

**ALFREDO DE LA CRUZ AND DOMINGA SALIMAO, PETITIONERS, VS.
ROGELIO FEBREO, THE PROVINCIAL SHERIFF OF NEGROS
OCCIDENTAL, HON. RAFAEL Q. GASATAYA, IN HIS CAPACITY AS
MUNICIPAL JUDGE...**

G.R. No. L-33884. April 25, 1978

Ponente: FERNANDO, J.

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FERNANDO, J.:

The protection of procedural due process no less than the fundamental doctrine that cautions against the improvident or hasty issuance of a writ of mandatory preliminary injunction is invoked by petitioners in this certiorari and mandamus proceeding. There would have been no need for such a suit had respondent Judge Carlos Abiera, now retired, nullified or set aside the writ of preliminary mandatory injunction issued by the Municipal Court of Kabankalan. What aggravated matters, in their opinion, is that respondent Judge dismissed their petition precisely instituted for that purpose by a court and summary order without even hearing the parties. It was alleged by them in the action before us that as an incident of a suit for forcible entry, a writ of preliminary injunction was issued by the aforesaid Municipal Court even before an urgent motion to that effect was received by them as defendants in such action and that four days later, after they had filed the opposition to such urgent motion, there was another order, this time for the writ of mandatory preliminary injunction directing respondent Provincial Sheriff to place private respondent Rogelio Febreo in possession of the disputed lot.[1] For petitioners, there was no legal basis to justify such a writ, considering that as far back as 1938 they had been in actual possession.[2] The order of respondent Judge, subject of this petition, reads as follows: "After a careful study of all the pleadings in this case, the Court is of the opinion that the respondent Municipal Judge has not acted without or in excess of jurisdiction and neither with grave abuse of discretion in issuing the orders of July 31 and August 4, 1970, respectively, and orders the dismissal of the petition without pronouncement as to costs." [3] A motion for reconsideration having proved fruitless, petitioners came to this Court.[4] The answer did not even dispute the allegation of absence of a hearing and thus the denial of due process. It merely alleged that there was a waiver on the part of petitioners.[5] Nor did it bother to refute the allegation that private respondent was never in possession of said lot. There was, therefore, less than full respect to the consistent doctrine followed by this Court since the leading case of *Manila Electric Railroad and Light Company v. Del Rosario*, [6] a 1912 decision, that the law looks with disfavor on the issuance of a mandatory preliminary injunction, absent a showing of extreme urgency, with the right being clear and with the party praying for such a writ able to make out "a clear case, free from doubt and dispute." [7]

The merit of the petition is quite obvious. So adherence to controlling doctrines requires. Moreover, all the equities are in favor of petitioners. Certiorari and mandamus lie.

1. Private respondent Rogelio Febreo had never disputed in all his pleadings the allegation that since 1938 petitioners had been in actual possession of the disputed lot. If it were not so, he could have denied such a claim. Such a failure on his part militates against his pretension that he was ousted therefrom contrary to law and that

therefore he should be entitled to a writ of mandatory preliminary injunction. In a manifestation submitted to this Court on June 9, 1975, petitioners alleged: "1. That while the above-entitled petition was pending before this Honorable Court, the land in question upon proper representation by the parties was made the subject of a joint investigation by the Bureau of Lands, Bacolod, and the Department of Agrarian Reform (Tabugon Agency); 2. That on January 22, 1974, the Bureau of Lands, issued an Order finding that the principal respondent in this case, Rogelio Febreo, had never occupied and cultivated the land in question in violation of the Homestead Law and finding that the actual occupants are the petitioners herein, Alfredo de la Cruz and his wife, who [had] introduced considerable improvements thereon and in whose name the land was already awarded, therefore cancelling the application of said respondent Rogelio Febreo. [A copy of such order was attached]; 3. That said Order of January 22, 1974 had already become final on the ground that respondent Rogelio Febreo had not appealed from the said order or decision." [8] When respondent Rogelio Febreo was required to comment, he did so in a three-page pleading submitted to this Court on August 27, 1975. Nowhere therein was there any denial of the fact of the long-continued and actual possession of petitioners of the lot in question. Instead, he would want this Court to disregard the findings of the Bureau of Lands as well as the Department of Agrarian Reform on the ground that he was not heard on the matter. He should have known that the question before this Court is limited to the validity of the issuance of the writ of mandatory preliminary injunction. What possessed materiality, therefore, is not so much the actuation by the aforesaid executive agencies, although it did bolster the claim of petitioners, but the status of the parties in terms of possession when the assailed writ was issued. What is of decisive significance then is that acting with almost indecent haste, the Municipal Court of Kabankalan, in defiance of the basic ruling of this Tribunal, issued such a writ and that respondent Judge, when appealed to, equally manifested lack of respect for such fundamental doctrine and summarily dismissed the suit filed by petitioners without any hearing.

2. To go back to the leading case of *Manila Electric Railroad and Light Company v. Del Rosario*, it may not be amiss to cite in full the formulation appearing in the opinion of Justice Torres: "It may be admitted that since an injunction mandatory in its nature usually tends to do more than to maintain the status quo, it is generally improper to issue such an injunction prior to the final hearing; but on the other hand, in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation, we hold that the jurisdiction to grant such injunctions undoubtedly exists; and while caution must be exercised in their issuance, the writ should not be denied the complainant when he makes out a clear case, free from doubt and dispute." [9] That opinion had been cited with approval in the following cases: *Villena v. Roque*, [10] *Morabe v. Brown*; [11] *Coronado v. Court of First Instance of Rizal*; [12] *Bautista v. Barcelona*; [13] *Commissioner of Customs v. Cloribel* [14] and *National Marketing Corporation v. Cloribel*. [15]

3. A petition of this character would have been unnecessary had the Municipal Judge of Kabankalan and respondent Judge displayed a greater awareness of the demands of due process and familiarity with controlling doctrines from this Tribunal. It does not speak well of members of the bench if they would be susceptible to the charge that they are remiss in their obligation to be fully acquainted with legal norms and precepts. Even on the assumption that they could accurately ascertain the facts, they would not be in a position to apply the correct principles of law. What is worse, in this particular case, the failure to respect the cardinal requirement of procedural due process did lead to consequences that, to say the least, cast a reflection on the two dignitaries concerned.

WHEREFORE, the writ of certiorari is granted and the order of respondent Judge, dismissing Civil Case No. 516 pending in the sala of the Court of First Instance of Himamaylan, Province of Negros Occidental, 12th Judicial

District, is nullified and set aside. The writ of mandamus is likewise granted ordering the presiding Judge of such Court, who replaced respondent Judge upon his retirement, to issue a new order in its place granting the petition for certiorari filed by petitioners, nullifying and setting aside the writ of preliminary mandatory injunction issued by the Municipal Court of Kabankalan, now declared to be without any force or effect. The possession of petitioners must be respected subject to the final outcome of the proceeding pending before the appropriate administrative authorities. This decision is immediately executory. Costs against private respondent Rogelio Febreo.

Antonio, Concepcion, Jr., and Santos, JJ., concur.

Barredo, J., in the result, upon the ground stated by Justice Aquino.

Aquino, J., concur, the grant of a preliminary mandatory injunction in a forcible entry case is governed by article 539 of the Civil Code and section 3, Rule 70 of the Rules of Court. A motion is required in order that the defendant should be accorded an opportunity to be heard. (See *Mara, Inc. vs. Estrella*, 65 SCRA 471; *Masallo vs. Cesar*, 39 Phil. 134).

[1] Annex 1, pars. 2-7.

[2] *Ibid*, par. 7.

[3] Annex 7.

[4] Annex 10.

[5] Annex B, Answer, pars. 7-8.

[6] 22 Phil. 433.

[7] *Ibid*, 437.

[8] Manifestation, 1.

[9] 22 Phil. 433, 437.

[10] 93 Phil. 363 (1953).

[11] 95 Phil. 181 (1954).

[12] 96 Phil. 729 (1955).

[13] 100 Phil. 729 (1955).

[14] L-20266, January 31, 1967, 19 SCRA 234.

[15] L-26585, March 13, 1968, 22 SCRA 1033.

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