

**RAFAEL L. DIZON, PETITIONER, VS. HON. NICASIO YATCO, ET AL.,
RESPONDENTS.***G.R No. L-23449. January 30, 1965*

Ponente: BENGZON, C.J.

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This is a petition for certiorari seeking to secede the order issued ex parte by respondent judge on August 31, 1964 enjoining preliminary petitioner from acting as auditor of the Central Bank, as well as Auditor General Jimenez from allowing him to act in that capacity, pending decision on the merits of the quo warranto case filed by respondent Medrano on the ground that respondent judge has acted with grave abuse of discretion.

On August 27, 1964, Iluminado R. Medrano filed a quo warranto case against Rafael L. Dizon, Sr., et al. before this Court of First Instance of Rizal claiming, inter alia, that the appointment extended to Rafael Dizon as auditor of the Central Bank be declared null and void, having been made without legal sanction, and that Medrano be declared entitled to that office being the official next higher in rank and, pending decision on the merits a writ of preliminary prohibitory injunction be issued ex parte to enjoin Rafael Dizon, Sr. from acting as such auditor of the Central Bank in order to maintain the status quo of Medrano's position as acting auditor of the Central Bank immediately before the commencement of Dizon's usurpation of said office.

Since the prayer relative to the writ of preliminary prohibitory injunction ex parte was granted by respondent Judge, Dizon, interposed the present petition for certiorari. In due course, this Court issued the preliminary injunction prayed for.

The petition for quo warranto contains several causes of action. In substance, it is alleged that Medrano is the senior assistant auditor of the Central Bank who, since August 11, 1964, acted as auditor of said bank, but that on August 24, 1964 Dizon usurped the position and discharged the duties thereof illegally to the exclusion of Medrano. And to show the illegality of the appointment of Dizon the following facts are alleged: Medrano was recommended on March 4, 1964 to the Auditor General to the office of auditor of the Central Bank by Ismael Mathay before his retirement. Medrano appealed to the Auditor General on March 30, 1964 pleading to consider his appointment. On April 1, 1964, the officers of the Central Bank Staff Association, as well as the representatives of its Council, sent a letter to the Auditor General interceding for Medrano. Hilarion Beronilla, together with 97 officials and employees of the office of the Auditor of the Central Bank, also appealed to the Auditor General recommending the promotion of Medrano.

On May 13, 1964, Ismael Mathay retired as auditor of the Central Bank, on which date said office became vacant. Heronilla occupied the position in a temporary capacity.

When Dizon was appointed auditor of the Central Bank. Meantime, Beronilla, then acting auditor, took a sick leave and Medrano was designated acting auditor during his sick leave. On August 22, 1964, Beronilla, pursuant to an office order of the Auditor General, resumed office as acting auditor of the Central Bank. On August 24, 1964, Dizon appeared in the Office of the Central Bank and "began to intrude and usurp" the right of Medrano.

On August 24, 1964, Medrano wrote to the Governor of the Central Bank asking him not to recognize Dizon as auditor. Medrano also issued an office memorandum to all officials and employees of the Central Bank informing them of the void appointment of Dizon.

On the other hand, in the petition for certiorari filed by Dizon, as well as in other pleadings filed in the instant case, the following facts are stated:

The General Auditing Office is headed by the Auditor General. Below him is the Deputy Auditor General, and next in rank to the latter are the auditors assigned to different government agencies or corporations, among which is Rafael Dizon who, before his appointment as auditor of the Central Bank, was the auditor of the Philippine Sugar Institute, or Philsugin for short. In the different government agencies or corporations where these auditors are detailed, the latter have their respective assistants appointed by the Auditor General, who receive less compensation than the auditors themselves.

On March 30, 1964, anticipating the retirement of Ismael Mathay as auditor of the Central Bank, Iluminailo Medrano wrote a letter to the Auditor General requesting that he be appointed to said position, which request was unheeded in spite of other letters sent by Ismael Mathay himself and the members of the Central Bank Staff Association endorsing Medrano's appointment. Even before the retirement of Mathay on May 12, 1964, Hilarion Beronilla was designated acting auditor of the Central Bank who thenceforth discharged the functions of said office. On August 11, 1964, Beronilla went on sick leave and on the same date Medrano was designated acting auditor until the return of Beronilla. On August 21, 1964, the Auditor General issued an order directing the immediate return of Beronilla to the Central Bank, and pursuant thereto the latter resumed office on August 22, 1964.

Meanwhile, an appointment was extended to Rafael L. Dizon as auditor of the Central Bank on July 10, 1964, which was approved by the Commissioner of Civil Service, said appointment to take effect upon assumption of duty. On August 24, 1964, Dizon was ordered by the Auditor General to assume office as auditor of the Central Bank, which he immediately heeded by taking his oath of office. In the same order Beronilla was directed to return to the Philippine National Bank, while the appointment of Medrano as acting auditor was revoked. The Auditor General also addressed a letter to Mr. Andres V. Castillo, Governor of the Central Bank, informing the latter of Dizon's appointment as auditor of said bank.

From the foregoing recital of facts, the following stand out as decisive and undisputed:

When Ismael Mathay retired on May 12, 1964, Medrano was merely a senior assistant auditor of the Central Bank. Upon Mathay's retirement Beronilla, auditor of the Philippine National Bank, was designated to act in his place. Then Beronilla went on sick leave and Medrano was designated to act in his place until his return. On August 21, 1964, the Auditor General directed Beronilla to resume office as acting auditor of Central Bank, and in an office order issued by the Auditor General Beronilla was directed to return to the Philippine National Bank while the appointment of Medrano as acting auditor was revoked. Meanwhile, or on July 19, 1964, Dizon was appointed auditor of the Central Bank, his appointment having been duly approved by the Commissioner of Civil Service. And on August 24, 1964, upon direction of the Auditor General, Dizon took his oath and assumed his duties as such auditor.

It is clear, therefore, that when Medrano filed the present Petition for quo warranto he was merely a senior assistant auditor of the Central Bank, while Dizon was already the auditor thereof duly appointed by the Auditor General. Dizon was then holding and discharging the duties of that office. Verily, until proven otherwise, Dizon is the one entitled to continue holding that office as well as to discharge its functions and duties, pending trial and decision on the merits of the quo warranto case. Hence, it would appear to be a grave abuse of discretion on the

part of respondent judge to have issued the writ of preliminary prohibitory injunction in question without first considering the merits of said case, or without giving the parties an opportunity to present evidence thereon. In fine, said writ was issued without Medrano having any existing right to protect.

" 'The existence of a right violated is a prerequisite to the granting of an injunction. * * * A permanent injunction should not be awarded except in a clear case and to prevent irreparable injury.' (32 C.J., 34-36.)

" 'A court of chancery will not entertain a bill to enforce a mere valueless abstract right, and the court will, on its own motion, raise the point for its own protection.' (Duznom vs. Thomsen, 58 111. App., 390.)

"None of these requisites is present in the instant case. There has been a failure to establish either the existence of a clear and positive right of the plaintiff specially calling for a judicial protection through an extraordinary writ of the kind applied for, or that the defendant has committed or attempts to commit any act which has endangered or tends to endanger the existence of said right, or has injured or threatens to injure the same." (North Negros Sugar Co. vs. Hidalgo, 63 Phil., 664, 671)

"Injunction, like other equitable remedies, will issue only at the instance of a suitor who has sufficient title or interest in the right or property sought to be protected. He must stand on the strength of his own right or title, rather than on the weakness of that claimed by his adversary. An impending or threatened invasion of some legal right of the complainant, and some interest in preventing the wrong sought to be perpetrated must be shown. It is always a ground for denying injunction that the party seeking has not sufficient title or interest to sustain it, and no claim to the ultimate relief sought—in other words, that he shows no equity. Want of equity on the part of the plaintiff in attempting to use the injunctive process of the court to enforce a mere barren right will justify the court in refusing the relief even though the defendant has little equity on his side. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of disputes respecting title, and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or disputed." (28 Am. Jur., p. 218)

"In judicial proceedings, no one can be heard to complain unless he can show that he has been injured. Accordingly, one who seeks injunctive relief in a court of equity must satisfy the court, not only that he has a clear right of a character which equity will protect, but also that the act or acts complained of constitute an injurious invasion of that right which will result in or threatens actual and substantial damage." (Idem., pp. 220-221)

It is true that Medrano claims that as senior assistant auditor of the Central Bank he is entitled under the law to fill the vacancy by the retirement of Ismael Mathay, but Dizon claims otherwise, and on this point he advances points which are worthy of note. Medrano also has points in his favor which likewise deserve to be reckoned with. He even now claims that he had been appointed auditor of the Central Bank even if he has not adduced any pertinent documentary proof. But all these evidentiary matters can best be considered after this case is tried on the merits rather than in this instance bearing in mind merely the allegations in the pleadings filed in connection with the present petition.

In view hereof, we are of the considered opinion that the writ of preliminary injunction issued by respondent judge should be set aside without prejudice to whatever relief that may be warranted after the quo warranto case shall have been tried and decided on the merits.

WHEREFORE, the order of respondent judge dated August 31 1964 which grants ex parte the writ of preliminary Prohibitory injunction is hereby set aside. Respondent court is hereby directed to try and decide the quo warranto case on the merits. The writ issued by this Court is dissolved. No costs.

Paredes, Dizon, Regala, Bengzon, J. P. and Zaldivar, JJ. concur.

Reyes, J. B. L., J., concurs in the result.

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