

**MARTINIANO P. VIVO, AS COMMISSIONER OF IMMIGRATION,
PETITIONER, VS. HON. JUAN O. REYES, AS JUDGE OF THE COURT OF
FIRST INSTANCE OF MANILA, BRANCH XXI; MACARIO OFILADA, AS
CLERK ...**

G.R. No. L-22572. January 22, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This certiorari and prohibition case was filed on March 13, 1964 by the Commissioner of Immigration to restrain the Court of First Instance of Manila from enjoining the deportation of the overstaying aliens named Tan Sio Wan alias Chan Sook Luen, Tiu Yek Hiong alias Chang Yik Hung, and Tiu Chi Lu, who are, respectively, the wife and minor children of Tiu To Kiat, a naturalized citizen residing at 530 Rosario Street, Manila.

Tan Sio Wan, Tiu Yek Hiong and Tiu Chi Lu arrived in Manila on February 16, 1960 as temporary visitors authorized to stay for three months. Their stay was eventually extended to August 24, 1962. They were ordered to leave the country not later than September 8, 1962. But, instead of complying with that order, they filed on August 30, 1962 with the lower court an action for prohibition to restrain the Commissioner of Immigration from deporting them (Civil Case No. 51434).

That action was based on the fact that Tiu To Kiat's petition for naturalization was granted by the lower court in a decision dated July 30, 1960, which was not appealed, and that he would soon take his oath of allegiance (Civil Case No. 41108).

Civil Case No. 51434, the prohibition case, was submitted for decision on the basis of a stipulation of facts. The lower court in its decision of April 18, 1963 held that since Tiu To Kiat had become a naturalized Filipino citizen and had taken his oath of allegiance, his wife and two minor children became Filipino citizens and could not be deported. It ordered the Commissioner to cancel the immigration papers of Tiu To Kiat's wife and minor children and to refund their cash bond of twenty-four thousand pesos.

That decision, not having been appealed, became final and executory on May 20, 1963. Entry of judgment was duly made.

About ten months after that entry of judgment, the Commissioner resorted to the remedies of certiorari and prohibition to prevent its implementation. A writ of preliminary injunction was issued by this Court on March 13, 1964 to restrain the trial court from enforcing that judgment.

The respondents answered the petition. Their principal defense was that certiorari and prohibition could not be availed of because the Commissioner's remedy was appeal which was already lost. This case was submitted for decision on August 3, 1964.

On December 29, 1966, the Solicitor General filed in the naturalization case, Civil Case No. 41108, a motion for

the cancellation of Tiu To Kiat's certificate of naturalization because he failed to comply with the educational requirement for his minor children and on other grounds. The lower court denied the motion.

In the appeal in that denaturalization incident, this Court in its decision of March 25, 1974 reversed the lower court's order of denial, cancelled Tiu To Kiat's certificate of naturalization and declared void the decision granting his application for naturalization, the order allowing him to take his oath of allegiance and the oath administered to him on February 16, 1963 (*Tiu To Kiat vs. Republic*, L-28169, 56 SCRA 57, per Justice Fernando).

Thus, this Court's decision removed the ground which was the basis of the lower court's order in the prohibition case, Civil Case No. 51434, restraining the deportation of Tiu To Kiat's wife and two minor children.

However, in a comment dated February 25, 1977, the Solicitor General disclosed that Tiu To Kiat, with other deserving aliens, was granted Philippine citizenship under Presidential Decree No. 1055 dated November 26, 1976.

The question is whether, as prayed for by the Solicitor General in his memorandum of January 4, 1965, the lower court's final and executory decision of April 18, 1963, can be declared void in this certiorari and prohibition case.

We hold that the petition be entertained. The lower court had jurisdiction to render the decision now being questioned. Certiorari and prohibition cannot be a substitute for appeal. Sections 1 and 2, Rule 65 of the Rules of Court explicitly require that certiorari and prohibition may be availed of in case "there is no appeal". As a rule, after the judgment has become final and executory, the same cannot be set aside by means of certiorari and prohibition.

Whether the events supervening after the rendition of the lower court's decision, such as the denaturalization of Tiu To Kiat in 1974, his reacquisition of Philippine citizenship thereafter and the fact that respondents Tiu Yek Hiong and Tiu Chi Lu are already of age, would render the execution of its judgment impossible, unjust or inequitable (*De los Santos vs. Rodriguez*, L-23170, January 31, 1968, 22 SCRA 451, 458 and *City of Cebu vs. Mendoza*, L-26321, August 19, 1975, 66 SCRA 174, 177), is a point that need not be decided in this case. (See the dictum in *Lewin vs. Galang*, 109 Phil. 1041, 1052 that immigration cases affect the sovereignty of the State.)

WHEREFORE, the petition is dismissed. The preli-minary injunction issued on March 13, 1964 is dissolved. No costs.

SO ORDERED.

Barredo, (Chairman), Antonio, Concepcion, Jr., and Santos, JJ., concur.
Abad Santos, J., did not take part.

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