

THE PHOENIX ASSURANCE COMPANY, PLAINTIFF-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES AND CUSTOMS ARRASTRE SERVICE, DEFENDANTS-APPELLEES.*G.R. No. L-26531. October 31, 1969*

Ponente: FERNANDO, J.

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To state the basis of the order of July 16, 1966 of the Court of First Instance of Manila, Branch XXII, the Honorable Federico C. Alikpala presiding, dismissing an action filed by plaintiff-appellant Phoenix Assurance Company against the Republic of the Philippines on the ground of lack of jurisdiction, the state not being susceptible to a suit without its consent, is to make manifest the appropriate disposition of this appeal. Its fate is foreordained. A reversal of the lower court decision is unthinkable.

An action was filed against defendants, now appellees, Republic of the Philippines and the Customs Arrastre Service, on June 11, 1966, in view of the claims for losses and damages for failure of the latter, as arrastre operator, to deliver on two occasions five cartons of cigarettes, with the rest of the merchandise delivered but in a damaged condition. Such goods were insured with plaintiff-appellant. It had to pay the claims thereon, thereby subrogating itself to whatever rights of recovery the consignee had. It made demands on now appellee Customs Arrastre Service for the amounts involved, but there was a failure and refusal to satisfy such claims. Hence the action filed on June 11, 1966. There was a motion to dismiss on the part of defendants, now appellees, Republic of the Philippines and Customs Arrastre Service on June 25, 1966, the principal ground being the lack of jurisdiction under the doctrine of non-suability. As noted, the order of July 16, 1966 sustained the above motion, the complaint being dismissed.

The appeal was taken direct to this Court on a pure question of law. As above made clear, the futility thereof is undeniable.

Only last September of this year, in *Providence Washington Insurance Co. v. Republic of the Philippines*,^[1] we had occasion to dismiss an appeal in view of the 1966 authoritative *Mobil Philippines Exploration, Inc.* decision,^[2] wherein such, immunity from suit, absent its consent, was given affirmation in the most categorical language. It was noted by us that there were thirty-six subsequent cases upholding such a view. We could then categorically assert: "The doctrine of non-suability thus holds undisputed sway. Its primacy appears to be undeniable. For a suit of this character to prosper, there must be a showing of consent either in express terms or by implication through the use of statutory language too plain to be misinterpreted. Its absence being obvious, the lower court acted correctly."

So it is in this case. The lower court did right and must be upheld. Nor is the reason advanced in the brief of appellant Phoenix Assurance Company as to the desirability of a doctrine permitting such a suit, in view of the government engaging in business, commend itself for approval. In the same *Providence Washington Insurance Co.* decision, we had occasion to explain why there should be no departure from the doctrine of non-suability.

Thus: "This is not to deny that while indeed logical and far from impractical the doctrine does give rise to problems considering how widely immersed in matters hitherto deemed out-side its sphere the government is at present. Nor is it likely considering its expanding role, demanded by the times and warranted by the Constitution, that a halt would be called to many of its acti-vities, at times unavoidably adversely affecting private rights. None-theless, a continued adherence to the doctrine of non-suability is not to be deplored for as against the inconvenience that may be caused private parties, the loss of governmental efficiency and the obstacle to the performance of its multifarious functions are far greater if such a fundamental principle were abandoned and the availability of judicial remedy were not thus restricted. With the well known propensity on the part of our people to go to court, at the least provocation, the loss of time and energy required to defend against law suits, in the absence of such a basic principle that constitutes such an effective obstacle, could very well be imagined."

WHEREFORE, the order of dismissal of July 16, 1966 by the Honorable Federico C. Alikpala is affirmed. Costs against the Phoenix Assurance Company.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, and Teehankee, JJ., concur.
Zaldivar and Barredo, JJ., took no part.

[1] L-26386.

[2] Mobil Philippines Exploration, Inc. v. Customs Arrastre Service, 18 SCRA 1120 (1966).

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