

## CITY OF MANILA, PETITIONER, VS. COURT OF APPEALS AND METROPOLITAN THEATER COMPANY, RESPONDENTS.

*G.R. No. L-35253. July 26, 1976*

Ponente: CASTRO, C.J.

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### CASTRO, C.J.:

This is an appeal by way of certiorari from the decision of the Court of Appeals dated June 20, 1972 in GR-SP-00707-R, annulling the special order of execution of September 30, 1971 and the writ-issue-order of December 29, 1971 in civil cases 78845 and 79907 of the Court of First Instance of Manila. This Court resolved to consider this appeal as a special civil action.

The petitioner City of Manila (hereinafter referred to as the City), commenced on July 2, 1968 an action for unlawful detainer against the private respondent Metro-politan Theater Company (Company, for short) in civil case 172062 of the City Court of Manila, which, after due hearing, dismissed the case. From this dismissal the City appealed on December 16, 1969 to the Court of First Instance of Manila where the case was docketed as civil case 78845.

On January 9, 1929 the City and the Company entered into an agreement whereby for and in consideration of P1.00 the former sold, assigned and transferred to the latter three parcels of land with a total area of 8,343.40 square meters; that the building which the Company would construct thereon would be principally devoted to theatrical performances; that the Company was authorized to borrow money and mortgage the property as security; that upon completion of the theater, the Company would reconvey to the City the lots and building, subject to such encumbrances as might have been imposed thereon in connection with the construction of the building; that the City after the reconveyance to it of the property, would execute a contract of lease of the same property in favor of the Company for a period of 99 years at a yearly rental of P100 and the Company would pay annually the necessary amount to meet the obligations contracted for the construction of the building until they are fully paid; and that upon the termination of the lease, the Company would return to the City the leased premises and the building.

The Company had borrowed as of December 10, 1931 the total amount of P700,000 from the El Hogar Filipino, secured by a mortgage over the parcels of land involved in the agreement between the City and the Company.

On December 10, 1931 the City and the Company entered into and executed a contract whereby the latter, for and in consideration of P1.00, re-sold, re-assigned, re-transferred and re-conveyed to the former the parcels of land together with the theater building constructed thereon. Pursuant to the agreement the City subsequently leased the same to the Company.

Ravaged during the last World War, the Metropolitan Theater Building could no longer be devoted to theatrical performances.

The City then notified the Company of the termination of the contract and demanded that the latter vacate and

turn over the premises to the former. The Company refused to do so; the City then filed an ejectment suit.

On March 19, 1970, during the pre-trial of civil case 78845, the presiding judge of Branch XXIII of the Court of First Instance of Manila suggested to the City the filing of another complaint to recover possession of the land and building involved in the unlawful detainer case.

On May 29, 1970 the City filed a complaint for rescission of contract with receivership, docketed as civil case 79947, which the City asked in an ex parte motion to be consolidated with the appealed case 78845. On June 1, 1975 the trial court approved the consolidation.

After a joint trial of the appealed case and civil case 79947, the Court of First Instance of Manila rendered on August 5, 1971 its decision declaring, among others, that the City is entitled to recover from the Company the possession of the Metropolitan Theater Building and the three lots on which it was constructed, and ordering the Company to deliver the possession thereof to the City.

On August 9, 1971 the City filed a motion for execution of the decision based on Section 8 of Rule 70 of the Rules of Court relative to judgment in illegal detainer and forcible entry cases. On August 20, 1971 the Company filed its opposition to the said motion, contending that the consolidated actions had become an accion publiciana which could not be the subject of a motion for immediate execution under Section 8 of Rule 70 of the Rules of Court.

On August 23, 1971 the Company filed its notice of appeal and cash bond, and on August 25, 1971 its record on appeal.

On September 1, 1971 the City filed an amended motion for execution, reiterating its ground for execution pending appeal under Section 8, Rule 70 of the Rules of Court, and adding another ground, which is the alleged "dilatatory tactics and insolvency" of the Company, under Section 2 of Rule 39 of the Rules of Court. On September 24, 1971 the Company filed its opposition to the amended motion, denying the allegation that it is insolvent and that its appeal was intended merely to delay, and praying that, in the event that the trial court should favorably consider the execution pending appeal under Rule 39 of the Rules of Court, it be allowed to post a supersedeas bond to stay the execution under Section 3 of said Rule 39. On September 30, 1971 the trial court issued a special order for the execution of its judgment dated August 5, 1971, upon the filing by the City of a bond in the amount of P30,000, pursuant to the provisions of Section 2 of Rule 39 of the Rules of Court.

On October 4, 1971 the Company filed an urgent motion for reconsideration, contending that the City had no valid ground for execution pending appeal under Section 2 of Rule 39 of the Rules of Court, and reiterating its offer to post a supersedeas bond.

On December 29, 1971 the trial court issued an order denying the motion for reconsideration, approving the bond filed by the City, and directing the implementation of the execution order of September 30, 1971.

The Company then filed on January 6, 1972 with the respondent Court of Appeals a special civil action for certiorari and prohibition, docketed as GR-00707-R, for the annulment of the special order of execution dated September 30, 1971 and the writ-issue-order of December 29, 1971. The respondent Court, in its resolution dated January 11, 1972, granted ex parte the writ of preliminary injunction applied for by the Company to stay the enforcement of the orders complained of, upon the filing of a P2,000 bond, and required the City to answer the petition.

The City moved to have the writ of injunction dissolved, pointing out that the bond was insufficient and that the act sought to be restrained had already become *fait accompli*. The motion was denied; the City then filed its

answer.

The respondent Court rendered its decision on June 20, 1972 granting the writ of certiorari and prohibition, setting aside the special order of execution of September 30, 1971 and the writ-issue-order dated December 29, 1971 of the trial court, and made permanent the preliminary injunction theretofore issued. From the said judgment, the City interposed this appeal (which this Court has considered as a special civil action), claiming that the respondent Court of Appeals erred in disturbing the findings of fact of the trial court which are supported by substantial evidence and substituting therefor its own conclusions which are based on speculations, surmises and conjectures, or which are manifestly mistaken or absurd; and that the respondent Court used the office of the writ of certiorari and prohibition to set aside the findings of fact and conclusions made by the trial court in the exercise of its jurisdiction.

In its answer, the Company contends that the review sought must hinge solely on whether or not the Court of Appeals has committed errors of jurisdiction or grave abuse of discretion, as distinguished from mere errors of judgment; that the first ground relied upon in the petition raises a question of fact inasmuch as it seeks a review of the findings of fact of the Court of Appeals; and that the second ground is devoid of merit since the Court of Appeals is vested by law with jurisdiction to issue writs of certiorari and prohibition in aid of its appellate jurisdiction and can review the order of execution of the trial court pending appeal. It likewise refuted the arguments adduced by the petitioner in support of the errors allegedly committed by the respondent Court, and prayed for the dismissal of the petition.

The cardinal issue in this case is whether or not the respondent Court of Appeals committed grave abuse of discretion when it set aside the special order of execution issued by the trial court pending appeal. The petitioner's complaint that the Court of Appeals made use of the writ of certiorari to set aside the order of execution would hardly require discussion, for it is settled that it can do so provided the trial court committed a grave abuse of discretion in issuing the order.[1]

Section 2 of Rule 39 of the Rules of Court which enumerates the conditions in order that a judgment may be executed before the expiration of the time to appeal is hereunder quoted:

"On Motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein."

Of the three conditions required (to wit: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be good reasons for issuing execution; and (c) the good reasons must be stated in a special order), only the existence of good reasons is disputed.

Even though the element that gives validity to an execution pending appeal is the existence of good reasons in support thereof, the statute, nevertheless, does not determine, enumerate, or give examples of what may be considered good reasons to justify execution. What these good reasons are must, therefore, necessarily be addressed to the discretion of the court.

Inasmuch as the issuance of the writ of execution depends on the discretion of the trial court, such issuance must necessarily be controlled by the judgment of the judge in accordance with his own conscience and by a sense of justice and equity, free from the control of another's judgment or conscience. It must be so for discretion implies the absence of a hard and fast rule. This Court has said that discretion is the power exercised by a court to determine questions arising in the trial of a case to which no strict law is applicable, but which from their nature and the circumstances of the case, are controlled by the personal judgment of the court.[2] It is the power which the law confers on public officials to act officially under certain circumstances in accordance with their own

judgment or conscience.[3]

The discretion given by statute to issue execution pending appeal is not however unconfined, vagrant, absolute, and arbitrary. Rather, it is sound discretion, for the court may grant such execution only when there are good reasons therefor, and which are to be stated in a special order. If in the mind of the court, taking into consideration the facts and circumstances surrounding the case, good reasons exist, the exercise of the power to issue immediate execution of the judgment cannot be considered as grave abuse of discretion.[4] Provided there are good reasons for execution according to the judgment of the trial judge, such judgment should generally not be interfered with, modified, controlled, or inquired into by the appellate court; the latter should generally not substitute its way of thinking for that of the trial court, otherwise, the discretionary power given to the trial court would have no meaning. The appellate court may, however, interfere with that discretion lodged in the trial court only in case of grave abuse[5] or in case conditions have so far changed since the issuance of the order as to necessitate the intervention of the appellate court to protect the interests of the parties against contingencies which were not or could have not been contemplated by the trial judge at the time of the issuance of the order.[6]

The trial court retains its discretion to issue an order of immediate execution pending appeal even when the losing party posts a supersedeas bond to stay execution.[7] It is necessary, however, in order that the trial court may disregard the supersedeas bond, that there be special and compelling reasons justifying immediate execution.[8] In the case before us where the Company offered to post a supersedeas bond to stay immediate execution, the basic issue raised can be resolved by determining whether there are good, special and compelling reasons justifying the questioned order of execution. In such determination, the facts and circumstances which impelled the court to act as it did and its own assessment of the equities are entitled to considerable weight, for the issuance of the order of immediate execution is within its sound discretion.[9]

1. The first ground given by the trial court to justify immediate execution contains three concatenated special reasons, namely, the Company's insolvency, the risk of forfeiture of the City's lots, and the prodigal, if not anomalous, wastage of the rental income of the Theater Building. Said the trial court:

"It is not disputed that the four (4) parcels of land on which the Metropolitan Theater Building was constructed are owned by plaintiff City of Manila; that said parcels of land with a total area of 8,343.40 square meters covered by Transfer Certificates of Title Nos. 368, 36813, 7138 and 36818 were mortgaged on December 10, 1931 in favor of El Hogar Filipino to answer for a principal indebtedness of P700,000.00 which was used for the construction of the Metropolitan Theater building now object of this case between the plaintiff and the defendant. After the building was severely damaged by the last war, the defendant Metropolitan Theater Company did not pay to El Hogar Filipino the annual amortizations provided for in the mortgage contract. Defendant has not even paid in full the annual interests due on the loan. The balance sheet of the defendant shows that as of June 30, 1968 the indebtedness to the El Hogar Filipino was P721,547.82 (Exh. R). The income from the Metropolitan Theater Building derived from the rents collected by the defendant from the various tenants for the years 1966-67 averaged P104,342.00 a year (Exh. C-2). Of this income only P49,045.92 was paid to El Hogar Filipino. The rest of the income was disbursed for overhead expenses including the directors' fees, officers' salaries, salaries and wages of employees, legal and audit fees, maintenance and repair (Exh. R-1, sheet 2, Exh. R-2, sheet 4). There are no prospects that the indebtedness to El Hogar Filipino can ever be paid if the defendant continues possessing the Metropolitan Theater Building as it has done for the past 26 years. At any time it chooses to, El Hogar Filipino may exercise its right to foreclose the mortgage because of defendant's failure to pay the annual amortizations on the mortgage loan. It is not right, fair or just that defendant Metropolitan Theater Company should be allowed to continue possessing the property in litigation during the pendency of this case on appeal when the highly valuable parcels of land on which the building in dispute is constructed belongs to the plaintiff City of Manila, which lands run the risk of being foreclosed at any time by the mortgagee El Hogar Filipino because of defendant's failure to pay the annual

amortizations agreed upon in the mortgage contract.

"The City of Manila has made it of record that it is willing to pay the mortgage debt to El Hogar Filipino. It has to do so to prevent a very valuable property from being foreclosed. The City of Manila is in a very much better financial position than the defendant to pay the mortgage obligation. The fact that El Hogar Filipino has not chosen up to now to exercise its right of foreclosure does not change the fact that there is danger of foreclosure and that El Hogar Filipino may exercise its right to do so at any time. If El Hogar Filipino forecloses the mortgage, the City of Manila loses four (4) parcels of valuable property containing a total area of 8,343.40 square meters. The defendant does not stand to lose much because according to its managing director all the income that it derives from the building is eaten up by administration expenses, maintenance expenses, salaries of officers and employees, part-ial payment of interests to El Hogar Filipino and other necessary expenses. The City of Manila is entitled in justice and equity to the immediate possession of the property in litigation so it can take steps to protect its interests on the building and the land to prevent further damage.

"It has been held that when judgment is in favor of the plaintiff it may be executed immediately to prevent further damage to him caused by the loss of his possession (Sumintac vs. Court, 74 Phil. 445)."

In the decision complained of, the Court of Appeals discarded the first ground relied upon by the trial court, to wit, that the Company is insolvent. Said the Court of Appeals:

"From the evidence of respondent City of Manila that the income of the Metropolitan Theater Building for the years 1966-1967 averaged P104,342.00 a year and of that income only P49,045.92 was paid to El Hogar Filipino, and that as of June 30, 1968, the indebtedness to the latter was P721,547.82, respondent court expressed the view that "There are no prospects that the indebtedness to El Hogar Filipino can ever be paid if the defendant (Metropolitan Theater Company) continues possessing the Metropolitan Theater Building \* \* \*. At any time it chooses it, El Hogar Filipino may exercise its right to fore-close the mortgage because of defendant's failure to pay the annual amortizations of the mortgage loan.'

"Be that as it may, it does not clearly show the insolvency of the Metropolitan Theater Company. It may have the means, other than the income from the theater building, with which to meet its financial obligations."

If the facts from which the trial court inferred the Company's insolvency were only those recited by the Court of Appeals in the aforequoted paragraphs then we cannot but agree with the appellate court that the insolvency of the Company has not been clearly shown. But the Court of Appeals has omitted, and consequently failed to appreciate, many other facts recited in the special order of execution, which clearly show that the Company is in-solvent. It omitted and disregarded the fact that the Company could not even pay in full the annual interest due on the mortgage for 26 years, as a consequence of which the original loan of P700,000 had increased to P721,547.82.[10] It likewise omitted and failed to consider other factors appearing in the other portions of the record, to wit, that the balance sheet of the Company shows a total deficit of P1,261,851 as of December 31, 1967, as against the book value of its capital of only P77,419.58;[11] that the Company has incurred in arrears in monthly dues and penalties that ran up to P439,019.11 from February 1967 to June 1968, inclusive;[12] that, as stated by the trial court, "There are no prospects that the indebtedness to El Hogar Filipino can ever be paid if the Defendant continues possessing the Metropolitan Theater Building as it has done for the past 26 years after the last war."

The Company, however, contends that the trial court has not categorically found that the Company is insolvent. This contention cannot be accorded credit inasmuch as the insolvency of a party may be inferred from a number of circumstances on record.[13] If insolvency is the inability or the lack of means to pay one's debt, or the condition of a person who is unable to pay his debts as they fall due,[14] then there is no doubt that the Company is insolvent for it has been unable to pay not only the amortizations on the principal but also the full interests on the loan as they fell due, and that it is not in a position to pay the mortgage debt.

The Court of Appeals, however, not only disregard the facts on record when it stated that the insolvency of the Company has not been clearly shown, but also aggravated its error when it conjectured that the Company "may have means, other than the income from the theater building, with which to meet its financial obligations." The mere possibility that the Company may have means to pay its obligations cannot outweigh the facts on record that clearly show that the Company is insolvent. The Court of Appeals, in setting, aside the conclusion of the trial court on this matter of the Company's insolvency, which, as has been shown, is based on the facts on record, and substituting therefor its conjecture, committed grave abuse of discretion, for "the findings of fact of the lower court cannot be disregarded except in the absence of substantial evidence to support it." [15] This Court has likewise said that "it is a fair statement of the governing principle to say that the appellate function is exhausted when there is found to be a rational basis for the result reached by the trial court." [16]

It cannot be gainsaid that the insolvency of a defeated party, where it has been clearly shown, is a good and special reason for execution pending appeal. [17]

Compounding the Company's insolvency and as a result of its failure to pay its obligations, is the risk of forfeiture of the City's valuable lots. The parcels of land on which the Metropolitan Theater Building was constructed are the City's property, and that the Company, by agreement with the City, mortgaged these lots in favor of the El Hogar Filipino to answer for the principal indebtedness of P700,000 used for the construction of the Metropolitan Theater Building. Inasmuch as the Company has failed for 26 years after World War II to pay in full even the interests on the indebtedness, let alone the amortizations on the principal, the El Hogar Filipino has the right to foreclose the mortgage. Should the mortgage be foreclosed the City will lose its three parcels of land with a total area of 8,343.40 square meters, but the Company, on the contrary, will not stand to lose much, for the money it spent in the construction of the Theater was borrowed from the mortgagee, and the income it derives from the building, according to the Company's managing director, is totally eaten up by administration expenses, maintenance expenses, salaries of officers and employees, sundry expenses and partial payments of the interest on the loan.

The Court of Appeals, however, rejected this ground, stating that the danger of foreclosure, according to the belief of the Company, is very remote. It said:

"The Metropolitan Theater Company entertained a strong belief that the danger that El Hogar Filipino might foreclose on the property 'is very remote,' and cited the fact that it 'has not even been ever hinted.' "

The fact that the Company entertained said tenuous belief cannot negate the mortgagee's right to foreclose whenever it so desires. Neither can such belief serve as a guaranty that the mortgagee will not foreclose nor will it bar foreclosure should it desire to. The fact is that because the mortgagee has a right to foreclose whenever it so chooses, the City runs the risk of losing its property given as security. As between the City that would lose incalculably more and the Company which would lose practically nothing in case of foreclosure, the City must take more pains in avoiding the foreclosure.

2. The second ground given by the trial court to justify immediate execution is the City's having put up a bond of P30,000 to answer for the return of the property and damages in the event that it be finally adjudicated on appeal that the Company is entitled to the possession of the property. The Court of Appeals did not likewise consider this as a good reason for execution pending appeal on the ground that the action is not for a sum of money and that in the case of *Rodriguez vs. Court of Appeals* [18] the filing of the bond was not by itself considered a good reason, for the dilatory nature of the appeal was also considered by this Court.

It is true that in *Rodriguez vs. Court of Appeals*, this Court considered, besides the filing of the supersedeas bond, the dilatory nature of the appeal. That does not mean, however, that the filing of the supersedeas bond alone or the

dilatory nature of the appeal alone, is not in itself a good and special reason for execution pending appeal. In the very same case relied upon by the Court of Appeals, this Court approvingly quoted Moran, thus:

"The element that gives validity to an order of execution is the existence of the good reasons if they may be found distinctly somewhere in the record. In this connection, it has been held that the filing of bond by the successful party is a good reason for ordering execution. That the appeal is being taken for purposes of delay is also a good reason. (Rodriguez v. Court of Appeals, 105 Phil. 777, 780-781)."[19]

In *Hacienda Navarra, Inc. vs. Labrador*[20] the filing of a bond alone was considered a good and special reason for ordering execution pending appeal. Said this Court:

"The filing of the bond required by the respondent judge in the order sought to be annulled constitutes a special ground authorizing the court to issue a writ of execution pending appeal, in conformity with the provisions of section 144 of the Code of Civil Procedure."

In *People's Bank vs. San Jose*[21] this Court also held that the filing of a bond by the prevailing party is a good and special reason for ordering execution pending appeal.[22]

The Court of Appeals also expressed the fear that should the trial court's judgment be reversed on appeal the damages that may arise from its execution pending appeal may not be fully compensated, without however stating the nature of the said damages. Will said damages not be the fair and reasonable value of the use and occupation of the property or the amount of rentals received by the Company from the building? Is the P30,000 bond not sufficient for said rentals? If it is insufficient, should the Court of Appeals not have ordered the amount to be increased?

From what has been said, it is thus clear that the Court of Appeals erred in not considering the City's posting a bond as a good and special reason to justify execution pending appeal.

3. The third ground given by the trial court in the special order of execution is that the expenses of administering the building would be very much less if the City of Manila were in possession of the building. The reason is that the City will not have to pay directors' fees, officers' salaries, salaries and wages of employees, and legal and audit fees, since the City of Manila has already the necessary facilities, personnel and employees to maintain and administer the building. This ground was rejected, the Court of Appeals saying that "we cannot bring ourselves to believe that it is justifiable reason for the immediate execution of the judgment of a respondent court. Moreover it is speculative, without any proof whatsoever."

It will be noted that the Court of Appeals did not doubt the fact that more than one-half of the average yearly income of the building is spent for directors' and employees' salaries, fees and services. Out of the yearly income of P104,342 only P49,045.92 was paid to El Hogar Filipino. In the appreciation of the trial judge, although he did not explicitly say so, such expenses were a wastage of the income, for if it were not so, why did the trial court say that "There are no prospects that the indebtedness to El Hogar Filipino can ever be paid if the defendant continues possessing the Metropolitan Theater Building as it has done for the past 26 years after the last war"? The Court of Appeals hesitated to say whether to prevent this wastage was a good reason for execution pending appeal.

We do think that under the facts, circumstances and equities in the instant case, to prevent such wastage of income so that considerably more of the income can be channeled to the payment of the indebtedness is a compelling reason to justify immediate execution.

Pursuant to the contract between the City and the Company, the latter, in the words of the Court of Appeals, "is obliged to pay annually the necessary amount to meet the obligations contracted for the construction of the building until they are fully paid." It appears that the Company's income from the building is the only source of

what it pays to the El Hogar Filipino, for in its memorandum, the Company says, that it is the duty of the petitioner to repair the building so that it could "generate enough income to cover fully the amortizations due to El Hogar Filipino as they fell due." Ordinary diligence and prudence dictate that whatever income is derived from the theater should be primarily and principally devoted to the payment of the indebtedness. The wastage of the income will ultimately result in non-payment of the indebtedness, and this will be to the prejudice and damage of the City which must pay the obligation or the outstanding balance thereof, if it does not want to lose its lots which were mortgaged. If the present possessor cannot channel such income to the payment of the indebtedness, should not the City which ultimately has to pay the indebtedness if the Company fails to pay it not be given an opportunity to do so? Would it be equitable to allow the present possessor to waste the income, and let the City ultimately suffer tremendous damages on account of such waste?

The Company, to support the decision of the Court of Appeals, likewise contends that the refusal of the trial court to accept the supersedeas bond to stop execution is sufficient to taint the order of execution with arbitrariness and constitutes grave abuse of discretion.

We do not think so. It is well settled that even upon the filing of the supersedeas bond, the losing party is not entitled as a matter of right to a suspension of the execution. Section 3 of Rule 39 of the Rules of Court merely empowers the Court to order such suspension in the exercise of its sound discretion.[23] The acceptance and approval of a supersedeas bond to stay execution lies within the discretion of the court.[24] Hence, the trial court may disregard the supersedeas bond and order immediate execution provided there are special and compelling reasons justifying execution, which reasons obtain in this case.[25]

Another reason given to support the decision complained of is that execution pending appeal cannot be justified because the supposed right of the City to immediate repossession of the property to prevent further loss caused by dispossession is the core of the controversy and the merit of such claim is under appeal. Anent this matter suffice it to say that in determining whether execution should be stayed or not, the merits of a case, which should not be determined in advance of the appeal, are of no moment. Thus this Court said in *Mapua vs. David*[26] that:

"The reason by petitioner to maintain that the stay granted by the respondent court is a grave abuse of discretion is the merits of their own case. They allege that defendant has absolutely no right to possession and has, therefore, no defense whatsoever. But the merits of the case should not be determined at this state of the proceedings in advance of the appeal taken by both parties from the judgment rendered by respondent court in the principal case."

In conclusion, all the reasons given by the trial court in ordering the execution of its order pending appeal, despite the Company's offer to file a supersedeas bond to stay execution, are compelling enough to warrant immediate execution.[27]

If the same cogent reasons are considered in the light of the fact that the Metropolitan Theater building is no longer devoted to the primary purpose for which it was intended, that is, to theatrical performances, they would outweigh the security offered by the supersedeas bond which was rejected by the trial court.

We hold that the Court of Appeals, in substituting its judgment for the statutory discretion soundly and judiciously exercised by the trial court in issuing the questioned Special Order of Execution, acted with grave abuse of discretion.

ACCORDINGLY, the decision of the Court of Appeals dated June 20, 1972 in G.R. SP-00707-R is set aside, and the order of the trial court of December 29, 1971 directing the implementation of its execution order of September 30, 1971, is maintained, with costs against the Company.

Teehankee, Makasiar, Muñoz Palma, and Martin, JJ., concur.

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- [1] Go Lea Chu v. Gonzales, L-23687, February 26, 1968, 22 SCRA 766.
- [2] Lamb v. Phipps, 22 Phil. 456, 489 (1912); Gregorio Araneta, Inc. v. Rodas, 81 Phil. 506, 508 (1948).
- [3] Lamb v. Phipps, loc. cit.
- [4] Scherer v. Quicho, October 26, 1962, 59 O.G. 4226 (1962).
- [5] Padilla v. Court of Appeals, L-31569, Sept. 28, 1973, 53 SCRA 168, 175. See also Astraquillo v. Javier, L-20034, Jan. 30, 1965, 13 SCRA 125, 130, citing Calvo v. Gutierrez, 4 Phil. 203; Case v. Metropole Hotel, 5 Phil. 49; Gamay v. Gutierrez David, 48 Phil. 768; Buenaventura v. Peña, 78 Phil. 795; Ong Sit v. Piccio, 78 Phil. 785; Naredo v. Yatco, 80 Phil. 220; Federation of United Namarco Distributors vs. National Marketing Corp., et al. and Namarco Marketing Corp. vs Tan, et al., L-17819 and L-16678, March 31, 1962; Ledesma v. Teodoro, 98 Phil. 232, 236 (1956).
- [6] Calvo v. Gutierrez, 4 Phil. 203 (1905); Naredo v. Yatco, 80 Phil. 220, 223 (1948);
- [7] Sec. 3, Rule 39, Rules of Court; National Waterworks and Sewerage Authority v. Catolico, L-21705, April 27, 1967, 19 SCRA 980, 984; De Leon v. Soriano, 95 Phil. 806 (1954); Rodriguez v. Court of Appeals, 105 Phil. 777, 782 (1959).
- [8] Rodriguez v. Court of Appeals, 105 Phil. 777, 782 (1959); De Leon vs. Soriano, 95 Phil. 806, 813 (1954).
- [9] Padilla vs. Court of Appeals, L-31569, September 28, 1973, 53 SCRA 168, 175-176.
- [10] Amended Answer of City in CA-G.R. SP-00707-R, p. 4; Record, p. 60.
- [11] Ibid.
- [12] Ibid.
- [13] Astraquillo vs. Javier, L-20034, January 30, 1965, 13 SCRA 125, 132.
- [14] Munion vs. Vic Corporation, May 28, 1959, 59 O.G. 9683, 9687, citing Dewey vs. St. Albans Trust Co., 48 Am. Rep. 803.
- [15] De la Cruz vs. Dollete, L-17932, May 30, 1962, 5 SCRA 257, 261.
- [16] Jose vs. Santos, L-25510, October 30, 1970, 35 SCRA 538, 548, citing Corliss vs. Manila Railroad Company, 27 SCRA 674, 678 (1969).
- [17] Astraquillo vs. Javier, L-20034, January 30, 1965, 13 SCRA 125, 131; Padilla vs. Court of Appeals, L-31569, September 28, 1973, 53 SCRA 168.
- [18] 105 Phil. 777, 780-781.
- [19] Comments on the Rules of Court, Vol. I, pp. 539-540, 1957 edition.
- [20] 65 Phil. 536.
- [21] 96 Phil. 895.
- [22] See Rodriguez vs. Court of Appeals, 105 Phil. 777, 781.

[23] National Waterworks and Sewerage Authority vs. Catolico, L-21705, April 27, 1967, 19 SCRA 980.

[24] Rodriguez vs. Court of Appeals, 105 Phil. 777, 782.

[25] Rodriguez vs. Court of Appeals, 105 Phil. 777, 782; De Leon vs. Soriano, 95 Phil. 806, 813.

[26] 77 Phil. 131, quoted in 2 Francisco, Civil Procedure, 1966, p. 615.

[27] See De Leon vs. Soriano, 95 Phil. 806, 817.

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