

HONORABLE ARSENIO N. ROLDAN, JR., IN HIS CAPACITY AS ACTING COMMISSIONER, PHILIPPINE FISHERIES COMMISSION, AND THE PHILIPPINE NAVY, PETITIONERS, VS. HONORABLE FRANCISCO ARCA, AS...

G.R. No. L-25434. July 25, 1975

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

A petition for certiorari and prohibition with preliminary injunction to restrain respondent Judge from enforcing his order dated October 18, 1965, and the writ of preliminary mandatory injunction thereunder issued.

On April 3, 1964, respondent company filed with the Court of First Instance of Manila a civil case docketed as No. 56701 against petitioner Fisheries Commissioner Arsenio N. Roldan, Jr., for the recovery of fishing vessel Tony Lex VI (one of two fishing boats in question) which had been seized and impounded by petitioner Fisheries Commissioner through the Philippine Navy.

On April 10, 1964, respondent company prayed for a writ of preliminary mandatory injunction with respondent court, but said prayer was, however, denied.

On April 28, 1964, the Court of First Instance of Manila set aside its order of April 10, 1964 and granted respondent company's motion for reconsideration praying for preliminary mandatory injunction. Thus, respondent company took possession of the vessel Tony Lex VI from herein petitioners by virtue of the above-said writ.

On December 10, 1964, the Court of First Instance of Manila dismissed Civil Case No. 56701 for failure of therein petitioner (respondent company herein) to prosecute as well as for failure of therein defendants (petitioners herein) to appear on the scheduled date of hearing. The vessel, Tony Lex VI or Srta. Winnie however, remained in the possession of respondent company.

On July 20, 1965, petitioner Fisheries Commissioner requested the Philippine Navy to apprehend vessels Tony Lex VI and Tony Lex III, also respectively called Srta. Winnie and Srta. Agnes, for alleged violations of some provisions of the Fisheries Act and the rules and regulations promulgated thereunder.

On August 5 or 6, 1965, the two fishing boats were actually seized for illegal fishing with dynamite. Fish caught with dynamite and sticks of dynamite were then found aboard the two vessels.

On August 18, 1965, the Fisheries Commissioner requested the Palawan Provincial Fiscal to file criminal charges against the crew members of the fishing vessels.

On September 30, 1965, there were filed in the Court of First Instance of Palawan a couple of informations, one against the crew members of Tony Lex III, and another against the crew members of Tony Lex VI - both for violations of Act No. 4003, as amended by Commonwealth Acts Nos. 462, 659, and 1088, i.e., for illegal fishing with the use of dynamite. On the same day, the Fiscal filed an ex parte motion to hold the boats in custody as

instruments and therefore evidence of the crime (p. 54, rec.), and cabled the Fisheries Commissioner to detain the vessels (p. 56, rec.).

On October 2 and 4, likewise, the Court of First Instance of Palawan ordered the Philippine Navy to take the boats in custody.

On October 2, 1965, respondent company filed a complaint with application for preliminary mandatory injunction, docketed as, Civil Case No. 62799 with the Court of First instance of Manila against herein petitioners. Among others, it was alleged that at the time of the seizure of the fishing boats in issue, the same were engaged in legitimate fishing operations off the coast of Palawan; that by virtue of the offer of compromise dated September 13, 1965 by respondent company to the Secretary of Agriculture and Natural Resources, the numerous violations of the Fishery Laws, if any, by the crew members of the vessels were settled.

On October 9, 1965, petitioners, represented by the Solicitor General, opposed the above-mentioned complaint, alleging among others, that: (1) the issuance of the writ would disrupt the status quo of the parties and would render nugatory any decision of the respondent court favorable to the defendant; (2) that the vessels, being instruments of a crime in criminal cases Nos. 3416 and 3417 filed with the Court of First Instance of Palawan, the release of the vessels sans the corresponding order from the above-mentioned court would deprive the same of its authority to dispose of the vessels in the criminal cases and the Provincial Fiscal would not be able to utilize said vessels as evidence in the prosecution of said cases; (3) that as petitioners herein were in possession of one of the vessels in point, they cannot now be deprived of the legal custody thereof by reason of the dismissal of Civil Case No. 56701; (4) that petitioner Fisheries Commissioner has the power to seize and detain the vessels pursuant to Section 5 of Republic Act No. 3215 in relation to Sections 903 and 2210 of the Revised Tariff and Customs Code; (5) that respondents herein have not exhausted administrative remedies before coming to court; (6) that the compromise agreement approved by the Secretary of Agriculture and Natural Resources and indorsed to the Fisheries Commissioner is never a bar to the prosecution of the crime perpetrated by the crew members of the vessels belonging to respondent company.

And again, on October 15, 1965, herein petitioners filed their memorandum praying for the denial of the application for preliminary mandatory injunction.

On the same day, October 15, 1965, herein petitioner filed an urgent motion to submit additional documentary evidence.

On October 18, 1965, herein petitioners, as defendants in said Civil Case No. 62799, filed their answer to the complaint with affirmative defenses, reiterating the grounds in their opposition to the issuance of a writ of preliminary mandatory injunction and adding that herein private respondent admitted committing the last violation when it offered in its letter dated September 21, 1965 to the Acting Commissioner of Fisheries, to compromise said last violation (Exh. 12, pp. 60-61, rec.).

On said day, October 18, 1965, the respondent Judge issued the challenged order granting the issuance of the writ of preliminary mandatory injunction and issued the preliminary writ upon the filing by private respondent of a bond of P5,000.00 for the release of the two vessels (pp. 95-102, rec.).

On October 19, 1965, herein petitioners filed a motion for reconsideration of the order issuing the preliminary writ on October 18, 1965 on the ground, among others, that on October 18, 1965 the Philippine Navy received from the Palawan Court of First Instance two orders dated October 2 and 4, 1965 requiring the Philippine Navy to hold the fishing boats in custody and directing that the said vessels should not be released until further orders from the Court, and that the bond of P5,000.00 is grossly insufficient to cover the Government's losses in case the

two vessels, which are worth P495,000.00, are placed beyond the reach of the Government, thus frustrating their forfeiture as instruments of the crime (pp. 103-109, rec.).

On November 23, 1965, respondent Judge denied the said motion for reconsideration (p. 110, rec.).

WE rule that the respondent Judge of the Manila Court of First Instance acted without jurisdiction and with grave abuse of discretion when he issued on October 18, 1965 the order directing the issuance of a writ of preliminary mandatory injunction and when he refused to reconsider the same.

I

When the respondent Judge issued the challenged order on October 18, 1965 and the writ of preliminary mandatory injunction pursuant thereto, the fishing vessels were already under the jurisdiction of the Court of First Instance of Palawan by virtue of its orders of October 2 and 4, 1965 upon motion of the Provincial Fiscal (pp. 54-55, rec.), directing the Philippine Navy to detain (pp. 108, 109, rec.) said vessels, which are subject to forfeiture as instruments of the crime, to be utilized as evidence in Criminal Cases Nos. 3416 and 3417 for illegal fishing pending in said court (pp. 54-55, rec.). The said vessels were seized while engaging in prohibited fishing within the territorial waters of Palawan (pp. 45, 48-53, rec.) and hence within the jurisdiction of the Court of First Instance of Palawan, in obedience to the rule that "the place where a criminal offense was committed not only determines the venue of the action but is an essential element of jurisdiction" (*Lopez vs. Paras*, L-25795, Oct. 29, 1966, 18 SCRA 616, 619). The jurisdiction over the vessels acquired by the Palawan Court of First Instance cannot be interfered with by another Court of First Instance. The orders of October 2 and 4, 1965 by the Palawan Court of First Instance expressly direct the Philippine Navy "to hold in custody" the two vessels and that "same should not be released without prior order or authority from this Court" (pp. 108, 109, rec.). Only the Palawan court can order the release of the two vessels. Not even the Secretary of Agriculture and Natural Resources nor the Fisheries Commissioner can direct that the fishing boats be turned over to private respondent without risking contempt of court.

The grave abuse of discretion committed by the respondent Judge was heightened by the fact that he did not reconsider his order of October 18, 1965 after he was informed by petitioners in their motion for reconsideration filed on October 19, 1965 that the Palawan Court of First Instance had already issued the two orders dated October 2 and 4, 1965 directing the Philippine Navy to hold in custody the fishing boats until further orders.

It is basic that one court cannot interfere with the judgments, orders or decrees of another court of concurrent or coordinate jurisdiction having equal power to grant the relief sought by injunction; because if coordinate courts were allowed to interfere with each other's judgments, decrees or injunctions, the same would obviously lead to confusion and might seriously hinder the administration of justice (*Ongsinco, etc. vs. Tan, et al.*, 97 Phil. 330; *PNB vs. Javellana*, 92 Phil 525; *Montesa vs. Manila Cordage Company*, 92 Phil. 25; *Hubahib vs. Insular Drug Company*, 64 Phil. 119; *Hacbang, et al. vs. The Leyte Auto Bus Company, et al.*, G. R. No. L17907, May 30, 1963, 8 SCRA, 103, 107-109; *NPC vs. Hon. Jesus de Vera*, G. R. No. L-15763, Dec. 22, 1961, 3 SCRA, 646, 648; *Cabigao vs. del Rosario*, 44 Phil. 182; *Araneta & Uy vs. Commonwealth Insurance Company*, 55 OG 431; *Moran*, Comments on the Rules of Court, Vol. III, 1970 ed., p. 64).

As early as October 2 and 4, 1965, the two boats were already in custodia legis under the sole control of the Palawan Court of First Instance. The Manila Court of First Instance cannot interfere with and change that possession (*Hacbang vs. Leyte Bus Co., Inc.*, supra; *NPC vs. Hon. Jesus de Vera*, supra).

It is immaterial that the vessels were then in the Philippine Navy Basin in Manila; for the same in no way impugns the jurisdiction already vested in the Palawan court, which has custody thereof through the Philippine

Navy. This is analogous to the situation in *Colmenares versus Villar* (L-27124, May 29, 1970, 33 SCRA 186, 188- 9), wherein WE ruled "where the illegal possession of firearms was committed in the town where the Court sits, the fact that the firearms were confiscated from the accused in another town does not affect the jurisdiction of the Court" (pp. 186, 189).

It is likewise of no moment that the herein respondents were not notified by the herein petitioners of the seizure of the questioned vessels by the Philippine Navy, because such previous notice is not required by law.

II

The dismissal on December 10, 1964 of the first Civil Case No. 56701 by the Court of First Instance of Manila had the necessary effect of automatically dissolving the writ of preliminary mandatory injunction issued therein on April 28, 1964, directing the return of fishing vessel *Tony Lex VI* (pp. 156-157, rec.). Such a preliminary writ, like any other interlocutory order, cannot survive the main case of which it was but an incident; because "an ancillary writ of preliminary injunction loses its force and effect after the dismissal of the main petition" (*National Sugar Worker's Union, etc., vs. La Carlota Sugar Central, et al.*, L-23569, May 25, 1972, 45 SCRA 104, 109; *Lazaro vs. Mariano*, 59 Phil. 627, 631; *Saavedra vs. Ibanez*, 56 Phil. 33, 37; *Hi Caiji vs. Phil. Sugar Estate and Development Company*, 50 Phil. 592, 594).

Moreover, the writ of preliminary injunction issued on April 28, 1964 in Civil Case No. 56701 was directed against the detention of the vessel *Tony Lex VI* for violations committed prior to August 5, 1965, and therefore cannot and does not extend to the seizure and detention of said vessel for violations on August 5 or 6, 1965, which violations were not and could not possibly be the subject-matter of said Civil Case No. 56701 which was filed on April 3, 1964 (p. 12, rec.).

III

Herein petitioners can validly direct and/or effect the seizure of the vessels of private respondent for illegal fishing by the use of dynamite and without the requisite licenses.

Section 4 of Republic Act No. 3512 approved on March 20, 1963 empowers the Fisheries Commissioner to carry out the provisions of the Fisheries Act, as amended, and all rules and regulations promulgated thereunder, to make searches and seizures personally or through his duly authorized representatives in accordance with the Rules of Court, of "explosives such as.... dynamites and the like...; including fishery products, fishing equipment, tackle and other things that are subject to seizure under existing fishery laws"; and "to effectively implement the enforcement of existing fishery laws on illegal fishing."

Paragraph 5 of Section 4 of the same Republic Act 3512 likewise transferred to and vested in the Philippine Fisheries Commission "all the powers, functions and duties heretofore exercised by the Bureau of Customs, Philippine Navy and Philippine Constabulary over fishing vessels and fishery matters x x x"

Section 12 of the Fisheries Act, otherwise known as Republic Act No. 4003, as amended, prohibits fishing with dynamites or other explosives which is penalized by Section 76 thereof "by a fine of not less than P1,500.00 nor more than P5,000.00, and by imprisonment for not less than one (1) year and six (6) months nor more than five (5) years, aside from the confiscation and forfeiture of all explosives, boats, tackles, apparel, furniture, and other apparatus used in fishing in violation of said Section 12 of this Act." Section 78 of the same Fisheries Law provides that "in case of a second offense, the vessel, together with its tackle, apparel, furniture and stores shall be forfeited to the Government."

The second paragraph of Section 12 also provides that "the possession and/or finding, of dynamite, blasting caps

and other explosives in any fishing boat shall constitute a presumption that the said dynamite and/or blasting caps and explosives are being used for fishing purposes in violation of this Section, and that the possession or discovery in any fishing boat of fish caught or killed by the use of dynamite or other explosives, under expert testimony, shall constitute a presumption that the owner, if present in the fishing boat, or the fishing crew have been fishing with dynamite or other explosives." (Italics supplied.).

Under Section 78 of the Fisheries Act, as amended, any person, association or corporation fishing in deep sea fishery without the corresponding license prescribed in Sections 17 to 22 of Article V of the Fisheries Act or any other order or regulation deriving force from its provisions, "shall be punished for each offense by a fine of not more than P5,000.00, or imprisonment, for not more than one year, or both, in the discretion of the Court; Provided, That in case of an association or corporation, the President or manager shall be directly responsible for the acts of his employees or laborers if it is proven that the latter acted with his knowledge; otherwise the responsibility shall extend only as far as fine is concerned: Provided, further, That in the absence of a known owner of the vessel, the master, patron or person in charge of such vessel shall be responsible for any violation of this Acts: and Provided, finally, That in case of a second offense, the vessel together with its tackle, apparel, furniture and stores shall be forfeited to the Government" (Italics supplied).

Under Section 13 of Executive Order No. 389 of December 23, 1950, reorganizing the Armed Forces of the Philippines, the Philippine Navy has the function, among others, "to assist the proper governmental agencies in the enforcement of laws and regulations pertaining to x x x fishing x x x" (46 OG 5905, 5911).

Section 2210 of the Tariff and Customs Code, as amended by PD No. 34 of October 27, 1972, authorizes any official or person exercising police authority under the provisions of the Code, to search and seize any vessel or air craft as well as any trunk, package, bag or envelope on board and to search any person on board for any breach or violation of the customs and tariff laws.

When the Philippine Navy, upon request of the Fisheries Commissioner, apprehended on August 5 or 6, 1965 the fishing boats Tony Lex III and Tony Lex VI, otherwise known respectively as Srta. Agnes and Srta. Winnie, these vessels were found to be without the necessary license in violation of Section 903 of the Tariff and Customs Code and therefore subject to seizure under Section 2210 of the same Code, and illegally fishing with explosives and without fishing license required by Sections 17 and 18 of the Fisheries Law (pp. 46-47, rec.)

The operation of the fishing boat Tony Lex III was suspended pursuant to the order dated January 28, 1964 issued by the Commissioner of Fisheries pending the final determination of the case against it for illegal fishing with explosives on January 21, 1964 (p. 34, rec.) and remained suspended until its apprehension on August 5 or 6, 1965 (p. 46, rec.).

For illegal fishing with explosives on March 23, 1963, the renewal of the fishing boat license of Tony Lex VI was suspended for one year from the time said boat was moored at Pier 14 at North Harbor, Manila, without prejudice to the institution of a criminal case against its owner and/or operator, pursuant to the order dated May 19, 1964 issued by the Commissioner of Fisheries (pp. 35--36, rec.), the motion for reconsideration of which order was denied by the Commissioner of Fisheries in an order dated August 17, 1964 (pp. 41-42, rec.).

For illegal fishing with dynamite on March 28, 1963, the operation of Tony Lex VI was suspended by the Commissioner of Fisheries in an order dated April 1, 1963 (p. 62, rec.).

For illegal fishing again with explosives on April 25, 1963, the fishing boat Tony Lex VI together with its tackle, apparel, furniture and all other apparatus used in fishing was ordered confiscated and forfeited in favor of the Government and a fine in the amount of P5,000.00 was imposed on its owners-operators, without prejudice to the

filing of the necessary criminal action, pursuant to the order of June 2, 1964 of the Commissioner of Fisheries (pp. 37-38, rec.).

Again, for committing the same violation on June 19, 1963, a fine in the amount of P5,000.00 was imposed on the owners-operators of fishing boat Tony Lex VI pursuant to the order of June 4, 1964 issued by the Commissioner of Fisheries (pp. 39-40, rec.).

It appears, therefore, that since January 28, 1964, the fishing boat Tony Lex III was suspended from operating and was ordered moored at Pier 14, North Harbor, Manila (pp. 34, 46-47, rec.); and that the fishing vessel Tony Lex VI was suspended for one year from May 24, 1964 and was actually ordered forfeited to the Government pursuant to the order of June 2, 1964 for repeated violations of Section 12 of the Fisheries Act (pp. 37-38, rec.). As a matter of fact, when apprehended on August 5 or 6, 1965, both vessels were found to be without any license or permit for coastwise trade or for fishing and unlawfully fishing with explosives, for which reason their owners and crew were accordingly indicted by the Provincial Fiscal of Palawan for illegal fishing with dynamite and without the requisite license (pp. 48-53, rec.).

As heretofore intimated, the two fishing boats were apprehended on numerous occasions for fishing with dynamite from March 28, 1963 to March 11, 1964, which violations private respondent, as owner-operator, sought to compromise by offering to pay a fine of P21,000.00 for all said prior violations.

Such previous violations of Sections 12, 17 and 18 of the Fisheries Act committed by the two fishing boats, Tony Lex III and Tony Lex VI, from March 28, 1963 until August 5 or 6, 1965, rendered the said vessels subject to forfeiture under Sections 76 and 78 of the Fisheries Act, as amended.

Search and seizure without search warrant of vessels and air crafts for violations of customs laws have been the traditional exception to the constitutional requirement of a search warrant, because the vessel can be quickly moved out of the locality or jurisdiction in which the search warrant must be sought before such warrant could be secured; hence it is not practicable to require a search warrant before such search or seizure can be constitutionally effected (*Papa vs. Mago*, L-27360, Feb. 28, 1968, 22 SCRA 857, 871-74; *Magoncia vs. Palacio*, 80 Phil. 770, 774; *Carroll vs. U. S.* 267, pp. 132, 149, 158; Justice Fernando, *The Bill of Rights*, 1972 ed., p. 225; Gonzales, *Philippine Constitutional Law*, 1966 ed., p. 300).

The same exception should apply to seizures of fishing vessels breaching our fishery laws. They are usually equipped with powerful motors that enable them to elude pursuing ships of the Philippine Navy or Coast Guard.

Another exception to the constitutional requirement of a search warrant for a valid search and seizure, is a search or seizure as an incident to a lawful arrest (*Alvero vs. Dizon*, 76 Phil. 637; Justice Fernando, *The Bill of Rights*, 1972 ed., p. 224). Under our Rules of Court, a police officer or a private individual may, without a warrant, arrest a person (a) who has committed, is actually committing or is about to commit an offense in his presence; (b) who is reasonably believed to have committed an offense which has been actually committed; or (c) who is a prisoner who has escaped from confinement while serving a final judgment or from temporary detention during the pendency of his case or while being transferred from one confinement to another (Section 6, Rule 113, Revised Rules of Court). In the case at bar, the members of the crew of the two vessels were caught in flagrante illegally fishing with dynamite and without the requisite license. Thus their apprehension without a warrant of arrest while committing a crime is lawful. Consequently, the seizure of the vessel, its equipment and dynamites therein was equally valid as an incident to a lawful arrest.

The allege compromise approved by the Secretary of Agriculture and Natural Resources on September 13, 1965 (pp. 63-64, 158-159, rec.) cannot, be invoked by the respondents because the said compromise referred to about

thirty violations of the fisheries law committed by the private respondent from March 28, 1963 to March 11, 1964. The violations by the two vessels of private respondent by reason of which these vessels were apprehended and detained by the Philippine Navy upon request of the Commissioner of Fisheries, were committed on August 5 or 6, 1965.

Moreover, the power to compromise would exist only before a criminal prosecution is instituted; otherwise the Department Secretary or any of his sub-alterns can render criminal prosecutions for violations of the fisheries law a mere mockery. It is not in the public interest nor is it good policy to sustain the viewpoint that the Department Secretary can compromise criminal cases involving public, not private, offenses after the indictment had been instituted in court. The fishing vessels together with all their equipment and the dynamites found therein are not only evidence of the crime of illegal fishing but also subject to forfeiture in favor of the Government as instruments of the crime (Art. 45, Revised Penal Code, Sec. 78, Act No. 4003, as amended). Section 80(j) of Act No. 4003, as amended, precludes such a compromise the moment — the Fisheries Commissioner decides to prosecute the criminal action in accordance with Sections 76 and 78 of the other penal provisions of the fisheries law. Furthermore, any compromise shall be upon the recommendation of the Fisheries Commission (Section 80[i], Act No. 4003), which did not recommend such a compromise for the violation on August 5 or 6, 1965 of Section 12 in relation to Sections 76 and 78 of Act No. 4003, as amended. On the contrary, the Fisheries Commissioner requested the Provincial Fiscal to institute the criminal cases (pp. 43-45, rec.) and the Provincial Fiscal filed the corresponding informations docketed as Criminal Cases Nos. 3416 and 3417 on September 30, 1965 against the owners and the members of the crew of the vessels (pp. 48-53, rec.).

It should be noted that in the first indorsement dated September 13, 1965 of the Secretary of Agriculture and Natural Resources approving the compromise fine of P21,000.00 for the various violations committed previous to August 5 or 6, 1965 (pp. 34-42, 47, 58-64, 149-155, 158-159, rec.), the Department Secretary "believes that the offer made by the company was an implied admission of violations of said provisions of the Fisheries Law and Regulations, x x x" (pp. 63, 158, rec.). The said approval was granted after the private respondent filed a motion for reconsideration of the indorsement dated March 5, 1965 of the Secretary of Agriculture and Natural Resources disapproving the offer by private respondent to pay the fine by way of compromise.

There can be no dispute that the term fishing boat employed in the second paragraph of Section 12 of the Fisheries Act applies to the vessels Tony Lex III and Tony Lex VI. Even private respondent refers to said fishing boats as fishing vessels "engaged in fishing operations" or "in commercial fishing" in paragraph IV of its complaint in Civil Case No. 62799 (p. 18, rec.), as well as in its various communications to the Fisheries Commissioner (pp. 60-61, 65, 82, rec.). The two fishing vessels Tony Lex III and Tony Lex VI likewise fall under the term vessel used in Sections 17, 76 and 78, as well as the term boats utilized in the second paragraph of Section 76 of the Fisheries Act. They can also fall under the term fishing equipment employed in Section 4 of Republic Act No. 3512; because a fishing equipment is never complete and cannot be effectively used in off-shore or deep-sea fishing without the fishing boat or fishing vessel itself. And these two vessels of private respondent certainly come under the term fishing vessels employed in paragraph 5 of Section 4 of the same Republic Act 3512 creating the Fisheries Commission.

Hence, no useful purpose can be served in trying to distinguish between boat and vessel with reference to Tony Lex III and Tony Lex VI. As a matter of fact, the accepted definition of vessel includes "every description of water craft, large or small, used or capable of being used as a means of transportation on water" (Cope versus Vallete, etc., 119 U. S. 625; U.S. vs. Holmes, 104 Fed. 884; Charles Barnes Co. vs. One Dredge Boat, 169 Fed. 895; and Yu Con vs. Ipil, 41 Phil. 780).

The word boat in its ordinary sense, means any water craft (Monongahela River Construction, etc. vs. Hardsaw,

77 NE 363, 365). The fishing boats Tony Lex III and Tony Lex VI are likewise vessels within the meaning of the term vessel used in Sections 903 and 2210 of the Tariff and Customs Code.

WHEREFORE, THE PETITION IS HEREBY GRANTED AND THE ORDER OF RESPONDENT JUDGE DATED OCTOBER 18, 1965, THE WRIT OF PRELIMINARY MANDATORY INJUNCTION ISSUED THEREUNDER AND THE ORDER DATED NOVEMBER 23, 1965, ARE HEREBY SET ASIDE AS NULL AND VOID, WITH COSTS AGAINST PRIVATE RESPONDENT.

Castro, (Chairman), Esguerra, Muñoz-Palma, and Martin, JJ., concur.

Teehankee, J., took no part.

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