

ONG SU HAN, PETITIONER, VS. JOSE GUTIERREZ DAVID, JUDGE OF FIRST INSTANCE OF MANILA, TAN ENG GEE, AND THE SHERIFF OF THE CITY OF MANILA, RESPONDENTS.*G.R. No. L-265. April 24, 1946*

Ponente: BENGZON, J.

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Now again comes Ong Su Han in an effort to delay the carrying out of the judgment of the Manila Court of First Instance, ordering him to vacate the premises belonging to respondent Tan Eng Gee. Writ of execution of that decision had been issued last December but it had not yet been executed, when on January 18, 1946, he filed in that court a motion for suspension under Commonwealth Act No. 689. The court refused to suspend. Hence, this application for certiorari and allied remedies.

The material facts are not disputed: On April 2, 1945, Tan Eng Gee sued herein petitioner, in the Municipal Court of Manila, for unlawful detainer of the premises in question. On April 16, 1945, judgment was rendered for plaintiff, and defendant appealed to the Court of First Instance. On July 11, 1945, pursuant to a compromise agreement submitted by the parties' attorneys, that court entered judgment of ouster, with the understanding "that provided the defendant pays the monthly rents, there shall be no writ of execution issued before November 30, 1945, and provided further that with this agreement the defendant waives his right to appeal." During the following months of August and October, defendant—herein petitioner—attempted to have the decision vacated, asserting he had not authorized his counsel to make the covenant, but he failed, and the court issued a writ of execution on December 20, 1945. On January 5, 1946, he instituted certiorari proceedings here, but the same was dismissed by resolution of January 9, 1946. Then on January 18, 1946, Ong Su Han submitted to the court below an amended petition for suspension of execution, invoking sections 4, 5, 6 and 7 of Commonwealth Act No. 689. Tan Eng Gee having made opposition, the Hon. Jose Gutierrez David, Judge, declined to suspend, for the reasons that "From a review of the records of this case, it appears that the defendant has been given the opportunities accorded by law on the matter and he has exhausted all legal resources to delay the execution of the judgment in question. Furthermore, it appears that the judgment rendered in this case is by virtue of an agreement entered into by the parties in open session, the defendant being then assisted by counsellor of law."

For the purposes of this opinion, it is convenient fully to set out sections 4 and 5 of Commonwealth Act No. 689:

"When a final and executory order or judgment in a suit for the recovery of rentals or for ejection from a building or part thereof used as dwelling establishes the fact that the lessee has retained the possession of the buildings leased to him after the expiration of the contract, the Court that issued such order or judgment may, at its discretion, on the petition of the lessee and subject to the conditions prescribed in this Act, suspend the execution of said order or judgment for a period which it considers convenient but not exceeding three months. (Section 4.)

"When there is a petition for the suspension of execution of an order or judgment, the Court shall hear both parties, and if during the trial it shall be found that the building or buildings mentioned in the petition are

destined solely for dwelling; that the petitioner cannot secure another dwelling house for himself and his family; that he had used due diligence to find another building; that he had filed his petition in good faith, and is willing to obey and comply with the requirements and orders of the Court, said Court shall grant the suspension as provided in this Act, on the condition that the requirements laid down for said suspension shall be complied with." (Section 5.)

Petitioner's first contention is that His Honor was duty bound to direct the suspension, in view of the allegations in his petition that the house was used solely as dwelling and,

"That defendant, in view of the housing problem in Manila caused by the wanton destruction and burning of many houses by the enemy, cannot secure another dwelling house for him and his family;

"That defendant, since the rendition of said decision against him had been exerting all efforts to look for another dwelling to which he and his family could transfer, but notwithstanding all diligence to find and look for another place or house to live in, all said efforts were of no avail;

"That defendant has filed this petition for suspension of the writ of execution in good faith, and is willing to obey and comply with all the requirements and order of this Honorable Court;"

He emphasizes that under section 5 the court "shall grant the suspension as provided in this Act," the phrase being mandatory and obligatory. Considering that the previous section declares that the court "may, at its discretion," suspend the execution; and remembering that "shall," when used in statutes, often means "may,"[1] we opine that the granting of suspensions of execution under Act No. 689 is discretionary, as the provisions of both sections should be construed together, their effect being the specification of the conditions for the granting of the relief. In other words, if the conditions in sections 4 and 5 are not present, the court can not grant postponement. If they are, the court may still, in its discretion, reject the postponement, whenever valid reasons are shown. Any abuse in the use of that discretion is reviewable by certiorari.

Petitioner's other contention poses the issue whether the trial judge has committed abuse. We think not. Our reason is that the judgment of dispossession was entered on July 11, 1945, more than six months before the request for suspension under Commonwealth Act No. 689. In the similar case of *Tiangco vs. Liboro* and Judge of First Instance of Manila (75 Phil., 559), we declined to reverse the judge's order denying suspension of execution because "the purpose of the law (689) in authorizing the suspension of the execution is to give the petitioner time to 'secure another dwelling house for himself and his family,' and 'the petitioner has had nearly six months within which to look for another dwelling house.'"

Petitioner strives to take advantage of a minor incident: After the first petition for certiorari had been quashed here, plaintiff hastened to execute the judgment in the court below. To block the move, defendant submitted on January 16, 1946, an urgent request for stay alleging mainly that his motion for reconsideration in the certiorari case here, was still pending. On January 16, 1946, the Hon. Buenaventura Ocampo, Judge, believing from other allegations of the pleading that defendant desired to invoke Commonwealth Act No. 689, suspended the execution and summoned the parties to a hearing set for January 19, 1946. On that date, however, through a new distribution between the Manila Judges, the expediente corresponded to the respondent judge, to whom herein petitioner later, submitted his amended petition, making representations under Commonwealth Act No. 689. Without a formal hearing, Judge Gutierrez David denied the suspension, as hereinabove stated. Petitioner's theme, eagerly advanced, is that, after Judge Ocampo had ordered suspension of the execution and had called the parties to a hearing, it was legal abuse of discretion for respondent to cancel the order and refuse the suspension, without previously listening to the litigants. We can not fully indorse that view. It has been held that a judge of first instance is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action.[2] And Judge Gutierrez David was not required to hear the

parties, if and when a reading of the record convinced him, as it did, that the suspension should be revoked because improperly granted or that it should be disapproved.[3]

It is doubtful whether the ouster judgment of July 11, 1945, rendered by agreement of the parties may now be suspended, over plaintiff's objection, by operation of a law passed after the agreement, October 15, 1945 (Commonwealth Act No. 689); said plaintiff being in a position to argue that to suspend will be to amend the agreement whereby Ong Su Han undertook to leave about November 30, 1945. Yet we do not deem, it necessary to pass on this question now. Neither do we decide the situation where the compromise agreement and therefore the judgment is entered after the promulgation of Commonwealth Act No. 689. Enough to rule that, as defendant Ong Su Han has had sufficient time, there was no abuse in the denial. Anyway, when this, our decision, is promulgated the writ of execution issued December 20, 1945, will have been in abeyance for more than three months.

Wherefore, the petition is denied, and the writ of preliminary injunction heretofore issued is dissolved. Respondent Tan Eng Gee may forthwith have his execution. With costs against petitioner.

Moran, C. J., Ozaeta, Jaranilla, Feria, De Joya, and Hilado, JJ., concur.

[1] See footnote 29 at page 554, Vol. 57, Corpus Juris.

[2] Roxas vs. Zandueta (57 Phil., 14).

[3] Tiangco vs. Liboro and Judge of First Instance of Manila (supra).

PABLO, M., con quien esta conforme PARAS, M., disidente:

El recurrente presento una mocion urgente en la causa civil No. 70215 del Juzgado de Primera Instancia de Manila pidiendo la suspension de la ejecucion de la sentencia, de acuerdo con las disposiciones del articulo 5 de la Ley No. 689. Como el Honorable Juez recurrido no estaba aun renombrado, la mocion fue sometida al Honorable Juez Ocampo, quien en 16 de enero de 1946 ordeno al Sheriff que suspenda la ejecucion y ordeno a las partes que comparezcan el 19 del mismo mes para la vista de la mocion. En el dia señalado, enero 19, el recurrente estuvo esperando que se llame a vista; pero no se llamo porque el expediente habia sido devuelto ya a la sala del Honorable Juez recurrido. El recurrente acudio entonces ante este juez a las 10.30 y ya habian salido el demandante y su abogado. En vista de esto, el recurrente presento con el consentimiento del Juez—segun la solicitud jurada—una mocion enmendada señalada a vista para el enero 26, 1946. El parrafo 9 de la contestation no jurada, sin embargo, dice "that it is not true that the respondent Judge agreed to a hearing on the amended petition." Debe aceptarse la alegacion hecha bajo juramento. Cuatro dias antes de la fecha señalada (enero 26, 1946), esto es, en enero 22, el Honorable Juez recurrido, a petition ex-parte del demandante Tan Eng Gee, en que alega que la mocion enmendada es una de la serie de tacticas dilatorias, dicto una orden denegando la mocion urgente, en vez de actuar sobre la mocion enmendada, y ordeno al Sheriff que efectue la orden de ejecucion de fecha diciembre 22, 1945. Su razon es la siguiente: "From a review of the records of this case, it appears that the defendant has been given the opportunities accorded by law on the matter and he has exhausted all legal resources to delay the execution of the judgment in question. Furthermore, it appears that the judgment rendered in this case is by virtue of an agreement entered into by the parties in open session, the defendant being then assisted by

counsellor of law."

Es verdad que el recurrente utilizo, porque nadie podia privarle, todos los recursos ordinarios y remedios especiales; pero se le privo del ultimo recurso, del recurso de emergencia, recurso expresamente aprobado por la Legislatura para minimizar los efectos de la ruina y desolacion que dejaron en nuestras ciudades las hordas enemigas. El articulo 5 de dicha ley dice asi.

"Cuando se pide la suspension de la ejecucion el juzgado oira a las partes, y si de la vista resultare que la finca o fincas descritas en la peticion estan destinadas unicamente a habitacion; que el solicitante no puede obtener un edificio para su habitacion y la de su familia; que ha empleado la diligencia debida para encontrar otro edificio; que presenta su solicitud de buena fe, y que obedecera y cumplira las disposiciones y ordenes del Juzgado, el mismo puede conceder la suspension que en esta se provee, bajo la condicion de que se cumplan las condiciones con arreglo a las cuales se dicta dicha suspension de ejecucion."

Las palabras "oira a las partes" y "shall hear both parties" en el texto ingles de la ley son mandatorias. El recurrente tenia derecho a probar los hechos alegados por el en su mocion; pero no se le dio oportunidad de ser oido. Se le privo de un derecho sustancial. El alojamiento es tan esencial como el alimento. Nadie debe ser privado de el, sin el debido proceso que marca el articulo 5 ya citado. Este recurso es nuevo. Es creacion de las anormales condiciones post-guerra. No debemos ser insensibles al nuevo estado de cosas, ni debemos cerrar los ojos a la realidad. La ley estara en vigor durante dos años desde su aprobacion: lo que demuestra que es una medida de emergencia. No es de caracter permanente. Denegar de plano la mocion urgente, cuando una mocion enmendada ha sido presentada debidamente sin dar oportunidad al mocionante para presentar sus pruebas, es abusar de la discrecion. La orden de denegacion es nula.

"It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered." (17 C. J., 1133; Lerma contra Antonio, 6 Jur. Fil., 244; Muerteguy y Aboitiz contra Delgado, 22 Jur. Fil., 111; Lavitoria contra Juez de Primera Instancia de Tayabas, 32 Jur. Fil., 214; y Villegas contra Roldan, 42 Gac. Of., 2830.)

La causa de Tiangco contra Liboro no tiene aplicacion en la presente causa: en aquella se trataba de una finca utilizada en parte para negocio y en parte para residencia, y en la presente, se trata de una finca exclusivamente para residencia.

Aunque la sentencia que se trato de ejecutar fue dictada en julio 11, 1945, no era aun ejecutoria mientras el recurrente utilizaba los remedios que la concedieran las leyes. Quedo definitivamente ejecutoria dicha sentencia despues de notificadas las partes de la resolucion de este Tribunal de 9 de enero de 1946 sobreseyendo el recurso de certiorari presentado por el recurrente. Ya estaba en vigor la Ley No. 689. El argumento de efecto retroactivo de dicha ley, en este caso particular, es insostenible.

Que el recurrente antes de dictarse la sentencia obtuvo cuatro meses de aplazamiento para desalojar la finca por concesion del demandante, eso no le priva del derecho que le concede la ley No. 689. El arrendamiento es de mes en mes: prolongar la ocupacion de la finca por algunos meses mas es contrato que esta de acuerdo con el articulo 1581 delCodigo Civil. La condescendencia del demandante no riñe con el derecho que concede el articulo 5 de dicha ley, que se ejercita despues de quedar ejecutoria la sentencia. Tres meses de aplazamiento de la ejecucion no puede arruinar al demandante; pero el inmediato lanzamiento del demandado (hoy recurrente) a la calle puede causarle y a su familia incalculables sinsabores.

Se declara nula y de ningun valor la orden del Honorable Juez recurrido de enero 22, 1946 y se ordena la vista de la mocion enmendada de acuerdo con el articulo 5 de la Ley No. 689.

BRIONES, M.:

Concurro en la preinserta disidencia.

PERFECTO, J., dissenting:

From the majority opinion, we quote the following:

"Petitioner strives to take advantage of a minor incident: After the first petition for certiorari had been quashed here, plaintiff hastened to execute the judgment in the court below. To block the move, defendant submitted on January 16, 1946, an urgent request for stay alleging mainly that his motion for reconsideration in the certiorari case here, was still pending. On January 16, 1946, the Honorable Buenaventura Ocampo, Judge, believing from other allegations of the pleading that defendant desired to invoke Commonwealth Act No. 689, suspended the execution and summoned the parties to a hearing set for January 19, 1946. On that date, however, through a new distribution between the Manila judges, the expediente corresponded to the respondent judge, to whom herein petitioner later submitted his amended petition, making representations under Commonwealth Act No. 689. Without a formal hearing, Judge Gutierrez David denied the suspension, as hereinabove stated. Petitioner's theme, eagerly advanced, is that, after Judge Ocampo had ordered suspension of the execution and had called the parties to a hearing, it was legal abuse of discretion for respondent to cancel the order and refuse the suspension, without previously listening to the litigants. We can not fully indorse that view. It has been held that a judge of first instance is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action. (Roxas vs. Zandueta, 57 Phil., 14.) And Judge Gutierrez David was not required to hear the parties, if and when a reading of the record convinced him, as it did, that the suspension should be revoked because improperly granted or that it should be disapproved. (Tiangco vs. Liboro and Judge of First Instance of Manila, 75 Phil., 559.)

We disagree.

What from the majority's point of view is a minor incident, appears to us to be of vital importance.

The question may be synthesized as follows: May a court deprive a party litigant of his day in court in deciding a question which may adversely affect him as in the present case, in fact, it did?

The right to a hearing is an essential element of due process of law. When a decision or resolution is rendered against a party litigant without granting him his day in court, an injustice is committed against him no matter what the merits of the decision or resolution may be.

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