

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. GUILLERMO P. VILLASOR, AS JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCH I, THE PROVINCIAL SHERIFF OF RIZAL, THE SHERIFF ...*G.R. No. L-30671. November 28, 1973*

Ponente: FERNANDO, J.

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The Republic of the Philippines in this certiorari and prohibition proceeding challenges the validity of an order issued by respondent Judge Guillermo P. Villasor, then of the Court of First Instance of Cebu, Branch I,[1] declaring a decision final and executory and of an alias writ of execution directed against the funds of the Armed Forces of the Philippines subsequently issued in pursuance thereof, the alleged ground being excess of jurisdiction, or at the very least, grave abuse of discretion. As thus simply and tersely put, with the facts being undisputed and the principle of law that calls for application indisputable, the outcome is predictable. The Republic of the Philippines is entitled to the writs prayed for. Respondent Judge ought not to have acted thus. The order thus impugned and the alias writ of execution must be nullified.

In the petition filed by the Republic of the Philippines on July 7, 1969, a summary of facts was set forth thus: "7. On July 3, 1961, a decision was rendered in Special Proceedings No. 2156-R in favor of respondents P. J. Kiener Co., Ltd., Gavino Unchuan, and International Construction Corporation, and against the petitioner herein, confirming the arbitration award in the amount of P1,712,396.40, subject of Special Proceedings. 8. On June 24, 1969, respondent Honorable Guillermo P. Villasor, issued an Order declaring the afore-stated decision of July 3, 1961 final and executory, directing the Sheriffs of Rizal Province, Quezon City [as well as] Manila to execute the said decision. 9. Pursuant to the said Order dated June 24, 1969, the corresponding Alias Writ of Execution [was issued] dated June 26, 1969, * * *. 10. On the strength of the afore-mentioned Alias Writ of Execution dated June 26, 1969, the Provincial Sheriff of Rizal (res-pondent herein) served notices of garnishment dated June 28, 1969 with several Banks, specially on the 'monies due the Armed Forces of the Philippines in the form of deposits, sufficient to cover the amount mentioned in the said Writ of Execution'; the Philippine Veterans Bank received the same notice of garnishment on June 30, 1969 * * *. 11. The funds of the Armed Forces of the Philippines on deposit with the Banks, particularly, with the Philippine Veterans Bank and the Philippine National Bank [or] their branches are public funds duly appropriated and allocated for the payment of pensions of retirees, pay and allowances of military and civilian personnel and for maintenance and operations of the Armed Forces of the Philippines, as per Certification dated July 3, 1969 by the AFP Comptroller, * * *." [2] The paragraph immediately succeeding in such petition then alleged: "12. Respondent Judge, Honorable Guillermo P. Villasor, acted in excess of jurisdiction [or] with grave abuse of discretion amounting to lack of jurisdiction in granting the issuance of an alias writ of execution against the properties of the Armed Forces of the Philippines, hence, the Alias Writ of Execution and notices of garnish-ment issued pursuant thereto are null and void." [3] In the answer filed by respondents, through counsel Andres T. Velarde and Marcelo B. Fernan, the facts set forth were admitted with the

only qualification being that the total award was in the amount of P2,372,331.40.[4]

The Republic of the Philippines, as mentioned at the outset, did right in filing this certiorari and prohibition proceeding. What was done by respondent Judge is not in conformity with the dictates of the Constitution.

It is a fundamental postulate of constitutionalism flowing from the juristic concept of sovereignty that the state as well as its government is immune from suit unless it gives its consent. It is readily understandable why it must be so. In the classic formulation of Holmes: "A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." [5] Sociological jurisprudence supplies an answer not dissimilar. So it was indicated in a recent decision, *Providence Washington Insurance Co. v. Republic of the Philippines*, [6] with its affirmation that "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." [7]

This fundamental postulate underlying the 1935 Constitution is now made explicit in the revised charter. It is therein expressly provided: "The State may not be sued without its consent." [8] A corollary, both dictated by logic and sound sense from such a basic concept is that public funds cannot be the object of a garnishment proceeding even if the consent to be sued had been previously granted and the state liability adjudged. Thus in the recent case of *Commissioner of Public Highways v. San Diego*, [9] such a well-settled doctrine was restated in the opinion of Justice Teehankee: "The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action 'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law." [10] Such a principle applies even to an attempted garnishment of a salary that had accrued in favor of an employee. *Director of Commerce and Industry v. Concepcion*, [11] speaks to that effect. Justice Malcolm as ponente left no doubt on that score. Thus: "A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it." [12]

In the light of the above, it is made abundantly clear why the Republic of the Philippines could rightfully allege a legitimate grievance.

WHEREFORE, the writs of certiorari and prohibition are granted, nullifying and setting aside both the order of June 24, 1969 declaring executory the decision of July 3, 1961 as well as the alias writ of execution issued there-under. The preliminary injunction issued by this Court on July 12, 1969 is hereby made permanent.

Zaldivar, (Chairman), Anonio, Fernandez, and Aquino, JJ., concur.
Barredo, J., took no part.

[1] The other respondents are the Provincial Sheriff of Rizal, the Sheriff of Quezon City, the Sheriff of the City of Manila, the Clerk of Court, Court of First Instance of Cebu, P. J. Kiener Co., Ltd., Gavino Unchuan, and International Construction Corporation.

[2] Petition, pars. 7-11.

[3] Ibid, par. 12.

[4] Answer, par. III.

[5] *Kawananakoa v. Polyblank*, 205 U.S. 349 (1907).

[6] G.R. No. L-26386, September 30, 1969, 29 SCRA 598.

[7] Ibid, 601-602.

[8] Article XV, Sec. 16.

[9] G.R. No. L-30098, February 18, 1970, 31 SCRA 616.

[10] Ibid, 625. The opinion cited among others the following decisions: *Merritt v. Government*, 34 Phil. 311 (1916); *Visayan Refining Co. v. Camus*, 40 Phil. 550 (1919); *Director of Commerce v. Concepcion*, 43 Phil. 384 (1922); *Belleng v. Republic*, G.R. No. L-19856, Sept. 16, 1963, 9 SCRA 6; *Republic v. Palacio*, G.R. No. L-20322, May 29, 1968, 23 SCRA 899.

[11] 43 Phil. 384 (1922).

[12] Ibid, 386.

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