

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE JESUS S. RODRIGUEZ, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, 11TH JUDICIAL DISTRICT, BRANCH VI,...

G.R. No. L-26056. May 29, 1969

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Petition for a writ of mandamus to compel the Court of First Instance of Iloilo to approve the record on appeal filed by the petitioner in Civil Case No. 6738 of the said court and to transmit the same to this Supreme Court.

The case originated in a petition filed on 12 March 1965 in the Court of First Instance aforesaid by the Republic of the Philippines against Rosario T. Jalandoni (represented by her administratrix, Luz Jalandoni Vda. de Serra) to restrain her from taking possession of Lots 3748 and 3860 of the Iloilo Cadastre and covered by Original Certificates of Title Nos. 15139 and 15188, which lots are, and have been since 1919, occupied by the Iloilo Normal School under the Bureau of Public Schools, Department of Education; to constitute a board of appraisers to determine and fix the fair and reasonable value of said cadastral lots; to authorize payment of, and direct defendant to accept, the value of the lots as determined at the time the Government took possession thereof, with interest; and to order the cancellation of the Original Certificates of Title and the issuance of Transfer Certificates of Title in the name of the petitioner (Petition, Annex "A").

On 16 March 1965, the court issued a writ of preliminary injunction to restrain defendant "from enforcing the writ of possession awarded to her in G. R. No. 19920-R,[1] pending the termination of this litigation and/or unless a contrary order is issued by this court".

Subsequently, upon defendant's motion, and despite petitioner's objection, the court below, by order of 31 August 1965, dismissed the petition for failure to state a cause of action and dissolved the preliminary injunction (Annex "F").

Its petition for reconsideration having been denied, the Republic filed notice of appeal to this Court and a record on appeal only, being exempt from the requirement of an appeal bond. But the Court, upon objection of the defendant, denied approval of the notice and record on appeal (Annex "R") on the ground that -

“... the purpose for which the petition has been instituted became moot and academic in view of the fact that the property sought to be expropriated or retained has already been purchased by the plaintiff in a negotiated contract of sale duly approved by this Court in Special Proceedings No. 1634, entitled In The Matter of the Intestate Estate of the Deceased Rosario T. Jalandoni, Luz Jalandoni Vda. de Serra, petitioner, the duly appointed administratrix.

"The objective then for which the petition was filed has been already obtained and the appeal as an incident of the petition must perforce be dismissed."

Wherefore, the petitioner-appellant resorted to this Supreme Court in quest of a writ of mandamus, as described in

the first part of this decision.

We are not called here to pass upon the merits of the petition filed in the court below. The issue now is whether the court below has neglected to perform an act specifically enjoined by law, and unlawfully excluded the petitioner from the right to prosecute an appeal duly perfected in Civil Case No. 6738.

We are of the opinion that the writ of mandamus should issue.

For in refusing to allow the appeal to proceed on the ground that the case has become moot and academic, notwithstanding that on 18 February 1966 it was informed by counsel for petitioner that implementation of the sale of the lots to the Government had been suspended, and the legality of the sale was being inquired into, the court below, in fact, proceeded to determine the merits of the petitioner's appeal, trenching upon the jurisdiction of the appellate courts.

Sections 13 and 14 of Rule 41 of the Revised Rules of Court clearly establish that, unless the appeal is abandoned, the only ground for dismissing an appeal in the trial court is the failure of the appellant to file on time the notice of appeal, appeal bond, or record on appeal.

"SEC. 13. Effect of failure to file notice, bond, or record on appeal. - Where the notice of appeal, appeal bond or record on appeal is not filed within the period of time herein provided, the appeal shall be dismissed."

"SEC. 14. Motion to dismiss appeal. - A motion to dismiss an appeal on any of the grounds mentioned in the preceding section, may be filed in the Court of First Instance prior to the transmittal of the record to the appellate court."

There is only one instance under the Rules of Court wherein a trial court may refuse to allow an appeal to proceed, notwithstanding compliance by the appellant with the procedural requirements of Rule 41, and that is in the case of paupers' appeals (Rule 41, section 16).

"SEC. 16. Appeal by pauper. - Where a party desiring to appeal shall establish to the satisfaction of the trial court that he is a pauper and unable to pay the expenses of prosecuting the appeal, and that the case is of such importance, by reason of the amount involved, or the nature of the questions raised, that it ought to be reviewed by the appellate court, the trial judge may enter an order entitling the party to appeal as pauper. The clerk shall transmit to the appellate court the entire record of the case, including the evidence taken on trial and the record on appeal, and the case shall be heard in the appellate court upon the original record so transmitted without printing the same.

"A petition to be allowed to appeal as pauper shall not be entertained by the appellate court."

Even in this case, the power is only given by implication, and it is unnecessary to stress the need of proceeding with caution so that a party may not be deprived of its right to appeal except for weighty reasons.

It is true that, under section 9 of Revised Rule 41, "the appeal is deemed perfected upon the approval of the record on appeal and of the bond other than a cash bond", but the provision is not meant to confer upon the trial court unbounded discretion to disapprove records on appeal for reasons other than the non-compliance by the appellant with the requirements of Rule 41.[2] Otherwise, the way would be opened for courts of first instance to forestall review or reversal of their decisions by higher courts, no matter how erroneous or improper such decisions should be.

Moreover, since the Government has refused implementation of the private sale of the cadastral lots in question, because it is of the opinion that it is of doubtful legality, to say the least, and because the validity thereof has actually been put in issue in the Court of First Instance of Manila, in Case No. 66225 of said court entitled Luz

Jalandoni vs. Hon. Rafael Salas, et al. (Annexes "1" and "2" of the petitioner's memorandum in this Court, Record, page 131 et. seq.), the pronouncement that the expropriation proceedings have become moot and academic is at present premature. The validity or invalidity of the deed of sale was not for the respondent court to resolve.

The governing rule is found in our decision in *Dosalla vs. Caluag*, L-18765, 31 July 1963, 8 SCRA, 644, 647, where we said:

"We find merit in the petition. To begin with, the grounds on which the appeal was dismissed are not among those for which an appeal may be dismissed as enumerated in Rule 52, of the Rules of Court. These grounds, even if they exist, can only be entertained by an appellate court, not by the court a quo, for, as already stated, an appeal is perfected if the steps prescribed in Section 3, Rule 41 had been taken, and once taken it becomes the duty of the court a quo to give due course to the appeal. ----- "(Emphasis supplied)

WHEREFORE, the writ of mandamus is granted, and the respondent court is ordered to approve and transmit to this Court the petitioner's record on appeal in Civil Case No. 6738 of the Court of First Instance of Iloilo. Costs against the private respondent.

Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.
Concepcion, C.J., and Castro, J., both on official leave, did not take part.

[1] Of the Court of Appeals.

[2] A trial court may not dismiss an appeal as frivolous, such step de-volving upon the appellate courts: *Republic vs. Gomez*, 31 May 1962, 5 SCRA 368; *Icasiano vs. Icasiano*, 27 October 1961, 3 SCRA 302.

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