

SPOUSES JOSE SY BANG AND ILUMINADA TAN, COMPLAINANTS, VS. JUDGE ANTONIO MENDEZ, SR., RESPONDENT.*A.M. No. RTJ-91-672. September 28, 1993*

Ponente: PUNO, J.

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This is an administrative case filed by complainant-spouses Jose Sy Bang and Iluminada Tan against respondent judge for gross impropriety, blatant partiality, serious irregularities and knowingly issuing unjust orders in Civil Case No. 2137-G entitled, “Suarez Agro-Industrial Development Corporation v. Development Bank of the Philippines and Spouses Jose Sy Bang and Iluminada Tan.”

On February 11, 1992, the Court referred the complaint to Associate Justice Oscar M. Herrera of the Court of Appeals for investigation, report and recommendation.

On April 16, 1993, Justice Herrera submitted a report which established the following facts:

Two (2) lots, with an ice plant and improvements thereon situated at Calauag, Quezon, were originally owned by DBP and were leased to Suarez Agro-Industrial Corporation (corporation, for brevity) for a period of one year starting on July 1, 1983. After the one year period, DBP allowed the corporation to continue leasing said properties on a monthly basis. The corporation, however, became delinquent in its rental payments. From the period July 1987 until September 1990, its unpaid rentals amounted to P650,000.00. Thus, on August 16, 1990, DBP demanded that the corporation vacate the properties. It refused. On December 15, 1990, DBP sold the properties to complainant-spouses. They were duly registered in their names.

On December 21, 1990, complainants again demanded that the corporation vacate the properties. Once more, the demand was refused. The complainants then filed with the Municipal Trial Court of Calauag, Quezon an ejectment suit (docketed as Civil Case No. 814) against the corporation. The court issued a restraining order^[1] enjoining the corporation from further operating the ice plant. Not to be outdone, the corporation filed an action for specific performance and annulment of sale with preliminary injunction against DBP and the spouses before the Makati RTC, Branch 134 (docketed as Civil Case No. 90-3511).^[2]

The spouses filed a motion to dismiss Civil Case No. 90-3511 for improper venue^[3] considering that the subject lots were situated in Calauag, Quezon. The motion was, however, denied and a writ of preliminary injunction was issued enjoining the spouses from taking possession of the subject properties. The spouses elevated the case to the Court of Appeals on certiorari. In a decision dated April 15, 1991,^[4] the Court of Appeals declared the Makati RTC to be devoid of authority to hear the case and ordered its dismissal. A motion for reconsideration filed on May 10, 1991^[5] was denied in a Resolution dated May 22, 1991 on the ground that it was filed out of time.

While the above case was pending before the Makati RTC (the corporation’s period to file a motion for reconsideration not having as yet lapsed), the corporation filed on April 24, 1991 the same action (for specific performance and annulment of sale, with preliminary and prohibitory injunction) against the same parties (DBP

and the spouses), this time before the RTC of Gumaca, Quezon, Branch 62, presided by respondent judge (docketed as Civil Case No. 2137-G).[6] At this point, it is noteworthy to mention that there were only two (2) RTC branches in Gumaca, Quezon (Branches 61 and 62) and both were then presided by the respondent judge, he being the pairing judge in Branch 61.

On even date, respondent judge issued a temporary restraining order (TRO) against DBP and the spouses.[7] Hearing on the prayer for injunction was set on May 9, 1991. However, the TRO was not implemented for the spouses had already entered and were in possession of the premises even before the petition was filed.[8] Since the court failed to order the spouses to restore possession of the property to the corporation, an ex-parte motion to amend said TRO[9] was made by the corporation. The motion was granted in an Order dated April 30, 1991 and the date of hearing was reset to May 7, 1991.

The spouses still refused to leave the premises claiming that the plaintiff corporation had not posted a bond and the writ did not state to whom possession of the premises should be surrendered.[10]

At the hearing held on May 8, 1991, both parties presented evidence on the issue of whether or not the preliminary mandatory injunction should be granted. In an Order of even date,[11] respondent judge considered the case submitted for decision within twenty (20) days from April 30, 1991. Thereafter, on May 14, 1991, respondent judge granted the writ of injunction upon the filing of a one million peso bond[12] by the corporation.

On May 17, 1991, the corporation filed an ex-parte motion to approve the bond issued by Plaridel Surety and Insurance Co.[13]

On May 18, 1991, the spouses filed a Manifestation and Motion before respondent judge informing the latter of the pendency before the Makati RTC of the same action between the same parties and thus prayed for the dismissal of the Gumaca case. The motion was denied by respondent judge in an Order dated May 21, 1991,[14] for being moot and academic.

In sum, complainant-spouses charge respondent judge with the following:

- I. Respondent judge had no jurisdiction to hear and decide cases falling under the territorial jurisdiction of the RTC of Calauag, Quezon without first securing an authority from the Supreme Court.
- II. Respondent judge issued the Orders dated April 26, April 30 and May 14, all of 1991, which were all designed to place the subject properties under the control of the corporation, without due process and hearing.
- III. The bond approved by the respondent judge for the issuance of the injunction is questionable for it lacks the bond number and the records do not show that the premiums were paid. Likewise, respondent judge was fully aware that the insurance company was bankrupt and hence, the injunction remains until now to be unsupported by an adequate bond.
- IV. The Order of respondent judge dated May 24, 1991 to break open the subject premises was issued without any hearing.
- V. The Order of respondent judge dated May 8, 1991 submitting civil case no. 2137-G for decision is highly irregular and premature for complainants have not as yet filed their answer to the complaint nor were they ever declared in default.

In his Comment dated October 17, 1991,[15] respondent judge answered these charges, thus:

- I. He has authority to hear Civil Case No. 2137-G for jurisdiction over a case is conferred by law in a given province upon all the RTC branches in general, and not over specific branches therein. In any case, pursuant to Rule 4, Section 4 of the Rules of Court, the spouses waived the defect of improper venue when they filed their

answer with counter-claim.

II. His ex-parte Order dated April 24, 1991, granting the issuance of a TRO against the spouses, is not prohibited under Section 5, Rule 58 of the Rules of Court. His other questioned Orders were issued to implement the TRO. On the other hand, his Order dated April 30, 1991 granting the preliminary mandatory injunction was given only after both parties adduced evidence in the hearing of May 8, 1991.

III. Although he was informed that there was a similar case involving the same parties and cause of action before the Makati RTC, he denied the spouses' motion to dismiss on the ground that it has become moot and academic. He explained that the Court of Appeals, in a Resolution dated May 22, 1991, denied the motion for reconsideration filed by the corporation. The denial amounted to a termination of the case pending with the Makati RTC, thus rendering moot and academic the ground alleged in the motion to dismiss.

IV. A copy of the bond filed by the corporation (Rollo, p. 120) clearly shows that it has a number. Further, the Rules of Court do not require that hearing be conducted prior to the approval of a bond. What is only required is that a copy thereof be served upon the defendant and such was done in this case.

V. There was no premature submission of the case for decision. What was submitted for decision was not the merit of the case itself but the issue of whether or not the court should grant a preliminary mandatory injunction since the TRO originally issued on April 24, 1991 and subsequently amended on April 30, 1991 would expire twenty (20) days thereafter.

In his report and recommendation which was received by this Court on April 16, 1993, Justice Herrera made the following findings and recommendations which this Court adopts, viz.:

“1. With Respect To the Improper Filing and action by Respondent Judge on the Complaint.

“Under BP Blg. 129, the Supreme Court shall define the territory over which a branch of the Regional Trial Court shall exercise its authority. The territory thus defined shall be deemed to be the territorial area of the branch concerned for purposes of determining the venue of all suits, proceedings or action, whether civil or criminal, as well as determining the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts over which the said branch may exercise appellate jurisdiction. The power therein granted shall be exercised with a view to making the courts readily accessible to the people of the different parts of the region and making the attendance of litigants and witnesses as inexpensive as possible (Section 18, B.P. Blg. 129). Pursuant thereto, Administrative Circular No. 7, Series of 1983, delimited the territorial area between the branch sitting in Calauag and the branch sitting in Gumaca separately from the other.

“Respondent judge committed no infraction in acting on the complaint which was directly filed before the GUMACA court despite the fact that the subject matter of the complaint is located in Calauag which does not fall within his territorial area for purposes of venue albeit within the same region, there being no question that he has jurisdiction or the power to decide the case on the merits as distinguished from venue which deals merely on the locality, the place where the suit may be had (*Dacoycoy v. Intermediate Appellate Court*, 195 SCRA 644). What would have been improper was for re-spondent Judge to motu proprio dismiss the complaint for improper venue.

“As pointed out in *Dacoycoy*:

“Dismissing the complaint on the ground of improper venue is certainly not the appropriate course of action at this stage of the proceeding, particularly as venue in inferior courts as well as in the courts of first instance (now RTC), may be waived expressly or impliedly. Where defendant fails to challenge timely the venue in a motion to dismiss as provided by Section 4, Rule 4 of the Rules of Court, and allows the trial to be held and a decision to be rendered, he cannot on appeal or in a special action be permitted to challenge belatedly the wrong venue, which is

deemed waived. (*Ocampo vs. Domingo*, 38 SCRA 134 (1971).

“Thus, unless and until the defendant objects to the venue in a motion to dismiss, the venue cannot be truly said to have been improperly laid, as for all practical intents and purposes, the venue, though technically wrong, may be acceptable to the parties for whose convenience the rules on venue had been devised. The trial court cannot pre-empt the defendant’s prerogative to object to the improper laying of the venue by *motu proprio* dismissing the case (*Dacoycoy vs. IAC*, *Supra*).”

“In this case petitioner did not timely raise the propriety of the venue but instead filed his answer with counterclaim. In so doing, petitioner as defendant waived improper venue (Section 4, Rule 4, [Rules of Court]; *International Trading Corporation vs. M.V. Zillena*, G.R. No. 102904, October 30, 1992, [215 SCRA 309]).

“2. The charge of FORUM SHOPPING

“Forum shopping may not be attributed to Respondent Judge who has nothing to do with the filing of the case with the Gumaca Court. This was not his choice but that of the plaintiff brought about by unforeseen circumstances. When Civil Case No. 2137 was filed, there was no Presiding Judge at Calauag. Plaintiff’s complaint in Makati was ordered dismissed by the Court of Appeals, but even before the decision could become final and executory, the complaint alleged that defendants were already starting to perform the acts complained of. Plaintiff believes that it is entitled to an injunction and hence resorted to the next available remedy which was the filing of another case - not in Calauag because there was no Judge - but in the Gumaca Court whose writ is enforceable in the same region where the property is located. The fact that the complaint was originally intended to be filed in Calauag is shown by the caption of the Complaint. If the original intention was to file it in Gumaca, then that is the Court which would have been placed in the Caption of the Complaint.

“The complaint as formulated by the plaintiff made it appear that the issue before the Court of Appeals simply is venue while the issue before respondent Judge is the need for the issuance of a preliminary injunction. Altho(ugh) the denial of venue by the Court of Appeals in the Makati Court would result, as it did, in the lifting of the preliminary injunction issued by the latter, it is undeniable that the same remedy may thereafter be sought for (sic) in the proper venue without violating the rule on forum shopping. Basically, the remedy of injunction was not obtained in Makati not because it is unmeritorious, but only because the Court of Appeals ruled that the Makati Court is without authority to grant the injunction it being an improper venue. This means that injunction may be sought for (sic) before the Court with proper authority to grant the writ.

“Upon the other hand, there was no Presiding Judge in Branch 61 of the Gumaca Court. Only respondent Judge of Branch 62 was available, and since an urgent matter was presented before him for action, hence, he has no choice but to act one way or the other on the premises.

“There was no need to secure a prior authorization from the Supreme Court for respondent Judge to act on the application for the issuance of a preliminary mandatory injunction for as a court, it has jurisdiction to act on the case and to issue writs enforceable within its region. The only limitation thereto is the rule on venue which respondent Judge may not apply *motu proprio*.

“What may probably taint the action with forum shopping is that at the time the complaint was filed in Gumaca, there was still a pending motion for reconsideration before the Court of Appeals of its decision ordering the dismissal of the Makati case. Given, however, the circumstances of the case, We are not prepared to conclude that in acting on the complaint before him, respondent Judge consented to forum shopping.

“3. On the Impropriety of the Preliminary Mandatory Injunction

“The Order granting the issuance of a writ of preliminary mandatory injunction was first upheld by the First Division of the Court of Appeals in CA-G.R. SP No. 25225, promulgated on January 21, 1992, with the Court

declaring improper venue as having been waived by petitioners. The decision was, however, amended on February 02, 1993 declaring the writ of preliminary mandatory injunction as void, but not on improper venue, but because of the impropriety of the writ, there being no existing right in favor of plaintiff as an essential element for the issuance of an injunction. x x x At this writing there is yet no Entry of Judgment, and from our verification, an appeal on certiorari has been filed with the Supreme Court. The determination of its propriety being judicial in nature, and sub judice at that, we refrain from making any finding on the propriety of the writ until the issue is finally decided.

“Parenthetically, there was no need for a hearing on the order to break open which is but an implementation of the writ of preliminary mandatory injunction. There is a rule that there is even no need for the Sheriff to secure a break open order where the character of the writ in their hands authorized them if necessary to break open the apartment. The officer enforcing the writ has the right to employ force necessary to enable him to enter the house and enforce the judgment (*Arcadio v. Ylagan* 143 SCRA 168).

“In this case, the temporary mandatory injunction directed the sheriff to eject the defendants from the premises and maintain the status quo ante before the petition was filed. At that point of time, the issuance was made within the allowable 20-day period when a judge is granted discretion to issue a temporary restraining order ex-parte pending determination of whether or not a preliminary injunction may issue.

“The statement of respondent Judge in its Order of May 8, 1991 which reads:

“This Civil Case No. 2137-G was submitted for decision within twenty (20) days from April 30, 1991.”

was explained by respondent Judge to refer to the hearing on the application for preliminary mandatory injunction and that what was deemed submitted for decision within twenty days was not the case itself but the application for the issuance of a writ of preliminary mandatory injunction which the Judge must decide within twenty (20) days from the issuance of Temporary Restraining Order and not from the termination of the hearing of the application. The temporary restraining order in this case was issued on April 24 and not April 30 which was the date when the temporary order was amended. The writ was issued on May 14, 1992 which is the 20th day from the date the restraining order was issued on April 24.

“4. Approval of defective Bond

“Complainant assails respondent Judge for approving the bond issued by the Plaridel Surety for the issuance of preliminary mandatory injunction which complainant learned was bankrupt and was blacklisted and prohibited by the Supreme Court, and in furnishing the complainant with a bond different from that filed in Court. The bond adverted to is Annex R-1, R-2 of the petition (pp. 117-126). No evidence has, however, been adduced on the claim of complainant that the surety was blacklisted at the time of its approval or that if it was, that this was known to respondent Judge. The rules do not require a hearing on the approval of the bond, provided that the Judge is satisfied with the solvency of the surety. On the other hand, the injunction may be lifted based on the insufficiency of the bond (Section 6 Rule 58). Significantly, there appears to be no petition for the lifting or dissolution of the writ of preliminary mandatory injunction based on insufficiency of petitioner’s bond.

“5. Improperly acting on defendant’s Motion before the Set Date For Hearing

“What has not been satisfactorily explained by respondent Judge, is why he immediately denied petitioner’s Manifestation and Motion seeking the dismissal of Civil Case No. 2137-G on the ground of pendency of another case on the same cause of action between the litigant before the Makati Regional Trial Court - Civil Case No. 90-3511- even before the scheduled date of hearing on the ground that it is moot and academic. The motion was set for hearing on May 23, 1991 at 2:00 o’clock in the afternoon, only for complainant to find out that respondent Judge denied the motion without a hearing on May 21, 1991 for being moot and academic (Annex E Ad. Complaint). There was still pending at the time a Motion For Reconsideration of the decision dismissing the Makati case, before the Court of Appeals. When respondent Judge denied the Motion To

Dismiss based on the pendency of another action, the Makati case was still pending. The motion for reconsideration of the decision dismissing the Makati case was only denied per resolution of the Court of Appeals on May 22, 1991, and in any event then, respondent Judge could not have immediately learned of such denial to justify his declaration on May 21, 1992 that the motion before him has become moot and academic.

“The action of respondent Judge in peremptorily and prematurely denying the Motion To Dismiss before the scheduled date of hearing without granting complainant a chance to be heard on their motion, is highly improper justifiably giving rise to a perceived partiality. By this singular act respondent rendered the totality of his past conduct on the case suspect. To the complainants’ perception, this is a confirmation of their suspicion that respondent Judge was partial to the plaintiff. Such conduct is not in consonance with the dictum that his conduct at all times must not only be characterized with propriety and decorum but above all else must be above suspicion. The Judge must not only be impartial (*Fernandez v. Presbiterio*, 79 SCRA 61). A litigant is entitled to no less than the cold neutrality of an impartial judge.

Respondent’s action has placed his integrity, independence and impartiality under a cloud which is in violation of the code of judicial conduct which requires every judge to be an embodiment of competence, integrity and independence.”

On July 9, 1993, this Court received a Manifestation from complainant-spouses further alleging that despite respondent judge’s knowledge of the bankruptcy of Plaridel Surety, he still admitted the bond issued by said company to secure the issuance of the writ of preliminary mandatory injunction in Civil Case No. 2137-G. Complainant-spouses aver that since February 10, 1992, respondent judge knew of the bankruptcy of Plaridel Surety for on said date, he received a telegram from one Atty. Gabalones of the Office of the Clerk of Court, this Court, advising all judges that Plaridel Surety’s authority to operate as a bonding entity has been suspended.[16] Further, complainants aver that when they filed a motion requesting that plaintiff corporation be ordered to file a substitute bond, respondent judge, instead of granting outright their motion, still gave the corporation an opportunity to explain why the same should not be granted.

Complainants further seek the dismissal of respondent judge because the latter refused to dismiss the case upon their motion filed on July 2, 1993 on the ground that plaintiff-corporation submitted its pre--trial brief five (5) days after the pre-trial hearing held on May 14, 1993.

It will be noted that complainant-spouses’ Manifestation was filed on July 5, 1993, long after the instant complaint has been submitted by both parties for resolution. Nevertheless, its circumspect consideration on the merits will not alter the conclusions earlier set forth in this Decision.

With respect to the alleged knowledge of respondent judge regarding the insolvency of Plaridel Surety, the fact is that the bond supporting the issuance of the preliminary mandatory injunction in Civil Case No. 2137 was approved by the respondent judge way back in May of 1991 while the telegram advising respondent judge of the suspension of authority of Plaridel Surety to operate as a bonding entity was received by him only on February 10, 1992. Clearly then, respondent judge committed no error in approving said bond for at that time, Plaridel Surety’s authority to operate has not yet been suspended by the proper authorities.

Complainant-spouses further question the Order of respondent judge in still requiring the corporation to show cause why it should not be made to post a substitute bond. Under the circumstances, it cannot be fairly charged that respondent judge was favoring the corporation. Indeed, it was prudent of the respondent judge to hear the side of the corporation on the incident considering that more than a year has passed since Plaridel Surety’s authority to operate was suspended in January 1992. There was nothing improper for the respondent judge to inquire about the status of the surety company before cancelling the original bond.

Lastly, complainant-spouses would have respondent judge declare the corporation to be non-suited or as in default for failure to file its pre-trial brief on time. On this point, the Court notes that this is not the proper forum to question the alleged error of judgment committed by respondent judge. Under the Rules, complainants have sufficient remedy to question respondent's ruling on the matter by way of petition for certiorari before the appellate courts.

WHEREFORE, premises considered, respondent JUDGE ANTONIO MENDEZ, SR., Presiding Judge of the Regional Trial Court, Branch 62, Gumaca, Quezon, is hereby CENSURED. He is further admonished to exercise greater care and be more circumspect in the performance of his official duties for repetition of the same or similar act in the future shall be dealt with more severely by this Court.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, and Vitug, JJ., concur.

[1] Annex "I", Complaint, Rollo, p. 62.

[2] The corporation claimed that it had previously made an offer to purchase the leased properties from DBP for two million pesos for a term of five years and that the latter duly accepted said offer.

[3] Annex "K", Complaint, Rollo, pp. 73-76.

[4] Rollo, p. 79.

[5] Annex "M", Complaint, Rollo, pp. 86-91.

[6] Rollo, pp. 92-103.

[7] Annex "Q", Rollo, p. 109.

[8] As per Sheriff's Return dated April 29, 1991, Annex "4", Comment, Rollo, p. 192.

[9] Annex "R", Complaint, Rollo, p. 115.

[10] See Sheriff's Return dated May 6, 1991, Annex "5", Comment, Rollo, pp. 193-194.

[11] Annex "T", Complaint, Rollo, p. 129.

[12] Annex "Q-3" of the complaint, Rollo, pp. 113-114.

[13] Annex "R-1" of the complaint, Rollo, pp. 117-118.

[14] Annex "V" of the complaint, Rollo, p. 151.

[15] Rollo, p. 157.

[16] Annex "1" of the Manifestation.

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