

EMILIANO M. PEREZ, PETITIONER VS. THE COURT OF APPEALS, ET AL., RESPONDENTS*G.R. No. L-20783. August 31, 1963*

Ponente: MAKALINTAL, J.

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This is a petition for certiorari and prohibition to review and annul a resolution of respondent Court of Appeals, dated January 22, 1963, in CA-G.R. No. 31674-R, granting a writ of preliminary mandatory injunction as prayed for by therein petitioners Luis P. Reyes and Amanda Reyes, respondents here.

Petitioner Emiliano M. Perez leased from Mariano Guison a door of his building on Carriedo St., Manila. Petitioner divided the leased apace into two compartments, one of which he subleased to the R.A. Reyes & Company, a partnership of the brothers Benjamin A. Reyes and Ricardo Reyes, later substituted by their parents Luis P. Reyes and Amanda Reyes (respondents herein), at a monthly rental of P650.00, payable upon arrangement allegedly made by petitioner, directly to the owner of the building. On April 30, 1962 petitioner filed a complaint for ejectment in the Municipal Court of Manila against the Reyes brothers. The complaint was subsequently amended to include herein respondents as defendants. Respondents answered that they were not sublessees of petitioner but had leased the premises directly from the owner Guison. The Municipal Court of Manila, after trial, ordered respondents to Vacate the premises, pay rents in arrears from June to September, 1962 And accruing rents beginning October 1962 until actual vacation. Respondents appealed to the Court of First Instance of Manila. On December 11, 1962 the Court of First Instance of Manila ordered the issuance of a writ of execution pending appeal on the ground that respondents had. failed to file a supersedeas bond and to pay the accruing rents, notwithstanding the fact that they had made regular rental payments directly to the owner Guison, which payments the court considered as not sufficient compliance with the municipal court's decision.

Alleging that the Judge of the Court of First Instance had acted with grave abuse of discretion in ordering execution pending appeal, respondents, on December 19, 1962, filed in the Court of Appeals a petition for certiorari, CA-G.R. No. 31674-R, with a prayer for issuance of writ of preliminary injunction. Notice of this petition was received by petitioner on the very same day (December 20, 1962) that possession of the premises was delivered to him by the Manila sheriff. On December 21, 1962 respondents filed in the Court of Appeals a petition for restoration of the premises to them. After hearing the Court of Appeals issued on January 22, 1963 a writ of preliminary mandatory injunction to restore possession of the premises to respondents.

On January 25, 1963 petitioner filed in this Court the instant petition, with a prayer for preliminary and/or mandatory injunction against the Court of Appeals and respondents (L-20783), to annul the resolution of the said court granting the writ of preliminary mandatory injunction. To enjoin execution of that resolution, this Court on January 28, 1963 issued a writ of preliminary injunction.

It further appears that on the same day, January 28, 1963, the Court of Appeals promulgated its decision in CA-G.R. No. 31674, annulling the order of execution issued by the Court of First Instance and making the writ of

preliminary mandatory injunction permanent.

On February 26, 1963 petitioner filed in this Court a second case (L-20937) for review on certiorari of the appellate court's decision of January 28, 1963. This second case was dismissed by this Court on March 7, 1963 on the ground that "there is no showing of special and important reason for review."

Meanwhile, in the instant case, the respondents had filed on March 4, 1963 a petition for dismissal on the ground that the preliminary mandatory injunction issued by the Court of Appeals on January 22, 1963, sought to be reviewed herein, had become *functus officio*, having been superseded by the said Court's decision of January 28, 1963. And then on August 1, 1963 respondent Luis P. Reyes filed a motion to lift this Court's writ of preliminary injunction in view of the dismissal of the petition for review on certiorari in L-20937.

The issue presented in the instant petition is whether or not the Court of Appeals acted with grave abuse of discretion in issuing a writ of preliminary mandatory injunction for the restoration of the disputed premises to herein respondents pending the appeal in the Court of First Instance, while in L-20937 the question raised was whether the appellate court erred in definitely annulling the order of execution issued by the Court of First Instance and in making permanent the writ of preliminary mandatory injunction. What is attacked in both cases is the writ of mandatory injunction, with the difference that in the instant case the writ is assailed in its preliminary stage whereas in L-20937 it was questioned after it had been made permanent. But since this Court has found no cause to review the appellate court's decision granting both the writ of certiorari and the final writ of injunction sought therein, and accordingly dismissed the petition for such review (L-20937), the issue in the present petition has been impliedly resolved by such dismissal. There is no reason to review the propriety of the preliminary mandatory injunction granted by the Court of Appeals after it has been superseded by a permanent one, which this Court has already declined to review.

A word of explanation should be made concerning the dismissal of the petition in G.R. No. L-20937 on the ground that "there is no showing of special and important reason for review." We are not to be understood as affirming thereby the correctness of the findings of fact and legal conclusions made by the Court of Appeals in its decision in so far as they deal with the merits of the ejectment case that is precisely the subject of the appeal pending in the Court of First Instance. All we did resolve was that we found no substantial reason to interfere with the exercise by the Court of Appeals of its discretion to place the parties in status quo as of the filing of the complaint for ejectment until the same is decided finally by the Court of First Instance, which of course must base its decision upon its own independent findings according to the evidence to be presented at the trial.

Wherefore, the instant petition is dismissed and the writ of preliminary injunction heretofore issued is dissolved, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon and Regala, JJ., concur.

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