

J.M. TUASON & CO., INC., HON. HERMOGENES CALUAG, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL (QUEZON CITY BRANCH IV) AND HON. NICASIO YATCO, JUDGE OF THE COURT OF FIRST INSTAN...*G.R. No. L-18128 and L-18672. December 26, 1961*

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

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The record shows that the judgments rendered in 1955 by the Court of First Instance of Rizal, in its ejectment cases Q-1401 and Q-1402, were, upon regular appeal, subsequently affirmed in toto by the Court of Appeals in its cases CA-G.R. Nos. 16265-66-R, "Tuason & Company, Inc. vs. Bruna Rosete and Buenaventura Dizon". The Court of First Instance, after the appellate court's decision became final and upon return of the records in due course, Issued writs of execution of the judgment against Rosete and Dizon, as prayed for by the landowner Tuason & Company. Subsequently, on November 19, 1960, the Court of First Instance issued orders of demolition of the houses of the evictees or judgment debtors.

A few days previously, on November 16, 1960, the landowner J. M. Tuason & Company had also applied for a writ of prohibition in the Court of First Instance of Quezon City (Case No. Q-5527) against the Land Tenure Administration, the Auditor General, and the Solicitor General, to restrain them from instituting expropriation proceedings of the petitioner Company's land in Quezon City, generally known as the "Tatalon Estate", as expressly and specifically authorized by Republic Act No. 2616, that became law, without executive approval, on August 3, 1959; the Company claiming mainly that: the Republic Act was unconstitutional, null and void, as legislation aimed at depriving it of its property for the benefit of squatters and occupants, even If the property had been actually subdivided, and its lots were being sold to the public; and that respondent officers threatened to enforce said law by initiating expropriation proceedings. At petitioner's request, Judge Hermogenes Caluag of the Quezon City Court of First Instance (to whom the prohibition case was assigned) issued an ex parte writ of preliminary injunction on November 18, 1960, upon the filing of a bond of P20,000.

After injunction was issued, the evictees in Quezon City cases Q-1401 and 1402, Bruna Rosete and Tranquilino Dizon, petitioned the Court of First Instance to suspend the order of demolition of their houses, on the ground that they were tenants of the Tatalon Estate; that Republic Act No. 2616, after specifically authorizing the expropriation of the Tatalon Estate, in its section 4, prescribes as follows:

"Section 4. After the expropriation proceedings mentioned in section two of this Act shall have been initiated and during the pendency of the same, no ejectment proceedings shall be instituted or prosecuted against the present occupant of any lot in said Tatalon Estate, and no ejectment proceedings already commenced shall be continued and such lot or any portion thereof shall not be sold by the owners of said estate to any person other than the present occupant without the consent of the latter given in a public document."

However, Judge Nicasio Yatco of the Court of First Instance of Quezon City denied the suspension, because no

expropriation proceedings had been actually filed.

Thereupon, the evictees Rosete and Dizon resorted to the Court of Appeals, and there instituted, on February 4, 1961, certiorari proceedings (C.A.-G.R. No. 28842-R) against Judges Yatco and Caluag, J. M. Tuason & Co., Inc., and the Land Tenure Administration. They averred, after recital of the facts, that Judge Caluag gravely abused his discretion in issuing the preliminary injunction in the prohibition case No. Q-5527 to restrain the initiation of condemnation proceedings over the Tatalon Estate; that as beneficiaries under section 4 of Republic Act No. 2616, they were entitled to a stay of the demolition proceedings against them; and that Judge Yatco abused his discretion in refusing to suspend the same until the expropriation case was terminated. The petitioners prayed that—

- (1) Judge Yatco be enjoined from issuing orders of demolition in Cases Nos. Q-1401 and 1402;
- (2) Judge Caluag be enjoined from enforcing the preliminary injunction he had issued in Case No. Q-5527; and
- (3) That the Land Tenure Administrator be commanded to institute the expropriation proceedings authorized by Republic Act No. 2616.

The Court of Appeals gave due course to the certiorari petition, and on February 9, 1961 ordered the issuance *ex parte* of the preliminary injunction prayed for, upon the filing of a P1,000 bond, which was done. Respondent Tuason & Company, Inc., moved to dissolve the preliminary injunction of the Court of Appeals, pointing out that said Court's jurisdiction to take cognizance of certiorari proceedings and to issue injunctions was only in aid of its appellate jurisdiction; that the orders of execution issued by the Quezon City Court are not appealable; that the prohibition proceedings in case No. Q-5527, involving (as they did) a question of constitutionality of a statute, were likewise not appealable to the Court of Appeals; and that said Court, therefore, was without jurisdiction to pass over the questioned orders and that its injunction was improperly issued, not being in aid of the appellate jurisdiction of the Court of Appeals. These points were reiterated in the Company's answer to the petition for certiorari. The Court of Appeals (Second Division) refused to lift the preliminary injunction; on the contrary, on February 26, upon motion of one of the respondents, the Land Tenure Administration, it clarified the previous writ of preliminary injunction,—

"In the sense that said Writ lifts, quashes, or dissolves the writ of preliminary injunction issued by the Hon. Judge Hermogenes Caluag, in Civil Case No. 5527, CFI, Rizal, so that respondent Land Tenure Administration may thus properly file the complaint for expropriation as authorized by Republic Act No. 2616."

Thereupon, Tuason & Company instituted in this Supreme Court certiorari proceedings (G.R. No. L-18128). We gave it due course and enjoined enforcement of the orders of the Court of Appeals in C.A.-G.R. No. 28842, and ordered the Land Tenure Administration to defer the filing of the expropriation proceedings until further orders.

The sequel to the events narrated can be gleaned from the record of case G.R. No. L-18672, a certiorari proceeding filed by the Land Tenure Administration against Judge Hermogenes Caluag and Tuason & Company, Inc. The motion of this Land Tenure Administration and its co-respondents to dismiss the prohibition case in the Quezon City Court (Case No. Q-5527), as well as their motion to dissolve the preliminary injunction issued by Judge Caluag, was denied by him; and when the Second Division of the Court of Appeals issued its resolution of February 26, 1961, quashing Judge Caluag's preliminary injunction, the Land Tenure Administration attorneys attempted to file the complaint for the expropriation of 93 hectares of the Tatalon Estate in the Quezon City court, but said complaint could not be docketed because the Judge had forbidden the Court Clerk to do so. Despite entreaties, Judge Caluag refused to allow the expropriation complaint to be docketed, claiming that he had no official knowledge of the resolution of the Court of Appeals, even after he was served with a certified copy thereof.

The Land Tenure Administration avers that the issuance of the injunction in the prohibition case (Q-5527), the denial of the motion to dismiss the case, the refusal to dissolve the injunction, and the refusal to have the complaint for expropriation docketed were all in abuse of discretion and excess of jurisdiction; that furthermore, venue was improperly laid, because an action for prohibition is personal in character, and neither petitioner nor any of the respondents in said prohibition case were domiciled in Quezon City, Petitioner Land Tenure Administration, therefore, prayed that Judge Caluag be ordered by this Court to refrain from proceeding with the prohibition case, from enforcing the writ of preliminary injunction issued therein, from issuing orders of demolition of the tenants houses, and to allow the expropriation case to be docketed and regularly proceeded with.

As we view it, two main questions are involved in these cases:

- (1) In G. R. L-18128: Did the Court of Appeals have jurisdiction to lift, quash, and dissolve the preliminary writ of injunction issued by Judge Caluag in the prohibition case No. Q-5527 pending in his court?
- (2) In G. R. L-18672: Did Judge Caluag act without or in excess of jurisdiction in issuing the preliminary injunction in the prohibition case?

As to the first issue, we are satisfied that the writ of injunction issued by the Court of Appeals in CA-G.R. No. 28842-R is null and void for want of jurisdiction. The authority of said Court to issue writs of mandamus, prohibition, injunction, certiorari and habeas corpus is expressly limited by statute to their issuance in aid of its appellate jurisdiction (Judiciary Act, sec. 30), and it has been repeatedly ruled by us that the jurisdiction of the Court of Appeals to issue such writs must be based on the existence of a right to appeal to it from the judgment on the merits in the main case. Without such right of appeal the Court of Appeals is without jurisdiction to interfere, for that Court is purely a creature of statute. [1] Since the issuance of orders for execution after the judgment of ejectment had become final are not appealable, as the Court of Appeals itself has ruled [2], otherwise litigations would never end; and since the prohibition case No. Q-5527 involved the constitutionality of Republic Act No. 2616, an issue of which the Court of Appeals could not take cognizance, said Court clearly had no authority to interfere by prerogative writ in either litigation, for lack of appellate jurisdiction. Judge Caluag of Quezon City was, therefore, not bound by the writs so issued by the Court of Appeals.

On the second question, the preliminary injunction issued by Judge Caluag was merely an incident to the main (prohibition) case, and evidently had for its object to prevent that the principal case and any remedy to be granted therein should be rendered moot and nugatory by the filing of the condemnation proceedings sought to be prohibited. Issuance of the injunction was authorised by section 7 of Rule 67 of the Rules of Court, dealing with writs, certiorari, prohibition, and mandamus.—

"SEC. 7 Expediting proceedings. Preliminary injunction. The court in which the petition is filed, or a judge thereof, may make orders expediting the proceedings, and may also grant a preliminary injunction for the preservation of the rights of the parties pending such proceedings."

Authority is likewise derived from section 6 of Rule 124, concerning the powers and duties of courts:

"When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry into effect may be employed by such court or officer."

That the alleged unconstitutionality of Republic Act No. 2616 could be invoked as a defense in the expropriation proceedings does not alter the right of respondent Tuason & Company to invoke it in the prohibition case, without awaiting the initiation of the condemnation case. In any event, the issue of constitutionality would be like a prejudicial question to the expropriation, as it would be a waste of time and effort to appoint evaluation commissioners and debate the market value of the property sought to be condemned if it turned out that the

condemnation was illegal.

It is urged by amicus curiae that Courts of First Instance have no jurisdiction to entertain actions assailing the constitutionality of statutes or treaties, because section 10 of Article VIII of the Constitution prescribes that—

"No treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the (Supreme) Court."

This contention is, however, destroyed by the terms of section 2 of Article VIII, wherein the Constitution itself inhibits Congress from depriving the Supreme Court—

"Of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in—

(1) All cases in which the constitutionality or validity of any treaty, law, ordinance or executive orders or regulations is in question." (*Italics Supplied*)

Plainly, the Constitution contemplates that the inferior courts should have jurisdiction in cases involving constitutionality of any treaty or law, for it speaks of appellate review of final judgments of inferior courts in cases where such constitutionality happens to be in issue. Construing both provisions together, it is readily discerned that the two-thirds vote of the Supreme Court, required by section 10 of Article VIII, conditions only the decisions of the Supreme Court in the exercise of Its appellate jurisdiction.

It is true that, as argued by the petitioner Land Tenure Administration, the mere fact that a statute is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined. But the rule is not without exceptions. In *Cochiong vs. Dinglasan*, 79 Phil. 125, this Court quoted with approval from 28 Am. Jur. 369-371 the rule that—

"It is recognized, however, that an injunction will lie to restrain the threatened enforcement of an invalid law where the lawful use and enjoyment of private property will be injuriously affected by its enforcement * * * ",

and the petition for a writ of prohibition in Q-5527 of the Court of First Instance of Quezon City pleads precisely this threatened injury to the proprietary rights of Tuason & Company, Inc., as owners of the Tatalon Estate. Whether this injury is real or not must be decided on the evidence submitted in that case, and we are in no position to resolve it in the certiorari proceedings now before us. Our task here is merely to determine absence or excess of jurisdiction: and on the facts and applicable law, we can not say that in the issuance of the preliminary injunction by the Court of First Instance of Quezon City there was such grave abuse of discretion as would constitute excess of jurisdiction.

It may be added that the maintenance of the injunction issued by Judge Caluag works no real prejudice at present, not only because we can not anticipate the final decision of Judge Caluag on the issue of constitutionality, but also because the Land Tenure Administration confesses that it has available only two million pesos to pay for property that, according to the proposed complaint for expropriation, has an area of 1,096,849.50 square meters with a reasonable assessed value of P6,034,865.95. Plainly, the government is not now in a position to take over the possession of the land, since it does not have the money that it must deposit as a prerequisite to its entry (section 3 of Rule 69 on Eminent Domain).

In moving for the lifting of the preliminary injunction and for a stay of, the ejectment proceedings, the Land Tenure, Administration and the other movants assume that, upon filing of the condemnation petition, the land owner will be barred from enforcing its final judgments of ejectment against the possessors of the land, even if the Government should not take over the possession of the property involved. This view, in our opinion, is not

warranted. We see nothing in the terms of Republic Act No. 2616 to justify the belief that the Legislature intended a departure from the normal course prescribed for eminent domain cases, where the rights of the owner of the land may not be disturbed without previous deposit of the provisional, value of the property sought to be condemned. The effectivity of section 4 of Republic Act 2616, discontinuing ejectment proceedings against the present occupants, and restraining any act of disposition of the property, is justifiable only, if the Government takes possession of the land in question by depositing its value. It needs no argument to show that by restraining the land owner from enforcing even final judgments in his favor to recover possession of his property, as well as from disposing of it to persons of his choice, he is deprived of the substance of ownership, and; his title is left as an empty shell. The land owner would be deprived of those attributes of ownership that give it value, and his property is virtually taken from him without compensation and in violation of the Constitution, particularly in view of the fact that R.A. 2616 (unlike previous Acts of similar character) does not even provide for a deposit of the current rentals by the tenants during the pendency of the proceedings (cf. R.A. No. 1162, section 5). The Bill of Rights, in requiring that "private property shall not be taken for public use without just compensation", and Article XIII, section 4, in prescribing that "Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals", prohibit any disturbance of proprietary rights without coetaneous payment of just indemnity. Hence, the mere filing of the condemnation proceedings for the benefit of tenants can not, by itself alone, lawfully suspend the condemnee's dominical rights, whether of possession, enjoyment, or disposition. And this is especially the case where final and executory judgments of ejectment have been obtained against the occupants of the property.

Whether or not venue was correctly laid in the prohibition case now pending in the Court of First Instance of Quezon City is a question of law that does not affect jurisdiction, and any resolution of the trial Court thereon is reviewable by appeal and not by certiorari.

In view of the foregoing, judgment is hereby rendered:

(a) In Case G.R. No. L-18128, J. M. Tuason & Co., Inc. vs. Court of Appeals, et al., setting aside the writ of preliminary injunction issued by the Court of Appeals in its case CA-G.R. No. 28842-R, the same being null and void for lack of jurisdiction on the part of the Court to take cognizance of said case;

(b) In Case G. R. No. L-18672, Republic of the Philippines vs. J. M. Tuason & Co., Inc., et al., dismissing the petition for certiorari, and denying the writs of certiorari and injunction applied for.

The Court of First Instance of Quezon City is directed to hear and resolve the prohibition case No. Q-5527 with all practicable dispatch. Without costs.

So ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Dizon and De Leon, JJ., concur.

[1] Roldan vs. Villaroman, 69 Phil. 12; Breslin vs. Luzon Stevedoring, 84 Phil., 618; 48 Of. Gaz., 1170; Borja vs. Saminiano, 71 Phil., 227.

[2] Aquino vs. Judge Forilan Bayona, (CA) 56 Off. Gaz., (No. 25), pp. 4232, 4233.

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