

**PHILIPPINE VIRGINIA TOBACCO ADMINISTRATION, PETITIONER,
VS. HON. ANTONIO G. LUCERO, RAMON O. NOLASCO AND ARSENIO
SOLIDUM, AS ASSO-CIATE JUSTICES OF THE COURT OF APPEALS
(4TH SPE...**

G.R. No. L-32550. October 27, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

This is an appeal by certiorari from the decision of the then Court of Appeals which dismissed the action petitioner had filed with said court for certiorari with preliminary mandatory injunction, seeking to set aside, pending appeal, the order of execution issued by the lower court in Civil Cases Nos. 11548, 11658 and 11672.

The facts, as found by the Court of Appeals, are the following:

"On October 19, 1967, Civil Case No. Q-11548 was filed by the United Narvacan Planters Association, Inc. and forty (40) other corporations domiciled within the Provinces of La Union, Ilocos Sur, Ilocos Norte and Abra, against the Philippine Virginia Tobacco Administration and the Central Cooperative Exchange, Inc. for alleged unpaid tobacco shipments amounting to P266,274.32 (see amended complaint, rec. 21-24, 63-70). In its Answer to the complaint in Q-11548, defendant Philippine Virginia Tobacco Administration (PVTa) alleges that the tobacco shipments referred to therein were not actually delivered by the plaintiffs, nor received and accepted by said defendant PVTa or its agent, co-defendant Central Cooperative Exchange, Inc. (CCE for short, see rec. 36). It further alleges that co-defendant CCE has acted beyond the scope of, and contrary to, its authority as agent of defendant PVTa and should be held solely liable for the payment of the tobacco shipments of the plaintiffs in Civil Case Q-11548 (rec. 36). The co-defendant CCE likewise denies the plaintiffs' claims (rec. 171).

"On November 24, 1967, plaintiffs Mellow Leaf TPA, Inc. and twenty-three (23) other corporations, filed Civil Case No. Q-11658 against the PVTa and the CCE (see 1st amended complaint and 2nd amended complaint, rec. 42-45; 71-77). The same defenses were inter-posed by the said defendants to this 2nd case (rec. 46-50).

"On December 16, 1967, Narvacan Union TPC and seventeen (17) other corporations filed Civil Case No. Q-11672 against the PVTa and the CCE (see complaint, rec. 51-54; amended complaint, rec. 80-84). Both defendants adopted the same Answers filed in the first 2 cases (rec. 172). The above three (3) cases were jointly tried by respondent Judge (rec.173-A).

"At several stages of these 3 cases, partial judgment (sic) were rendered therein in favor of some plaintiffs and the awards thereunder, according to defendant PVTa, had already been satisfied through writs of garnishments and actual releases of the sums of money specified (rec. 172-173). As to the remaining controversial matters, the respondent Judge rendered partial judgments therein on October 30, 1969 and these partial judgments gave rise to the present petition for certiorari with Preliminary Injunction (rec. 173).

"On October 31, 1969, the day following the partial judgments in question, winning plaintiffs in the aforesaid 3

cases filed an urgent motion for execution pending appeal on the following propositions: (1) 'said partial judgments rest on incontrovertible facts and upon laws as applied and abundantly illustrated by court precedents, such that any appeal therefrom would be palpably to delay' (rec. 126-127); (2) 'plain-tiffs' claims have a first priority in the order of payment of outstanding PVTA obligations under RA 4155' (rec. 127); (3) 'the termination of the tobacco subsidy law would permanently remove from plaintiffs any chance of recouping their losses thereby causing their injury irre-parable' (rec. 127); (4) 'other similar cases or claims previously upheld by this Honorable Court (CFI) had been paid by execution pending appeal' (rec. 128) and (5) 'the defendants, particularly defendant PVTA, had subscribed to the urgency of settling plaintiffs' claims expeditiously under the joint manifestation of both parties of September 25, 1969 and in defendant PVTA's formal offer of evidence of October 11, 1969, said defendant PVTA manifested that it is submitting the case with respect to plaintiffs' claims against PVTA but reserving its right to pursue independently its crossclaims against its co-defendant CCE, thus making it evident that said defendant PVTA had in the course of the trial been sufficiently impressed by plaintiffs' evidence' (rec. 128). This motion for execution pending appeal dated October 31, 1969 was set for hearing on November 3, 1969 (rec. 129). Written opposition dated October 31, 1969 was filed by defendant PVTA stating the following: (1) the appeal is meritorious without explaining the why and the wherefore (rec. 131); (2) the plaintiffs have already enjoyed that preference 'considering that in the said gapes the plaintiffs have already secured no less than 5 partial judgments in their favor, all of which had been executed despite appeal interposed by defendant PVTA; the amount involved in the instant partial judgment is much less than the amounts previously received by the plaintiffs as a result of the executions issued respecting previous five (5) partial judgments' (rec. 132); (3) the termination of the tobacco subsidy law is speculative (rec. 132); (4) 'the fact that the previous partial judgments rendered on the subject cases have been executed despite the appeals interposed by defendant PVTA does not automatically entitle the plaintiffs to an order of execution respecting the present par-tial judgment' (rec. 132); and (5) the allegation of urgency is a mere conclusion (rec. 132), 'the fact that plaintiffs have already collected the greater bulk of their claims as a result of the execution earlier issued in the cases, already negates the urgency for immediate execution respecting the present partial judgment' (rec. 133-134). Resolving this incident, the respondent Judge issued an order dated November 5, 1969 granting execution pending appeal, which reads as follows:

"CONSIDERING plaintiffs' 'Urgent Motion for Execution Pending Appeal' dated October 31, 1969, and defendant PVTA's opposition thereto, the Court finds the following reasons for execution of its Partial Judgment of October 30, 1969, as sufficient and compelling, to wit:

'(1) That the facts on which these cases were decided fully substantiated that no significant evidence was adduced against these claims and that plaintiffs' legal right to payment upon these facts is sustained by laws, which as applied by the Supreme Court, confirm plaintiffs' cause, such that any appeal from the Court's partial judgment of October 30, 1969, would be merely dilatory;

'(2) That plaintiffs, being clearly entitled to the payment of their claims, are likewise entitled to law to priority in the liquidation of outstanding PVTA obligations to wit, Section 5 of Republic Act 4155, approved on June 20, 1964, which specifically provide as follows:

'SEC. 5. Financing. - The support given by the Central Bank as provided for by Republic Act Numbered Eleven hundred ninety-four, as amended, is hereby discontinued and in lieu thereof, a special fund is hereby established to be known as the Tobacco Fund, which shall be constituted by and collected from the proceeds of fifty per centum of the tariff or taxes of imported leaf as herein above provided and also fifty per centum of the specific taxes or locally manufactured Virginia type cigarettes. This fund shall be expended for the support or payment of:

'1. Indebtedness of the Philippine Virginia Tobacco Administration and the former Agricultural Credit and Cooperative Financing Administra-tion to FACOMAS and farmers and planters regarding Virginia tobacco transac-tions in previous years.'

'(3) That plaintiffs face a real danger of having an empty judgment in their favor since, as this Court takes notice of the fact, subsidy has not been intended as a permanent solution to the problems of the Virginia tobacco industry;

'(4) That in all previous partial judgments in these cases and in other similar cases already decided, this Court had, taking cognizance of the urgent and compelling reasons given for immediate execution, granted the same, and there is no reason why it should now reverse itself.

'In the opposition filed by the defendant PVTa to the 'urgent motion for execution pending appeal of the plaintiffs in the instant cases, the Court noted that they admitted that payments of the obligations under litigation enjoys a priority and that, as in previous cases decided involving the same nature and relative to these cases, the defendant PVTa raised only the question as to the payment of interest counting from 48 hours from the date of delivery and the high percentage of attorney's fees. As to the payment of the cost of tobacco delivered, the PVTa practically admitted same and have been partially paid by virtue of the previous orders of this Court. Such being the case, the ends of justice may be better served considering that actually the farmers who have not received payments of their tobacco will be the ones prejudiced if payments will further be delayed, the Court deems it wise to grant the instant motion after the plaintiffs shall have filed a bond equal to the total amount to be executed to answer for the same should plaintiffs be finally adjudged to be not entitled to the payments thereof.

'WHEREFORE, the 'urgent motion for execution pending appeal' is hereby granted, provided that a bond be filed by the plaintiffs in favor of the defendant PVTa. Upon the filing of such bond, the Clerk of Court is directed to issue the corresponding writ of execution.

'SO ORDERED.'

"And, on November 14, 1969, in pursuance of the above-quoted order, respondent Judge issued a writ of execution in favor of 18 plaintiffs whose names are listed therein (see writ of execution, rec. 138-140). On November 14, 1969, also, respondent Judge issued on the aforesaid 3 cases a Notice of Garnishment to the Rizal Commercial Banking Corporation, Makati, Rizal, for P647,572.93 (see Notice of Garnishment, rec. 141). On November 17, 1969, acting upon plaintiffs' urgent motion, respondent Judge directed the Rizal Commercial Banking Corporation to immediately release and deliver to the Special Sheriff, Mr. Roberto B. Garcia, the garnished amount of P647,572.93 and ordered the said Sheriff, upon receipt of the amount, to deliver the same to plaintiffs counsel Atty. Buenaventura Salvador, upon proper receipt (see order, rec. 142). The order of November 5, 1969 granting execution pending appeal (rec. 135-137) and the order of November 17, 1969, directing the Rizal Commercial Banking Corporation to release the sum of P647,572.93 are the object of the present petition for certiorari with preliminary mandatory injunction on the ground that the special reasons stated on the order of November 5, 1969 are not sufficient to warrant the issuance of a special order of execution' (rec. 10)" (pp. 2-7, Petitioner's brief)

Petitioner submits that the Court of Appeals erred in ruling that the trial court did not gravely abuse its discretion in granting execution pending appeal.

We find the petition to be without merit. For certiorari to lie, "there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions (Panaligan vs. Adolfo, 67 SCRA 176, 180)." The "abuse of discretion must be grave and patent, and it must be shown that the discretion was exercised arbitrarily or despotically (Palma and Ignacio vs. Q. & S., Inc., et al., 17 SCRA 97, 100)."

The petition in the case at bar does not show any misuse of power properly vested in courts. On the contrary, the court a quo, in granting the motion of herein private respondents for execution pending appeal, required of them

to file a bond equal to the amount sought to be executed, as in fact they have posted three (3) bonds in the total amount of P647,500.00, the same to last until the cases are terminated and released by the court. And, said bonds bear for the express approval of the corporate counsel.

Section 2, Rule 39 of the Rules of Court allows execution pending appeal. Said rule provides:

"SEC. 2. Execution pending appeal.- On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein."

Thus, the court may, in its discretion, order an execution even before the expiration of the time within which to appeal provided there are good reasons for execution which must be stated in the special order. An example of good reason is when the successful or prevailing party files a bond. In *Hacienda Navarra, Inc. vs. Hon. Alejo Labrador*, 65 Phil. 536, the Court held that "the filing of the bond required by the respondent judge in the order sought to be annulled constitutes a special ground authorizing the court to issue a writ of execution pending appeal." However, the order of execution pending appeal may be stayed, "upon approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned upon the performance of the judgment or order appealed from in case it be affirmed wholly or in part." (Section 3, Rule 39 of the Rules of Court). The supersedeas bond guarantees satisfaction of the judgment in case of affirmance on appeal, not things like damage to the property pending the appeal (*De Leon vs. Santos*, 78 Phil. 461)."

Further, it is well established that "certiorari, being an extraordinary remedy, cannot be resorted to whenever another adequate remedy is available. x x x [T]he petitioner, as would be appellant, could have stayed execution by tendering supersedeas bond, as provided by section 3 of Rule 39 of the Revised Rules of Court, that would have enabled the trial court to stay execution, without prejudice to attacking the issuance of the execution in his brief on appeal. Having failed to avail himself of that remedy, the petitioner is not entitled to certiorari (*Javellana vs. Querubin, et al.*, 17 SCRA 873, 875)."

IN VIEW OF THE FOREGOING, the writ of certiorari prayed for is DENIED, with costs against the petitioner.

SO ORDERED.

Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

Teehankee, (Chairman), in the result.

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