

VIRGILIO SURIGAO, DOING BUSINESS UNDER THE NAME AND STYLE OF SURIGAO MOTOR WORKS, COMPLAINANT, MARINO V. CACHERO, DEPUTY SHERIFF OF QUEZON CITY, RESPONDENT.

A.M. No. P-2374. September 30, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

Administrative charge that respondent Sheriff Marino V. Cachero of the Court of First Instance of Quezon City acted illegally and with abuse of authority in implementing a writ of execution. This complaint was referred to Executive Judge Ernani Cruz Paño of the Court of First Instance of Quezon City for investigation, report and recommendation. Hereunder is Judge Paño's report and recommendation:

"With respect to the first charge, it cannot be said that the sixty-day period had already expired because admittedly the delay in enforcing the writ was due to several motions and petitions filed by Surigao. The enforcement of the writ was reiterated by the Court of Appeals on December 13, 1979 but the complainant Surigao went to the Supreme Court and filed a petition for certiorari but which petition was dismissed. The sixty-day period fixed in the writ had not expired when the levy was made on December 14, 1979 not only because of the delay occasioned by the legal moves of Surigao but also because the Court of Appeals itself directed enforcement on December 13, 1979. Moreover, execution in this case was issued pending appeal under the authority of Sec. 8, Rule 70 of the Rules of Court. It cannot be said that immediate execution may be defeated by the defendant's own parrying moves which delayed enforcement of the writ. In fact, the rule is that when a valid levy is made, the auction sale may be effected even beyond the five (5) year period. (See *Del Rosario vs. Yatco*, 18 SCRA 1263.)

"On the matter of entry to the premises, without a court order, the contention of Cachero is that he was authorized in the resolution of the Court of Appeals of August 1, 1979. This defense is tenable because the resolution of August 1, 1979 authorizes the sheriff to break open the premises in question. As to the demolition of the motor shop, the evidence on record shows that the constructions were levied upon as chattels by Cachero. Thereafter, the same was sold to the judgment creditor and it was the judgment creditor who caused the demolition so that at the time of the demolition the title to the improvements had already passed to the judgment creditor.

"There does not appear to be any necessity to proceed with the sale of the improvements only after following the procedure for the sale of real property as the parties did not appear to treat the improvements as real property. When Sheriff Cachero levied on the materials as personal property on December 14, 1979, and issued a notice of Sheriff's sale on April 10, 1980, describing the levied property as chattels, Surigao did not complain on the treatment of the construction as personal property. As a matter of fact the City Court in Civil Case No. VII-24660 as affirmed by both the Court of First Instance and the Court of Appeals found no evidence to support the claim of Surigao on the major repairs in the premises as no material evidence had been adduced by him.

"While it is true that in case a house is constructed on the land belonging to another it should be treated as real

property for purposes of execution, it does not appear that said doctrine should be followed in this case because as earlier stated Surigao did not object to the levy on the construction as personal property. Moreover, it was admitted by Surigao that the premises was never declared by him for tax purposes with the City government; he did not pay any real taxes for the premises. At any rate, no evidence was introduced during the investigation that the so-called motor shop was a permanent structure on the property; also there is no charge that Sheriff Cachero did not observe the procedure prescribed for the sale of real property on execution under Sec. 18, Subsec. (c) of Rule 39, Rules of Court.

"WHEREFORE, premises considered, it is recommended that the complaint against Deputy Sheriff Marino Cachero be dismissed."

The Court has examined the record and found the above report to be supported by the evidence. Under the circumstances found by the Investigator, the Court holds that the actuations of respondent complained were substantially in accordance with the pertinent rules even if not literally adhering thereto. The most that We can say is that henceforth, the Sheriff should await another writ of execution even if the court, as in this case, has reiterated its order of execution of the previous writ.

The Court, therefore, resolved to DISMISS this case with the admonition as above stated to respondent to henceforth act more strictly in conformity with the rules.

Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

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