

**COSMOS FOUNDRY SHOP WORKERS UNION AND FILEMON G. ALVAREZ, PETITIONERS, VS. LO BU AND COURT OF APPEALS, RESPONDENTS.***G.R. No. L-40136. March 25, 1975*

Ponente: FERNANDO, J.

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The jurisdiction of respondent Court of Appeals is assailed in this certiorari and prohibition proceeding. It is taken to task for entertaining an appeal from the Court of First Instance on a replevin suit which was correctly dismissed as it had all the earmarks of a subterfuge that was resorted to for the purpose of frustrating the execution of a judgment in an unfair labor practice controversy, one moreover already passed upon and sustained by this Court. Petitioner Cosmos Foundry Shop Workers Union is the prevailing party in that labor dispute which unfortunately had dragged on since 1961, all its efforts to obtain what was due it being rendered illusory through the machinations of a certain Ong Ting, now deceased, and the private respondent Lo Bu. The lack of competence of respondent Court of Appeals to proceed further is thus rather obvious. It is about time that there be an effective vindication of the rights of petitioner labor union, so long set at naught and disregarded, by the employment of techniques, which certainly deserve no encouragement, much less approval. There was a grave infirmity then in the Court of Appeals having dismissed the appeal, reinstating it in its resolution of December 19, 1974. Certiorari and prohibition lie.

The facts show that on January 16, 1973, petitioner Cosmos Foundry Shop Workers Union was able to obtain from the Court of Industrial Relations the third alias writ of execution for the satisfaction and enforcement of the judgment in its favor.[1] Thereafter, Deputy Sheriff Mario Abiog of Manila, who was especially deputized to serve the writ, did so on January 17 and 18, 1973 levying on the personal properties of the Cosmos Foundry Shop or the New Century Foundry Shop for the purpose of conducting the public auction sale.[2] It was then that respondent Lo Bu filed an urgent motion to recall writ of execution, asserting lack of jurisdiction of the Court of Industrial Relations, a point stressed in another motion dated February 2, 1973, on the further ground that petitioner Cosmos Foundry Shop Workers Union failed to put up an indemnity bond. The Court of Industrial Relations in its order dated February 23, 1973 denied his motions. So likewise was the motion for reconsideration, as shown in its order dated March 23, 1973. Private respondent appealed by certiorari such order to this Court. It was docketed as G.R. No. L-36636.[3] This Court, in its resolution dated July 17, 1973, denied the petition for certiorari of private respondent.[4] In the meanwhile, there was a replevin suit by private respondent in the Court of First Instance of Manila covering the same properties. Upon receipt of the order from this Court denying certiorari, petitioner labor union filed a second motion to dismiss the complaint. It was therein alleged that private respondent has no cause of action, he being a fictitious buyer based on the findings of the Court of Industrial Relations in its order dated June 22, 1970 and affirmed by the Supreme Court in its resolution dated July 17, 1973. The lower court dismissed the complaint.[5] That is the decision elevated to the Court of Appeals, and it is precisely because of its obvious character as a further delaying tactic that this petition is filed.

Petitioner labor union has made out a case for certiorari and prohibition.

1. The order of the Court of Industrial Relations in the unfair labor practice case dated June 27, 1970[6] for the satisfaction and enforcement of which the third alias writ of execution was issued in favor of petitioner labor union starts with the following: "This concerns complainant's motion for the issuance of an alias writ of execution, dated March 12, 1970, 'allowing the Sheriff to serve the Writ and returnable within 60 days and the said writ should be directed to Cosmos Foundry Shop or New Foundry Shop which is the firm name use(d) by the respondent in lieu of the Cosmos Foundry Shop \* \* \* The original writ of execution had been returned wholly unsatisfied as respondents had no visible properties found in their names, and the foundry shop where Mrs. Ong Ting and her family reside at Maisan, Valenzuela, Bulacan, is the 'New Century Foundry Shop' (return of the Deputy Provincial Sheriff of Bulacan, dated March 11, 1970). Consequently, in its Order of March 19, 1970, the Court directed the examination of Mrs. Ong Ting and the Cosmos Foundry Shop concerning the latter's and Ong Ting's property and income. Extensive hearings were conducted."[7]

Then comes this relevant portion: "From the evidence and the records, the Court finds that after the Cosmos Foundry Shop was burned, Ong Ting established the New Century Foundry Shop. He and his family resided in the premises of the shop at 118 Maisan Road, Valenzuela, Bulacan. After his proposals to settle the present case for P5,000.00 in September 1968, for P25,000.00 in October 1968, and for P40,000.00 on December 22, 1968, were successively rejected by complainant's counsel, Ong Ting, after hinting of taking measures to avoid liability, soon executed a deed of absolute sale on December 31, 1968, selling all his business, including equipment, machineries, improvements, materials, supplies and rights, in the New Century Foundry Shop, to his compadre Lo Bu, for P20,000.00, which he acknowledged so fully paid \* \* \*. The deed does not bear the conformity of Mrs. Ong Ting. On January 7, 1969, when Lo Bu applied for the original registration of the firm name, he gave his name as the manager and the capital of the business as P30,000.00 \* \* \*. Notwithstanding such sale to Lo Bu, Ong Ting filed a verified urgent motion to reopen the case on January 25, 1969, and a verified motion for reconsideration of the Decision on May 12, 1969. In the latter motion, it was alleged that as a result of the fire, 'Ong Ting lost everything; we cannot squeeze blood out of nothing \* \* \*.' This allegation was made despite the recent alleged sale to Lo Bu, from which he realized P20,000.00."[8] The absence of good faith on the part of respondent Lo Bu as the alleged vendee was made clear thus: "There was no actual turn over of the business to Lo Bu, the alleged manager in absentia. At the time Ong Ting died, he was still residing in the premises of the shop \* \* \*. His family continued to reside therein without paying any rental to Lo Bu. His young 19-year-old son Delfin Ong became in-charge of the shop and the workers. His daughter Gloria Ong became the cashier. Mrs. Ong Ting became the manager and she supervised the work. \* \* \* The alleged sale was no doubt intended to circumvent any judgment this Court might render unfavorable to respondents. It is clearly fictitious. And such a declaration by this Court is well within its jurisdiction because what is being sought is the enforcement or implementation of its order. Having acquired jurisdiction, the Court may employ means to carry it into effect (Sec. 6, Rule 135, Rules of Court)."[9]

That was why in the dispositive portion of the aforesaid order, an alias writ of execution was issued against the properties held in the name of the New Century Foundry Shop at 118 Maisan Road, Valenzuela, Bulacan for the satisfaction of the judgment in this unfair labor practice proceeding. As noted, there was a replevin suit by the same vendee in bad faith, Lo Bu, which was dismissed by the Court of First Instance of Manila precisely because in the meanwhile the finality of the writ of execution became definitely settled when this Court issued its resolution of July 17, 1973.[10] It denied the petition for certiorari filed by the private respondent, Lo Bu, for the purpose of annulling the third writ of execution issued in accordance with the dispositive portion of the order of the Court of June 22, 1970.

2. To all intents and purposes then, that is the law of the case. What is worse, private respondent Lo Bu certainly cannot plead ignorance, as he himself was the petitioner in the certiorari proceeding before this Court. He failed, and it was not surprising, for on the facts as found, he was a principal in the nefarious scheme to frustrate the award in favor of petitioner labor union. There was thus a ruling as to the bad faith that characterized his pretension of being the alleged vendee. In *Cruz v. Philippine Association of Free Labor Unions*[11] it was shown that to avoid the legal consequences of an unfair labor practice, there was a fictitious sale resorted to, as in this case. Under the circumstances, the bad faith being evident, the ostensible vendee was precluded from taking advantage of the situation. So it must be here. Moreover, that is merely, as stated earlier, to accord deference to the fundamental principle of the law of the case, his petition for certiorari having been dismissed by this Court. There is this excerpt from the recent decision of *Mangayao v. De Guzman*: [12] "The latest case in point as of the time the order complained of was issued is *Kabigting v. Acting Director of Prisons*, a 1962 decision. As emphasized by the ponente, the then Justice, now Chief Justice, Makalintal: 'It need not be stated that the Supreme Court, being the court of last resort, is the final arbiter of all legal questions properly brought before it and that its decision in any given case constitutes the law of that particular case. Once its judgment becomes final it is binding on all inferior courts, and hence beyond their power and authority to alter or modify. If petitioner had any ground to believe that the decision of this Court in Special Proceeding No. 12276 should further be reviewed his remedy was to ask for a reconsideration thereof. In fact he did file two motions for that purpose, both of which were denied. A new petition before an inferior court on the same grounds was unjustified. As much, indeed, was clearly indicated by this Court in its resolution of April 3, 1959, hereinabove reproduced in its entirety. The import of the resolution is too plain to be misunderstood.' So it has been from 1919, when in *Compagnie Franco-Indochinoise v. Deutsche-Australische Dampschiffs Gesellschaft*, this Court, through Justice Street, categorically declared that a decision that has become the law of the case 'is not subject to review or reversal in any court.' What is more, in 1967, there is a reaffirmation of the doctrine by this Tribunal in *People v. Olarte*, where it was stressed by Justice J.B.L. Reyes that a ruling constituting the law of the case, 'even if erroneous, \* \* \* may no longer be disturbed or modified since it has become final \* \* \*.' Then, in *Sanchez v. Court of Industrial Relations*, promulgated in 1969, there is the pronouncement that the law of the case 'does not apply solely to what is embodied in [this Court's] decision but likewise to its implementation carried out in fealty to what has been \* \* \* decreed.'" [13]

3. Private respondent, in his special and affirmative defenses, alleged that petitioners have a plain and adequate remedy in the ordinary course of law being the appellees in the pending case in the Court of Appeals sought to be dismissed in this suit for certiorari. As a general rule, such a plea could be looked upon with sympathy. That is the ordinary course of judicial procedure. There would be no basis for legitimate grievance on the part of petitioners. It is not so however in this case. The sad plight of petitioner labor union had been previously noted. It is about time that a halt be called to the schemes utilized by respondent Lo Bu in his far-from-commendable efforts to defeat labor's just claim. It would be repugnant to the principle of social justice [14] and the mandate of protection to labor [15] if there be further delay in the satisfaction of a judgment that ought to have been enforced years ago.

4. One last point. It was set forth in the Petition [16] that respondent Lo Bu filed an urgent motion with the Court of Industrial Relations to recall the writ of execution alleging as one of his grounds lack of jurisdiction to pass upon the validity of the sale of the New Century Foundry Shop, followed by another motion praying for the return of the levied properties this time asserting that petitioner labor union failed to put up an indemnity bond and then a third, this time to allow the sheriff to keep the levied properties at his factory, all of which were denied by the Court en banc in its order of March 23, 1973, assailed in the certiorari proceeding, dismissed by this Court for lack of merit. [17] Counsel Yolando F. Busmente in his Answer to this petition, filed on February 20, 1975, had the temerity to deny such allegations. He simply ignored the fact that as counsel for respondent Lo Bu, petitioner in L-36636, he did specifically maintain: "On January 26, 1973, in order to vindicate his rights over the levied

properties, in an expeditious or less expensive manner, herein appellant voluntarily submitted himself, as a forced intervenor, to the jurisdiction of respondent CIR, by filing an urgent 'Motion to Recall Writ of Execution,' precisely questioning the jurisdiction of said Court to pass upon the validity and legality of the sale of the 'New Century Foundry Shop' to him, without the latter being made a party to the case, as well as the jurisdiction of said Court to enforce the Decision rendered against the respondents in Case No. 3021-ULP, by means of an alias writ of execution against his properties found at the 'New Century Foundry Shop;' \* \* \*; Petitioner appellant's urgent motion aforesaid was set for hearing on February 5, 1973, and inasmuch as the auction sale of his properties was set for January 31, 1973, the CIR issued an order on January 30, 1973, one day before the scheduled sale, ordering the Sheriff of Manila not to proceed with the auction sale; \* \* \*; On February 3, 1973, herein petitioner-appellant [Lo Bu] filed another urgent motion dated February 2, 1973, praying for the return of his properties on the ground that the judgment creditor (respondent-appellee) failed to put up an indemnity bond, pursuant to the provision of Section 17, Rule 39 of the Rules of Court; \* \* \* On February 10, 1973, respondent-appellee Cosmos Foundry Workers Union interposed its opposition to herein petitioner-appellant's urgent motions dated January 26, 1973 and February 2, 1973, \* \* \*; On February 27, 1973, herein petitioner-appellant received an order from respondent CIR, dated February 25, 1973, denying his urgent motions and ordering the Sheriff of Manila to proceed with the auction sale of his properties 'in accordance with law;' \* \* \*." [18] Such conduct on the part of counsel is far from commendable. He could, of course, be casuistic and take refuge in the fact that the paragraph of the petition, which he denied, was, in addition to being rather poorly and awkwardly worded, also prolix, with unnecessary matter being included therein without due regard to logic or coherence or even rules of grammar. He could add that his denial was to be correlated with his special defenses, where he concentrated on points not previously admitted. That is the most that can be said of his performance, and it is not enough. For even if such be the case, Attorney Busmente had not exculpated himself. He was of course expected to defend his client's cause with zeal, but not at the disregard of the truth and in defiance of the clear purpose of labor statutes. He ought to remember that his obligation as an officer of the court, no less than the dignity of the profession, requires that he should not act like an errand-boy at the beck and call of his client, ready and eager to do his every bidding. If he fails to keep that admonition in mind, then he puts into serious question his good standing in the bar.

WHEREFORE, the writ of certiorari is granted and the order of December 19, 1974 of respondent Court of Appeals reinstating the appeal is nullified and set aside. The writ of prohibition is likewise granted, respondent Court of Appeals being perpetually restrained from taking any further action on such appeal, except that of dismissing it. Triple costs.

Makalintal, C.J., Antonio, and Fernandez, JJ., concur.

Barredo, J., concurs in a separate opinion.

Aquino, J., on sick leave.

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[1] Petition, par. 2.

[2] Ibid, par. 3.

[3] Ibid, par. 4.

[4] Ibid, par. 7.

[5] Ibid, par. 6.

[6] Case No. 1321-ULP of the Court of Industrial Relations.

[7] Order, Annex A to Petition, 1.

[8] Ibid, 4.

[9] Ibid, 5.

[10] Lo Bu, doing business under the name and style of New Century Foundry Shop v. Court of Industrial Relations, L-36636.

[11] L-26519, October 29, 1971, 42 SCRA 68.

[12] L-24787, February 22, 1974, 55 SCRA 540.

[13] Ibid, 543-544. Kabigting is reported in 6 SCRA 281, Compagnie Franco-Indochinoise in 39 Phil. 474, Olarte in 19 SCRA 494, and Sanchez in 27 SCRA 490.

[14] It is worth noting that the social justice principle has been further vitalized in the present Constitution. Thus, Article II, Section 6 provides: "The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."

[15] The mandate of protection to labor has been likewise made more definite as shown by the language employed in Article II, Section 9: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."

[16] Petition, par. 4.

[17] L-36636, Lo Bu v. Court of Industrial Relations. The resolution denying the petition for lack of merit was issued on July 20, 1973.

[18] Petition in L-36636, pars. 12-16.

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## CONCURRING OPINION

### **BARREDO, J.:**

I concur in the judgment enjoining the Court of Appeals from entertaining the appeal of private respondent in CA-G.R. No. 56485-R entitled Lo Bu, etc. vs. Cosmos Foundry Shop Workers Union & F. Alvarez.

After petitioners had secured a judgment in the Court of Industrial Relations against Cosmos Foundry Shop and by virtue thereof obtained a writ of execution against said Shop and the Sheriff had levied on properties found therein, herein private respondent appeared and asserting his rights over the levied properties by virtue of a sale made to him by the Shop, impugned the jurisdiction of the Industrial Court to carry out the purported execution. The Industrial Court sustained its authority and on certiorari to the Supreme Court by respondent the petition was dismissed (G. R. No. L-36636). In the meanwhile, respondent sued for replevin of the same properties in the Court of First Instance of Manila, Case No. 89994. In its answer to the replevin action, petitioners invoked the resolution of this Court in G. R. No. L-36636 and moved to dismiss the complaint, which motion was granted. When respondent appealed to the Court of Appeals, petitioners filed the present petition for prohibition.

No doubt, as things stand now, the remedy pursued by petitioners is not the appropriate one. The ground of dismissal upheld by the trial court was in essence *res adjudicata*. Ordinarily, against such dismissal, the remedy is appeal and, of course, such an appeal cannot be stopped by prohibition. And if only because the Court of Appeals has not been given any opportunity at all to pass on its own alleged lack of jurisdiction, the present action would seem to be premature.

From another point of view, however, it is quite obvious that to allow the respondent Court of Appeals to entertain respondent's appeal would be sanctioning, as the main opinion finds, the apparently endless ingenious schemes, if judicial, of respondent to further delay the execution of the subject judgment which became final and executory almost two years ago after a protracted litigation that started way back in 1961, since thirteen yesteryears from now. Law and justice demand that petitioners should not be further denied the fruit of their legal efforts, to secure redress, particularly because in the order of the Industrial Court denying respondents motion to recall the writ of execution against Cosmos Foundry Shop, the court found said Shop and respondent to have indulged in a simulated transaction covering the properties in question purposely to avoid satisfaction of the judgment in favor of petitioners.

To reiterate, the ground of dismissal of respondent's replevin suit is a legal one, *res adjudicata*, termed in the main opinion as "law of the case". Indeed, the Court of Industrial Relations had already found the sale to respondent of the Cosmos Foundry Shop to be fraudulent, and that decision was sustained by this Court. In that proceeding, even the jurisdiction of the Industrial Court was questioned. Thus, both the merits of the respective claims of the parties as well as the validity of the action of the Industrial Court is now beyond question. And that was the basis of petitioners' motion to dismiss the replevin action. Under these circumstances, any appeal from the order of dismissal should have come directly to this Court, the issue passed upon by the trial court being purely legal, premised as it is on conclusions of fact of the Court of Industrial Relations no longer assailable as a matter of law by respondent.

In other words, the Court of Appeals would have no alternative anyway than to certify that appeal to Us, and, accordingly, We can already decide the present action as if certification had in fact been made. The pleadings and the issues before Us now could not be substantially different, if We took the roundabout way of directing such certification to be made before We render Our decision. It is, but proper, therefore, that in the interest of a faster, more effective and less technically cumbersome administration of justice, We should here and now put an end to the controversy between the parties herein.

Contrary to the claim of respondent regarding the jurisdiction of the Industrial Court to pass on the question of the alleged fictitiousness of the sale to respondent, there is at least the decision of this Court in *Kaisahan ng Mga Manggagawa sa La Campana vs. De los Angeles*, 36 SCRA 142, holding that the power of control over the Sheriff in relation to the implementation of writ of execution issued by the Industrial Court belongs to that court and not to any Court of First Instance. (at pp. 155-6.) But even assuming there could be in truth some doubt on the matter, the fact is that that issue was actually included in the previous proceeding in that court sustained by this Court in G. R. No. L-36636. If that ruling is in anyway erroneous, We cannot change it anymore. As far as the parties are concerned that is the law of the case. Even a ruling on jurisdiction has the effect of *res adjudicata*. Much less then could any other court disregard it. And inasmuch as the trial court simply adhered to this view, its order of dismissal can hardly be assailed as erroneous.

IN VIEW OF THE FOREGOING, it is my considered view that for want of appellate jurisdiction, the impugned appeal in the Court of Appeals may be considered as non-existing and that court should be enjoined from taking any further action thereon, even as We decide the case now as if it had been duly appealed to us without the need of any further proceeding, since, as already observed, the necessary pleadings are in effect already before Us.

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