

**ALEJANDRO KATIGBAK, AND MERCEDES K. KATIGBAK,
PLAINTIFFS-APPELLANTS, VS. THE SOLICITOR GENERAL, EPIFANIO
VILLEGAS, ARTURO XAVIER, PONCIANO FERNANDO, ROSEN-DO
DOMINGO AND LEONARD...**

G.R. No. L-19328. December 22, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

These cases were certified to this Court by the Court of Appeals for resolution on appeal,¹ since the central issue involved is the constitutionality of Republic Act No. 1379, "An Act Declaring Forfeiture in Favor of the State of Any Property Found To Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor."¹ As posed by the referral resolution,² the question is whether or not said statute --

" * * en cuanto autoriza la confiscacion en favor del Estado de las propiedades ilegalmente adquiridas por un funcionario o empleado del Gobierno antes de la aprobacion de la Ley ** es nula y anticonstitucional porque:

(a) es una Ley ex-post facto que autoriza la confiscacion de una propiedad privada adquirida antes de la aprobacion de la ley y obliga el funcionario o empleado publico a explicar como adquirio sus propiedades privadas, compeliendo de esta forma a inculparse a si mismo, y en cierto modo autoriza la confiscacion de dicha propiedad sin debido proceso de la ley; y

(b) porque autoriza la confiscacion de inmuebles previamente hipotecados de buena fe a una persona."

The proceedings at bar originated from two (2) actions filed with the Court of First Instance of Manila.

The first was Civil Case No. 30823, instituted by the Spouses Alejandro Katigbak and Mercedes Katigbak. In their complaint they prayed that: (1) the Solicitor General be enjoined from filing a complaint against them for forfeiture of property under the above mentioned R.A. No. 1379; (2) said statute be declared unconstitutional in so far as it authorizes forfeiture of properties acquired before its approval, or, alternatively, a new preliminary investigation of the complaint filed against Alejandro Katigbak by NBI officers be ordered; (3) properties acquired by Alejandro Katigbak when he was out of the government service be excluded from forfeiture proceedings; and (4) the NBI officers and the Investigating Prosecutor (Leonardo Lucena) be sentenced to pay damages.

The second action was Civil Case No. 31080, commenced by petition³ filed by the Republic of the Philippines against Alejandro Katigbak, his wife, Mercedes, and his son, Benedicto, seeking the forfeiture in favor of the State of the properties of Alejandro Katigbak allegedly gotten by him illegally, in accordance with R.A. No. 1379. Said properties were allegedly acquired while Katigbak was holding various positions in the government, the last being that of an examiner of the Bureau of Customs; and title to some of the properties were supposedly recorded in the names of his wife and/or son.

The cases were jointly tried. The judgment thereafter rendered⁴ (1) dismissed the complaint and the counterclaim

in Civil Case No. 30823, the first action; and (2) as regards Civil Case No. 31080, ordered "that from the properties (of Katigbak) enumerated in this decision as acquired in 1953, 1954 and 1955, shall be enforced a lien in favor of the Government in the sum of P100,000.00."¹ The judgment also declared that the "impatience of the Investigating Prosecutor" during the preliminary inquiry into the charges filed against Katigbak for violation of R.A. No. 1379 did not amount to such arbitrariness as would justify annulment of the proceedings since, after all, Katigbak was able to fully ventilate his side of the case in the trial court;² that R.A. No. 1379 is not penal in nature, its objective not being the enforcement of a penal liability but the recovery of property held under an implied trust;³ that with respect to things acquired through delicts, prescription does not run in favor of the offender;⁴ that Alejandro Katigbak may not be deemed to have been compelled to testify against his will since he took the witness stand voluntarily.⁵ The Katigbaks moved for reconsideration and/or new trial. The Trial Court refused to grant a new trial but modified its decision by reducing the amount of "P100,000.00 in the dispositive portion ** to P80,000.00."⁶

Appeal was taken from this verdict to the Court of Appeals by the Katigbaks which appeal, as earlier stated, was certified to this Court.

No less than 18 errors have been attributed by the Katigbaks to the Court a quo.⁷ They concern mainly the character of R.A. No. 1379 as an ex post facto law, principally because it imposes the penalty of forfeiture on a public officer or employee acquiring properties allegedly in violation of said R.A. No. 1379 at a time when that law had not yet been enacted.⁸

Whatever persuasiveness might have been carried by the ruling on the issue of the learned Trial Judge in 1961, the fact is that the nature of R.A. No. 1379 as penal was in 1962 clearly and categorically pronounced by this Court in *Cabal v. Kapunan, Jr.*⁹ Citing voluminous authorities, the Court in that case declared that "forfeiture to the State of property of a public officer or employee which is manifestly out of proportion to his salary as such ** and his other lawful income and the income from legitimately acquired property ** has been held ** to partake of the nature of a penalty"; and that "proceedings for forfeiture of property (although technically civil in form) are deemed criminal or penal, and, hence, the exemption of defendants in criminal cases from the obligation to be witnesses against themselves is applicable thereto."¹⁰ The doctrine was reaffirmed and reiterated in 1971 in *Republic v. Agoncillo*.¹ And germane is the 1977 ruling of the Court in *de la Cruz v. Better Living, Inc.*² -- involving among others the issue of the validity and enforceability of a written agreement alleged to be in violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act -- to the effect that "the provisions of said law cannot be given retroactive effect."

The forfeiture of property provided for in Republic Act No. 1379 being in the nature of a penalty; and it being axiomatic that a law is ex post facto which inter alia "makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act," or, "assuming to regulate civil rights and remedies only, in effect imposes a penalty or deprivation of a right for something which when done was lawful," it follows that that penalty of forfeiture prescribed by R.A. No. 1379 cannot be applied to acquisitions made prior to its passage without running afoul of the Constitutional provision condemning ex post facto laws or bills of attainder.³ But this is precisely what has been done in the case of the Katigbaks. The Trial Court declared certain of their acquisitions in 1953, 1954 and 1955 to be illegal under R.A. No. 1379 although made prior to the enactment of the law, and imposed a lien thereon "in favor of the Government in the sum of P100,000.00." Such a disposition is, quite obviously, constitutionally impermissible.

As to the issue of whether or not the Prosecuting Fiscal, Leonardo Lucena, should be made answerable for damages because the filing of the forfeiture proceedings, Civil Case No. 31080, resulted from a preliminary investigation which was allegedly conducted by Fiscal Lucena in an arbitrary and highhanded manner, suffice it

to state that the trial court found no proof of any intention to persecute or other ill motive underlying the institution of Civil Case No. 31080. The trial court further found that during the preliminary investigation by Fiscal Lucena on September 13, 19, 24, 25 and 26, 1956, Alejandro Katigbak was assisted by reputable and competent counsel, Atty. Estanislao A. Fernandez and Atty. Antonio Carag. The mere fact that the preliminary investigation was terminated against the objection of Katigbak's counsel, does not necessarily signify that he was denied the right to such an investigation. What is more, the Trial Court's factual conclusion that no malice or bad faith attended the acts of public respondents complained of, and consequently no award of damages is proper, cannot under established rule be reviewed by this Court absent any showing of the existence of some recognized exception thereto.

The foregoing pronouncements make unnecessary the determination of the other issues.

WHEREFORE, the judgment of the Court a quo, in so far as it pronounces the acquisitions of property by the appellants illegal in accordance with Republic Act No. 1379 and imposes a lien thereon in favor of the Government in the sum of P80,000.00 is hereby REVERSED AND SET ASIDE, but is AFFIRMED in all other respects. No pronouncement as to costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

1 Sec. 3, Rule 52 of the Rules of Court of 1940 (Sec. 3, Rule 50, [present] Rules of 1964)

1 Eff. June 18, 1955

2 Promulgated on Nov. 20, 1961 by the Special Third Division of the Court of Appeals: Hernandez, Rodriguez, and Villamor, JJ

3 Later amended

4 Under date of April 11, 1960, by Hon. Magno S. Gatmaitan (later, Associate Justice and then, Presiding Justice, of the Court of Appeals)

1 Record on Appeal, pp. 336-381

2 Id., p. 375

3 Id., p. 376

4 Id., p. 377

5 Id., pp. 379-380

6 Id., pp. 494-505

7 Rollo, pp. 117 et seq

8 Errors Numbered I to V

9 6 SCRA 1059

10 At pp. 1063-1064, and 1066; parenthetical insertion and emphasis, supplied. Occasion was had, at p. 1067, to distinguish the ruling from that in *Almeda v. Perez*, L-18428, Aug. 30, 1962, which had reference "to the purely

procedural aspect of said proceeding, and ** (had) no bearing on the substantial rights of the respondents therein, particularly their constitutional right against self-incrimination."

1 40 SCRA 579, 584

2 78 SCRA 274, 287

3 Sec. 11, Rule III, 1935 Constitution, then in force

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