

**TAN BENG, OWNER AND MANAGER OF NEW YORK GROCERY,
PETITIONER-APPELLANT, VS. THE CITY SHERIFF OF MANILA, JOSE
NALDO, JULIANO E. ESTELLA, AND DOMINADOR TOMAS,
RESPONDENTS-APPELLEES.**

G.R. No. L-24375. May 18, 1978

Ponente: FERNANDO, J.

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FERNANDO, J.:

This appeal from a decision of the Court of First Instance dismissing a petition for certiorari and prohibition filed by Tan Beng as owner and manager of the New York Grocery was certified to this Court by a resolution of the Court of Appeals on the ground that only questions of law were raised. The brief for appellant stressed that the claim for overtime pay, underpayment, and pay for work on Sundays and legal holidays was passed upon by the then Regional Office No. 3 of the Department of Labor, but admitted that there was a motion for reconsideration.[1] Only after its denial was a writ of execution issued.[2] Thereafter, an action was brought by petitioner before the Court of First Instance of Manila wherein the issue of the validity of Reorganization Plan No. 20-A in relation to Republic Act No. 997 was raised, but the lower court rendered judgment upholding its constitutionality.[3] Petitioner then filed a certiorari and prohibition proceeding with this Court, which was dismissed on the ground that appeal was the proper remedy.[4] It was at that stage that another action for certiorari and prohibition was again instituted in the lower court, reliance being had on the failure of Regional Office No. 3 to abide by the requirement of procedural due process, the evidence against petitioner being presented *ex parte*. [5] A motion to dismiss was filed by respondent-claimant Dominador Tomas on the ground that the matter was *res judicata*. [6] It did not prosper, but after trial, the decision against petitioner was precisely based on the ground that whatever cause of action he might have had was barred by the previous judgment of the court sustaining respondent's right to the wages claimed, a judgment which had become final and executory.

Hence the appeal to the Court of Appeals, which thereafter certified it to this Tribunal. As is obvious from the above, with the express admission that there was a motion for reconsideration, the alleged denial of procedural due process is far from persuasive. Moreover, even on the assumption that the validity of Reorganization Plan No. 20-A could still be questioned after his previous petition was dismissed by this Court, with the judiciary having had occasion to consider the merits of the controversy, decisions of this Tribunal cited in appellant's brief [7] ruling against its validity should not be an obstacle to the affirmance of the judgment of the lower court dismissing the second petition for certiorari and prohibition.

The appeal must fail. The lower court ruled correctly.

1. The procedural due process question raised is not impressed with merit. As noted, there was, after the decision of Regional Office No. 3 in favor of respondent Tomas, a motion for reconsideration, but it was denied. Only then was a writ of execution issued. Whatever deficiency could be imputed to the assailed decision, one rendered after petitioner was notified of the date of hearing, although his counsel filed a motion for postponement, thus resulting

in the evidence presented ex parte, was cured by the motion for reconsideration. So this Court has held in a number of cases with an impressive concord of opinion.[8]

2. The brief for petitioner-appellant would likewise put in issue the validity of Reorganization Plan No. 20-A insofar as empowered regional offices of the Department of Labor to act on money claims including overtime pay, unpaid wages, and wages for Sundays and legal holidays, citing, as previously mentioned, the Corominas opinion. It does not help his cause at all. There must still be affirmance of the dismissal of this certiorari and prohibition proceeding by the lower court. As admitted by him, the question of validity was not "concretely raised" in this particular proceeding for certiorari and prohibition.[9] A waiver could therefore be predicated on such a pregnant omission.[10]

3. Then, too, the contention, even if properly raised, that the challenged actuation of Regional Office No. 3 could just be disregarded and considered as not having taken place, reflects the orthodox view that an unconstitutional act is not a law, confers no rights, imposes no duties, and affords no protection.[11] There is a qualification to what, for some, is a simplistic approach to the problem of judicial review in the recent case of *Serrano de Agbayani v. Philippine National Bank*: [12] "It may not, however, be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity, such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation, regard be had to what had been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then if there be no recognition of what had transpired prior to such adjudication." [13]

4. There is reinforcement to the above conclusion from another avenue of approach. It would be to close one's eyes to the realities of the situation if the action taken by Regional Office No. 3 would be considered as devoid of any legal significance. The doctrine announced in *Francisco v. City of Davao* [14] commends itself for approval. Chief Justice Concepcion in that case made clear why the allegation of absence of jurisdiction, even if well-taken, would not be a bar to recovery. Thus: "We have not overlooked the fact that, it would have been better had plaintiffs pursued their claim pursuant to Republic Act No. 1125, by waiting for the decision of the City Board of Assessment Appeals, and/or taking up the matter with the Court of Tax Appeals, to seek, thereafter, if necessary, the intervention of this Court, instead of instituting this case in the Court of First Instance of Davao. We note, however, that the defendants had advanced this view in a motion to dismiss by them filed with the lower court * * *, and that the same denied the motion * * *, and consequently decided the case on the merits * * *. The ends of justice would not be served, if we now dismiss the case — over nine (9) years after it had been initiated — and bade the plaintiffs to start all over again, following the procedure that the defendants had asked the lower court, but which the latter refused, to require. At any rate, since the legal question raised in the pleadings has reached this Court, and the assessment complained of is manifestly violative of the clear and express provision of the law, it is best that we decide said question, instead of further deferring its resolution." [15]

5. What cannot be denied is that on two separate occasions the courts of justice were appealed to — and both times in vain — by petitioner-appellant to defeat what apparently was a just claim on the part of respondent Dominador Tomas. The allegation that there was a previous payment is a factual matter. It was not given credence by the lower court. Implicit in a certification of this appeal to this Tribunal by the Court of Appeals was the recognition

that the factual questions had been sufficiently considered and the conclusion reached justified so that only questions of law had to be passed upon. It would appear therefore, from whatever angle this case is viewed, that the decision reached by the lower court in dismissing this special civil action for certiorari and prohibition was clearly warranted.

WHEREFORE, the appeal from the decision in Civil Case No. 43129 entitled, Tan Beng, owner and manager of New York Grocery, v. The City Sheriff of Manila, Jose A. Naldo, Julian E. Estella and Dominador Tomas, dismissing the special civil action for certiorari and prohibition, is found to be without merit and the decision is affirmed. Costs against petitioner-appellant.

Antonio, Concepcion, Jr., and Santos, JJ., concur.

Aquino, J., in the result.

Barredo, J., took no part.

[1] Brief for Petitioner-Appellant, 3.

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] Ibid, 4.

[6] Ibid, 5.

[7] As noted in the brief for appellant, only one opinion was rendered in the Corominas, Manila Central University, Wang Chun, and Balrodgon cases, reported in 112 Phil. 551 (1961). The Equitable Bnaking Corporation case is classified as an unreported case in 112 Phil. 1105 (1961).

[8] Cf. De Borja v. Flores, 62 Phil. 106 (1935); De Borja v. Tan, 93 Phil. 167 (1953); Flash Taxicab Co. v. Cruz, 117 Phil. 524 (1963); Caltex (Phil.) Inc. v. Castillo, L-24657, Nov. 27, 1967, 21 SCRA 1071; Batangas Laguna Tayabas Bus Co. v. Cadio, L-28725, March 12, 1968, 22 SCRA 987; Demaronsing v. Tandayag, L-27057, Aug. 21, 1974, 58 SCRA 484; Maglasang v. Ople, L-38813, April 29, 1975, 63 SCRA 508, Nation Multi Service Labor Union v. Agcaoili, L-39741, May 30, 1975, 64 SCRA 274.

[9] Brief for Appellant, 17.

[10] Cf. Carillo v. Allied Workers Association, L-23689, July 31, 1968, 24 SCRA 566.

[11] Cf. Norton v. Shelby County, 118 US 425 (1886).

[12] L-23127, April 29, 1971, 38 SCRA 429.

[13] Ibid, 434-435.

[14] L-20654, December 24, 1964, 12 SCRA 628.

[15] Ibid, 633-634.

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