

**PETRONILA REYES VDA. DE PIMENTEL AND MARCIAL PIMENTEL,
PETITIONERS, VS. THE HONORABLE WALFRIDO DE LOS ANGELES,
JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON CITY,
SECRETARY OF ...**

G.R. No. L-30418. June 15, 1972

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

A petition for mandamus to set aside respondent court's orders of October 22, 1968 and February 5, 1969 holding that the appeal sought to be perfected by petitioners from respondent court's adverse decision of July 9, 1968 was not perfected on time and did not comply with the legal requirements and for a writ commanding respondent court to give due course to the proposed appeal.

The petition filed on April 29, 1968 in respondent court by herein petitioners against herein respondents public officials and private respondent Maria Rosario Sy likewise as respondents therein, sought the annulment and setting aside of respondent Secretary's decision resolving the conflict between the contending applicants for the timber license to operate the forest concession known as Block II at Labo, Camarines Norte with 11,650 hectares, in favor of respondent Sy and against petitioners.[1] Petitioners manifest expressly that "the inherent merit of this petition is not involved in these proceedings."[2]

After some incidents involving the issuance of preliminary injunction and upon separate motions of respondents both principally pleading failure on the part of petitioners to exhaust administrative remedies and prematurity of petitioners' action since petitioners had admittedly a pending appeal in the Office of the President which was as yet undecided, respondent court in a "decision" dated July 9, 1968, granted the motions to dismiss "for lack of cause of action against respondents" and consequently denied the issuance of a writ of preliminary injunction, and lifted its interim order of May 3, 1968 restraining respondents from committing the acts complained of.

Respondent court thus justified its dismissal of the petition: "(I)t is very apparent that the petitioners have not exhausted all their administrative remedies before going to court. The petitioners cannot deny that the appeal is still pending in the Office of the President. How could this court now review the decision of the Secretary of Agriculture & Natural Resources when under the law said decisions are appealable to the Office of the President, and only then if this last stage of the administrative proceeding fail could a party go to court for judicial review? (Rule 65, Revised Rules of Court; Presidential Executive Order No. 19; *Hodges vs. Mun. Board of Iloilo City*, G. R. No. L-18276, Jan. 12, 1967; *Roman Santos vs. Hon. Florencio Moreno*, L-15829, Dec. 4, 1967); that, clearly, therefore, petitioners have no cause of action for their failure to exhaust administrative remedies which is a condition sine qua non in a petition for certiorari and mandamus filed for the purpose of reviewing the decision of a department secretary."

As already indicated above, petitioners filed the present action of mandamus upon respondent court's refusal to give due course to their proposed appeal, upon respondents' separate oppositions as sustained by it that the appeal

was not perfected on time and in the manner prescribed by the Rules.[3]

The petition was given due course, respondents filed their separate answers, and memoranda in lieu of oral argument were filed by the parties on the question at issue of whether or not petitioners seasonably perfected their appeal from respondent court's adverse decision so as to entitle them to the writ of mandamus herein prayed for.

The pleadings of record, however, make manifest now that the ultimate objective of the present action for the granting of a writ of mandamus requiring respondent court to give due course to petitioners' proposed appeal has been rendered moot and academic by the President's decision in the administrative appeal released on June 10, 1969 thru then Assistant Executive Secretary Gilberto M. Duavit dismissing petitioners' appeal and affirming the issuance of the timber license to Block II (as well as Block I applied for by another claimant not involved herein) to respondent Maria Rosario Sy.[4]

Petitioners in their memorandum of September 18, 1969, however, disputed respondents' claim that their action has been rendered moot by the presidential decision of June 10, 1969 and submitted copy of their motion for reconsideration dated August 4, 1969 praying for reconsideration of the President's adverse decision, which was then pending and unresolved.[5]

In private respondent's pleadings of February 28, 1970 and February 2, 1972, it has been asserted without contradiction from petitioners that on February 11, 1970, the Office of the President thru then Acting Assistant Executive Secretary Ponciano A. Mathay denied petitioners' motion for reconsideration and adjudged "the case considered closed" on the ground that it was "filed beyond the 15-day reglementary period fixed in section 4 of Executive Order No. 19, series of 1966" which it was noted "was promulgated to discourage frivolous and dilatory appeals, as well as motions for reconsideration, which erode the stability and finality of administrative decisions." Nevertheless, the President's said order of denial took pains to reaffirm that the facts of the administrative case fully justify that respondent Maria Rosario Sy "indubitably possesses better qualifications" than petitioners' predecessor and therefore was deserving of the award.[6]

It is evident, therefore, as contended by private respondent, that the presidential decision definitely and finally dismissing petitioners' administrative appeal renders moot and futile any further proceedings in the case at bar.

Respondent court had duly dismissed petitioners' action before it questioning respondent Secretary's award of the questioned timber license in favor of respondent Sy precisely because of prematurity and lack of cause of action, since petitioners still were pursuing their administrative appeal in the Office of the President. Respondent Secretary's questioned award has now been supplanted by the presidential actions of June 10, 1969 and February 11, 1970 issued long after the herein challenged orders of October 22, 1968 and February 5, 1969 dismissing petitioners' proposed appeal from respondent court's adverse decision of July 9, 1968.

It is consequently now purely academic and serves no practical purpose to still rule on the question at bar as to the timeliness of petitioner's proposed appeal for the simple reason that even if such appeal were to be allowed, any review of the respondent Secretary's challenged award would likewise be academic. The subsequent presidential determinations in the administrative case definitely and finally awarding the contested timber license in favor of respondent Maria Rosario Sy now constitute the final administrative decision that should be judicially challenged, assuming the existence of valid grounds therefor in accordance with well established principles of administrative law.[7] Such challenge must be raised by petitioners in an entirely separate case, assuming that the same may still be seasonably done. Assuming the utmost that petitioners' appeal from respondent Secretary's action is given due course herein and that petitioners succeed in securing on appeal a reversal of respondent court's ruling of prematurity of their action, their action below would nevertheless remain academic – since what control now are the later presidential determinations of June 10, 1969 and February 11, 1970 which cannot be reviewed in the case

below since they were never the subject-matter thereof.

"The granting of writs of prohibition and mandamus," as observed by the Chief Justice, "is ordinarily within the sound discretion of the courts, to be exercised on equitable principles and * * * said writs should be issued when the right to the relief is clear." [8] As restated by Mr. Justice Castro for the Court in *Lemi vs. Valencia* [9] "It is essential, therefore, for a writ of mandamus to issue, that the plaintiff has a legal right to the thing demanded and that it is the imperative duty of the defendant to perform the act required. The legal right of the plaintiff to the thing demanded must be well-defined, clear and certain. The corresponding duty of the defendant to perform the required act must also be clear and specific." Since petitioners' issues have become moot and academic, it is patent that the present action must likewise fail for lack of a clear right.

ACCORDINGLY, the Court hereby orders the dismissal of the petition. Without costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Fernando, and Antonio, JJ., concur.

Makasiar, J., concurs in the result.

Barredo, J., see concurring opinion.

[1] Civil Case No. Q-12071 of the Court of First Instance of Rizal, Quezon City branch, entitled "Petronila Reyes Vda. de Pimentel, et al, petitioners vs. Secretary of Agriculture & Natural Resources, et al, respondents."

[2] Petition, par. 2a.

[3] Respondent Sy's oppositions to motion for elevation of original records both dated Sept. 17, 1968, Annexes I and J, petition, and, respondents officials' motion for dismissal of appeal, dated Sept. 17, 1968, Annex K, petition.

[4] Annex 4, respondent Sy's motion to dismiss dated July 18, 1969.

[5] Annex A, petitioners' memorandum.

[6] Annex "I", respondent Sy's motion and manifestation dated February 28, 1970.

[7] See *Timbancaya vs. Vicente*, 9 SCRA 852 (Dec. 17, 1963); Resolution of March 15, 1972 in L-33831, *Subido vs. Pangramuyen*.

[8] Concurring and dissenting op. of the new Chief Justice in *Aytona vs. Castillo*, 4 SCRA 1, 17 (1962); italics supplied.

[9] 26 SCRA 203, 210 (Nov. 29, 1968); italics supplied.

CONCURRING OPINION

BARREDO, J.:

I concur in the denial of the petition for mandamus in this case.

In the court below, the action of herein petitioners was also a mandamus. As stated in the main opinion, they "sought the annulment and setting aside of respondent Secretary's decision resolving the conflict between the contending applicants for the timber license to operate the forest concession known as Block II at Labo, Camarines Norte, with 11,650 hectares in favor of respondent Sy and against petitioners". Thru a motion to dismiss, respondent succeeded in having the petition dismissed upon the ground of non-exhaustion of

administrative remedies, an appeal from respondent Secretary's decision to the President being available. So, petitioners took steps to appeal but the court a quo refused to allow the appeal, the same not having been, according to the court, seasonably made. Hence, the instant petition.

In the meanwhile, since petitioners had evidently actually pursued an administrative appeal, the Office of the President rendered a decision therein adverse to petitioners and when a motion to reconsider was filed by them the same was denied. Incidentally, it may be mentioned that notwithstanding that the main ground for such action was also the tardiness of petitioners' motion for reconsideration, the resolution took pains just the same to rule on the merits in favor of respondent, holding inter alia that she "indubitably possesses better qualifications". The present petition is directed against the orders of the trial court of October 22, 1968 and February 5, 1969 whereas the presidential actions were taken on June 10, 1969 and February 11, 1970. In other words, the administrative decision adverse to petitioners became final way back in February 1970 yet.

Under these undisputed facts, the question arises, should petitioners' appeal from the lower court's decision in this case be allowed by this Court, what would be the ultimate result of petitioners' case in the appeal? May the appellate court still declare the action of respondent Secretary incorrect or illegal, the same having been affirmed by the President? I cannot see how that can be legally done. On the other hand, just to go one step further, may the actions of the Office of the President of June 10, 1969 and February 11, 1970 be brought to question in the appeal? Again, I say, there is no legal way by which that could be done, for the simple reason that in such event, the appellate court would be ruling on a matter not passed upon by the trial court. Looking at the matter in the best light for petitioners, the most that the appellate court could do would be to return the case to the lower court for the corresponding amendment of the petitioners' complaint in order to incorporate therein whatever allegation they feel they can make against the legality or validity of the two adverse actions of the Office of the President. In any of these contingencies, it is obvious that the petitioners' purported appeal has become moot and academic in the sense that it cannot accomplish any useful purpose that cannot be achieved without such appeal.

Withal, the court a quo made it clear in dismissing petitioners' petition for mandamus that "it is very apparent that the petitioners have not exhausted all their administrative remedies before going to court. The petitioners cannot deny that the appeal is still pending in the Office of the President. How could this court now review the decision of the Secretary of Agriculture & Natural Resources when under the law said decisions are appealable to the Office of the President, and only then if this last stage of the administrative proceeding fail could a party go to court for judicial review? (Rule 65, Revised Rules of Court; Presidential Executive Order No. 19; *Hodges vs. Mun. Board of Iloilo City*, G.R. L- 18276 , Jan. 12, 1967; *Roman Santos vs. Hon. Florencio Moreno*, L-15829, Dec. 4, 1967); that, clearly, therefore, petitioners have no cause of action for their failure to exhaust administrative remedies which is a condition sine qua non in a petition for certiorari and mandamus filed for the purpose of reviewing the decision of a department secretary." I say emphatically that there cannot be any argument against this position of the trial court. Consequently, I hold that petitioners' projected appeal had absolutely no merit and was purely dilatory and would have only served to clog the docket of the appellate court. If for this reason alone, it is my considered view that the instant petition for mandamus cannot prosper. "The granting of writs of prohibition and mandamus is ordinarily within the sound discretion of the courts, to be exercised on equitable principles", (Per Chief Justice Concepcion in his concurring and dissenting opinion in *Aytona vs. Castillo*, 4 SCRA 1, 17). I would add that mandamus may issue only "when the legal right of the plaintiff to the thing demanded must be well-defined, clear and certain." (Per Mr. Justice Castro in *Lemi vs. Valencia*, 26 SCRA 203, 210) On these premises, maintain that even when it appears that a projected appeal has been made on time and all the requisite steps therefor have been taken, if it is indubitable on the face of the record that the appeal is groundless, it is sound discretion for the court to deny an application of the appellant for the equitable remedy of mandamus, this, notwithstanding the provisions of Section 15 of Rule 41 specifically allowing mandamus "when

erroneously a motion to dismiss appeal is granted or a record on appeal is disallowed by the trial court" and the ruling in the case of *Centenera vs. Yatco*, 106 Phil. 1064, 1068 reiterated in *Province of Misamis Occidental vs. Catolico*, 23 SCRA 1295, 1299-1300, firstly because I do not believe that a court can be held to be acting "erroneously" in dismissing an appeal that on its face is frivolous, and secondly, I cannot perceive any tinge of equity in compelling a court to give due course to an appeal that manifestly will only waste the time and effort of the appellate court. After all, what Mr. Justice J.B.L. Reyes held in *Centenera* is that "the constant policy of the courts is not to deny the writ if the result would be to deprive a party of his substantial rights and leave him without a remedy", and, to my mind, dismissing a projected appeal that already appears clearly to the court to have absolutely no merit is not a denial of substantial justice. If appellate courts could only act along these lines in appropriate cases, which are not really infrequent, I foresee the lightening of their burdens and the earlier clearing of dockets which are much to be desired by all elements of society these days.

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