

**ABELARDO SUBIDO, EDITOR, THE MANILA POST, PETITIONER, VS.
ROMAN OZAETA, SECRETARY OF JUSTICE, AND MARIANO
VILLANUEVA, REGISTER OF DEEDS, CITY OF MANILA,
RESPONDENTS.**

G.R. No. L-1631. February 27, 1948

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for mandamus. The petitioner, editor of the Manila Post, a morning daily, prays that an order issue "commanding the respondents to furnish (petitioner) the list of real estates sold to aliens and registered with the Register of Deeds of Manila since the promulgation of the Department of Justice Circular No. 128 or to allow the petitioner or his duly accredited representatives (to) examine all records in the respondents' custody relative to the (said) transactions."

The first alternative of the petition was denied by the Register of Deeds and later, on appeal, by the Secretary of Justice. No request to inspect the records seems to have ever been made, but the Solicitor General, answering for the respondents, gives to understand that not even this would the petitioner or his representatives be allowed to do if they tried. As the petitioner appears not to insist on his request for a list of sales of real estate to aliens, we shall confine our discussion to the second part of the prayer; namely, that the petitioner be allowed to examine all the records in the respondents custody to gather the material he wants. In this connection, frill the Solid tor General contends that the examination or inspection of the records in the of flee of the Register of Deeds may be made only by those having special Interest therein and subject to such reasonable regulations as may be prescribed by the Chief of the Land Registration Office, and that the Secretary of Justice has reasonably ruled, to safeguard the public interest and the interest of those directly concerned in the records, that records may not be disclosed for publication.

The petition in part is grounded on the liberty of the press. We do not believe that this constitutional right is in any way involved. The refusal by the respondents does not constitute a restriction upon, or censorship of publication. It only affects facilities of publication, and the respondents are correct in saying that freedom of information or freedom to obtain information for publication is not guaranteed by the constitution.

The case is governed by statute and to a certain degree by general principles of democratic institutions. It has been expressly stated that the right to examine or inspect public records is purely a question of statutory construction. (80 A.L.R. 761 citing cases)

The right of inspection of title records is a subject of express statutory regulation in the Philippines. Section 56 of Act No. 496, as amended by Act No. 3300, provides that all records relating to registered lands in the office of the Register of Deeds shall be open to the public subject to such reasonable regulations as may be prescribed by the Chief of the General Land Registration Office with the approval of the Secretary of Justice. The Chief of the General Land Registration Office does not seem to have adopted any regulations in pursuance of this provision.

Nevertheless, we do not believe this omission relevant. The Register of Deeds has inherent power to control his office and the records under his custody and has same discretion to exercise as to the manner in which persons desiring to inspect, examine, or copy the records may exercise their rights. (45 Am. Jur. 531.) The question at issue boils down to a determination of the scope of this discretion.

No one will contest the proposition that the power to regulate is not synonymous with the power to prohibit. Stated differently, the power to make regulations does not carry with it the power to prohibit. To the extent that newspapers and others who have no direct or tangible interest in the records are obstructed from making an examination thereof, a part, indeed the larger part of the public, is thereby excluded from the right granted by law. Such prohibition is at war with the requirement that the books and records of registered lands shall be open to the public. "Public" is a comprehensive, all inclusive term. Properly construed, it embraces every person. To say that only those who have a present and existing interest of a pecuniary character in the particular information sought are given the right of inspection is to make an unwarranted distinction. This interpretation is contrary to the letter of the law and the whole concept and purpose of registration of recorded titles, which is to serve notice to all who might be affected by the registries.

From the language of Section 56 of Act No. 496, as amended, it is our opinion that the regulations which the Register of Deeds, or the Chief of the General Land Registration Office, or the Secretary of Justice is empowered to promulgate are confined to prescribing the manner and hours of examination to the end that damage to, or loss of, the records may be avoided, that undue interference with the duties of the custodian of the books and documents and other employees may be prevented, that the right of other persons entitled to make inspection may be insured, and the like. The idea is aptly expressed in *People ex rel. Title Guarantee & T. Co. v. Raily* (1886) 38 Hun (N.Y.) 429:

"The subject is necessarily committed, to a great degree, to his (register of deeds) discretion as to how much of the conveniences of the office are required to be preserved for the accommodation of these persons. It is not his duty to permit the office to be thronged needlessly with persons examining its books or papers, but it is his duty to regulate, govern, and control his office in such a manner as to permit the statutory advantages to be enjoyed by other persons not employed by him as largely and extensibly as that consistently can be done. What the law expects and requires from him is the exercise of an unbiased and impartial judgment, by which all persons resorting to the office, under legal authority, and conducting themselves in an orderly manner, shall be secured their lawful rights and privileges, and that a corporation formed in the manner in which the relator has been, shall be permitted to obtain all the information either by searches, abstracts, or copies, that the law has entitled it to obtain."

Except, perhaps, when it is clear that the purpose of the examination is unlawful, we do not believe it is the duty under the law of registration officers to concern themselves with the motives, reasons, and objects of the person seeking to the records. It is not their prerogatives to see that the information which the records contain is not flaunted before public gaze, or that scandal is not made of it. If it be wrong to publish the contents of the records, it is the legislature and not the officials having custody thereof which is called upon to devise a remedy. As to the moral or material injury which the publication might inflict on other parties, that is the publisher's responsibility and lookout. The publication is made subject to the consequences of the law.

The respondents have been guided in their action by the rule laid down in the decision of the Supreme Court of Georgia in *Buck vs. Collins* (1874) 51 Cta. 391, *Abu Hep*. 236, copy of which was furnished the Register of Deeds by the Secretary of Justice in 1933 evidently answer to a query covering a situation similar to the case at the respondents place much or entire reliance on this decision, we shall dwell at length on its relevancy in the present case.

Since, as we have pointed out, the right of inspection is dependent on the construction to be given the statute in force in the particular jurisdiction, the decision relied upon can not have any controlling or persuasive effect here unless it is predicated on a statute like or similar to the Philippine law. It is not that decision was inspired largely by common law principles. It is not in harmony with modern tendencies, and the common law rule has been found to be inapplicable to the conditions obtaining in the United States and, for that matter, in the Philippines. The present tendency is to extend the right of inspection of recorded titles to abstractors, a right denied in *Buck v. Collins*. This tendency, according to *American Law Reports* (80, p. 760), has even led the courts in some instances to over rule prior well recognized decisions, among which are *Buck vs. Collins* and *Land Title Warranty & S.D. Co. vs. Tanner* (1896), 99 Ga. 470, 27 3.1. 727; while in at least one other instance, a holding by the supreme court that abstracters were not entitled to have access to public records led to the enactment of a statute by the legislature expressly conferring such right. (80 A.L.R. 768). In *Atlanta Title & T. Co. vs. Tidewell Co.* (193 173, Ga. 499, 160 S.E. 620), the same court which announced the doctrine in *Buck vs. Collins*, while not definitely reversing that decision says its opinion does not entirely accord with the views expressed therein. The development of the more modern tendencies is ably explained with a discussion of the common law rule in *Shelby County Co. vs. Memphis Abstract Co.* (1918), 140 Term 74, 203 S.W. 339. The court said:

"According to the rules of the common law as administered in England there was no general or public right of inspection of public records, the right being confined to those who had a personal interest in the property affected by the records. The greater portion of the real property in England was held by the nobility and the aristocracy in large estates, and the system that prevailed looked to the descent of realty to the oldest son and other heirs, often by entail, and this resulted in few transfers. In America different ideals have prevailed, and these brought, as a necessary consequence, a decided change. Shall holdings in fee have resulted from the American concept and principle of equality as heirs, and activity of sales and freedom of transfer have been encouraged by the policy of our laws. The earlier common law decisions are, therefore, not applicable to the changed conditions, and should have little influence in the molding of precedents respecting the right to inspect and make use of registries of titles. If subsequent purchasers and encumbrances are to be charged with notice of all that appears of record affecting the particular real estate, it is but sheer justice that the law should be liberalized so as not only to extend the right of inspection to members of the public who may be interested in the title, but so as to expand the opportunity for notice to all who may be injured should they act or deal without notice. Sound policy would give to the contents of the registries of deeds, mortgages and liens the widest possible publicity, and in the form that is most reliable and reassuring. Whatever adds to the vendibility of real property at its full value augments the wealth of the state while the title examiner or abstractor has followed his profession ever since a system of registration was adopted, there has come in modern times the creation and development of the abstract company, which in turn has paved the way for and made possible the title guaranty company. The constantly increasing complication of land titles, especially in populous estates, has made each of these not only a utility, but a necessity, as aids in the ascertainment and assurance of rights based upon titles to realty."

Independently of statute the petitioner, as editor of a newspaper, has the requisite interest in land records under the common law theory entitling him to the Newspapers have a better established right of access to records of titles by reason of their relation to the public than abstractors or insurers of title. Whether by design or otherwise, newspapers perform a mission which does not enter into the calculation of the business of abstracting titles conducted purely for private gain. Newspapers publish information for the benefit of the public while abstractors do so for the benefit of a limited class of investors and purchasers of real estate only. It is through the medium of newspapers that the public is informed of how public servants conduct their business. The public through newspapers have the legitimate right to know the transactions in real estate which they believe, correctly or erroneously, have been registered in violation of the constitution. The publication of these matters is certainly not only legitimate and lawful but necessary in a country where, under the constitution, the people should rule.

In this connection, it will profit us to quote the following passages from The Rights and Privileges of the Press, Chapter II, by Siebert:

"If the Press is to report fully and accurately the affairs of government, it must have ready access to all relevant sources of information. Public officers, public records, and public proceedings furnish quantities of such information to the daily newspaper, whose duty in turn is to pass it on to the reading public.

"The majority rule in the United States is that any member of the public can demand the right of access to public documents where it can be shown that the public's interest would be benefited. No special pecuniary interest in the record need be shown.

"This rule does not apply, for reasons of public policy, to demands for access to certain records such as diplomatic correspondence, police records, records of the grand jury, and communications by voluntary informers. Also, where examination has been prompted by a desire for scandalous details, the inspection of court records (especially in divorce cases) has been denied.

"In addition to his rights as a citizen and an elector, the newspaper proprietor can demand access to public records on the basis of his special pecuniary interest. The interest of the newspaper man in public records is the interest of the manufacturer in his raw materials. By being denied access to the records the newspaper is cut off from a source of income and profit. That the newspaper's prospective business from the sale of copies containing information gathered from the records was a sufficient pecuniary interest to entitle the proprietor or employee to access to the documents was finally established in two cases."

Upon the foregoing considerations, mandamus is the appropriate remedy, and the petition will be granted commanding the respondents to allow the petitioner or his accredited representatives to examine, extract, abstract or make memoranda of the records of sales of real properties to aliens subject to such restriction and limitation as may be deemed necessary not Incompatible with this decision, without costs.

Moran, C.J., Paras, Feria, Hilado, Bengzon, and Padilla, JJ., concur.

BRIONES, M., conforme en parte; disidente en parte:

Estoy substancialmente conforme con la ponencia, pero no puedo suscribir el pronunciamiento hehecho en ella de que la libertad de la prensa no esta envuelta o comprometida en este asunto; que el aoto de los recurridos negando acceso al reeurrente, en particular, y a todos los representantes de la prensa, en general, a los libros y demas dooumentos del Registro de la Propiedad para fines de publicacion en las columnas de los perid dicos, no constituye una restriccion o una preria censura equivalente a negacion y abrogaoition de la libertad de imprenta consagrada y garantida en la Constitucion como uno de los derechos fundamentales del pueblo y del ciudadano (Bill of Rights, Art. III, Sec. 1, inc. 8, Constitucion de Filipinas); que dicho acto afecta solamente a facilidades de publicacion, y que "los recurridos aciertan al decir que la libertad de informacion o libertad para obtener informacion para fines de publicacion no este garantizada por la Constitucion."

Este pronunciamiento reduce, si es que no deshace y anula, la tremenda importancia del presente asunto. Su meollo es precisamente constitucional. Quitfidle ese meollo, casi no queda nada.

Se compreadera esta asercion si examinamos el fondo y la perspectiva del asunto. El recurrente, en su concepto de editor del diario "Manila Post", desaaba obtener oieritos datos del Registro de la Propiedad de Manila para la seccion informativa de su periddico. Se invocaron al efecto razones evidentes de interns publico, entre ellas la de que se deseaba informar al publico sobre la verdad o falsedad de los rumores de que ventas y traspasos de terrenos residenciales y comerciales a extranjeros se estaban inscribiendo y registrando en la oficina del Registrador de Manila, con grave infraccidn die la Constitucion. (Se debe hacer constar, entre parent e sis, que el "Manila Post"

estaba empeñado entonces en una fuerte e intensa campaña de publicidad contra la enajenación de terrenos a extranjeros y en favor de una rigida aplicación de la prohibición constitucional correspondiente). Otra razón insinuada era que se deseaba informar correcta y honradamente al público acerca de la verdad o falsedad de otros rumores sinestros en el sentido de que algunos funcionarios y empleados del gobierno unos de nombramiento, otros electivos y algunos parientes de los mismos se estaban enriqueciendo rápidamente, de la noche a la mañana, en erminos y bajo circunstancias harto sospechosas, adquiriendo propiedades raíces de cuantioso valor, cuando generalmente se sabía que sus disponibilidades eran bien limitadas, se quería comprobar la veracidad de tales rumores en los datos del Registro de la Propiedad.

Pues bien; el Registrador de Títulos de Manila, obedeciendo instrucciones del Departamento de Justicia que a su vez invocaba una circular expedida hace varios años ya casi olvidada bajo el polvo de los archivos, dijo al recurrente que no podía acceder a lo pedido, esto es, a que le dejara examinar los libros documentos de registro para fines de publicarlo en la prensa, pues todo que estaba prohibido el hacerlo. Se ha apuntado como una de las razones de la prohibición el deseo de evitar que los ladrones bandidos se enterasen de quienes tenían dinero en virtud de los datos del registro. De ahí la interposición del presente recurso de mandamus.

Si esto no es restricción, previa censura, tengo que declarar paladinamente que no encuentro otro término para denominarlo. El recurrente quería examinar los libros documentos de registro para ver de publicar algo en su periódico. No pudo hacerlo, porque el Registrador se lo prohibió, obedeciendo órdenes superiores. No es esto restringir, poner cortapisa, imponer una interdicción?

Se dice, sin embargo, que esa prohibición nada tiene que ver con la libertad de imprenta. Pero pregunto de que le sirve a la prensa la libertad si, por otro lado, se le niegan los instrumentos para ejercer esa libertad, se le cierran las fuentes públicas de información - fuentes que son de vida o muerte para la prensa, pues de ellas mismas dimana fluye el jugo esencial de su existencia? No equivale ello a dar la libertad con una mano para arrebatarla con la otra?

Esto me recuerda la filosofía de la llamada libertad del hambre, de la escasez (freedom from want) como poderis conocer al indigente, al hambriento de que goza de las libertades esenciales - entre ellas la de comer lo que le plazca - si no le poneis en condición razonable de satisfacerlas? Lo más de que poderis convencerle es que goza de una libertad - la libertad de morir.

Lo que la prensa pide necesita bajo un gobierno de opinión, dentro de un régimen democrático, no es una libertad académica, vacía, la sombra de la libertad, sino una libertad real, efectiva, substancial. Y esto solamente se puede lograr asegurándole una libertad completa de información mediante un acceso fácil desembarazado a las fuentes noticiarias, sobre todo las de carácter oficial público, salvo ciertas limitaciones que imponen los usos de la diplomacia, o relativas a la seguridad de la nación del estado, u otras. La carencia de nuestro sistema es dejar a la conciencia sentido de responsabilidad del periodista un margen de propias inhibiciones en aras del interés público.

Interesa al estado al pueblo el mantener constantemente abiertas las fuentes de información pública no sólo para permitir el más amplio juego posible a la opinión pública como ingrediente esencial de las instituciones democráticas, sino también para impedir que la mentira, el rumor falso, el "canard" la calumnia suplan al dato auténtico, a la noticia veraz cierta, al informe correcto honrado, con todas las siniestras consecuencias que se siguen de tal suplantación.

Ni conclusión, por tanto, es que los libros documentos del Registro de la Propiedad son públicos a ellos tiene libre acceso el público, la prensa, sujeto solamente a ciertas regulaciones de poca monta, de carácter administrativo; que la libertad de imprenta a prensa está seriamente comprometida en el presente asunto; que la libertad de información está estrechada enlazada con la libertad de la prensa; que, por tanto, todo acto ejecutivo o legislativo que tienda a

cerrar tapiar las fuentes pucliaos de informacidn como el registro de la propiedad, o impedir, proaibir o restringir el ubre acceso a dichas fuentes constituye un atentado contra la mencionada libertad, y, por tanto, debe ser considerado y tratado como acto anticonstitucional.

Expidase el mandamus solicitado.

PERFECTO, M.:

Concurro con esta sabia y elocuente opinion de Magistrado Sr. Briones.

DISIDENTE

PABLO, M.:

Disiento.

No creo que sea procedente aeceder a la solioltud de mandamus ordenando a los recurridos que permitan al recurrente o su representante "to examine, extract, abstract or make memoranda of the records of sales of real properties to aliens subject to such restriction and limitation as may be deemed necessary not incompatible with this decision".

No hay alegacion en la solioltud de que el recrarrente haya pedido a los recurridos que le dieran aceso a los libros de la oficina del Registro de Propiedad de Manila para tomar datos sobre las ventas de propiedades a extranjeros, y que los recurridos con abua de discrecion no le hayan permitido. Es evidente que bajo el articulo 56 de la Ley No. 96, el recurrente tiene derecho a tomar datos de las ventas anotadas en los libros de registro, y si los recurridos no le hubieran permitido al pedirles penniso para tal fin, entonces cabe emplear el recurso de mandamus.

La simple peticion en la solicitud de que este Tribunal ordene a los recurridos que permitan al recurrente o a su representante a examinar todos los records que estan bajo su custodia, sin alegacion de que los recurridos le hayan indebidamente privado de tal derecho, no es base suficiente para una solicitud de mandamus. La solicitud es defectuosa porque no contiene alegacion en que fundar la, peticion. Esto desde el punto aq vista procesal. Como hecho consumado, ha pedido el recurrente que le den oportunidad los recurridos para ver los libros sobre las ventas de bienes a extranjeros? No, nunca entonces, ten que funda su peticion de una orden perentoria de este Tribunal contra los recurridos? No tenemos derecho a condenar por anticipado a ellos ordenandoles que permitan al recurrente a tomar datos cuando no le han negado tal derecho.

El recurrente pidio que le proporcionasen lista completa de las ventas a extranjeros desde la expedicion de la Circular No. 128 del Departamento de Justicia, con los siguientes datos: (1) nombre del vendedor, (2) nombre del comprador, (3) extension y situacion del terreno, (4) precio, (5) fecha de la venta, (6) numero del certificado de ttulo del vendedor, y (7) numero del certificado del comprador; pero nunca pidio permiso oara ver los records y tomar notas que le interesan.

Si el Procurador General alego en su contraficacion: "the examination or inspection of the receipts of the Register of Deeds may be made oply? Its special interest therein and subject to such reasonable regulations as may be prescribed by the Chief of the Land Registration Office, and that the Secretary of Justice has reasonably ruled, to safeguard the public interest and the interest of those directly concerned in the records, that records may not be disclosed for publication", no se deduce necesariamente que los recurridos con abuso de discrecion hayan impedido al recurrente a ejercitar un derecho que le garantiza la ley de Registro de la Propiedad de tener acceso a

los archivos de la oficina del Registrador de Titulos.

Y de los datos que obtenga de los archivos, el recurrente tiene perfecto derecho a hacer uso de ellos en la forma que quiera o publicarlos en su periodico, si asi le place. No puedo suscribir a la teoria de que se prohiba su publicacion. Prohibir es coartar el libre albedrio del particular. Que cada individuo gobierne sus propios actos despues de todo, nadie responde de ellos sino el mismo.

Hay muchas causas en este Tribunal porque se abusa demasiado de los remedios especiales. Por cual orden o resolucion de un juzgado inferior que no es del agrado de una parte, se acude a este Tribunal con mandamus o certiorari, Y en el presente caso, sin alegacion que motive de accion, y sin culpa, accion v. omission de parte de los recurridos, se pide una orden perentoria contra ellos la mayoría les concede. En mi humilde opinion, esa orden perentoria es una herejia procesal.

La solicitud debe ser sobreseida.

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