

MANUEL T. UBARRA, COMPLAINANT, VS. JUDGE JOSE H. TECSON, RESPONDENT.*A.M. No. R-4-RTJ. January 17, 1985*

Ponente: CUEVAS, J.

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For delay in resolving a Motion to Dismiss, and for the issuance of two restraining orders, this complaint has been lodged against respondent Judge Jose H. Tecson of the Regional Trial Court of the National Capital Region by lawyer Manuel T. Ubarra. The complaint charges Judge Tecson with gross ignorance of the law, obvious partiality, incompetence, undue delay in resolving pending incidents, and grave abuse in the issuance of restraining orders.

This case traces its origin to a decision rendered by the defunct City Court of Manila in Civil Case No. 042984, an ejectment suit filed by Ubarra's client, Francisco Guballa, Sr., against the latter's tenant, Emiterio Mozar. In a decision rendered on January 22, 1980, the trial court ordered the aforementioned defendant to vacate the leased premises and to pay rentals in arrears. Defendant Mozar appealed to the then Court of First Instance which, however, affirmed the trial court's decision in toto.[1] Not satisfied, Mozar elevated the case to the defunct Court of Appeals on Petition for Review.[2] The appellate court affirmed the lower court's decision on the ejectment aspect but modified the money judgment. Both parties came to Us on certiorari[3] but We denied the Petition for lack of merit. Our Resolution denying the Petition for Certiorari became final and executory, and Entry of Judgment was issued on June 2, 1982.

Upon motion by Cuballa, the prevailing party in the ejectment suit, a writ of execution was issued by the City Court of Manila on July 16, 1982, to enforce its judgment as modified by the Court of Appeals. To forestall the enforcement of the writ, defendant Mozar filed, on August 30, 1982, a Petition for Certiorari and Prohibition with Prayer for the Issuance of a Preliminary Injunction and/or Restraining Order with the Court of First Instance. The Petition was docketed as Civil Case No. 82-12102 and assigned to respondent's sala. On August 31, 1982, respondent Judge issued the restraining order prayed for. A Motion to Dismiss the Petition was filed by Ubarra on behalf of his client Guballa, which motion was set for hearing on September 20, 1982. For failure of petitioner Mozar and counsel to appear, the Motion was deemed submitted for resolution as of said date. Respondent Judge, however, failed to resolve said Motion up to the time of the filing of this complaint on March 7, 1983, or well-beyond the reglementary period of ninety (90) days[4] from the submission of the Motion for resolution. Meanwhile, respondent Judge issued a second restraining order on February 28, 1983, after his attention had been called by complainant to the expiration of the lifetime of the first restraining order.

In his COMMENT/EXPLANATION respondent Judge admitted the facts alleged in the letter complaint, including the delay in the resolution of several pending incidents in the certiorari case before him. However, he claims that the delay was "occasioned or caused by the several and protracted attempts of the parties through the mediation of the court to reach an amicable settlement". In addition respondent avers that he deemed it wise and proper to desist from further acting on the case to avoid any suspicion of partiality, since a Motion for his

Disqualification from further trying the case had been filed by the herein complainant.

From the facts on record which were augmented by the respondent's admission,[5] it is clear that respondent Judge was guilty of delay in the disposition of (1) Guballa's Motion to Dismiss; (2) Motion for Leave to Intervene; (3) Motion to File Supplemental Petition; and (4) Urgent Motion for Issuance of a Writ of Preliminary Injunction. Said incidents were already submitted for resolution on September 20, 1982. And yet, as of March 7, 1983, the date when the complaint was filed, all said incidents still remained unresolved.

Respondent's explanation - alleged projected settlement by the parties - appeared too shallow an alibi as to merit a favorable consideration. Complainant Guballa had vehemently denied any negotiation towards the settlement of the ejectment case between him and his tenant, Mr. Mozar. Such claim appeared not to have been satisfactorily rebutted by the respondent.

But be that as it may, respondent should have placed on record by means of an order to that effect, that no court resolution was forthcoming on the aforementioned incidents submitted for resolution because of a pending negotiation for the settlement of the case between the parties. Or at the very least, he should have required the parties to file a motion to that effect for his protection. As the record stands, however, there is nothing in it, either by way of a motion or an order issued by the court, tending to support His Honor's alibi.

Besides, even if there were really attempts and/or negotiations towards a compromise between the parties, at least, a deadline for the purpose should have been fixed by His Honor, considering that the judgment sought to be executed involves an ejectment case which had been pending for a period of no less than five years. In fact, that ejectment case had even reached this Court.[6] Upon petition for certiorari of both Guballa and Mozar, and which petition had been dismissed for lack of merit. Immediate disposal of ejectment cases is a matter of public policy.[7] So much so that the extraordinary remedy of preliminary mandatory injunction is provided for by law by way of support for its speedy adjudication to save the dispossessed party from further damage.[8]

His Honor therefore should have acted with greater dispatch in resolving those pending incidents, which undoubtedly are part and parcel of a scheme to frustrate and delay satisfaction of the judgment in favor of Guballa. No doubt, his inaction or procrastinating to act one way or another gives room to suspicion that he was partial in favor of Mozar. As a dispenser of justice, he should have acted in such a manner as to avoid suspicion in order to preserve faith in the administration of justice.[9] Delay in resolving motions and incidents pending before a judge's sale within the reglementary period of 90 days fixed by the constitution and the law is not excusable and should not be condoned.[10]

But that is not all. Respondent Judge not only failed to act on the motions and incidents before him within the 90-day reglementary period. Worst still, he even issued a second restraining order upon his attention being called to the expiration of the first one issued by him which has lost its efficacy and binding force.

Complainant's submission on this regard appeared meritorious. His Honor's issuance of a second restraining order was in violation of Section 5, Rule 58 of the Rules of Court as amended by Batas Pambansa Blg. 224, which reads:

"No preliminary injunction shall be granted without notice to the defendant. If it shall appear from the facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice, the judge to whom the application for preliminary injunction was made, may issue a restrain-ing order to be effective only for a period of twenty days from date of its issuance. Within the said twenty-day period, the judge must cause an order to be served on the defendant, requiring him to show cause, at a specified time and place, why the injunction should not be granted, and determine within the same period whether or not the preliminary injunction shall be granted, and shall accordingly issue the

corresponding order. In the event that the application for preliminary injunction is denied, the restraining order is deemed automatically vacated."

Upon the passage of said Batas Pambansa 224, a restraining order now loses its efficacy and binding force upon the expiration of twenty (20) days from its issuance without necessity of any judicial order.[11] Inevitably, therefore, a hearing must be held and action on the application for the writ must be made within the period specified by the said law. Unfortunately, however, respondent Judge failed to follow this clear mandate of the law.

By the nature of his office and the functions appurtenant thereto, respondent Judge is supposed to keep abreast with law and jurisprudence[12] He must also be familiar with changes in law and the latest decisions.[13]

A judicious examination of the charges against the respondent Judge will show that they all emanated from his failure to act on matters submitted to him within the prescribed period, and the issuance of a second restraining order. Said infractions also brought about the charges of incompetence, partiality and gross ignorance of law. Our review of the records convinces Us that respondent could be held GUILTY only of undue delay in resolving pending incidents within the prescribed period and grave abuse in the issuance of restraining orders which to our mind absorb the charges of partiality, gross ignorance of law and incompetence in the instant case.

In cases analogous to the case at bar, we have invariably imposed the penalty of one (1) month to six (6) months suspension. Respondent Judge Tecson, however, had already gone on compulsory retirement starting November 26, 1983, after rendering twelve (12) continuous years of service in the judiciary. Considering his age - more than seventy - and to enable him to savor the fruits of his retirement, we feel that some sort of leniency and liberality should be accorded to him. The minimum allowable penalty, under the law should be imposed on him.

IN VIEW THEREOF and finding the respondent Judge GUILTY of undue delay in resolving pending incidents before him and grave abuse in issuing restraining orders, a fine equivalent to his three (3) months salary is hereby imposed.

SO ORDERED.

Fernando, C.J., Teehankee, Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

Makasiar and Aquino, JJ., no part.

[1] Civil Case No. 130088.

[2] CA-G.R. No. SP-11149-R.

[3] G.R. No. L-57953.

[4] Section 11(1), Article X, Constitution of the Philippines; B.P. 129.

[5] Par. 3, Second Indorsement, March 24, 1983.

[6] G.R. No. L-57953.[7] Ganadin vs. Ramos, 99 SCRA 615.

[8] Que vs. CA, 101 SCRA 13.

[9] Vasquez vs. Malvar, 85 SCRA 10.[10] Pinera vs. Dalocanog, 104 SCRA 193.

[11] A.B. Dionisio, et al vs. CFI, Cotabato, Branch II, 124 SCRA 226.[12] Fajota vs. Balonso, 105 SCRA 1.[13] Ajeno vs. Inserto, 71 SCRA 166.

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