

THE COMMISSIONER OF IMMIGRATION, PETITIONER, VS. HON. CIPRIANO VAMENTA, JR., AS JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS ORIENTAL, BRANCH III, STATIONED AT DUMAGUETE CITY,...

G.R. No. L-34030. May 31, 1972

Ponente: BARREDO, J.

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BARREDO, J.:

Original special civil action for certiorari and prohibition, with preliminary injunction, to annul and set aside the resolution of the Court of First Instance of Negros Oriental, Branch III, in its Civil Case No. 5128, Anabella Imperial Uy vs. The Commissioner of Immigration, denying petitioner's motion to dismiss respondent Uy's petition for mandamus filed with said court seeking to compel the herein petitioning Commissioner "to cancel her Alien Certificate of Registration" as a Chinese citizen since she had already duly elected Philippine citizenship and "thereafter to issue a certificate that she is a citizen of the Philippines for all intents and purposes", alleging that petitioner had failed to act on her corresponding application for more than two years.

Petitioner's motion to dismiss of September 29, 1970 alleged:

"COMES NOW respondent Commissioner of Immigration, by the undersigned counsel, and respectfully moves the Honorable Court to dismiss the petition for mandamus for lack of jurisdiction over the subject matter thereof, as under present legislation, there can be no action for the judicial declaration of the citizenship of an individual (Republic vs. Maddela, G.R. No. L-21664, March 28, 1969), and it is not the mandatory duty of the respondent enjoined by law by virtue of his office, to cancel the alien registration of the petitioner.

"If petitioner had validly elected Philippine citizenship, her election and the oath of allegiance subscribed by her pursuant thereto to the Republic of the Philippines should suffice to show that she is a citizen of the Philippines, there being no need for the cancellation of her alien certificate of registration which had become functus officio because she need not register further as an alien.

"With respect to the issuance of an identification certificate showing that she is a Filipino citizen by election, that is not the mandatory duty of the respondent, as it is not required to be done under the law:

"Moreover, the present Secretary of Justice has reversed the ruling of his predecessor on this matter; under pertinent regulations now in force, she may file an application for cancellation of alien registry on the claim of Philippine citizenship by election with the Bureau of Immigration, subject to final action thereon by the Department of Justice.

"As it does not appear that the petitioner has exhausted all administrative remedies, she is not entitled to the issuance of mandamus (Bisschop vs. Galang, G.R. No. L-18365, May 30, 1963)." (Annex C, Petition)

Upon the other hand, in opposition to said motion, respondent Uy contended thus:

"1. That, contrary to the contention of the respondent, the instant petition is one for mandamus, which asks this

Court to order the respondent Commissioner of Immigration to act on the petitioner's application for election of Philippine citizenship which was filed as far back as July 19, 1968 yet, and on which, as of this date, no action has been taken by the said respondent. It is a duty enjoined by law that respondent act on said application, and this he has not done.

"The case of *Republic vs. Maddela* (G.R. No. L-21664-65, March 28, 1969) is inapplicable to the case at bar. The present case is for mandamus. A close examination of the *Maddela* case will show that a principal action (Special Proceeding No. 4012 before the Court of First Instance of Quezon) was filed by the petitioner therein, Miguela Tan Suat, a Chinese national, praying that she be declared a Filipino citizen by virtue of her marriage to a Filipino citizen. Said petition was granted, as a result of which the Solicitor-General filed two separate petitions for certiorari and prohibition with preliminary injunction.

"In contrast to the *Maddela* case, petitioner herein filed with the Bureau of Immigration a petition for election of Philippine citizenship upon reaching the age of majority in accordance with the provisions of Art. IV, Section IV of the Constitution of the Philippines and the provisions of Commonwealth Act No. 625. The petition was filed on July 19, 1968 yet, without any action taken thereon by the respondent who, by law, should pass upon the question of whether or not this petitioner has validly elected Philippine citizenship. It will thus be seen that aside from the fact that the facts and the issues in the case at bar are widely different and dissimilar from those in the *Maddela* case, herein petitioner does not ask of this Court to be declared a Filipino citizen. What she asks is that action be taken on her petition pending before the respondent Commissioner.

"An explanation must be made at this point that if ever in the instant case petitioner prays, among others, that she be declared a Filipino citizen by this Court, she does so in pursuance of the circular issued by (the Secretary of) Justice, dated June 13, 1970 (Annex 'F' of the petition). It will be of interest to note that in the present case, Justice Makasiar himself gave the advice that the proper action is a petition for mandamus. Said circular of June 13, 1970 was, however, reversed by the present Secretary of Justice on September 7, 1970, subsequent to the filing of this action.

"2. That despite the fact that, as stated in the motion of the Solicitor-General, the present Secretary of Justice has reversed the ruling of his predecessor on the matter and that the Bureau of Immigration may now continue to process petitions for election of Philippine citizenship, the respondent has up to the present failed to take action on the petitioner's application.

"3. It is the office of respondent to declare whether or not the petitioner has validly elected Philippine citizenship, and in the event that respondent declares that the petitioner has validly elected Philippine citizenship, to forthwith cancel her alien certificate of registration and declare her a Filipino citizen for all intents and purposes.

"4. More importantly, the petitioner, who is due to leave for the United States to undertake further studies in nursing, has been needlessly delayed due to respondent's inaction, a certificate of her Philippine citizenship by election being needed as a requisite for the issuance of her passport to the United States." (Annex D, Petition)

There being no serious dispute as to the basic facts alluded to by both parties, on the basis thereof, the Court rules that petitioner is right in claiming that respondent Uy has not exhausted her administrative remedies, inasmuch as it appears that under existing administrative regulations issued by petitioner's department head, the Secretary of Justice, she has a recourse to said secretary with whom she can take up for appropriate action what she considers to be unreasonable delay on the part of petitioner in acting on her request for the cancellation of her alien certificate of registration. Such delay, contrary to the view of respondent's counsel, does not constitute an exception to the rule of exhaustion of administrative remedies, for it is precisely such delay, among other undesirable and unjustified shortcomings, that should be brought to the attention of the Secretary of Justice for remedial action which he is anyway empowered to take, thereby relieving the courts of the necessity of taking cognizance of and acting on the matter, which is exactly the reason behind the rule of exhaustion invoked by

petitioner. Of course, this is far from saying that the court a quo did not act correctly in ruling, in effect, that it has jurisdiction to entertain the present suit. In truth the defense of non-exhaustion of administrative remedies does not raise a question of jurisdiction; it is rather an attack against the existence of a cause of action on the part of the party filing the action or petition.

In these premises, although ordinarily, the Court would hesitate to overrule an order denying a motion to dismiss grounded, not on lack of jurisdiction of the court, but for failure of the complaint or petition to state a cause of action, since such an order is interlocutory in nature, and, besides, under the rules on practice, plaintiff or petitioner may yet cure such defect by amendment, in this particular case, We see no point in allowing the subject proceeding to be prolonged any further, it being obvious that the non-exhaustion of administrative remedies therein is patently beyond repair. From all that appears in the record, there is no possibility of respondent Uy being able to show that she has gone to the Secretary of Justice for the purpose above-stated. And mandamus, the remedy sought by her below, being one in equity, We hold that, weighing all relevant considerations, it would be better that the trial court put an end to her case by an order of dismissal, particularly, when consideration is given to the well taken observations of the petitioner contained in the aforequoted portions of his motion to dismiss to the effect that the cancellation of respondent Uy's alien certificate of registration and the issuance to her of a certificate of Philippine citizenship are neither indispensable for the exercise of her rights as a Filipina, if in fact she is one, nor do they form part of his ministerial duties. Not having ordered such dismissal, it can be said that the trial judge has abused his discretion gravely enough to warrant the granting of the present petition. More, in view of the special circumstances obtaining in this case, the Court opts to consider the said petition as also one for mandamus. The dockets of the courts are so clogged with cases most of which involve genuine controversies needing urgent attention that it has become the plain duty of judges enforceable by mandamus to dismiss at the earliest opportunity those which are shown to be, like the case at bar, hopelessly without any possible cause of action, even if they have to cast aside, whenever necessary, in so dismissing them, minor flaws in procedure which do not affect the jurisdiction of the court nor the minimum requirements of due process.

Having arrived at this conclusion, We consider it unnecessary to pass upon the the other issues raised in the pleadings of the parties.

WHEREFORE, the resolution assailed in the petition is set aside and the trial court is ordered to dismiss respondent Uy's special civil action of mandamus, without prejudice to her administrative remedies above-indicated. Without costs.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, and Fernando, JJ., concur.

Castro, Makasiar, and Antonio, JJ., did not take part.

Concepcion, C.J., on official leave.

CONCURRING OPINION

TEEHANKEE, J.:

I concur in the result.

I do not share the main opinion's view upholding petitioner's contention of non-exhaustion of administrative remedies, while conceding that "there (is) no serious dispute as to the basic facts" and the issue therefore is purely one of law.

As stated by now Mr. Acting Chief Justice Reyes for the Court in *Aguilar vs. Valencia*,^[1] "it is now a well settled rule that previous exhaustion of administrative remedies does not apply to a case where the issue is purely one of law." In the latest case of *Cipriano vs. Marcelino*^[2] involving likewise pure questions of law, Mr. Justice Castro stressed for the Court that "(W)e have held time and time again that the principle of exhaustion of administrative remedies is not without exception, nor is it a condition precedent to judicial relief. The principle may be disregarded when it does not provide a plain, speedy and adequate remedy. It may and should be relaxed when its application may cause great and irreparable damage."^[3]

Respondent court cannot be said to have acted without jurisdiction or with grave abuse of discretion in rejecting petitioner's plea for dismissal of the case below for alleged non-exhaustion of administrative remedies. Petitioner's failure for over two years to act on respondent's application filed since July 19, 1968 yet justifies respondent's petition below for mandamus to compel action on her said application.

I concur, however, with the main opinion's view that it would be more expeditious under the circumstances for respondent to seek recourse with the Secretary of Justice as department head, considering that it is manifested by petitioner that the present Secretary's circular of September 7, 1970 reversed his predecessor's circular of June 13, 1970 and authorizes anew petitioner to process and grant such applications (as respondent's) for cancellation of alien registry,^[4] and the pendency of the present action is all that seems to prevent petitioner from finally acting upon and resolving on respondent's application.

[1] 40 SCRA 210, 214 (July 30, 1971) and cases cited therein.

[2] G.R. No. L-27793, Feb. 28, 1972.

[3] Footnotes omitted.

[4] Petitioner's motion to dismiss of Sept. 29, 1970, cited at p. 2, main opinion.

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