

**J. R. S. BUSINESS CORPORATION, J. R. DA SILVA AND A. J. BELTRAN,
PETITIONERS, VS. IMPERIAL INSURANCE, INC., MACARIO M.
OFILADA, SHERIFF OF MANILA AND HON. AGUSTIN MONTESA,
JUDGE...**

G.R. No. L-19891. July 31, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

Petitioner J. R. Da Silva, is the President of the J. R. S.. Business Corporation, an establishment duly franchised by the Congress of the Philippines, to conduct a messenger and delivery express service. On July 12, 1961, the respondent Imperial Insurance, Inc., presented with the CFI of Manila a complaint (Civ. Case No. 47520). for sum of money against the petitioner corporation. After the defendants therein have submitted their Answer, the parties entered into a Compromise Agreement, assisted by their respective counsels, the pertinent portions of which recite:

"1) Whereas, the defendants admit and confess their joint and solitary indebtedness to the plaintiff in the full sum of PESOS SIXTY-ONE THOUSAND ONE HUNDRED SEVENTY-TWO AND 32/100 (P61,172.32), Philippine Currency, itemized as follows:

- a) Principal P50,000.00
- b) Interest at 12% per annum 5,706.14
- c) Liquidated damages at 7% per annum 3,330.58
- d) Costs of suit 135.60
- e) Attorney's fee 2,000.00

2) WHEREAS, the defendants bind themselves jointly and severally, and hereby promise to pay their aforementioned obligations to the plaintiff at its business address at 301-305 Banquero St., (Ground Floor), Regina Building, Escolta, Manila, within sixty (60) days from March 16, 1962 or on or before May 14, 1962;

3) Whereas, in the event the defendants fail to pay in full the total amount of pesos sixty one thousand one hundred seventy-two and 32/100 (P61,172.32), Philippine Currency, for any reason whatsoever, on May 14, 1962, the PLAINTIFF, shall be entitled, as a matter of right, to move for the execution of the decision to be rendered in the above-entitled case by this Honorable Court based on this COMPROMISE AGREEMENT."

On March 17, 1962, the lower court rendered judgment, embodying the contents of the said compromise agreement, the dispositive portion of which reads—

"WHEREFORE, the Court hereby approves the above-quoted compromise agreement and renders judgment in accordance therewith, enjoining the parties to comply faithfully and strictly with the terms and conditions thereof, without special pronouncement as to costs."

On May 15, 1962, one day after the date fixed in the compromise agreement, within which the judgment debt would be paid, but was not, respondent Imperial Insurance Inc., filed a "Motion for the Issuance of a Writ of Execution." On May 23, 1962, a Writ of Execution was issued by respondent Sheriff of Manila, and on May 26, 1962, Notices of Sale were sent out for the auction of the personal properties of the petitioner J.R.S. Business Corporation. On June 2, 1962, a Notice of Sale of the "whole capital stocks of the defendants JRS Business Corporation, the business name, right of operation, the whole assets, furnitures and equipments, the total liabilities, and Net Worth, books of accounts, etc., etc." of the petitioner corporation was handed down. On June 9, the petitioner, thru counsel, presented an "Urgent Petition for Postponement of Auction Sale and for Release of Levy on the Business Name and Right to Operate of Defendant JRS Business Corporation", stating that petitioners were busy negotiating for a loan with which to pay the judgment debt; that the judgment was for money only and, therefore, plaintiff (respondent Insurance Company) was not authorized to take over and appropriate for its own use, the business name of the defendants; that the right to operate under the franchise, was not transferable and could not be considered a personal or immovable property, subject to levy and sale. On June 10, 1962, a Supplemental Motion for Release of Execution, was filed by counsel of petitioner JRS Business Corporation, claiming that the capital stocks thereof, could not be levied upon and sold under execution. Under date of June 20, 1962, petitioner's counsel presented a pleading captioned "Very Urgent Motion for Postponement of Public Auction Sale and for Ruling on Motion for Release of Levy on the Business Name, Right to Operate and Capital Stocks of JRS Business Corporation". The auction sale was set for June 21, 1962. In said motion, petitioners alleged that the loan they had applied for, was to be secured within the next ten (10) days, and they would be able to discharge the judgment debt. Respondents opposed the said motion and on June 21, 1962, the lower court denied the motion for postponement of the auction sale.

In the sale which was conducted in the premises of the JRS Business Corporation at 1341 Perez St., Paco, Manila, all the properties of said corporation contained in the Notices of Sale dated May 26, 1962, and June 2, 1962 (the latter notice being for the whole capital stocks of the defendant, JRS Business Corporation, the business name, right of operation, the whole assets, furnitures and equipments, the total liabilities and Net Worth, books of accounts, etc., etc., were bought by respondent Imperial Insurance, Inc., for P10,000.00, which was the highest bid offered. Immediately after the sale, respondent Insurance company took possession of the properties and started running the affairs and operating the business of the JRS Business Corporation. Hence, the present appeal.

It would seem that the matters which need determination are (1) whether the respondent Judge acted without or in excess of his jurisdiction or with grave abuse of discretion in promulgating the Order of June 21, 1962, denying the motion for postponement of the scheduled sale at public auction, of the properties of petitioner; and (2) whether the business name or trade name, franchise (right to operate) and capital stocks of the petitioner are properties or property rights which could be the subject of levy, execution and sale.

The respondent Court's act of postponing the scheduled sale was within the discretion of respondent judge, the exercise of which, one way or the other, did not constitute grave abuse of discretion and/or excess of jurisdiction. There was a decision rendered and the corresponding writ of execution was issued. Respondent Judge had jurisdiction over the matter and erroneous conclusions of law or fact, if any, committed in the exercise of such jurisdiction are merely errors of judgment, not correctible by certiorari (*Villa Roy Transit vs. Bollo, et al.*, L-18957, Apr. 23, 1963, and cases cited therein.)

The corporation law, on forced sale of franchises, provides—

"Any franchise granted to a corporation to collect tolls or to occupy, enjoy, or use public property or any portion of the public domain or any right of way over public property or the public domain, and any rights and privileges acquired under such franchise may be levied upon and sold under execution, together with the

property necessary for the enjoyment, the exercise of the powers, and the receipt of the proceeds of such franchise or right of way, in the same manner and with like effect as any other property to satisfy any judgment against the corporation: Provided, That the sale of the franchise or right of way and the property necessary for the enjoyment, and exercise of the powers, and the receipt of the proceeds of said franchise or right of way is especially decreed and ordered in the judgment: And provided, further, That the sale shall not become effective until confirmed by the court after due notice." (Sec. 56 Corporation law)

In the case of *Gulf Refining Co. vs. Cleveland Trust Co.*, 108 So., 158, it was held—

"The first question then for decision is the meaning of the word 'franchise' in the statute.

'A franchise is a special privilege conferred by governmental authority, and which does not belong to citizens of the country generally as a matter of common right. * * * Its meaning depends more or less upon the connection in which the word is employed and "the property and corporation to which it is applied. It may have different significations."

'For practical purposes, franchises, so far as relating to corporations, are divisible into (1) corporate or general franchises; and (2) special or secondary franchises. The former is the franchise to exist as a corporation, while the latter are certain rights and privileges conferred upon existing corporations, such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires' 2 Fletcher's Cyclopaedia Corp. Sec. 1148; 14 C. J. p. 160; *Adams vs. Yazon & M. V. R. Co.* 24 So. 200, 317, 28 So. 956, 77 Miss. 253, 60 L.R.A. 33 et seq.

"The primary franchise of a corporation, that is, the right to exist as such, is vested 'in the individuals who compose the corporation and not in the corporation itself (14 C.J. pp. 169, 161; *Adams vs. Railroad*, supra; 2 Fletcher's Cyclopaedia Corp. Secs. 1153, 1158; 3 Thompson on Corporations [2d Ed.] Secs. 2863, 2864), and cannot be conveyed in the absence of legislative authority to do so (14A C.J. 513, 557; 1 Fletcher's Cyc. Corp. Sec. 1224; *Memphis and L.R.R.Co. vs. Ferry*, 5 S. Ct. 299, 112 U.S. 609, 28 L. Ed. 837; *Vicksburg Waterworks Co. vs. Vicksburg*, 26 S. Ct. 660, 202 U.S. 453, 50 L. Ed. 1102, 6 Ann. Cas. 253; *Arthur vs. Commercial and Railroad Bank*, 9 Smedes and M. 394, 48 Am. Dec. 719), but the special or secondary franchises of a corporation are vested in the corporation and may ordinarily be conveyed or mortgaged under a general power granted to a corporation to dispose of its property (*Adams vs. Railroad*, supra; 14A C.J. 542, 557; 3 Thompson on Corp. [2d Ed.] Sec. 2909), except such special or secondary franchises are charged with a public use (2 Fletcher's Cyc. Corp. sec. 1225; 14A C.J. 544; 3 Thompson on Corp. [2d Ed.] sec. 2908; *Arthur vs. Commercial & R. R. Bank*, supra; *McAllister vs. Plant*, 54 Miss. 106)."

The right to operate a messenger and express delivery service, by virtue of a legislative enactment, is admittedly a secondary franchise (R.A. No. 3260, entitled "An Act granting the JRS Business Corporation a franchise to conduct a messenger and express service") and, as such, under our corporation law, is subject to levy and sale on execution together and including all the property necessary for the enjoyment thereof. The law however, indicates the procedure under which the same (secondary franchise and the properties necessary for its enjoyment) may be sold under execution. Said franchise can be sold under execution, when such sale is especially decreed and ordered in the judgment and it becomes effective only when the sale is confirmed by the Court after due notice (Sec. 56, Corp. Law). The compromise agreement and the judgment based thereon, do not contain any special decree or order making the franchise answerable for the judgment debt. The same thing may be stated with respect to petitioner's trade name or business name and its capital stock. Incidentally, the trade name or business name corresponds to the initials of the President of the petitioner corporation and there can be no serious dispute regarding the fact that a trade name or business name and capital stock are necessarily included in the enjoyment of the franchise. Like that of franchise, the law mandates, that property necessary for the enjoyment of said franchise, can only be sold to satisfy a judgment debt if the decision especially so provides. As we have stated heretofore, no such directive appears in the decision. Moreover, a trade name or business name cannot be sold

separately from the franchise, and the capital stock of the petitioner corporation or any other corporation, for that matter, represents the interest and is the property of stockholders in the corporation, who can only be deprived thereof In the manner provided by law (Therbee vs. Baker, 35 N.E. Eq. [8 Stew.] 501, 505; In re Wells' Estate, 144 N W. 174, 177, Wis. 294, cited in 6 Words and Phrases, 109).

It, therefore, results that the inclusion of the franchise, the trade name and/or business name and the capital stock of the petitioner corporation, in the sale of the properties of the JRS Business Corporation, has no justification. The sale of the properties of petitioner corporation is set aside, in so far as it authorizes the levy and sale of its franchise, trade name and capital stocks. Without pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Regala and Makalintal, JJ., concur.

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