

**SEVERINO DAGDAG, JR. AND UNITED NORTHERN TRANSIT,
PETITIONERS, VS. THE PUBLIC SERVICE COMMISSION, THE
PHILIPPINE RABBIT BUS LINE, AND/OR THE ESTATE OF FLORENCIO
P. BUAN, RESPOND...**

G. R. No. L-11940. July 25, 1958

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c11eaa70c925/>

REYES, J.B.L., J.:

This is a petition to review an order of the Public Service Commission dated January 24, 1957 in its Case No. 101776 provisionally approving the sheriff's sale to the respondent Estate of Florencio P. Buan of a certificate of public convenience issued to one Virginia Sambrano, and authorizing said respondent to operate the certificate provisionally subject to modification or revocation at any time.

The facts constituting the background for the issuance of the order in question appear to be as follows:

On May 9, 1953, Corazon de Castro in her own behalf and that of her two minor children, filed a complaint for damages in the Court of First Instance of Ilocos Norte (C. C. No. 1734) against Alfredo Formoso, Santiago Sambrano and Virginia Sambrano as a result of the death of her husband, engineer Jose Castro, while a passenger in a bus belonging to the defendants when the said bus met an accident at Barrio Artacho, Sison, Pangasinan. On October 12, 1953, the Court of First Instance of Ilocos Norte rendered judgment condemning defendants, with the exception of Alfredo Formoso who had already sold his interests in the certificate of public convenience in question to his co-defendant Virginia Sambrano, to pay plaintiffs damages in the sum of P25,000, attorney's fees in the sum of P1,200, and costs.

On October 31, 1953, the trial court issued a writ of execution pending appeal, pursuant to which the sheriff sold at public auction to plaintiff Corazon de Castro as the highest bidder the certificate of public convenience of defendants. Immediately after the sale, Corazon de Castro in turn sold her rights over said certificate of public convenience to the Estate of Florencio P. Buan, who filed the corresponding application for the approval of the sale with the Public Service Commission (Case No. 79980).

On June 12, 1954, defendants Virginia and Santiago Sambrano filed with this Court a petition for certiorari (G. R. No. L-7868) for the annulment of the aforesaid execution sale in C. C. No. L-7868, and on June 23, 1955, we rendered judgment holding that the certificate of public convenience in question should not have been sold but only attached, and setting aside the sale. Upon motion for reconsideration of intervenor Estate of Buan, however, urging that the execution sale was proper because judgment had already been rendered in the case and the Rules of Court allow execution pending appeal for strong reasons shown, we issued a resolution to the effect that petitioners should be given an opportunity to file a supersedeas bond and if they still failed, the trial court may proceed with the execution and even authorize the sale of the certificate of public convenience in question. In view of our decision in G. R. No. L-7868, the Public Service Commission dismissed the application for sale and transfer filed by the Estate of Buan in Commission Case No. 79980.

In the meantime, the appeal of defendants Sambranos in the Ilocos Norte Court in Civil Case No. 1734 was dismissed for their failure to file an amended record on appeal. Whereupon, on June 15, 1954, the court issued an order declaring its decision in the case final and executory, and ordering its execution. The Provincial Sheriff again levied on the aforementioned certificate of public convenience of the defendants and advertised the same for sale at public auction on July 30, 1956. On the day of the scheduled sale, a third party claim was presented by attorney Severino Dagdag, Jr., as a result of which the sale was postponed to August 8, 1956. It appears that in another case for damages against the defendants Sambranos, filed by Miguela Quirit, et al. (C. C. No. 1377 of the Court of First Instance of Ilocos Sur), defendants signed with plaintiffs on March 3, 1956, a compromise settlement whereby they conveyed to the latter, subject to the approval of the Public Service Commission, the same certificate of public convenience involved in Civil Case No. 1734 of the Court of First Instance of Ilocos Norte between Corazon de Castro and the Sambranos, in full settlement of the claim of the Quirits; and on March 23, 1956, the Quirits in turn assigned whatever rights they have over said certificate of public convenience to attorney Severino Dagdag, Jr. This sale was the basis of Dagdag's third party claim in C. C. No. 1734; and to restrain the execution sale of the certificate of public convenience in said case, Dagdag filed Civil Case No. 1668 in the Court of First Instance of Ilocos Sur and secured a writ of preliminary injunction restraining the sheriff from proceeding with the execution sale in Civil Case No. 1734.

However, on September 7, 1956, the Ilocos Sur Court dismissed Dagdag's complaint (C. C. No. 1668) and in view of this dismissal, the Court of First Instance of Ilocos Norte issued a third alias writ of execution in C. C. No. 1734, pursuant to which the sheriff sold at public auction to the Estate of Florencio P. Buan on November 12, 1956 the certificate of public convenience in question. On November 27, 1956, the Estate of Buan filed with the Public Service Commission an application for the approval of said sheriff's sale (Comm. Case No. 101776), and pending final action on the application, prayed for a provisional approval of the sale and provisional authority to operate the service in question. After due publication, the petition was heard on December 20, 1956, at which hearing attorney Severino Dagdag, Jr. opposed the petition on behalf of the United Northern Transit Co., who had allegedly acquired all his rights over the certificate of public convenience in question. Ground for Dagdag's opposition was that the Commission had no power to act in the proceedings until a case he had filed with this Court (G. R. No. L-11554) questioning the legality of the sheriff's sale in C. C. 1734 is resolved. At the end of the hearing, the Commission announced that it would give Dagdag fifteen days to secure a temporary restraining order from this Court, otherwise it would approve the sale to the Estate of Buan provisionally. The day after the hearing, on December 21, 1956, we issued a resolution denying petitioners' motion for a writ of preliminary injunction in G. R. No. L-11554. Whereupon, the Estate of Buan reiterated its petition to have its sale provisionally approved. Oppositors Dagdag, Jr. and the United Northern Transit Co., on the other hand, moved to be given another fifteen days to obtain a writ of preliminary injunction from this Court, which the Commission denied. Then on January 24, 1957, the Commission issued an order provisionally approving the sheriff's sale of the certificate of public convenience in question to the Estate of Buan, and authorizing said Estate to operate the service provisionally until the authority is modified or revoked and subject to any action this Court may take in G. R. L-11554. Not agreeable to this order, oppositors Severino Dagdag, Jr. and the United Northern Transit filed with this Court on February 1, 1957 the present petition for certiorari (which we accepted as a petition for review). On February 26, 1956, we denied the petitioners' urgent motion for the issuance of a writ of preliminary injunction.

Several grounds are urged in support of the petition; but we find no sufficient reason to set aside the order appealed from. Petitioners' main argument against the provisional approval of the sheriffs sale to respondent Estate of Buan and the provisional authority granted to the latter to operate said lines, is that pending decision of this Court in G. R. Nos. L-11554 and L-11767, filed by petitioners to question the validity of the sheriff's sale in

civil case No. 1734 of the Court of First Instance of Ilocos Norte, the Commission has no power and authority to approve said sale and to authorize the vendee to operate the service in question.

We see no merit in the argument, considering that the Commission's approval is merely provisional and subject to modification or revocation at any time. Under sec. 20 (g) of the Public Service Act, the Commission has the power and authority to approve a sale or transfer of a certificate of public convenience if (1) there are just and reasonable grounds for making the transfer; and (2) the sale or transfer is not detrimental to the public interest. The fact that the question of the validity of the transfer, or the title or ownership over the franchise, is pending determination in the courts, does not deprive the Commission of the power to approve or transfer provisionally where these conditions set by the law are satisfied, in order to protect the public interest (*Montoya vs. Ignacio* 94 Phil., 182; 50 Off. Gaz. [1] 108). Thus, in *Orlanes and Banaag Transportation Co. vs. P. S. C.*, 57 Phil. 634, we sustained the action of the Commission of giving provisional authority to a vendee to operate a franchise pending final decision of the legality of the sale by the court, as a "modus vivendi by which the public might not suffer 'by reason of the failure of a service which is so extremely necessary'" before the validity of the sale is judicially determined. Of course, the Commission's approval does not give validity or efficacy to a contract not executed with all the intrinsic and extrinsic formalities of the law (*Zamboanga Transportation Co. vs. Public Utility Commission*, 50 Phil. 237; *Zamboanga Trans. Co. vs. Bachrach Motor Co.*, 52 Phil. 244; *Zambrano vs. Jamias*; January 23, 1940 (8 LJ, 13,513), since the Commission is not a judicial tribunal and its functions are limited and administrative in nature (*Filipino Bus Co. vs. Phil. Railway Co.*, 57 Phil. 860) and so it can not pass upon questions that are within the exclusive province of the ordinary courts, like the validity of a contract (*Hoc Lian Ho Dry Goods Club and Tan vs. Manila Electric Co.*, 63 Phil. 804).

The order of the Commission provisionally approving the sale to respondent Estate of Buan and authorizing said respondent to operate temporarily said lines until the validity of said sale is determined by this Court, would not, therefore, as petitioners incorrectly claim, render ineffectual or academic the issue of the validity of such sale raised in the other cases filed by them with this Court (one of which—G. R. L-11767—has already been dismissed on May 3, 1957 because of petitioners' failure to file their printed record of appeal), nor does it deprive them of the opportunity to be heard on that issue. In fact, the order of the Commission expressly makes the provisional approval and authority to operate granted to respondent subject to any action this Court may take in G.R. L-11554.

Petitioners argue, however, that the order in question is void because it does not make findings of fact upon which the provisional approval of the sale to the respondent Estate of Buan is based. The argument is clearly untenable, for said order makes certain findings to justify the provisional approval of respondent's sale, namely, that "the sale and transfer of such certificate, as evidenced by the Sheriff's sale, has already been consummated and that the vendee is qualified to engage in the transportation business, being the holder of several certificates of public convenience itself to operate TPU services". Considering that, as we have already pointed out, the only factors to be considered by the Commission in approving or disapproving a transfer of a franchise are (1) that there is a just and reasonable ground for the transfer, and (2) that the same is not detrimental to the public interest; the above findings of the Commission sufficiently satisfy these elements, since the execution sale of the franchise to satisfy a final judgment against defendants is a reasonable ground for the sale, while the buyer's ability and experience to operate the service in question shows that the transfer would not be detrimental to the public interest.

Petitioners also assert that their application for the approval of the sale in their favor of the certificate of public convenience in question was presented in the Commission ahead of the application of the respondent Estate of Buan, and that the Commission abused its discretion in granting provisional approval to respondent without taking into account the priority of their application, as well as the fact that they have already considerably invested and

are already operating the service satisfactorily. The record shows, though, that these claims were not urged by petitioners in the Commission when they opposed respondent's application, their opposition having been made solely on the ground that the Commission had no authority to act on said application until the validity of the sheriff's sale to the applicant is determined by this Court; and not having raised these questions in the Commission, petitioners can not raise them for the first time in this Court.

And even if petitioners had urged the priority of their application as a ground for opposition to respondent's application in the proceedings in the Commission, we doubt if it would have made any difference in the Commission's decision to grant provisional approval and authority to respondents. For the controlling factor in the approval of a sale or transfer of a franchise is not priority of a sale over another, but that one sale is more stable or certain and more satisfactory and therefore, superior, to another (*Aucal Autocala Co. vs. Ablaza*, 66 Phil. 24). The sale to respondent Estate of Buan, the holder and operator of several certificates of public convenience, is undoubtedly superior and more beneficial to the public than the sale to petitioner United Northern Transit, which appears to be a newly formed corporation and so does not and can not have the experience that respondent has in the operation of a transportation service. As for the priority of the two sales, it can not even be said that the sale to petitioners is prior to the sale to respondent in point of time, because while the sheriff's sale to respondent in civil case No. 1734 has, except for the approval of the Commission, been fully consummated between the parties, the sale to petitioners in the compromise settlement in civil case No. 1377 has not yet been consummated even as between the parties because it was expressly stipulated (Annex A, petition) that the transfer would not be effective between them nor would the price be paid until the contract was approved by the Commission.

With respect to the claim of petitioners that they have already made considerable investments and are already operating the service in question, so that the provisional authority to operate the same service given to the respondent Estate of Buan would cause them irreparable injury, suffice it to say that such operation by petitioners is absolutely illegal because the sale to them has not yet been approved by the Commission and, consequently, they are operating without a certificate of public convenience. Whatever injury or damage they suffer by reason of such illegal operation is, therefore, entirely of their own making, and constitutes no valid ground to annul the provisional authority granted to respondent Estate of Buan.

Lastly, petitioners allege that the order in question was issued by the Commission without a hearing and without giving their day in court. Again, this allegation is belied by the record which shows that petitioners were not only heard by the Commission orally (during the hearing of December 20, 1957) and in writing (in their written Opposition of December 29, 1957 and their Motion and Manifestation of January 3, 1957), in opposition to respondent's application, but even given a reasonable opportunity to obtain a temporary order from this Court to enjoin the Commission from acting on said application, which we repeatedly refused to issue. Petitioners can not, therefore, rightly claim that they were deprived of their day in court during the proceedings in the Commission. It is true that respondent's application was not heard on the merits at the hearing of December 20, 1957 because petitioners raised the question of the power and jurisdiction of the Commission to hear the same. But jurisdiction was the only issue brought up by petitioners in their verbal and written oppositions in the Commission; consequently, they can not blame the Commission for provisionally approving the sale when it held itself to have such jurisdiction. It even appears that at the hearing of December 20, 1957, the Commission announced its intention to approve the sale to respondent provisionally if petitioners failed to get a restraining order from this Court in fifteen days. Petitioners did fail to get the order, and yet they did not oppose the application on other grounds. The Commission, then, did not err or abuse its discretion when it approved the sale provisionally without further hearing petitioners and based on its own findings which we have held sufficiently justify such approval.

The order appealed from is, therefore, affirmed, with cost against petitioners. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Endencia, and Felix, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.