

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. GABRIEL V. VALERO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON, AND ANTONIO TAN, RESPONDENTS.*G.R. No. L-23524. May 31, 1985*

Ponente: CUEVAS, J.

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Petitioner in this special civil action of "CERTIORARI and MANDAMUS with Preliminary Injunction", seeks the annulment of the entire proceedings held in Naturalization Case No. 186 before the then Honorable Gabriel V. Valero, Presiding Judge of the then Court of First Instance of Quezon. It likewise sought the cancellation of the certificate of naturalization issued to private respondent Antonio Tan, and the issuance of an order directing respondent Judge to approve petitioner's record on appeal. Meantime, it is prayed that a writ of preliminary injunction be issued ex-parte and without bond, restraining private respondent Tan from representing himself to be a Filipino and from exercising any of the rights and privileges of a Filipino citizen.[1]

Sometime in July 14, 1946, Antonio Tan filed with the defunct Court of First Instance of Quezon, a verified petition for naturalization[2] which was docketed therein as Naturalization Case No. 186. In the said petition, Tan, among others, alleged that he was born on May 18, 1933 in Manila; that Casiguran, Sorsogon was formerly his residence but at present he is a resident of Lucena, Quezon; that he had been an employee since 1947, from which occupation he derived an average annual income of at least P6,000.00; and that he is married to Asuncion Lo but without any child as yet. Attached to the petition were the joint affidavit of two character witnesses,[3] the declaration of intention,[4] and the native-born certificate of residence[5] issued to Tan by the Acting Commissioner of Immigration.

On February 15, 1962, the case was called for hearing by the Hon. Enrique Maglanoc, then Presiding Judge of the aforementioned court. Assistant Provincial Fiscal Jose I. Veluz, Jr. manifested in open court that the Office of the Provincial Fiscal had not as yet received any written authority from the Solicitor General to appear in said naturalization proceedings. Thereupon, and even before he could move for continuance of the scheduled hearing, the trial court ruled out, for lack of personality the appearance of Assistant Fiscal Veluz, Jr..

Forthwith, the trial court decided to proceed with the hearing ex-parte, notwithstanding the absence of government representation but granted the request of counsel for the applicant that the case be called later that day. Subsequently, the court a quo proceeded to hear the witnesses for the applicant and to receive his other evidences. The Government's representative was not given any opportunity to cross-examine said witnesses. On that same date, the trial court rendered judgment granting Tan's petition for naturalization.[6]

Copy of the said decision was furnished the Provincial Fiscal on February 23, 1962. Another copy was sent by registered mail to the Solicitor General which was received only on March 6, 1962.

On instructions of the Solicitor General, the Acting City Attorney of Lucena City filed a Notice of Appeal[7] from said decision to this Court on March 27, 1962. The corresponding Record on Appeal was filed with the trial court

on March 31, 1962.

Thereafter, or on June 28, 1962, the trial court issued an Order[8] dismissing the appeal interposed by the Solicitor General. It sustained applicant's contention "that the Solicitor General has no personality to appeal, since he did not submit any opposition to the petition for naturalization, and that his notice of appeal and record on appeal were filed beyond the reglementary period."

On February 25, 1964, counsel for Tan filed a motion[9] to calendar his oath taking for hearing. Against the opposition of the Assistant Provincial Fiscal and special counsel for Lucena City[10] the respondent Judge, on April 20, 1964 issued an Order[11] allowing Tan to take his oath of allegiance to the Republic of the Philippines as a naturalized Filipino citizen and ordered that upon his doing so, the corresponding certificate of naturalization be issued to him.

Copy of the said Order was received by the provincial fiscal on April 25, 1964 and by the Solicitor General on April 30, 1964. On the very same day the Solicitor General received his copy of the Order, Tan took his oath of allegiance[12] before the respondent Judge. The oath taking took place before the Order allowing it became final.

On May 29, 1964, the special counsel designated for Lucena City filed a motion for reconsideration[13] which was opposed by Tan's lawyer.[14]

On June 16, 1964, the respondent Judge issued an Order[15] denying the motion for reconsideration for lack of merit.

Sometime on June 26, 1964, the special counsel-designate filed a notice of appeal[16] which was opposed by counsel for Tan[17] on the ground that, among others, the intended appeal was interposed beyond the reglementary period.

In an Order[18] dated July 17, 1964, the respondent Judge dismissed the government's appeal. Special counsel-designate filed a petition for reconsideration[19] of the said Order. Counsel for Tan forthwith opposed.[20]

On August 20, 1964, the respondent Judge, finding no merit in the aforementioned petition, denied the same.[21]

Hence, this petition.

As prayed for in the petition, a preliminary injunction without bond was issued by this Court on October 7, 1964.[22]

The petition is impressed with merit.

From the records of the proceedings in the court below, it appears indubitably clear that the Government was denied of its day in Court. Fiscal Veluz, Jr. who sought and attempted to appear for and in behalf of the Solicitor General was disqualified by the respondent Judge on the ground of lack of authority from the latter's office. The court a quo further ruled that even if Fiscal Veluz, Jr. has been so authorized, still he could not have proceeded to appear in opposition to the petition since the Solicitor General has not filed any formal written opposition to the petition. Such a pronouncement is erroneous. To sustain the same would be to sanction a monstrosity known as citizenship by estoppel. The grant of naturalization under such circumstances is illegal and cancellation thereof may be had at any time.[23] Neither estoppel nor res judicata may be set-up as a bar from instituting the necessary proceedings to nullify the certificate of naturalization so issued.

There is no question that the hearing scheduled on February 15, 1962 was an initial one. There is not even a single postponement granted at the instance of the government prior thereto. The postponement sought for by Fiscal

Veluz, Jr. appeared anchored on valid and legal grounds — that as of that date, he has not yet received any written authority from the Solicitor General to appear for the Government. Instead of postponing said hearing for even a week or so, respondent Judge nevertheless proceeded to receive the evidence of the petitioner (now private respondent) Antonio Tan. And worse still, without anybody representing the government such that the proceedings were conducted ex-parte.

And as though that was not enough, the hearing prior to the oath taking of respondent Tan was conducted without the required notice to the Solicitor General. It is true, as it appeared later, that Fiscal Veluz, Jr. was authorized by the Solicitor General to represent the Government in the hearing of the application for naturalization. That authority however does not extend to Fiscal Veluz' right to appear for the State in the hearing preparatory to the oath taking.[24] Private respondent Tan was therefore under legal obligation to serve copy of his motion to be allowed to take his oath of allegiance as a Filipino citizen upon the Solicitor General which was not done. And we are convinced that the omission was not a mere case of inadvertence. Rather, it was intentional in order to prevent the State from opposing and/or presenting contrary evidence that will prevent Tan from taking the necessary oath. Needless to state that even if the provincial or city fiscal appeared authorized to represent the Solicitor General in a naturalization case, still the counsel of record for the Republic of the Philippines remains the Solicitor General and as such all processes and notices should be served upon him.

That private respondent Tan had already taken his oath of allegiance does not in any way legalize the proceedings relative thereto which is pregnant with legal infirmities. Compounding these irregularities is the fact that Tan was allowed to take his oath even before the expiration of the thirty (30) days period within which an appeal may be made thus making the said oath not only highly improper but also illegal.[25]

With the view We take on the foregoing issue, We find no necessity in further dwelling at length on the timeliness of the Government's appeal.

The entire proceedings conducted by the court a quo being null and void, ordering the trial court to elevate to this Court the Record on Appeal in Naturalization Case No. 186 will serve no purpose. But lest we be misunderstood, let it be stated that We do not subscribe to the view of the court a quo that the period of appeal for the Government has already expired, which period commences to run only from the time notice of the judgment or order complained of is served upon the Solicitor General's Office and not upon the Fiscal.[26]

WHEREFORE, the writ of CERTIORARI prayed for is hereby GRANTED. The entire proceedings of the court below that led to the grant of Filipino citizenship to private respondent Antonio Tan is hereby declared NULL and VOID. The certificate of naturalization issued to him together with the oath of allegiance taken by him are likewise hereby CANCELLED and declared NULL and VOID.

SO ORDERED.

Makasiar, (Chairman), Aquino, Abad Santos, and Escolin, JJ., concur.

Concepcion, Jr., J., on leave.

[1] Petition.

[2] Annex "A".

[3] Annex "A".

[4] Annex "B".

- [5] Annex "C".
- [6] Annex "A", page 10.
- [7] Annex "A", page 14.
- [8] Ibid, page 19.
- [9] Ibid, page 20.
- [10] Ibid, page 21.
- [11] Ibid, page 33.
- [12] Ibid, page 35.
- [[13]] Ibid, page 36.
- [14] Ibid, page 41.
- [15] Ibid, page 46.
- [16] Ibid, page 46.
- [17] Annex "B".
- [18] Annex "C".
- [19] Annex "D".
- [20] Annex "E".
- [21] Annex "F".
- [22] Page 173, Rollo.
- [23] Republic vs. Reyes, 17 SCRA 170.
- [24] Lu Luan Co vs. Jarencio, 15 SCRA 190.
- [25] Tan vs. Republic, 37 SCRA 353.
- [26] Antonio Qua vs. Republic, 15 SCRA 698.

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