

TRIFON G. ESPIRITU, MELBA LACOSTA-ESPIRITU AND GREGORIA GRANADOS-ESPIRITU, PETITIONERS, VS. HON. ARSENIO SOLIDUM, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND THE SOLICIT...

G.R. No. L-27672. July 25, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court in dismissing this special civil action for certiorari seeking to set aside respondent court's order denying petitioners' motion to dismiss the State's complaint for forfeiture of unlawfully acquired wealth since the grounds of dismissal raise questions of fact which re-quire the presentation of evidence and are not indubitable, reaffirms the well settled rule that certiorari does not lie where respondent court has acted in accordance with law and within his competence and discretion and therefore without abuse, much less grave abuse, of discretion.

Respondent court in denying petitioners' motion to dismiss was but acting in accordance with the express authority of Rule 16, section 3 that the trial court "may defer the hearing and determination of the motion until the trial if the ground(s) alleged therein do(es) not appear to be indubitable"[1] and its denial was but a provisional denial until after trial.[2]

A review of the case below and of the grounds of dismissal urged by petitioners amply justifies respondent court's order of provisional denial and dismissal of the petition at bar.

On November 12, 1962, the Solicitor General filed on behalf of the Republic of the Philippines with the court of first instance of Manila the complaint[3] for "Forfeiture of Unlawfully Acquired Properties under Republic Act No. 1379"[4] against petitioners. It was alleged therein that petitioner Trifon G. Espiritu during his incumbency since 1952 as an employee (permit agent) in the Sugar Quota Administration, Department of Commerce & Industry, Manila had acquired real and personal properties therein described which were manifestly out of pro-portion to his salaries and other lawful income, the excess being in the claimed amount of P180,802.38 and held or recorded in the name of said petitioner and his co-petitioners, viz, Gregoria Granados-Espiritu and his wife Melba Lacosta-Espiritu; and prayed for a declaration of forfeiture thereof in favor of the State under Republic Act No. 1379.

Claiming that for reasons not attributable to them only petitioner Gregoria Granados-Espiritu had been served with summons at their place of residence in Makati, Rizal and that petitioners-spouses had never been served with summons despite the lapse of almost four years, peti-tioners entered a so-called special appearance in the case below on Au-gust 18, 1966 and filed a motion to dismiss the complaint upon grounds of

(a)

improper venue (with Trifon submitting a certified copy of the acceptance of his resignation effective May 11, 1962 by then Undersecretary Medina Lacson de Leon, and claiming therefore that the venue of the action

against him properly laid in petitioners' place of residence at Makati, Rizal);

(b)

lack of jurisdiction over the subject-matter, with the action allegedly having been filed within the one-year prohibitory period before the general election of November 12, 1963;

(c)

failure to state a cause of action, assailing the Act as unconstitutional for being allegedly violative of due process and destructive of the presumption of innocence and of the right against self-incrimination and "illegally retroactive as in effect a bill of at-tainder;" and

(d)

failure to prosecute for an unreasonable length of time.

Then Solicitor General, now a member of this Court, Justice Antonio P. Barredo duly filed an opposition and traversed petitioners' allegations, averring inter alia that

(a)

according to the very complaint Trifon continued in the employ of the Sugar Quota Administration;

(b)

the case was not filed within the one-year period before the general election of November 12, 1963;

(c)

the complaint is sufficient in form and substance and states a cause of action, reciting all the allegations required under section 3 of Republic Act No. 1379;

(d)

"Said law is not violative of due process because it gives the defendants (petitioners herein) all the opportunities to be heard. It is not retroactive because it goes after properties unlawfully acquired presently in the name of defendants or in the name of other persons under which they were concealed. This law does not compel the defendants to be witnesses against themselves but gives them the chance to speak for themselves. In fact, after analyzing the provisions of this law, this Honorable Court upheld its validity (Almeda vs. Perez, G. R. No. L-18428, August 30, 1962[5]);"[6]

(e)

petitioners-spouses had evaded service of summons for almost four years notwithstanding the efforts of the

PAGCOM and the NBI whose assistance for service of alias summons upon them had been enlisted in vain by the State;

(f)

petitioner Gregoria Granados-Espiritu has no standing in court since she had been declared in default on July 11, 1964 for failure to answer the complaint; and

(g)

the grounds of the dismissal motion are not indu-bitable.

Respondent court after hearing the parties denied per its order of October 23, 1966 petitioners' motion to dismiss "it appearing to the court that the grounds alleged in said motion raise questions of fact which cannot be decided without the presentation of evidence and it appearing further that said grounds are not indubitable." [7] It further denied reconsideration and directed petitioners (as defendants below) to answer the complaint within the reglementary period, as per its order of January 20, 1967.

Petitioners, after filing on January 27, 1967 their "answer ad cautelam" thereafter filed on June 20, 1967 the present petition for certiorari wherein they pray that the respondent court's challenged orders denying their motion to dismiss be "revoked, annulled and set aside" and that respondent court be "directed to dismiss the complaint ... upon any, some or all of the grounds urged in this petition."

As already indicated, the petition must fail.

The cited Rule of Court precisely requires in effect that the order of the trial court dismissing an action should be founded on indu-bitable grounds in order to avoid multiplicity of appeals. Hence, in case of doubt as in the case at bar, the rule provides that the court must defer its final hearing and determination until the trial. "Indu-bitable" is generally defined as "something which cannot be doubted; also certain and unquestionable; without doubt." [8] Petitioners' grounds for dismissal were certainly far from indubitable and respondent court properly entered a provisional denial until he could duly decide them after the presentation of evidence at the trial and would have had suffi-cient time and opportunity to study and rule upon the respective legal contentions of the parties.

It follows, as likewise provided by the Rules of Court, that the remedy against the denial of a motion to dismiss is by appeal in due course after the case is decided on the merits, save where the trial court clearly acted outside its jurisdiction or with grave abuse of dis-cretion as to amount to excess of jurisdiction. If every error committed by the trial court were to be a proper object of review by certiorari, the trial would never come to an end and the appellate courts' dockets would be clogged ad infinitum with the aggrieved parties-litigants filing petition after petition for writs of certiorari against every interlocutory order of the trial court. [9]

ACCORDINGLY, the petition for certiorari is dismissed with costs against petitioners.

Makalintal, (Acting C.J.,) Ruiz Castro, Fernando, Makasiar, Antonio, and Esguerra, JJ., concur.
Zaldivar and Barredo, JJ., on leave.

[1] Escaler vs. Panganiban, 26 SCRA 379 (1968).

[2] Nico vs. Blanco, 81 Phil 213 (1948).

[3] Docketed as Civil Case No. 52167 and entitled "Republic of the Philippines, plaintiff vs. Trifon G. Espiritu, Melba Lacosta-Espiritu and Gregoria Granados-Espiritu, defendants."

[4] Entitled "An Act declaring forfeiture in favor of the State any property found to have been unlawfully acquired by any public officer or employee and providing for the procedure therefor."

[5] Reported in 5 SCRA 970 (1962).

[6] Answer to petition, Rollo, pages 74-75.

[7] Annex E, petition.

[8] Asejo vs. Leonoso, 78 Phil 467 (1947).

[9] Harrison Foundry & Machinery vs. Harrison Foundry Workers Ass'n., 8 SCRA 430 (1963); Nocon vs. Geronimo, 101 Phil 735 (1957); Arvisu vs. Vergara, 90 Phil 621 (1951).

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