

REPUBLIC OF THE PHILIPPINES, PETITIONERS, VS. HON. PERFECTO R. PALACIO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR, MACARIO M. OFILADA, AS EX-OFFICIO SHERIFF OF MA...*G.R. No. L-20322. May 29, 1968*

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

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This is a petition for review of the decision of the Court of Appeals (in CA-G. R. No. 30915), dismissing the original action for certiorari and prohibition filed with said Court by herein petitioner Republic of the Philippines, to restrain the enforcement of a writ of execution (issued by the Court of First Instance of Camarines Sur in its Civil Case No. 4886) on the trust fund in the account of the Irrigation Service Unit with the Philippine National Bank.

There is no controversy as to the following facts:

On April 2, 1960, Ildefonso Ortiz instituted in the Court of First Instance of Camarines Sur Civil Case No. 4886, against the Handong Irrigation Association, Inc., a corporation with principal place of business in Libmanan, Camarines Sur, and the Irrigation Service Unit, an office or agency under the Department of Public Works and Communications, to recover possession, with damages, of a 958-square meter-lot located in Handong, San Juan, Libmanan, Camarines Sur, which the Irrigation Association allegedly entered and occupied, at the instance of its co-defendant. For failure to appear and answer the complaint, therein defendant Irrigation Service Unit was declared in default.

On June 3, 1960, the Republic of the Philippines, through the Solicitor General, moved for the dismissal of the complaint, claiming that defendant Irrigation Service Unit has no juridical personality to sue and be sued. By order of June 11, 1960, this motion was denied, on the ground that the said defendant although a mere agency of the Republic of the Philippines, is engaged in the private business of selling irrigation pumps and construction materials on installment plan. The Solicitor General's motion for reconsideration of the aforesaid order was also denied on July 19, 1960. No appeal appears to have been taken.

On January 29, 1962, the Solicitor General was served with copy of the writ of execution issued by the court against the defendants in the above-mentioned civil case; and, on February 16, 1962, an order of garnishment was served by the Sheriff of Manila against the deposits and/or pump irrigation trust fund in the account of the Irrigation Service Unit at the Philippine National Bank, Manila, to cover the sum of P14,874.40.[1]

On March 8, 1962, the Solicitor General, on behalf of the Republic of the Philippines, filed with the lower court an urgent motion to lift the order of garnishment, for the reason that the funds subject matter thereof are public funds and exempt from attachment or execution. Upon denial of this motion, as well as of the motion for reconsideration of said denial, the Solicitor General commenced the present certiorari and prohibition proceeding

in the Court of Appeals.

In its decision of August 21, 1962, the appellate court sustained the propriety of the disputed garnishment-order, and dismissed the Government's petition, on the basis of the finding by the trial court that the Irrigation Service Unit, "formerly an office under the Department of Agriculture and Natural Resources created by virtue of a 'Memorandum of Agreement on the Irrigation Pump Program of the Philippines', signed by the Chairman of the PHILCUSA (now NEC), Chief of the MSA Mission (now AID) and the Secretary of Agriculture and Natural Resources, and presently under the Department of Public Works and Communications to which it was transferred", is engaged in a private business of purchase and sale of irrigation pumps and systems. Consequently, according to the Court of Appeals, and following the ruling in the case of *National Airports Corporation vs. Teodoro et al.*, L-5122, April 30, 1952 (91 Phil. 203), by thus engaging in private business, the Government, through the Irrigation Service Unit, had actually consented to the suit. Hence, the present petition for review filed by the Republic of the Philippines.

The issue presented by this case is whether or not the pump irrigation trust fund, deposited with the Philippine National Bank in the account of the Irrigation Service Unit, may be garnished to satisfy a money-judgment against the latter. This issue in turn calls for a determination of the nature of said trust fund, i.e., whether it is a fund belonging to the National Government (which was not a party to Civil Case No. 4886), as maintained by here-in petitioner, or purely the proceeds of a private venture by the government, as claimed by the respondents.

For a better understanding of the nature, function and operation of the Irrigation Service Unit (ISU) which is necessary for the proper resolution of the issue herein involved, it is worthwhile to recall that this office was originally created under the Department of Agriculture and Natural Resources by virtue of a Memorandum Agreement between the governments of the Philippines and the United States, dated August 13, 1952. It was later transferred to the Department of Public Works and Communications as an office directly under the Office of the Secretary, "to prosecute to completion the rehabilitation of pump systems transferred from the former Irrigation Pump Administration of the Department of Agriculture and Natural Resources,[2] including the settlement of the obligations of said administration." The budgetary requirements to carry out the objectives of the project were to be financed by withdrawals from the Counterpart Fund-Special Account. (Memorandum Agreement of June 1954).

This Counterpart Fund-Special Account referred to above was established in the Central Bank by the Government of the Philippines and made up of deposits in pesos commensurate with the indicated dollar cost to the Government of the United States of economic and technical assistance made available to the Philippines, pursuant to the Bilateral Agreement between the Philippines and the United States of April 27, 1951; of deposits accruing to it (Philippine government) from the sale of commodities or services supplied under the Agreement or otherwise accruing to it as a result of the import of such commodities or service; and of any advance deposits which the Philippine government may make in the Special Account (Sec. 1, paragraphs 2[a], [b] and [c], Annex to Memo. Agreement of April 27, 1951). Later, on the basis of a supplemental agreement (No. 2, Counterpart Project No. 409 - Pump Irrigation), the Pump Irrigation Trust Fund was established in the Philippine National Bank, to which all authorized releases to the ISU,[3] from the Counterpart Fund - Special Account, to finance the peso-cost of the Irrigation Pump Project, were transferred. This is the fund on which the disputed writ of execution for money judgment rendered against the ISU, is being enforced.

A reading of the records and documents submitted to the Court of Appeals will readily show that the sales of irrigation pumps to farmers by ISU are governed by the terms of the Supplemental Agreement No. 2 to Counterpart Project No. 409 (signed by representatives of the Philippine and U.S. governments) hereunder copied in full:

"C. Disposition of Proceeds from Payments under Contracts of Sale

"1. Under the Guiding Principles of the Irrigation Pump Project, pumps are sold to farmers associations under conditional sales contracts. Periodic payments to ISU by each association are required. The total payment required under the contract is stated in the contract and is equal to the sum of (a) the landed cost of equipment at the installation site, (b) the cost of installation and construction including survey and design, (c) the cost of fuel and oil financed for the first crop season, if any, (d) ten per cent of the total of a and b to cover the cost of administration, technical assistance furnished by the ISU, inspection and collection, and (e) the compensating use tax to the Philippine Government. Interest is also payable under each contract at the rate of six percent per annum on any unpaid balance of the total amount of the contract.

"2. All principal and interest payments received by the ISU from farmers' associations shall be deposited immediately in the Trust Fund. The separate account established by the project agreement for Counterpart Project 409, entitled 'Irrigation Pump Sales Proceeds Account' is hereby abolished and any deposits therein will be immediately transferred to the Trust Fund.

"3. Whenever the total value of all deposits made to the Trust Fund from contract principal and interest payments exceeds the value of total releases made to the Trust Fund from the Counterpart Fund-Special Account, these excess deposits shall be transferred from the Trust Fund to the Counterfund-Special Account. Such transfers shall be considered as 'proceeds of sale' and 'advance deposits' as provided in Annex Section 1, (b) and (c) of the Bilateral Agreement between the Republic of the Philippines and the United States of America."

It was also provided therein that the payments by the farmers' associations on conditional sales agreements specified in para-graph C-2 above, will be considered in the preparation, and shall form part, of the ISU annual budget, which will finance the costs of supply and equipment purchases, the installation and construction of pump units, and the operating expenses of ISU for which appropriated funds are not available. (Para. B-1).

It is clear from the foregoing that the ISU is not only an office in the Government of the Republic of the Philippines, created to promote a specific economic policy of said government, but also that its activity (of selling irrigation pumps to farmers on installment basis) is not intended to earn profit or financial gain to its operator. The mere fact that interests are being collected on the balance of the unpaid cost of the purchased pumps does not convert this economic project of the government into a corporate activity. As previously pointed out, the installment payments and interests receivable from the farmers are to be used to replenish the counterpart funds utilized in furtherance of the operation of the project.

Although evidently acknowledging the nature of the Pump Irrigation Trust Fund as a public fund, the Court of Appeals nevertheless sustained the garnishment order, on the ground that the ISU, by engaging in the private business of purchasing and selling irrigation pumps on installment basis, has waived its governmental immunity and, by implication, consented to the suit.

It is apparent that this decision of the Court of Appeals suffers from the erroneous assumption that because the State has waived its immunity, its property and funds become liable to seizure under legal process. This emphatically is not the law (*Merritt vs. Insular Government*, 34 Phil. 311).

"Even though the rule as to immunity of a state from suit is relaxed, the power of the courts ends when the judgment is rendered. Although the liability of the state has been judicially ascertained, the state is at liberty to determine for itself whether to pay the judgment or not, and execution cannot issue on a judgment against the state. Such statutes do not authorize a seizure of state property to satisfy judgments recovered, and only convey an implication that the legislature will recognize such judgment as final and make provision for the satisfaction thereof." (49 Am. Jur., sec. 104, pp. 312-320).

"Judgments against a state, in cases where it has consented to be sued, generally operate merely to liquidate and establish plaintiffs claim in the absence of express provision; otherwise they can not be enforced by processes of law; and it is for the legislature to provide for their payment in such manner as it sees fit." (59 C.J. sec. 501, p. 331; 81 C.J.S., sec.232, p. 1343).

It needs no stressing that to allow the levying under execution of the ISU funds would amount to diverting them from the purposes originally contemplated by the P.I. -U.S. Bilateral Agreement, and would amount to a disbursement without any proper appropriation as required by law.

A second infirmity of the decision under appeal originates from its ignoring the fact that the initial complaint against the Irrigation Service Unit was that it had induced the Handong Irrigation Association, Inc., to invade and occupy the land of the plaintiff Ildefonso Ortiz. The ISU liability thus arose from tort and not from contract; and it is a well-entrenched rule in this jurisdiction, embodied in Article 2180 of the Civil Code of the Philippines, that the State is liable only for torts caused by its special agents, specifically commissioned to carry out the acts complained of outside of such agent's regular duties (Merritt vs. Insular Government, *supra*; Rosete vs. Auditor General, 81 Phil. 453). There being no proof that the making of the tortious inducement was authorized, neither the State nor its funds can be made liable therefor.

WHEREFORE, the decision of the Court of Appeals under review is reversed and set aside, and the order of garnishment issued by the Sheriff of Manila on the Pump Irrigation Trust Fund in the account of the Irrigation Service Unit, with the Philippine National Bank, is hereby declared null and void. The writ of preliminary injunction heretofore issued is made permanent. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] A previous order of garnishment served on the Philippine National Bank, Naga branch, was returned unsatisfied, the trust fund in the account of defendant having been transferred to the Philippine National Bank, Manila office.

[2] The primary purpose of this (irrigation pump) project is to extend irrigation facilities through the installation of irrigation pumps to provide water to communities of small farmers whose fields depend solely upon the natural rainfall for water supply during the rainy season of the year and are left uncultivated during the dry season. (Memo. Agreement of October 7, 1953).

[3] Irrigation Service Unit.

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