

HON. MARTINIANO P. VIVO, AS (ACTING) COMMISSIONER OF IMMIGRATION, PETITIONER, VS. HON. RICARDO C. PUNO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH XXIV, LIM CHUY ...*G.R. No. L-25180. August 29, 1969*

Ponente: FERNANDO, J.

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In this proceeding for certiorari and prohibition, petitioner, the then Acting Commissioner of Immigration, Martiniano P. Vivo, would challenge on jurisdictional grounds the validity of an order of respondent Judge, the Hon. Ricardo C. Puno, in a pending prohibition case before his sala,[1] denying a motion of petitioner to dissolve a writ of preliminary injunction and to dismiss the petition observing "that the issues involved in this incident at bar refer to matters of law and of fact relating to the issues in the main cause which should be resolved after trial on the merits." [2] It is petitioner's contention that respondent Judge was without jurisdiction to entertain the afore-said prohibition case before him, instituted by private respondents in this petition to prevent the deportation of the three of them, the wife and two minor children [3] of the fourth party litigant, the husband and father. [4]

The petition alleged that on February 27, 1960 the wife and the two minor children arrived and were admitted to the Philip-pines being authorized to stay initially for only one month after arrival as non-immigrant temporary visitors, which period of temporary stay was extended, after repeated requests, to October 28, 1960. [5] It was likewise admitted in the petition that the husband and father of the other three respondents, Lim Chuy Tian, did apply for naturalization on December 2, 1960, a decision in his favor being granted on October 31, 1961 and after the expi-ration of the two year period having been allowed to take his oath of allegiance. [6]

It was on the basis of such Filipino citizenship granted respondent Lim Chuy Tian that he, his wife and two minor children filed Civil Case No. 58597 before respondent Judge maintaining that by virtue of his naturalization both his wife and minor children, had become citizens and could not be required to leave the country anymore. The prayer in such proceeding before respondent Judge was for petitioner before us, as acting Commissioner of Immigration, being enjoined and restrained from ordering the arrest and deportation of such wife and minor children. As already noted, petitioner Acting Commissioner of Immigration, as respondent in that lower court proceeding, sought the dismissal of the petition on the ground of lack of juris-diction and the dissolution of the writ of preliminary injunction theretofore issued.

Respondent Judge, in the aforesaid challenged order, denied such plea to dissolve the writ of preliminary injunction and to dismiss the petition. The matter was elevated to us in this suit for certiorari and prohibition with preliminary injunction filed on October 25, 1965. We gave due course to the petition on October 27, 1965 issuing at the same time a preliminary injunction. In the answer of private respondents, while there was no denial of the allegation that the last extension granted would allow the stay of the wife and minor children as non-immigrant temporary visitors only up to October 28, 1960, stress was laid on the naturalization of the father resulting,

according to them, in the benefits of the Revised Naturalization Act being extended to the wife and minor children who, therefore, should be deemed Filipino citizens entitled to remain in this country permanently.

The decisive question, therefore, is whether such alleged naturalization of respondent Lim Chuy Tian resulted in his wife and two minor children, the other private respondents, becoming Filipinos? A negative response is called for in the light of the controlling precedents. The naturalization of the husband did not automatically confer citizenship on the wife. Nor could the two minor children be considered naturalized as they were not within legal contemplation "dwelling in the Philippines at the time of the naturalization of the parent." [7] This petition is meritorious.

The wife, respondent Tan Soat Kiat, cannot be considered a Filipino citizen in the light of our constant ruling from *Ly Giok Ha v. Galang* [8] that marriage to a Filipino does not result in a foreign wife becoming a Filipino citizen unless she herself may be naturalized. That would require that she should have all the qualifications and none of the disqualifications under the law. *Kua Suy v. Commissioner of Immigration* [9] is squarely in point.

Neither are the two minor children entitled to the benefits of the pertinent provision of the Naturalization Act. As was held in the same *Kua Suy* decision: "As to the minor children, it is to be observed that the same section (paragraph 3) of the naturalization law extends citizenship to a foreign-born minor child 'if dwelling in the Philippines at the time of the naturalization of the parent', and, of course, 'dwelling' must necessarily be construed to mean 'lawful residence'. Since prior to the time the father of these appellees took his oath of allegiance (on 24 August 1959) the lawful period of stay of those children had already expired in 1957, and they had been already required to leave the Islands, plainly they were no longer lawfully residing therein and have no right to be considered as also naturalized. The Naturalization Act was certainly not intended to be an excuse for violations of our immigration laws." [10]

There was a reaffirmation of the above principle in *Vivo v. Cloribel*. [11] Thus: "As to foreign-born minor children, they are extended citizenship 'if dwelling in the Philippines at the time of the naturalization of the parent.' 'Dwelling' means lawful residence. Since prior to the time the father of respondents visitors was supposed to have taken his oath of citizenship (June 24, 1963), their lawful period of stay had already expired and they had been required to leave, they were no longer lawfully residing here." As a matter of fact, in another decision of the same year, *Co Pek v. Vivo*, [12] "dwelling" was identified with the concept of domicile. Thus: "Referring again to Section 15 of the Revised Naturalization Law quoted above, it is noteworthy, that a foreign-born minor child automatically becomes a Philippine citizen, if said child is 'dwelling in the Philippines at the time of the naturalization of the parent. It must be remembered that this provision confers on a person a primary right, a status, the Philippine citizenship. The term 'dwelling' used in the law could not, therefore, be referring to mere physical presence in this country. That the law must have intended none other than domicile can also be inferred from the requirement of permanent residence before foreign-born minors, who are not in the Philippines at the time of the naturalization of their parents, can acquire the unqualified status of a Filipino citizen."

WHEREFORE, this petition for certiorari and prohibition is granted, declaring null and void and setting aside the questioned order of respondent Judge, the Hon. Ricardo C. Puno, and permanently restraining him or his successor from taking cognizance of and assuming jurisdiction over said Civil Case No. 58597 pending before him. The writ of preliminary injunction issued by us on October 27, 1965 is hereby made permanent. With costs against private respondents.

Concepcion, C.J., Zaldivar, Sanchez, Castro, Capistrano, Teehankee and Barredo, JJ., concur.
Dizon, J., reserves his vote.

Makalintal, J., did not take part.
Reyes, J., is on official trip.

[1] Civil Case No. 58597 of the Court of First Instance of Manila, Annex B, Petition.

[2] Order of July 14, 1965, Annex G, Petition.

[3] Respondent wife in this petition is Tan Soat Kiat alias Chan Shuet Kit and the minor children are Lim Lily and Lim Tai Li.

[4] The husband and father of the two minor children is respondent Lim Chuy Tian.

[5] Petition, III, par. 4.

[6] Ibid, par. 7.

[7] Section 15, Commonwealth Act No. 473 as amended.

[8] 101 Phil. 459 (1957).

[9] SCRA 300 (1963).

[10] Ibid, p. 305.

[11] 18 SCRA 713, 722 (1966).

[12] 18 SCRA 954, 959-960 (1966).

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