

SECRETARY OF JUSTICE, PROVINCIAL FISCAL OF QUEZON, SPECIAL PROSECUTOR VICENTE ORENDAIN, JR., PETITIONERS, VS. THE HON. JUDGE ENRIQUE MAGLANOC, AS PRESIDING JUDGE OF BRANCH II OF...

G.R. No. L-19600. July 19, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This original action in certiorari is directed against certain orders of respondent Judge in Special Civil Action No. 6461 pending in his court.

The pertinent events are as follows:

On July 26, 1961 respondent Judge promulgated a decision in Cadastral Case No. 90, LRC Cad. Rec. No. 1516, adjudicating Lot No. 7719 (with an area of 15,505.6854), together with the improvements thereon, to the claimant Leon Faraon. The decision was subsequently amended on September 6, 1961, whereby six hundred (600) hectares of Lot No. 7719 were adjudicated to Frances Alice and Leonor Burgess, leaving to Faraon 14,905.6854 hectares.

On October 4, 1961 Leon Faraon, a Catholic priest, executed a sworn statement before Notary Public Leonardo L. Guce in an investigation conducted by the Office of the Provincial Governor of Quezon denying that he was the petitioner and claimant of Lot No. 7719 in Cadastral Case No. 90, or that he appeared, let alone gave his testimony, in that proceeding.

In view of the peculiar circumstances thus dis-closed in connection with the decision in said case, then Secretary of Justice Alejo Mabanag, acting pursuant to Section 1686 of the Revised Administrative Code, issued on December 6, 1961 Administrative Order No. 300, designating Attorneys Fernando de Leon and Vicente Orendain, Jr. of the Department of Justice as special prosecutors "to assist the Provincial Fiscal of Quezon and City Attorney of Lucena City in the prosecution of the Personnel of the Court of First Instance involved and particularly Jesus Orozco, File-mon Juntereal, Elinoy Joyas, Fidel Faraon and others for the alleged falsification of public documents, false testimony, and other offenses related to the promulgation of decisions of the Court of First Instance in Cadastral cases of Quezon covering more than 15,000 hectares of land in that province."

Accordingly, on January 3, 1962 Attorney Orendain, Jr. started the investigation pursuant to the Administrative Order. On the same day the persons named therein (respondents here) filed a petition for prohibition before respondent Judge (Special Civil Action No. 6461), alleging that:

"a. [Orendain] trataba de comenzar con la investigacion contra los aqui compare-cientes en ausencia del recurrido Fiscal Provincial, a los comienzos de la cual ellos impugnaron tanto la facultad del investigador como la legalidad y validez del procedimiento;

"b. La susodicha investigacion es improcedente, ilegal y nula, puesto que los hechos que constituyen los delitos supuestos, sobre los cuales versa la misma se encuentran sub-judice y forman cuestiones prejudiciales;

“c. Los recurridos al ordenar y practicar la precitada investigacion han obrado sin jurisdiccion, o en exceso, con grave abuso de su competencia, y en la tramitacion ordinaria del caso no existe el recurso de apelacion expedito y adecuado, mas que la presente Accion Civil Especial por avocacion y prohibicion.”

On January 4, 1962 respondent Judge issued a writ of preliminary injunction against herein petitioners, restraining them from conducting the preliminary investigation pursuant to the directive of the Secretary of Justice, and another order for them to answer the petition.

Orendain moved to set aside the orders aforesaid and upon denial of the motion came to this Court on certiorari.

The two principal grounds relied upon by herein respondents in their petition below are manifestly un-meritorious and the orders complained of, particularly the injunctive writ, constitute a grave abuse of discretion. The first of said grounds is that petitioning special prosecutors could not legally conduct the investigation in the absence of the Provincial Fiscal. No authority for this novel proposition was or has been cited. The mere fact that the special prosecutors were designated to "assist" the Provincial Fiscal does not mean that the latter must always be present at every stage of the investigation. It was held by this Court in another case: "A lawyer appointed by the Secretary of Justice, pursuant to section 1686 of the Revised Administrative Code, as amended, to assist the City Fiscal, is authorized to sign informations, make investigations and conduct prosecutions. This lawyer does not need to secure the consent of the corresponding Fiscal to start a prosecution. In fact, it is not a secret that the power in said section has often been exercised by the Department of Justice, whenever it did not see eye to eye with the Fiscal on certain matters involving offenses and/or prosecutions." (People vs. Henderson, G. R. No. L-10829-30, May 29, 1959.) If consent of the Fiscal is not required so that a prosecutor designated in the manner above described may discharge his duties, it stands to reason that the physical presence of the Fiscal is likewise not indispensable. Otherwise the purpose for which the special prosecutor has been designated can be easily defeated by an indifferent or uncooperative Fiscal.

Respondents' second point is that since a petition for reopening of the Cadastral case has been filed by the Director of Forestry and is now pending in court, the investigation to be conducted by the Fiscal would treat of matters that are sub-judice. Consequently, it is contended, a prejudicial question exists which should be resolved in the said petition before any criminal proceedings are started.

The contention is without merit. The possible criminal responsibility of respondents, as may be established upon investigation pursuant to Administrative Order No. 300, is not in issue in the petition for reopening filed by the Director of Forestry. What is alleged there is that fraud, deceit and misrepresentation had been committed by claimant-movant Leon Faraon in connection with his cadastral application. No reference whatsoever is made to the participation of respondents, who are the persons specifically fingered for investigation in the Administrative Order. The judgment that may be rendered in the cadastral case will not be conclusive as to the guilt or innocence of said respondents.

WHEREFORE, the writ prayed for is granted: the order of respondent Judge for the issuance of a writ of preliminary injunction as well as the writ itself are hereby set aside. Costs against respondents except the Judge.

Reyes, JBL, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

Concepcion, CJ., took no part.

Dizon, J., did not take part.

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