

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. GREGORIO D. MONTEJO, JUDGE OF THE COURT OF FIRST INSTANCE OF ZAMBOANGA CITY, AND LIM GO, RESPONDENTS.*G.R. No. L-23690. January 17, 1968*

Ponente: CASTRO, J.

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Before us is a petition for certiorari and mandamus with preliminary injunction by the Republic of the Philippines against Judge Gregorio D. Montejo (of the Court of First instance of Zamboanga City) and Lim Go. Pending determination of the petition on the merits, the issuance of a writ of preliminary injunction was sought, to restrain the private respondent Lim from representing himself to be, and exercising the rights or privileges of, a citizen of the Philippines. The petitioner further prays that after due hearing, the respondent judge be directed not only to approve its record on appeal filed in connection with naturalization case 157,[1] but as well to elevate it together with all pertinent records to this Court for review. On October 22, 1964 we issued the writ of preliminary injunction prayed for.

The petitioner contends that the respondent judge committed "a grave palpable and wanton abuse of discretion, in a manner amounting to lack or excess of jurisdiction" when he dismissed its appeal which was perfected on time, and that this unwarranted dismissal entitles the petitioner to the remedy of mandamus.

The antecedent facts are not complicated.

On November 23, 1960 the private respondent Lim filed a petition for naturalization with the CFI of Zamboanga City. City Attorney Pascual S. Atilano of Zamboanga City appeared for the Solicitor General when the petition was heard on December 15, 1961. On the following December 16, the respondent judge rendered judgment granting the petition.

On February 18, 1964 the private respondent moved that he be allowed to take the oath of allegiance. After due hearing on the motion, the respondent judge in his order of February 22 declared that the private respondent has met all the requirements of Republic Act 530, ordered the registration of the decision of December 16, 1961, and authorized the private respondent to take his oath, which the latter forthwith did on the same day.

On March 12, 1964 the city attorney, for the petitioner and in representation of the Solicitor General, appealed the order of February 22, 1964 on the ground that it "is contrary to law and the evidence." At the same time he asked for a first extension until April 22, 1964 to file the Government's record on appeal. He averred that he needed "more time to study, evaluate and assess the evidence [taken] during the hearing to take oath." This was opposed by the private respondent. A second extension until June 15, 1964 to file the record on appeal was thereafter granted, upon the city attorney's plea that he needed more time "to study, evaluate and assess other evidence from the National Bureau of Investigation, the Bureau of Immigration and other national agencies of government, and in the interest of justice." A third extension until July 15 was sought on May 29, 1964, which was opposed by the private respondent who decried the "apparent pattern on the part of the State to unduly delay and harass" him, as

"four months had already elapsed without the State having filed its record on appeal."

The respondent court, on June 26, 1964, warned Vicente G. Largo, a special counsel of Zamboanga City who represented the petitioner in lieu of the city attorney who was unavailable, that "if the Record on Appeal is not filed on said date [July 18, 1964] the government will be barred from filing the appeal." Instead of heeding this order, the said special counsel, on July 14, 1964, moved for another extension (the fourth) until August 4, 1964 to file the record on appeal. This motion was of course opposed by the private respondent.

On July 22, 1964 the respondent court dismissed the appeal. In its order of the same date, the court brushed aside all the reasons relied upon by the petitioner in support of its motions for extension of time to file the record on appeal as

"flimsy and unfounded, taking into consideration that for the preparation of the Record on Appeal * * * all the appellant has to do is compile the necessary pleadings appearing on the records and the same could be done not necessarily by the one who personally handled the case(s) for the government during the hearing, but by any of his representatives in the City Attorney's Office; and the period of about four (4) months is more than sufficient to do so."

The court concluded that "the State has been negligent and is deemed to have abandoned its intention to appeal."

The special counsel's motion for reconsideration was thereafter denied.

Hence the present recourse.

The issue is simple: Did the respondent court incur in grave abuse of discretion in dismissing the appeal of the Government because of its failure to file its record on appeal after it was given more than four months to do so?

Under section 3 of Rule 41 of the Rules of Court, an appeal "may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal." The period may be extended by the trial court if it appears, on the basis of justifiable reasons, that the appellant needs more time to prepare and file the record on appeal.[2]

Motions for extension of time to file a record on appeal are addressed primarily to the sound discretion of the trial court. Did the respondent court in this case exercise its discretion correctly? We hold that it did.

Ample time was afforded the petitioner to prepare and file its record on appeal. It was given three extensions covering, all told, a period of four months and ten days. The record on appeal intended to be filed is not voluminous. Its contents are limited to those relating to the appealed order of February 22, 1964, and those necessary "for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time." [3] The reasons invoked for the extensions, to our mind, demonstrate either a culpable ignorance on the part of the city attorney of Zamboanga City of the pertinent and applicable Rules of Court or a desire to harass the private respondent. "Time to study, evaluate and assess the evidence [taken] during the hearing to take oath" would normally be needed in the preparation of the brief; the gathering of "other evidence from the National Bureau of Investigation, the Bureau of Immigration and other national agencies of the government" has absolutely no relevance to the preparation of the record on appeal - by no means a formidable task - which can be done with facility even by a mere clerical assistant who is adequately trained and properly oriented.

Nowhere in the four corners of the record of this case is the slightest indication of abuse of judicial discretion which would justify this Court in interposing its powers of intervention.

ACCORDINGLY, the petition is dismissed, and the order appealed from is affirmed. The writ of preliminary

injunction heretofore issued is hereby dissolved. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

[1] "In the Matter of the Petition of Lim Go to be Admitted a Citizen of the Philippines."

[2] Moya vs. Barton, 76 Phil. 831, 832-833.

[3] Sec. 6, Rule 41, Rules of Court.

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