

HONORABLE MARCIANO ROQUE, ETC., PETITIONERS, VS. PABLO DELGADO, ET AL., RESPONDENTS.

G.R. No. L-6770. August 31, 1954

Ponente: PARAS, C.J.

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PARAS, C.J.:

On September 6, 1952, the Acting Executive Secretary issued an order for the closure of a cockpit known as "Bagong Sabungan" located in barrio Calios, municipality of Sta. Cruz, Province of Laguna, being only some 500 meters from the Seventh Day Adventist Church, in violation of Executive Order No. 318, series of 1941. On November 21, 1952, Pablo Delgado, Eugenio Zamora and Pio Manalo filed in the Court of First Instance of Laguna a petition for certiorari and prohibition, Civil Case No. 9616, against Hon. Marciano Roque as Acting Executive Secretary, Hon. M. Chipeco as Provincial Governor of Laguna, and Patricio Rebeque as Municipal Secretary of Sta. Cruz, Laguna, praying for the issuance of a writ of preliminary injunction restraining said respondents from carrying out the order of closure above mentioned. On November 22, 1952, Judge Nicasio Yatco issued the corresponding writ. On March 6, 1953, a decision was rendered in Civil Case No. 9616, dismissing the petition for certiorari and prohibition and dissolving the writ of preliminary injunction. On April 23, 1953, the petitioners in Civil Case No. 9616 filed a motion, praying that under the provision of Rule 39, section 4, of the Rules of Court, the writ of preliminary injunction issued on November 22, 1952, be restored, and on June 1, 1953, Judge Yatco granted the motion in the following order:

"Acting upon the motion filed by Atty. Amador Gomez under date of April 23, 1953 and after hearing both counsel Atty. Gomez and Assistant Provincial Fiscal Mr. Nestor Alampay on the matter, and the consideration of the facts and the circumstances surrounding the case, the Court, in consideration of Rule 39, section 4, of the Rules of Court, makes use of its discretion in ordering the suspension of the dissolution of the injunction during the pendency of the appeal of the judgment rendered by this Court in its decision of March 6, 1953, by thereby reinstating the writ of preliminary injunction pending appeal. The Court further took into consideration the importance of the case and the tense situation of the contending parties, at this stage of the proceedings. The Executive Secretary and all other authorities concerned are hereby instructed to abide by this order, made effective upon receipt hereof, for the maintenance of the status quo."

The first Assistant Solicitor General, in representation of the Acting Executive Secretary, filed an urgent motion for reconsideration dated June 3, 1953, which was denied by Judge Yatco on June 11, 1953. On June 26, 1953, Hon. Marciano Roque, Acting Executive Secretary, through the First Assistant Solicitor General, instituted in this Court the present petition for certiorari with preliminary injunction against Pablo Delgado, Eugenio Zamora, Pio Manalo and Judge Nicasio Yatco of the Court of First Instance of Laguna, for the annulment of the order of June 1, 1953, issued in Civil Case No. 9616.

It is contended for the petitioner that the respondent Judge acted with grave abuse of discretion or in excess or lack of jurisdiction, because when the order restoring the writ of preliminary injunction was issued, there was no pending appeal. It appears, however, that in the petition dated April 23, 1953, filed in Civil Case No. 9616, it was

expressly alleged that, in their projected appeal, the petitioners therein would in effect assail the correctness of the decision in said case. Section 4 of Rule 39 provides that "the trial court, however, in its discretion, when an appeal is taken from a judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party." Although this provision speaks of an appeal being taken and of the pendency of the appeal, we cannot see any difference, for all practical purposes, between the period when appeal has been taken and the period during which an appeal may be perfected, since in both cases the judgment is not final. As a matter of fact there is authority to the effect that the trial court may restore a preliminary injunction in anticipation of an appeal. (*Louisville & N. R. Co. et al. vs. United States et al.*, 227 Fed. 273.)

It is also argued for the petitioner that at the time the order of June 1, 1953, was issued by the respondent Judge, the act sought to be enjoined had already been performed, the cockpit in question having been actually closed on May 24 and 31, 1953. In answer to this argument, it may be recalled that as early as April 23, 1953, the petitioners in Civil Case No. 9616 filed a petition to suspend the decision of March 9, 1953 and to restore the preliminary injunction previously issued, which petition was not resolved until June 1, 1953, with the result that, if there was any closure, it should be deemed to be without prejudice to the action the respondent Judge would take on said petition dated April 23.

Another contention of the petitioner is that the respondent Judge was inconsistent in holding in his decision of March 6, 1953, that the location of the cockpit is in open violation of Executive Order No. 318, and in subsequently restoring the writ of preliminary injunction that would allow the continued operation of said cockpit. It is significant that, under section 4 of Rule 39, the respondent Judge is vested with the discretion to restore the preliminary injunction; and when we consider that the order of June 1, 1953, took into account "the facts and the circumstances surrounding the case," as well as "the importance of the case and the tense situation of the contending parties, at this stage of the proceedings," in addition to the fact that in his order of June 11, 1953, denying the motion for reconsideration filed by the First Assistant Solicitor General on June 3, the respondent Judge expressly stated that he acted "on the basis of the new facts and circumstances registered on record on the date of the hearing" of the petition of April 23 filed by the petitioners in Civil Case No. 9616, we are not prepared to hold that the respondent Judge had acted with grave abuse of discretion. The allegation in the herein petition that the petitioner was not notified of the hearing of the petition of April 23, is now of no moment, since the petitioner, through counsel, had filed a motion for the reconsideration of the order of June 1, 1953.

Another reason, though technical, why the present petition should be dismissed, is that although the petitioner, Hon. Marciano Roque, had ceased to hold the office in virtue of which he instituted the petition, no substitution has been made in accordance with section 18, rule 3, of the Rules of Court.

Wherefore, the petition is hereby denied, and it is so ordered without cost.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

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