

## CASTOR AGUILAR, PETITIONER, VS. ERNESTO TAN AND THE COURT OF APPEALS, RESPONDENTS.

*G.R. No. L-23600. January 30, 1970*

Ponente: SANCHEZ, J.

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### SANCHEZ, J.:

The primary object of the petitions in these two cases for certiorari is to reverse and/or nullify the June 16, 1964 decision and September 21, 1964 resolution of the Court of Appeals, it appearing that said decision and resolution would have the effect of depriving Castor Aguilar of his alleged right to operate the portorage service at the Manila International Airport and vesting it in respondent Ernesto Tan.[1]

The cases have their roots in Civil Case No. 2190-P of the Court of First Instance of Rizal, entitled "Ernesto Tan, Plaintiff, versus Urbano B. Caldoza, et al., Defendants, Celso Gazzingan, Intervenor", for mandamus to compel defendants to allow plaintiff to resume portorage service at the Manila International Airport. The judgment of the Court of First Instance of Rizal of March 31, 1964 dismissed plaintiff's mandamus suit and dissolved the writ of preliminary injunction theretofore issued. Ernesto Tan took steps to appeal to the Court of Appeals.

Meanwhile, plaintiff Ernesto Tan, in a motion before the court of first instance, sought to stop enforcement of the decision and to maintain the status quo under the dissolved injunction. The court, on April 27, 1964, ruled out the motion. On April 29, 1964, the court rejected the motion for reconsideration and directed Tan and/or his agents, workers or laborers "to refrain or cease from operating the portorage service in the Manila International Airport immediately."

Parenthetically, Castor Aguilar (petitioner herein in L-23600) was afterwards placed in the operation of the portorage service.

Ernesto Tan then went to the Court of Appeals on certiorari and prohibition with prayer for a writ of preliminary injunction.[2]

On June 16, 1964, without first giving due course to the petition and without as much as giving notice of Tan's petition to herein petitioners, the Court of Appeals rendered judgment, viz: "WHEREFORE, the instant petition is hereby granted, with orders for respondent court to give due course to petitioner's appeal from its adverse decision dated March 31, 1964; desist from carrying out its order of April 7, 1964;[3] and the Civil Aeronautics Administration, or Aguilar or any other party acting in his stead, to desist from interfering or molesting petitioner [Ernesto Tan] who is hereby understood to have remained all the time as concessionaire of the Manila International Airport, with the costs against respondents, except respondent court."

By way of follow-up to the foregoing judgment, Ernesto Tan moved in the Court of Appeals for a directive to be issued against the judge of first instance and herein petitioners to comply with the terms thereof. Simultaneously, Tan filed a similar motion in the Court of First Instance of Rizal praying for an order to direct the Director of the Civil Aeronautics Administration (Director) to comply with the decision of the Court of Appeals.[4]

Aguilar and the Director, for their part, moved to set aside the June 16, 1964 appellate court's decision, the former on June 20, 1964, and the latter on June 22, 1964. Their common ground is lack of jurisdiction over their persons as they had no notice of Tan's petition.

On June 27, 1964, the Court of Appeals promulgated the following resolution:

"The petition for the issuance of a writ of certiorari, prohibition and mandatory injunction filed by Ernesto Tan in the above-captioned case being an offshoot or concomitant to Civil Case No. 2190-P pending in respondent Court of First Instance, this Court of Appeals, in aid of its jurisdiction, was in a position to pass upon the said petition ex parte - as it did.

However, considering the importance of the case and to enable the respondents to be heard, upon motion they are hereby ordered to answer the petition within ten (10) days from receipt of copy of this order. Upon petitioner's filing a bond of P1,000.00, respondent court is hereby ordered to suspend further proceedings in Civil Case No. 2190-P.

In the interim, this Court's decision promulgated June 16, 1964, is being held in abeyance."

Pursuant to the foregoing resolution, summons were served on Aguilar on July 1, 1964 and the Director on July 2, 1964.

The Director and Aguilar, instead of filing their respective answers, went to this Court on an original petition for certiorari and prohibition with prayer for preliminary injunction ("Vicente C. Rivera, Jr., in his capacity as Director of Civil Aviation, Petitioner, versus Ernesto Tan and the Court of Appeals, Respond-ents", L-23164; "Castor Aguilar, Petitioner, versus Ernesto Tan and the Court of Appeals, Respondents", L-23165). Both petitions sought to annul the June 16, 1964 decision of the Court of Appeals and also its June 27, 1964 resolution.

This Court, in a minute resolution of July 13, 1964 issued in both cases (L-23164 and L-23165), resolved to dismiss the two petitions for being premature since petitioners "may appeal after the resolution by the Court of Appeals."

Back to the Court of Appeals, Aguilar and the Director there filed their respective answers to Tan's petition.

Issues having been joined and following oral arguments on the merits, the Court of Appeals, on September 21, 1964, issued an extended resolution, the dispositive part of which reads: "After pronouncing that our decision promulgated June 16, 1964, was simply intended to be held in abeyance, the same stands with the instant resolution incorporated therein as part hereof."

Hence, this appeal by certiorari. As prayed for, we issued a cease-and-desist order on November 7, 1964 in L-23600 (Castor Aguilar, Petitioner, versus Ernesto Tan and the Court of Appeals, Respondents).

1. Petitioners assail the June 16, 1964 decision of the Court of Appeals. Petitioners' claim is that at the time that decision was rendered, the court had not yet acquired jurisdiction over their persons. They submit that the decision was void for lack of due process.

Beyond question is the fact that the June 16, 1964 decision was rendered by the Court of Appeals without giving notice to herein petitioners of Tan's petition therein and without giving them an opportunity to be heard. Had the proceedings stopped there, unquestionably, that decision would have to be stricken down as null and void. But petitioners complained. They separately moved to set aside that decision. They stressed lack of due process. The Court of Appeals listened to their plea. Thus, on June 27, 1964, the appellate court resolved to hold in abeyance its June 16, 1964 decision, and ordered respondents (petitioners herein) to file their answers thereto. Summonses were served upon the Director and Aguilar. Thereafter, they filed their respective answers. The case was heard

before the appellate court on the merits. The parties argued orally their respective causes thereat.

There is then reason to say that the situation here presented comes within the coverage of the rule that "[w]hat the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard." [5] We have said that where a party was given a chance to be heard with respect to his motion for reconsideration there is sufficient compliance with the requirements of due process. [6] Such is the case here.

Considering then that the decision of June 16, 1964 was suspended, that meanwhile herein petitioners were given a chance to traverse the averments of the petition, have had full opportunity to speak and explain, and did actually speak and explain their side of the case, we feel that the fundamental safeguards of due process were not denied petitioners. Where previously there was error, subsequently such error was corrected. Originally victims of hasty justice, petitioners were subsequently given fair treatment. The vice existed; but it was cured.

2. Now to the core of the case. The judgment of the trial court dissolved the preliminary injunctive writ which gave respondent Tan the right to operate the portage service. The appellate court's directive is that such judgment should not be enforced. It is the Court of Appeals' view that Tan's appeal from the adverse decision "suspended all proceedings to oust him until such appeal shall have been finally disposed of by the appellate court."

The rule that an appeal does not stay execution of the judgment decreeing the dissolution of a preliminary injunction has a history in this country which dates back to 1902. That was the ruling of this Court in *Watson & Co., Limited vs. Enri-quez* (November 13, 1902), 1 Phil. 480, 481-482, closely followed on November 22 of the same year by *Sitia Teco vs. Ventura*, 1 Phil. 497, 499. [7]

3. Whether or not there was grave abuse of discretion on the part of the Court of Appeals in enjoining the lower court from enforcing its decision dissolving the injunctive writ is the next problem we are to grapple with.

Deeply ingrained in jurisprudence is the principle that the writs of certiorari and prohibition are granted "to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction." [8] As we have said in *Albert vs. Court of First Instance of Manila (Branch VI)*, L-26364, May 29, 1968, 23 SCRA 948, 965, "the office of the writ of certiorari has been reduced to the correction of defects of jurisdiction solely and cannot legally be used for any other purpose." [9]

Let us now look into the reasons of the appellate court for granting the writs.

The resolution of September 21, 1964, which was issued after hearing both parties, confirmed the conclusion reached in the June 16, 1964 decision that the writs prayed for should be granted, thus:

"Considering the attendant circumstances, in view of the appeal filed by petitioners from the trial court's decision arid in view of the further circumstance that petitioner has, for the last three years, been the incumbent server of the arrastre service in said international airport, it would seem the better part of judgment to preserve that status in view of the appeal they have interposed from the trial court's decision. Obviously, to rule otherwise, that is by allowing respondent arrastre group to take over, would be tantamount to disturbing the present order of status quo and evidently pre-judge the case." [10]

The most that can be inferred from the foregoing resolution is that in dissolving the writ of preliminary mandatory injunction, the trial judge could have erroneously sized up the situation. Intimation of abuse of discretion, much less grave abuse of discretion, there is none. Not every error a court commits in the exercise of its jurisdiction may be correctible by certiorari. Errors of judgment may be reviewed only by appeal. [11]

That the trial judge did not abuse his discretion in denying Tan's bid for status quo pending appeal, may readily be

shown from a reading of his order of April 27, 1964, thus –

"As to the petition for preliminary injunction, we can not see our way clear in granting the same in view of our findings that the plaintiff has not acquired any right under the bidding of November 28, 1960, which has been set aside by the Executive Secretary by authority of the President. In our decision, we stated:

'We have carefully weighed the reasons of Undersecretary Contreras, the Auditor General and the Executive Secretary in setting aside the bidding of November 28, 1960, and we are not prepared to hold, as we find no sufficient and valid reason therefor, that said officers in setting aside the bidding, acted arbitrarily or with abuse of discretion. As a matter of fact, the record fails to show that the aforesaid officials had exceeded their authority in disapproving and/or setting at naught the bidding. It is our sense that in so doing they were merely guided by their sound judgment and honest opinion. They acted with fairness and justice to protect public interest.'

We are loath to make an order modifying the decision heretofore rendered, or restoring or granting the injunction prayed for during the pendency of the appeal." [12]

More emphatic is the trial judge's statement in his order of April 29, 1964 denying Tan's second motion aimed at eliminating the dissolution of the preliminary injunction, as follows:

"After a careful consideration of said motion for reconsideration and the opposition thereto, it is our conviction that the plaintiff has no more legal right to continue operating the portage service nor has he shown any special reason satisfactory to the court to reconsider its decision dissolving the writ of preliminary mandatory injunction dated August 29, 1961." [13]

An order dissolving a writ of preliminary injunction issued before decision, we must say, stands on a footing different from that decreed in the decision itself. In the former, the possibility of irreparable injury which could visit petitioner pending hearing would be a potent deterrent against dissolution. The court at that time did not yet have a full grasp of the situation. But after the facts are known and the decision is rendered, a strong presumption of the correctness and validity of the judge's directive arises. [14] So that when the court in its decision orders dissolution of the preliminary injunction, weighty reasons must be advanced to overturn such order. Because discretion exercised by the trial court should normally be upheld. That court is at home, so to speak, with the record of the proceedings.

We, accordingly, rule that there was no abuse of discretion on the part of the trial court which would call for the exercise of the supervisory powers of the Court Petitioner, Appeals.

FOR THE REASONS GIVEN, the judgment of the Court of Appeals of June 16, 1964 and its resolution of September 21, 1964 in CA-G.R. No. 33943-R, entitled "Ernesto Tan, Petitioner, versus Hon. Judge Angel Mojica, etc., et al., Respondents", are hereby reversed, and the writ of preliminary injunction heretofore issued in L-23600 is hereby made permanent.

Costs against respondent Ernesto Tan.

### **SO ORDERED.**

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

Villamor, J., did not take part.

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[1] CA-G.R. No. 33943-R, entitled "Ernesto Tan, Petitioner, versus Hon. Judge Angel Mojica etc., et al.,

Respondents."

[2] CA-G.R. No. 33943-R mentioned in footnote 1.

[3] Should be April 29, 1964.

[4] Rollo of L-23631, p. 46.

[5] De Borja vs. Tan, 93 Phil. 167, 171, emphasis supplied; Embate vs. Penolio, 93 Phil. 782, 785.

[6] De Borja vs. Tan, *supra*; Llanto vs. Dimaporo, L-21905, March 31, 1966, 16 SCRA 599, 603-604.

[7] See also: Dimaunahan vs. Aranas, 74 Phil. 455, 459-460.

[8] Estrada vs. Sto. Domingo, L-30570, July 29, 1969, 28 SCRA 890, 915, citing case.

[9] Citing Herrera vs. Barretto, 25 Phil. 245, 271.

[10] Rollo of L-23600, p. 62; Rollo of L-23631, p. 59.

[11] Palma vs. Q. & S., Inc., L-20366, May 19, 1966, 17 SCRA 97, 100.

[12] Rollo of L-23631, p. 26.

[13] Rollo of L-23631, p. 27.

[14] *Virginian Railway Company vs. U.S.*, 71 L. ed. 463, 471.

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