

PASTOR ACIBO, ET AL., PETITIONERS, VS. HON. HIGINIO MACADAEG, MARIA PAZ MENDOZA-GUAZON, AND SHERIFF OF MANILA, RESPONDENTS.

G.R. No. L-19701. June 30, 1964

Ponente: REGALA, J.

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REGALA, J.:

This is an action for certiorari and prohibition to set aside a demolition order issued by the Court of First Instance of Manila in a suit for unlawful detainer and to compel the judge thereof to approve the supersedeas bonds filed by the petitioners.

It appears that in the Municipal Court (now the City Court) of Manila, Dr. Maria Paz Mendoza-Guazon filed an ejectment suit against 56 persons, 31 of whom are the petitioners, alleging that the latter were unlawfully withholding from her the possession of a piece of land in Paco, Manila. After hearing, the court gave judgment for the plaintiff Mendoza-Guazon and ordered the defendants to vacate the premises and pay back rents in various amounts and corresponding to various periods ending August, 1961 and the rents from September, 1961 up to the time the defendants actually, left the premises.

The defendants appealed to the Court of First Instance of Manila, but, at the instance of Dr. Mendoza-Guazon, the court ordered the immediate execution of the appealed decision on the ground that the defendants failed to file a supersedeas bond as required in Section 8 of Rule 72 (now Section 8, Rule 70, of the Revised Rules of Court).

On March 20, 1962, the defendants asked the court to give them ten days within which to file a supersedeas bond and to suspend its order of execution in the meantime. Dr. Mendoza-Guazon opposed the motion and on March 27 asked for an order of demolition to clear the property of houses built by the tenants which, she averred, the latter refused to remove. In the meantime and without waiting for the approval of their motion, 31 of the defendants, who are petitioners in this case, filed supersedeas bonds and asked the court to stay the execution of the decision under appeal.

Acting on the various motions of the parties, the lower court, on April 14, 1962, denied defendants' motion to suspend execution, disapproved the bonds filed by some of them and ordered the demolition of their houses.

The writ of demolition was issued on April 14, but the sheriff did not carry it out at once. Instead he gave the defendants-tenants five days, that is, until April 22, within which to clear the premises. And when he was informed of the filing of the present petition for certiorari and prohibition in this Court, the sheriff gave the tenants three more days to secure a writ of injunction but when none was issued by this Court he proceeded with the demolition of houses on April 26. This Court issued a writ of preliminary injunction only on May 5, so that, upon representation of Dr. Mendoza-Guazon that the decision of the Municipal Court had already been executed, the injunction was dissolved.

In this action, the respondent judge of the Court of First Instance is said to have acted in excess of jurisdiction and

with grave abuse of discretion on two counts, first, in refusing to suspend the execution of the appealed decision and approve the bonds of petitioners and, second, in allegedly denying petitioners reasonable time to remove their houses.

With respect to the first ground, Section 8- of Rule 70 provides in part as follows:

"Immediate execution of judgment. How to stay same.—If judgment is rendered against the defendant, execution shall issue immediately unless an appeal has been perfected and the defendant to stay execution files a sufficient bond, approved by the justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist.

Under this rule, when the judgment is in favor of the plaintiff, it must be executed immediately in order to prevent further damages to him arising from the loss of possession. However, the defendant may stay execution (a) by perfecting an appeal and filing a supersedeas bond; and (b) by paying from time to time either to the plaintiff or to the Court of First Instance the reasonable value of the use and occupation of the property as may be fixed by the justice of the peace court in its judgment. This rule is mandatory, the only exception being when the delay is due to fraud, accident or mistake or excusable negligence. (*Sison vs. Bayona, et al.*, 109 Phil., 557; *Moran*, 3 Comments on Rules of Court 298-299 [1963])

As already stated, the petitioners, who were defendants in the ejectment suit, appealed to the Court of First Instance without filing a supersedeas bond and without paying the current rents. Therefore, in accordance with the rule just mentioned, the lower court ordered the immediate execution of the decision of the Municipal Court. Indeed, it is said that the failure of the defendant to file a supersedeas bond or to deposit on time the monthly reasonable value of the use and occupation of the property or the rents fixed in the appealed judgment is a ground for outright execution of such judgment, the duty of the court in this respect being ministerial and imperative. (See *Moran*, 3 Comments on the Rules of Court 303-304 [1963])

Petitioners rely on *Igama vs. Soria*, 42 Phil., 11 and *Tolentino vs. Court of First Instance of Manila*, 75 Phil. 282, to support their claim that the lower court, in the exercise of its discretion, should have suspended the order of execution it had earlier issued and that it should have approved the bonds they later filed.

The contention lacks merit. The cases cited are authorities for the view that the Court of First Instance may allow the filing of the supersedeas bond (which should properly be filed in the inferior court) if the judgment is not yet executed and, to this end, it has the discretion to allow a reasonable time within which the supersedeas bond may be filed. To be sure, the discretion spoken of is not discretion alone to allow a supersedeas bond, otherwise it would be a duty. It is a discretion to grant or to deny. As stated in a later case, this Court never ruled in the *Igama* case that "refusal of the court to grant time (to file a supersedeas bond) constitutes in itself unwarranted exercise of power. He (the judge) has discretion to grant or to deny." (*Tagulimot vs. Makalintal and Tanangunan*, 85 Phil. 40) Here, the petitioners, as defendants in the ejectment case, did not ask the Court of First Instance for time to file a bond. On the contrary, they opposed the motion for immediate execution on the ground that under the Rules of Court, a supersedeas bond may only be required by the Municipal Court because Section 8 of Rule 72 (now Rule 70) speaks of "a sufficient bond, approved by the justice of the peace or municipal court." It was only after their opposition had been overruled and a writ of execution had been issued that they asked the court to suspend its order of execution on the promise that they would soon file a bond.

There is one other reason justifying immediate execution. It is that petitioners did not make deposits for current

rents. It is true that the bonds filed by them covered both the back rents and the current rents as of March, 1962, but it is now settled that the supersedeas bond answers only for rents or damages down to the time of the perfection of the appeal and not for the future rents or damages arising during the appeal, which rents are guaranteed by periodic cash deposits. (See Moran, 3 Comments on the Rules of Court 300 [1983]) The Court of First Instance has no authority to accept a bond in lieu of cash deposits for future rents (See Moran, 3 Comments on the Rules of Court 304-305 [1963]) '

The other ground relied upon by petitioners is based on Section 13, Rule 39 (now Sec. 14, Rule 39) of the Rules of Court which states:

"Removal of improvements on property subject of execution.— When the property subject of the execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court."

Petitioners claim that, contrary to this provision, the lower court ordered their houses demolished from the premises without hearing them, without serving their counsel with a copy of the demolition order and without giving them reasonable time to move out voluntarily.

The facts do not bear out the claim. Dr. Mendoza— Guazon's motion for a special writ of demolition and petitioners' opposition were set for hearing on March 31, 1962. On the appointed day, however, the court announced through the clerk that all motions set for that day would be deemed submitted for resolution, obviously because it saw no need for oral arguments. We see no denial of due process here. It was enough that the parties were able to make known to the court their positions by means of the motion and the opposition thereto. Oral Argument is never a part of due process.

Neither was there lack of service of the demolition order on petitioners' counsel. Service was perhaps made after the writ of demolition had been carried out by the sheriff. But then it was not necessary that service of the order should come first before service of the writ of demolition. As Moran states in his book:

"With regard to the appealability of an order of execution of a final judgment the settled rule is that ordinarily such an order is not appealable because otherwise a case would never end, for as often as an order of execution of judgment is made, it could be objected to and the case brought for review." (2 Comments on the Rules of Court 250 [1963])

Since the order of demolition was not appealable, there was no point in waiting until that order could be served on the adverse parties before issuing the corresponding writ of demolition.

With regard to the claim that petitioners were not given reasonable time to remove their houses, suffice it to say that although the writ of demolition was served on them on April 17, 1962, it was not actually carried out until April 26. We think that was enough time for petitioners to do as ordered.

Wherefore, the petition for certiorari and prohibition is hereby denied, without pronouncement as to costs.

Bengzon, C. J. Padilla, Bautista Angelo, Paredes, and Makalintal, JJ. concur.
Concepcion and Reyes, J. B. L., JJ., concur in the result.

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