

**NG HUA TO AND HEIRS OF ONG CHO, PETITIONERS-APPELLANTS,
VS. EMILIO GALANG, ETC., RESPONDENT-APPELLEE.***G.R. No. L-19140. February 29, 1964*

Ponente: BAUTISTA ANGELO, J.

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Ong Cho filed on behalf of Ng Hua To, an overstaying Chinese temporary visitor, with the Bureau of Immigration a cash bond in the amount of P2,000.00 wherein he undertook, among other things, that Ng Hua To shall not be employed or engaged in any business enterprise or other undertaking in the Philippines incompatible with his status without the written consent previously granted by the Commissioner of Immigration. After an investigation conducted by the Office of the Commissioner, it was found that Ng Hua To has been employed as manager of an iron grill shop operated under the name of "Gun Suat Factory", situated at 1426 Soler, Manila, in violation of the aforementioned condition of the bond. Consequently, on October 28, 1960, the Commissioner of Immigration ordered the bond confiscated in favor of the government and directed Ng Hua To to file a new cash bond of P2,000.00 and a surety bond of P8,000.00 within three days from receipt of the order, as otherwise his arrest and detention would be ordered.

Instead of complying with the order, Ng Hua To and the heirs of bondsman Ong Cho, who in the meanwhile died on November 29, 1952, moved for reconsideration of the order assailing the authority of the Commissioner to confiscate the bond, and this motion having been denied, they instituted the present petition for prohibition before the Court of First Instance of Manila wherein they disputed the power of the Commissioner to order the confiscation of the bond, in the same manner as they did before, on the following grounds: (a) it is personal in character and was extinguished by the death of Ong Cho, notice of which was given to the Bureau of Immigration in 1952; (b) even if the bond was not extinguished, it cannot be confiscated without proceeding against the estate of the deceased Ong Cho; (c) the cash bond was the subject of an extrajudicial partition among the heirs of Ong Cho; and (d) such bond is void since its form was not approved in accordance with Section 3 of Commonwealth Act No. 613. As an additional ground, petitioners alleged that the threatened arrest of Ng Hua To is unconstitutional since only a judge could issue a warrant of arrest under Section 1, paragraph 3, of Article III, of the Constitution. After due hearing, the court a quo found the petition without merit, and so it dismissed it with costs against petitioners. Hence the present appeal.

The cash bond executed by bondsman Ong Cho in behalf of petitioner Ng Hua To contains, among others, the following stipulations:

(g) That the undersigned agrees that during the temporary stay of NG HUA TO he/she shall not acquire any property nor make any investment nor be employed nor engage in any business enterprise or whatever undertaking in the Philippines, without the written consent for any such purpose previously granted by the Commissioner of Immigration; * * *

"That breach of any of the conditions abovementioned shall entitle the Commissioner of Immigration to declare this cash bond or part thereof forfeited, but shall not release the undersigned from the obligation to produce said NG HUA TO for such action as may be taken against him/her. No modification of this agreement shall be valid and effective unless made in writing and signed by the Commissioner of Immigration or his duly authorized representative."

Clearly, the bondsman undertook that Ng Hua To during his stay in the Philippines shall not be employed nor engaged in any business enterprise or any other undertaking without the written consent previously granted by the Commissioner of Immigration, and that in case of breach of such condition, or any other condition in the contract for that matter, the Commissioner may declare the bond forfeited in favor of the government. It is likewise clear that such confiscation, if declared, will not have the effect of releasing the bondsman from his obligation to produce Ng Hua To if and when his commitment is required by the Commissioner. Here it was found, after due investigation, that such condition was violated, and acting on the authority given him under the bond, the Commissioner of Immigration ordered the confiscation of the bond and the recommitment of Ng Hua To. The Commissioner, therefore, did not violate any legal provision, nor act with abuse of discretion, when he ordered the confiscation of the bond of P2,000.00, even if he required the posting of a surety bond of P8,000.00 as a condition of his further continuance in the Philippines, as averred by petitioners in this appeal.

The fact that when the order of confiscation was issued the bondsman Ong Cho had already died cannot have the effect of defeating the purpose of the bond. Such commitment has bound the bondsman to the purpose thereof which is to allow Ng Hua To to remain in the Philippines as a temporary visitor as long as he complies with the conditions therein stipulated, and that commitment continues regardless of the status of the bondsman. That commitment can only be released after its purpose has been accomplished, not before. To hold otherwise would be to subject the bond to a contingency not intended by the parties.

It is not correct to state that petitioners had no other plain, speedy and adequate remedy in the ordinary course of law before the institution of the present civil action, for they could have filed a new bond as required, and if they are not agreeable to it, they could have appealed from the order to the Secretary of Justice who has direct control and supervision over the Commissioner of Immigration. Having failed to avail of this remedy, petitioners have not exhausted all the administrative remedies available to them, thus rendering: their petition defective and insufficient.

"There is another reason why the petition should be dismissed. This is the fact that petitioner-appellant has not exhausted all the administrative remedies which he is entitled to pursue. The Commissioner of Immigration is directly under the control and supervision of the Secretary of Justice, and if it is believed that the said Commissioner has committed a grave abuse of discretion, as claimed in the case at bar, the remedy should have been for the petitioner-appellant to appeal to the Secretary of Justice for the reversal or review of the confiscation of the bond in question. Having failed to avail of this remedy, we must declare the petition for certiorari prematurely brought in accordance with principles and doctrines heretofore followed by us. (*Montes vs. Civil Service Board of Appeals, et al.*, 101 Phil., 490; *Sampaguita Shoe and Slipper Factory vs. Commissioner of Customs, et al.*, 102 Phil., 850; *Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals*, 53 Off. Gaz., No. 10, p. 3065.)" (*Antero Soriano, Jr. vs. Hon. Emilio L. Galang*, 107 Phil., 1026.)

Because the Commissioner of Immigration has stated in his order that if the new bonds required to be put up by Ng Hua To are not met he would order his arrest preparatory to his deportation, petitioners now dispute the authority of the Commissioner to order such arrest upon the theory that such power is only vested in a judge by Section 1, paragraph 3, Article III of our Constitution, thereby concluding that the pertinent provision of Commonwealth Act No. 613, as amended, which gives such authority to the Commissioner is unconstitutional.

This argument overlooks the fact that the stay of appellant Ng Hua To as temporary visitor is subject to certain contractual stipulations as contained in the cash bond put up by him, among them, that in case of breach the Commissioner may require the recommitment of the person in whose favor the bond has been filed. The Commissioner did nothing but to enforce such condition. Such a step is necessary to enable the Commissioner to prepare the ground for his deportation under Section 37 (a) of Commonwealth Act 613. A contrary interpretation would render such power nugatory to the detriment of the State.

Wherefore, the order appealed from is affirmed, with costs against appellants.

Bengzon, C. J., Padilla, Labrador, Concepción, Reyes, J. B. L. Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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