

CALIXTO DUQUE, FLORENTINO SELGA ALBERTO RAMOS, MANUEL BENAFE CLARO LIZARDO AND THE SPOUSES AND JOSE COCHINGYAN, SR., PETITIONERS, VS. THE COURT OF FIRST INSTANCE OF MANILA, BRAN...

G. R. Nos. L-18359 and L-23754. March 26, 1965

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In the first case, petitioners Calixto Duque, et al., have sought a review by certiorari of the refusal of the respondent Court of First Instance of Manila to suspend Ramon Saura as receiver in its Civil Case No. 34998.

Lorenzo Camins seeks, in G.R. No. L-23754, a writ of certiorari against certain orders of the Court of First Instance of Manila (issued in the same civil case No. 34998) appointing Macario Ofilada, Clerk of the Court of First Instance, the permanent receiver of World War Veterans Enterprises, Inc., and refusing" to appoint the Philipines Veterans Bank as such receiver.

Said Case No. 34998, entitled "Pilar Normandy, Lorenzo Camins, et al., vs. Calixto Duque, et al." and "Jose and Susana Cochingyan, Intervenor", was a derivative suit filed by minority stockholders of the World War Veterans enterprises, Inc., seeking to annul and set aside certain agreements entered into by the directors of the corporation and Jose and Susana Cochingyan.

By order of September 6, 1960, the Court of First Instance of Manila had, upon motion, appointed one Ramon E. Saura as receiver of the properties of the corporation. On January 31, 1961, defendants and intervenors filed charges against the receiver Saura and sought his suspension, praying further that a co-receiver be appointed. This motion was denied; whereupon, the movants, Calixto Duque, et al., resorted to the Supreme Court, alleging grave abuse of discretion amounting to excess of jurisdiction (G.R. No. L-18359). On April 29, 1961, this Supreme Court issued a resolution giving the petition due course, and stated therein-

"Without in any way prejudging the question involved in the motion for the removal of the receiver still pending in the respondent court, it is aim the opinion of this Court that, for the proper protection of the rights of petitioners, a second receiver should be appointed. Therefore, Macario Ofilada, Clerk of the Court of First Instance of Manila, is hereby appointed second receiver and may qualify us such upon filing and approval of a bond equal in the amount to the one filed by receiver Ramon Saura,However, inasmuch Oft mid clerk of Court has considerable official dudes to perform, his appointment hereby made is provisional and shall stand only until such time as this Court appoints another in his stead."

This case became moot when on May 28, 1964 receiver Ramon E. Saura resigned, and his resignation was accepted by the court below, which also fixed a fee of P10.000.00 for his services. Thereupon, defendants and intervenors asked that Macario Ofilada be made permanent receiver. Plaintiff Camins, on the other hand, opposed such appointment and. sought Ofilada's discharge on various grounds, primarily partiality to the other side. Camins proposed that the Philipines Veterans Bank be appointed receiver instead of Ofilada.

On September 24, 1964, the respondent Judge, Hon. Francisco Area, rejected the proposal to appoint the Bank as receiver, stating—

"2. Petitioner Lorenzo B. Camins through counsel filed on August 22, 1964 a petition for the substitution of the first receiver, the discharge of the second receiver, and the appointment of the Philippine Veterans Bank as receiver in place of the First Receiver, Ramon E. Saura, since discharged.

"The Court does not consider well taken the reasons alleged by Camitin in Ma petition and the Court believes that only one receiver is sufficient and will entail less expense. Consequently, the motion to appoint a substitute receiver in lieu of Saura is hereby denied and, inasmuch as the Court sees no valid and sufficient reason to discharge Macario M. Ofilada as receiver, the motion to remove him is hereby likewise denied."

Two days later, by order dated September 26, the court below granted the motion to appoint Macario Ofilada permanent receiver upon filing of a bond of P10,000.00.

Failing to obtain a reconsideration, plaintiffs Camins and Normandy (the latter died during the pendency of the proceedings) resorted to this Court for a writ of certiorari, asking that, for the reasons set forth in the petition, the orders of September 24, and 26, 1964 be annulled: that the Philippine Veterans Bank be appointed sole receiver; and that the lower court be ordered to discharge Macario Ofilada as receiver.

A due regard for the facts appearing of record convinces, us that the petition should be denied. The appointment and discharge of receivers are matters primarily addressed to, and resting largely on, the discretion of the trial court, not being a matter of strict right, and a reviewing court will not interfere with the exercise of such discretion unless convinced that the same has been abused (*Samson vs. Araneta*, 64 Phil. 549; *Lama vs. Apacible*, 79 Phil. 68; *De la Cruz, vs. Guinto*, 79 Phil. 304; *Valiente vs. Court of First Instance of Tarlac*, 80 Phil 415; *Tecson vs. Macadaeg*, 88 Phil. 605; *Medel vs. de Aquino*, 92 Phil. 895). This is all the more true of the trial court's choice between candidates for Receivership proposed by the contending parties, who have been fully heard in the matter.

The petitioner stresses that in 1961 this Court, in Case G.R. No. L-18359, has taken cognizance of the fact that as a clerk of Court Mr. Ofilada had considerable official duties to perform, and, for that reason, appointed him only as temporary receiver. Such action does not preclude a more accurate appraisal by the trial court three years later, whether or not the official duties of Mr. Ofilada, as the Clerk of that same court, impaired his efficient discharge of the functions of a receiver, taking into account his actuations as temporary receiver from 1961 to 1964; and we see no evidence that in concluding that Mr. Ofilada could well perform the work of a permanent receiver, despite his official duties, the lower court's decision was so arbitrary and capricious a determination as to warrant intervention of the appellate court.

The orders complained of import also a rejection of the charges of incompetence and partiality levelled at receiver Ofilada. It does not appear, however, that such action of the court was arbitrary, since the charges were fully discussed by the parties and considered by the Court. Assuming, for the sake of argument, that the conclusion made by the court below was erroneous, that per se does not render its appraisal of the facts adduced before it and grave abuse of discretion that would warrant the grant of a writ of certiorari (*Abad Santos vs. Province of Tarlac*, 67 Phil. 480; *Tan vs. People* 88 Phil. 609).

With regard to the impending retirement of Mr. Ofilada in March 1965; his nomination as judge of the Court of First Instance; and the nomination by respondents, of former General Dionisio Ojeda, brought to light during the hearing of this case, as well as the propriety of appointing a neutral party as a receiver, it is not shown that these developments were called to the lower court's attention. It is not opinion that the same should be first presented to the respondent Judge to give him due opportunity to consider and weigh them, and then decide whether such factors would justify a change of receiver.

WHEREFORE, the petition for a writ of certiorari in G. R. No. 23754 is denied, with costs against petitioner Lorenzo B. Gamins.

The former receiver, Ramon E. Saura, having resigned, and his resignation having been accepted, Case G.R. No. L-18359 has become academic. The case is, therefore, dismissed, without costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Paredez, Dizon, Regala, Makalintal, Bengzon J.P. and Zaldivar, JJ., concur.

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