

**NATIONAL WATERWORKS AND SEWERAGE AUTHORITY,
PETITIONER, VS. HON. ALFREDO CATOLICO, PRESIDING JUDGE,
CFI-MISAMIS OCCIDENTAL, BRANCH I, PROVINCE OF MISAMIS
OCCIDENTAL; SEBASTIAN L...**

G.R. No. L-21705. April 27, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

These are interrelated cases. G. R. No. L-21705 is a petition for certiorari, with preliminary injunction, to set aside an order of the Court of First Instance of Misamis Occidental, directing the execution of its decision in Civil Case No. 2281 thereof, entitled "The Province of Misamis Occidental vs. National Waterworks and Sewerage Authority" - hereinafter referred to as NAWASA - during the pendency of the appeal taken by the latter from said decision, whereas G. R. No. L-24327 is the aforementioned appeal.

Said case No. 2281 was instituted by the Province of Misamis Occidental - hereinafter referred to as the Province - on July 13, 1960, to recover from the NAWASA the possession, ad-ministration, operation and control of the Misamis Waterworks System and the Orquieta Waterworks System - hereafter referred to collectively as the Systems - which had been taken over by the NAWASA since 1956, acting in pursuance of Republic Act No. 1383. In due course, said court - presided over by Hon. Al-fredo Catolico, Judge, one of the respondents in L-21705 - rendered judgment, on April 30, 1963, declaring that the Pro-vince is the absolute owner of said Systems and ordering the NAWASA to return the same to the Province, to refund thereto the sum of P13,855.44 which the Province had delivered to the NAWASA when it took over the Systems, to render - within thirty (30) days from notice of said decision - an accounting of the income realized by the Systems since April 1956, or, in defect of such accounting, to pay to the Province the sum of P7,823.76 monthly, the average monthly income of the two (2) Systems, from April, 1956, to the date of the return thereof to the Province, as well as to pay thereto P50,000, as temperate, punitive and exemplary damages, and P5,000 by way of attorney's fees, in addition to the costs.

On May 3, 1963, copy of the decision was sent by regis-tered mail to counsel for the NAWASA, in Manila. On May 8, the Province filed a motion, which was set for hearing on May 25, for the execution of said decision. Copy of this motion was received, on May 13, by NAWASA's counsel, who, on May 14, prepared an opposition thereto upon the ground that he had not, as yet, received copy of the decision. Invoking the same ground, the NAWASA requested by telegram, on May 24, the postponement of said hearing. On May 25, Judge Catolico denied said request, overruled NAWASA's objection to the mo-tion for execution and granted the same. Two (2) days later, the clerk of court issued the corresponding writ of execution, which was complied with on May 28, 1963, insofar only as the possession, administration, operation and control of the Sys-tems, which were turned over to the Province, not as to the money judgment in its favor, which remained unsatisfied for lack of funds therefor in the NAWASA offices in Misamis Occidental.

Soon thereafter, the NAWASA filed an urgent motion, dated May 31, 1963, for "permission to post supersedeas bond to stay execution pending appeal". It, likewise, filed a supplement to said motion, dated June 30, 1963, stating that the order of execution was not supported by good grounds and that the damages that might arise from the delay in the execution of the decision "can be fully compensated". By an order dated July 2, 1963, the lower court, then presided over by Hon. Arturo B. Santos - Judge Catolico being then on leave - denied said urgent motion, after receiving NAWASA's evidence in support thereof. Accordingly, on July 5, 1963, the clerk of court issued another writ of execution addressed to the City Sheriff of Manila.

Subsequently, or on August 16, 1963, the NAWASA filed the petition for certiorari in G. R. No. L-21705, predicated upon the theory that the lower court had abused its discretion in ordering the execution of its decision pending appeal therefrom and in denying the urgent motion to stay the execution upon the filing of a supersedeas bond. In support of this contention, the NAWASA insists that the order of execution was prematurely issued on May 27, 1963, because the NAWASA had not as yet received copy of the aforementioned decision, because there was allegedly no valid and sufficient reasons to order said execution, and because the NAWASA claims to be entitled to stay the execution upon the posting of a supersedeas bond.

We find no merit in this pretense. To begin with, there is no legal provision barring execution of a decision, which is not yet final, before notice thereof has been served upon the judgment debtor. Secondly, copy of the decision of the lower court had, on May 3, 1963, been sent, by registered mail, in Ozamis City, addressed to NAWASA's counsel in Manila. In the ordinary course of events, he should have received said copy long before May 25, 1963, when the motion for execution was heard. Indeed, this motion was filed on May 8, and copy thereof was received by said counsel, in Manila, five (5) days later, or on May 13, 1963. In fact, NAWASA's representative in Misamis Occidental had, prior to May 25, 1963, advised the NAWASA, by telegram, of the aforementioned decision. Moreover, said representative was present, in the courtroom, when the motion for execution was heard on May 25, 1963. Then too, NAWASA's written opposition to the motion for execution was prepared on May 14, 1963. In other words, the NAWASA had had an opportunity to object to said motion and did, in fact, object thereto.

Thirdly, this Court has repeatedly held, in several decisions the first of which was rendered as early as August 30, 1959,[1] that Republic Act No. 1383 - upon the authority of which the NAWASA had acted in taking over the Systems in question - is unconstitutional - insofar as it makes the NAWASA the owner of all local waterworks systems in the Philippines - upon the ground that it constitutes a taking of private property without just compensation and without due process of law.

Fourthly, although the execution of a decision pending appeal may be suspended upon the filing of a supersedeas bond, the judgment debtor is not entitled to suspension as a matter of right. The court is merely empowered to order it in the exercise of its sound judgment or discretion.[2] Considering that the unconstitutionality of the aforementioned feature of Republic Act No. 1383 is now settled, and that the appeal from the decision of the lower court - insofar as the ownership, possession, administration and control of the Systems in question - can not possibly prosper and can merely have, therefore, a dilatory effect, the lower court was obviously justified in refusing to suspend the execution of its decision, despite NAWASA's offer of a supersedeas bond.

As regards the appeal taken by the NAWASA, it is even more patent, in view of the aforementioned decisions of this Court that, as regards the title, possession, administration and control of the Systems, and the obligation to refund the funds seized from the treasury of said Systems when the NAWASA took over the same, and to account for the earnings thereof, said appeal has no leg to stand on.

The lower court was not justified, however, in awarding P50,000 as exemplary and temperate damages, and

P5,000, as attorney's fees, for the NAWASA took over the Systems in compliance with said Republic Act No. 1383, which it was entitled to assume to be constitutional. In other words, it had acted in good faith.

WHEREFORE, the writ prayed for in G. R. No. L-21705 is denied, and the complaint therein dismissed, with costs against the NAWASA, and, with the elimination of said award for exemplary and temperate damages and attorney's fees, the decision appealed from in G. R. No. L-24327, is hereby affirmed, in all other respects, without special pronouncement as to costs in this instance.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] Baguio vs. NAWASA, 57 Off. Gaz. 1584; Cebu vs. NAWASA L-12892, April 20, 1960; Naguilian vs. NAWASA, L-18540, November 29, 1963; Mun. of La Carlota vs. NAWASA, L-20232, September 30, 1964; Mun. of Compostela vs. NAWASA, L-21763, December 17, 1966.

[2] Rule 39, Sections 2 and 3, Rules of Court, effective January 1, 1964; De Leon vs. Soriano, L-7848, September 17, 1954; Rodriguez vs. Court of Appeals, L-12534, May 20, 1959; Federation of United Namarco Distributors vs. National Marketing Corporation, L-17819 and National Marketing Corporation vs. Tan, L-17768, March 31, 1962; Astraquillo vs. Javier, et al., L-20034, January 30, 1965; Ledesma vs. Teodoro, 52 Off. Gaz. 784; Alliance Insurance & Surety Co. vs. Tan, 52 Off. Gaz. 7634; Buenaventura vs. Peña, 44 Off. Gaz. 4923; Valdez vs. Querubin, 37 Phil. 774.

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