

GAW SIN GEE, PETITIONER, VS. EMILIO PEÑA, JUDGE OF FIRST INSTANCE OF MANILA, ET AL., RESPONDENTS.

G.R. No. L-1461. November 29, 1947

Ponente: BENGZON, J.

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BENGZON, J.:

Except for some legal issues which the industry of petitioner's counsel uncovered, this case presents the same material features as others recently disposed of. The dispute concerns the occupation of market stalls of the Divisoria Market, City of Manila.

Alleging that, without valid cause, the master of the Divisoria Market had required him to vacate stalls Nos. 1420-1423, which he had leased from the city, herein petitioner Gaw Sin Gee filed in the court of First Instance of Manila a petition for injunction. The respondent officer answered that he was acting upon orders of the Mayor, who had found, upon investigation, that Gaw Sin Gee had violated the terms of the lease, and therefore had forfeited his right to continue occupying the said market places.

Fortunata M. Torres, the other respondent herein, joined the defendant market master, supporting his allegations of violation of the conditions of the lease and cancellation thereof. And averring that the said stalls had been duly awarded to her, and that under Republic Act No. 37 she had preference as a Filipino citizen, she asked for judgment sustaining her right as occupant and lessee of said market places.

The court, Judge Emilio Peña presiding, tried the issues, and in due course, promulgated a decision, the dispositive part of which reads as follows:

"Having arrived at the conclusion that the revocation of the lease was justified by the circumstances and no evidence having been presented to prove that the adjudication of stalls Nos. 1420-1423 to the defendant, Fortunata M. Torres, was irregular, it must be presumed that the provisions of the Market Code were followed in said adjudication.

"Wherefore, judgment is hereby rendered in favor of the defendant, Fortunata M. Torres, and against the plaintiff, declaring the former the lawful occupant of stalls Nos. 1420-1423 of the Divisoria Market, Manila, and ordering the latter to vacate said stalls, with the costs of the proceedings taxed against him. The order of preliminary injunction is hereby lifted."

Thereafter the aforesaid respondents filed an "urgent motion for immediate execution" alleging the rendition of the judgment and the inability of the city authorities to eject Gaw Sin Gee and his agents unless authorized to do so. Over plaintiff's opposition, and notwithstanding his appeal, the court directed the issuance of execution.

Hence this petition for certiorari and allied remedies, principally to annul the order of execution. It is based on alleged excess of jurisdiction and grave abuse of discretion.

We have recently denied petitions to impede similar "execution" of judgment on the right to hold market stalls. We made these remarks:

"The decision in civil case No. 971 set aside the writ of preliminary injunction issued at its commencement. Under section 4 of Rule 39 of the Rules of Court, unless otherwise ordered by the trial court, a judgment dissolving or denying an injunction shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal, although said court, in its discretion may restore such injunction during the pendency of the appeal upon such terms as to bond or otherwise as it may constitute proper for the security of the rights of the adverse party. In the instant case, the respondent judge not only did not restore the writ of preliminary injunction dissolved in his decision, but expressly ordered its execution and refused to allow the herein petitioner to file a supersedeas bond. In the absence of such injunction, the defendant city officials in civil case No. 971 could have proceeded, with the ouster of the petitioner from the stalls in question. Indeed, there is really nothing to be executed under the decision which merely determined who has a better title to said stalls; and the order of the respondent judge now complained of, can only be interpreted to mean as an authorization for the city authorities to carry out, with the aid of the sheriff, the said ouster." (Buenaventura vs. Peña, 78 Phil., 795.)

Mutatis mutandis, the above is conclusive against petitioner herein.

It may be noted, in connection with his point that the lower court lacked jurisdiction to order the ejectment because none of the parties had asked for such remedy, that respondent Fortunata M. Torres as intervenor, had in effect solicited analogous relief. As to the other objection, vigorously pressed here, that the occupant of a market stall may not, summarily and administratively, be deprived of his lawful privilege without due process of law and all its applicable connotations, it is enough to state that this aspect of the litigation should be taken up when the appeal is considered on the merits.

The petition is denied, with costs. So ordered.

Moran, C.J., Feria, and Pablo, JJ., concur.

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