

**THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,
REPRESENTED BY THE ASSET PRIVATIZATION TRUST, PETITIONER,
VS. NATIONAL LABOR RELATIONS COMMISSION, (FIFTH DIVISION),
NLRC SHER...**

G.R. No. 108544. May 31, 1995

Ponente: PUNO, J.

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PUNO, J.:

This is a special action of certiorari to set aside the resolution of the National Labor Relations Commission promulgated on December 18, 1992 affirming the auction sale of some of the properties of Marinduque Mining and Industrial Corporation.[1]

It appears that the United Lumber and General Workers of the Philippines (ULGWP) had a judgment of P10,660,264.09 against Marinduque Mining and Industrial Corporation (hereinafter referred to as Marinduque Mining) and Nonoc Mining and Industrial Corporation.[2] On April 25, 1992, Labor Arbiter Marissa Macaraig-Guillen issued a writ of execution to satisfy the judgment.[3] Respondent Sheriff Juan Gonzaga levied on some machineries, equipments, vehicles, and steel and iron materials of Marinduque Mining.[4] The Office of the ex-officio sheriff, scheduled their auction sale on May 25, 1992.[5]

On May 19, 1992, petitioner APT thru its Chief Legal Officer, Atty. Fiotello Azura, filed with the office of the ex-officio sheriff a Notice of Third-Party Claim.[6] The claim states:

"MR. JUAN GONZAGA
Deputy Sheriff
National Labor Relations Commission
Surigao City

Greetings:

Please take notice that the Government of the Republic of the Philippines, represented herein by its Trustee, the Asset Privatization Trust, a government trustee created and existing by virtue of Proclamation No. 50 dated December 8, 1986, as amended, with principal office at the 10th Floor BA-Lepanto Bldg., 8747 Paseo de Roxas, Makati, Metro Manila, has filed a Third-party Claim over the properties of Marinduque Mining and Industrial Corp. and Nonoc Mining and Industrial Corp. which you have levied upon and taken per your 'Notice of Levy and/or Sale of Personal Property' in the above entitled case.

Attached to this Notice is the affidavit of Third-Party Claim executed by Mr. Juan W. Moran, Associate Executive Trustee of APT.

For purposes of posting the required bond, the value of the properties levied upon is fairly and reasonably estimated at no less than P60,000,000.00.

In view of the foregoing, we respectfully demand that the aforesaid levy and sale of the properties which has

been transferred to the National Government be lifted or discontinued. In the event the aforesaid sale is pushed through the necessary bond in the amount of P60,000,000.00 be posted, otherwise we shall hold you and your deputies criminally and civilly responsible for the consequences thereof.

Makati, Metro Manila for Surigao City, May 18, 1992.

(Sgd.) Fiorello E. Azura
Chief Legal Officer"

The Affidavit of Juan W. Moran states in part:

"x x x x x x x x

2. That the properties levied upon and taken by Deputy Sheriff Juan Gonzaga in implementing the writ of execution issued in NLRC Case No. 11-0972-83 and 8-0542-84, entitled 'United Lumber and General Workers of the Philippines vs. Marinduque Mining and Industrial Corp., et al.,' belong to the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES by virtue of Proclamation No. 50 and 50-A dated December 8, 1986, Administrative Order No. 14 dated February 3, 1987, and Deed of Transfer dated February 27, 1987, copies of which are hereto attached and marked as Annex "A", "B", and "C", respectively, to form as integral parts hereof;"

In addition, on May 26, 1992, APT filed a petition for injunction with the NLRC (5th Division)[7] to prevent the auction sale. It raised the following issues:

"I.

WHETHER OR NOT PERSONALTIES BELONGING TO THE REPUBLIC MAY BE LEVIED UPON AND SOLD AT PUBLIC AUCTION TO SATISFY THE JUDGMENT DEBT OF MMIC.

II.

WHETHER OR NOT THE RESPONDENT ULGWP HAS A SUPERIOR RIGHT OVER THE PROPERTIES PREVIOUSLY BELONGING TO MMIC AND ACQUIRED BY PNB AND DBP THRU EXTRA-JUDICIAL FORECLOSURE.

III.

WHETHER OR NOT THE REPSONDENT EX-OFFICIO SHERIFF MAY LEVY UPON AND SELL PROPERTIES VALUED SEVENTEEN TIMES MORE THAN THE JUDGMENT DEBT."

On the same day, the NLRC enjoined the auction sale and ordered Arbiter Guillen to resolve the Third-Party Claim.[8]

On September 14, 1992, APT's third-party claim was heard. Atty. Jose Suratos, Jr. testified for APT. The minutes[9] show that on cross-examination, Atty. Suratos, Jr. admitted the following:

"x x x x x x x x

5. ULGWP representative, Odiano referred to a column in Exh. "F" marked as the Deed of Transfer from the NMIC to the Government and underscored the fact that under the heading Acquired Assets the column assigned to NMIC was left blank. When queried about this, witness explained that this was so, because what was transferred was the loan, equity and interest but not the assets and chattel. This is so because as of now, NMIC has not been foreclosed by the National Government."

In the same hearing, ULGWP requested that it be given time to file an indemnity bond so its writ of execution could be enforced. Its bond of P60,000,000.00 was approved by Arbiter Guillen on October 8, 1992. Arbiter

Guillen then lifted the suspension of the execution proceedings.[10] On October 12, 1992, she also denied the Third-Party Claims.[11] She ruled:

"x x x x x x x x

Besides, Philnico's interest in this execution proceedings is as a Third-Party Claimant, who argue that they are legal possessor and not owners of the refinery and all related facilities. They claim they have actual and legal possession by virtue of an Definitive Agreement executed between APT and Philnico in which physical possession of the refinery was transferred to them by APT.

In this regard, we wonder how Philnico can possibly make this assertion when during the hearing on the Third-Party Claims held on September 14, 1992, Atty. Jose Suratos, who represented third-party claimant APT, as trustee of the Government of the Republic of the Philippines admitted that by virtue of the Deed of Transfer executed between the National Government and the PNB (Annex "C" Third-Party Claim of the National Government dated May 18, 1992) what was transferred to the APT was the loan, equity and interest, not the chattel or equipment. He explained that this is so because Nonoc Mining Industrial Corporation was never foreclosed by the National Government.

In the light of these revelations, we wonder how Philnico could then be considered the legal possessor of the refinery and facilities, when in truth and in fact, the APT never acquired the refinery and equipment and therefore, could not have transferred possession thereof to Philnico.

Besides, with the indemnity bonds posted and the writ of execution previously issued, Section 2, Rule VI of the NLRC Sheriff's Manual expressly provides that the execution may proceed, making the resolution of the Third-Party Claims unnecessary.

ACCORDINGLY, to assist complainants in this undertaking, it appearing that the assigned Sheriff, Mr. Juan Gonzaga has failed to guide them properly, and to assure the validity and regularity in the execution proceedings, Sheriff Fulgencio Lavarez of the Regional Arbitration Branch No. XI is appointed to head the sheriff assigned to this case and shall be directly responsible to the undersigned for all actions taken.

Upon the expiration of the 45-day period provided in the Writ, Sheriff Lavarez shall submit the necessary report on the execution, for proper monitoring and coordination.

SO ORDERED."

On October 15, 1992, Arbiter Guillen issued an alias writ of execution.[12] On October 19, 1992, sheriffs Lavarez, Rotante, Jr., and Gonzaga gave the following Notice of Levy and Sale, viz: [13]

"TO: The Manager

Nonoc Mining & Ind'l. Corp.

Nonoc Island, Surigao City

G R E E T I N G S:

WHEREAS, by virtue of an ALIAS WRIT OF EXECUTION issued by the HONORABLE MARISSA MACARAIG-GUILLEN, Labor Arbiter, on October 5, 1992, copy of which is hereto attached, for the recovery by the Complainants against the Respondents in the above-captioned cases of the judgment sum of TEN MILLION SIX HUNDRED SIXTY THOUSAND TWO HUNDRED SIXTY FOUR and 09/100 PESOS (P10,660,264.09), LEVY is hereby made upon all the rights and interests of the above-named Respondent(s) over the properties particularly described below, to wit:

One (1) Lot

SCRAP IRON and other metals, wherever found within company premises, including detached equipment engines, parts, junk equipment and accessories, worn structural parts, structural remnants, containers such as drums and the like.

One (1) Lot

USED AND UNSERVICEABLE CONSTRUCTION EQUIPMENT AND MOTOR VEHICLES, including ____air track drills & accessories, ____motor cycles, ____compactors, ____air compressor, ____weighing scale, ____overhead crane, ____stone crusher assembly and accessories, ____crawler shovels, ____crawler crane, ____truck mounted crane, ____truck mounted excavators, ____payloaders, ____crawler tractors, ____truck tractors and trailers, ____road graders, ____forklifts, ____buckhoes, ____toyota Land Cruiser, ____Isuzu KB pickups, ____tankers, ____Hino cargo trucks, ____speed boat, LST and other like equipment, BUT EXCLUDING 12 Euclid dump trucks.

One (1) Lot

STEEL PLATES, shafting, pipes, beams, angulars, and like structural steel or other metal and PVC pipes.

One (1) Lot

USED AND UNUSED SPARE PARTS, tools and materials, mechanical/electrical/structural, for moving and non-moving machinery and equipment and accessories, inside and outside warehouse (old and new) and buildings.

One (1) Lot

ELECTRICAL SYSTEM EQUIPMENTS, accessories and materials, including generators, transformers, control cubicles, switch boxes, breakers, electric motors, welding machines.

One (1) Lot

LATHE MACHINES and other machine shop equipment, tools, parts and accessories and materials, including oxygen acetylene tanks empty or with contents.

One (1) Lot

ALL ORE MILLING PLANT MACHINERIES and appurtenant systems/structures, including but not limited to water, light and power, fuel supply, and conveyor systems/structures.

One (1) Lot

OFFICE EQUIPMENT and accessories, industrial oils, chemical, paints and like materials.

One (1) Lot

VARIOUS WASTE MATERIALS, including used tires, batteries, and tailings.

NOW THEREFORE, by virtue of the said alias Writ of Execution, the undersigned sheriff(s) hereby serve(s) notice to all interested parties and to the public in general that on October 26, 1992, at 10:00 o'clock in the morning or soon thereafter, at the compound of the Respondents at Nonoc Island, Surigao City, he/they will sell at public auction to the highest bidder and for CASH in Philippine Currency, the above-described properties to satisfy the above-mentioned judgment debt plus Sheriff's legal fees and expenses incurred in the enforcement of the alias Writ and for this execution sale.

Prospective buyers/bidders are hereby enjoined to investigate for themselves the titles of the said properties

and encumbrances thereon if any there be.

Nonoc Island, Surigao City, For Butuan City, October 19, 1992.

(Sgd.) FULGENCIO LAVAREZ

Sheriff II

NLRC XI

(Sgd.) RAYMUNDO ROTANTE, JR.

Deputy Sheriff

NLRC XI

(Sgd.) JUAN GONZAGA

Sheriff IV

RTC Surigao City"

Copies of the Notice were furnished Atty. Suratos of APT, Atty. Abeguella of Philnico and Promencio Odiano, of ULGWP. The Notice was also posted in five (5) public places.

The auction sale was held on October 26, 1992 with six (6) participants.[14] Private respondent Zoilo Andin, Jr., submitted the winning bid of P11,000,464.50. Thru his attorney-in-fact, Mr. Rodolfo S. Marcelino, he paid his bid in cash to the sheriffs.[15] The sheriffs then issued a Certificate of Sale[16] in favor of private respondent.

On October 29, 1992, APT filed an Omnibus Motion with the NLRC (5th Division) alleging that Arbiter Guillen did not resolve its Third-Party Claim and has ordered the sheriffs to implement the writ of execution. The other third-party claimant, PHILNICO Mining and Industrial Corporation, moved to quash the writ of execution. It alleged as grounds: lack of notice to parties, difference between the purchase price and actual value of the levied properties, lack of actual sale, and amicable settlement of the parties which rendered the levy and sale moot. The NLRC issued an Order restraining the holding of the execution sale.[17] On November 18, 1992, it ordered the elevation of the records of the case and directed the sheriffs to submit an "inventory of all the properties levied in execution together with the description thereof pursuant to the alias writ of execution.[18] On November 20, 1992, ULGWP, PHILNICO and APT filed a Joint Manifestation and Motion.[19] They alleged they have agreed in principle to settle their case and they prayed for the nullification of the alias writ of execution. On November 27, 1992, ULGWP and APT in an Omnibus Motion informed the Commission that they have consummated a Compromise Agreement and they prayed for the setting aside of the Notice of Levy and Sale and the Certificate of Sale.[20] They also alleged that the October 19, 1992 levy was simulated and that the sheriffs levied on properties valued at P4.5 billion.

A few days before or on November 23, 1992, private respondent Andin, Jr. filed an Urgent Ex-Parte Motion for a Writ of Possession. The motion was forwarded by Arbiter Guillen to the NLRC.[21] APT opposed the motion on the following grounds: (1) lack of standing of private respondent to file the motion; (2) the auction sale was a nullity because: (a) the entire Nonoc plant was levied upon; (b) the sheriffs never took possession of the levied properties; (c) no actual auction sale was conducted; (d) the bid price was never paid to the sheriffs; and (c) execution of compromise agreement by ULGWP and APT.[22] The private respondent filed a reply to the Opposition.

On December 18, 1992, the NLRC (5th Division) promulgated its Resolution resolving the pending incidents of the case. It held: (1) that "the levy on the properties in question was complete when the sheriffs went to the respective areas where these bulky and hefty personal properties were located, made an inventory thereof, gave due notices to the petitioners and posted the corresponding notices of sale in the various public places aforementioned; (2) that there was an actual auction sale conducted considering the positive assertions of

Romulado Sablayan and Clerino Abud; (3) that Arbiter Guillen correctly lifted the suspension of the execution proceedings considering the indemnity bond posted by ULGWP; (4) that the claim of ownership is moot as it should have been raised in this Court by petitioners; (5) that the Memorandum of Agreement is too late and cannot be used to quash the writ of execution; and (b) that private respondent is entitled to a writ of possession of the chattels he bought in the auction sale. APT did not move for reconsideration.

Despite the issuance of the writ of possession,[23] the private respondent still failed to take possession of the subject chattels. For on January 21, 1993, the RTC of Surigao City, Br. 30 issued a temporary restraining order enjoining the implementation of the writ of possession.[24] The private respondent was even charged with falsification of the November 17, 1992 Sheriff's Return and Certificate of Sale in the Office of the City Prosecution, City of Surigao.[25] Nonetheless, on January 28, 1993, the RTC of Surigao City, Br. 30, dismissed the Complaint of the City of Surigao for lack of jurisdiction.[26]

The legal battle then shifted to this Court when petitioner filed the instant petition on February 1, 1993. The petitioner raised the following:

"I S S U E S

- WHETHER OR NOT THE NLRC (5TH DIVISION) ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT FINDING THAT THE AUCTION SALE CONDUCTED BY THE RESPONDENT SHERIFFS IS VOID.

- WHETHER OR NOT THE NLRC (5TH DIVISION) ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN REFUSING TO ANNUL THE LEVY AND SALE DESPITE THE COMPROMISE AGREEMENT ENTERED INTO BY THE PARTIES.

- WHETHER OR NOT THE NLRC (5TH DIVISION) ACTED IN EXCESS OF JURISDICTION WHEN IT GRANTED THE MOTION FOR WRIT OF POSSESSION FILED BY ANDIN WHO IS NOT A PARTY TO THE CASE."

The petition lacks merit.

We shall first address the third-party claim of the petitioner. APT claims it owns the properties of Marinduque and Nonoc Mining levied upon by the sheriffs. This claim was heard by Labor Arbiter Guillen. After hearing, Arbiter Guillen dismissed the claim as she found as a fact that what were transferred to the NMIC were "x x x the loan, equity and interest but not the assets and chattel." This fact was established thru the testimony of Atty. Suratos[27] himself, counsel of APT. Buttressing this finding is the October 12, 1990 Definitive Agreement between APT, PHILNICO, and Nonoc Mining which states that it only involved a transfer of shares of stock. Indeed, the Agreement provides that the assets in Schedule 8, including the nickel powder and mine tailings are retained by Nonoc.[28] In any event, there is no way by which APT can frustrate the levy and sale in question. As another successor-in-interest, APT took these properties subject to all valid claims against them. So it was settled by this Court in GR No. 84682-83 where it ruled "x x x Nonoc, as successor-in-interest of Marinduque Mining, is liable for all claims presented against the latter as of the date of transfer as specifically set forth in the Deed of Transfer executed between PNB and DBP on the one hand and Nonoc on the other x x x."

Next, petitioner claims that the levy and sale were void. Several grounds are relied upon by petitioners. We will resolve them in seriatim.

First, petitioner complains about the excessiveness of the levy. It avers that the value of the properties levied was initially P60 million, ran to P170 million, and ended up at P4.5 Billion. A painstaking study of the records, however, will reveal that not a thread of evidence was introduced by petitioner in the NLRC to prove this

mind-boggling claim. In truth, APT did not even raise this issue of excessive levy when it filed its third-party claim before the Labor Arbiter on May 19, 1992. On the contrary, APT admitted that the true value of the properties levied is P60 million when it filed its Notice of Third-Party Claim,[29] thus:

"X X X X X X X X

Attached to this Notice is the Affidavit of Third-Party Claim executed by Mr. Juan W. Moran, Associate Executive Trustee of APT.

For purposes of posting the required bond, the value of the properties levied upon is fairly and reasonably estimated at no less than P60,000,000.00.

X X X X X X X X

Makati, Metro Manila for Surigao City.

May 18, 1992.

(Sgd.) FIORELLO E. AZURA
Chief Legal Officer"

Seven (7) days later or on May 26, 1992, APT filed a petition for injunction with the NLRC (5th Division). In this petition, APT started to change its valuation of the levied properties. It alleged that their value is not P60 million but P170 million. The NLRC ordered the Arbiter to resolve the claim of the petitioner. During the hearing, petitioner introduced no evidence to support its stance that the value of the said properties is P170 million. On the contrary, we note that in the course of the proceedings before the Arbiter, ULGWP offered an indemnity bond of P60 million to enable it to enforce its Decision. The Arbiter ordered APT to comment on the proffered indemnity bond. For reasons difficult to divine, APT failed to comment. In other words, it did not assail the indemnity bond as insufficient considering its allegation that the value of the levied properties is P170 million. By this failure, APT has admitted that the true value of the levied properties is P60 million and not P170 million.

But this is not all. APT continued pursuing its remedies with the NLRC. On October 29, 1992, it filed an Omnibus Motion to stop the Arbiter from implementing the writ of execution. Again, in this motion, it did not protest the excessiveness of the value of the levied properties. It was only on November 27, 1992 that APT (together with ULGWP) filed with the NLRC another Omnibus Motion alleging, among, others that the sheriffs made an excessive levy. This time, it alleged that the value of the levied properties is P4.5 billion!

As the party making the allegation, APT has the burden of proving that the value of the properties levied is P4.5 billion. But even during the hearing of the petition at bench before this court on February 9, 1994, it was clear that APT failed to discharge its burden. Counsel for APT declared:

"JUSTICE RODOLFO A. NOCON (Member):

Q

Burden of proof is on you to prove that these properties are worth P4.5 Billion. Correct?

ATTY. SISON: (co-counsel for APT)

A

Yes, Your Honor.

JUSTICE REGALADO (Member):

Q

Did you and the NLRC also attempt to specify at least even without proof in the meantime what were the individual values of these properties?

ATTY. SISON:

A

We did, Your Honor, but there was no hearing conducted at all to enable us to prove that this particular levy made was on the entire plant and it is worth P4.5. Billion.

JUSTICE REGALADO (Member):

Q

Can you furnish the Court with a copy of whatever representation you made the (NLRC) which detail shows the value of each of these equipment enumerated?

ATTY. SISON:

A

Yes, Your Honor.

JUSTICE PUNO (Member):

Q

Can you submit to us any pleading where you asked to be heard by the NLRC on these factual issues and that your Motion was refused by the NLRC?

ATTY. SISON:

A

Yes, Your Honor.

JUSTICE REGALADO (Member):

Q

Because you are challenging it on the ground of grave abuse of discretion and that is why we are interested. Am I correct?

ATTY. SISON:

A

Yes, Your Honor.:

(pp. 48-51)"

Despite the promise, counsel for APT failed to submit to this Court any pleading showing he asked the NLRC for opportunity to prove his allegation that the levied properties are worth P4.5 Billion, and that his motion was unceremoniously denied. In fact, when the NLRC rejected APT's Omnibus Motion, APT did not file any motion for reconsideration calling the attention of the NLRC that it erred in denying it the opportunity to prove its said

allegation. The NLRC correctly laid to rest APT's fantastic allegation when it ruled: "for the petitioner third-party claimant now to assert that the levied properties are worth billions would be tantamount to admitting that they lied when they initially assessed the value of the levied properties at P60 million, the amount of the bond put up for the prevailing party."

We also take note that the Solicitor General himself has steadfastly maintained that the value of the levied properties is P60 million, not P170 million or P4.5 billion. The Office of the Solicitor General is tasked by law to protect the legal interest of government. APT is part of the government and it would be irresponsible for the Solicitor General not to take its side if it would really lose P4.5 billion in this litigation. On the other hand, we note that this unproved allegation was initially made by Atty. Jose M. Suratos, Jr., a private lawyer hired by APT.[30] Between the allegations of the Solicitor General and Atty. Suratos, we give more weight to the representations of the former with respect to the interest of government.

Secondly, petitioner claims that the chattels levied by the sheriffs were not specifically described. It cites section 15, Rule 39, viz:

SEC. 15. Execution of money judgments. ? The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if they be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer, he must levy only on such part of the property as is amply sufficient to satisfy the judgment and costs.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied on in like manner and with like effect as under a writ of attachment."

Contrary to the submission of petitioner, this rule does not require that the sheriff should describe with pinpoint precision the brand, make, model, motor number, engine number or serial number of the machinery, or equipment levied upon. The rule requires description of the levied properties primarily to protect prospective bidders, to prevent them from being misled.[31] If prospective bidders can identify the levied properties with the exercise of ordinary diligence, their description must be upheld. In the case at bench, the bidders do not claim they were misled by the description of the levied chattels. Indeed, a minute description of the levied properties would be impractical since most of them are scrap, junk and unserviceable equipments and machineries.

Thirdly, petitioner contends that the Certificate of Sale failed to state that a third-party claim was filed by the petitioner. It cites section 28, Rule 39, viz:

Sec. 28. Certificate of Sale where Property Claimed by Third Person. - When a property sold by virtue of a writ of execution has been claimed by a third person, the certificate of sale to be issued by the sheriff pursuant to section 25, 26, and 27 of this rule, shall make express mention of the existence of such third-party claim.

We reject this contention. The records will show it was never raised by petitioner in the NLRC. It is elementary that issues not raised in the court a quo cannot be raised for the first time in this Court. But aside from this procedural infirmity, we have examined the Certificate of Sale.[32] It shows that copies of the Certificate of Sale were furnished to Atty. Antonio Abejuela, Counsel for Third-Party Claimant PHILNICO and Atty. Jose Suratos, Counsel for Third-Party Claimant APT. In other words, a reasonable reading of the Certificate of Sale will reveal that the sale was contested by third-party claimants. Moreover, the reason for section 28, Rule 39 is to protect the

interest of a third-party claimant. In the case at bench, the Arbiter and the NLRC dismissed the Third-Party claim of petitioner as devoid of basis. Even then, an indemnity bond has been filed to answer for damages which third-party claimants may suffer as a consequence of the sale of the levied properties. It cannot, therefore, be denied that the interest of petitioner, assuming it exists, is properly protected.

Fourth, petitioner charges that there was no valid levy because the sheriffs did not take possession and control of the subject chattels. It cites section 2, Rule V of the Sheriff's Manual. This issue was correctly resolved by the NLRC when it held:

"The sheriffs' return of the execution proceedings, however, reveals that the levied properties could not have been capable of manual delivery at the time of levy, considering their bulk, sizes and weight. Possession and control, in law, may be actual or constructive. To strictly require actual physical possession and control of the properties levied in this case would effectively defeat the spirit of the law. Under the circumstances the levy on the properties in question was complete when the sheriffs went to the respective areas where these bulky and hefty personal properties were located, made an inventory thereof, gave due notices to the petitioners and posted the corresponding notices of sale in the various public places aforementioned."

Further, we sustain the submission of the Solicitor General that:

"At any rate, petitioner APT is now estopped from claiming that the above proceedings - the making of an inventory and the sending and posting of notices of sale - do not constitute possession and control, considering that when those properties were first levied upon by respondent sheriff Gonzaga, he conducted the same proceedings and petitioner considered such proceedings as amounting to possession and control.Z

Thus, in its Notice of Third-Party Claim (Annex "E", Petition), petitioner APT stated that:

'Please take notice that the Government x x x has filed a Third-Party Claim over the properties of Marinduque Mining and Industrial Corp. which you have levied upon and taken x x x. (Italics ours)

Moreover, the very Affidavit of Third-Party Claim (Annex "F", Petition) alleges that there was taking of possession and control. It reads:

2. That the properties levied upon and taken by Deputy Sheriff Juan Gonzaga in implementing the writ of execution issued in NLRC Case No. 11-0972-83 and 8-0542-84 x x x belong to the Government x x x; (Italics ours)

Petitioner further contends that respondent Andin's act of filing a motion for a writ of possession is an admission that respondent sheriffs never acquired possession of the properties involved because the sheriff failed to deliver possession to Andin.

Such a contention is without merit. What respondent sheriffs failed to deliver to respondent Andin was merely the material or physical possession of the chattels sold. The juridical or symbolical possession of those chattels was already delivered to Andin on October 26, 1992 when respondent sheriffs executed the Certificate of Sale in Andin's favor."

Fifth, petitioner claims that the sheriffs sold the levied properties as one whole lot contrary to section 21, Rule 39 which provides:

"Sec. 21. How property sold on execution. Who may direct manner and order of sale. - All sales of property under execution must be made at public auction to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the

sale is of personal property capable of manual delivery, it must be sold within view of those attending the sale and in such parcels as are likely to bring the highest price. The judgment debtor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer holding the execution, nor his deputy, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale."

In *Herman v. La Urbana*,^[33] we held that "a sale in mass of separate known lots or parcels will not be set aside, unless it is made to appear that a larger sum could have been realized from a sale in parcels or that a sale of less than the whole would have been sufficient to satisfy the debt." As aforesaid, it is now petitioner's stance that there was an excessive levy of its chattels. Again, we reiterate that the records of the case before the Arbiter and the NLRC do not show that petitioner ever proved this allegation. It is too late in the day for petitioner to seek to prove this allegation in this petition for certiorari where the issues that could be raised are limited and where this Court cannot assume the role of a trier of facts.

It is hornbook jurisprudence that it is difficult to set aside a levy and sale of properties to satisfy a judgment. The general policy of the law is to sustain execution sales. Any irregularity, to be a ground for setting aside the sale, must be prejudicial and not merely technical.^[34] Execution is the final stage of litigation. It should not be frustrated except for serious reasons demanded by justice and equity.

The second main argument of petitioner is that the NLRC gravely abused its discretion when it refused to annul the levy and sale despite its compromise agreement with the ULGWP. Again, we sustain the ruling of the NLRC, to wit:

"Having thus ruled on the motions and objections filed or raised by the third-party claimants, We now resolve their joint manifestation and motion where they, among other things, sought our imprimatur on a Memorandum of Agreement entered into by and between APT, PHILNICO and ULGWP, providing, inter alia, an amicable settlement of the claims of the complainant in the provisional amount of P14,000,000.00. This is an ironic twist, coming as it does too late in the day to stave off what otherwise would have been an avoidable execution. As early as May 2, 1991, the Office of the Government Corporate Counsel filed a Manifestation to the effect that respondent NMIC (NONOC) did not oppose the issuance of a writ of execution on the P10,660,224.09 partial Christmas bonus computed and certified by the proper official of the company. In fine, with this Manifestation now and prayer for the approval of the Memorandum of Agreement the third-party claimants have obviously decided to settle the claims of the workers amicably, a sharp turnabout from their initial resistance to settle the case. Unfortunately, we cannot find our way clear how the writ of execution can still be quashed at this stage of the proceedings when the execution sale was conducted last October 26, 1992 and a certificate of sale has already been duly issued in favor of the highest bidder. This notwithstanding, we note from the records that the alias writ of execution on which the levy and subsequent sale were made pertains only to a partial execution of the workers' claims. Accordingly, we find no legal impediment for the workers and the third-party claimants to settle other claims not covered by the subject alias writ of execution leading to the auction sale of October 26, 1992 for such a step will undoubtedly pave the way for an expeditious settlement or payment of other claims of the workers long decided by the Supreme Court as their due."

Aside from the fact that the compromise agreement came too late in the day, there is another reason why it cannot gain judicial approval. As well pointed out by respondents, the compromise agreement does not carry the approval of the workers affiliated with the ULGWP. As the real beneficiaries of the Decision being executed, we have laid down the protective rule that these workers should personally and individually give their consent to any compromise agreement dealing with their judgment. Thus, in *Kaisahan ng mga Manggagawa sa La Campana v. Sarmiento*,^[35] the rule was stressed:

"Money claims due to laborers cannot be the object of settlement or compromise effected by a union or counsel without the specific individual consent of each laborer concerned. The beneficiaries are the individual

complainants themselves. The union to which they belong can only assist them but cannot decide for them. Awards in favor of laborers after long years of litigation must be attended to with mutual openness and in the best of faith. Only thus can we really give meaning to the constitutional mandate of giving laborers maximum protection and security. It is about time that the judgment in Case No. 584-V(7) be fully implemented considering the unreasonable delay in the satisfaction thereof. This unfortunate incident may only weaken the workingmen's faith in the judiciary's capacity to give them justice when due."

To be sure, the circumstances draping this Compromise Agreement, especially its hurried execution and the flip-flopping stance of petitioner, reveal petitioner's misplaced efforts to frustrate the consummated levy and sale in favor of private respondent. These dilatory maneuvers do not speak well of a government agency's duty of fair dealing.

Prescinding from these premises, petitioner's final argument that the NLRC gravely abused its discretion in granting a writ of possession to private respondent must perforce fall. Private respondent is concededly the highest bidder of the levied properties and has been given a certificate of sale by the sheriffs. As winning bidder, private respondent has all the personality to participate in the proceedings intended to set at naught his right. To deny him this right is to deprive him of due process.

We have ruled that petitioner has miserably failed to prove its charge of excessive levy made by the respondent sheriffs. But even while the Office of the Solicitor General agrees with this finding as it defended the public respondents, the Court will not allow any possibility that petitioner may be deprived of P4.5 billion of properties when private respondent bought the subject chattels at P11,000,464.50, for which an indemnity bond of P60 million has been given in favor of petitioner. In his Memorandum filed on March 15, 1994, private respondent submitted a "Cost Estimate for Removal of Items As Per Attached List of Levy and Sale of PHILNICO Property Located at NONOC Island, Surigao City," Prepared by an engineer of NONOC Mining, it shows that it would cost private respondent P42,352,692.00 to cut, collect and ship the levied scrap properties from Nonoc Island to their destination.[36] This estimate has not been seriously disputed by petitioner and the Court takes notice of the fact that the dismantling and shipment of said materials will indeed cost a considerable amount. As this Court is not only a court of law but also of equity, we hold that fairness requires that private respondent be allowed possession of not more than P60 million of the levied properties.

IN VIEW WHEREOF, the petition is dismissed there being no grave abuse of discretion on the part of the respondent NLRC. The respondent Sheriffs, under the supervision and control of the respondent NLRC, shall turn over to the private respondent the subject chattels as levied and sold but whose value shall not exceed P60 million. The petitioner may assign a representative to observe the sheriff's compliance with this Order. The public respondent NLRC is directed to resolve any and all issues in the event the parties do not agree on the valuation of the subject chattels. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

[1] NLRC Case Nos. SRAB 11-0972-83 and SRAB 8-0542-84; NLRC IC No. M-000039 and NLRC IC No. M-000050.

[2] The January 16, 1987 Decision in NLRC RAB Case Nos. 11-0972-83 and 8-0442-84 was challenged in G.R. No. 94682-83 but this Court dismissed the petition for certiorari on May 31, 1989.

[3] Annex "B", Petition.

- [4] Annex "C", Petition.
- [5] Annex "D", Petition.
- [6] Annex "E", Petition. PHILNICO also filed a Third-Party Claim.
- [7] NLRC IC No. 00039.
- [8] Annex "I", Petition.
- [9] See Annexes "3" and "3-A", Comment of Private Respondent.
- [10] Order of October 8, 1992, attached as Annex "J", Petition.
- [11] Annex "4", Comment of Private Respondent.
- [12] Annex "5", Comment of Private Respondent.
- [13] Annex "6", Comment of Private Respondent.
- [14] See Sheriff's Return, Annex "9", Comment of Private Respondent.
- [15] See Receipt, Annex "7", Comment of Private Respondent.
- [16] Annex "8", Comment of private respondent.
- [17] Annex "O", Petition.
- [18] Annex "11", Comment of Private Respondent.
- [19] Annex "P", Petition.
- [20] Annex "Q", Petition.
- [21] Annex "R", Petition.
- [22] Annex "S", Petition.
- [23] Annex "1", Comment of Private Respondent.
- [24] Annex "17" issued in Civil Case No. 4226 entitled City Government of Surigao vs. NLRC Sheriff Fulgencio Lavarez, et al., Comment of Private Respondent.
- [25] Annex "18", Comment of Private Respondent.
- [26] Annex "19", Comment of Private Respondent.
- [27] See footnote 9, *supra*.
- [28] See Annex "F" of PHILNICO's Motion for Reconsideration with the NLRC as cited in the OSG's Memorandum, March 17, 1994, at page 10.
- [29] See Notice of Third-Party Claim, *supra*.
- [30] His authority to appear for APT has been questioned by private respondent.
- [31] 30 AM JUR 2nd, pp. 634-635.
- [32] See Annex "N", Petition.

[33] 50 Phil. 621, 625.

[34] Francisco, The Revised Rules of Court, Vol. II, 1966, ed.; p. 751.

[35] 133 SCRA 220, 236 [1984].

[36] In the same Memorandum, the private respondent also showed that he has already spent P15,110,048.28 to be able to possess the levied properties of petitioner.

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