

LIM BUN SU, PETITIONER AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G.R. No. 11148. March 01, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was a petition for the writ of habeas corpus, presented in the Court of First Instance of the city of Manila on the 23d of June, 1915. The petition alleged that the plaintiff arrived at the port of Manila on the steamship Loongsang on the 23d of June, 1913, and asked permission to enter the Philippine Islands as the minor son of a resident Chinese merchant. To the petition the Attorney-General made due return. In his return he alleged that the Insular Collector of Customs was detaining the plaintiff for deportation by virtue of an order of the Honorable James A. Ostrand, of April 1, 1914.

Upon the issue thus presented, the Honorable James A. Ostrand, judge, on the 10th of July, 1915, denied the petition for the writ of habeas corpus, at the cost of the petitioner, Lim Bun Su, and ordered that he be remanded to the custody of the Insular Collector of Customs for deportation. From that order the plaintiff appealed to the Supreme Court. The record was received in the Supreme Court on the 15th of July, 1915, and the cause was finally submitted to the Supreme Court for decision on the 12th of January, 1916.

From the record brought to this court, the following facts appear:

That the petitioner arrived at the port of Manila on the 23d of June, 1913, and asked permission to enter the territory of the Philippine Islands as the legitimate minor son of a resident Chinese merchant; that the question of his right to enter the Philippine Islands was submitted to the board of special inquiry, which board, after hearing the evidence which the plaintiff presented, reached the conclusion that he was not the minor son of a resident Chinese merchant and denied to him the right to enter the Philippine Islands; that an appeal was taken to the Insular Collector of Customs, the Hon. H. B. McCoy, who, after an examination of the evidence presented to the board of special inquiry, affirmed the same and ordered the plaintiff herein deported on the next sailing vessel of the steamship company that brought him to the Philippine Islands, or some other vessel of the same line. The decision of the Insular Collector of Customs was made on the 4th of August, 1913.

On the 6th of August, 1913, the plaintiff presented a petition for the writ of habeas corpus in the Court of First Instance of the city of Manila. To said petition the Honorable H. B. McCoy, Insular Collector of Customs, made due return, which return contained a brief statement of the facts above related together with the further statement that the department of customs had in no way abused the power and discretion conferred upon it, and asked that the petition for the writ of habeas corpus be denied.

Upon the issue presented by the petition and answer, the cause was submitted to the court. After hearing the respective parties, the Honorable A. S. Crossfield denied said petition for the writ of habeas corpus upon the ground that the record failed to show that there had been any abuse of discretion or authority on the part of the department of customs.

From that decision an appeal was taken to the Supreme Court, on the 14th of April, 1914. The record was received in the Supreme Court on the 18th of May, 1914. The cause was finally submitted to the Supreme Court on the 16th of October, 1914, and the decision in this case was promulgated upon the 4th of March, 1915 [not published]. The Supreme Court, after a consideration of the issues presented, affirmed the judgment of Judge Crossfield and ordered the record returned to the lower court with direction that the plaintiff be deported. The record was received in the lower court two days thereafter.

Notwithstanding the foregoing decision, the plaintiff, on the 23d of June, 1915, presented another petition in the Court of First Instance for the writ of habeas corpus, alleging substantially the same grounds therefor which had been set up on his behalf in the petition of the 6th of August, 1913, above-mentioned.

To the said second petition the Attorney-General made due return and as a part of his return set out an order of the Honorable James A. Ostrand, dated the 23d of June, 1915, in which he, by authority of an order of April 1, 1914, ordered the plaintiff committed to the custody of the Insular Collector of Customs for deportation from the Philippine Islands.

Upon the issue thus presented and after hearing the respective parties, the Honorable James A. Ostrand, on the 10th of July, 1915, denied the petition for the writ of habeas corpus and ordered the plaintiff remanded to the custody of the Insular Collector of Customs, for deportation. The petition was denied upon the ground that there was no evidence before the court showing any abuse of discretion on the part of the administrative officials, and such errors of law as there may have been, do not appear to have been substantial.

From that decision the plaintiff appealed to the Supreme Court. The record was received in the Supreme Court on the 15th of July, 1915. After several delays on the part of the appellant and at least two motions to have his appeal dismissed for his failure to prosecute the same, the cause was finally submitted to this court on the 12th of January, 1916.

After a careful consideration of the questions presented by the appellant, we find that all of the questions have been heretofore discussed and decided in decisions heretofore announced, the decision in each case being against the contention of the appellant. We find no valuable purpose in restating the arguments upon said questions.

For the foregoing reasons the judgment of the lower court ordering the plaintiff deported is hereby affirmed with costs, and it is hereby ordered and decreed that the record be returned to the lower court, with direction that a judgment be entered affirming the judgment of deportation heretofore entered, and that after the lapse of ten days thereafter the plaintiff shall be returned to the custody of the Insular Collector of Customs and deported upon the first available transportation, with costs against the plaintiff. So ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.

Moreland, J., see concurring opinion.

CONCURRING OPINION

MORELAND, J.:

I think the judgment should be affirmed in so far as it denies the application for the writ. Neither that court nor this ought to make an order of deportation.

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