

**VICENTE R. MARABABOL, PETITIONER, VS. THE HONORABLE
MONTANO A. ORTIZ, JUDGE OF THE COURT OF FIRST INSTANCE OF
AGUSAN AND JUAN CALO, RESPONDENTS.**

G.R. No. 11526. June 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is a petition for certiorari to annul an order of the Court of First Instance of Agusan, granting the preliminary injunction prayed for by herein respondent Juan Calo in Civil Case No. 508, entitled "Juan Calo, plaintiff, vs. Vicente Marababol and D. O. Plaza Enterprises, defendants."

The record shows that on August 30, 1956, respondent Juan Calo, plaintiff below, bought at Sabang Umayam, Loreto, province of Agusan, 448 logs equivalent to 450,000 board feet of timber, more or less, from one Lorna R. Montilla at the rate of P36.00 per cubic meters. Following the usual procedure practiced by the Bureau of Forestry, the said logs were scaled by Forest Guard Iñigo M. Laspinas, acting-in-charge of the Loreto Forest Station, after which the auxiliary invoices, transport permits and release or clearance papers were issued to respondent Juan Calo. Said respondent paid in advance the sum of P25,000.00 to Lorna R. Montilla, who, by the way, was certified by Forest Guard Laspinas to be the owner of the logs. After delivery of the logs to respondent Calo, the latter was able to sell them to Jebenaur Company, Inc., which advised him by telegram of the arrival of a boat at Butuan City to take delivery of the logs.

While the logs were being towed by several launches to Butuan City, D. O. Plaza Enterprises, one of the defendants in the proceedings below, filed a protest with the District Forester of said city, alleging that the logs bought by respondent Calo were taken from the area subject of a dispute between it and Lorna R. Montilla. Acting upon the protest, the District Forester, with the aid of Constabulary soldiers, impounded the logs upon their arrival at Butuan City.

Contending that the District Forester arbitrarily ordered the impounding of the logs, the same having been purchased by him in good faith and for value, respondent Juan Calo filed a complaint for injunction with damages in the court below, with prayer for the issuance of a writ of preliminary injunction. After hearing the evidence adduced by the parties on the preliminary injunction prayed for, the respondent judge, finding that the impounding of the logs was arbitrary and oppressive which will cause great and irreparable injury to plaintiff, herein respondent Juan Calo, granted the same in an order dated September 15, 1956. The dispositive part of the order complained of reads:

"WHEREFORE, the Court resolves to grant the preliminary injunction to prevent the impending irreparable injury to the plaintiff. Let the preliminary injunction be issued restraining and enjoining the defendants, their attorneys, agents, representatives, deputies, guards, or any person or persons acting in their behalf from interfering, molesting and preventing the plaintiff from the exercise of his rights as owner and possessor of the 448 logs purchased by him from Lorna R. Montilla and specifically listed in Annex 'D' of the verified complaint, and ordering the release thereof to the plaintiff after payment of the corresponding forest charges

and other fees charged by the government, upon the plaintiffs filing and approval of the bond in the amount of P45,000.00 to answer for all damages which defendants may sustain by reason thereof, if the court should decide that plaintiff is not entitled thereto."

Reconsideration of this order having been denied, the District Forester filed the present petition for certiorari to annul the same for having been issued with grave abuse of discretion. The petition was given due course, but as no preliminary injunctive writ had been prayed for, the Court merely required respondents to answer.

Answering the petition, said respondents, thru counsel, alleged that it is within the power of the courts to correct the abuse of authority committed by some officers of the executive department of the Government. As special or affirmative defense, respondents also allege that the petition states no cause of action; that petitioner has another remedy in law, is not affected by the order, and consequently has no interest in the present litigation; and that the logs in question have already been delivered to respondent Juan Calo and shipped to Japan.

Without need of going into all the questions raised by the parties, this Court is of the opinion that the petition must be denied.

The petitioner District Forester of Butuan merely seeks the annulment of the order issued by the court below granting the preliminary mandatory injunction by virtue of which respondent Juan Calo was able to obtain possession of the logs in question. Apparently, petitioner would want to have the logs remain impounded pending the result of his investigation of the claim filed with him by D. O. Plaza Enterprises, which is the "standard operating procedure" of the Bureau of Forestry. Petitioner believes, as stated in his motion for reconsideration, that said logs "are the best evidence for determining the ownership thereof, so that if the same will be disposed of by plaintiff (respondent Juan Calo) by virtue of the writ of preliminary injunction, there will be no more competent evidence to satisfactorily show ownership thereof." It appearing that the logs in question have already been shipped to Japan, petitioner cannot now insist on having them impounded for purposes of the investigation he is conducting. The case made out by the present petition has, therefore, already become moot.

Wherefore, the petition is denied, without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Barrera, JJ., concur.

Padilla, J., took no part.

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