

FELIPE CALUB AND RICARDO VALENCIA, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), CATBALOGAN, SAMAR, PETITIONERS, VS. COURT OF APPEALS, MANUELA T. BABALCON, AND CONSTAN...

G.R. No. 115634. April 27, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review is the decision.[1] dated May 27, 1994, of the Court of Appeals in CA-G.R. SP No. 29191, denying the petition filed by herein petitioners for certiorari, prohibition and mandamus, in order to annul the Order dated May 27, 1992, by the Regional Trial Court of Catbalogan, Samar. Said Order had denied petitioners' (a) Motion to Dismiss the replevin case filed by herein private respondents, as well as (b) petitioners' Motion for Reconsideration of the Order of said trial court dated April 24, 1992, granting an application for a Writ of replevin..[2]

The pertinent facts of the case, borne by the records, are as follows:

On January 28, 1992, the Forest Protection and Law Enforcement Team of the Community Environment and Natural Resources Office (CENRO) of the DENR apprehended two (2) motor vehicles, described as follows:

"1. Motor Vehicle with Plate No. HAK-733 loaded with one thousand and twenty six (1,026) board feet of illegally sourced lumber valued at P8,544.75, being driven by one Pio Gabon and owned by [a certain] Jose Vargas.

2. Motor Vehicle with Plate No. FCN-143 loaded with one thousand two hundred twenty four and ninety seven (1,224.97) board feet of illegally-sourced lumber valued at P9,187.27, being driven by one Constancio Abuganda and owned by [a certain] Manuela Babalcon. ...".[3]

Constancio Abuganda and Pio Gabon, the drivers of the vehicles, failed to present proper documents and/or licenses. Thus, the apprehending team seized and impounded the vehicles and its load of lumber at the DENR-PENR (Department of Environment and Natural Resources-Provincial Environment and Natural Resources) Office in Catbalogan..[4] Seizure receipts were issued but the drivers refused to accept the receipts..[5] Felipe Calub, Provincial Environment and Natural Resources Officer, then filed before the Provincial Prosecutor's Office in Samar, a criminal complaint against Abuganda, in Criminal Case No. 3795, for violation of Section 68 [78], Presidential Decree 705 as amended by Executive Order 277, otherwise known as the Revised Forestry Code.[6]

On January 31, 1992, the impounded vehicles were forcibly taken by Gabon and Abuganda from the custody of the DENR, prompting DENR Officer Calub this time to file a criminal complaint for grave coercion against Gabon and Abuganda. The complaint was, however, dismissed by the Public Prosecutor..[7]

On February 11, 1992, one of the two vehicles, with plate number FCN 143, was again apprehended by a

composite team of DENR-CENR in Catbalogan and Philippine Army elements of the 802nd Infantry Brigade at Barangay Buray, Paranas, Samar. It was again loaded with forest products with an equivalent volume of 1,005.47 board feet, valued at P10,054.70. Calub duly filed a criminal complaint against Constancio Abuganda, a certain Abegonia, and several John Does, in Criminal Case No. 3625, for violation of Section 68 [78], Presidential Decree 705 as amended by Executive Order 277, otherwise known as the Revised Forestry Code..[8]

In Criminal Cases Nos. 3795 and 3625, however, Abegonia and Abuganda were acquitted on the ground of reasonable doubt. But note the trial court ordered that a copy of the decision be furnished the Secretary of Justice, in order that the necessary criminal action may be filed against Noe Pagarao and all other persons responsible for violation of the Revised Forestry Code. For it appeared that it was Pagarao who chartered the subject vehicle and ordered that cut timber be loaded on it..[9]

Subsequently, herein private respondents Manuela Babalcon, the vehicle owner, and Constancio Abuganda, the driver, filed a complaint for the recovery of possession of the two (2) impounded vehicles with an application for replevin against herein petitioners before the RTC of Catbalogan. The trial court granted the application for replevin and issued the corresponding writ in an Order dated April 24, 1992..[10] Petitioners filed a motion to dismiss which was denied by the trial court.[11]

Thus, on June 15, 1992, petitioners filed with the Supreme Court the present Petition for Certiorari, Prohibition and Mandamus with application for Preliminary Injunction and/or a Temporary Restraining Order. The Court issued a TRO, enjoining respondent RTC judge from conducting further proceedings in the civil case for replevin; and enjoining private respondents from taking or attempting to take the motor vehicles and forest products seized from the custody of the petitioners. The Court further instructed the petitioners to see to it that the motor vehicles and other forest products seized are kept in a secured place and protected from deterioration, said property being in custodia legis and subject to the direct order of the Supreme Court..[12] In a Resolution issued on September 28, 1992, the Court referred said petition to respondent appellate court for appropriate disposition..[13]

On May 27, 1994, the Court of Appeals denied said petition for lack of merit. It ruled that the mere seizure of a motor vehicle pursuant to the authority granted by Section 68 [78] of P.D. No. 705 as amended by E.O. No. 277 does not automatically place said conveyance in custodia legis. According to the appellate court, such authority of the Department Head of the DENR or his duly authorized representative to order the confiscation and disposition of illegally obtained forest products and the conveyance used for that purpose is not absolute and unqualified. It is subject to pertinent laws, regulations, or policies on that matter, added the appellate court. The DENR Administrative Order No. 59, series of 1990, is one such regulation, the appellate court said. For it prescribes the guidelines in the confiscation, forfeiture and disposition of conveyances used in the commission of offenses penalized under Section 68 [78] of P.D. No. 705 as amended by E.O. No. 277..[14]

Additionally, respondent Court of Appeals noted that the petitioners failed to observe the procedure outlined in DENR Administrative Order No. 59, series of 1990. They were unable to submit a report of the seizure to the DENR Secretary, to give a written notice to the owner of the vehicle, and to render a report of their findings and recommendations to the Secretary. Moreover, petitioners' failure to comply with the procedure laid down by DENR Administrative Order No. 59, series of 1990, was confirmed by the admission of petitioners' counsel that no confiscation order has been issued prior to the seizure of the vehicle and the filing of the replevin suit. Therefore, in failing to follow such procedure, according to the appellate court, the subject vehicles could not be considered in custodia legis.[15]

Respondent Court of Appeals also found no merit in petitioners' claim that private respondents' complaint for replevin is a suit against the State. Accordingly, petitioners could not shield themselves under the principle of

state immunity as the property sought to be recovered in the instant suit had not yet been lawfully adjudged forfeited in favor of the government. Moreover, according to respondent appellate court, there could be no pecuniary liability nor loss of property that could ensue against the government. It reasoned that a suit against a public officer who acted illegally or beyond the scope of his authority could not be considered a suit against the State; and that a public officer might be sued for illegally seizing or withholding the possession of the property of another..[16]

Respondent court brushed aside other grounds raised by petitioners based on the claim that the subject vehicles were validly seized and held in custody because they were contradicted by its own findings..[17] Their petition was found without merit.[18]

Now, before us, the petitioners assign the following errors:.[19]

(1) THE COURT OF APPEALS ERRED IN HOLDING THAT MERE SEIZURE OF A CONVEYANCE PURSUANT TO SECTION 68-A [78-A] OF P.D. NO. 705 AS AMENDED BY EXECUTIVE ORDER 277 DOES NOT PLACE SAID CONVEYANCE IN CUSTODIA LEGIS;

(2) THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE OPERATIVE ACT GIVING RISE FOR THE SUBJECT CONVEYANCE TO BE IN CUSTODIA LEGIS IS ITS LAWFUL SEIZURE BY THE DENR PURSUANT TO SECTION 68-A [78-A] OF P.D. NO. 705, AS AMENDED BY E.O. NO. 277; AND

(3) THE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPLAINT FOR REPLEVIN AGAINST THE PETITIONERS IS NOT A SUIT AGAINST THE STATE.

In brief, the pertinent issues for our consideration are:

(1) Whether or not the DENR-seized motor vehicle, with plate number FCN 143, is in custodia legis.

(2) Whether or not the complaint for the recovery of possession of impounded vehicles, with an application for replevin, is a suit against the State.

We will now resolve both issues.

The Revised Forestry Code authorizes the DENR to seize all conveyances used in the commission of an offense in violation of Section 78. Section 78 states:

Sec. 78. Cutting, Gathering, and or Collecting Timber, or Other Forest Products without License. – Any person who shall cut, gather, collect, remove timber or other forest products from any forestland, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

This provision makes mere possession of timber or other forest products without the accompanying legal documents unlawful and punishable with the penalties imposed for the crime of theft, as prescribed in Articles 309-310 of the Revised Penal Code. In the present case, the subject vehicles were loaded with forest products at the time of the seizure. But admittedly no permit evidencing authority to possess and transport said load of forest products was duly presented. These products, in turn, were deemed illegally sourced. Thus there was a prima facie violation of Section 68 [78] of the Revised Forestry Code, although as found by the trial court, the persons responsible for said violation were not the ones charged by the public prosecutor.

The corresponding authority of the DENR to seize all conveyances used in the commission of an offense in violation of Section 78 of the Revised Forestry Code is pursuant to Sections 78-A and 89 of the same Code. They read as follows:

Sec. 78-A. Administrative Authority of the Department Head or His Duly Authorized Representative to Order Confiscation. -- In all cases of violation of this Code or other forest laws, rules and regulations, the Department Head or his duly authorized representative, may order the confiscation of any forest products illegally cut, gathered, removed, or possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense and to dispose of the same in accordance with pertinent laws, regulations or policies on the matter.

Sec. 89. Arrest; Institution of criminal actions. -- A forest officer or employee of the Bureau [Department] or any personnel of the Philippine Constabulary/Philippine National Police shall arrest even without warrant any person who has committed or is committing in his presence any of the offenses defined in this Chapter. He shall also seize and confiscate, in favor of the Government, the tools and equipment used in committing the offense... [Emphasis supplied.]

Note that DENR Administrative Order No. 59, series of 1990, implements Sections 78-A and 89 of the Forestry Code, as follows:

Sec. 2. Conveyances Subject to Confiscation and Forfeiture. -- All conveyances used in the transport of any forest product obtained or gathered illegally whether or not covered with transport documents, found spurious or irregular in accordance with Sec. 68-A [78-A] of P.D. No. 705, shall be confiscated in favor of the government or disposed of in accordance with pertinent laws, regulations or policies on the matter.

Sec. 4. Who are Authorized to Seize Conveyance. -- The Secretary or his duly authorized representative such as the forest officers and/or natural resources officers, or deputized officers of the DENR are authorized to seize said conveyances subject to policies and guidelines pertinent thereto. Deputized military personnel and officials of other agencies apprehending illegal logs and other forest products and their conveyances shall notify the nearest DENR field offices, and turn over said forest products and conveyances for proper action and disposition. In case where the apprehension is made by DENR field officer, the conveyance shall be deposited with the nearest CENRO/PENRO/RED Office as the case may be, for safekeeping wherever it is most convenient and secured. [Emphasis supplied.]

Upon apprehension of the illegally-cut timber while being transported without pertinent documents that could evidence title to or right to possession of said timber, a warrantless seizure of the involved vehicles and their load was allowed under Section 78 and 89 of the Revised Forestry Code.

Note further that petitioners' failure to observe the procedure outlined in DENR Administrative Order No. 59, series of 1990 was justifiably explained. Petitioners did not submit a report of the seizure to the Secretary nor give a written notice to the owner of the vehicle because on the 3rd day following the seizure, Gabon and Abuganda, drivers of the seized vehicles, forcibly took the impounded vehicles from the custody of the DENR. Then again, when one of the motor vehicles was apprehended and impounded for the second time, the petitioners, again were not able to report the seizure to the DENR Secretary nor give a written notice to the owner of the vehicle because private respondents immediately went to court and applied for a writ of replevin. The seizure of the vehicles and their load was done upon their apprehension for a violation of the Revised Forestry Code. It would be absurd to require a confiscation order or notice and hearing before said seizure could be effected under the circumstances.

Since there was a violation of the Revised Forestry Code and the seizure was in accordance with law, in our view the subject vehicles were validly deemed in custodia legis. It could not be subject to an action for replevin. For it is property lawfully taken by virtue of legal process and considered in the custody of the law, and not

otherwise..[20]

In *Mamanteo, et. al. v. Deputy Sheriff Magumun*, A.M. No. P-98-1264, promulgated on July 28, 1999, the case involves property to be seized by a Deputy Sheriff in a replevin suit. But said property were already impounded by the DENR due to violation of forestry laws and, in fact, already forfeited in favor of the government by order of the DENR. We said that such property was deemed in custodia legis. The sheriff could not insist on seizing the property already subject of a prior warrant of seizure. The appropriate action should be for the sheriff to inform the trial court of the situation by way of partial Sheriff's Return, and wait for the judge's instructions on the proper procedure to be observed.

Note that property that is validly deposited in custodia legis cannot be the subject of a replevin suit. In *Mamanteo v. Deputy Sheriff Magumun*, we elucidated further:

"... the writ of replevin has been repeatedly used by unscrupulous plaintiffs to retrieve their chattel earlier taken for violation of the Tariff and Customs Code, tax assessment, attachment or execution. Officers of the court, from the presiding judge to the sheriff, are implored to be vigilant in their execution of the law otherwise, as in this case, valid seizure and forfeiture proceedings could easily be undermined by the simple devise of a writ of replevin..."[21]

On the second issue, is the complaint for the recovery of possession of the two impounded vehicles, with an application for replevin, a suit against the State?

Well established is the doctrine that the State may not be sued without its consent..[22] And a suit against a public officer for his official acts is, in effect, a suit against the State if its purpose is to hold the State ultimately liable..[23] However, the protection afforded to public officers by this doctrine generally applies only to activities within the scope of their authority in good faith and without willfulness, malice or corruption.[24] In the present case, the acts for which the petitioners are being called to account were performed by them in the discharge of their official duties. The acts in question are clearly official in nature.[25] In implementing and enforcing Sections 78-A and 89 of the Forestry Code through the seizure carried out, petitioners were performing their duties and functions as officers of the DENR, and did so within the limits of their authority. There was no malice nor bad faith on their part. Hence, a suit against the petitioners who represent the DENR is a suit against the State. It cannot prosper without the State's consent.

Given the circumstances in this case, we need not pursue the Office of the Solicitor General's line for the defense of petitioners concerning exhaustion of administrative remedies. We ought only to recall that exhaustion must be raised at the earliest time possible, even before filing the answer to the complaint or pleading asserting a claim, by a motion to dismiss..[26] If not invoked at the proper time, this ground for dismissal could be deemed waived and the court could take cognizance of the case and try it.[27]

ACCORDINGLY, the Petition is GRANTED, and the assailed Decision of the Court of Appeals in CA-G.R. SP No. 29191 is SET ASIDE. Consequently, the Order issued by the Regional Trial Court of Catbalogan, dated May 27, 1992, and the Writ of replevin issued in the Order dated April 24, 1992, are ANNULLED. The Sheriff of the Regional Trial Court of Catbalogan, Branch 29, is directed to take possession of the subject motor vehicle, with plate number FCN 143, for delivery to the custody of and appropriate disposition by petitioners. Let a copy of this decision be provided the Honorable Secretary of Justice for his appropriate action, against any and all persons responsible for the abovesited violation of the Revised Forestry Code.

Costs against private respondents.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 22-27.

[2] CA Records, p. 43.

[3] Rollo, p. 23.

[4] Id. at 23.

[5] Id. at 74.

[6] Sec. 78. Cutting, Gathering, and/or Collecting Timber, or Other Forest Products without License. – Any person who shall cut, gather, collect, remove timber or other forest products from any forestland, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code. . .

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found. (Emphasis supplied.)

[7] Rollo, p. 70.

[8] Id. at 23, 78.

[9] Id. at 75, 85.

[10] CA Records, p. 43.

[11] Supra, note 4.

[12] Id. at 18-19.

[13] Id. at 21.

[14] Id. at 26-A.

[15] Id. at 25-27.

[16] Id. at 27.

[17] Ibid.

[18] Ibid.

[19] Id. at 6.

[20] Bagalihog v. Fernandez, 198 SCRA 614, 621 (1991)

[21] Mamanteo, et. al. v. Deputy Sheriff Magumun, A.M. No. P-98-1264, July 28, 1999, citing Pacis v. Hon. Averia, 18 SCRA 907 (1966)

[22] CONST., Art. XVI, sec. 3.

[23] De Leon, The Law on Public Officers and Election Law, 2nd ed., 1994, pp. 228-229.

[24] Philippine Racing Club, Inc., et al. v. Bonifacio, et al., 109 Phil. 233, 241 (1960)

[25] Sanders v. Veridiano II, 162 SCRA 88, 96 (1988)

[26] Section 1, Rule 16, 1997 Rules of Court.

SECTION 1. Grounds. -- Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

- (a) That the court has no jurisdiction over the person of the defending party;
- (b) That the court has no jurisdiction over the subject matter of the claim;
- (c) That venue is improperly laid;

- (d) That the plaintiff has no legal capacity to sue;
- (e) That there is another action pending between the same parties for the same cause;
- (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
- (g) That the pleading asserting the claim states no cause of action;
- (h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
- (i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
- (j) That a condition precedent for filing the claim has not been complied with.

[27] *Soto v. Jareno*, 144 SCRA 116, 119 [1986]. See also Section 1[j], Rule 16, 1997 Rules of Court.

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