ROMEO G. DAVID, PETITIONER, VS. JUDGE TIRSO D.C. VELASCO,SHERIFF ERNESTO L. SULA, AND CONTINENTAL WATCHMAN SECURITY AGENCY, RESPONDENTS.

G.R. No. 126592. October 02, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a special civil action for certiorari filed by petitioner Romeo G. David, former administrator of the National Food Authority, seeking (1) annulment of the order of public respondent Judge Tirso D.C. Velasco dated October 9, 1996, granting the motion of private respondent Continental Watchman Security Agency for the issuance of a writ of execution in connection with Civil Case No. Q-93-17139, and its motion for immediate payment, as well as its manifestation with motion to reiterate payment on services actually rendered; (2) annulment of the writ of execution issued pursuant to the order dated October 9, 1996; and (3) issuance of an order directing the trial court to conduct pre-trial and trial relative to Civil Case No. Q-93-17139.

The antecedent facts, which are not in dispute, are as follows:

On February 5, 1990, the NFA, under then administrator Pelayo J. Gabaldon, conducted a bidding to determine the security agencies that would provide security services to NFA. Twelve security agencies, including private respondent, were awarded contracts. When the contracts expired, NFA extended them on a periodic basis.

When petitioner became NFA administrator, he initiated a review of all security service contracts and the formulation of new bidding procedures for the awarding of such contracts. A pre-qualification, bids, and awards committee was consequently formed on April 6, 1993. An invitation to pre-qualify and bid for security services was published in a nationwide newspaper in May 1993. Security agencies with existing contracts with NFA were also required to pre-qualify and bid in view, among others, of the change in "bidding jurisdiction". Previously, security agencies provided security for NFA on a regional basis. Under the new rules, security would be provided on a per area basis.

Private respondent qualified in the pre-bidding held on June 18, 1993. However, the final bidding set for June 30, 1993 was suspended after security agencies that failed to qualify obtained a temporary restraining order.

In a notice dated July 30, 1993, NFA informed private respondent that it no longer enjoyed the trust and confidence of the former. Hence, its contract would not be extended beyond August 16, 1993. Security service contracts were, however, awarded to other security agencies on August 4, 1993 on a month-to-month basis, pending resolution of the injunction issued against the bidding.

Unsatisfied, private respondent on August 9, 1993, filed a complaint docketed as Civil Case No. Q-93-17139, for damages and injunction with prayer for the issuance of a temporary restraining order against NFA and petitioner. A temporary restraining order and later a writ of preliminary injunction were issued.

NFA and petitioner questioned the issuance of said writ before the Court of Appeals,[1] which partially struck

down the writ. The CA ruled that since private respondent's contract with NFA had already expired, it could no longer be revived, extended, or renewed via a writ of preliminary injunction. Otherwise, NFA's right to enter into lawful contracts would be violated. However, the CA upheld the writ insofar as it sought to prevent NFA from awarding security service contracts to other security agencies without the requisite public bidding.

Petitioner and NFA appealed the CA decision to this Court, which upheld it in G.R. Nos. 115121 to 115125.[2] When we rendered our decision on February 9, 1996, petitioner had already been relieved of his post as NFA administrator.

Civil Case No. Q-93-17139 was remanded to the trial court. Private respondent then filed a motion for the issuance of a writ of execution on May 14, 1996, to obtain payment for its security services worth more than P26.5 million.[3] Petitioner and NFA opposed the motion since, at that time, the pre-trial and trial of the case were yet to be held.

Meanwhile, lawyers for NFA informed petitioner that they could no longer represent him as he was no longer connected with NFA.

On July 16, 1996, NFA filed an amended answer to private respondent's complaint, with a cross-claim against petitioner and a prayer for the issuance of a writ of preliminary attachment.

A hearing was held on private respondent's motion[4] on October 3, 1996, during which private respondent presented a witness who testified as to the amount being claimed by the former for its security services. Petitioner asserts that he was not informed of said hearing. He claims that an NFA lawyer claimed to represent him during the hearing, without his authority. Another lawyer was already representing petitioner since the NFA had earlier informed him that NFA lawyers would no longer represent him.

A writ of execution was issued on October 9, 1996. Petitioner did not file a motion for reconsideration before the trial court, arguing that it was unnecessary since the writ was a patent nullity and that the issue of prematurity and illegality of the writ was already passed upon by public respondent when he ruled on the opposition to the issuance of the writ.

Hence, this petition for certiorari, prohibition, and mandamus, with a prayer for a temporary restraining order. Petitioner claims that the remedy of appeal has already been foreclosed with the issuance of the questioned writ of execution, and that there is no other plain, speedy, and adequate remedy in the ordinary course of law.

Petitioner cites the following as alleged errors:

> I
>
> RESPONDENT JUDGE VIOLATED THE LAW AND GRAVELY ABUSED HIS DISCRETION AND ACTED WITHOUT JURISDICTION IN GRANTING THE WRIT OF EXECUTION AND ISSUING IT IN CIVIL CASE NO. Q-93-17139 WHEN NO PRE-TRIAL AND NO TRIAL HAD BEEN HELD, AND NO DECISION HAD BEEN RENDERED IN SAID CASE.
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> II
>
> THE RESPONDENT JUDGE VIOLATED THE LAW AND GRAVELY ABUSED HIS DISCRETION WHEN HE HELD THE HEARING OF OCTOBER 3, 1996 WITHOUT NOTICE TO PETITIONER THUS DEPRIVING HIM OF HIS RIGHT TO DUE PROCESS.
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> III
>
> THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN ISSUING A WRIT OF

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EXECUTION FOR P8,445,161.00 BASED ON ONE DOCUMENT TESTIFIED TO BY ONE INCOMPETENT WITNESS FOR SERVICES SUPPOSEDLY RENDERED AFTER THE CONTRACT FOR SERVICES HAD LAPSED.

IV

EVEN ASSUMING ARGUENDO, THAT THE ORDER... WAS THE RESPONDENT JUDGE'S DECISION, AND THE SAME WAS VALID, THE RESPONDENT JUDGE VIOLATED THE LAW AND GRAVELY ABUSED HIS DISCRETION WHEN HE IMMEDIATELY ISSUED A WRIT OF EXECUTION EVEN BEFORE 15 DAYS FROM RECEIPT OF SAID ORDER HAD LAPSED.[5]

On January 13, 1997, we issued a temporary restraining order[6] to enjoin respondents from implementing the order dated October 9, 1996 and the writ of execution bearing the same date.

On April 28, 1997, we granted the motion filed by NFA to intervene in this case.

Petitioner's main contention in this petition is that, under Rule 39, Section 1 of the Rules of Court,[7] there must be a final judgment before a writ of execution can be issued. Also, under the Rules of Court, before there could be a final judgment in a civil case, there must first be a pre-trial and trial. However, in Civil Case No. Q-93-17139, no pre-trial and trial have been held and no judgment has as yet been rendered. Thus, no writ of execution may be issued in relation to the case and its issuance by public respondent is "a blatant disregard of fundamental requirements of the rules of court."[8]

Petitioner maintains that he was denied his right to due process when he was not informed of the hearing of October 3, 1996. The appearance of the NFA lawyer on petitioner's behalf was allegedly unauthorized. During said hearing, private respondent presented a witness who testified on its money claims. Private respondent also submitted a summary of its claims, which included payment for services rendered, moral damages, and attorney's fees.

On the other hand, private respondent maintains that the motion for the issuance of the writ and the writ of execution itself are valid. It anchors its claim on the decision of this Court in G.R. Nos. 115121-25, affirming the decision of the CA in CA-G.R. SP Nos. 32213, 32230, and 32274-76 that had already become final. Private respondent points out that a formal hearing was held by the trial court before it issued the writ of execution, and that it presented evidence to justify its claims against the NFA. Any error in the appreciation by the trial court of the evidence presented cannot be assailed through a petition for certiorari, according to private respondent.

Furthermore, private respondent stresses that the questioned writ of execution had already been fully satisfied. It appears, per a sheriff's return dated November 5, 1996, that on October 10, 1996, a day after the writ of execution was issued, Sheriff Ernesto L. Sula served a copy of the writ to the NFA and garnished the amount of P8,445,161.00 from the NFA's deposit with the Philippine National Bank.[9]

The NFA, meanwhile, stressed that there was no basis for the issuance of the writ of execution and the award of money to private respondent since there is as yet no final, valid, and executory judgment rendered by the trial court. The case has not even reached the pre-trial stage.

At the outset, this Court would like to point out that petitioner was dropped as a defendant in Civil Case No. Q-93-17139, per order of the trial court dated June 20, 1997,[10] following a joint motion to dismiss filed by petitioner and private respondent before the trial court on June 13, 1997.[11] The questioned writ of execution -- which, strangely, was issued prior to June 1997[12] -- was directed only against the NFA and not against herein petitioner. Thus, it appears that petitioner has no more standing to question the said writ before this Court, and private respondent has pointed this out to us.

However, in the order authorizing the issuance of the writ, it was expressly stated that while the writ would be issued against NFA, it was without prejudice to the latter's cross-claim against petitioner. Therefore, petitioner also stood to be injured by the issuance and enforcement of the writ of execution in case the NFA decided to pursue its cross-claim against him. We note that, in fact, the NFA had already sued petitioner to recover more than P34 million that the NFA paid to another security agency in a case similar to the present one.[13] Petitioner clearly has a personal, substantial interest in questioning the said writ, an interest in issue and not merely an interest in the question involved or an incidental interest.[14]

The parties do not dispute that no trial on the merits was held and no judgment was ever rendered in Civil Case No. Q-93-17139. The Rules of Court, particularly Section 1 of Rule 39, in force at the time the herein controversy arose, provides:

> Section 1. Execution upon judgments or final orders. -- Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon expiration of the period to appeal therefrom if no appeal has been duly perfected.
>
> If the appeal has been duly perfected and finally resolved, such execution may forthwith be applied for in the lower court from which the action originated, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or the final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.
>
> The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution. (Underscoring supplied.)

Before a writ of execution may be issued, there must necessarily be a final judgment or order that disposes of the action or proceeding. The writ of execution is the means by which a party can enforce a final judgment or order of the court. There is nothing to enforce or execute absent a final judgment or order; thus, there can be no writ of execution.

In the instant case, the trial court itself was aware that a final judgment was yet to be made concerning Civil Case No. Q-93-17139. Thus, in its questioned order dated October 9, 1996, the trial court stated:

> xxx
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> This Court believes that the plaintiff is entitled to recover the amount of P8,445,161.00 representing salaries and wages of its security guards considering the fact that when this Court issued the preliminary injunction, it has the effect of preserving the status quo between the parties during the pendency of the present suit. xxx. However, reservation is made whether claims for damages can be lawfully obtained by the plaintiff pending the final determination of this case.
>
> xxx
>
> Accordingly, the Branch Clerk of this Court is directed to issue a Writ of Execution to be implemented by the Ex-Officio Sheriff or any of her deputies.
>
> SO ORDERED.[15] (Underscoring supplied.)

Clearly, the final determination of the issues in Civil Case No. Q-93-17139 was still pending when the trial court granted the motion for the issuance of a writ of execution, and issued the writ of execution itself, both dated October 9, 1996.

Noteworthy, private respondent filed a motion for leave to file supplemental complaint, and a supplemental complaint on February 18, 1997,[16] four months after the issuance of the order allowing execution and of the

writ of execution itself. There is no rhyme nor reason in the filing of the two pleadings, if a final judgment that would justify the issuance of a writ of execution had already been rendered in the case.

Private respondent relies on the decision of this Court in G.R. Nos. 115121-25, which affirmed the decision of the CA in CA-G.R. SP Nos. 32213, 32230, and 32274-76. However, what was decided in those cases was the propriety of the negotiated contracts entered into by the NFA with certain security agencies. Nothing in those cases settled the issues originally raised by private respondent in its complaint in Civil Case No. Q-93-17139.

The issuance of the order dated October 9, 1996, and of the writ of execution also on the same date, is patently erroneous. It is without any legal basis and shows manifest ignorance on the part of public respondent judge. He did not even have any discretion on the matter, since the trial court cannot issue a writ of execution without a final and executory judgment.

That the writ of execution had already been satisfied does not perforce clothe it with validity. As we have earlier discussed, a writ of execution may only be issued after final judgment. Such a writ issued without final judgment is manifestly void and of no legal effect. It is as if the writ was not issued at all. Seizure of property under a void writ of execution amounts to deprivation of property without due process of law. This Court may direct that whatever action taken under such a void writ be undone. Otherwise, we would be condoning a patent violation of a party's right to due process and allowing one party to unjustly enrich himself at the expense of another.

As regards petitioner's contention that the amount awarded to private respondent, through the order for the issuance of a writ of execution, is without basis and is unconscionable, this is a factual matter that should be taken up in the trial of the case.

WHEREFORE, the petition is GRANTED. The Order of the Regional Trial Court of Quezon City, Branch 88, dated October 9, 1996, granting private respondent's motion for issuance of a writ of execution, motion for immediate payment, and manifestation with motion to reiterate payment on the services actually rendered, and the Writ of Execution issued pursuant to said order, also dated October 9, 1996, are declared NULL and VOID. The Regional Trial Court of Quezon City, Branch 88, is directed to proceed and resolve Civil Case No. Q-93-17139 with dispatch.

No pronouncement as to costs.

SO ORDERED.

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

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[1] In CA-G.R. No. 32275. Petitioner and NFA also questioned four other writs of preliminary injunction before the CA. All cases--CA-G.R. Nos. 32230, 32274, 32275, 32276, and 32213--were consolidated.

[2] National Food Authority, et al. v. Court of Appeals, et al., 253 SCRA 470 (1996).

[3] Rollo, pp. 55-58.

[4] Id. at 77.

[5] Id. at 9-10.

[6] Id. at 83-85.

[7] Petitioner quoted the version of this rule that was in force prior to its amendment by SC Circular No. 24-94 that took effect on June 1, 1994. Thus:

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"SECTION 1. Execution upon final judgments or orders. -- Execution shall issue only upon a judgment or order that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the judgment has been duly appealed, execution may issue as a matter of right from the date of the service of the notice provided in section 11 of Rule 51."

The amendment introduced by SC Circular No. 24-94 was the rule in effect when this petition was filed.

[8] Rollo, p. 13.

[9] Id. at 105-106.

[10] Id. at 147.

[11] Id. at 145.

[12] Id. at 78-79.

[13] Id. at 215-228, 251-264. See also the demand letter, Rollo, p. 190.

[14] Joya v. Presidential Commission on Good Government, 225 SCRA 568, 576 (1993).

[15] Rollo, p. 79.

[16] Id. at 278-283.

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