

IN THE MATTER OF THE PETITION FOR DECLARATORY RELIEF REGARDING STATUS AS PERMANENT RESIDENT. THEODORE LEWIN, PETITIONER, VS. EMILIO GALANG, IN HIS OFFICIAL CAPACITY AS COMMISSIO...

G.R. No. 15253. October 31, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal against a decision of the Court of First Instance of Manila, Hon. Bienvenido A. Tan, presiding, rendered in its Civil Case No. 35758, entitled Theodore Lewin, petitioner, vs. Emilio Galang, respondent, on a "Petition for Declaratory Relief Regarding Status as Permanent Resident," declaring that petitioner has not lost his status as permanent resident, which status he had enjoyed since 1951; that respondent has no right or authority to limit the stay of petitioner in this country, classifying him as a temporary visitor; and issuing a writ of preliminary injunction against the respondent, directing him to desist from arresting and deporting petitioner.

The petition which originated the action contains these material allegations: that petitioner is a citizen of the United States, classified as an alien permanent resident, with Immigration Certificate of Residence issued at Manila on April 16, 1951; on September 16, 1953, preparatory to his visit to the United States he was given a Bureau of Immigration Re-entry Permit to re-enter the Philippines with expiry date of March 16, 1954; that he went to the United States but upon arrival there his American passport was taken by the United States authorities by reason of which he could not leave the mainland of the United States, making it impossible for him to return to the Philippines under his re-entry permit; that it was only in August, 1955 that his American passport was returned to him and another American passport was issued him in 1956; that after the return of his passport he could not return to the Philippines because his re-entry permit had expired on March 16, 1954 and also because the Department of Foreign Affairs had issued instructions prohibiting the issuance of a Philippine visa to him without its prior authorization, such prohibition having been issued during his stay in the United States and without notice to him; that he never abandoned his intention to return to the Philippines; that as his efforts to return failed he was forced to secure admission as a temporary visitor for nine days, although he never gave up intention to reside permanently in the Philippines; that petitioner has never been classified as an undesirable alien and his permit was renewed many times; that he never committed any violation of the law and on the contrary he had helped many civic organizations; that no reason exist³ for depriving him of his permanent status as a permanent resident and no proceedings have been instituted against him for the purpose; that respondent threatens to order his arrest upon the expiration of the period of his temporary stay; that his arrest and deportation would cause him irreparable injury. He prays for a declaratory judgment declaring that he has not lost his status as permanent resident and that a preliminary-injunction issue during the pendency of the case.

Respondent opposed the petition for the issuance of a preliminary injunction, but this opposition was overruled and a writ of preliminary injunction was issued.

The answer of the respondent (1) denies that petitioner is a permanent resident of the Philippines and claims that he has never been considered as such; (2) alleges that there are various confidential reports to the effect that petitioner is an undesirable alien, engaged in dollar smuggling, gunrunning and arms smuggling, and large-scale gambling, and his stay in the Philippines is a danger to the security of the country; (3) argues that the stay of aliens in the country is a mere privilege subject to the control of respondent and the latter's discretion can not be made subject to the control of the courts; (4) argues that there is no cause of declaratory relief, there being no deed, will, contract or written instrument, statute or ordinance which is sought to be construed or the validity of which is sought to be impugned; (5) argues that a declaratory relief can not be used to determine one's status; (6) alleges that petitioner has always been a temporary visitor; (7) argues that to allow petitioner to change his status from temporary visitor to permanent resident, without first leaving the country is to permit an unwise policy; (8) alleges that the same court on December 23, 1955 dismissed petitioner's petition for the writ of habeas corpus (Spec. Proc. No. 28409) and on January 3, 1956, denied petitioner's motion to reconsider said decision; and (9) claims that respondent's duty is to carry out the deportation unless petitioner seeks further extension of his stay as temporary visitor, and the Court has no jurisdiction to restrain respondent therefrom.

Upon the above issues the parties went to trial on February 3, 1959, and respondent's counsel manifested thereat that he was submitting the case "on the basis of our arguments contained in our answer. * * *" (t.s.n. pp. 73-74).

One of the special defenses raised in the court below is that of res judicata. This special defense is contained in the following paragraph of the answer:

* * * * *

"12. That as a matter of fact, the very same branch of this Honorable Court in its order dated*January 3, 1956, denying the motion for reconsideration of its decision dated December 23, 1955, dismissing the petition for habeas corpus filed with this Court by the very same petitioner herein (Spec. Proc. No. 28409), applied the ruling of our Supreme Court in the case of Chang Yung Fu vs. Gianzon, 97 Phil., 913; 52 Off. Gaz. 235, to the effect that the right of the Commissioner of Immigration to limit the stay in this country of a temporary alien visitor and to expel him after the expiration of such time limit may not be interfered with or restrained by the courts, (par. 12, p. 40 ROA)

In view of this special defense, the court below should have taken judicial notice of the habeas corpus proceedings instituted by petitioner before the same Court of First Instance of Manila and before the same judge, Case No. 28409, Ted Lewin vs. Commissioner of Immigration and Commissioner of Customs, and we find that practically the same facts relied upon in petitioner's present petition for declaratory judgment are the very facts upon which petitioner based his request for the issuance of the writ of habeas corpus in the previous case. Herein below are quoted the most important allegations of the ultimate and material facts in the habeas corpus case:

* * * * *

"8. As already stated above, your petitioner has been a permanent resident of the Philippines since in or about 1937. In September 1953, he left for the United States on a temporary visit, but always intending to return. He never relinquished his residence in the Philippines wherein his wife remained and continues to be; where his business and property are located, and which he has, since his arrival herein, considered his home]

"9. As soon as the purpose of his temporary visit to the United States had been accomplished, he wanted and prepared to return home to the Philippines, and made every effort to do so, but, due to circumstances beyond his control and completely without fault on his part, he was not able to arrive in the port of Manila, Philippines, until October 25, 1954;

"10. He arrived in the Philippines with a passport issued by the United States Government and a seaman's visa

issued by the Philippine consul in Hongkong;

"11. Upon arrival in the Philippines on October 25, 1955, your petitioner was prevented by the herein respondents from leaving the vessel in which he came, the "Maria Ines", a private vessel registered in the Republic of Panama;

* * * * *

"19. Pursuant to Article VI of the; 1946 Trade Agreement between the Republic of the Philippines and the United States of America, quoted in paragraph 2, above, your petitioner has acquired a permanent residence for purposes of the immigration and naturalization laws. The same constitutes a vested right of which respondents cannot arbitrarily deprive your petitioner,, but such deprivation necessarily results from the illegal and arbitrary imprisonment and detention of your petitioner for reasons unknown and without a prior hearing. The action of respondents is not only an unconscionable violation of the constitution but also unauthorized and arbitrary repudiation of treaty obligations:

'Aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, the court cannot be unmindful of the fact that the honor of the government and the people of the United States is involved in every inquiry whether rights secured by such stipulations shall be recognized and protected.' (U.S. vs. Gue Lim, 176 U.S. 459; 44 L. ed. 544, 547).

* * * * *

"22. No proceedings have been instituted against petitioner for his deportation or exclusion, and there is no legal provision or principle whatsoever which would justify the action of respondents in, by themselves, or by their agents, imprisoning, detaining, reporting, or excluding your petitioner without cause and without hearing;

* * * * *

"24. As well settled is the rule that habeas corpus lies when a person is illegally detained and confined and is thus deprived of his liberty (Rule 102, Sec. 1, Rules of Court);

* * * * *

"26. By their arbitrary and illegal action, respondents are breaking up a family and dissolving a union, which the laws of this country seek zealously to preserve and protect. Respondents have, by their arbitrary and illegal action prevented your petitioner to even come and see—much less join—his sick wife who, for her part, cannot join her husband on account of her serious illness."

The following defenses were presented against the petitioner.

II

"That the respondents specifically deny the allegations in paragraph 2 of the petition regarding petitioner's supposed 'permanent residence' in the Philippines^ the truth of the matter being as stated in the next preceding paragraph hereof; that the 1946 Trade Agreement does not grant petitioner any right of permanent residence in the Philippines; and that the respondents have no knowledge or information, sufficient to form a belief as to the truth of the rest of the averments of fact in the same paragraph of the petition;

* * * * *

IV

"That the respondents admit the allegation in paragraph 8 of the petition that the petitioner was formerly a resident of this country; but they specifically deny that he has established a permanent residence here for

purposes of the naturalization or immigration laws; that the respondents admit the allegation in the same paragraph of the petition that the petitioner left the Philippines some time in 1953; and that they have no information or knowledge sufficient to form a belief as to the truth of the rest of; the averments] in said paragraph of the petition;

* * * * *

XVI

"That the respondents admit the allegation in paragraph 22 of the petition that they have not instituted deportation or exclusion proceedings against the petitioner; they aver that such proceedings are not necessary or required because, as stated in the preceding paragraphs hereof, the1 petitioner is not now residing in the Philippines; that the respondents specifically deny the rest of the averments contained in the same paragraph of the petition, and they further allege that the petitioner is neither under imprisonment or detention nor is being subjected to deportation or exclusion proceedings, but is simply not allowed to enter the Philippines for lack of documentation;

* * * * *

"2. That conceding arguendo that the petitioner was a former resident in this country, as alleged in paragraphs 1 and 2 of the petition, he cannot as a matter of right reenter the country for permanent residence without proper documentation therefor (Sec. 15, Commonwealth Act No. 613), because the return of an alien from a foreign country constitutes new entry, with right of exclusion on the same conditions as original entry (Ex-parte Rodriguez, 15 F. 2nd 878);

"3. That, as may be gleaned from the instant petition, the petitioner seeks to enter the Philippines for a permanent residence; that in trying to gain admission to the country for such permanent residence by enlisting as a seaman of a foreign vessel (Pars. 10 and 11 of the petition), the petitioner is not only estopped from claiming rights as non-quota or returning resident (U.S. ex rel. Thomas vs. Day, 29 F. 2nd. 485) but also ceased to be a bona fide seaman and, therefore, has no right to be admitted even temporarily only as such seaman (Rule 17, par. 93 Immigration Rules and Regulations; Section 34, Commonwealth Act No. 613);

In its decision in said habeas corpus proceeding the court made the following findings of fact and pronouncements.

"The evidence in this case shows that the petitioner Theodore (Ted) Lewin, a former resident of the City of Manila, left the Philippines in September, 1953, after furnishing a bond for his return. A re-entry permit dated September 16, 1953, was issued in his favor. The validity of said re-entry permit expired on March 16, 1954. After the expiration of his permission to re-enter the Philippines, the petitioner arrived in Manila Bay on October 25, 1955, on board the motorboat "Maria Ines" which belongs to a corporation of which he is the President. He arrived in the said boat as a Second Mate, or member of the crew seven months after the expiration of his re-entry permit. Since his arrival in Manila Bay, he was prevented by the respondent Commissioner of Immigration and his agents to land. When interviewed by the counsel for the petitioner, the Commissioner of Immigration informed the petitioner, thru his counsel, that he could only be landed in Manila by securing the proper permit. The petitioner never formally or in writing asked the Commissioner of Immigration for this permit to land. All that he had done during his stay in the motorboat was to ask some of the agents of the Commissioner of Immigration to allow him to land as a permanent resident of the City of Manila and not as member of the crew of the "Maria Ines" under which classification he came or returned to this country. The petitioner carried with him an American passport but said American passport does not have any Philippine visa.

"In his testimony, the petitioner admitted that he did not make any attempt to secure a Philippine visa before returning to this country. On the other hand, when he reached Hongkong, he secured from the Philippines

Consulate in the said city a visa as member of the crew of the motorboat "Maria Ines" and said visa does not appear in his passport.

* * * * *

"We may say, therefore, without fear of contradiction that the detention in cases of habeas corpus must be illegal. But when such detention is legal, the writ of habeas corpus does not apply. In the case before us, the petitioner in this case is not provided with the proper documentation for his re-entry to the Philippines. His re-entry permit has expired seven months before his arrival in Manila Bay. He is not provided with the proper consular visa and he completely disregarded the authorized representatives of the Government of these Islands in the United States when he left that country without securing the visa of our consular representatives. He came here as a member of the crew of the "Maria Ines". The visa that he carried is the visa of a crew and not of a permanent resident. Yet he comes now and wish to be admitted as a permanent resident of this City and not as member of the crew whose visa he is carrying. He seeks admission to land without securing the proper permit from the Commissioner of Immigration and in contradiction to the permit formerly granted to him as appearing in his re-entry permit. He came to these Islands, knowing fully well that he was not provided with the necessary papers to make his entry legal. He sent a letter to the President of this Republic asking permission to enter and then when that letter was indorsed to the Secretary of Justice, instead of waiting for the answer to his letter to the President, he presented this writ of habeas corpus. In the same way that he disregarded completely our foreign embassy in the United States and did not have the patience to wait for the answer of the President to his letter, he now tries to enter these Islands without the permission and against the will of the Commissioner of Immigration, one of the respondents in this case.

"After disregarding and challenging the rights of our embassies and consulates; after without having waited for the answer to his petition to the President; after ignoring the Commissioner of Immigration to grant or not to grant him permission to re-enter; he comes to the Court and asks that he be allowed to land in defiance of our constituted authorities in the Executive Branch of our Government. While this court, with pleasure and patience, will hear any petition for the vindication of human rights and will gladly, not begrudgingly render its full influence and might for the preservation of said rights, it cannot sanction an act which questions or put in jeopardy the sovereign right of this Republic to admit to its shores aliens of its own choosing.

"The right to exclude or to expel from its territory an alien is one of the attributes of a sovereign state which the Republic has the right to claim and exercise. The President, or his representatives, can legally refuse the landing of any foreigner who, in their opinion, is subversive to the peace of the country, or that his presence might undermine our democratic way of life. The Court will not intervene in the exercise of this right of the Executive, nor will it question the wisdom of its action unless it is demonstrated and proven in a clear and conclusive manner that said powers have been abused."

The petitioner started perfecting his appeal from the above decision and from the order denying the motion for reconsideration. However, the appeal was later withdrawn, so the judgment became final.

It can readily be seen from a perusal of the material allegations of the petition in each case that the parties are the same; that in either case petitioner Ted Lewin asserts his right of entry into the Philippines, predicated such right on the alleged fact of his permanent residence in the Philippines prior to his leaving the same in the year 1951; in the case at bar the supposed violation of petitioner's right is the refusal of Philippine consular officials to issue visas to him although petitioner is not guilty of any violation of law such as to render him an undesirable alien and the similar refusal of the respondent to admit him into the islands, while in the previous case the petitioner alleged that he is prevented from leaving the boat in which he came and is being excluded from the country without justification. The alleged breach of petitioner's right in both cases is the same, that is, the refusal of the respondent to allow petitioner to land and enter the country as a permanent resident.

The remedies prayed for are different because of the different circumstances surrounding each case. In the

previous case petitioner came into the Philippines arriving in the port of Manila in a private vessel registered in Panama and the prohibition for him to land is alleged to be an exclusion of petitioner without cause or hearing, said prohibition giving rise to the right of petitioner to the issuance of the writ of habeas corpus. In the case at bar the petitioner dubs his petition & "complaint for declaratory relief" and seeks a judicial declaration to the effect that as a permanent resident he is entitled to enter the Philippines. The difference between the remedy applied for in the previous case, and that sought in the case at bar does not render the previous suit or action for habeas corpus different, for purposes of the defense of bar by prior judgment, from the case for declaratory relief, because the right of the petitioner alleged to have been violated in both cases are the same. (Juan vs. Go Cotay, 26 Phil., 328; Chua Tan vs. Del Rosario, 57 Phil., 411; Aguirre vs. Atienza, 104 Phil., 477; Geronimo vs. Nava, 105 Phil., 145; 57 Off. Gaz. 4417; Cayco vs. Cruz, 106 Phil., 65; 57 Off. Gaz. 260.)

We are, therefore, led to the conclusion that the previous proceeding for habeas corpus filed in the Court of First Instance of Manila before the same judge, Case No. 28409, Ted Lewin vs. Commissioner of Immigration and Commissioner of Customs, in which the judgment has already become final because petitioner did not appeal from the decision of the Court of First Instance denying the petition for habeas corpus, is a bar to the present action for declaratory judgment. It strikes us that the parties in this case have overlooked either the existence of the previous final judgment between the same parties and for the same cause, or its importance in the case at bar. Although the Solicitor General made mention of it in his answer to the complaint for declaratory judgment, no error is assigned by him on this appeal, that the present action is barred by a former judgment. The distinguished counsel for petitioner in this Court is, in most likelihood, unaware of the existence of the previous judgment.

In view of the above circumstances, one point needs clarification on our part. It is the fact that while respondent-appellant raised the defense of bar by former judgment in his answer, this defense has not been touched upon and is not assigned as an error in his brief before us. Is it proper for us to consider this defense which has not been raised on appeal?

There is a rule of law to the effect that the rights of a State may not be waived by mistakes of officers entrusted with the exercise of such rights. This rule has been applied by us in taxation cases. (Pineda vs. Court of First Instance of Tayabas, 52 Phil., 803; Canlubang Sugar Estate vs. Standard Alcohol Co. [Phil.], Inc., G. R. No. L-10887, April 16, 1958; Philippine American Drug Co. vs. Collector of Internal Revenue and Court of Tax Appeals, 106 Phil., 161; 57 Off. Gaz. [21] 3915.) This principle has been applied in similar cases in the United States.

"Unless duly authorized by law, a board or officer may not waive the state's immunity from suit; nor may an officer of the United States, without statutory authority, waive conditions or limitations imposed by statute in respect of suits against the United States. And as a general rule, the government is not bound by the action of its officers where, by misconstruction of the law under which they have assumed to act, unauthorized payments are made." (48 Am. Jur., p. 72.)

The present suit is against the Commissioner of Immigration, who represents the Republic of the Philippines in matters involving admission of aliens into the country, a matter directly affecting the sovereignty of the State. If in tax cases the errors of public officers entrusted with the administration of the collection of revenue may not prejudice the right of the Government to said taxes, with more reason should the mistakes of the Solicitor General in trials of immigration cases involving the right of an alien to enter the Philippines, which affects the sovereignty of the States, not have the effect of waiving such sovereignty. Especially will this principle hold true in trials before courts of justice where the representative of the Government commits an error in procedure only, as in this case (the Solicitor General failed to raise the issue of *res judicata* in his brief although the same was raised in his pleadings in the lower court). Furthermore, a reason of public policy demands that the error of procedure

committed by the Solicitor General be overlooked. It is to the interest of the administration of justice that there be uniformity of decisions. Were we allowed to overlook the previous decision of the Court of First Instance of Manila in the habeas corpus case we would have two contradicting final decisions, because a subsequent decision of the same Court of First Instance presided over by the same judge, is entirely opposite to his decision in a previous case on the same issues and between the same parties. This Court cannot tolerate such an anomaly. The purpose behind the constitutional provision requiring all appeals involving questions of law to be brought before the Supreme Court is to insure uniformity of decisions in matters of law. In accordance with this purpose it is our bounden duty to take into account a decision already rendered by the same Court of First Instance, a decision which has already become final; otherwise we will be faced with the anomalous spectacle of two conflicting final decisions on the same set of facts.

For the above considerations, the judgment appealed from is hereby reversed and the complaint dismissed. Without costs. So ordered.

Paras, C.J., Bengzon, Padilla, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Judgment reversed.

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