

HON. MARTINIANO P. VIVO, AS ACTING COMMISSIONER OF IMMIGRATION, PETITIONER, VS. HON. GAUDENCIO CLORIBEL, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BR. VI, ET AL., RESPO...

G. R. No. 23239. November 23, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This is a special civil action for certiorari and prohibition with preliminary injunction filed before Us by the Commissioner of Immigration to review and set aside the preliminary injunction issued on September 18, 1962 by the respondent Judge of the Court of First Instance of Manila in Civil Case No. 51626, as well as the latter's order dated March 30, 1964, refusing to dissolve said injunction.

The facts are as follows:

On January 9, 1961 Sy King Fong[1] and her minor children Co Belo, Co E. Khon and Co Shan Shan (hereinafter also referred to as respondents visitors) applied for and were granted a passport visa to the Philippines at the Philippine Consulate General in Hongkong, for the purpose of visiting Sy King Pong's husband and the children's father, respondent Co Chin, a Chinese resident in the Philippines.

In connection with the said application, Co Chin posted with the Bureau of Immigration a bond of P28,000.00 undertaking that his wife and children will depart from the Philippines on or before the date specified, and will continue to maintain the status under which they are admitted and will not violate any limitation or condition of their admission.

Said wife and children of Co Chin arrived here as such temporary visitors on January 17, 1961 for an authorized stay of three (3) months, or up to April 17, 1961, while Co Chin's application for naturalization was pending.

On February 3, 1961 the Commissioner of Immigration was informed, by letter from the Office of the President, that His Excellency had authorized the extension of respondents visitors' stay for another three (3) months from the expiry date of April 17, 1961 or up to July 17, 1961.

On June 24, 1961 respondent Co Chin's petition for naturalization was granted by the Court of First Instance of Manila, and the judgment was not appealed.

On July 3, 1961 respondents visitors filed with the Commissioner of Immigration a request for another extension of stay for three (3) months from July 17, 1961, or up to October 17, 1961, on the ground that they desired to stay with Co Chin and other relatives and friends whom they had not seen for several years, and to visit the different tourist attractions in this country. This request was likewise granted.

On August 17, 1961 respondents visitors wrote the Secretary of Justice, through the Secretary of Foreign Affairs, requesting for the extension of their temporary stay for two (2) years from June 24, 1961 pursuant to the Cabinet

Resolution of February 29, 1956, revealing for the first time that respondent Co Chin's petition for naturalization was granted by the Court of First Instance of Manila on June 24, 1961, and there was no appeal. Acting on this request the Secretary of Foreign Affairs in his 1st Indorsement, dated August 17, 1961, approved respondents visitors' change in category from temporary visitors to special non-immigrants under Section 47(a)(2) of the Philippine Immigration Act of 1940, as amended, and extended their temporary stay for a period the expiry date of which was June 24, 1963, "it appearing that the petition for naturalization as Philippine citizen of their husband/father, Co Chin, has been granted by the Court of First Instance of Manila in its decision dated June 24, 1961, which has not been appealed."

On August 24, 1961 the Secretary of Justice in his 2nd Indorsement approved the extension up to June 24, 1963 in favor of respondents visitors, stating that they ".... will become citizens by operation of law, if otherwise qualified, when the decision of the court becomes executory 'after two years from its promulgation', pursuant to Republic Act No. 530," but subject to the condition that they shall secure reentry permits to Hongkong valid at least two months over and beyond their extended stay and that they shall maintain their cash bonds filed with the Bureau of Immigration and pay the corresponding fees.

On August 28, 1961 the Secretary of Foreign Affairs in his 3rd Indorsement referred the matter to the Commissioner of Immigration who, however, extended respondents visitors' stay only up to October 17, 1962 .

On October 2, 1961 respondents visitors wrote the Commissioner of Immigration, requesting that they be granted an extension of stay up to June 24, 1963 per approval of the Secretaries of Foreign Affairs and of Justice, but no action had been taken thereon by the latter.

After the 1961 national elections there was a change of administration. The new Secretaries of Foreign Affairs and of Justice maintained that the power to extend the stay of aliens was vested by law in the Commissioner of Immigration, not in them.

On August 29, 1962 the Commissioner of Immigration, with the approval of the new Secretary of Justice, issued Immigration Circular No. V-101 which abrogated all extensions of stay of temporary visitors who arrived in the Philippines in 1961 and prior years.

On August 31, 1962 the Commissioner of Immigration sent a letter to respondent Co Chin, enclosing a copy of the aforesaid circular, and requiring respondents visitors to leave the country on September 18, 1962 . This was not complied with. Instead, on September 17, 1962 respondent Co Chin, in behalf of his wife and children (respondents visitors), filed a petition for prohibition with preliminary injunction with the Court of First Instance of Manila docketed as Civil Case No. 51626 and assigned to Branch VI under respondent Judge Gaudencio Cloribel.

On September 18, 1962 the respondent Judge issued an order requiring the Commissioner of Immigration (respondent below) to file an answer to the petition within ten (10) days from notice and, pending the consideration of the petition, granting the issuance of a writ of preliminary injunction upon the filing of a bond of P4,000.00, enjoining therein respondent (petitioner here) to desist from arresting and/or requiring Sy King Pong, Co Belo, Co E. Khon and Co Shan Shan to leave the country and from confiscating the cash bond posted in their behalf until further orders.

On October 16, 1962 the Commissioner of Immigration filed his answer to the petition below, alleging that petitioners therein are not entitled to stay beyond the authorized period which had already been terminated in accordance with law; that, consequently, they are liable to arrest, confiscation of their bond, and subsequent deportation in accordance with Section 37(a) of the Immigration Act of 1940, as amended; that the Secretaries of

Foreign Affairs and of Justice are not authorized to admit into the Philippines aliens for temporary stay, or extend the period authorized by the Commissioner of Immigration; and that the petition does not state a cause of action.

On January 7, 1964 the respondent below filed a motion to dissolve the writ of preliminary injunction, on the ground that assuming the validity of the extension granted by the former Secretaries of Foreign Affairs and of Justice, the authorized period of stay, up to June 24, 1963, had already expired. To this motion petitioners below filed on January 22, 1964 an opposition.

On March 30, 1964 respondent Judge denied the motion to dissolve the writ of preliminary injunction, stating only that it was "not well-taken."

Thus, the filing of this action herein on July 25, 1964. Respondents visitors were required to answer, but We issued no preliminary injunction. Subsequently, the parties submitted the case for decision upon the filing of memoranda in lieu of oral argument.

Petitioner herein contends that the respondent Judge acted in excess of jurisdiction and with grave abuse of discretion in issuing the writ of preliminary injunction and in refusing to dissolve the same. On their part, respondents traverse the Commissioner's contention and insist that appeal is an adequate remedy for the Commissioner; that the latter should have filed a motion for reconsideration to enable the respondent Judge to reexamine the legal aspect of the case, and that the case below has not become moot and academic.

This Court in *Vivo v. Area, et al.*,^[2] also a petition for certiorari involving facts alike in all respects to those in the instant case, thru Mr. Justice J. B.L. Reyes, held:

"It is argued for these visitors that the indorsements of the Secretaries of Justice and Foreign Affairs ... effected a change in their status from temporary visitors to special non-immigrants, entitled to residence until the naturalization case of the husband is finally decided. We find this proposition untenable, because both indorsements clearly specify that they were only granted 'a period of stay up to June 9, 1963,' a fixed date that can not imply an indefinite stay. It is to be presumed that both Secretaries knew that the final acquisition of Filipino citizenship by the husband Lim Chiao Cun cannot be set, under the existing law, at any definite date after a Judgment declaring him qualified for naturalization, since later on he may be found unfit to take the oath of allegiance; and that a definite terminus for the stay of his wife and children is incompatible with an intent to let them stay until the end of the naturalization proceedings.

"Another circumstance indicating that the terminal date, June 9, 1963 was wholly unconnected with Lim Chiao Cun's naturalization case is the requirement of the Secretary of Justice that the visiting wife and children 'shall secure reentry permits to Hongkong valid at least two months over and beyond their extended stay' for this condition connotes the idea that the , visitors must leave within 2 months from the expiry date of the extension, without regard to the result of the naturalization case.

"Finally, an extension of an alien's period of stay being a matter of grace, and not of right, should be strictly interpreted.

"As it is not disputed that further staying here of these visitors has not been authorized, the refusal of the court to dissolve its preliminary injunction after June 9, 1963, as prayed for by the petitioning Commissioner, insofar as the stay of these visitors are concerned, was against the law, and, therefore, in abuse of discretion and excess of jurisdiction."

In the case under consideration, the indorsements of the Secretaries of Foreign Affairs and of Justice likewise specified a definite period of stay up to June 24, 1963, which has long expired. Respondents visitors were also required by the Secretary of Justice to secure reentry permits to Hongkong valid at least two months over and beyond their extended stay. Similarly, the respondent Judge refused after June 24, 1963, to dissolve the

preliminary injunction he ordered issued, that is, even after the terminus of the longest extension of respondents visitors' stay in the Philippines .

It is to be noted that the aforecited case was promulgated by the Supreme Court on December 27, 1963 , whereas the order of the respondent Judge denying the Commissioner's motion to lift the injunction was issued on March 30, 1964 . It is surprising why the respondent Judge took no heed of said precedent-setting decision, handed down three months before he issued his questioned order. Neither should Ignorance be his reason, for Judges are supposed to keep track of current jurisprudence in order that they be guided accordingly. Thus it is unfortunate that the grant of the writ below was precipitate.

The Cabinet Resolution of February 29, 1956 upon which the Secretaries of Foreign Affairs and of Justice based their action of changing the status of respondents visitors from temporary visitors to special non-immigrants, and of prolonging their stay up to June 24, 1963 - and which apparently guided the actions of respondent Judge below - does not find support in law. As enunciated by this Court thru Mr. Justice J.G. Barrera in *Lim Chiok, et al. v. Vivo*, L-20513, December 26, 1963:

"[T]he administration and enforcement of our immigration laws lie with the Bureau of Immigration. The so-called Cabinet Resolution of February 29, 1956 did not specifically authorize the Secretaries of Foreign Affairs and of Justice to extend the stay of temporary visitors. It could not legally do so because under the express provisions of the Immigration Law, it is the Commissioner of Immigration who is vested with the power and authority to grant such extensions. And, the Cabinet has no power to amend or modify the law. We so declared in *Ang Liong vs. Commissioner of Immigration* (51 O.G. 2893) when we said: 'The Secretary of Foreign Affairs is not authorized to admit into the Philippines aliens for temporary stay, or extend the period authorized by the Commissioner of Immigration for their stay in the Philippines.'

"Neither can the two Secretaries authorize the change of status from temporary visitors to special non-immigrants. The law and our decisions on the matter are clear on this point: temporary visitors can not have their status changed to special non-immigrants without first departing from the country."

It is, however, contended that respondents visitors claim the right to stay in the Philippines not only by reason of the date extended but of the approval of the petition for naturalization of respondent Co Chin by which, allegedly, they (wife and children) shall acquire the right to become Filipino citizens by operation of law when the decision in the naturalization case becomes executory, unless disqualified to become Filipino citizens under the naturalization law.

The record does not show whether or not Co Chin has already taken his oath of citizenship. Assuming even *arguendo* that he is now a naturalized Filipino, still the decisions are in unison that:

"x x x the marriage of an alien woman to a Philippine citizen does not automatically make her a Philippine citizen entitled to enjoy all the rights and privileges of citizenship. She must, as a pre-requisite, establish satisfactorily in appropriate proceedings, that she has all the qualifications and none of the disqualifications required by law. The privilege of citizenship is granted only to those found worthy of it and not indiscriminately to anybody at all solely on the ground of marriage to a man who is or has already become a citizen of the Philippines, irrespective of moral character, ideological beliefs and identification with Filipino ideals, customs and traditions." [3]

As to foreign-born minor children, they are extended citizenship "if dwelling in the Philippines at the time of the naturalization of the parent." "Dwelling" means lawful residence. Since prior to the time the father of respondents visitors was supposed to have taken his oath of citizenship (June 24, 1963) their lawful period of stay had already expired and they had already been required to leave, they were no longer lawfully residing here (*Kua Suy, et al. v. The Commissioner of Immigration*, L-13790, October 31, 1963).

Respondent Co Chin's argument that he will not be able to comply with his obligation to send his children of school age to Philippine public schools or private schools where Philippine history, government and civics are taught, during the probationary period, if the latter would be sent back to Hongkong, is not in point. This is a requirement which he must comply with "during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen." (See. 2, .Com. Act No. 473)

At any rate, respondents visitors are duty bound to comply with the last paragraph of Section 9 of the Philippine Immigration Act of 1940, which provides that:

"An alien who is admitted as a non-immigrant, cannot remain in the Philippines permanently. To obtain permanent admission, a nonimmigrant alien must depart voluntarily to some foreign country and procure from the appropriate Philippine Consul the proper visa and thereafter undergo examination by the officers of the Bureau of Immigration at a Philippine port of entry for determination of his admissibility in accordance with the requirements of this Act."

For as this Court, again thru Mr. Justice J.B.L. Reyes, has observed in *Chiong Tiao Bing v. Commissioner of Immigration*, 52 O.G. 6551, 6552-6553:

"x x x It is clear that if an alien gains admission to the Islands on the strength of a deliberate and voluntary representation that he will enter only for a limited time, and thereby secures the benefit of a temporary visa, the law will not allow him subsequently to go back on his representation and stay permanently, without first departing from the Philippines as he had promised, x x x. Any other ruling would as stated in our previous decision, encourage aliens to enter the Islands on false pretenses; every alien, so permitted to enter for a limited time, might then claim a right to permanent admission, however flimsy such claim should be, and thereby compel our government to spend time, money and effort in examining and verifying whether or not every such alien really has a right to take up permanent residence here. In the meanwhile, the alien would be able to prolong his stay and evade his return to the port whence he came, contrary to what he promised to do when he entered. The dangers inherent in such a ruling are self-evident."

Contrary to respondents' stand, appeal is not the adequate remedy here. The respondent court seems to be dragging its feet in the disposition of this case. Although Civil Case No. 51626 was instituted on September 17, 1962 and issues were joined by the filing of the answer on September 27, 1962, and although as a suit for prohibition it was entitled to preferential attention, no action was taken on the case until after petitioner (respondent below) filed his motion to dissolve the writ of preliminary injunction on January 7, 1964. And although the longest extension (assuming that it was valid) had already expired on June 24, 1963, still the respondent court refused to dissolve the writ of preliminary injunction. In these circumstances the Commissioner of Immigration is not required to wait for the rendition of final judgment and take; an appeal from a patently illegal order of denial. Appeal, unlike a writ of certiorari, cannot promptly relieve the aggrieved party from the injurious effect of the order (*Silvestre vs. Torres*, 57 Phil. 885). And even if the error is subsequently corrected on appeal, such aliens are meanwhile able to unduly prolong their illegal stay in violation of our country's immigration laws and policies (*Kua Suy, et al. vs. The Commissioner of Immigration*, supra.).

A motion for reconsideration likewise would not have availed the Commissioner. The respondent court took almost three months to resolve the motion for dissolution of the writ of preliminary injunction. This was despite the fact that even the petitioners below themselves admitted that the longest extension of their stay was only up to June 24 1963, and this fact was brought to respondent Judge's attention. Any further delay would have prejudiced the interest of the Government because of the undue continuation of respondents visitors' unauthorized stay.

Furthermore, the Solicitor General is correct in observing that the suit below is already moot and academic. It is premised on the extension granted by the Secretaries of Foreign Affairs and of Justice for therein petitioners' stay

up to June 24, 1963, which has already expired. And, as observed, the acquisition of Philippine citizenship by respondent Co Chin will not improve the position of his wife and children who have already stayed here illegally and too long.[4]

From the facts and circumstances of record, this Court is convinced that even before the respondents aliens left Hongkong for the Philippines they had a well-planned move to stay here permanently contrary to what they stated in their application before the Philippine Consulate in Hongkong, which the lower court failed to detect. Thus, soon after their arrival, representations were made to the Office of the President culminating in a letter sent by said office, dated February 3, 1961, to the Commissioner of Immigration informing the latter that the President had already authorized the extension of their stay for another period of three months so that instead of their stay expiring on April 17, 1961 as originally provided for in their visas they could stay up to July 17, 1961. Fourteen (14) days before the expiration of the period extended, again another petition for extension of three months was filed with the Commissioner of Immigration which, having been granted, brought their permitted stay up to October 17, 1961. Two months before the date of expiration or on August 17, 1961 respondents aliens again wrote the Secretary of Justice through the Secretary of Foreign Affairs requesting an extraordinary period of extension of two years from June 24, 1961. When the Commissioner of Immigration in the exercise of his discretion pursuant to law did not extend the period as desired, they resorted to this case. And unluckily for the Government respondent Judge Gaudencio Cloribel took cognizance of the same and immediately issued a preliminary injunction, and what is worse, later on, despite clear provisions of the law and the Jurisprudence, stubbornly persisted without cause in refusing to dissolve the injunction even after the expiration of the extended period of stay as granted by administrative officials, thereby further prolonging the aliens' stay for almost 2-1/2 years up to the present time.

The situation here again brings to mind the apt observation of the now Chief Justice Roberto Concepcion, speaking for this Court in *The Chief of the Philippine Constabulary v. The Judge of the Court of First Instance of Rizal*:^[5]

"Thus, several parties had, through the action and the omissions of the judicial branch of the government, succeeded, not only in evading the law, but, also, in preventing the executive department from executing and enforcing the same, for over two (2) years. Surely, more caution should be exercised to avoid such occurrence, if we hope to keep the faith of the people in the courts of justice."

Perceptible, indeed, from the drift of several cases that reached this Court is a disquieting possible effect of weakening the people's faith in the Judicial Department of our Republic, sometimes through acts of inadvertence by some members of our Judiciary. As early as 1958, in the case of *People v. Santas*, 56 O.G. 3546, this Court stressed the need for trial Judges to take cognizance of the settled pronouncements and rulings of the Supreme Court. Speaking through Mr. Justice Alfonso Felix, this Court therein said (*supra*, 3552-3553):

"Now, if a Judge of a lower Court feels, in the fulfillment of his mission of deciding cases, that the application of a doctrine promulgated by this Superiority is against his way of reasoning, or against his conscience, he may state his opinion on the matter, but rather than disposing of the case in accordance with his personal views he must first think that it is his duty to apply the law as interpreted by the Highest Court of the Land, and that any deviation from a principle laid down by the latter would unavoidably cause, as a sequel, unnecessary inconveniences, delays and expenses to the litigants. And if despite of what is here said, a Judge, by delicate or acute qualms of conscience, still believes that he cannot follow Our rulings, then he has no other alternative than to place himself in the position that he could properly avoid the duty of having to render Judgment on the case concerned (Art. 9, C.C.), and he has only one legal way to do that."

The issuance of preliminary injunction, it is true, rests upon the sound discretion of the court or its Presiding

Judge. Sound judicial discretion, however, is no license to undo the law by defeating its objectives. Perhaps only too often, as this Court's records will bear out, has respondent Judge herein been stopped by this Court, through preliminary injunction or restraining order, from carrying out a preliminary injunction or order issued by him at his discretion.[6]

We remember that earlier in another case, *Commissioner of Immigration v. Hon. Gaudencio Cloribel, et al.*, L-23838, December 28, 1964, respondent Judge's attention was called by this Court, with caution and prudence, thus:

"Petitioners also state that the Presiding Judge of Branch VI has shown bias against them and, in support of this, mention previous decisions of said Judge reversed by this Court. We trust, however, that respondent Presiding Judge will follow the rulings of this Court, not insist upon his own, in the instances where his decisions had been reversed."

It is the impression of this Court in this case, that the interests of the Government have been plainly disregarded. We moreover express our displeasure and dissatisfaction with the actuations of Judge Cloribel which have been unfair to the Government and to the people. And if this statement is made it is in the spirit and purpose of preserving the faith of the people in the judiciary of which every member should, by diligence and study, prove that the people's and the Government's interest are taken into consideration and the laws and jurisprudence involved are seriously taken into account, something which regrettably had been forsaken or at least neglected in this particular case below.

And to forestall any doubt thereon, nothing herein shall preclude the Commissioner of Immigration from exercising his functions and duties under the law by confiscating the P28,000.00 bond aforementioned and proceeding accordingly at the appropriate time. Finally, may this case also serve to alert and warn Government officials concerned of similar plans by prospective alien visitors who may entertain the same wishes as those of the respondents visitors herein or what is worse if their purpose is to spy in our midst for other nations.

WHEREFORE, the preliminary injunction issued by respondent Judge on September 18, 1962 is hereby dissolved and his order dated March 30, 1964 refusing to dissolve said injunction is hereby set aside, and respondent Judge of the Court of First Instance of Manila is hereby permanently restrained from further taking cognizance of and assuming jurisdiction over said court's Civil Case No. 51626, except to dismiss it for having become moot and academic. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] Alias Sy King Fung, alias Siy Teng

[2] G.R. No. L-21728, decision promulgated December 27, 1963 .

[3] Brito v. Commissioner of Immigration, G.R. No. L-16929, June 30, 1965 .

[4] Lao Chay v. Galang, G.R. No. L-19977, October 30, 1964 ; Kua Suy, et al. v. The Commissioner of Immigration, *supra*.

[5] G.R. No. L-22308, G.R. No. L-22343-44, March 31, 1964 .

[6] Some thirty-nine (39) civil cases against respondent Judge Gaudencio Cloribel are in this Court's records. And this Court has granted preliminary injunction or restraining order against him in at least twenty (20) of said cases, i.e., G.R. Nos. L-19598, L-20024, L-20266, L-20458, L-22236 (mandamus granted) L-23026-27, L-24139, L-24704, L-24946, L-25171, L-25248, L-25442, L-25851 (pending bond), L-25878, L-26069, L-26235, L-26439, L-26585 and L-26733, & L-26845.

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