

ETERNAL GARDENS MEMORIAL PARK CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND RESIDENTS OF BAESA, CALOOCAN CITY, RESPONDENTS.

G.R. NO. 50054. August 17, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for certiorari seeks to set aside the order of the Intermediate Appellate Court which denied the petitioner's motion to dismiss the respondent's appeal on the ground that the petitioner failed to include a notice of hearing in its motion and the subsequent order which denied the motion to reconsider the earlier order.

Petitioner Eternal Gardens Memorial Park Corporation (Eternal Gardens) applied for a certificate of clearance from the National Pollution Control Commission (NPCC), to operate a memorial park at the former site of the Philippine Union College in Baesa, Caloocan City, Metro Manila. The private respondents, "Residents of Baesa" opposed the application on the ground that the project would cause pollution of water resources in the area.

While hearings were being conducted by the NPCC, the petitioner allowed an interment to take place in its cemetery. The private respondents filed a telegram complaint with the NPCC requesting the latter to investigate and look into the legality of the said interment. The complaint was incorporated with the original application for clearance filed by the petitioner.

Upon a finding that the objections raised by the respondents were not without remedy and that the project had been approved by the Metro Manila Commission, the Regional Health Office No. 4 and the Mayor of the City of Caloocan, the NPCC issued an order granting the petitioner a certificate of clearance to operate a memorial park at Baesa, Caloocan City subject to the condition that it submit the following: (1) A design of its interment vaults duly certified by a registered structural engineer that such vaults will not crack from earthquakes with intensity No. 7 and above on the Richter Scale; and (2) A certification covering each intermit vault to be used that the same has passed a rigid quality control test according to the latest concept of interment to the effect that it is structurally sound, free from the tiniest crack, and waterproof. The said order was received by the respondents on April 20, 1978.

On May 4, 1978, the respondents filed a motion for reconsideration. On August 22, 1978, the NPCC denied the motion. However, it imposed a fine of P1,000.00 on the petitioner for causing an interment to take place without any prior permit from the NPCC.

On September 8, 1978, the respondents filed a notice of appeal and an ex-parte urgent motion for extension of time to file appeal or petition for review with the appellate court praying for an extension of thirty (30) days to perfect the appeal. The docket fee, however, was paid only on October 2, 1978.

In a resolution dated October 4, 1978, the appellate court granted the respondents' motion, subject to the conditions that the same is filed within the reglementary period and that the decision sought to be reviewed is

appealable. Thereafter, the respondents filed the corresponding appeal.

On November 21, 1978, the petitioner filed a motion to dismiss the appeal on the ground that the same was filed out of time. According to the petitioner, since the respondents received the NPCC's order on April 20, 1978, they had up to May 5, 1978 or 15 days within which to perfect their Appeal, pursuant to section 6 of Rule 122 of the Rules of Court. However, on May 4, 1978, the respondents filed a motion for reconsideration. Thus, assuming that the said motion interrupted the period for filing their notice of appeal, respondents had only one (1) day left within which to appeal, which was on August 26, 1978, one day after the respondents received the denial of their motion. Therefore, since the respondents filed their appeal only on October 2, 1978, the same was filed out of time being 37 days late.

The respondents filed a motion to expunge from the records the petitioner's motion to dismiss on the ground that the latter failed to state the time and place for hearing in Violation of sections 4 and 5 of Rule 15 of the Rules of Court.

The appellate court granted the respondents' motion on January 10, 1979. The petitioner moved to reconsider the court's order but the same was denied on February 8, 1979. Consequently, it filed this instant petition for certiorari and mandamus with preliminary injunction, alleging that the appellate court committed grave abuse of discretion in dismissing its motion on the ground that said motion did not contain any notice of hearing for such notice is not required in motions or pleadings filed with the appellate court.

While the petition was pending before this Court, the appellate court, on March 27, 1979, issued *motu proprio* a resolution recalling its order granting the respondents' motion to expunge petitioner's motion to dismiss. It considered the motion submitted for resolution.

On April 5, 1979, the appellate court issued another resolution granting the petitioner's motion to dismiss the respondents' appeal on the ground that it was filed out of time.

In view of the aforementioned dismissal of the appeal, the petitioner filed a manifestation and motion to withdraw the petition for certiorari filed before this Court on the ground that it had become moot and academic.

On September 10, 1979, this Court issued a resolution requiring the respondents to comment on petitioner's manifestation and motion to withdraw the petition. The Court of Appeals and the Division Clerk of said Court were also directed to explain why the appellate court issued *motu proprio* its resolutions dated March 27 and April 5, 1979. respectively, notwithstanding that said matters were no longer within its jurisdiction by virtue of the pendency of the present petition in this Court wherein the petitioner has raised precisely the same issues for determination, and to comment on the timeliness of respondents' appeal.

In their comment, the respondents averred that the petition should not be dismissed for being moot and academic because the resolutions in question were not only violative of the respondents' right to due process of law but were also null and void for having been issued without jurisdiction.

The respondent appellate court, through its division clerk, filed a compliance contending that the present petition did not divest the said court of jurisdiction to correct its processes and orders and, therefore, the questioned resolutions were issued within its lawful jurisdiction. It stated that the petition filed with this Court was under Rule 65 of the Revised Rules of Court and not under Rule 45 thereof because there is as yet no final determination and judgment of the case pending with the respondent court and what was actually elevated to this Court were only interlocutory orders. Therefore, the main case still remaining with the appellate court, the latter had jurisdiction to correct such orders unless restrained by this Court.

On the matter of the timeliness of respondents' appeal, the appellate court contended that although the respondents filed by registered mail their ex parte motion for extension of time to file an appeal or petition for review on September 8, 1978, the Court did not consider such motion as filed until after October 2, 1978 when respondents paid the docketing fee. Furthermore, even granting that the latter filed their notice of appeal on September 8, 1978, still, the same was filed outside the reglementary period to appeal because after the denial of respondents motion for reconsideration on August 25, 1978, they had only two days left to perfect their appeal which was on August 27, 1978.

On November 16, 1979, this Court issued a resolution dated November 14, 1979, giving due course to the petition and requiring both parties to submit their respective memoranda on the basic issues of (1) whether or not respondents' appeal was timely submitted to the appellate court and should be resolved on the merits and (2) whether the said court had jurisdiction to issue motu proprio its resolutions dated March 27 and April 5, 1979 notwithstanding the pendency of the present petition filed with this Court on March 5, 1979.

With regard to the jurisdiction of the appellate court in issuing the resolutions dated March 27 and April 5, 1979 respectively, the petitioner argues that since it filed a petition for certiorari under Rule 65 which means that such a petition is a special civil action, the appellate court did not lose its jurisdiction to correct interlocutory orders that may have been issued erroneously.

On the other hand, the respondents maintain that while under the Rules of Court, courts may amend, modify or revoke any decision or order promulgated by them, such power of authority is not absolute. They state that among the limitations thereof are when a judgment has become final and when an appeal has been interposed on time. Accordingly, while it is true that what is pending in the present case is neither a final judgment nor an appeal by certiorari, the effect thereof would be the same. Therefore, out of respect and courtesy for the higher court, the lower court should have suspended all pending proceedings in the elevated case as even without any restraining order, the lower court had lost jurisdiction to further act on the case.

We agree with the respondents on this point.

Although this Court did not issue any restraining order against the Intermediate Appellate Court to prevent it from taking any action with regard to its resolutions respectively granting respondents' motion to expunge from the records the petitioner's motion to dismiss and denying the latter's motion to reconsider such order, upon learning of the petition, the appellate court should have refrained from ruling thereon because its jurisdiction was necessarily limited upon the filing of a petition for certiorari with this Court questioning the propriety of the issuance of the above-mentioned resolutions. Due respect for the Supreme Court and practical and ethical considerations should have prompted the appellate court to wait for the final determination of the petition before taking cognizance of the case and trying to render moot exactly what was before this Court. As we have ruled in the case of *People v. Court of Appeals*, (101 SCRA 450, 463 and 466):

“x x x Thirdly, the statement that ‘whatever rights the movants were allowed to exercise in the Supreme Court could be exercised by them in the Court of Appeals’ is clearly misplaced. It implies concurrence of jurisdiction between this Tribunal and respondent Court, which is totally unacceptable. It would lead to the absurd situation where within the reglementary period from finality of a Decision or Resolution, a party can simultaneously file a Petition for Review before this Tribunal as well as a Motion for Reconsideration before respondent Court. This interpretation does havoc to the rules on orderly procedure. A party should not be allowed to pursue simultaneous remedies in two different forums.

XXX XXX XXX

We find the foregoing without merit. The Writ of Certiorari is intended to keep a tribunal within the limits of its jurisdiction. As explained above, respondent court acted without or in excess of its jurisdiction and with grave abuse of discretion when It passed upon private respondents' Fourth Motion for Reconsideration considering that its judgment of conviction had already become final. And what is even more glaring, respondent Court acted on said Fourth Motion for Reconsideration after this Tribunal had already denied private respondents' Petition for Review on Certiorari, as well as the reconsideration thereof. The attention of respondent Court, as explained heretofore, was called to such development. It paid no heed. Although now, it is claimed that 'had it known, it would have stopped action or desisted from taking any at any stage in which the fourth (4th) motion for reconsideration was found."

Applying the foregoing precedent, we rule that the appellate court acted with grave abuse of or in excess of jurisdiction when it issued the resolutions dated March 27 and April 5, 1979 correcting its earlier erroneous orders which were already before us.

On the second issue of whether or not respondents perfected their appeal on time, the petitioner argues that clearly, the respondents' appeal was filed out of time since by their own admission, respondents filed their notice of appeal only on September 8, 1978, when they had only up to August 27, 1978 to file the same.

Conversely, the respondents maintain that the period to appeal should be reckoned from August 25, 1978, the date when they received the second order of the NPCC because said order amended or modified the order of August 18, 1978 and, therefore, since there was such an amendment, the period to perfect the appeal commenced to again start from August 25, 1978.

We find the petitioner's contention well-taken.

It should be noted that when the respondents filed a motion for reconsideration of the order issued by the NPCC dated August 18, 1978, the same was denied by the latter on August 22, 1978, Notice of the denial was received by the respondents on August 25, 1978. The dispositive portion of the order of denial states:

"WHEREFORE, premises considered, the instant motion for reconsideration of Complainants-Oppositors is hereby denied. Applicant-Respondent, through its President or managing head, is hereby Ordered to pay to the Government through this Commission a fine of One Thousand (P1,000.00) Pesos pursuant to Section 9(b) of Presidential Decree No. 984 for violation of Section 8 of the same decree.

SO ORDERED." (Rollo, p. 75)

It is clear from the above-quoted order that as far as the respondents are concerned there was an amendment of the NPCC's previous orders which would justify the running anew of the period to appeal. The only modification found in the order did not pertain to the respondents but to the petitioner which was fined for allowing an illegal interment. The respondents cannot allege that the order of August 22, 1978 was more adverse to them since it was the petitioner which was fined. After the denial of the respondents' motion for reconsideration, they only had one day to perfect their appeal which was on August 26, 1978. Therefore, their filing of an appeal on September 8, 1978 was definitely out of time. We ruled in the case of *Garcia v. Echiverri*, (132 SCRA 631, 638):

"Well-rooted is the principle that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory that deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal. (Acda v. Minister of Labor, 119 SCRA 309; Agricultural and Industrial Marketing, Inc. v. CA, 118 SCRA 49; Santos v. CA, 125 SCRA 22)."

Even assuming arguendo that the fifteen (15) day period to appeal started anew on August 25, 1978, the day when respondents received the order of August 22, 1978, still their appeal was perfected out of time since the perfection of the same should be reckoned not from the filing of the notice of appeal but from the payment of docketing fees. The respondents paid the docket fees only on October 2, 1978. We stated in the case of Aranas v. Endona, (117 SCRA 753, 758):

"As early as November 16, 1932 this Court rendered a decision in Lazaro v. Endencia and Andres (57 Phil. 552) that full payment of docket fees within the required period is an 'indispensable step' for the perfection of an appeal. xxx

xxx xxx xxx

"Payment of the full amount within the reglementary period was declared jurisdictional.

"The jurisdictional nature of this requirement continues to the present. xxx"

Inasmuch as the respondents' appeal was perfected out of time, the appellate court did not acquire jurisdiction over it. Consequently, its appealed orders before the Court and all other orders it issued with regard to the present case are null and void.

We have carefully examined the records for any substantial consideration of equity which might warrant different conclusions on the basic merits of the main case. We have found none.

WHEREFORE, the petition is GRANTED and the orders of the appellate court dated January 10, 1979, February 8, 1979, March 27, 1979 and April 5, 1979 are annulled and set aside. Considering that the respondents' appeal was perfected long after the due date, the order of the National Pollution Control Commission dated April 18, 1978 is hereby declared FINAL.

SO ORDERED.

Fernan, C.J. (Chairman), Feliciano, Bidin and Cortes, JJ., concur.

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