

**CONCHING ALVARO, SEGUNDINO BACANI, ANGELITO BALINGIT,
DANILO BANAL, MARIANO BRAGIL, TOMAS CALMA, BONIFACIO
DABU, VIRGILIO DABU, EDUARDO DIWA, ANDUNG ESCOTO, ET AL.,
PETITIONERS,...**

G.R. No. 50548. November 25, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

For Our determination in this petition for certiorari with preliminary injunction is the propriety of the issuance of the preliminary mandatory injunction by the Municipal Court of Lubao, Pampanga.

This case stemmed from the complaint for forcible entry and damages, with prayer for a restraining order filed on February 13, 1979 by private respondents against petitioners alleging that private respondent Alfredo V. Arrastia is a co-owner and administrator for himself and his co-heirs of parcels of sugarland in Lubao, Pampanga, covered by Trans-fer Certificates of Title Nos. 6771, 6772, 6773 and 6775 and Tax Declara-tion No. 10176, comprising a total area of 116 hectares; that sometime or about the 30th day of April, 1978, Arrastia executed a contract of lease over said parcels of land in favor of respondent Gil B. Baluyut, but when the latter began agricultural operations and activities in May, 1978, on the said hacienda, petitioners, by means of force, violence, intimidation, threats and stealth, illegally occupied the hacienda, "transferring houses thereon, making construction thereon, making agricultural activities and virtually squatting thereon," thereby depriving private respondents of their prior, peaceful, actual, open and continuous possession of the said hacienda; and that said petitioners are not tenants or lessees but mere squatters and intruders. Attached to the complaint is a motion for a writ of preliminary mandatory injunction.

After conducting an ex parte hearing on the application for a writ of preliminary mandatory injunction, respondent judge, on February 28, 1979, issued an order granting the writ in favor of private respondents upon the latter's filing of an injunction bond.[1]

Petitioners filed on March 8, 1979 a motion for reconsideration and/or to dissolve or lift the injunctive order, claiming that as the order affects some 103 legitimate farmers, the order should have been issued with prior notice, and that they, and not private respondents have been in prior, actual and physical possession of the land in question, even before the assumption of Arrastia, as administrator of the property and long before the alleged execution of the lease contract.

On March 13, 1979, petitioners filed a manifestation and motion praying that they be allowed to reap and harvest their produce. On March 21, 1979, petitioners filed their answer to the complaint with a motion to lift the writ of preliminary mandatory injunction.

On April 4, 1979, petitioners filed a manifestation that the First Integrated Bonding & Insurance Company, Inc. that posted the bond for private respondents has no authority to issue judicial bonds, including injunction bonds,

in any court in the Philippines, as certified to by a letter certification by this Court;[2] and consequently, the aforesaid bond is a nullity.

On April 30, 1979, after respondent judge had conducted a hearing on the motion to lift the injunction, he issued an order denying said motion which reads:

"x x x

"The record shows that in the preliminary hearing set on February 27, 1979, for the issuance of a restraining order and/or order of preliminary mandatory injunction, the plaintiffs testified and their witness, one Gregorio Bautista in support thereto and submitted documentary exhibits from Exhibits "A" to "I", with their sub-markings. Exhibit "G" is a certification of the Department of Agrarian Reform now Ministry of Agrarian Reform, dated October 12, 1977, certifying that the land in question is purely devoted in the production of sugarcane and administered by the owner through mechanized farming and the land-holding is not covered by P.D. 29. Exhibit "F-1" is a certification issued July 28, 1978, of Assistant Minister Miguel M. Sesa, of the Ministry of Agri-culture, certifying that the land in question is found to be non-tenanted as contemplated under P.D. 27 as amended. Exhibit "F-2" dated July 31, 1979, addressed to the plaintiff Alfredo Arrastia and signed by Chief Agrarian Reform Unit Jose P. Nituliano, is an authority given to plaintiff Alfredo Arrastia to shift to other crops pursuant to P.D. No. 1066 and its implementing rules and regulations, DA Administrative Order No. 1, Series of 1977." [3]

Meanwhile, the First Integrated Bonding & Insurance Company, Inc. through its branch manager, filed a motion to cancel plaintiffs' bonds, which, however was also denied by respondent judge on May 4, 1979 for failure to comply with Sections 4, 5 and 6 of Rule 15 of the Revised Rules of Court.[4]

The instant petition must be granted.

The preliminary mandatory injunction by respondent judge was issued with undue haste and without regard to petitioners' right to hearing. It was issued in grave abuse of discretion and showed partiality on the part of said judge in favor of private respondents.

It has always been said that it is improper to issue a writ of preliminary mandatory injunction prior to the final hearing, except in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation.[5]

The right of private respondents to possession is not clear. To establish that they have prior possession over the disputed land, private respondents submitted documentary exhibits, which became the basis of respondent judge in issuing the preliminary mandatory injunction on February 28, 1979 and also in denying the motion to lift the said injunction on April 30, 1979. Our own examination of the said documents which were also adverted to and attached to the comment on the petition reveals that the certifications dated October 12, 1977[6] and July 28, 1978[7] of the Ministry of Agrarian Reform to the effect that the land alluded therein is not covered by P.D. 27 and that the same is non-tenanted, respectively, and the authority granted by the Chief Agrarian Reform Unit[8] to Arrastia to shift to other crops pursuant to P.D. 1066 referred to other parcels of land and not to the lands involved in this case. Verily, private respondents' legal right to possession is very doubtful.

On the other hand, petitioners in their motion for reconsideration and/or to dissolve or lift the order of February 28, 1979 and subsequent pleadings have claimed that they are the duly constituted farmer-tenants of the landholdings even long before Arrastia became the administrator; that they have planted crops thereon and have

their old houses on their farmlots; and in support thereof, they have submitted to the lower court and to this Court some of their respective copies of the leasehold contracts.[9] Admittedly, the genuineness of said contracts has to be proved in the trial court. However, said contracts prima facie show that they are entitled to remain in possession of the lands. Thus, in issuing the writ and in refusing to dissolve the same, respondent judge, in effect, decided the merits of the case without hearing. It granted private respondents' prayer for the ejectment of petitioners from the land and for the transfer of the possession of said land to them in disregard of the claim of petitioners, supported by documentary evidence, that they are the tenants of respondent Arrastia. By issuing said writ, respondent judge ignored the fundamental rule in Our jurisdiction that a writ of preliminary mandatory injunction cannot be used to oust a party from his possession of a property and to put in his place another party whose right has not been clearly established.[10]

When petitioners filed their pleadings, subsequent to the issuance of the writ of injunction, alleging therein that they are bonafide tenants of the land in question with supporting documents attached to the answer with motion to lift the mandatory injunction, it was incumbent upon the judge to dissolve the writ; after all, the issuance or recall of a pre-liminary writ of injunction is an interlocutory matter that remains at all times within the control of the court.[11] It becomes more imperative for the judge to recall the writ when his attention was called to the fact that the bond posted by the First Integrated Bonding & Insurance Company, Inc. has not been authorized by Us to issue judicial bonds.

WHEREFORE, judgment is hereby rendered annulling and setting aside the order of February 28, 1979 and the writ of preliminary mandatory injunction issued pursuant thereto, and converting the temporary restraining order issued by this Court on May 23, 1979 into a permanent injunction, insofar as the enforcement of the preliminary mandatory injunction is concerned. The respondent judge may now proceed with the trial of the case, if he has not yet done so. Costs against private respondents.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

[1] p. 27, Rollo, Annex "L".

[2] p. 70, Id.

[3] p. 72, Id., Annex "GG".

[4] p. 82, Id., Annex "MM".

[5] The Police Commission vs. Hon. Judge Eloy B. Bello, 37 SCRA 230

[6] p. 105, Id., Annex-3, Arrastia.

[7] p. 100, Id., Annex-1, Arrastia.

[8] p. 102, Id., Annex-2, Arrastia.

[9] pp. 45-54, Id.

[10] Emilia vs. Bodo, 23 SCRA 187.

[11] Ramos vs. Court of Appeals, 95 SCRA 365.

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