

**PHILIPPINE PACIFIC FISHING CO., INC., CHENG YONG, LILIA GAW
AND CHENG GUAT, PETITIONERS, VS. HON. ARTEMON D. LUNA,
JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA; YOSHIO
YAMAMOT...**

G.R. No. 59070. March 15, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and prohibition to annul and set aside as acts in excess of jurisdiction and/or a grave abuse of discretion the order of respondent judge, which, briefly characterized, amount to an assumption of jurisdiction by a Court of First Instance and its exercise of the power to review actuaciones of the Securities and Exchange Commission. Notably, the respondents have not filed any answer, required by the Court's resolution of December 16, 1981.

The background facts are simple. As alleged in the petition which by their very nature, and because they are not denied, anyway, respondents having failed to answer, the circumstances that led to the filing of the instant recourse are:

"4.01 . The Philippine Pacific Fishing Co., Inc. through its officers, Yoshio Yamamoto and/or Marilyn Javier, private respondents herein, who are plaintiffs in Civil Case No. 144299, mortgaged to the Philippine Banking Corporation the fishing vessels, PACIFIC I and PACIFIC II, to secure payment of a debt. Upon default of the Philippine Pacific Fishing Co., Inc. to pay its debt, the Philippine Banking Corporation instituted fore-closure proceedings and filed an action for replevin. To prevent the foreclosure, Yamamoto and/or Marilyn Javier, acting as officers of the corporation, made an agreement with Cheng Yong, one of the defendants in the aforementioned Civil Case. Under the agreement, Cheng Yong paid the indebtedness of Philippine Pacific Fishing to Philippine Banking Corporation, and in turn, Yamamoto and/or Javier, as officers of Philippine Pacific Fishing executed a chattel mortgage of the two vessels in favor of Cheng Yong.

"4.02 . Upon failure of Philippine Pacific to pay the debt, Cheng Yong foreclosed the mortgage. Yamamoto and Javier then went to the Securities and Exchange Commission and filed a complaint, alleging that the controversy between Cheng Yong and Philip-pine Pacific was intra-corporate. (SEC Case No. 002042). The SEC restrained the foreclosure pro-ceedings and thereafter, the parties finally agreed to the formation of a Management Committee, with powers among others, 'to take custody and posses-sion of all assets, funds, properties and records of the corporation; and 'to administer, manage and preserve such assets, funds and records'. Exercising said powers the Management Committee ordered Yamamoto and Javier to deliver to the Committee vessels, PACIFIC I and PACIFIC II;

"V. PERTINENT PROCEEDINGS

"5.01 . On October 22, 1979 private respondents, through counsel, filed with the respondent court a complaint for declaration of rescission and injunction, with ex-parte preliminary injunction docketed as Civil Case No. 144299, entitled 'Yoshio Yamamoto and Marilyn A. Javier, plaintiffs, versus, Securities and Exchange

Commission, Jose Maria Hilado, Philippine Pacific Fishing Co., Inc. Cheng Yong, Lilia Gaw and Cheng Guat; xerox copy of said complaint is hereto attached as Annex 'B';

"5.02. In their complaint, private respondents pray that upon filing of the complaint, a restraining order be issued ex-parte commanding the defendants to desist from further proceeding in SEC Case No. 2042 and from enforcing the orders issued by the Securities and Exchange Commission under date of August 14, 1981, September 29, 1981 and October 6, 1981; that thereafter, a writ of preliminary injunction be issued restraining the defendants, particularly the Securities and Exchange Commission, from enforcing and implementing the orders complained of and from disturbing or interfering in the exercise by private respondent Yoshio Yamamoto of his rights to the ownership and possession of the two fishing vessels, PACIFIC I and PACIFIC II;

"5.03. Likewise, private respondents pray that after hearing, private respondent Yoshio Yamamoto be declared the lawful and absolute owner of the aforementioned two fishing vessels; that all questioned orders of the Securities and Exchange Commission be declared null and void and issued without authority and jurisdiction and/or with grave abuse of discretion; that the defendants, particularly the Securities and Exchange Commission, desist from questioning the herein private respondent Yoshio Yamamoto's ownership and right of possession of the aforesaid two vessels and making permanent such writ of preliminary injunction which it may have issued;

"5.04 . On the same date, private respondents filed an ex-parte motion for resolution of the Executive Judge of the Court of First Instance of Manila, praying that an order be issued directing the Clerk of Court or his authorized deputy to give due course to the complaint of the herein private respondents upon payment of the docket fee of P200.00 pursuant to par. 10, Section 5 Rule 141 of the Rules of Court. Xerox copy of the motion is hereto attached as Annex 'C'. Acting upon said motion, the aforementioned Executive Judge granted the same and ordered the Clerk of Court to accept the filing of private respondents' complaint upon payment of docket fee in the sum of P200.00. Xerox copy of the order is hereto attached as Annex 'D';

"5.05. On October 26, 1981, the respondent judge issued the order complained of, copy of which is hereto attached as Annex 'A' restraining the Securities and Exchange Commission, and Jose Maria Hilado, and the petitioners from further proceeding with SEC Case No. 2042 and from enforcing the aforesaid orders until further orders from the Court;

"5.06 . On November 10, 1981 petitioners Cheng Yong, Lilia Gaw and Cheng Guat, who are some of the defendants named in the aforesaid Civil Case No. 144299, Court of First Instance of Manila, filed, through counsel, a motion to dismiss the complaint, xerox copy of which is hereto attached as Annex 'E' and an opposition to the issuance of a writ of preliminary injunction, xerox copy of which is hereto attached as Annex 'F';

"5.07. In the meantime, the hearing of the application for issuance of a writ of preliminary injunction which was originally set on November 6, 1981 was, upon motion of private respondents' counsel, postponed and reset to November 18, 1981, during which the parties were given a period of fifteen (15) days within which to simultaneously submit their respective memorandum;

"5.08 . On November 19, 1981, as aforesaid, the fourth floor of the City Hall of Manila, housing several salas of the Court of First Instance of Manila, among which is the sala of Branch XXXII was burned and as consequence, the judicial records including those of the aforementioned case was burned, hence, the proceedings in said case is ordered suspended pending the reconstitution of the judicial records. Thereafter, however, counsel for defendant Cheng Yong, Lilia Gaw and Cheng Guat in the aforementioned Civil Case No. 144299 in the court below filed, through counsel, their memorandum, xerox copy of which is hereto attached as Annex 'G';" (Pp. 7-12, Record)

The order of herein respondent judge being questioned reads thus:

"This is a complaint for declaration of rescission and injunction, with prayer for issuance of a writ of preliminary injunction to restrain the Securities and Exchange Commission from further proceeding with SEC Case No. 2042, entitled, 'YOSHIO YAMAMOTO and MARILYN A. JAVIER vs. PHILIPPINE PACIFIC FISHING CO., INC., CHENG YONG, LILIA GAW, CHENG GUAT and the SHERIFF OF MANILA' as well as from enforcing its Orders of August 14, September 29, and October 6, 1981. Finding the complaint sufficient in form and substance, defendants are required to show cause on November 6, 1981 at 8:30 o'clock a.m. why the writ of preliminary injunction should not be issued. Let copies of this Order together with copies of the complaint be served upon defendants at the expense of plaintiffs. Defendants are required to answer the petition within ten (10) days from receipt of this Order.

"Meanwhile, the defendants are hereby restrained from further proceeding with SEC. No. 2042 and from enforcing the aforesaid Orders until further orders from this Court.

"Plaintiffs are hereby ordered to immediately file a bond of P20,000 to answer for any damages which respondents may sustain by reason of the issuance of this Order, if the Court should finally decide that they are not entitled thereto.

"SO ORDERED.

" Manila, Philippines, October 26, 1981." (Page 22, Record)

The orders of the Securities and Exchange Commission referred to in the above order are as follows:

" O R D E R

"After a careful study and review of the allegations of the separate motions filed by the respondents, both seeking to reconsider the Order of this Commission dated June 17, 1981 denying the motion to dismiss and the opposition of petitioners thereto, this Hearing Officer finds no compelling reason for disturbing the findings made in the Order sought to be reconsidered, and therefore, said motions are hereby DENIED.

"At the hearing on July 27, 1981, the motion of counsel for the respondent corporation requiring the petitioners who are in possession of the fishing vessels F/B Pacific I and II, to deliver said fishing vessels to the corporation was likewise considered. After considering the manifestation and arguments of both parties and upon suggestion of this Hearing Officer, the parties agreed that in lieu of the appointment of a receiver as prayed for by the petitioners in their motion to that effect and the delivery of the fishing vessels to the corporation as requested by counsel for the respondent corporation, a Management Committee be instead created. The petitioners and the respondents immediately nominated their representatives as members and the Chairman to be designated by the Commission.

"As agreed upon by the parties, assisted by their respective counsels, a Management Committee is hereby created and constituted to be composed of Mrs. Marilyn Javier and Mr. Melecio Hernandez as members with Atty. Felipe S. Tongco of this Commission as Chairman. The said Committee, which shall at all times be under the control and supervision of this Commission shall have the following powers, functions and duties, to wit:

1. to take custody and possession of all assets, funds, properties and records of the corporation and to prepare an inventory thereof;
2. to administer, manage and preserve such assets, funds and records;
3. to receive any and all amounts, sums or money due and owing to the company and to deposit such amounts received in an appropriate bank for and in the account of the corporation;
4. to make such payments and disbursements in the ordinary course of business;

5. to keep and maintain proper accounting records of each and every transaction of the company, particularly receipts and disbursements of funds;

6. to submit to this Commission a detailed report on all receipts and disbursement of funds and such other reports as this Commission may require; and

7. to acquire, lease, sell, mortgage or otherwise encumber such assets with the prior approval of this Commission.

"The parties, petitioners as well as defendants shall turn over to the Commission all the assets, funds, properties and records of the corporation in their possession including the vessels F/B Pacific I and II within five (5) days and to submit to the Commission within ten (10) days a complete inventory of all the assets, funds, properties and records of the corporation which are in their possession, in the presence of the Chairman and the members of the above committee.

"Until further orders from this Commission, said Committee created pursuant to this Order shall have all the foregoing authorities and must discharge all the functions pertaining thereto as well as to perform such other duties as may be necessary in order to protect the interest of the corporation.

"The application of the petitioners for the provisional remedy of receivership is also hereby considered withdrawn.

"SO ORDERED.

"Mandaluyong, Metro Manila, August 14, 1981"

x x x x x x

" O R D E R

"Submitted for resolution is the manifestation and motion filed by the respondents to cite petitioners in contempt of this Commission and the opposition thereto filed by petitioners.

"In a manifestation and motion filed before this Commission on September 1, 1981, respondents alleged that in an order dated August 14, 1981, issued by the Commission, the parties, petitioners and respondents, were directed to turn over to the Management Committee formed thereat, all the assets, funds, properties and records of the corporation which are in their possession, including the vessels 'F/B Pacific I and Pacific II' within five (5) days and to submit to the Commission within ten (10) days, a complete inventory of said assets, funds, properties and records of the corporation in the presence of the Chairman and members of the Management Committee; that more than five (5) days have elapsed since the receipt of the order of August 14, 1981 by the petitioners without the latter having complied with the directive to deliver the afore-said vessels to the Commission; that each day of delay in the delivery of the possession of the aforesaid vessels and in the operation thereof by the Management Committee, deprived the corporation of sizeable earnings out of said vessels; and that this failure of petitioners to comply with the Order, being willful and deliberate, constitute contumacious acts punishable under the New Rules of Procedure in the Securities and Exchange Commission.

"Petitioners, in opposing the motion for contempt, averred that they are not in possession of assets, funds, properties and records of the corporation which to the best of their knowledge are in the possession of respondent Cheng; that the fishing vessels F/B Pacific 1 and 11 are not assets of respondent corporation, petitioner Yamamoto having rescinded the sale in the exercise of his lien as an unpaid seller of the vessels; and that petitioner Yamamoto is willing to consider arrangement whereby the vessels would be operated under the supervision of the Management Committee for the benefit of all the parties concerned, the rescission the sale of the vessels notwithstanding.

"Considering that one of the issues involved in this case is the ownership of the two (2) vessels, we consider it

quite impractical for the petitioners to capitalize on this issue to justify their inability to comply with the Order of this Commission dated August 14, 1981.

"Unless, therefore, prevented by any supervening events, petitioners are duty bound to abide by the directive of this Commission for the delivery of the two (2) fishing boats to the Management Committee. Viewed from this perspective, we find petitioners' non-compliance with the Order of this Commission dated August 14, 1981 directing delivery of fishing boats P/B Pacific 1 and 11, which are admittedly in their (petitioners) possession, to the Management Committee to be without any justifiable reason.

"WHEREFORE, petitioners are hereby found guilty of indirect contempt and a fine of P1, 000 plus an additional fine of P200 for every day of delay in the delivery of said vessels or non-compliance with the order is hereby imposed upon them without prejudice to imprisonment in case petitioners still fail to deliver the two (2) fishing boats within five (5) days from receipt of the Order.

"SO ORDERED.

"Mandaluyong, Metro Manila, September 29, 1981." (Pp. 57-59, Record)

" O R D E R

"Acting upon the urgent ex-parte motion of defendant corporation dated October 6, 1981, and finding the same to be meritorious, said urgent ex-parte motion is hereby GRANTED.

"WHEREFORE, the Chairman of the Management Committee or his duly authorized representative is hereby directed to take possession of the fishing vessel, the PACIFIC II, wherever it may be found in Philippine waters and for the purpose, is hereby authorized 'to enlist the aid and support of any and all enforcement agencies of the government, civil or military', pursuant to Sec. 3 of Presidential Decree No. 902-A.

"SO ORDERED.

"Mandaluyong, Metro-Manila , Philippines .

" October 6, 1981." (Page 60, Record)

We are aware of the fact that up to the present respondent judge has not gone beyond issuing the above restraining order, notably requiring the filing of a bond. What has happened with the motion for a writ of preliminary injunction is not in the record. But assuming respondents should claim that the herein petition is premature considering there is no showing that respondent judge has not been asked to reconsider his impugned order and the incident on the preliminary injunction has not been resolved. Our ready answer is that We have opted to act now, for the simple reason that the invalidity of the challenged order is so manifest and patent, in fact and in law, that it would be a waste of time and actually an injustice to petitioners, if We delayed further disposition of the issues raised by them. We cannot imagine any different end result that subsequent actions of the parties or respondent judge could possibly affect Our conclusion regarding the utter lack of jurisdiction of respondent judge in the premises.

As already portrayed above, the parties came within the jurisdiction of the Securities and Exchange Commission on the basis of the complaint of herein petitioners. They claimed their controversy with private respondents involved intra-corporate matters within the exclusive jurisdiction of that body. The Commission took cognizance thereof, the parties discussed their respective positions before it, and on the issues joined by them, the Commission issued the orders above-quoted.

If any or all of said orders are erroneous, the organic act creating the Commission, Presidential Decree 902-A, provides the appropriate remedy, first within the Commission itself, and ultimately in this Court. Nowhere does

the law empower any Court of First Instance to interfere with the orders of the Commission. Not even on grounds of due process or jurisdiction. The Commission is, conceding *arguendo* a possible claim of respondents, at the very least a co-equal body with the Courts of First Instance. Even as such co-equal, one would have no power to control the other. But the truth of the matter is that only the Supreme Court can enjoin and correct any actuation of the Commission. (*Pineda vs. Lantin*, 6 SCRA 757)

Moreover, it is obvious that since the Commission has its offices outside of Manila, under settled jurisprudence, a Manila court's writ of preliminary injunction, much less a restraining order, can have no binding effect outside the Manila area.

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered setting aside the impugned orders of herein respondent judge and making the restraining order heretofore issued by Us permanent, with costs against respondents.

Aquino, Concepcion, Jr., De Castro, Ericta, and Escolin, JJ., concur.

Abad Santos, J., in the result.

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