

APOLONIO V. DIONISIO, VALERIANA R. DIONISIO, FLORENIO N. SANGIL, CLARITA G. BAUTISTA, EDILBERTO C. VILLANUEVA, EVENER VILLASANTA, ET AL., PETITIONERS, VS. HONORABLE COURT OF FIR...

G.R. No. 61048. August 17, 1983

Ponente: PLANA, J.

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PLANA, J.:

As stockholders of ETCO Timber Corporation (ETCO), Filomeno Lamis and Neville Lamis filed a derivative suit (Civil Case No. 749) with the Court of First Instance of South Cotabato, Branch II (Koronadal), on May 24, 1982 against Apolonio V. Dionisio, Valeriana R. Dionisio, Florenio N. Sangil, Clarita G. Bautista, Edilberto Villanueva, Evener Villasanta and Dolorico Mejorada - all officers/stockholders of ETCO - "for rendition of corporate accounting, inspection of books of accounts, damages through embezzlement and falsification, annulment of undertaking and contract, upholding of corporate presidency and management, and injunction", with application for a writ of preliminary injunction.

On June 8, 1982, without notice and hearing, Judge Filomeno S. Gapultos, then Presiding Judge of respondent court, issued an Order of preliminary injunction enjoining the defendants and their representatives

- from continuing logging operations within the ETCO concession area in General Santos City and South Cotabato;
- from representing ETCO in any manner and from conducting its business with the government or any private person or entity;
- from interfering with plaintiff's operations within the timber area of ETCO;
- from selling/disposing of their log production; and
- from enforcing certain Board resolutions.

The Order also directed the seizure of logs already cut and placed them under the temporary custody of the respondent court.

The defendants, aside from filing an answer, filed a motion to dismiss the complaint and to reconsider the preliminary injunction on the ground of lack of notice and hearing, lack of jurisdiction of the court over the subject matter of the case, and improper venue.

Before the motion could be heard, Judge Gapultos unfortunately died. There being no replacement, the defendants were faced with the immediate implementation of the writ of preliminary injunction by respondent Sheriff Ramon Progalidad.

At this juncture, the defendants filed the instant special civil action for certiorari with application for injunction,

assailing the order of preliminary injunction dated June 8, 1982 of the respondent court for being a patent nullity on the same grounds raised before the trial court, namely: (a) that the Order was issued without notice and hearing; (b) that respondent court did not have jurisdiction over the subject matter of the action; and (c) that venue was improperly laid.

The petition is meritorious.

In the first place, the assailed Order of June 8, 1982 was issued in violation of Section 5 of Rule 58 of the Rules of Court, as amended on April 16, 1982 by Batas Pambansa Blg. 224, which reads:

"SEC. 5. Preliminary injunction not granted without notice; issuance of restraining order. - No preliminary injunction shall be granted without notice to the defendant. If it shall appear from the facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice, the judge to whom the application for preliminary injunction was made, may issue a restraining order to be effective only for a period of twenty days from date of its issuance. Within the said twenty-day period, the judge must cause an order to be served on the defendant, requiring him to show cause, at a specified time and place, why the injunction should not be granted, and determine within the same period whether or not the preliminary injunction shall be granted, and shall accordingly issue the corresponding order. In the event that the application for preliminary injunction is denied, the restraining order is deemed automatically vacated."*

The above-quoted amendatory provision was adopted as a reaction against the indiscriminate issuance of ex-parte preliminary injunctions which, not infrequently, converted the writ from an instrument in furtherance of justice to a shield for injustice. Thereunder, in no case may a preliminary injunction be issued without notice. The rule is absolute. Nevertheless, if it appears that great or irreparable injury would result to the applicant before his application for preliminary injunction could be heard on notice, the judge could issue a temporary restraining order with a limited life of 20 days from date of issue. If before the expiration of the 20-day period, the application for preliminary injunction is denied, the temporary restraining order would thereby be deemed automatically vacated. But if no action is taken by the judge on the application for preliminary injunction within the said 20 days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary. Thus, by the terms of Batas Pambansa Blg. 224, a temporary, restraining order can no longer exist indefinitely; it has become truly temporary.

There is another reason, equally compelling, why the assailed order of preliminary injunction must be struck down. The respondent court has no jurisdiction to hear and decide the basic complaint which raised issues arising from supposed intra-corporate machinations involving alleged falsification by corporate officers of corporate records, misappropriation of corporate funds, fraudulent transfer/acquisition of shares of stocks, and usurpation of corporate offices. These are clearly intra-corporate and kindred disputes which fall within the exclusive and original jurisdiction of the Securities and Exchange Commission pursuant to Section 5 of Presidential Decree No. 902-A which took effect on March 11, 1976. This law reads:

"SEC. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

- a) Devices or schemes employed by or any acts, of the board of directors, business associates (sic), its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission.
- b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which

they are stockholders, members of associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations."

The evident purpose to law in investing a specialized administrative body like the Securities and Exchange Commission with additional adjudicatory powers over intracorporate and kindred disputes is to promote dispatch arising from expertise enhanced by specialization in the settlement of the said controversies. On this premise, it would not really matter whether the acts or events giving rise to litigation occurred before or after the adoption of Presidential Decree No. 902-A on March 11, 1976. Moreover, the settled rule on this point is that the jurisdiction of a tribunal is determined by the statute in force at the time of the commencement of the action. (*Encarnacion vs. Baltazar*, 1 SCRA 860; *Aquizap vs. Basilio*, 21 SCRA 1434; *People vs. Mariano*, 71 SCRA 600.) There is no reason why this principle should not be applied to both judicial and quasi-judicial bodies. Therefore, when the derivative suit here in question was filed on May 24, 1982 by private respondent with the Court of First Instance of South Cotabato, the said Court had no more jurisdiction to entertain it, jurisdiction over intra-corporate disputes having been previously transferred by law to the Securities and Exchange Commission.

The foregoing considerations make it unnecessary to rule on the issue of venue.

WHEREFORE, the petition is hereby granted. The questioned Order of the court a quo dated June 8, 1982 is set aside and the complaint ordered dismissed without prejudice to the filing thereof with the proper forum. The temporary restraining order heretofore issued by this Court is made permanent. No costs.

SO ORDERED.

Melencio-Herrera, Relova, and Gutierrez, Jr., JJ., concur.

Teehankee, Acting C.J., in the result.

Vasquez, J., no part.

* See also Presidential Decree No. 605 dated December 12, 1974 banning the issuance by courts of preliminary injunctions in cases involving concessions, licenses, and other permits issued by public administrative officials or bodies for the exploitation of natural resources. Section 1 of this law provides: "No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licenses, permits, patents, or public grants of any kind in connection with the disposition, exploitation, utilization, exploration and/or development of the natural resources of the Philippines."

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