

**ANSELMO L. PESIGAN AND MARCELINO L. PESIGAN, PETITIONERS,
VS. JUDGE DOMINGO MEDINA ANGELES, REGIONAL TRIAL COURT,
CALOOCAN CITY BRANCH 129, ACTING FOR REGIONAL TRIAL
COURT OF CA...**

G.R. No. 64279. April 30, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

At issue in this case is the enforceability, before publication in the Official Gazette of June 14, 1982, of Presidential Executive Order No. 626-A dated October 25, 1980, providing for the confiscation and forfeiture by the government of carabaos transported from one province to another.

Anselmo L. Pesigan and Marcelo L. Pesigan, carabao dealers, transported in an Isuzu ten-wheeler truck in the evening of April 2, 1982 twenty-six carabaos and a calf from Sipocot, Camarines Sur with Padre Garcia, Batangas, as the destination.

They were provided with (1) a health certificate from the provincial veterinarian of Camarines Sur, issued under the Revised Administrative Code and Presidential Decree No. 533, the Anti-Cattle Rustling Law of 1974; (2) a permit to transport large cattle issued under the authority of the provincial commander; and (3) three certificates of inspection, one from the Constabulary command attesting that the carabaos were not included in the list of lost, stolen and questionable animals; one from the livestock inspector, Bureau of Animal Industry of Libmanan, Camarines Sur and one from the mayor of Sipocot.

In spite of the permit to transport and the said four certificates, the carabaos, while passing at Basud, Camarines Norte, were confiscated by Lieutenant Arnulfo V. Zenarosa, the town's police station commander, and by Doctor Bella S. Miranda, provincial veterinarian. The confiscation was based on the aforementioned Executive Order No. 626-A which provides "that henceforth, no carabao, regardless of age, sex, physical condition or purpose and no carabeef shall be transported from one province to another. The carabaos or carabeef transported in violation of this Executive Order as amended shall be subject to confiscation and forfeiture by the government to be distributed x x x to deserving farmers through dispersal as the Director of Animal Industry may see fit, in the case of carabaos" (78 OG 3144).

Doctor Miranda distributed the carabaos among twenty-five farmers of Basud, and to a farmer from the Vinzons municipal nursery (Annex I).

The Pesigans filed against Zenarosa and Doctor Miranda an action for replevin for the recovery of the carabaos allegedly valued at P70,000 and damages of P92,000. The replevin order could not be executed by the sheriff. In his order of April 25, 1983 Judge Domingo Medina Angeles, who heard the case at Daet and who was later transferred to Caloocan City, dismissed the case for lack of cause of action.

The Pesigans appealed to this Court under Rule 45 of the Rules of Court and section 25 of the Interim Rules and

pursuant to Republic Act No. 5440, a 1968 law which superseded Rule 42 of the Rules of Court.

We hold that the said executive order should not be enforced against the Pesigans on April 2, 1982 because, as already noted, it is a penal regulation published more than two months later in the Official Gazette dated June 14, 1982. It became effective only fifteen days thereafter as provided in article 2 of the Civil Code and section 11 of the Revised Administrative Code.

The word "laws" in article 2 (article 1 of the old Civil Code) includes circulars and regulations which prescribe penalties. Publication is necessary to apprise the public of the contents of the regulations and make the said penalties binding on the persons affected thereby. (People vs. Que Po Lay, 94 Phil. 640; Lim Hoa Ting vs. Central Bank of the Phils., 104 Phil. 573; Balbuna vs. Secretary of Education, 110 Phil. 150.)

The Spanish Supreme Court ruled that "bajo la denominacion generica de leyes, se comprenden tambien los reglamentos, Reales decretos, Instrucciones, Circulares y Reales ordenes dictadas de conformidad con las mismas por el Gobierno en uso de su potestad." (1 Manresa,Codigo Civil, 7th Ed., p. 146.)

Thus, in the Que Po Lay case, a person, convicted by the trial court of having violated Central Bank Circular No. 20 and sentenced to six months' imprisonment and to pay a fine of P1,000, was acquitted by this Court because the circular was published in the Official Gazette three months after his conviction. He was not bound by the circular.

That ruling applies to a violation of Executive Order No. 626-A because its confiscation and forfeiture provision or sanction makes it a penal statute. Justice and fairness dictate that the public must be informed of that provision by means of publication in the Gazette before violators of the executive order can be bound thereby.

The cases of Police Commission vs. Bello, L-29960, January 30, 1971, 37 SCRA 230 and Philippine Blooming Mills vs. Social Security System, 124 Phil. 499, cited by the respondents, do not involve the enforcement of any penal regulation.

Commonwealth Act No. 638 requires that all Presidential executive orders having general applicability should be published in the Official Gazette. It provides that "every order or document which shall prescribe a penalty shall be deemed to have general applicability and legal effect".

Indeed, the practice has always been to publish executive orders in the Gazette. Section 551 of the Revised Administrative Code provides that even bureau "regulations and orders shall become effective only when approved by the Department Head and published in the Official Gazette or otherwise publicly promulgated". (See Commissioner of Civil Service vs. Cruz, 122 Phil. 1015.)

In the instant case, the livestock inspector and the provincial veterinarian of Camarines Norte and the head of the Public Affairs Office of the Ministry of Agriculture were unaware of Executive Order No. 626-A. The Pesigans could not have been expected to be cognizant of such an executive order.

It results that they have a cause of action for the recovery of the carabaos. The summary confiscation was not in order. The recipients of the carabaos should return them to the Pesigans. However, they cannot transport the carabaos to Batangas because they are now bound by the said executive order. Neither can they recover damages. Doctor Miranda and Zenarosa acted in good faith in ordering the forfeiture and dispersal of the carabaos.

WHEREFORE, the trial court's order of dismissal and the confiscation and dispersal of the carabaos are reversed and set aside. Respondents Miranda and Zenarosa are ordered to restore the carabaos, with the requisite documents, to the petitioners, who as owners are entitled to possess the same, with the right to dispose of them in Basud or Sipocot, Camarines Sur. No costs.

SO ORDERED.

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

Abad Santos, J., The Pesigans are entitled to the return of their carabaos or the value of each carabao which is not returned for any reason. The Pesigans are also entitled to a reasonable rental for each carabao from the twenty six farmers who used them. The farmers should not enrich themselves at the expense of the Pesigans.

De Castro, J., no part.

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