

CELSO DEFALOBOS, PETITIONER, VS. HON. GREGORIO U. AQUILIZAN, REGIONAL TRIAL JUDGE OF THE REGIONAL TRIAL COURT OF NORTH COTABATO, 12TH JUDICIAL REGION BRANCH XVI, KABACAN, NORTH ...

G.R. No. 65831. May 20, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for the issuance of a writ of habeas corpus originates from Civil Case No. 191 for recovery of possession of a parcel of land and damages which was filed against the petitioner Celso Defalobos before the Regional Trial Court of Kabacan, North Cotabato and presided by the respondent Judge Gregorio U. Aquilizan.

On March 23, 1983, the respondent judge issued a restraining order, incorrectly denominated writ of preliminary injunction, restraining the petitioner from "making further cultivation, planting or improvement of the land under controversy."

On June 8, 1983, the respondent judge extended the effectivity of the restraining order for another twenty days, and set the hearing of the motion for the issuance of a writ of preliminary injunction on June 30, 1983.

On June 27, 1983, the respondent judge without first conducting a hearing ordered the issuance of a writ of permanent injunction, restraining the petitioner "from making any further cultivation, planting or improving of the land under controversy."

On July 20, 1983, the decision was rendered in Civil Case No. 191 ordering the petitioner, among others, to vacate the land in controversy.

On August 22, 1983, the said judge heard a verbal manifestation of the plaintiff in the civil case that the petitioner refused to obey the writ of permanent injunction. Petitioner was, thus, ordered to explain his refusal.

On September 5, 1983, the respondent judge issued an order holding the petitioner in contempt of court and committing him to imprisonment under Section 7 of Rule 71 of the New Rules of Court. He was also ordered to pay a fine of P1,000.00.

Hence, this petition.

On November 29, 1983, this Court ordered the immediate release of the petitioner on his recognizance.

The only issue before us is whether on the given facts, the respondent judge correctly held the petitioner guilty of indirect contempt of court.

The Solicitor-General, in his Manifestation dated December 9, 1983, prayed that his office be excused from filing a return of the writ on behalf of the respondent judge on the ground that the arrest of the petitioner and his commitment to prison cannot be legally sustained.

We sustain the position taken by the Solicitor-General.

At the outset, the extension by the respondent judge of the restraining order issued on March 23, 1983 was already void for being violative of Batas Pambansa Blg. 224. It is well-settled that the life span of a temporary restraining order automatically expires on the 20th day by the sheer force of law and no judicial declaration to that effect is necessary. (See *Ortigas & Company Limited Partnership v. Hon. Vivencio M. Ruiz, et al.*, G. R. No. 33952, March 9, 1987). Therefore, as correctly contended by the Solicitor-General, there was no effective restraining order which the petitioner could have disobeyed. Furthermore, the permanent injunction upon which the contempt charge was based was likewise void for having been issued without a hearing. It was thus violative of the petitioner's right to due process. Finally, it is an established doctrine that the mere refusal of the defeated party to surrender the property to the winning party upon the order of the sheriff does not constitute contempt. (See *Clapano v. Gapultos*, 132 SCRA 429, 433) Again, as correctly contended by the Solicitor-General, what the respondent judge should have done instead was to direct the sheriff to enforce the decision.

Since Judge Gregorio U. Aquilizan has been phased out of the judiciary, the Court finds any further inquiry into the administrative aspects of this case no longer necessary. However, this resolution is ordered entered into his personnel files in the Supreme Court for records purposes.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is GRANTED. The order of the respondent judge committing the petitioner to imprisonment and fining him P1,000.00 for contempt of court is SET ASIDE. This Court's resolution granting the release of the petitioner upon his own recognizance is AMENDED to order his permanent release. A copy of this decision is ordered incorporated into the personnel files of former Judge Gregorio U. Aquilizan.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

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