

SECOND DIVISION

[G.R. No. 93540, December 13, 1999]

FULGENCIO S. FACTORAN, JR., SECRETARY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, VICENTE A. ROBLES AND NESTOR GAPUZAN, PETITIONERS, VS. COURT OF APPEALS (THIRD DIVISION), HON. BENIGNO T. DAYAW, AS, JUDGE, REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 80, JESUS SY AND LILY FRANCISCO UY, RESPONDENTS.

DECISION

DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision and Resolution of the Court of Appeals dated March 30, 1990 and May 18, 1990, respectively, dismissing petitioners' charge that Honorable Benigno T. Dayaw, Presiding Judge of Branch 80 of the Regional Trial Court (RTC) of Quezon City, committed grave abuse of discretion in ordering them to deliver to private respondents the six-wheeler truck and its cargo, some 4,000 board feet of narra lumber which were confiscated by the Department of Environment and Natural Resources (DENR) and forfeited in favor of the government.^[1]

The antecedent facts:

On August 9, 1988, two (2) police officers of the Marikina Police Station, Sub-Station III, intercepted a six-wheeler truck, with Plate No. NJT-881, carrying 4,000 board feet of narra lumber as it was cruising along the Marcos Highway. They apprehended the truck driver, private respondent Jesus Sy, and brought the truck and its cargo to the Personnel Investigation Committee/Special Actions and Investigation Division (PIC/SAID) of the DENR Office in Quezon City. There, petitioner Atty. Vicente Robles of the PIC/SAID investigated them, and discovered the following discrepancies in the documentation of the narra lumber:^[2]

"a. What were declared in the documents (Certificate of Timber Origin, Auxiliary Invoices and various Certifications) were narra flitches, while the cargo of the truck consisted of narra lumber;

"b. As appearing in the documents, the Plate Numbers of the truck supposed to carry the forest products bear the numbers BAX-404, PEC-492 or NSN-267, while the Plate Number of the truck apprehended is NVT-881;

"c. Considering that the cargo is lumber, the transport should have been accompanied by a Certificate of Lumber Origin, scale sheet of said lumber and not by a Certificate of Timber Origin, which merely covers only transport of logs and flitches;

"d. The Log Sale Purchase Agreement presented is between DSM Golden Cup International as the seller and Bonamy Enterprises as the buyer/consignee and not with Lily Francisco Lumber and Hardware,"^[3]

which are in violation of Bureau of Forestry Development (BFD) Circular No. 10. The said BFD Circular requires possession or transportation of lumber to be supported by the following documents: (1) Certificate of Lumber Origin (CLO) which shall be issued only by the District Forester, or in his absence, the Assistant District Forester; (2) Sales Invoice; (3) Delivery Receipt; and (4) Tally Sheets.^[4] Such omission is punishable under Sec. 68 of Presidential Decree (P.D.) No. 705 otherwise known as the Revised Forestry Code.^[5] Thus, petitioner Atty. Robles issued a temporary seizure order and seizure receipt for the narra lumber and the six-wheeler truck.^[6]

On January 20, 1989, petitioner Fulgencio S. Factoran, then Secretary of Environment and Natural Resources (hereinafter referred to as petitioner Secretary) issued an order for the confiscation of the narra lumber and the six-wheeler truck.^[7]

Private respondents neither asked for reconsideration of nor appealed, the said order to the Office of the President. Consequently, the confiscated narra lumber and six-wheeler truck were forfeited in favor of the government. They were subsequently advertised to be sold at public auction on March 20, 1989.^[8]

On March 17, 1989, private respondents filed a complaint with prayer for the issuance of writs of replevin and preliminary injunction and/or temporary restraining order for the recovery of the confiscated lumber and six-wheeler truck, and to enjoin the planned auction sale of the subject narra lumber, respectively.^[9] Said complaint was docketed as Civil Case No. Q-89-2045 and raffled to Branch 80 of the RTC of Quezon City.

On the same day, the trial court issued an Order directing petitioners to desist from proceeding with the planned auction sale and setting the hearing for the issuance of the writ of preliminary injunction on March 27, 1989.^[10]

On March 20, 1989, the scheduled date of the auction sale, private respondents filed an Ex-Parte Motion for Release and Return of Goods and Documents (Replevin) supported by an Affidavit for Issuance of Writ of Replevin and Preliminary Injunction and a Replevin Bond in the amount of P180,000.00.^[11] The trial court granted the writ of replevin on the same day and directed the petitioners "to deliver the xxx [n]arra lumber, original documents and truck with plate no. NJT 881 to the custody of the plaintiffs and/or their representative x x x".^[12]

On March 22, 1989, the trial court issued a writ of seizure. However, petitioners refused to comply therewith.^[13] David G. Brodett, Sheriff of Branch 80 of the RTC of Quezon City (hereinafter referred to as the Sheriff) reported that petitioners prevented him from removing the subject properties from the DENR Compound and transferring them to the Mobil Unit Compound of the Quezon City Police Force. To avoid any unwarranted confrontation between them, he just agreed to a constructive possession of the properties in question.^[14] In the afternoon of the same day, petitioners filed a Manifestation stating their intention to file a

counterbond under Rule 60 of the Rules of Court to stay the execution of the writ of seizure and to post a cash bond in the amount of P180,000.00. But the trial court did not oblige petitioners for they failed to serve a copy of the Manifestation on private respondents. Petitioners then immediately made the required service and tendered the cash counterbond in the amount of P180,000.00, but it was refused, petitioners' Manifestation having already been set for hearing on March 30, 1989.
[15]

On March 27, 1989, petitioners made another attempt to post a counterbond which was, however, denied for the same reason. [16]

On the same day, private respondents filed a motion to declare petitioners in contempt for disobeying the writ of seizure.[17] The trial court gave petitioners twenty-four (24) hours to answer the motion. Hearing thereon was scheduled on March 30, 1989.

However, on March 29, 1989, petitioners filed with the Court of Appeals a Petition for Certiorari, Prohibition and/or Mandamus to annul the Orders of the trial court dated March 20, 1989 and March 27, 1989.[18]

On March 30, 1989, the Court of Appeals granted petitioners temporary relief in the form of a temporary restraining order (TRO).

On September 11, 1989, the Court of Appeals converted the TRO into a writ of preliminary injunction upon filing by petitioners of a bond in the amount of P180,000.00.[19]

However, on March 30, 1990, the Court of Appeals lifted the writ of preliminary injunction and dismissed the petition. It declared that as the complaint for replevin filed by private respondents complied with the requirements of an affidavit and bond under Secs. 1 and 2 of Rule 60 of the Revised Rules of court, issuance of the writ of replevin was mandatory.[20]

As for the contempt charges against petitioners, the Court of Appeals believed the same were sufficiently based on a written charge by private respondents and the report submitted by the Sheriff.[21]

On April 25, 1990, petitioners filed a motion for reconsideration of the foregoing decision. However, that motion was denied by the Court of Appeals in its Resolution dated May 18, 1990.[22]

Hence this petition.

On the one hand, petitioners contend, thus:

(1) "Confiscated lumber cannot be subject of replevin".[23]

(2) "Petitioners not compelled to criminally prosecute private respondents but may opt only to confiscate lumber".[24]

(3) "Private respondent charged criminally in court".^[25] and

(4) "Writ of Replevin issued in contravention of PD #605".^[26]

On the other hand, private respondents argue that:

(1) "The respondent Judge had jurisdiction to take cognizance of the complaint for recovery of personal property and, therefore, had jurisdiction to issue the necessary orders in connection therewith."^[27]

(2) "The issuance of the order for the delivery of personal property upon application, affidavit and filing of replevin bond by the plaintiff is mandatory and not discretionary, hence, no abuse of discretion can be committed by the trial court in the issuance thereof."^[28]

(3) "The Order of March 20, 1989 was in accordance with Section 4, Rule 60 of the Rules of Court and is, therefore, valid."^[29]

(4) "The private respondents have not been proven to have violated Section 68 of the Revised Forestry Code."^[30]

(5) "The petitioners do not have the authority to keep private respondents' property for an indefinite period, more so, to dispose of the same without notice and hearing or without due process."^[31]

(6) "Contrary to the allegation of petitioners, no formal investigation was conducted by the PIC with respect to the subject lumber in this case."^[32]

(7) "The alleged Order dated January 20, 1989 of the petitioner Secretary Fulgencio Factoran, Jr. of the DENR is not valid and does not make the issuance of the order of replevin illegal."^[33] and

(8) "The subject properties were not in custody of the law and may be replevied."^[34]

At the outset we observe that herein respondents never appealed the confiscation order of petitioner Secretary to the Office of the President as provided for in Sec. 8 of P.D. No. 705 which reads:

"All actions and decisions of the Director are subject to review, *motu proprio* or upon appeal of any person aggrieved thereby, by the Department Head whose decision shall be final and executory after the lapse of thirty (30) days from receipt by the aggrieved party of said decision unless appealed to the President x x x. The decision of the Department Head may not be reviewed by the courts except through a special civil action for certiorari and prohibition."

The doctrine of exhaustion of administrative remedies is basic. Courts, for reasons of law, comity and convenience, should not entertain suits unless the available administrative remedies have first been resorted to and the proper authorities have been given an appropriate opportunity to act and correct their alleged errors, if any,

committed in the administrative forum.^[35] As to the application of this doctrine in cases involving violations of P.D. No. 705, our ruling in *Paat v. Court of Appeals*, is apropos:

"Moreover, it is important to point out that the enforcement of forestry laws, rules and regulations and the protection, development and management of forest lands fall within the primary and special responsibilities of the Department of Environment and Natural Resources. By the very nature of its function, the DENR should be given a free hand unperturbed by judicial intrusion to determine a controversy which is well within its jurisdiction. The assumption by the trial court, therefore, of the replevin suit filed by private respondents constitutes an encroachment into the domain of the administrative agency's prerogative. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. In *Felipe Ismael, Jr. and Co. vs. Deputy Executive Secretary*, which was reiterated in the recent case of *Concerned Officials of MWSS vs. Vasquez*, this Court held:

`Thus, while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of these resources, the judiciary will stand clear. A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.'"^[36]

However, petitioners did not file a motion to dismiss based on the ground of non-exhaustion of administrative remedies. Thus, it is deemed waived.^[37]

Nonetheless, the petition is impressed with merit.

First. A writ of replevin does not just issue as a matter of course upon the applicant's filing of a bond and affidavit, as the Court of Appeals has wrongly put it. The mere filing of an affidavit, sans allegations therein that satisfy the requirements of Sec. 2, Rule 60 of the Revised Rules of Court, cannot justify the issuance of a writ of replevin. Said provision reads:

"Affidavit and bond. - Upon applying for such order the plaintiff must show by his own affidavit or that of some other person who personally knows the facts:

"(a) That the plaintiff is the owner of the property claimed, particularly describing it, or entitled to the possession thereof;

"(b) That the property is wrongfully detained by the defendant, alleging the cause of detention thereof to his best knowledge, information, and belief;

"(c) That it has not been taken for a tax assessment or fine pursuant to law, or seized under an execution, or an attachment against the property of the plaintiff, or, if so seized, that it is exempt from such seizure; and