

THIRD DIVISION

[G.R. No. 171095, June 22, 2015]

**MAYOR MARCIAL VARGAS AND ENGR. RAYMUNDO DEL ROSARIO,
PETITIONERS, VS. FORTUNATO CAJUCOM, RESPONDENT.**

DECISION

PERALTA, J.:

Before the Court is a petition for review assailing the trial court's Order denying petitioners' motion to quash a writ of execution.

The facts are as follows:

On August 15, 2000, Fortunato Cajucom (*Cajucom*) filed with the Regional Trial Court (RTC) of Cabanatuan City a Complaint for *mandamus* and abatement of nuisance against the Municipal Mayor of Aliaga, Nueva Ecija, in the person of Mayor Marcial Vargas (*Mayor Vargas*), the Municipal Engineer of Aliaga, Nueva Ecija, namely, Engr. Raymundo del Rosario (*Engr. del Rosario*), and a number of private persons, namely, Rodel Puno, Vicente Mata, Tony Maderia, Rene Maderia, and German Maderia (*Puno, et al.*).^[1] The case was docketed as Civil Case No. 3776 and assigned to the RTC of Cabanatuan City, Branch 86.^[2]

In the complaint, Cajucom alleged that he had intended to start a gasoline station business on his lot in Aliaga, Nueva Ecija, but several illegal structures built on the road shoulder by Puno, *et al.* were obstructing access to his site, thus, also frustrating his plan. He claimed that demand was made for Puno, *et al.* to remove their structures, but to no avail. Cajucom then alleged that he tried to enlist the help of Mayor Vargas and Engr. Del Rosario, but the latter similarly did not act. Cajucom ultimately prayed for the court to command the said municipal mayor and engineer to cause the removal of all buildings and structures built on the concerned road shoulder by Puno, *et al.*

On February 14, 2001, the court rendered a Decision in favor of Cajucom.^[3] It held that as correctly alleged by Cajucom, the mayor and municipal engineer failed to perform their duties under the Rules and Regulations Implementing the Local Government Code (*Republic Act No. 7160*), among which duties is the duty to order the demolition or removal of illegally constructed houses, buildings or other structures on the road shoulder.^[4] Thus, the court held:

WHEREFORE, in view of the foregoing the petition for MANDAMUS is hereby GRANTED and the public defendants Municipal Mayor Marcial Vargas and Municipal Engineer Raymundo del Rosario, both of the Municipality of Aliaga, Nueva Ecija, are hereby ordered to comply with the above-cited provision of law.

IT IS SO ORDERED.^[5]

No appeal was interposed from the decision.^[6] As the decision became final and executory, Cajucom filed a Motion for the Issuance of a Writ of Execution.^[7]

On May 11, 2001, the RTC issued an Order granting Cajucom's motion.^[8] It directed that a writ of execution be issued to implement and enforce the decision of February 14, 2001. Subsequently, a Writ of Execution was issued by the clerk of court on May 25, 2001.^[9]

Then, the court sheriff reported that on May 28, 2001, he served a copy of the writ of execution on Mayor Vargas and Engr. del Rosario.^[10] The writ of execution was signed as received by the mayor's private secretary and by Engr. del Rosario on said date.^[11] However, the sheriff also reported in his Return of Service dated July 2, 2001 that, as of June 13, 2001 the judgment has not been executed.^[12]

Meanwhile, on February 8, 2002, Puno, *et al.* filed a petition for Annulment of Judgment with the Court of Appeals to annul the February 14, 2001 decision of the RTC.^[13] That case was docketed as CA-G.R. SP No. 69035 entitled *Rodel Puno et al. v. Raymundo Annang, et al.* The grounds alleged in the petition include the trial court's lack of jurisdiction and its speculation as to certain facts of the case.^[14] The CA, in a Decision dated January 12, 2005^[15] and a Resolution dated March 18, 2005,^[16] denied such petition. The appellate court held that the petition's allegations are flimsy and unacceptable in addition to the fact that Puno, *et al.* indeed have no right to build residential and commercial structures on the shoulder of a public road.^[17] Puno, *et al.* then went to the Supreme Court via a Petition for *certiorari* with injunction and request for temporary restraining order (TRO), dated April 8, 2005, to assail the CA's decision denying the petition for annulment of judgment.^[18] However, on May 3, 2005, the Supreme Court, in G.R. No. 167537 entitled *Rodel Puno, et al. v. Fortunato Cajucom*, denied the petition of Puno, *et al.*^[19] A subsequent motion for reconsideration was likewise denied in another resolution dated July 27, 2005.^[20]

On April 13, 2005, Cajucom filed a Motion to Compel Defendants Mayor Marcial Vargas and Engineer Raymundo Del Rosario to Implement the Writ of Execution and to Explain Why They Should Not Be Cited for Contempt of Court.^[21]

In response to the said motion, Puno, *et al.* immediately filed their written Opposition (in lieu of oral arguments) to the same.^[22] Likewise, Mayor Vargas and Engr. del Rosario filed their own Motion to Quash Writ of Execution with Explanation Why Public Defendants Should Not Be Cited for Contempt of Court.^[23]

Cajucom then followed up with a Motion to Punish Respondents Mayor Marcial Vargas and Municipal Engineer Raymundo Del Rosario for Contempt of Court.^[24] Mayor Vargas and Engr. Del Rosario filed an Opposition^[25] to the same.

On September 15, 2005, the RTC issued its assailed Order^[26] denying the motion

filed by Mayor Vargas and Engr. Del Rosario to quash the writ of execution of the court's Decision dated February 14, 2001. The court held that the mayor can be compelled to do his duty by writ of *mandamus*.^[27] It also held that issuance of the writ was not premature as Cajucom had previously demanded for the structures to be removed but to no avail.^[28] Meanwhile, the court suspended the resolution of the motion to punish Mayor Vargas and Engr. Del Rosario.^[29] The dispositive portion of the said assailed Order states:

WHEREFORE, premises considered, the Motion to Quash Writ of Execution filed by public defendants Mayor Marcial Vargas and Engr. Raymundo del Rosario, both of Aliaga, Nueva Ecija, is hereby DENIED for lack of merit. Their Explanation Why They Should Not Be Cited For Contempt Of Court is hereby NOTED. Said public defendants, however, are hereby granted a period of thirty (30) days from notice within which to implement and execute the decision of this court dated February 14, 2001 with respect to private defendants Rodel Puno, Vicente Mata, Tony Maderia, Rene Maderia and German Maderia, pursuant to Art. 87(b)(3)(VI) of Rule XV of the Implementing Rules and Regulations of the Local Government Code of 1991. For this purpose, let a writ of Mandamus be issued to Mayor Marcial Vargas and Municipal Engineer Raymundo del Rosario for execution.

The resolution of the Motion To Punish Respondents Municipal Mayor Marcial Vargas and Municipal Engineer Raymundo del Rosario For Contempt Of Court Pursuant to Sections 7 and 8 of Rule 71 of the 1997 Rules of Civil Procedure filed by the plaintiff through counsel is hereby SUSPENDED until after the lapse of the 30-day period from notice granted to the said public defendants to execute the decision of this court

IT IS SO ORDERED.^[30]

Hence, the petitioners, Mayor Vargas and Engr. Del Rosario, filed this petition. Petitioners sum up their arguments for the allowance of their petition as follows:

1. THE WRIT OF EXECUTION IS BEING ENFORCED TO COMPEL ENGINEER RAYMUNDO DEL ROSARIO TO EXERCISE THE POWERS AND PERFORM THE DUTIES AND FUNCTIONS OF MAYOR MARCIAL VARGAS UNDER RULE XV, ART. 87(3) (VI) OF THE IMPLEMENTING RULES AND REGULATIONS OF THE LOCAL GOVERNMENT CODE OF 1991 (RA 7160);^[31]
2. THE WRIT OF EXECUTION IS BEING ENFORCED TO COMPEL MAYOR MARCIAL VARGAS TO PERFORM A DISCRETIONARY DUTY, CONTRARY TO LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT;^[32]
3. RESPONDENT NOT HAVING EXHAUSTED ALL ADMINISTRATIVE REMEDIES BEFORE FILING THE PETITION, THE WRIT OF MANDAMUS SHOULD NOT HAVE BEEN GRANTED AND THE WRIT OF EXECUTION ISSUED TO ENFORCE IT [SHOULD BE QUASHED];^[33]
4. RESPONDENT NOT HAVING [A] WELL-DEFINED, CLEAR AND CERTAIN RIGHT TO WARRANT THE GRANT OF MANDAMUS, THE SAME SHOULD

NOT HAVE BEEN GRANTED AND THE WRIT OF EXECUTION ISSUED TO ENFORCE IT [SHOULD BE QUASHED];^[34]

5. THE WRIT OF EXECUTION IS NOT CAPABLE OF BEING ENFORCED AND SHOULD NOT HAVE BEEN ISSUED IN THE FIRST PLACE.^[35]

6. THE WRIT OF EXECUTION IS BEING ENFORCED IN A WAY [THAT] NOT ONLY VARIES THE JUDGMENT, BUT [IS] CONTRARY TO LAW AND JURISPRUDENCE.^[36]

The Court is now confronted with the singular issue of whether grounds exist to quash the subject writ of execution.

It is a consistent practice that once a judgment has become final and executory, a writ of execution is issued as a matter of course, in the absence of any order restraining its issuance.^[37] In addition, even a writ of demolition, if the case calls for it, is ancillary to the process of execution and is logically also issued as a consequence of the writ of execution earlier issued.^[38]

Rule 39 of the Rules of Court is clear:

Section 1. *Execution upon judgments or final orders.* — **Execution shall issue as a matter of right**, or motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. (1a)

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.^[39]

Stated differently, once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution.^[40] Its issuance is, in fact, the trial court's ministerial duty, the only limitation being that the writ must conform substantially to every essential particular of the judgment promulgated, more particularly, the orders or decrees in the dispositive portion of the decision.^[41] Even the holding in abeyance of the issuance of a writ of execution of a final and executory judgment can be considered abuse of discretion on the part of the trial court.^[42]

In sum, this Court has explained the principle as follows:

It is not disputed that the judgment sought to be executed in the case at bar had already become final and executory. It is fundamental that the prevailing party in a litigation may, at any time within five (5) years after the entry thereof, have a writ of execution issued for its enforcement and the court not only has the power and authority to order its execution but

it is its ministerial duty to do so. It has also been held that the court cannot refuse to issue a writ of execution upon a final and executory judgment, or quash it, or order its stay, for, **as a general rule, the parties will not be allowed, after final judgment, to object to the execution by raising new issues of fact or of law, except when there had been a change in the situation of the parties which makes such execution inequitable or when it appears that the controversy has ever been submitted to the judgment of the court; or when it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that judgment debt has been paid or otherwise satisfied; or when the writ has been issued without authority.** Defendant-appellant has not shown that she falls in any of the situations afore-mentioned. Ordinarily, an order of execution of a final judgment is not appealable. Otherwise, as was said by this Court in *Molina v. De la Riva*, a case could never end. Once a court renders a final judgment, all the issues between or among the parties before it are deemed resolved and its judicial function as regards any matter related to the controversy litigated comes to an end. The execution of its judgment is purely a ministerial phase of adjudication. The nature of its duty to see to it that the claim of the prevailing party is fully satisfied from the properties of the loser is generally ministerial.^[43]

And equally settled is the rule that when a judgment is final and executory, it becomes immutable and unalterable.^[44] It may no longer be modified in any respect, except to correct clerical errors or to make mine pro tune entries, or when it is a void judgment.^[45] Outside of these exceptions, the court which rendered judgment only has the ministerial duty to issue a writ of execution.^[46] A decision that has attained finality becomes the law of the case regardless of any claim that it is erroneous.^[47] Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.^[48] Thus, an order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity.^[49]

In the case at bar, there is no dispute that the trial court's decision had become final and executory, as petitioners themselves did not appeal the same. In the current petition, neither is there an allegation that the judgment is a void one. But even if there is such an allegation, the issue is a settled one, as this Court itself, in the petition for annulment of judgment filed by petitioner's co-obligors, *i.e.*, *Puno et al.*, had upheld the judgment rather than declare the same void. That petition also alleged lack of jurisdiction and raised other issues which are similarly raised in the instant petition.

Therefore, at this late stage, nothing more may be done to disturb the said final judgment.

As for the regularity of the issuance of the writ of execution itself, it is uncontested that all the requirements for the issuance of such a writ, as laid down in the rules, were followed in the case at bar. No issue was raised before the trial court which qualifies as an exception to the general rule that parties may not object to its issuance. Instead, for the most part, the petition appears to pray for a quashal of