

## SECOND DIVISION

**[ G.R. No. 144742, November 11, 2004 ]**

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HAMILTON  
TAN KEH, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

The Republic of the Philippines, represented by the Office of the Solicitor General (OSG), filed the present petition for review on certiorari seeking to reverse and set aside the Decision<sup>[1]</sup> dated February 11, 2000 of the Court of Appeals in CA-G.R. SP No. 55339 which affirmed the orders promulgated by the Regional Trial Court (RTC) of Caloocan City, Branch 125, granting respondent Hamilton Tan Keh's petition for naturalization and his motion to present evidence of compliance with Republic Act No. 530. Likewise sought to be set aside is the appellate court's Resolution dated August 31, 2000, denying the petitioner's motion for reconsideration.

The case arose from the following undisputed factual antecedents:

On August 10, 1993, respondent Tan Keh filed with the court a quo a petition for naturalization under Commonwealth Act No. 473 (CA 473), otherwise known as the Revised Naturalization Law, as amended. He alleged in his petition that, *inter alia*, he is a resident of San Jose, Caloocan City and previously resided in Binondo, Manila, Sta. Cruz, Manila and Carmona, Cavite; he was born in the Philippines on May 22, 1959 and is a citizen of China; he is married to Lily Chu Ko, also a Chinese citizen, with whom he has three (3) children, all born in the Philippines; he has continuously resided in the Philippines except for brief visits abroad in connection with his business; he received primary, secondary and tertiary education in Philippine schools and is able to speak and write English and Tagalog; he is employed as company manager of KB Trading and earns therefrom an annual income of P100,000, more or less; he believes in the principles underlying the Philippine Constitution and he has conducted himself in a proper and irreproachable manner; he possesses all the qualifications under Section 2 and none of the disqualifications under Section 4 of CA 473; and he desires to become a citizen of the Republic of the Philippines. The petition was docketed as Naturalization Case No. C-24.

On July 4, 1994, the court *a quo* issued a Notice of Hearing stating in part:

WHEREFORE, notice is hereby given that said petition will be heard by this court, Regional Trial Court, Branch 125, Caloocan City, located at the 2<sup>nd</sup> Floor Genato Bldg., 12<sup>th</sup> Ave., Grace Park, Caloocan City, Metro Manila on April 27, 1995 at 8:30 in the morning.

Let a copy of this notice as well as the petition and its annexes be

published, at the expense of the petitioner, in a newspaper of general circulation once a week for three (3) consecutive weeks and in the Official Gazette and to be posted in a public and conspicuous place and in the Office of the Clerk of Court.<sup>[2]</sup>

A copy of the said notice, as well as respondent Tan Keh's petition for naturalization, were published in the September 5, 12 and 19, 1994 issues of the Official Gazette. They were, likewise, published in the July 7-13, 1994, July 14-20, 1994 and July 21-27, 1994 issues of the "Newsline."

At the initial hearing on April 27, 1995, the OSG manifested in open court that the notice of hearing and the consequent publication suffered from a fatal defect in that they violated Section 10<sup>[3]</sup> of CA 473. The said provision proscribes the hearing of a petition for naturalization within thirty (30) days preceding any election. The hearing on April 27, 1995 was less than thirty (30) days preceding the May 8, 1995 senatorial, congressional and local elections. Accordingly, on the same day, the court *a quo* issued an Order canceling the April 27, 1995 hearing and resetting the same to June 9, 1995. However, it no longer ordered the republication of the notice of hearing and the petition.

A Motion to Dismiss respondent Tan Keh's petition for naturalization dated June 16, 1995 was filed by the OSG on the ground that the court *a quo* did not acquire jurisdiction over the action since the notice of hearing and the consequent publication were fatally defective. The court *a quo*, however, denied the motion to dismiss, as well as the subsequent motion for reconsideration filed by the OSG.

In the Order dated December 18, 1995, the court *a quo* granted respondent Tan Keh's petition for naturalization. The dispositive portion thereof stated:

IN VIEW OF ALL THE FOREGOING, the Court believes and so holds that the petitioner has complied with all the requirements to become a Filipino citizen. He has all the qualifications and none of the disqualifications. Upon the expiration of the two-year period provided for by Section 1, Republic Act No. 530, petitioner be allowed (*sic*) to become a naturalized citizen of the Philippines, after submission of satisfactory proof that he has complied with the other requirements of the aforementioned law.

SO ORDERED.<sup>[4]</sup>

On February 16, 1996, a few months after his petition for naturalization was granted, respondent Tan Keh filed with the court *a quo* a Motion for Leave of Court to Travel Abroad. The said motion was granted.

On July 7, 1997, respondent Tan Keh filed a Motion to Defer Oath-taking praying that since he left the country several times, he should be allowed to defer his oath-taking until such time that the two-year probationary period under Section 1 of Rep. Act No. 530 had been completed. The said motion was granted by the court *a quo*.

On February 22, 1999, respondent Tan Keh filed with the court *a quo* a Motion to Present Evidence of Compliance with the Requirements of Rep. Act No. 530. The OSG filed an Opposition thereto on the ground that respondent Tan Keh did not comply with the requirements under Section 1 of Rep. Act No. 530, particularly that

proscribing an applicant from leaving the country during the two-year probationary period.

In the Order dated May 4, 1999, the court *a quo* granted respondent Tan Keh's motion to present evidence of compliance with the requirements of Rep. Act No. 530. The OSG sought reconsideration thereof but the court *a quo*, in the Order dated July 30, 1999, denied the motion.

The OSG then filed with the Court of Appeals a petition for certiorari alleging that the court *a quo* did not acquire jurisdiction over the action because the notice of hearing and the consequent publication violated Section 10 of CA 473; hence, the same were void and without legal effect. In denying the OSG's motion to dismiss and granting respondent Tan Keh's petition for naturalization, Judge Geronimo Mangay (now retired) allegedly acted with grave abuse of discretion. The OSG likewise imputed grave abuse of discretion on the part of respondent Judge Adoracion G. Angeles (who replaced Judge Mangay) in granting respondent Tan Keh's motion to present evidence of compliance with the requirements of Rep. Act No. 530 despite the fact that, in violation thereof, he left the country within the two-year probationary period.

After the parties had filed their respective pleadings, the appellate court rendered the assailed Decision dated February 11, 2000, dismissing the OSG's petition for certiorari as it ruled that the court *a quo* committed no grave abuse of discretion in denying the OSG's motion to dismiss and granting respondent Tan Keh's petition for naturalization, as well as in subsequently granting his motion to present evidence of compliance with the requirements of Rep. Act No. 530.

The OSG filed a motion for reconsideration of the assailed decision but the appellate court, in the assailed Resolution dated August 31, 2000, denied the same.

Hence, the recourse to this Court.

In support of its petition, the OSG advances the following arguments:

## I

THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE CASE DESPITE THE FACT THAT THERE WAS A DEFECTIVE PUBLICATION. THE NOTICE OF HEARING TOOK PLACE WITHIN THE PROHIBITED PERIOD UNDER SECTION 10 OF COMMONWEALTH ACT NO. 473, AS AMENDED, OTHERWISE KNOWN AS THE "REVISED NATURALIZATION LAW." THE TRIAL COURT'S RESETTling OF THE HEARING ON A DATE OTHER THAN THAT STATED IN THE PUBLISHED NOTICE OF HEARING DID NOT CURE THE DEFECT. A VALID AND NOT FATALlY DEFECTIVE PUBLICATION IS A JURISDICTIONAL REQUIREMENT. HENCE, THE TRIAL COURT NEVER ACQUIRED JURISDICTION OVER THE ACTION.

## II

THE COURT OF APPEALS ERRED IN RULING THAT SECTION 10 OF COMMONWEALTH ACT NO. 473, AS AMENDED, OTHERWISE KNOWN AS

THE REVISED NATURALIZATION LAW, IS NOT A RESTRICTION IN THE PUBLICATION OF THE NOTICE OF HEARING.

### III

THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT DID NOT VIOLATE SECTION 1 OR (sic) R.A. NO. 530 EVEN THOUGH HE LEFT THE COUNTRY SEVERAL TIMES DURING THE TWO-YEAR PROBATIONARY PERIOD.

### IV

THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT'S TRAVEL ABROAD CAN BE CONSIDERED AS AN EXCEPTION TO SECTION 1 OF R.A. NO 530.<sup>[5]</sup>

The first two grounds shall be resolved jointly as they are interrelated. Sections 9 and 10 of CA 473 read:

*Sec. 9. Notification and appearance.* - Immediately upon the filing of a petition, it shall be the duty of the clerk of court to publish the same at the petitioner's expense, once a week for three consecutive weeks, in the Official Gazette, and in one of the newspapers of general circulation in the province where the petitioner resides, and to have copies of said petition and a general notice of the hearing posted in a public and conspicuous place in his office or in the building where said office is located, setting forth in such notice the name, birthplace, and residence of the petitioner, the date and the residence of the petitioner, the date and place of his arrival in the Philippines, the names of the witnesses whom the petitioner proposes to introduce in support of his petition, and the date of the hearing of the petition, which hearing shall not be held until after six months from the date of the last publication of the notice. The clerk shall, as soon as possible, forward copies of the petition, the sentence, the naturalization certificate, and other pertinent data to the Department of the Interior,<sup>[6]</sup> the Bureau of Justice,<sup>[7]</sup> the Provincial Inspector<sup>[8]</sup> of the Philippine Constabulary of the province and the Justice of the Peace<sup>[9]</sup> of the municipality wherein the petitioner resides.

*Sec. 10. Hearing of the petition.* - No petition shall be heard within thirty days preceding any election. The hearing shall be public, and the Solicitor General, either himself or through his delegate or the provincial fiscal concerned, shall appear on behalf of the Commonwealth of the Philippines at all the proceedings and at the hearing. If, after the hearing, the court believes, in view of the evidence taken, that the petitioner has all the qualifications required by, and none of the disqualifications specified in this Act and has complied with all requisites herein established, it shall order the proper naturalization certificate to be issued and the registration of the said naturalization certificate in the proper civil registry as required in Section 10 of Act No. 3753.

It is not disputed that there was publication of the notice of hearing and respondent Tan Keh's petition for naturalization in the Official Gazette and Newsline once a week