

THIRD DIVISION

[G.R. No. 106052, October 22, 1999]

PLANTERS PRODUCTS, INC., PETITIONER, VS. COURT OF APPEALS AND FERTIPHIL CORPORATION, INC., RESPONDENTS.

DECISION

PURISIMA, J.:

At bar is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking to annul the Decision ^[3] of the Court of Appeals, dated June 19, 1992, in CA-G.R. No. 2776, which denied the petition to set aside the Order^[2] dated April 8, 1992 of the Regional Trial Court of Makati, Branch 146, in Civil Case No. 17835.

The antecedent facts are as follows:

On June 3, 1985, for the purpose of rehabilitating Philippine Planters, Inc., the then President Ferdinand E. Marcos issued Letter of Instruction (LOI) No. 1465 which imposed a charge of P10.00 per bag of fertilizer on all domestic sales of fertilizer in the Philippines.

Respondent Fertiphil Corporation, a domestic entity engaged in the fertilizer business, questioned the constitutionality of LOI NO. 1465 and brought an action to recover its accumulated payment thereunder in the amount of P6,698,144.00, the case docketed as Civil Case No. 17835 before Branch 147 of the Regional Trial Court of Makati.

On November 20, 1991, the court of origin declared Letter of Instruction No. 1465 unconstitutional and ordered the petitioner to pay the private respondent the amount it paid pursuant thereto; disposing as follows:

“WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiff and against the defendant Planters Product, Inc., ordering the latter to pay the former:

- 1) the sum of P6,698,144.00 with interest at 12% from the time of judicial demand;
- 2) the sum of P100,000.00 as attorney’s fees;
- 3) the costs of suit.

SO ORDERED.”^[3]

On February 20, 1992, simultaneously with the filing of petitioner’s notice of appeal, the private respondent presented a motion to execute the said decision pending appeal, but the motion was opposed by the petitioner on the ground that there was no good reason to warrant execution pending appeal.

On April 8, 1992, the lower court granted the motion for execution pending appeal and directed the issuance of the corresponding writ of execution upon the posting by private respondent of a bond in the amount of P6,698,000.00; ratiocinating thus:

"Thus, it is clear from the foregoing discussion that the tax imposition under LOI No. 1465 is null and void and cannot be justified even under the police power of the state. As a matter of fact, because it is an invalid tax imposition, the same was discontinued upon the advent of a free and democratic regime after the EDSA revolution. Hence, the Court finds that the appeal of the defendant is not only dilatory but also frivolous.

Anyway, in the remote event of reversal by the appellate court, there is the bond to answer for the return of these assets which may be executed pending appeal. It has been held that the filing of a bond by the prevailing party constitutes good reason for the issuance of a writ of execution pending appeal. x x x

WHEREFORE, in view of the foregoing, the court hereby grants plaintiff's motion for execution pending appeal. Let a writ of execution issue upon the filing of a bond in the amount of P6,698,000.00 subject to the approval of the Court.

SO ORDERED."^[4]

On April 13, 1997, upon the posting of the requisite bond, Fertiphil caused the closure of petitioner's warehouse in Sta. Ana, Metro Manila. Stored in that warehouse were 70,000 bags of fertilizer (estimated by Fertiphil to be 47,000 bags only). Also levied upon were twenty-four (24) Suzuki motorcycles, five (5) Suzuki jeeps and two (2) UV FMA 220-D motor vehicles. On April 20, 1992, the properties thus levied upon were sold at public auction, with Fertiphil as the highest bidder.

On April 14, 1992, petitioner filed with the Court a quo an "Urgent Omnibus Motion", asked for the approval of its supersedeas bond in the amount of P10,477,902.45, and prayed that pending approval of the said supersedeas bond, the lower court:

'x x x immediately issue an Order (1) DIRECTING plaintiff (Fertiphil) and/or the Sheriff of this Honorable Court, as well as all the persons acting under their supervision and/or instruction to immediately cease and desist from performing any act or all acts in furtherance of the execution of the Decision dated November 1991, and (2) DIRECTING the immediate release of defendant PPI's abovementioned bank accounts and funds from garnishment.'^[5]

Petitioner further prayed that the order of execution pending appeal as well as the writ issued by virtue thereof be set aside and dissolved; and its omnibus motion be heard on the following day, April 15, 1992. Acting thereupon on the same day, the lower court issued an order giving the private respondent ten (10) days to submit its opposition to the motion of petitioner, and also giving petitioner ten (10) days from receipt of the opposition to reply thereto, if so desired.

Five (5) days later, or on April 20, 1993, to be precise, petitioner brought a petition for *certiorari* before the Court of Appeals on the alleged ground that the lower court unreasonably failed to act on its "Urgent Omnibus Motion" dated April 14, 1992.

On April 21, 1992, the Court of Appeals issued a Temporary Restraining Order effective until May 11, 1992, enjoining the private respondent and all persons acting under their supervision and/or instruction from executing any further the decision in Civil Case No. 17835. After the lapse of said period, on May 5, 1992, petitioner presented an Urgent Motion for the issuance of a writ of preliminary injunction to prevent private respondent from executing any further the decision of the trial court.

On May 21, 1992, petitioner asked the Court of Appeals to admit its supplemental petition for *certiorari* imputing abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the lower court in granting private respondent's motion for execution pending appeal.

On June 19, 1992, the Court of Appeals came out with its decision to the following effect:

"WHEREFORE, the petition and supplemental petition are hereby DENIED. The prayer for the issuance of a preliminary injunction is likewise denied. Costs against petitioner.

SO ORDERED."^[6]

Dissatisfied therewith, petitioner found its way to this Court via the present Petition, contending:

I

THAT THE SUPPLEMENTAL PETITION COULD NO LONGER QUESTION THE SPECIAL EXECUTION SINCE THIS WAS NOT RAISED IN THE ORIGINAL PETITION;

II

THAT PPI ADMITTED THE CORRECTNESS OF THE SPECIAL EXECUTION WHEN IT FILED THE SUPERSEDEAS BOND;

III

THAT THE FOLLOWING WERE "GOOD REASONS" TO JUSTIFY ADVANCE EXECUTION:

i) FRIVOLOUSNESS OF THE APPEAL BECAUSE LOI No. 1465 IS UNCONSTITUTIONAL; AND ii) FILING OF THE BOND OF P6,698,144;

IV

THAT THE TRIAL COURT DID NOT GRAVELY ABUSE ITS DISCRETION WHEN IT GAVE FERTIPHIL 10 DAYS TO OPPOSE PPI'S SUBMISSION OF SUPERSEDEAS BOND.

V

THAT THE COLLECTION UNDER LOI No.1465 WAS FOR THE BENEFIT OF PPI AND RECEIVED BY IT WITHOUT CONSIDERATION; and

VI

THAT THE IMPOSITION UNDER LOI 1465 WAS IMPROPER EXERCISE OF TAXATION.

^[7]

The petition is impressed with merit.