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qualified under the law to own disposable lands of the public domain and thus reduce the number of landless among the citizenry.

Considering the area of the lot applied for — only about 573 square meters — it was quite unfair, if not oppressive, to put the private respondent to such expense and anxiety, after the Director of Lands withdrew his opposition, while the Director of Forestry interposed no opposition to private respondent's application.

**WHEREFORE,** THE DECISION OF THE LOWER COURT IS HEREBY AFFIRMED AND THE PETITION IS HEREBY DISMISSED. NO COSTS.

*Teehankee (Chairman), Fernandez, Guerrero, De Castro,* and *Melencio-Herrera, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. L-35707. May 31, 1979]

**CRISPINO FLORES,** *petitioner, vs.* **HON. G. JESUS B. RUIZ, Presiding Judge, Court of First Instance of Cagayan, PROVINCIAL WARDEN of Cagayan, and LEONARDO MANDAC, represented by his Heirs, thru the Widow DOLORES *VDA. DE* MANDAC,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHT OF THE ACCUSED; RIGHT TO COUNSEL NOT SUBJECT TO WAIVER.** — The right of the accused to counsel in criminal proceedings has never been subject to waiver. The practice has always been for the trial court to provide the accused with a counsel *de oficio,* if he has no counsel of his own choice, or

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cannot afford one. Contempt proceedings partake of the nature of a criminal prosecution, and it is the duty of the court in such proceedings to satisfy the constitutional right of accused to counsel. A person charged with contempt is denied due process where he was not duly notified of the contempt charge, nor was properly "arraigned," since he was not assisted by counsel during the hearing.

2. **ID.; ID.; ID.; DENIAL THEREOF ENTITLES ACCUSED TO THE WRIT OF *HABEAS CORPUS*.** — The proceedings on the contempt charge is vitiated by lack of due process, entitling the petitioner to the writ of *habeas corpus*, where during such proceedings petitioner was deprived of his fundamental right to counsel.

3. **ID.; ID.; CONTEMPT; WHEN COMMITTED IN CASE OF REFUSAL TO VACATE PREMISES.** — What constitute contempt is the re-entry of the defeated party into the premises after possession thereof has been delivered to the prevailing party by the sheriff in the enforcement of the writ of execution. But where the defeated party asked to vacate the premises by the judgment of the court, refuses to vacate the same on being ordered by the sheriff, no contempt is committed.

**APPEARANCES OF COUNSEL**

*Eliseo M. Cruz* for petitioner.
*Laggui & Laggui* for private respondents.

## D E C I S I O N

**DE CASTRO, *J.*:**

This is a Petition for *Certiorari* and/or *Habeas Corpus* filed by petitioner Crispin Flores on October 24, 1972 after he has been allegedly arrested and detained illegally by Order of the respondent Judge, dated June 20, 1972, finding him guilty of indirect contempt. (Annex A, Petition, p. 11, *Rollo*).

From the records of this case, it appears that petitioner was actually arrested on August 28, 1972 and has since been detained in the Provincial Jail of Cagayan until his release by virtue of

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a bond of ₱500.00 which he was allowed to file by this Court in its Resolution dated October 31, 1972 (p. 33, *Rollo*), which he must have filed as he had precisely asked to be bailed, pending his appeal from the Order of the respondent judge dated August 10, 1972. (Annex E to Petition, p. 24, *Rollo*). The reason for the delayed arrest is that petitioner was given a period up to August 1, 1972 "to inform the court whether or not he relinquishes his possession over the land in question."

The land in question was levied upon and sold on execution on November 28, 1978 to satisfy the award of damages in favor of Leonardo Mandac, plaintiff in Civil Case No. 1616 of the Court of First Instance of Cagayan against petitioner and his father, Doroteo Flores, as defendants and the losing parties in said case. They failed to redeem the property sold to the heirs of Leonardo Mandac in the auction sale. Hence, the respondent court ordered petitioner to place in possession the heirs of Leonardo Mandac who had in the meantime died. For his refusal to vacate the land in favor of the heirs of Mandac, contempt proceedings were instituted against petitioner on motion of Atty. Antonio N. Laggui, as counsel of the aforementioned heirs. As previously stated, these contempt proceedings led to his arrest and detention.

Petitioner, however, questions the legality of the proceedings for not having been assisted by counsel during the hearing of the motion for contempt, and for not having been duly informed of the contempt charge by being furnished a copy of the motion, or properly "arraigned" before trial. Thus, petitioner claims to have been deprived due process of law which voided the proceedings against him as for lack of jurisdiction of the court to inflict the penalty imposed on him, citing *Santiago vs. Alikpala*, L-25133, September 28, 1968, 25 SCRA 356.

Further, petitioner contends that his act of not surrendering possession of his levied property does not constitute contempt, citing the case of *Faustino Lagrimas vs. JP of Camiling, et al.*, L-14345, July 20, 1961, 2 SCRA 793, and *Chinese Commercial Property Co. vs. Martinez, et al.*, L-18565, November 30, 1962, 6 SCRA 851.

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1. On the issue of whether petitioner was denied due process as he claims, both respondent judge and private respondents deny the claim of petitioner, of having been so denied, private respondents even quoting from the transcript of the stenographic notes the following:

"COURT: Is the defendant Crispin Flores in Court?

(Interpreter calls out the name of Crispin Flores, and answered that he is present).

(The Court addresses Crispin Flores).

Q. Who is going to represent you in this case?
A. I have a lawyer but he was not able to come.

Q. Did you notify him?
A. Yes, sir, but he was not able to come today.

Q. Are you willing to go into trial in this case even in the absence of your lawyer?
A. Yes, sir.

Q. Do yon need the assistance of any lawyer?
A. No more, anyway I can answer."

(pp. 1 and 2, tsn Barias, June 19, 1972).

The veracity of the alleged proceedings as indicated above is denied by petitioner, alleging that no such proceedings took place, and that, in any event, the transcript was not signed by the stenographer. What happened according to him, is that "when respondent judge had learned that he was without counsel, he told him (petitioner) to deliver possession of the premises to the private respondents, and for this purpose gave him ten (10) days to carry out that mandate. In spite of the plan of petitioner that the hearing on that date be postponed so that his counsel of record could appear for him or that a new counsel would be hired to appear in his behalf, the respondent judge, however, demurred, and with the assistance of a certain Atty. Joshua Pastores, petitioner was made to sign an understanding to deliver up the premises within the period indicated by the judge on pain of being imprisoned." (Petitioner's Memorandum, pp. 79-80, *Rollo*).

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The right of the accused to counsel in criminal proceedings has never been considered subject to waiver. The practice has always been for the trial court to provide the accused with a counsel *de oficio*, if he has no counsel of his own choice, or cannot afford one. This is because —

"The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence and this can happen more easily to persons who are ignorant or uneducated. It is for this reason that his right to be assisted by counsel is deemed so important that it has become a constitutional right and it is so implemented that under our rules of procedure it is not enough for the court to apprise an accused of his right to have an attorney, it is not enough to ask him whether he desires the aid of an attorney, but it is essential that the court should assign one *de oficio* for him if he so desires and he is poor or grant him a reasonable time to procure an attorney of his own." (*People vs. Holgado,* 85 Phil. 752; See also *Aguador vs. Enerio*, 37 SCRA 140).

On the basis of the aforequoted ruling, it cannot be disputed that the respondent court failed in its duty designed to satisfy the constitutional right of an accused to counsel. Petitioner, as the respondent in the contempt charge, a proceedings that partake of the nature of a criminal prosecution, was thus denied due process. This is more so as petitioner does not appear to have been duly notified of the contempt charge, nor was properly "arraigned," since he was not assisted by counsel during the hearing (*Santiago vs. Alikpala, supra*). Admittedly with a counsel of record, petitioner could not have willingly submitted to go to trial when his counsel failed to appear. It is certainly much easier to believe, that, as petitioner alleges, he asked for postponement, because of the absence of his counsel, but that the respondent judge denied the plea, a fact not expressly traversed in the respondent judge's comment (p. 56, *Rollo*). Neither has he denied the allegation in the petition that there was a denial of petitioner's right to due process for not having been duly informed of the contempt-charge, nor was his counsel

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furnished a copy thereof, as he is entitled to one as a matter of right and as a matter of duty of the court. All that respondent judge said in his comment is that "defendant Flores has been granted his day in court to defend himself from the charges presented by reason of his contumacious acts." (p. 56, *Rollo*).

We are, therefore, constrained to hold that the proceedings on the contempt charge has been vitiated by lack of due process, entitling petitioner to the writ of *habeas corpus* he seeks.

"*Habeas corpus* is a high prerogative writ. It is traditionally considered as an exceptional remedy to release a person whose liberty is illegally restrained such as when the accused's constitutional rights are disregarded. Such defects results in the absence or loss of 'jurisdiction and therefore invalidates the trial and the consequent conviction of the accused whose fundamental right was violated. That void judgment of conviction may be challenged by collateral attack, which precisely is the function of *habeas corpus*. This writ may issue even if another remedy which is less effective may be availed of by the defendant. In *Harden vs. The Director of Prisons* (81:741/1948), Justice Tuason, speaking for the Court, explicitly announced that 'deprivation of any fundamental or constitutional rights' justify a proceeding for *habeas corpus*; on the ground of lack of jurisdiction. *Abriol vs. Homeres* (84 Phil. 525) is even more categorical. In that case, the action of a lower court, denying the accused the opportunity to present proof for his defense, his motion for dismissal failing, was held by this Court as a deprivation of his right to due process. As was made clear by the opinion of Justice Ozaeta: 'No court of justice under our system of government has the power to deprive him of that right. If the accused does not waive his right to be heard but on the contrary invokes the right, and the court denies it to him, that court no longer has jurisdiction to proceed; it has no power to sentence the accused without hearing him in his defense; and the sentence thus pronounced is void and may be collaterally attacked in a *habeas corpus* proceeding." (*Santiago vs. Alikpala, supra.*)

2. We also find as not clearly established by the pleadings and annexes, the legal basis for the pronouncement of guilt for contempt against petitioner. What would constitute contempt is the re-entry of the defeated party into the premises after possession thereof has been delivered to the prevailing party

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by the sheriff in enforcement of the writ of execution (*Rom vs. Cobadora*, L-24764, July 17, 1969, 28 SCRA 758, 763; *Chinese Commercial Property Co. vs. Martinez, et al.*, L-18565, November 30, 1962, 6 SCRA 848; *Faustino Lagrimas vs. JP of Camiling, et al.*, L-14345, July 20, 1961, 2 SCRA 793). Thus, in the order of the respondent judge, dated September 28, 1972, (Annex G to Petition, pp. 30-31, *Rollo*), it was stated that:

"By virtue of the writ of execution of the decision in this case the plaintiffs were placed in possession over the parcel described in paragraph 3 of the complaint. Sometime in March, 1969, defendants invaded the land and since then, they refused to vacate same. Plaintiffs, on July 2, 1969, filed the first motion for contempt against the defendants.

The other properties of defendants were levied, foreclosed and sold to defendants on November 28, 1968 in a public auction to satisfy the damages awarded in the same judgment. The defendants failed to redeem the bidded properties within the one year from the registration of the certificate of sale of the land, and yet defendants refused to vacate same land for which plaintiffs filed the second motion for contempt on December 17, 1971.

The Court did not pass upon the first motion for contempt but gave due course to the second motion for contempt."

It is altogether clear that with respect to the parcel described in paragraph 3 of the complaint, the Mandacs were placed in possession thereof but subsequently, the petitioner herein invaded the land and had since refused to leave it. With respect, however, to the land in question, petitioner never vacated the same; there was, therefore, no re-entry to speak of. According to petitioner, the sheriff who tried to enforce the writ of possession never succeeded in locating the specific land to be delivered to the Mandacs to be able to claim having placed the latter in possession of the land, (pp. 77-78, *Rollo*). Where the defeated party asked to vacate the premises by the judgment of the court, refuses to vacate the same on being ordered by the sheriff enforcing a writ of execution or possession, no contempt is committed, as held in *Goyena de Quizon vs. Philippine National Bank, et al.*, G. R. No. L-2851, January 31, 1950, cited in *Chinese Commercial Property Co. vs. Martinez, et al., supra*. In the

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case of *Rom vs. Cobadora*, L-24764, July 17, 1969, 28 SCRA 758, Justice Teehankee, speaking for the court said:

"The order of execution issued by the lower court is addressed solely and exclusively to the sheriff, who under the above-cited rules is called upon to oust the defeated party from the property and make the delivery or restitution by placing the prevailing party in possession of the property, and mere refusal or unwillingness on the part of the defeated party to relinquish the property, would not constitute contempt."

3. There is, likewise, an allegation in the petition that the Motion for Contempt was filed by the counsel of Leonardo Mandac after the latter's death, and therefore, the motion was unauthorized and without legal standing. From what has been said above that petitioner is not guilty of contempt, the challenge against the legality of the motion for contempt need not be inquired into. In fairness, however, to private respondent from his allegation in his Answer that —

"7. Atty. Pedro N. Laggui had authority to file the motion for contempt against the Petitioner on June 30, 1969; at that time, Leonardo Mandac was still alive. Atty. Antonio N. Laggui likewise had authority to file the motion for contempt against the Petitioner on December 17, 1971 no longer as counsel for the deceased Leonardo Mandac — for at that time he was already dead — but as counsel for his wife and children in whose favor the corresponding deed of sale of the parcels of land sold at auction on November 28, 1968, was executed by the Sheriff on February 12, 1970, pursuant to the Order dated January 21, 1970." (Answer, p. 69, *Rollo*).

We have no hesitation to say that the Motion for Contempt has been filed with proper authority.

For all the foregoing, the present petition should be, as it is, hereby granted, thereby setting aside the order of the respondent judge finding petitioner guilty of indirect contempt. No pronouncement as to costs.

**SO ORDERED.**

*Teehankee (Chairman), Makasiar, Fernandez, Guerrero,* and *Melencio-Herrera, JJ.*, concur.