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is unfounded and without basis. Such an award cannot be justified under Article 2208 of the Civil Code.

WHEREFORE, the petition is granted and the orders of the respondent judge dated August 13 and November 3, 1975, in Civil Case No. L-154 of the Court of First Instance of Surigao del Sur, entitled, "*Alfonso A. Chan,* plaintiff, *versus Sofronia Agao,* defendant," should be, as they are hereby, annulled and set aside. Costs against the private respondent, Sofronia Agao.

SO ORDERED.

Barredo (Actg. Chairman), Antonio, Aquino, and *Santos, JJ.*, concur.

Abad Santos, J., took no part.

SECOND DIVISION

[G.R. No. L-44240. May 5, 1979]

FREDESWINDA R. CASANOVA, *petitioner, vs.* **THE HON. MARIANO A. LACSAMANA, in his capacity as Presiding Judge of Pasay City Court, Branch II, THE SPOUSES JOSE V. OCHOA and ELENA VERGEL, THE SHERIFF OF PASAY CITY and THE ENGINEER OF PASAY CITY,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION; REQUISITES FOR REMOVAL OF IMPROVEMENTS OR PROPERTY SUBJECT OF EXECUTION. — An order of demolition issued without hearing and without granting the defendant a reasonable time within which to remove the improvements he constructed on the property subject of

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execution is null and void. Under Section 14, Rule 39 of the Revised Rules of Court, the officer called upon to enforce a final judgment involving delivery or restitution of property may do so by placing the plaintiff in possession of such property but the official shall not destroy, demolish or remove the improvements made by the defendant or his agent on the property except by special order of the court which may only issue upon petition of the plaintiff, after due hearing, and upon the failure of the defendant to remove the improvements within a reasonable time fixed by the court. This requirement is not an empty gesture. This safeguard is necessary to give the defendant's an opportunity to protect his interest. Defendant's house could not be removed pending plaintiff's recourse to the court for a special order for the demolition and removal of improvements constructed by him, which order is to be issued upon petition of plaintiff, after due hearing and after the defendant has failed to remove the same within a reasonable time fixed by the court.

APPEARANCES OF COUNSEL

David H. Eñano for petitioner.
Deogracias B. Conchu for private respondents.

D E C I S I O N

ANTONIO, *J.*:

Petition for *certiorari* and *mandamus* with preliminary injunction wherein petitioner prays this Court: (1) to enjoin respondent Judge from enforcing his order of demolition dated July 8, 1976 and the respondent City Sheriff of Pasay City from carrying out his notice of demolition; (2) to annul the said order of demolition and the Sheriff's notice of demolition; and (3) to issue a writ of *mandamus* commanding the respondent Judge to accord due process of law under the Constitution to the petitioner and formal hearing under Section 14, Rule 39 of the Revised Rules of Court.

Sometime in 1974, private respondent Jose V. Ochoa instituted an action for ejectment against petitioner in the City Court of

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Pasay City, Branch II (Civil Case No. 10977). Petitioner alleged among others, that he is the absolute owner of the lot having purchased the same from the Estate of Don Mariano San Pedro and has been in possession thereof for more than thirty (30) years. In the said case, the respondent Judge rendered judgment in favor of respondent Ochoa on March 5, 1976, the dispositive portion of which reads as follows:

"WHEREFORE, judgment on the pleadings is hereby rendered in favor of the plaintiff Jose V. Ochoa and against the defendant Fredeswinda R. Casanova ordering her to vacate and surrender the possession of the premises to the plaintiff or his duly authorized representative; to pay the accrued back rentals for the premises in the total amount of ₱300.00; to pay ₱60.00 per month as damages for the illeg detainer of the property until such time as the defendant actually vacates the premises; and to pay the sum equivalent to 25% of the amount involved as attorney's fees."[1]

On April 9, 1976, petitioner moved for reconsideration and suspension of the order of execution dated April 5, 1976 and prayed that the Sheriff of Pasay City be ordered to withdraw and desist from enforcing his notice of collection and ejectment dated April 13, 1976, citing as basis for said motion General Order No. 53, dated August 21, 1975 which provides, among others, that "all orders for the ejectment of tenants or the demolition of their homes are hereby suspended until further orders." Respondent Ochoa opposed said motion on April 28, 1976, on the ground that General Order No. 53 had no application in the case because it was issued for the purpose of forestalling the indiscriminate eviction of *bona fide* tenants from agricultural and/or residential lands converted or proposed to be converted into subdivision or commercial center and establishment. Further, respondent Ochoa stated that the ejectment case was instituted due to the failure and/or refusal of petitioner to comply with her obligation as lessee.

On May 6, 1976, private respondent filed an Urgent *Ex-Parte* Motion for Issuance of Order of Demolition and an Urgent

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[1] Annex "C", Petition, *Rollo*, p. 12.

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Ex-Parte Motion for Issuance of *Alias* Writ of Execution and Order of Demolition. On June 4, 1976, upon the manifestation of private respondent that said motions were submitted for resolution without further oral argument, the respondent Judge issued an order which considered said motions as submitted for resolution without further oral arguments.

On June 14, 1976, petitioner filed an urgent motion for postponement of the hearing scheduled on June 17, 1976 at 9:00 a.m. Considering that it had already issued on June 4, 1976 an order which considered the motions of private respondent as submitted for resolution without further oral arguments, respondent court issued an order dated June 16, 1976 reiterating its afore-mentioned order of June 4, 1976, thus for all intents and purposes denying the motion for postponement.

On July 8, 1976, respondent Judge issued an order denying petitioner's motion for reconsideration and suspension of order of execution. In the same order, the motions of private respondent were granted and the Sheriff of Pasay City was ordered "to demolish the house/structure of the defendant (petitioner) erected on the plaintiff's property and to remove the same therefrom." On July 26, 1976, the Deputy Sheriff of Pasay City, in a letter of even date, notified the petitioner as follows:

"x x x x x x x x x

THAT AT 9:00 AM, 30 JULY 1976, YOUR HOUSE WILL BE DEMOLISHED BY THIS OFFICE.

Please remove said house outside of the Plaintiff's lot before the given period."[2]

Petitioner in seeking to annul the order of respondent Judge dated July 8, 1976 and to restrain the Sheriff of Pasay City from demolishing her house cites as basis for her petition Section 14, Rule 39 of the Revised Rules of Court which provides:

"SEC. 14. *Removal of improvements on property subject of execution.* — When the property subject of the execution contains

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[2] Annex "B", Petition, *Rollo*, p. 8.

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improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon *special order of the court,* issued upon petition of the judgment creditor *after due hearing* and after the former *has failed to remove the same within a reasonable time fixed by the court.*" (Italics supplied.)

It is petitioner's contention that the respondent Judge failed to observe said provision in not setting for hearing private respondent's motion for order of demolition and motion for issuance of *alias* writ and order of demolition and in the questioned order the court did not fix a definite reasonable period within which her house should be removed, thus rendering the order of the court granting said motions null and void.

Upon the other hand, private respondents argue that from the decision of the lower court dated March 5, 1976, no appeal was taken and the same has become final and executory. Further, according to private respondents there was no denial of due process on the part of the petitioner when the respondent Judge issued the questioned order because the petitioner was given ample time by both respondent Judge and the Deputy Sheriff of Pasay City within which to remove the construction she erected on private respondent's premises.

We find petitioner's contention meritorious. We agree with private respondents that the decision in the ejectment case has already become final and executory, but what is being questioned in the present petition is the order of the court ordering the Sheriff of Pasay City or his deputies and the City Engineer's Office of Pasay City or his duly authorized representative to demolish the house/structure of the petitioner erected on the respondents' property and to remove the same therefrom. The questioned order was issued without due hearing of the motions of private respondent and without granting petitioner a reasonable time within which to remove her house from the premises.

In *Folloso v. Director of Lands*,[3] this Court said:

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[3] L-4991, March 23, 1953, 92 Phil. 810.

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"Under Section 13 (now 14), Rule 39, the officer called upon to enforce a final judgment involving delivery or restitution of property may do so by placing the plaintiff in possession of such property, but 'the officer shall not destroy, demolish or remove the improvements made by the defendant or his agent on the property, except by special order of the court, which order may only issue upon petition of the plaintiff after due hearing and upon the defendant's failure to remove the improvements within a reasonable time to be fixed by the court.' The safeguard accorded to the defendant by the above provision has not been followed. While *the motion of the appellee for the removal of the houses was set for* hearing after due notice given to the appellants, the court ordered the sheriff to remove said houses within a period of 30 days but without giving them a reasonable time within which to do so as required by said Section 13 (now 14). This requirement is not an empty gesture. This safeguard is necessary to give the defendant an opportunity to protect his interest. The lower court erred in issuing the order of demolition without giving a reasonable time to the appellants."

The same ruling was reiterated in *Rom v. Cobadora,*[4] where this Court held:

"*** Under Rule 39, Section 14, the appellant's house could not *be removed pending appellee's recourse to the Court for a special* order for the demolition and removal of such improvements constructed by the appellant, which order is to be issued 'upon petition of the judgment creditor *after due hearing* and after the former has failed to remove the same *within a reasonable time* fixed by the Court.' x x x."

WHEREFORE, the order of demolition dated July 8, 1976, issued by respondent Judge, and the Sheriff's Notice of Demolition, are hereby set aside, and respondent Judge ordered to accord petitioner a reasonable time to remove her house from the premises after a formal hearing, in accordance with Section 14, Rule 39 of the Revised Rules of Court.

Fernando, Acting C.J., Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

Abad Santos, J., took no part.

Barredo, J., on leave.

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[4] l-24764, July 17, 1969, 28 scra 758