Supreme Court E-Library

THIRD DIVISION

[A.M. RTJ 00-1593. October 16, 2000]
(Formerly OCA IPI No. 98-544 RTJ)

JAIME MORTA, SR., and DONALD MORGA, *complainants, vs.* **Judge JOSE S. SAÑEZ and Sheriff IV ANGEL CONEJERO,** *respondents.*

SYNOPSIS

Administrative complaint was filed against respondents judge and sheriff by defendants in an unlawful detainer case.

As recommended by the OCA, the Supreme Court imposed a fine of five thousand pesos (₱5,000.00) after finding that respondent judge violated Section 10 [d] of Rule 39. Before issuing the challenged writ of demolition, respondent judge should have conducted a hearing to afford complainants reasonable time within which they could remove their houses. A Special Order should have been issued relative to the demolition of subject houses.

As likewise found by the OCA, the Supreme Court found respondent sheriff guilty of abuse of authority, misconduct and gross ignorance of the law and suspended the latter for one month without pay. Respondent sheriff failed to make an inventory of the demolished materials and to issue the official receipt therefor. Respondent sheriff also failed to submit for court approval a rough estimate of the cost of execution and demolition. Respondent Judge was fined ₱5,000.00 while respondent Sheriff was suspended for one month without pay.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; EXECUTION; REQUISITES PRIOR TO THE ISSUANCE OF AN ORDER OF DEMOLITION; CASE AT BAR.** — Section 10 (d), Rule 39 provides "When the property subject of the execution contains improvements constructed or planted by the judgment-obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon

Supreme Court E-Library

special order of the court, issued upon motion of the judgment-obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court." The OCA found that respondent judge did not conduct a hearing before issuing the challenged writ of demolition. He did not fix a reasonable time within which complainants could remove their houses. Neither did he issue a Special Order relative to the demolition of subject houses. Such being the scenario at bar, the Court upholds the finding and conclusion of OCA that respondent judge gravely abused his authority when he issued the order of demolition in question in utter disregard of pertinent rules.

2. **ID.; ID.; ID.; ID.; ID.; WHEN A SPECIAL "BREAK-OPEN" ORDER IS NOT REQUIRED BEFORE DEMOLITION.** — When a party refuses to yield possession of a property as ordered by a writ of execution, contempt is not the proper remedy. The sheriff must oust the deforciant from subject property. If a demolition is necessary, there must be a hearing, upon motion and with due notice, for the issuance of a Special Order under Sec. 14 (now Sec. 10 [d]) of Rule 39. Paragraph (d), Section 10 contemplates the only instance when a special "break-open" order is required. It is only when there is no occupant in the premises that the sheriff may lawfully cause a demolition without the need of securing a "break-open" order.

3. **ID.; ID.; ID.; ID.; DUTIES OF SHERIFF EFFECTING THE EXECUTION AND DEMOLITION; CASE AT BAR.** — With respect to the charges against the respondent sheriff, the OCA found him liable for grave abuse of authority, incompetence and misconduct for his failure to make an inventory of the demolished materials and to issue the official receipt therefor, as well as for his failure to submit for court approval a rough estimate of the cost of execution and demolition. x x x For the respondent sheriff, a suspension of one month without pay, as recommended by OCA, is in order.

D E C I S I O N

PURISIMA, *J.:*

At bar is an administrative complaint against Judge Jose S. Sañez of the Regional Trial Court (RTC), Branch 13, Ligao,

Supreme Court E-Library

Albay, for gross ignorance of the law, inexcusable negligence, abuse of authority and incompetence; and against Angel Conejero, Sheriff IV, Office of the Clerk of Court of the same RTC, Ligao, Albay, for abuse of authority, incompetence and misconduct, lodged by the defendants in Civil Case No. 1920, entitled *Baraclan vs. Morta, Sr., et al.,* for unlawful detainer. The Complaint was received by the OCA Legal Office on March 27, 1998.

The Office of the Court Administrator (OCA) summarized the antecedent facts and circumstances as follows:

x x x complainants are the defendants in Civil Case No. 962, an action for Unlawful Detainer filed by Josefina Baraclan before the MTC, Guinobatan, Albay. On September 9, 1996, Judge Designate Aurora Binamira-Parcia rendered judgment ordering the defendants to vacate Lot Nos. 991 and 997 situated at San Rafael, Guinobatan, Albay and to pay plaintiff damages and cost of suit. Defendants moved to reconsider the decision but the court denied the motion for lack of merit. Defendants appealed therefrom to the RTC, Ligao, Albay which was raffled to Branch 4 presided by Judge Salvador A. Silerio. On July 16, 1997, Judge Silerio affirmed the lower court's decision. On August 11, 1997, complainants appealed the adverse decision to the Court of Appeals.

Meantime, on August 7, 1997, plaintiff filed a motion for execution pending appeal with notice to defendants' counsel setting the motion for hearing on August 15, 1997.

On said date, Judge Silerio granted the motion and order (sic) the issuance of the corresponding writ of execution. On August 29, 1997, defendants' counsel, Atty. Rodolfo Paulino, filed an Opposition to the writ of execution contending, among others, that they received a copy of the motion only on August 18, *i.e.,* 3 days after the hearing and granting of said motion.

On August 28, 1997, Branch Clerk of Court Jesus Quinones of Branch 14 issued the writ of execution. A motion to lift the writ was filed by the defendants which was denied by Judge Silerio on September 4, 1997.

On September 6, 1997, co-respondent Deputy Sheriff Angel Conejero served the writ of execution to the defendants thru herein complainant Morta, Sr., and gave the defendants a grace period of

Supreme Court E-Library

20 days to vacate the premises. He also demanded the amount stated in the judgment. It appears that on lots 991 and 997 are built the residential houses owned by Morta Sr., and his son, respectively. The two refused to vacate the premises. Hence, on November 18, 1997 plaintiff filed a motion for issuance of writ of demolition setting the hearing of said motion on December 19, 1997. Defendants opposed the motion reasoning that the houses subject of the demolition are family homes, therefore, exempt from execution, forced sale or attachment under Article 153 of the Family Code and that the writ of demolition was issued without notice and hearing.

On January 22, 1998, the motion was granted by herein respondent Judge Jose Sañez. Accordingly, a writ of demolition was issued. Defendants filed a motion for reconsideration on February 23, 1998 but the same was denied by respondent Judge Sañez.[1]

Against respondent judge, complainants averred that:

1. The writ of execution and writ of demolition were issued in violation of Sections 4 and 6 of Rule 15, which requires prior notice and hearing of the motion;

2. The writ of demolition was effected without a special order from the court in violation of the provisions of Section 10 (d), Rule 39;

3. The subject of the writ of demolition are family homes which are exempt from execution, attachment or even demolition under Art. 155 of the Family Code.[2]

Against the respondent sheriff, it is alleged that:

1. Respondent sheriff effected the demolition knowing fully well that the subject homes are exempt from execution;

2. He failed to make an inventory of the demolished materials and to issue official receipts therefor to the complainants;

3. He failed to submit to the court for approval the costs or rough estimates of the demolition and possession;

---

[1] *Rollo*, Report of the Office of the Court Administrator, pp. 1-2.

[2] *Supra*.

Supreme Court E-Library

4. He hastily implemented the demolition without special order from the court and without serving the writ of demolition; and

5. He has not made a return of the alleged demolition.[3]

On August 7 and 10, 1998, respectively, OCA required the respondents to comment.

In his Comment dated September 9, 1998, respondent judge denied the charges. He admitted, however, that he granted the questioned writ of demolition in his capacity as the Pairing Judge of Branch 14. According to him, the said writ was a mere incident to the writ of execution previously issued by Judge Silerio. He did not dispute that no Special Order was issued.

On August 28, 1998, Sheriff Conejero likewise denied the charges but he admitted the antecedent facts concerning the implementation of the questioned writ of demolition. Records show that he did not make an inventory of the demolished materials, and no estimate of the expenditures for the implementation of subject writ of demolition had been submitted for the approval of the trial court concerned.

The OCA recommended that respondent judge be exonerated of the charges except the charge of violation of Section 10 (d) of Rule 39 of which he appears guilty and for which he should be fined Five Thousand (₱5,000.00) Pesos.

For respondent sheriffs failure to observe the rules on execution and demolition, the OCA recommended his suspension for one month without pay.

On June 21, 2000, the parties were required to manifest if they were submitting the case on the basis of the records and pleadings filed. The complainants and respondent judge submitted their affirmative manifestation.

Section 10 (d), Rule 39 provides "When the property subject of the execution contains improvements constructed or planted by the judgment-obligor or his agent, the officer shall not destroy,

---

[3] *Ibid.*

Supreme Court E-Library

demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment-obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court."

The OCA found that respondent judge did not conduct a hearing before issuing the challenged writ of demolition. He did not fix a reasonable time within which complainants could remove their houses. Neither did he issue a Special Order relative to the demolition of subject houses. Such being the scenario at bar, the Court upholds the finding and conclusion of OCA that respondent judge gravely abused his authority when he issued the order of demolition in question in utter disregard of pertinent rules.

The contention of respondent judge that the said procedural error had been cured by his Order denying the motion for reconsideration dated February 23, 1998, and by the Order of Demolition, dated January 22, 1998, is untenable. As correctly found by OCA, the aforesaid orders cannot be treated as the requisite special order since he (respondent judge) failed to fix a reasonable time for the complainants to remove their houses from the premises, as required by the rules.

When a party refuses to yield possession of a property as ordered by a writ of execution, contempt is not the proper remedy. The sheriff must oust the deforciant from subject property. If a demolition is necessary, there must be a hearing, upon motion and with due notice, for the issuance of a Special Order under Sec. 14 (now Sec. 10 [d]) of Rule 39.[4]

Paragraph (d), Section 10 contemplates the only instance when a special "break-open" order is required. It is only when there is no occupant in the premises that the sheriff may lawfully cause a demolition without the need of securing a "break-open" order.[5]

---

[4] *Remedial Law Compendium* (1997), Vol. 1, p. 432, by Florenz Regalado citing: *Fuentes, et al. vs. Leviste, et al.*, L-47363, Oct. 28, 1982; *Atal Moslem, et al. vs. Soriano, et al.*, L-36837, Aug. 17, 1983.

[5] *Ibid.*, citing: *Arcadio, et al. vs. Ylagan*, A.C. No. 2734, July 30, 1986.

Supreme Court E-Library

With respect to the charges against the respondent sheriff, the OCA found him liable for grave abuse of authority, incompetence and misconduct for his failure to make an inventory of the demolished materials and to issue the official receipt therefor, as well as for his failure to submit for court approval a rough estimate of the cost of execution and demolition.

The OCA rejected respondent sheriff's explanation that he made an inventory, albeit informally, of the demolished materials in the presence of the *Barangay* Captain who witnessed the constructive delivery of said materials. Respondent sheriff's professionalism became questionable, when he failed to make an inventory of the demolished materials and to issue a receipt therefor, to the complainants and other defendants who own the said materials.[6]

The OCA likewise found respondent sheriff guilty of violating Section 9, par. (g), Rule 141, which provides:

"Sheriff and other persons serving processes. —

x x x x x x x x x

(g) For executing a writ or process to place a party in possession of real estate, one hundred (₱100.00) pesos.

x x x x x x x x x

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-oficio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with

---

[6] *Wenceslao vs. Madrazo*, 247 SCRA 696, p. 705.

Supreme Court E-Library

his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor."

In the present case, respondent sheriff admitted to the OCA that he gave the original copy of the rough estimate of the cost to the lawyer of plaintiff but not to the court, although he had a duplicate copy of the same, which he could have submitted for the approval of the court. In *Miro vs. Tan*,[7] the Court held:

> ". . . it is very clear that respondent has failed to comply with the said requirements. As Sheriff he is duty bound to know at least the very basic rules relative to the implementation of writs of execution and/or demolition. It is very elementary, that cost or rough estimates or implementation of the writ of demolition and possession must be submitted to the Court for approval. It is either he forgot to comply or deliberately failed to do the same to advance his personal interest."

As regards the penalties recommended by OCA, the Court believes that it is reasonable to impose a fine of ₱5,000.00 on the respondent judge. For the respondent sheriff, a suspension of one month without pay, as recommended by OCA, is in order.

WHEREFORE, respondent Judge Jose S. Sañez is found *GUILTY* of abuse of authority and gross ignorance of the law and is hereby *FINED* Five Thousand (₱5,000.00) Pesos.

Respondent sheriff is adjudged *GUILTY* of abuse of authority, misconduct and gross ignorance of the law and is hereby *SUSPENDED* for one month without pay.

Both respondents are warned that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and *Gonzaga-Reyes, JJ.*, concur.

---

[7] 235 SCRA 405, p. 412.