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has been said that where a power rests in judgment or discretion, so that it is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.[41] The COMELEC therefore, acting as quasi-judicial tribunal, cannot ignore the requirements of procedural due process in resolving the petitions filed by private respondent.

IN VIEW WHEREOF, the COMELEC order dated June 2, 1998 in SPC No. 98-143 and SPC No. 98-206 is *ANNULLED*. This case is *REMANDED* to the COMELEC and the Commission is hereby ordered to hold a hearing on the issues presented in SPC No. 98-143 and SPC No. 98-206, and thereafter render a decision based on the evidence adduced and the applicable laws. The incident of whether or not petitioner may continue discharging the functions of the office of congressman pending resolution of the case on its merit shall be addressed by the COMELEC in the exercise of its reasonable discretion.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago, and *De Leon, Jr., JJ.*, concur.

Pardo, J., took no part.

FIRST DIVISION

[G.R. No. 133969. January 26, 2000]

NEMESIO GARCIA, *petitioner, vs.* **NICOLAS JOMOUAD, *Ex-Officio* Provincial Sheriff of Cebu, and SPOUSES JOSE ATINON & SALLY ATINON,** *respondents.*

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[41] 35A Words and Phrases 463.

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SYNOPSIS

Petitioner, claiming ownership of Proprietary Ownership Certificate No. 0668 in the Cebu Country Club, filed an injunction challenging the levy of the same in the collection case filed by Spouses Atimon against Jaime Dico. Petitioner asserted that he merely lent to Dico the said certificate to allow him to enjoy the "signing" privileges and that the same was returned to him covered by a deed of transfer dated November 18, 1992. The "return" was not, however, recorded in the books of the Club. Judgment was rendered by the trial court dismissing the complaint and affirmed on appeal by the Court of Appeals. Hence, this petition.

The Supreme Court held that a transfer of the certificate of shares of a corporation not recorded in the books of the corporation does not bind third persons pursuant to Section 63 of the Corporation Code. Said provision of law strictly requires the recording of the transfer in the books of the corporation, and not elsewhere, to be valid as against third parties.

SYLLABUS

1. **COMMERCIAL LAW; PRIVATE CORPORATIONS; TRANSFER OF SHARES OF CORPORATION, TO BIND THIRD PARTIES, MUST BE REGISTERED IN BOOKS OF THE CORPORATION.**— Section 63 of the Corporation Code reads: "Sec. 63 *Certificate of stock and transfer of shares.* xxx No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

2. **ID.; ID.; ID.; CASE AT BAR.**— In *Uson vs. Dionisio* (61 Phil. 535) we hold that the transfer of the subject certificate made by Dico to petitioner was not valid as to the spouses Atinon, the judgment creditors, as the same still stood in the name of Dico, the judgment debtor, at the time of the levy on execution. In addition, as correctly ruled by the CA, the entry in the minutes of the meeting of the Club's board of directors noting the resignation of Dico as propriety member thereof does not

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constitute compliance with Section 63 of the Corporation Code. Said provision of law strictly requires the recording of the transfer in the books of the corporation, and not elsewhere, to be valid as against third parties. Accordingly, the CA committed no reversible error in rendering the assailed decision.

APPEARANCES OF COUNSEL

Romulo R. Senining and *Zosa & Quijano Law Offices* for petitioner.

Francis J. Militante for private respondents.

D E C I S I O N

KAPUNAN, *J.*:

In this petition for review on *certiorari*, Nemesio Garcia (herein petitioner) seeks the reversal of the Decision, dated 27 October 1997, of the Court of Appeals in CA G.R. CV No. 52255 and its Resolution, dated 22 April 1998, denying petitioner's motion for reconsideration of said decision.

Petitioner filed with the Regional Trial Court, Branch 23 of Cebu, an action for injunction with prayer for preliminary injunction against respondents spouses Jose and Sally Atinon and Nicolas Jomouad, *ex-oficio* sheriff of Cebu. Said action stemmed from an earlier case for collection of sum of money, docketed as Civil Case No. CEB-10433, before the RTC, Branch 10 of Cebu, filed by the spouses Atinon against Jaime Dico. In that case (collection of sum of money), the trial court rendered judgment ordering Dico to pay the spouses Atinon the sum of ₱900,000.00 plus interests. After said judgment became final and executory, respondent sheriff proceeded with its execution. In the course thereof, the Proprietary Ownership Certificate (POC) No. 0668 in the Cebu Country Club, which was in the name of Dico, was levied on and scheduled for public auction. Claiming ownership over the subject certificate, petitioner filed the aforesaid action for injunction with prayer for preliminary injunction to enjoin respondents from proceeding with the auction.

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After trial, the lower court rendered its Decision, dated 28 July 1995, dismissing petitioner's complaint for injunction for lack of merit. On appeal, the CA affirmed *in toto* the decision of the RTC upon finding that it committed no reversible error in rendering the same. Hence, this petition.

Petitioner avers that Dico, the judgment debtor of the spouses Atinon, was employed as manager of his (petitioner's) Young Auto Supply. In order to assist him in entertaining clients, petitioner "lent" his POC, then bearing the number 1459, in the Cebu Country Club to Dico so the latter could enjoy the "signing" privileges of its members. The Club issued POC No. 0668 in the name of Dico. Thereafter, Dico resigned as manager of petitioner's business. Upon demand of petitioner, Dico returned POC No. 0668 to him. Dico then executed a Deed of Transfer, dated 18 November 1992, covering the subject certificate in favor of petitioner. The Club was furnished with a copy of said deed but the transfer was not recorded in the books of the Club because petitioner failed to present proof of payment of the requisite capital gains tax.

In assailing the decision of the CA, petitioner mainly argues that the appellate court erroneously relied on Section 63 of the Corporation Code in upholding the levy on the subject certificate to satisfy the judgment debt of Dico in Civil Case No. CEB-14033. Petitioner contends that the subject stock certificate, albeit in the name of Dico, cannot be levied upon on execution to satisfy his judgment debt because even prior to the institution of the case for collection of sum of money against him:

1. The spouses Atinon had knowledge that Dico already conveyed back the ownership of the subject certificate to petitioner;

2. Dico executed a deed of transfer, dated 18 November 1992, covering the subject certificate in favor of petitioner and the Club was furnished with a copy thereof; and

3. Dico resigned as a proprietary member of the Club and his resignation was accepted by the board of directors at their meeting on 4 May 1993.

The petition is without merit.

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Section 63 of the Corporation Code reads:

"Sec. 63 *Certificate of stock and transfer of shares.* — The capital stock of corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. *No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.*

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation."

The sole issue in this case is similar to that raised in *Uson vs. Diosomito*,[1] *i.e.*, "whether a *bona fide* transfer of the shares of a corporation, not registered or noted in the books of the corporation, is valid as against a subsequent lawful attachment of said shares, regardless of whether the attaching creditor had actual notice of said transfer or not."[2] In that case, we held that the attachment prevails over the unrecorded transfer stating thus —

"[w]e think that the true meaning of the language is, and the obvious intention of the legislature in using it was, that all transfers of shares should be entered, as here required, on the books of the corporation. And it is equally clear to us that all transfers of shares not so entered are *invalid* as to attaching or execution creditors of the assignors, as well as to the corporation and to subsequent purchasers in good faith, and, indeed, as to all persons interested, except the parties to such transfers. All transfers not so entered on the books of the corporation are absolutely void; not because they are without notice or fraudulent in law or fact, but because they are made so void by statute."[3]

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[1] 61 Phil. 535 (1935).

[2] *Id.*, at 537.

[3] *Id.*, at 540.

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Applying the foregoing jurisprudence in this case, we hold that the transfer of the subject certificate made by Dico to petitioner was not valid as to the spouses Atinon, the judgment creditors, as the same still stood in the name of Dico, the judgment debtor, at the time of the levy on execution. In addition, as correctly ruled by the CA, the entry in the minutes of the meeting of the Club's board of directors noting the resignation of Dico as proprietary member thereof does not constitute compliance with Section 63 of the Corporation Code. Said provision of law strictly requires the recording of the transfer in the books of the corporation, and not elsewhere, to be valid as against third parties. Accordingly, the CA committed no reversible error in rendering the assailed decision.

IN VIEW OF THE FOREGOING, the Court RESOLVED to *DENY* the petition.

SO ORDERED.

Puno, Pardo, and *Ynares-Santiago, JJ.*, concur.

Davide, Jr., C.J. (Chairman), took no part due to close relation to a party.

FIRST DIVISION

[G.R. Nos. 102961-62. January 27, 2000]

JESUS P. LIAO, *petitioner, vs.* **HON. COURT OF APPEALS, I. C. CRUZ CONSTRUCTION, INC. and ARLE DEVELOPMENT CORPORATION,** *respondents.*

[G.R. No. 107625. January 27, 2000]

JESUS P. LIAO, *petitioner, vs.* **HON. COURT OF APPEALS, PRESIDING JUDGE, REGIONAL TRIAL COURT,**