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> autoridad del tribunal, en un asunto de registro, para expedir mandamiento de ejecución de su sentencia, subsiste, no obstante la vigencia del Código Administrativo." (El Director de Terrenos *contra* Abingayan, 71 Phil. 112).

In R. Kagahastian & Co. *vs.* Carag, 61 Phil. 132, the second paragraph of section 17, as amended by Act No. 1680, was quoted. It was observed in that case "that the power to issue writs of injunction in registration cases may be exercised only by the Court of Land Registration (now Courts of First Instance) during the pendency of the registration proceedings". It was assumed that Section 17 as amended is still in force.

Since the lower court acted within its jurisdiction in issuing the injunction order, *certiorari* does not lie to annul that order. Appeal would be the proper remedy in the event that Miguel's application for registration is granted and the opposition of the Estipona spouses is overruled. (Nocon *vs.* Geronimo, 101 Phil. 735).

Wherefore, the petition is dismissed with costs against the petitioners. So ordered.

Fernando, Chairman, Barredo, Antonio and *Concepcion Jr., JJ.*, concur.

Petition dismissed.

[No. L-42399 January 30, 1976]

SECOND DIVISION

RAFAELA G. VDA. DE CASTRO, petitioner, *vs.* MAJOR GENERAL FABIAN VER, as Commanding Officer of

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the National Intelligence Security Agency (NISA); JUAN PONCE ENRILE, AS SECRETARY OF NATIONAL DEFENSE; MAJOR GENERAL FIDEL RAMOS, CHIEF OF CONSTABULARY AND THE COMMANDING OFFICER, CAMP CRAME STOCKADE, respondents.

ORIGINAL ACTION. Habeas Corpus.

SYNOPSIS

Petitioner sought the issuance of a writ of habeas corpus for the release of her forty-two-year-old son from respondents' custody. On the date of the hearing, respondents produced the body of petitioner's son and informed the court that the detainee was arrested by virtue of an Arrest, Search and Seizure Order issued by the Secretary of National Defense, "for knowingly, wilfully and by overt act joining the Communist Party of the Philippines in violation of the Anti-Subversion Act," and in connection with his arrest, "a .32 cal. Mauser pistol and 77 rounds of ammunition were seized from him after he failed to produce the license to possess the same." Attached to respondents' return was an affidavit of the detainee stating among other things that he is not being held *incommunicado*, and he does not agree with the filing of the present petition, as he, a lawyer and aware of his rights, would rather clear his name in the investigation being conducted by the P.C.

The Supreme Court, considering that the person detained has voluntarily moved for the withdrawal of the petition, resolved to allow such withdrawal and considered the case terminated.

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SYLLABUS
of the Ruling of the Court

1. MARTIAL LAW; HABEAS CORPUS; AVAILABILITY OF WRIT.– The writ of habeas corpus is available during martial law. It must be recognized that while instances of unjustified and unwarranted detention may occur, either the top officials of the defense establishment or the courts of justice can step in to right matters. Only persons arrested or detained for acts related to the basic objective of the proclamation of martial rule are precluded from utilizing this remedy to put an end to the deprivation of their freedom.
2. ID.; WITHDRAWAL OF PETITION BY DETAINED PERSON.– Where the person detained has voluntarily moved for the withdrawal of a petition for a writ of habeas corpus filed in his behalf, such withdrawal will be allowed, since it is his personal liberty that is at stake.

APPEARANCES OF COUNSEL

Antonio M. Castro for the petitioner.

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Vicente V. Mendoza and *Solicitor Roberto A. Abad* for the respondents.

RESOLUTION

ANTONIO, *J.:*

On January 15, 1976, Rafaela G. Vda. de Castro, on behalf of her son, Rolando G. Castro, 42 years of age, single and government employee, presented the present petition for the issuance of a writ of *habeas corpus* for the release of her son from custody of respondents, asserting

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that her son was arrested on January 13, 1976 at their residence, without "any warrant of arrest, search and seizure order", by Lt. Batac, and thereafter brought to the Camp Crame stockade where he is now detained and kept *incommunicado,* which "detention is illegal and without any justification and/or legal authority". Acting on said petition, this Court, on January 16, 1976, issued the Writ, commanding the respondents, or their authorized representatives, (a) to appear and produce the body of Rolando G. Castro before this Court, and (b) to show the cause of imprisonment or restraint, both acts to be done on Wednesday, January 21, 1976 at 10:30 a.m., at which date and time the parties will be heard. Upon urgent motion of the Solicitor General on behalf of respondents, the filing of the return and the hearing was postponed to January 23, 1976.

On the date of hearing, the respondents produced the person of Rolando G. Castro, subject of the writ, and informed this Court, in the return, that said detainee was arrested by elements of the 5th Constabulary Security Unit and is being detained in Camp Crame, Quezon City, by virtue of Arrest, Search and Seizure Order No. 3140 dated January 10, 1976, issued by the Secretary of National Defense, "for knowingly, wilfully and by overt act joining the Communist Party of the Philippines in violation of the Anti-Subversion Act (Rep. Act No. 1700)", and in connection with his arrest, "a .32 cal. Mauser pistol and 77 rounds of ammunition were seized from him after he failed to produce a license to possess the same." It was also asserted that in accordance with the rules and regulations of the Chief, Philippine Constabulary, Capt. Virgilio G. Saldajeno, Legal Officer of the 5th Constabulary Security Unit, called up the detainee's residence within seventy-two (72) hours of the arrest and informed the latter's relatives of his

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whereabouts and of the fact that they can visit him in Camp Crame, Quezon City. Attached to the return was an affidavit of Rolando G. Castro, in which he states, among other things, that he is not being held ***incommunicado***, and he does not agree with the filing of the present petition, as he, as a lawyer and aware of his rights, would rather clear his name in the investigation being conducted by the P.C.

This petition, as well as several others acted upon by this Court, sufficiently indicate the availability of the writ of habeas corpus during martial rule. Thus, it must be recognized that while instances of unjustified and unwarranted detention may occur, it has so far been shown that either the top officials of the defense establishment or the courts of justice can step in to right matters. It is only with respect to persons arrested or detained for acts related to the basic objective of the proclamation of martial rule who are precluded from utilizing this remedy to put an end to their deprivation of freedom.

Considering, however, that the person detained has voluntarily moved for the withdrawal of this petition, and since it is his personal liberty that is at stake, the Court has voted to allow such withdrawal.

Wherefore. the petition for habeas corpus is considered withdrawn and the case terminated.

Fernando, Chairman, Barredo, Aquino and *Concepcion Jr., JJ.*, concur.

Petition considered withdrawn and case terminated.