

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ASIAN FOOTWEAR & RUBBER
CORPORATION,**

Petitioner,

-versus-

**G.R. Nos. 71695-703
May 20, 1986**

**ANTONIO P. SORIANO, in his capacity
as Deputy Sheriff of the Arbitration
Branch, National Capital Region,
National Labor Relations Commission,
HON. BENIGNO L. VIVAR, JR., in his
capacity as Executive Labor Arbiter,
Arbitration Branch, National Capital
Region, National Labor Relations
Commission, and JACINTO RUBBER
FREE WORKERS ASSOCIATION,**

Respondents.

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DECISION

ABAD SANTOS, J.:

This is a Petition to Review the actuations of respondent Benigno L. Vivar, Jr., in his capacity as Executive Labor Arbiter of the National

Capital Region. It is alleged that he “acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in imprudently and indiscriminately enforcing the aforesaid Alias Writ of Execution against the petitioner who has no obligation whatsoever to the private respondent.” (Rollo, p. 13.) We issued a temporary restraining order on September 25, 1985, which must now be made permanent because the petition is impressed with merit.

Asian Footwear and Rubber Corporation (ASIAN), the petitioner, is engaged in the manufacture of footwear. Its work force consists of about 500 persons.

On November 10, 1980, ASIAN bought from Jacinto Rubber and Plastics Co., Inc. (JACINTO) eight (8) parcels of land together with the permanent improvements thereon. The purchase price was P450.00 per square meter plus assumption by ASIAN of JACINTO’s obligation to the Philippine Banking Corporation in the amount of P2,284,932.11. (Annex A.) By November 28, 1980, ASIAN had obtained transfer certificates of title to the lands which it had bought.

The petition recites that it had “been operating business operations peacefully until May 16, 1985, when surprisingly, respondent Deputy Sheriff Antonio P. Soriano, together with some policemen and other persons went to the premises of petitioner Asian Footwear & Rubber Corporation to enforce an Alias Writ of Execution issued by the respondent Hon. Benigno L. Vivar, Jr., Executive Labor Arbiter, in NLRC — NCR case No. AB-9-8414-80; 8415-80; AB-12-9286-80; 9287-80, 9288-80; 9289-80; 9290-80; 9291-80; and AB-9-10596-80, entitled ‘Jacinto Rubber Free Workers Association — versus — Jacinto Rubber & Plastics Co., Inc.,’ carbon copy of said Alias Writ of Execution is hereto attached as Annex F.” (Rollo, p. 5.) Annex F is a writ of execution issued by respondent Vivar on May 8, 1985, commanding the Acting Sheriff of the National Labor Relations Commission, National Capital Region, “to proceed to the premises of respondent Jacinto Rubber and Plastics Company, Inc., located at 5th Avenue, Grace Park, Caloocan City or c/o Hermogenes Jacinto, Jr. of No. 34 Valle Verde Gate 2, Pasig, Metro Manila, and collect the amount of seven hundred sixty five thousand nine hundred ninety eight pesos and ninety nine centavos (P765,998.99) representing complainants’ gratuity pay. If you fail to collect the said amount in

cash, you may cause the full satisfaction of this writ out of the movable goods and chattel, or in the absence thereof, the immovable properties of the respondent not exempt from execution.” (Rollo, p. 54.)

ASIAN resisted the execution on the ground that the properties sought to be levied were its own and not JACINTO’s. The sheriff reported ASIAN’s posture to Vivar and in a conference with ASIAN he verbally intimated that ASIAN was a purchaser in bad faith so that the writ of execution could be enforced against it. Hence, the instant petition.

The record shows that when ASIAN bought the JACINTO properties, the latter had already stopped its business operations. In fact, it had applied with the Ministry of Labor for clearance for a total shutdown. Moreover, at the time of the sale the only lien annotated on the certificates of title was the mortgage in favor of the Philippine Banking Corporation executed by JACINTO. Finally, there is nothing to show that ASIAN is JACINTO by another name.

In the light of the foregoing, if there is nonetheless suspicion that the sale of the JACINTO properties to ASIAN was not in good faith, i.e. was made in fraud of creditors, a government functionary like the respondent labor arbiter is incompetent to make a determination. The task is judicial and the proceedings must be adversary.

WHEREFORE, the petition is granted and the respondents are directed to desist from enforcing the alias writ of execution against the properties of the petitioner. Costs against the private respondents.

SO ORDERED.

Yap, Narvasa, Melencio-Herrera and Cruz, JJ., concur.