44 Phil. 580

[G.R. No. 20088. March 05, 1923]

THE MUNICIPAL COUNCIL OF MASANTOL, PAMPANGA, PETITIONER, VS. HONORABLE GUILLERMO B. GUEVARA, JUDGE OF THE COURT OF FIRST INSTANCE OF PAMPANGA, AND BENITO BAUTISTA, TEODORO GALANG, EMIGDIO BAUTISTA, SIXTO BUSTOS, VICTOR SUNGA, AND FLORENTINO USI, RESPONDENTS.

D E C I S I O N

STATEMENT

This is a petition for a writ of certiorari by the municipal council of Masantol, Pampanga, in which it is alleged that the Honorable G. B. Guevara is the Judge of the Court of First Instance of that province; that pending in his court there are different petitions for writs of mandamus against the petitioner here, who is respondent there, all of which were consolidated, to which the petitioner here filed a demurrer upon the ground that the court had no jurisdiction of the defendant or of the subject-matter, and that the petition did not state facts sufficient to constitute a cause of action; that on October 20, 1922, the demurrer was overruled; that the terms of office of the municipal councilors as constituted on October 9, 1922, expired on October 16, 1922, at which time a new council was inaugurated; that at all times the new council has never convened as a municipal board of election canvassers, and that the new board never took any part in the canvass of the last general election returns; that feeling itself aggrieved at the decision of the lower court in overruling its demurrer on October 25, 1922, the petitioner here applied to this court for a writ of certiorari to review such proceedings, contending that the lower court acted in excess of its jurisdiction. It is then alleged that November 27, 1922,[1] this court denied the application for the writ for the alleged reason that the question of the jurisdiction of the

lower court had not been presented to that court prior to the application for the writ of certiorari in this court. That the petitioner has always contended that the lower court was acting in excess of its jurisdiction, and that after its writ was denied here it immediately applied to the lower court for the reconsideration of its order overruling the demurrer, and specifically calling the attention of the lower court to the fact that it was acting in excess of its jurisdiction. The petition for reconsideration was then heard in the lower court and overruled. It is then alleged that the Court of First Instance was acting in excess of its jurisdiction, and will continue to do so unless restrained by this court, and that your petitioner has no plain, speedy, and adequate remedy at law.

In response to the order of this court, the respondents here appeared and filed an answer in which they deny all of the material allegations of the complaint, and, as a special defense, allege that the municipal council of Masantol may be reconvened by the Court of First Instance for the purpose of correcting its canvass, and that in the mandamus proceedings the question was not that the board of canvassers should certify that the respondents be declared elected, but that the board should proceed to the mathematical computation of the returns, and that the election protest which was dismissed is not *res judicata* as to the mandamus proceedings; that there is no identity of the parties; that the election contest is brought against the candidates voted for in their respective offices while in the mandamus proceedings the action is against the board of canvassers; that the subject-matter is not identical; that the object of the election protest was to contest the title of the respondents to the respective offices, but that the purpose of the mandamus proceedings is to procure an order from the court to compel the board of canvassers to correct its canvass and to make it conform with the genuine returns; that the election protests were dismissed on technical grounds; that the Court of First Instance has jurisdiction to compel the board of canvassers to correct its error, because it is not a discretionary but a ministerial duty; that the grounds alleged in the pending petition are identical with those alleged in the former petition for a writ of certiorari, No. 19803, which was dismissed by this Court, with costs, on November 27, 1922, and that the present petition must be denied following the doctrine of Lucido and Lucido *vs*. Vita (20 Phil., 449).

JONHS, J.:

All of these different proceedings had their inception in the recent election for municipal council of Masantol. After the election was over the canvassing board met, canvassed the returns and declared the result. Following this an election contest was initiated, in which it was claimed that others than those certified by the canvassing board were elected. That proceeding was finally dismissed in this Court for the reason that the complaint and records were not sufficient to sustain the contest within the terms and provisions of the Election Law. After the time for the filing of an election contest had expired, and acting through, different proceedings, the respondents here filed petitions for writs of mandamus against the petitioner here as respondent there, praying for an order of the Court requiring it to meet and make a recanvass of the votes cast at the last election, and to make another and different certificate for the ostensible purpose of correcting mathematical errors in the original canvass, with a view of having declared elected the persons who had initiated the election contest which was dismissed by this court for want of jurisdiction. In the final analysis, the mandamus proceedings now pending in the lower court are nothing more than an election contest in another and different form commenced after the time for the filing of an election contest has expired. The lower court in its opinion, among other things, says:

> "The court cannot concur with the counsel for the respondent. For the very reason that the Election Law fixes a period too short and peremptory for the filing of petitions and protest against the result of an election, the petitioners in these cases have not at present any other easy and speedy remedy, except that of asking that the municipal council of Masantol be compelled to correct its canvass in accordance with the result of the election."

The purpose and intent of the Legislature was to fix a certain and definite time within which petitions and protests against the result of an election should be filed, and to provide summary proceedings for the settlement of such contests. The question as to whether the time is too short and peremptory is one for the Legislature and not for the courts. The duty of the courts is to construe legislative acts, as written, and avoid judicial legislation. Upon the facts shown in the record, the lower court did not have jurisdiction to hear and

issue a writ of mandamus for the purposes alleged in the petition. Such proceedings were nothing more than an election contest in another and different form, and were not commenced within the statutory time.

To review such proceedings of the lower court, the petitioner here filed a petition in this Court against the respondents, known as R.G. No. 19803, in which all of the papers filed in the mandamus proceedings in the lower court were attached to, and made a part of, the record, from which it appears that the petitioner here as respondent there filed a demurrer to the petition for mandamus in the lower court upon the following grounds: First, that the court had no jurisdiction of the defendant or the subject-matter of the action; second, that the said petition does not state facts sufficient to constitute a cause of action against the respondent. Attached to, and made a part of, the demurrer was an argument in which it was vigorously contended that the lower court was acting in excess of its jurisdiction, and that it did not have any authority to issue a writ of mandamus. Founded upon that petition, a member of this court granted a restraining order against his Honor Guillermo B. Guevara to abstain and refrain from further proceedings in the mandamus petition until the further order of this court. To that petition the respondents here filed a demurrer upon the grounds, first, that the Supreme Court has no jurisdiction to issue a writ of certiorari in the mandamus proceedings filed in the lower court; second, that the complaint does not state sufficient facts to constitute a cause of action in that: (*a*) The lower court has never exceeded its jurisdiction in entertaining the proceedings of mandamus. (*b*) The lower court has not exceeded its jurisdiction on the alleged ground of *res adjudicata*.

November 28, 1922, this court made an order reciting that: “It appearing that the petitioner has not presented in the court below the question of jurisdiction, it is the order of the court that the complaint should be, and is hereby, dismissed with costs against the petitioner;” and the restraining order was dissolved.

A vigorous motion for reconsideration was then filed by the petitioner to which a copy of the decision of the lower court of October 20, 1922, was attached and made a part of the record, in which the trial court said:

> "One single demurrer was filed in the above entitled three cases on the ground that this court has no jurisdiction either over the respondent corporation or over the subject-matter of the controversy, and that the facts alleged in the petition do not constitute a cause of action."

The lower court then proceeds to analyze the grounds specified arid overrules the demurrer.

December 18, 1922, this court denied the petition for a rehearing without specifying the reasons why. But as a matter of fact it was denied because the petitioner had not exhausted all of his remedies in the lower court. The petitioner then at once appeared in the lower court and again raised and presented the question that it did not have jurisdiction to issue a writ of mandamus in the pending proceeding, and that it was acting in excess of its jurisdiction. This contention was again overruled by the lower court, and the present case, R.G. No. 20088, now seeks to review the action of the lower court, and prays for an order that all further proceedings in the lower court be stayed until the final judgment is rendered in this court, "and that upon a review of said record and proceedings this Honorable Court adjudge and decree that said respondent is acting and attempting to act without and in excess of his jurisdiction as Judge of the Court of First Instance of Pampanga and that he be permanently enjoined from proceeding further therein and your petitioner have and recover its costs and disbursements herein expended and such other and further relief as this Honorable Court may deem just and proper in the premises."

The record is conclusive upon the facts alleged that the lower court is without jurisdiction to grant a writ of mandamus in the proceedings pending before it. But the respondents now contend that on account of the action taken by this court in case R.G. No. 19803 in dismissing the petition, the question involved is now *res judicata*, and that this court is without jurisdiction to issue the writ in case R. G. No. 20088. But as stated, in truth and in fact, the petition was dismissed in case R.G. No. 19803, for the sole reason that it was prematurely filed, and that the petitioner had not exhausted all of its remedies in the lower court. The petitioner at once took appropriate proceedings to exhaust all of its remedies in the lower court, and was again denied relief,

following which an application for the writ of certiorari in case R. G. No. 20088 was again filed in this court.

The question of the jurisdiction of the lower court in the proceeding pending before us is now squarely presented, and upon the merits we hold that the petitioner is entitled to the writ, as prayed for in its petition, and it is so ordered, without costs to either party.

We might add that where the question of the want of jurisdiction is squarely raised, argued and submitted in the lower court, and where it appears from the record that the question was squarely met and decided by the lower court, there is no valid reason which requires a motion for a reconsideration of that same question to be raised, presented and overruled as a condition precedent to the filing of an application for a writ of certiorari in this court. Such a rule is not in conflict but is in harmony with the principles of law laid down in the oft cited decision of this court in Herrera *vs*. Barretto and Joaquin (25 Phil., 245) as found on page 272 of the opinion.

Araullo, C.J., Street, Malcolm, Avanceña, Ostrand, and *Romualdez, JJ.,* concur.

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[1] Municipal Council of Masantol *vs*. Guevara et al., R. G. No. 19803, not reported.

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