

95 Phil. 292

[ G.R. No. L-5669. June 30, 1954 ]

**LUBIN NEPOMUCENO AND ISABEL NEPOMUCENO, PETITIONERS, VS.  
HONORABLE FELICISIMO OCAMPO, JUDGE OF THE COURT OF FIRST INSTANCE  
OF MANILA, AND BARTOLOME E. SAN DIEGO, RESPONDENTS.**

**D E C I S I O N**

**CONCEPCION, J.:**

This is a petition to set aside two orders or writs of preliminary injunction issued by respondent Honorable Felicisimo Ocampo, as Judge of the Court of First Instance of Manila, in Civil Case No. 11035 thereof, entitled “Bartolome E. San Diego vs. Fidel Macapugay, Mariano Roldan, Deogracias Malonzo, Federico Tiongson, Alfredo B. Jose, Ramon Cujancho, Cirilo Lim, Gelacio Tumanping, Lubin Nepomuceno, Isabel Nepomuceno, Manuel Relova, Gonzalo Relova, and Tawi Tawi Fishing Corporation.”

It appears that on January 15, 1949, Ordinance No. 1, Series of 1949, was passed by the Municipal Council of Taytay, Palawan. Said ordinance reads:

*“An ordinance governing the grant of exclusive privilege of fishery over the Malampaya Sound, Taytay, Palawan.*

By the authority conferred upon the Municipal Council by Act No. 4003, as amended, the Municipal Council of Taytay, Palawan, hereby ordains:

ART. 1. This ordinance shall be known as the *Ordinance of Fisheries*, and for

other purposes.

ART.

2. No individual or entity shall erect a fish corral, operate a fishpond, oyster culture bed, take or catch bangus fry known as “kawag-kawag”, or engage in any other method of fishing unless he has first secured the necessary license or permit therefor.

ART.

3. The Malampaya Sound (or bay) is divided into (1) Fish Corral Zone No. 1, comprises all the bodies of water within the Inner Sound below or south of an imaginary line drawn parallel from east to west from Rocky Head to Green Head crossing the southern part of Passage Island; and (2) Fish Corral Zone No. 2, comprising all the bodies of water within the outer sound or north of Zone No. 1 and the imaginary line drawn parallel from east to west from Rock Head to Green Head crossing the southern part of Passage Island.

(NOTE: Reference to the above description, of the boundary line is made to the U. S. C. G. Survey Map of Malampaya Sound and its approaches No. 4349)

ART.

4. The exclusive privilege of erecting fish corrals, operating fishponds, or oyster culture beds, or take or catch bangus fry known as “kawag-kawag” shall be let to the highest bidder in a public auction for a period of five (5) years, or upon previous approval of the Provincial Board for a longer period but not exceeding ten (10) years, or upon the previous approval of the Secretary of Agriculture and Natural Resources for a longer period but not exceeding twenty years.

ART. 5. Public auction on fisheries shall be held in the municipal building of Taytay, Palawan, by the *Committee on Auction*, composed of the Municipal Mayor, as Chairman, and the Municipal Treasurer and the Vice-Mayor as members.

ART.

6. All bids must be addressed to the Committee on Auction, Taytay,

Palawan, Philippines contained in sealed envelope and must be accompanied with at least P4,000 in cash or postal money order, cashier's check, personal check duly certified by the drawee and properly indorsed in favor of the Municipal Treasurer.

ART.

7. The minimum bid that will be considered for the exclusive privilege of erecting fish corrals in the two (2) fish corral zones of Malampaya Sound (or bay) for the period of five (5) years shall be at least P80,000.

ART. 8. The notice of the auction for the fishery privilege shall be advertised by the Municipal Treasurer in any local newspaper of general circulation if any, and/or posted in public places in the Municipality and/in the Provincial Capital.

ART. 9.

The Committee on Auction shall submit tied bids to lottery, and the successful one shall be declared the successful bidder.

ART.

10. The successful bidder shall post bond in an amount equal to two (2) years rentals in cash by any surety company licensed for that purpose, or in real estate the assessed value of which equals twice the value of the two years rentals.

ART. 11. All payments or rentals must be made quarterly within the first twenty days of each quarter; the first payment shall be made after adjudication and upon the execution of the contract of lease.

ART. 12. Delinquency in the payment of any quarterly rentals as they fall due, shall incur a surcharge of 20 per cent.

ART.

13. Violation of any of the provisions of this Ordinance shall subject the offender to a fine of not less than fifty pesos nor more than two hundred pesos, imprisonment of at least 15 days and not exceeding two

(2) months, or both in the discretion of the Court. In case of an entity, the fine alone shall be imposed.

ART. 14. All ordinances, resolutions or part thereof inconsistent with the provisions of this Ordinance are hereby repealed.

ART.

15. This Ordinance shall take effect upon its approval by the Secretary of Agriculture and Natural Resources pursuant to paragraph 2, section 4, of Act 4003, as amended."

Pursuant to Resolution No. 28 of the same council, adopted on September 30, 1949, the Municipal Treasurer of Taytay issued on or about October 1, 1949, a notice to the effect that "the exclusive privilege of erecting fish corrals within the Malampaya Sound \* \* \* will be sold at public auction on December 12, 1949," under the conditions set forth in said notice, which are substantially those prescribed in the above quoted ordinance. On the date last mentioned, bids, complying with the minimum requirements of said ordinance, were submitted by the following persons, for the sums stated opposite their respective names:

|                        |            |
|------------------------|------------|
| Bartolome E. San Diego | P95,000.00 |
| Rosalia Abueg          | 90,000.00  |
| Batas Riego de Dios    | 87,000.00  |
| Jose Soyangco          | 80,002.00  |

Admittedly, Rosalia Abueg is a sister-in-law of the highest bidder, Bartolome San Diego, whereas Batas Riego de Dios is his brother-in-law and Jose Soyangco his (Bartolome's) relative. The privilege referred to in said notice was granted to Bartolome E. San Diego as the highest bidder, and the corresponding contract of lease, in his favor, accordingly, executed on the same date. Said contract is of the following tenor:

*"This contract of lease entered into this*

12th day of December, 1949, by and between the municipality of Taytay, Palawan, represented by the Municipal Mayor, Mr. Antonio Gonzales, hereinafter designated the *Party of the First Part*; and

*Mr. Bartolome E. San Diego*, Filipino, of legal age, married to Angela Abueg, and resident at 1946 Misericordia, Sta. Cruz, Manila, hereinafter designated the *Party of the Second Part*;

WITNESSETH:

That the party of the first part, by virtue of Resolutions Nos. 28 and 29, in connection with Ordinance No. 1, all series of 1949, and in pursuance with the provisions of Act No. 4003, as amended, hereby lets, and the Party of the Second Part leases, the exclusive privilege of erecting fish corrals' in Malampaya Sound (or bay), Taytay, Palawan, more specifically described, to wit:

"Fish coral Zone No. 1, comprising of all the bodies of water within the Outer Sound below or south of an imaginary line drawn parallel from east to west from Rocky Head crossing the southern part of Passage Island.

"Fish coral Zone No. 2, comprising of all the bodies of water within the Outer Sound above or north of Zone No. 1, and the imaginary line drawn parallel from East to West from Rocky Head to Green Head crossing the southern of Passage Island." and all mouths or rivers and tributaries emptying into the said Malampaya Sound (or bay), as many fish corals as the said party of the Second Part may find necessary, with the erection, construction, specification and position of which shall be in conformity with existing laws, regulations and ordinances.

That the term of this lease is for a period of five years from the date of the execution of this instrument.

That

the Party of the Second Part shall pay to the Party of the First Part the total rental of ninety-five thousand pesos (P95,000), Philippine currency, for the period of five (5) years, or an annual rent in the amount of nineteen thousand pesos (P19,000), payable quarterly in advance within the first 20 days of each quarter, except the first payment, corresponding to the first quarter of 1950, which shall be made upon the execution of this instrument. Delinquency in the making of the quarterly payment shall incur upon the Party of the Second Part a surcharge of 20 per cent.

That, for the faithful compliance

with the terms and conditions of this lease, the Party of the Second Part shall file a bond within 20 days from the date of the execution of this instrument in the amount equivalent to 2 years rental, or thirty-eight thousand pesos (P38,000), in cash, by a surety company license for that purpose, or in real estate situated in the Philippines, which bond shall answer from year to year up to the expiration of the 5 years term of the lease.

That the Party

of the First Part, through the Municipal Mayor, shall afford to the Party of the Second Part, or his representatives, or agents all protection necessary in the proper and free enjoyment of the privilege of fishery so leased and shall co-operate with the leasee in the apprehension and prosecution of persons or entities found violating existing "laws, regulations and ordinances committed within the fisheries leased.

That upon the expiration of the term of

this lease, the Party of the Second Part shall immediately surrender unto the Party of the First Part the fisheries leased to him and he shall remove all fish corrals or other fishing gear found therein within 30 days, and failure on his part to remove or dispose of the said fish corals or fishing gear within the specified period of thirty days from the termination of the lease will be equivalent to a renunciation or waiver of his ownership, title, rights, interest and

participation in said fish corrals or fishing gear in favor of the  
Party of the First PART.

*In witness whereof*, the parties hereto signed this instrument this 12th day of  
December, 1949, at Taytay, Palawan, Philippines.

(Sgd.) ANTONIO GONZALES

(Sgd.) BARTOLOME E. SAN DIEGO

For the Municipality of Taytay,  
Palawan, Party of the First  
Part.

SIGNED IN THE PRESENCE OF:

1. (Sgd.) EELADIO BACOSA

(Sgd.) ALBERTO SANDOVAL

Republic of the Philippines

Province of Palawan

s.s

Municipality of Taytay

In the municipality of Taytay, Palawan, Philippines,  
on this 12th day of December, 1949, personally came and appeared before  
me Antonio Gonzales, who exhibited to me his residence certificate No.  
A-736041 issued at Taytay, Palawan, on January 15, 1949, and Bartolome  
E. San Diego, who exhibited to me his residence certificate No.  
A-1112001 issued at Taytay, Palawan, on December 12, 1949, to me known  
to be the same persons who executed the foregoing contract of lease of  
exclusive privilege of fisheries in Malampaya Sound (or bay), including  
all mouths of rivers and their tributaries emptying into the said Sound  
or bay, situated in Taytay, Palawan, for a period of 5 years and they  
acknowledged to me that the same is of their free and voluntary act and  
deed. I certify further that all the parties are Filipinos, the former  
is the Municipal Mayor of Taytay, Palawan, and he executed the  
foregoing in representation of the said Municipality of Taytay,  
Palawan, and that they together with their witnesses signed at the foot  
of this instrument and at the left margin of the first page. This

instrument consists of 2 pages including this acknowledgment.

*Witness my hand and official seal the date and place already first above written.*

(Sgd.) J. M. ALLI

*Notary Public*

*My Commission expires December 31, 1949*

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Meanwhile, in compliance with the second paragraph of section 4 of Act 4003, as amended, otherwise known as the "Fisheries Ace," reading:

"All ordinances, rules or regulations pertaining to fishing or fisheries promulgated or enacted by Provincial boards, municipal boards or councils, or municipal district councils shall be submitted to the Secretary of Agriculture and Commerce for approval."

and Section 15 of Ordinance No. 1, series of 1949, of Taytay, providing that the same "shall take effect upon its approval by the Secretary of Agriculture and Natural Resources pursuant to paragraph 2, Section 4, of Act 4003, as amended," said ordinance had been forwarded to the Secretary of Agriculture and Natural Resources, who received it on December 31, 1949. In a 7th indorsement dated March 8, 1950, said office advised the Director of Fisheries as follows:

"Respectfully returned to the Director of Fisheries, Manila.

After

considering the observations of that Office contained in its 3rd indorsement hereon dated January 16, 1950 on the within Municipal Ordinance No. 1, dated January 15, 1949 of the Municipal Council of



Taytay, Palawan; and the comment thereon of the Commissioner of Customs embodied in the 5th indorsement dated February 13, 1950, this Office desires to state as follows:

1. That Ordinance No. 1, series of 1949, of the Municipal Council of Taytay, entitled "*An Ordinance governing the grant of exclusive privilege of fishery over the Malampaya Sound, Taytay, Palawan*" should be changed to read as follows:

*"An Ordinance governing th-e grant of exclusive privilege of erecting fish corrals over the Malampaya Sound, Taytay, Palawan."*

2. That the Malampaya Sound comprising zone 1 and zone 2 can not be granted as fishpond, it having been decided already by the Supreme Court in the case of Donato C. Guzman and Minaro Tamashiro vs: the Municipality of Taytay and Roman Santos (38 Off. Gaz., 2308) that the granting thru public auction of the exclusive privilege of fisheries over the Malampaya Sound to Roman Santos for a period of five years is illegal and void because of its incompatibility with the provisions of the Fisheries Act. Hence, the provisions of Article 4 of the Municipal Ordinance No. 1, series of 1949, of the Municipal Council of Taytay, pertaining to the exclusive privilege of operating fishpond, are contrary to them said decision of the Supreme Court and should, therefore, be deleted from the said Article 4.

3. That this Office believes that the Committee on auction should be composed of the Municipal Mayor as Chairman, the Provincial Auditor or his representative, as member, and the Municipal Treasurer also as member. The Provincial Auditor or his representative should take the place of the Vice-Mayor. Hence, Article 5 of the Ordinance should be amended accordingly.

4. That the amount of P80,000 as the minimum bid that will be considered for the special privilege of erecting fish corrals in the two fish corral zones of the Malampaya Sound is, in the opinion of this Office, very low, considering the profit that may be obtained therefrom by whoever be the successful

bidder for that privilege. This Office believes that the minimum bid that should be considered should be at least P200,000 for a period of 5 years. Hence, Article 7 of said ordinance should be amended so that the amount of P80,000 mentioned therein should be changed to P200,000.

5. That the notice of the auction for the fisheries privilege as mentioned in Article 8 should be advertised at least in two daily newspapers, English and Spanish, published in Manila. Hence, Article 8 should be amended accordingly.
6. That the successful bidder should post a bond of at least P200,000 by any surety company licensed for that purpose and that any violation of the provisions of the ordinance or any of the terms and conditions therein should cause the forfeiture of said bond in favor of the Government. Hence, Article 10 of the ordinance should also be amended accordingly.
7. That an article should be added to the said ordinance so that the following conditions may be embodied:
  - (a) That no corrals shall be so constructed on the area as would obstruct navigation and the free movement of ships and fishing vessels;
  - (b) That the fish corrals and the parts thereof should be at least 200 meters distant from one another;
  - (c) That other legitimate methods of fishing should be allowed within the space which, on account of the depth of the water, could not be utilized for the erection of fish corrals;
  - (d) That the fishery grant of erecting fish corrals authorized under this ordinance should be limited strictly within the boundary limits of the municipal water of Taytay, Palawan, described in Article 3 of this

ordinance; and that it does not give the grantee the right to collect or charge fees from any other person or persons who fish in this area by employing other legitimate methods of fishing authorized by law and by the regulations; nor does it give the grantee the right to collect oysters, bangus fry, and other aquatic products;

(e)

That the sublease of any fish corrals within the area must have to be submitted to the Secretary of Agriculture and Natural Resources for approval; and no sublease shall be effective and binding unless approved by the Secretary; and

(f) That any

violation of the conditions above-enumerated, may be a sufficient ground for the cancellation of the lease and the forfeiture of the bond of P200,000.

Unless the foregoing amendments, terms and conditions are made and embodied in the aforesaid Ordinance No. 1 of the Municipal Council of Taytay, Palawan, dated January 15, 1949, this Office is not inclined to approve the same. In other words, if the said municipal ordinance will be amended so as to embody all of the aforesaid amendments, terms and conditions, the same will be approved by this Department.

(Sgd.) Placido L. Mapa

*Secretary of Agriculture and Natural Resources*

By a letter dated March 14, 1950, these views were transmitted by the Director of Fisheries to the Municipal Council of Taytay, through the Provincial Board of Palawan, for compliance. The last paragraph of said letter reads:

“In view hereof, please comply with the foregoing requirements in order to expedite the approval of your Ordinance No. 1, s. 1949. After the said ordinance has been revised in accordance with the requirements of the Office of the Secretary, and has been duly

approved by the Provincial Board, it is requested that copies in triplicate be resubmitted to this Office for corresponding action.” These directives were not heeded, however, by the Municipality of Taytay.

On or about May 5, 1950, Bartolome San Diego instituted Civil Case No. 11035 of the Court of First Instance of Manila, above referred to. In the complaint therein filed it was alleged that defendants therein, among whom are herein petitioners, Isabel Nepomuceno and Lubin Nepomuceno, who own fishing boats licensed under sections 17 and 18 of the “Fisheries Act,” were fishing in the Malampaya Sound, in violation of section 21 of said Act and of San Diego’s exclusive privilege under the lease contract transcribed above. On motion of San Diego the Court of First Instance of Manila, then presided over by Honorable Agustin P. Montesa, Judge, issued, on May 10, 1950, a writ of preliminary injunction restraining the defendants in said case “from operating or fishing with their fishing boats \* \* \* in the municipal waters described on page 3 of the complaint”, which are the two zones into which the Malampaya Sound is divided in the municipal ordinance in question. On motion of said defendants Judge Montesa, by an order dated May 13, 1950, amended the writ of injunction by limiting the aforementioned prohibition to “within 200 meters from the nearest fish corral licensed by the Municipality of Taytay, Palawan, in favor of San Diego.”

On June 14, 1950, San Diego commenced Civil Case No. 14013 of the Court of First Instance of Manila against Rosenda Lim, Dominador Isla, Juan Mateo Jr., Venancio Correa, Estanislao Antonio, Cornelio Rivera and Esperanza Montes, for the same purpose sought in case No. 11035. In said case No. 14013, another branch of the Court of First Instance of Manila, which was presided over by Honorable Gavino S. Abaya, Judge, issued, on June 20, 1951, a writ of preliminary injunction restraining the defendants therein and their agents from operating their fishing boats “within the two fish corral zones of Malampaya Sound, Taytay, Palawan”. Thereafter, a statement was filed, in both cases, on behalf of the Armed Forces of the Philippines to the effect that, at the

request of the Department of Agriculture and Natural Resources, a naval patrol had been detailed to the Malampaya Sound, to maintain peace and order therein, and that it was at a loss on how to perform its task, for the writ of injunction issued in case No. 11035 permitted the defendants therein to operate their fishing boats, provided that they did not do so within 200 meters from any fish corral duly erected in the Sound, whereas the writ issued in case No. 14013 prohibited absolutely the operation of the fishing boats of the defendants therein within the entire sound. On July 25, 1951, San Diego filed a motion in case No. 11035 for the amendment of the order of May 13, 1950 and the reinstatement of the writ of injunction issued on May 10. This motion was granted by an order of the Court of First Instance of Manila—then presided over by Honorable Simeon Ramos, Judge—dated September 7, 1951, the dispositive part of which reads:

*“Wherefore, finding the motion well founded, the order of this court of May 13, 1950 is hereby amended so that order shall hereafter read as follows:*

*‘The defendants, their attorneys, agents, and representatives, their pilots and crew and such other persons acting on their behalf, are hereby restrained and enjoined from operating or fishing with their motor boats licensed under section 18 of Act No. 4003, as amended by Commonwealth Act No. 471, in the municipal waters known as Outer and Inner Malampaya Sound, nor within 200 meters from the nearest fish coral licensed by the Municipality of Taytay, Palawan, in favor of plaintiff herein.’*

*Inasmuch as plaintiff has originally filed a bond for P50,000, which bond was deemed sufficient by this court for the original injunction embracing the whole of Malampaya Sound, the same bond filed by plaintiff will suffice for the present amendatory injunction which likewise embraces the whole of Malampaya Sound within the territorial jurisdiction of Taytay, Palawan.”*

It appears that on February 14, 1952, the Chief of Staff of the

Armed Forces of the Philippines, issued a memorandum order directing the Philippine Navy "to allow fishing boats of more than 3 tons gross, licensed by the Department of Agriculture and Natural Resources, or by the Bureau of Fisheries, to fish in the Malampaya Sound, but always beyond 200 meters from the nearest fish corral licensed by the Municipality of Taytay, Palawan, with the exception of the motor boats belonging to the defendants" in cases Nos. 11035 and 14019. On motion filed by San Diego in both cases, Judge Felicisimo Ocampo, issued an order dated March 21, 1952, enjoining the Chief of Staff and the Commander of the Philippine Navy from carrying out the provisions of said memorandum order. Lubin Nepomuceno and Isabel Nepomuceno moved for a reconsideration of this order of March 21, 1952, as well as of the order of September 7, 1951, but the motion was denied by respondent Judge Ocampo, in an order dated April 22, 1952.

Hence, soon thereafter, Lubin Nepomuceno and Isabel Nepomuceno instituted the present action against Judge Felicisimo Ocampo and Bartolome San Diego, to annul said orders of September 7, 1951, and March 21, 1952, upon the ground that, in issuing the same, respondent Judge had acted without jurisdiction and with grave abuse of discretion amounting to excess of jurisdiction. In support of this pretense the Nepomucenos allege that the contract of lease between San Diego and the municipality of Taytay is void, said contract having been authorized by Ordinance No. 1, series of 1949, which had never been approved and, hence, never became effective, apart from being inconsistent with the Fisheries Act, and the pertinent rules and regulations issued by the government and with the decision of this Court in the case of *Guzman vs. Municipality of Taytay, et al.*, (65 Phil., 340); and that the order of March 21, 1952 is, likewise, null and void, for said petitioners were not served a copy of the corresponding motion of San Diego, or notified of the hearing of said motion, and the court had no jurisdiction over the Chief of Staff and the Commander of the Philippine Navy, none of them being parties in cases Nos. 11035 and 14019. Soon after the commencement of the present case, and upon the filing and approval of the corresponding indemnity bond, this Court issued, on motion of the Nepomucenos, a writ of preliminary injunction

restraining the enforcement of the aforementioned orders of September 7, 1951 and March 21, 1952.

Respondent Bartolome San Diego maintains that the public auction held on December 12, 1949, took place, and the contract of lease in his favor, was entered into pursuant to Act No. 4003, not to said Ordinance No. 1, series of 1949; that the same had never been disapproved by the Secretary of Agriculture and Natural Resources and became effective upon the approval of Republic Act No. 671; that, independently of the foregoing, the municipality of Taytay is clothed with authority to grant municipal licenses for fishing purposes; that said contract of lease was executed pursuant to Ordinance No. 6, series of 1938, of the municipality of Taytay, Palawan; and that, at any rate, the Nepomucenos have, under the Fisheries Act, no right to fish within municipal waters or within 200 meters from any fish corral erected in conformity with a municipal license.

At the outset, the deed of lease between the municipality of Taytay and respondent San Diego declares that it was executed “by virtue of Resolutions Nos. 28 and 29 *in connection with Ordinance No. 1, all series of 1949*”. Moreover, it specifically covers the two fish corral zones into which the *Malampaya Sound* was divided in Article 3 of said municipal ordinance.

Again, the conditions therein prescribed were incorporated into said contract. Indeed, the notice of auction was issued and published by the officer designated in said ordinance and the bids were submitted to the committee on auction therein established. It is clear, therefore, that the contract of lease in question was made under the authority of said Ordinance No. 1, Series of 1949.

Although by virtue of the Fisheries Act our municipal corporations are *possessed* of authority to regulate fishing in the respective municipal waters, it can not be denied that such power may be *exercised* only if the corresponding ordinance is approved by the municipal council. For this reason, it is urged by San Diego that his contract of lease is authorized by Municipal Ordinance No. 6, series of 1938, of the Municipality of Taytay, Palawan, reading as follows:

“ORDINANCE FIXING A LICENSE TAX ON  
FISHING PRIVILEGES

By authority of the provisions of sections 67, 69,  
and 70 of Act No. 4003, as amended by Commonwealth Acts Nos. 115 and  
297, the Municipal Council of Taytay, Province of Palawan, ordained:

SECTION 1.—*Public waters within the municipality.*—Fresh  
water streams, lakes, and tidal streams included within the  
municipality and not comprised within national parks, public forests,  
timber lands, forest reserves, or fishery reserved, but also marine  
waters included between two lines drawn perpendicular to the general  
coast line from points where the; boundary lines of the municipality  
touch the sea at low tide and a third line parallel with the general  
coast line and distant from it three nautical miles are hereby declared  
public waters for the purpose of this ordinance.

SEC. 2. *License necessary.*—It  
shall be unlawful for any person, company or corporation to engage in  
fishing in any public waters included within the jurisdiction of the  
municipality of Taytay, Palawan, without having previously obtained a  
license or permit from the municipal treasurer as hereinafter provided.

SEC 3. *Classification of fish corrals.*—First  
class corrals are those having a depth of five brazas or more; second  
class corrals are those having a depth of three brazas or more but less  
than five brazas; third class corrals are those having a depth of less  
than three brazas; and fourth class corrals are those commonly called  
“henasan” or those built on that part of the seashore which is barren  
at low tide. By depth is meant the distance from the bottom to sea  
level at high tide measured at the middle of the corral farthest from  
the seashore.

SEC. 4. *Fishing appliances and fees to be charged therefor.*—  
The following nets, traps, or other fishing tackles used for the  
purpose of taking fish in municipal waters shall be deemed taxable and  
the fee fixed therefore as indicated in each such fishing appliances



shall be due and payable quarterly in advance to the Municipal Treasurer or to any of his duly authorized representatives during the first 15 days of every quarter with a surcharge of 20 per cent of the original fees if not paid with the time prescribed herein:

(a)

Fishing by means of the so-called "Chinchoro", per  
quarter.....  
P400.00

(b) Fishing by means of "Sarap", per quarter

.....  
20.00

(c) Fishing by means of torches (lights), per  
quarter

.....  
2.00

(d) Fishing by means of corrals:

1. For each first class corrals, per quarter, not less than

.....  
200.00

2. For each second class corral per quarter,  
not less than

.....  
150.00

3. For each third class corral, per quarter,  
not less than

.....  
60.00

4. For each fourth class corral, per quarter,  
not less

than.....,  
2.00

provided, however, that for the remaining part of the third quarter of 1938, after the approval of this ordinance the license fees to be charged and taxed shall be one-third of the amount per quarter as prescribed for each fishing apparatus provided herein.

SEC. 5. *Public bidding*.—The privilege to erect and operate fish corrals shall be left to the highest bidder for a period of not to exceed five years, or upon the previous approval of the Provincial Board, for a longer period not exceeding twenty years, under such conditions as shall be prescribed by the Secretary of Agriculture and Commerce. A fish corral location shall continuously be under license and fees therefor paid up-to-date. A fish corral location whose fee is delinquent shall automatically be considered abandoned and shall again be advertised for public bidding.

SEC. 6. *Distrait*.—Fish corrals being more or less immovable, they shall be located in a line along the shore at least five hundred meters apart, and that none of them shall be in front or behind others in order that no fish corral owner shall have occasion to complain that his fish corral are obstructed by those of another. If the fish corrals are placed with their pockets toward the sea, the measurement shall be made between the right wing of one fish corral and the left wing of the other fish corral. This requirement of 500 meters between fish corrals is applicable to all new fish corrals after the adoption of this ordinance and shall not be applicable to those fish corrals already under license at the time this ordinance was adopted until their license shall have expired. The other devices for fishing are considered more or less movable and do not therefore need distance specification except that they shall not be placed in front of, or within a radius of 200 meters from, any fish corral; and those fishing by means of torches fish at a place at least 200 meters away from any fish corral.

SEC. 7. *Privilege of Residents to take fish from municipal waters for personal use*.—Any person who has not been granted license for the privilege of commercial fishing shall be allowed within the distance of 200 meters from the

fish corral licensed by the municipality; and provided, further, that no fish caught under this privilege can be sold.

SEC. 8. *Penalty.*—Any person violating any of the provisions of this ordinance shall, upon conviction in a court of competent jurisdiction, be punished by a fine of not less than P50, or by imprisonment of not less than 6 months, or by both such fine and imprisonment in the discretion of the court.

SEC. 9. *Enforcement or Regulations.*—For the proper enforcement of the preceding Sections, the Municipal Council of Taytay, Palawan, may promulgate rules and regulations not inconsistent with the existing laws and regulations, order and instructions promulgated or hereafter may be promulgated by the Secretary of Agriculture and Commerce.

SEC. 10. *Ordinances repealed.*—All ordinances or part of ordinance which are inconsistent with the provisions of this ordinance are hereby repealed.

SEC.

11. If any of the provisions of this ordinance is declared illegal or the applicability thereof to any person or circumstances, is, or may be held invalid, the validity of the remaining provisions to other persons and circumstances \* \* \*."

It should be noted, however, that this ordinance regulates fishing *in general* in the Malampaya Sound, and does not authorize the grant, as San Diego's contract does, of the *exclusive*

privilege to erect fish corrals in said arm of the sea. Besides, said ordinance was repealed by Ordinance No. 1, series of 1947, which likewise provided that fishing boats of more than 3 tons gross, licensed by the Secretary of Agriculture and Natural Resources (like petitioners herein) shall be allowed to fish in the Municipal waters of Taytay, beyond 200 meters from a duly authorized fish corral.

Again, Article 15 of Ordinance No. 1, series of 1949, from which San Diego's contract derives its authority, provides that said ordinance

“shall take effect *upon its approval* by the Secretary of Agriculture and Natural Resources pursuant to paragraph 1, section 4, of Act 4003, as amended.” It is not denied that said approval had never been given by the Secretary of Agriculture and Natural Resources. In fact, the latter did not receive copy of said ordinance until December 31, 1949, or 19 days after the execution of the lease contract in favor of San Diego. It is thus obvious that the contract was void when it was made.

San Diego insists, however, that the ordinance became effective upon approval of Republic Act No. 659, amending section 4 of Commonwealth Act No. 471, the pertinent part of which provides:

“All ordinances, rules or regulations pertaining to fishing or fisheries promulgated or enacted by provincial boards, municipal boards or councils, or municipal district councils shall be submitted to the Secretary of Agriculture and Natural Resources for approval and shall have full force and effect unless notice in writing of their disapproval is communicated by the Secretary to the board or council concerned within thirty days after submission of the ordinance, rule, or regulation.”

Under the Fisheries Act, municipal ordinances granting fishing licenses are ineffective until approved by the Secretary of Agriculture and Natural Resources, who is not required to decide within a particular time. Republic Act No. 659 imposed upon said officer the duty to act within 30 days from submission of the ordinance to him, and, should he fail to disapprove it within this period, the ordinance shall *ipso facto* have full force and effect, as if it had been given the requisite approval.

We do not believe, however, that Republic Act No. 659 affects ordinance No. 1, series of 1949, for the same was submitted to the Secretary of Agriculture and Natural Resources on December 31, 1949, or long before the approval of said statute, on June 16, 1951, and legislative acts operate prospectively unless the intention to the contrary appears clearly. To our mind, such intent has not been

established satisfactorily. What is more, the explanatory note to Senate Bill 153, which, upon approval, became Republic Act No. 659, says:

“The purpose of this amendment to the Fisheries Act is *simply to secure prompt action* by the Department Chief concerned over local fishing ordinances, rules, and regulations. *Nothing is changed in the existing law, the only* addition being the requirement that the department disapproval of such ordinances must be communicated to the board or council concerned within thirty days after submission of the ordinance; otherwise the latter goes into full force and effect.”

Indeed, reporting on said bill, former Senator Emiliano Tria Tirona, who sponsored it on the floor of the Senate, said:

“\* \* \* La ‘*única* enmienda consiste en limitar el plazo durante el cual el Secretario de Agricultura debe actuar sobre ordenanzas que se refieren a la pesca. Bajo la actual legislation esas ordenanzas sobre la pesca se someten al Secretario de Agriculture para su aprobacion, pero sin fijar ningun plazo determinado.

“El objeto de la enmienda que se introduce en la presente ley, no es mas que para que esas ordenanzas sometidas al Secretario de Agricultura no entren en vigor sino despues de un plazo de treinta dias desde que las mismas hayan sido sometidas al mismo. Esa es toda la innovation que se introduce en el proyecto.”

If, as stated in the aforementioned explanatory note, by the approval of Senate Bill 153 or Republic Act No. 659, “*nothing* is changed in the existing law,” it follows that said act did not affect the legislation in force, or the ordinances submitted to the Secretary of Agriculture and Natural Resources, *before* its enactment.

Again, the seventh indorsement of the Secretary of Agriculture and

Natural Resources to the Director of Fisheries, dated March 8, 1950 and quoted in the preceding pages, which, soon thereafter, was transmitted by the latter official to the municipal council of Taytay, through the Provincial Board of Palawan—stating that said department secretary was “not inclined to approve” the municipal ordinance in question, and that, if “amended so as to embody all of the \* \* \* amendments” specified in said communication, said ordinance would be approved—amounted to a disapproval thereof, within the purview of Republic Act No. 659, the *only* purpose of which being merely to expedite action by the department aforementioned, which had acted by virtue of said indorsement.

At any rate, even if pursuant to Republic Act No. 659, Ordinance No. 1, series of 1949, were to be considered approved by said officer, such approval would have taken place, at best *on June* 16, 1951, when said legislation became effective. In other words, the contract of lease made, in favor of San Diego, *on December 12, 1949*, would still be null and void, for, at that time, the ordinance authorizing its execution was not effective as yet.

Lastly, the power of municipal corporations, under the Fisheries Act, to grant the exclusive privilege of erecting fish corrals, is subject to two important qualifications namely: (a) the authority may be exercised only within the corresponding municipal waters; and (b) the privilege granted must be limited to a “definite ‘*portion*’ of said waters. Municipal Ordinance No. 1, series of 1949, infringes the last requirement, inasmuch as it divides the Malampaya Sound into two zones and authorizes the grant to one person of the *exclusive* privilege of erecting corrals in both zones or the whole Sound (which—according to the uncontradicted allegations of the petition in the case at bar—“is about 19 miles in length, varying in breath from 2 to 4 1/2 miles,” and—according to the decision of the case of *Guzman vs. Municipality of Taytay*, 65 Phil., 340, 348—“is navigable \* \* \* and \* \* \* accessible to the largest ocean vessels”), instead of in a “definite portion thereof (which implies a specific “part” only) as required in Act No. 4003.

Thus, in said case of *Guzman vs. Municipality of Taytay, et al.*, we held:

“\* \* \* that it was not the Legislature’s intention to include within the meaning of fishpond the Malampaya Sound or other similar bodies of water of the Philippine Archipelago. We do *not believe that the Legislature, in enacting the Fisheries Act, has intended to close from navigation and maritime traffic important bays of the country, like the Malampaya Sound, which as stated, by its area and importance, is a port accessible to the largest ocean vessels.* Should we hold that the Malampaya Sound is a fishpond, the result would be that the exclusive license issued to the defendant Santos is legal and valid, and the latter, with every little effort, can *close the same* by ingenious ways and thereby *exclude therefrom all ships* desiring to navigate or anchor in its waters.”

San Diego contends that this view does not militate against the validity of the contract of lease in his favor, for the same grants the exclusive privilege of *erecting fish corrals*, whereas the Guzman case referred to the privilege of “fishery”. We do not believe, however, that the distinction is material to the question under consideration. As the Director of Fisheries had correctly held in his 3rd indorsement dated January 16, 1950:

“The question to be decided is whether the proposed municipal ordinance No. 1, s. 1949, is inconsistent or not with the provisions of Act 4003, as amended. This Office contends that, following the doctrine laid down by the Supreme Court in the case of Donato C. Guzman and Minaro Tomashiro vs. the Municipality of Taytay, and Roman Santos (38 Off. Gaz., 2308), the proposed ordinance in question is incompatible with the provisions of the Fisheries Act. In the aforecited case, action was brought by plaintiffs to annul Ordinance No. 1, s. 1933, of defendant, Municipal Council of Taytay, Palawan, which granted through public auction the exclusive privilege of fisheries over the Malampaya Sound to defendant, Roman Santos, for a period of five years. Plaintiffs in that case were holders respectively of a license to operate a motor fishing vessel and a fisherman’s license which were both duly issued by the Secretary of Agriculture and

Commerce, pursuant to Act 4003. The Supreme Court in that case, while recognizing the right and power of the municipality of Taytay, Palawan, to grant the exclusive privilege of erecting fish corrals, etc., as provided in the Fisheries Act, nevertheless, declared that 'we do not believe that the legislature in enacting the Fisheries Act, has intended to close from navigation and maritime traffic, important bays of the country like the Malampaya Sound which, as stated, by its area and importance, is a port, accessible to the largest ocean vessel. Should we hold that the Malampaya Sound is a fishpond, the result would be that the exclusive license issued to the defendant Santos is legal and valid, and the latter with very little effort can close the same by ingenious ways and thereby exclude therefrom all ships desiring to navigate or anchor in its waters.' The Supreme Court concluded that Ordinance No. 1, s. 1933 of the Municipal Council of Taytay, Palawan, is illegal and void because of its incompatibility with the provisions of the Fisheries Act, and the exclusive privilege granted by the municipality of Taytay to defendant, Roman Santos, was likewise declared illegal and without effect.

"The present proposal to grant the exclusive privilege of erecting fish corrals over the whole Malampaya Sound as embodied in the proposed Ordinance No. 1, s. 1949 would, it is believed, similarly affect navigation and maritime traffic aside from depriving many others or the public in general of their right to fish in the aforesaid Sound, for there is no telling to what extent a successful bidder over the Malampaya Sound could go by way of controlling the whole Sound and preventing or molesting others from exercising their right to fish within the Sound—a right which is being exercised actually by duly licensed operators of fishing vessels and by duly licensed fishermen in consonance with the Fisheries Act and the existing ordinances of the Municipality of Taytay. It may be argued that the proposed Ordinance No. 1, s. 1949, refers to the grant of the exclusive privilege of erecting fish corrals, etc., while Ordinance No. 1, s. 1933, which was declared null and void by the Supreme Court in the case cited above refers to the grant of the exclusive privilege of fisheries over the Sound. Although the difference must be conceded, it



cannot be denied, nevertheless, that the lessee or grantee of a single fish corral site enjoys the exclusive privilege of fisheries over that particular area or site covered by the erected fish corrals. Hence, if the whole Malampaya Sound as proposed in the ordinance in question is given to a successful lessee or bidder, the latter, *by covering the entire Sound with fish corrals, would be exercising not only the exclusive privilege of erecting fish corrals but also the exclusive privilege of fisheries over the entire Malampaya Sound.* In other words, the leasing or granting of the Malampaya Sound to a single individual or group of individuals for the specific purpose of erecting fish corrals would be *tantamount or equivalent to the granting in his or in their favor of the exclusive right of fisheries over the entire Malampaya Sound.*

“Moreover, the division of the Malampaya Sound into two fish corral zones (outer and inner) as contemplated in the proposed ordinance is believed inconsistent with the provisions of section 67 of Act 4003, as amended by Commonwealth Act 471. The aforesaid section, it is true, permits the division of the municipal waters of fresh waters into zones, or the designation of ‘any definite portion, or area, of the municipal waters’, for the purpose of granting the exclusive privilege of erecting fish corrals, etc. A careful analysis of this section would show that the zones indicated therein refer to fixed *small* areas appropriate for fish corrals within any body of water and *not to very extensive areas.*

This is so, to allow other legitimate methods of fish capture to legally operate around the constructed fish corrals, subject to such limitations as are provided (200 meters distant). The statement under the same section fixing the distances between fish corrals at 200 meters apart in marine fisheries and 100 meters apart in fresh water fisheries substantiates the view of this Office that the zones or ‘definite portion, or area, of the municipal waters’, embodied in the law does not comprehend *whole* body or bodies of the water like the Malampaya Sound. The division of the Malampaya Sound into two zones, each zone covering extensive areas of fishing grounds is, therefore believed, inconsistent with section 67 of Act 4003, as amended.

“In view of the foregoing, the conclusion is inescapable that the doctrine laid down by the Supreme Court in the case above-mentioned is clearly applicable to the case under consideration.”

In addition to being inherently sound, this opinion has special weight for, pursuant to section 3 of the Fisheries Act:

“The Secretary of Agriculture and Natural Resources shall be the executive officer charged with carrying out the provisions of this *Act with authority to assign the direct executive control of the enforcement of its provision* and the rules and regulations that may hereafter be promulgated in accordance therewith to such representatives, bureau, office or service as said Secretary may designate.” and the direct executive control of the enforcement of the Fisheries Act had been assigned by the Secretary of Agriculture and Natural Resources to the Director of Fisheries.

In short, even if actually approved by the Secretary of Agriculture and Natural Resources, before the execution of the contract lease in question, said municipal ordinance would be null and void, it being in excess of the authority granted by law to the municipality of Taytay.

It is, also, obvious, that the order of March 21, 1952, directed against the Chief of Staff and the Commander of the Philippine Navy, is void, it having been issued on motion of San Diego, copy of which was not served upon the Nepomucenos, who were parties in the case, and were not notified of the hearing of the motion. Moreover, the Court had no jurisdiction to issue a writ of injunction directed to said officers of the armed forces,, for they, unlike the Nepomucenos, were not parties in the proceedings.

It is next contended that, as holders of a license to operate a fishing boat over 3 tons gross, pursuant to sections 18 and 21 of Act 4003, as amended by Commonwealth Act No. 471, reading:

“SEC. 18. *Annual fee on operation of boat.*—The Secretary of Agriculture and Commerce is hereby empowered to issue to the proper parties licenses for fishing operation of powered vessels of more than three tons gross and sailing or rowed vessels of more than three tons gross towed or operated in connection with power-propelled vessels in the territorial waters of the Philippines upon the payment of an annual fee of not less than two pesos nor more than two hundred pesos for every vessel subject to taxation under this Act: *Provided*, That failure of a licensee to secure a renewal or extension of his license and pay the annual fee on or before the 1st day of February of each year shall subject him to surcharge of one hundred per centum based on the amount of the original fee, without prejudice to criminal proceedings against the delinquent licensee under the penal provisions of this Act: *Provided, further*, That all vessels less than three tons shall be licensed under the provisions of section seventy of this Act: And provided, also, That the catching of fish under the license issued shall be subject to the limitation, restrictions, and penalties imposed by this Act.

“SEC. 21. *License for off-shore fishing and municipal grant of fishery.*—No license granted in accordance with section eighteen of this Act shall operate within three nautical miles from the shore line and from two hundred meters of any fish corral licensed by a municipality pursuant to the provisions of section sixty-nine hereof, except if the licensee is the same person authorized by the municipality to operate such fish corral.”

the Nepomucenos have no right to fish within the municipal waters of Taytay, and, hence, within the Malampaya Sound, and that, accordingly, they are not entitled to the relief prayed for. Upon the other hand, petitioners invoke, in their favor, a communication of the Secretary of Agriculture and Natural Resources, addressed to the then Secretary of the Interior, dated January 22, 1940, which we quote:

“The Honorable

The Secretary of the Interior

Manila

Dear Mr. Secretary:

I

have the honor to bring to your attention the provisions of section 21 of Act No. 4003, as amended by Commonwealth Act No. 471. In this connection, I wish to state that when Bill No. 980 was signed by his Excellency, the President, and became Commonwealth Act No. 471, there was understanding that the 3-nautical mile limitation should be *ignored*, as it is contrary to the spirit of Act No. 4003, which confers in the Department of Agriculture and Commerce control over fisheries in the territorial waters of the Philippines.

I would now request

that instruction be issued by your Department directed to all the Chiefs of Police in all the coastal townships, municipalities and cities of the Philippines to the effect that no prosecution should be commenced under section 21 of Act No. 471, without first obtaining the consent of the Department of Agriculture and Commerce by virtue of paragraph (j) of section 80 of Act No. 4003, as amended by Commonwealth Act No. 471. I make this request in order to avoid unnecessary and unjust prosecutions.

And please, accept in anticipation, my appreciation and thanks for your cooperation in this matter.

Very respectfully,

(Sgd.) BENIGNO S. AQUINO

*Secretary of Agriculture and Commerce"*

In fact, respondents herein quoted in their answer a first indorsement of the Director of Fisheries, dated May 31, 1951, couched

in the following language:

“Respectfully returned to Atty. Estanislao A.

Fernandez, Manila, the enclosed letter with the information that fishermen licensed by this Bureau *are entitled* to fish in territorial waters of the Philippines *which necessarily include the municipal waters*.

Attention is invited to the opinion No. 140, of the Honorable Secretary of Justice dated February 7, 1951, copy attached, which declares that

‘\* \* \* it may be safely concluded that the power to issue fishing boat license weighing more than three tons gross is vested in the Department of Agriculture and Natural Resources, *even if they are operated within three nautical miles from the shoreline.*’

(Sgd). D. V. Villadolid  
*Director of Fisheries*”

It should be noted, in this connection that, in the language of the court, in *U. S. vs. Hernandez* (31 Phil., 342)—which was quoted with approval in *Municipality of San Luis vs. Ventura and Castillo* (56 Phil., 329) and *Guzman vs. Municipality of Taytay* (65 Phil., 340, 356)—the right to engage in fishing is a common and general one, although subject to regulation; and that, pursuant to section 4 of ordinance No. 1 of the Municipality of Taytay, passed on March 15, 1947, “fishing boats of more than three tons gross, licensed by the Secretary of Agriculture and Commerce shall be allowed to fish in such (municipal) waters outside of 200 meters from a Fish corral licensed pursuant to the provisions of this section.” At any -rate, it is unnecessary for us to pass, and we do not pass, upon the right of the *Nepomucenos* to fish within the *Malampaya Sound*, for the issue in the case at bar is whether or not respondent Judge transcended his authority in issuing at San Diego’s request, the writs of injunction or resolutions complained of. San Diego’s right to said remedy depended, in turn, upon the existence of a valid contract of lease in his favor. If said contract is void, as we hold it is, then San Diego had no property right to protect, and respondent Judge exceeded his

jurisdiction or acted with grave abuse of discretion, amounting to want of jurisdiction, in acting as he did. Inasmuch as the order of September 7, 1951, was directed against, among others, petitioner herein, as defendants in Civil Case No. 11035 of the Court of First Instance of Manila, and the order of March 21, 1952, in effect sought to implement said order of September 7, 1951, it follows that said petitioners are entitled to restrain the enforcement of both orders and to secure a declaration of nullity thereof. In other words, the fact that said void orders were directed against petitioners herein as defendants in civil case No. 11035, is sufficient to give them a cause of action for the nullification of the orders aforementioned and to enjoin the enforcement thereof.

Wherefore, said orders of September 7, 1951 and March 21, 1952, are hereby annulled and set aside, and the writ of injunction issued by this Court made permanent, with costs against respondent Bartolome San Diego. It is so ordered.

*Paras, C. J., Pablo Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo and Labrador, JJ., concur.*

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