

104 Phil. 319

[G. R. No. L-11839. August 21, 1958]

MANUEL MASIGLAT, PETITIONER AND APPELLANT, VS. CITY MAYOR OF PASAY CITY, ET AL., RESPONDENTS AND APPELLEES.

D E C I S I O N

REYES, J.B.L., J.:

In view of an order of the Court of First Instance of Rizal in Civil Case No. 1461-P, dismissing his petition for prohibition and mandamus with preliminary injunction, on the ground of failure to prosecute, Manuel Masiglat has appealed to this Court.

The facts essential to a proper disposition of this appeal may be stated as follows:

Petitioner Manuel Masiglat was a lieutenant in the Pasay City Police Department when he was suspended by the City Mayor, Enrique Manaloto, following the filing of administrative charges against him with the Municipal Board of the said city. The charges involved misconduct in office, irregular performance of duty and violation of law, on three specifications as follows: (1) having solicited votes, accompanied voters to electoral precincts, given away free food and drinks to voters; (2) having carried his gun inside the prohibited area in the electoral precinct; and (3) use for electioneering purposes of a government jeep assigned to him.

As the administrative case was still pending upon the expiration of sixty (60) days from his suspension, Masiglat asked the City Mayor to reinstate him forthwith pursuant to section 3 of Republic Act No. 557. ^[1] The refusal of the respondent mayor to do so prompted Masiglat to file this case against the respondent municipal officers for prohibition and mandamus with preliminary injunction on May 7, 1954.

Acting on the petition for preliminary mandatory injunction, the lower court on May 26, 1954, ordered petitioner's reinstatement pending the final determination of the case.

On July 27, 1954, the Municipal Board decided the administrative case against petitioner Masiglat, declaring him guilty of charges 1 and 3 and sentencing him to be separated from the service. A petition for reconsideration to this decision having been denied by the said Board, the petitioner perfected his appeal with the Commissioner of Civil Service, which appeal is being held in abeyance pending the final disposition of this petition.

On August 18, 1964, petitioner filed a motion to declare the City Mayor, the City Treasurer and the Chief of Police in contempt of court for having again effected his separation as of August 11, 1954, following the decision of the Municipal Board, notwithstanding the writ of preliminary injunction. Acting on the said motion, the trial court, on September 27, 1954, issued an order absolving respondents from contempt, but upholding its previous preliminary mandatory injunction by ordering that it remain in full force and effect.

In the local elections held in November, 1955, a new set of officials were elected, namely: Pablo Cuneta, as Mayor; and Ruperto Galvez, Ansberto Paredes, Eduardo Vitocruz, Pascual Cruz, Nicanor Santos, Luis Cabrido and Irineo Gallegos, as members of the Municipal Board.

In accordance with section 18, Rule 3 of the Rules of Court, and upon motion of petitioner, the trial court on June 16, 1956, ordered the new members of the Municipal Board to manifest within 30 days from notice their stand whether or not they desire to uphold the action of their predecessors. The order was received by petitioner on August 1, 1956, and by respondent members of the Municipal Board on July 26, 1956, who answered that they stood by the action already taken. Thereafter, nothing more was done about the case until October 19, 1956, when the lower court issued an order dismissing the same for failure to prosecute. A motion for reconsideration was denied; hence, this appeal by petitioner Masiglat.

The main issue raised here is whether or not petitioner failed to prosecute his action for an *unreasonable length of time*.

The pertinent provision of the Rules of Court on this point is contained in section 3, Rule 30, which reads:

SEC. 3. *Failure to prosecute*.—When plaintiff fails to appear at the time of the trial, or to prosecute his action for an *unreasonable length of time*, or to comply with these rules or any order of the court, the action may be dismissed upon

motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court."

What would constitute "unreasonable length of time" depends upon the circumstances of each particular case and the sound discretion of the court will not be disturbed in the absence of patent abuse (*Smith Bell & Co. vs. American President Lines Ltd.*, 94 Phil., 879; *Brandt vs. Behn, Mayer & Co.*, 38 Phil., 351). In the instant case, we find the order appealed from entirely justified, considering that from the time issues were joined, on December 14, 1954, petitioner Masiglat took no steps to have the case tried until one and a half years thereafter, on May 4, 1956, when appellant asked that it be set for hearing; and when the court did set the trial for the 25th day of that month, appellant further delayed it by filing a supplemental petition that naturally called for a similar answer on the part of respondents. It is not difficult to realize that having secured his reinstatement through the preliminary mandatory injunction of May 26, 1954, petitioner thereafter lost interest in a prompt decision on the merits, lest the advantage he had thus obtained should be forfeited. Thus, no reason is shown why appellant could not have filed sooner the supplemental petition of May 25, 1956, that merely alleged his dismissal by the Municipal Board of Pasay City on July 27, 1954. Likewise, the motion of June 13, 1956, to require the new Municipal Board, elected in November 1955, to manifest if it stood by the decision of its predecessor, could have been filed much earlier if petitioner had been reminded to secure an early disposition of his case.

"It is well-known policy of the courts to expedite the disposal of cases and to prevent the clogging of the dockets. It is incumbent upon the parties, especially the plaintiff, to take the initiative in the prompt disposal of these cases as a duty to themselves, to the courts, and the public in general" (*E.E. Elser, Inc. et al. vs. Macondray & Co., Inc.* 96 Phil., 395). This principle should be more strictly adhered to where, as in this case, the appellant is prosecuting a special civil action and a preliminary injunction has been granted therein.

It is next urged by appellant that the lower court erred in not passing upon the legality of the Municipal Board's decision dismissing him from the service, which he assails as promulgated in his absence and at a time when the Board was not in session. Having arrived, however, at the conclusion that there was no abuse of discretion in the dismissal of the petition, this particular question has become moot. Moreover, this issue may well be

decided in Masiglat's pending appeal to the Commissioner of the Civil Service. Wherefore, the order of dismissal appealed from is affirmed. Costs against appellant. So ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Endencia, and Felix, JJ., concur.

^[1] Sec. 3. When charges are filed against a member of the provincial guards, city police or municipal police under this Act, the provincial governor, city mayor or municipal mayor, as the case may be, may suspend the accused, and said suspension to be not longer than sixty days. If during the period of sixty days, the case shall not have been decided finally, the accused, if he is suspended, shall *ipso facto* be reinstated in office without prejudice to the continuation of the case until its final decision, unless the delay in the disposition of the case is due to the fault, negligence, or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension herein provided.
