

CONCEPCION CORNELIO, PETITIONER, VS. HON. COURT OF APPEALS AND SOCORRO T. MAGBANUA, RESPONDENTS.

G.R. No. L-24334. September 30, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from a decision of the Court of Appeals reversing that of the Court of First Instance of Negros Occidental and de-claring Socorro T. Magbanua entitled to Stalls Nos. 236, 237 and 238 of the central market of Bacolod City, with costs against Concepcion Cornelio.

The factual background is set forth in said decision of the Court of Appeals, from which we quote:

"It appears that plaintiff Socorro T. Magbanua occupied a 32-square meter stall, situated in the sari-sari section of Bacolod City Central Market before and during the war and until the said market was burned on April 14, 1955. Likewise, Concepcion Cornelio was, before the war and until fire destroyed the aforementioned market, a lessee of a block in the main building, and another make-shift stall of 3 square meters used as sari-sari store and admittedly occupied and personally tended by Concepcion's common law husband Sy Chai Tan, a Chinese national.

"After the fire gutted the Bacolod Central Market on April 14, 1955, plaintiff resumed her former place in the burned market by rebuilding her stalls therein, which was subsequently demolished to give way to the construction of a new Central Market. Defendants Cornelio and Sy Chai Tan on the other hand transferred their sari-sari store to Luzurriaga-Smith streets, and admittedly Sy Chai Tan occupied and tended this sari-sari store while Concepcion Cornelio attended to her carinderia business and in the administration of her two commercial buildings, one at Rizal street and another in front of the Central Market, both at Bacolod City.

"After the reconstruction of the Central Market, the City Council of Bacolod passed a series of ordinances, namely, Ordinance Nos. 1 and 2, series of 1959, enacted on July 8, 1958 and Ordinance No. 18, series of 1959, enacted on August 1, 1958 (Exhibit 7), the latter ordinance amending, inter alia, Section 1 of Ordinance No. 2, by providing that the Market Committee shall be composed of (a) City Treasurer as Chairman, (b) a representative of the Mayor, (c) a representative of the Secretary of Finance, (d) a representative of the City Fiscal, (e) a representative of the City Council, and (f) a representative of the market vendors as members. Both ordinance Nos. 2 and 18 provided that all applications in triplicate shall be filed with the City Treasurer not later than July 22, 1958. The records reveal that on July 11, 1958, plaintiff Socorro Magbanua filed her application for Stalls Nos. 342, 343 and 344 of the grocery and sari-sari section, while defendant Concepcion Cornelio filed her application for stalls Nos. 321, 322 and 323 of the dry goods section. (Exhibit 11).

"On August 11, 1958, the Market Committee awarded to plaintiff stalls Nos. 236, 237 and 238, together with 64 other applicants, which were awarded the other stalls in the same section comprising stalls Nos. 225 to 246 and 375 to 382 - belonging to the reserve section and which were classified by the Committee and awarded to applicants in the sari-sari section (Exhibit B). Subsequently or on August 14, 1958, the City Treasurer formally informed plaintiff of the award of the aforementioned stalls 236 to 238, advising her to report immediately to the Market Superintendent to take possession of the stalls (Exhibit L). Plaintiff took

possession thereof and introduced improvements thereon and regularly paid the rentals therefor (Exhibit V).

"On the other hand, it has been established that defendant Cornelio, upon learning of the award of the stalls in question to plaintiff, went to the City Hall and verbally protested said award to the Market Committee and filed her written protest on August 23, 1958 (Exhibit 12-Tambasen; 5--Cornelio). On August 25, 1958, the Market Committee met to discuss the petition of defendant for a reconsideration of the award made to plaintiff Magbanua, and during the deliberation Mr. Ilde-fonso Coscolluela, Jr., a member thereof re-marked:

'With regards to the reconsideration sought by Mrs. Concepcion Cornelio, Mr. Nessi, I would like to inform you that at the time of the filing of application, Mrs. Concepcion Cornelio filed her application in the Dry Goods Section and that in the distribution of the Sari-Sari Section applicants, she was not given preference in view of her application. With regards to her allegation that at that time she did not apply for stalls Nos. 236, 237 and 238 because it was reserved, I would like to inform you that no one had applied for the said stalls, but after the sari-sari section was already exhausted, we got the re-served sections and allocate to those applicants who had applied for sari-sari section, hence the said stalls were awarded to Mrs. Magbanua. However, to give her justice, we offered her stalls in the dry good section and also in the sari-sari section but she rejected the offer.'

The Committee then compromised to give defendant Cornelio 'stalls if the space between the stalls and blocks building will be open to public vendors, which the Attorney for the petitioner (defendant herein) also agreed' (Exhibit 13-Tambasen). It was on September 9, 1958, when Cornelio thru counsel, lodged her formal protest with the Department of Finance not based on composition of Committee (Exhibit 7-Cornelio); and in his 4th Indorsement dated February 6, 1959, the Secretary of Finance declared that the awards made by the Market Committee on August 7 and 11, 1958, could not be considered as having been rendered by a duly constituted committee under the provisions of Department Order No. 22, as amended, because the market vendors were not represented in said committee (Exhibit 9 -Cornelio). This indorsement was further clarified when in his 1st Indorsement dated May 28, 1959, the Secretary of Finance referred to the City Treasurer of Bacolod City the request of Eduardo Regalado, and stating therein that the 'awarding of the market stalls as shown in the minutes dated August 7 and 11, 1958 of the supposed Market Committee of that City has been declared without force and effect as the said Committee, not having been regularly constituted and incomplete, as required by Department Order No. 32 of this Department, is without legal authority to hold session.' (Exhibit 15-Tambasen; 10 -Cornelio).

"Subsequently, the Secretary of Finance acting on the petition of Socorro Magbanua for a reconsideration of the ruling declaring the awards made on August 7 and 11, 1958 without force and effect, denied the same in his 5th Indorsement of July 5, 1960, and directed the Market Committee to take appropriate steps to allocate or assign to Mrs. Cornelio the same number of stalls in the Sari-Sari Section of the reconstructed market of the City of Bacolod (Exhibit 11-Cornelio; Exhibit 12-Tambasen). Acting on the 5th Indorsement aforesaid of the Department of Finance, the Market Committee met on August 9, 1960, and approved the award of stalls Nos. 236, 237 and 1/2 of 238 to defendant Concepcion Cornelio and 1/2 of Stall No. 238 and Stalls Nos. 239 and 240 to plaintiff Socorro Magbanua (Exhibit F). After considering plaintiff's manifestations protesting said award and the comments of the City Treasurer, the Secretary of Finance in his 12th Indorsement of November 2, 1960, affirmed the assignment of the stalls in question thus made by the Market Committee in its meeting of August 9, 1960 (Exhibit 12-Cornelio).

"It appears that the award of stalls Nos. 239 and 240 to herein plaintiff, could not be implemented because the former is in the possession of Falconera Cortez while the latter is the subject of controversy between Jose Magbanua and Rosario Llander (Exhibit 3-Cornelio and Exhibit C). In its meeting of December 16, 1960, the Market Committee was informed by the City Treasurer that he could not implement the awards made of the stalls in question because of the aforementioned fact that stalls Nos. 239 and 240 are occupied by Cortez and Llander, and it was agreed that the papers on said case be returned to the Secretary of Finance (Exhibit 3-Cornelio). There is nothing on record to show, however, that said papers were returned to the Department of

Finance."

On December 14, 1960, Magbanua filed Civil Case 5986 of said court of first instance - which is the case at bar - against the City of Bacolod, the members of its Market Committee, and Concepcion Cornelio and her alleged husband, Sy Chai Tan, to enforce the award of Stalls Nos. 236, 237 and 238, made in 1958, in favor of said Magbanua. Soon thereafter, or on January 24, 1961, Cornelio, in turn, commenced Civil Case No. 6021, of the same court, for mandamus, against the City of Bacolod, its mayor and its treasurer, to compel them to deliver Stalls Nos. 236, 237 and half of No. 238 to Cornelio, in accordance with the award made on August 9, 1960. Both cases were assigned to Branch I of said court, presided over by Hon. Francisco Arellano, Judge. Magbanua sought to intervene in case No. 6021, but her motion was denied, upon the ground that it would unduly delay the disposition of the case and that, at any rate, her rights would be duly protected in Case No. 5986.

Judgment having been rendered in favor of Cornelio, in Case No. 6021, on April 7, 1961, the city treasurer tried to place her in possession of Stalls Nos. 236, 237 and half of No. 238, by directing Magbanua to make those stalls available for occupancy by Cornelio on or before April 13, 1961. Thereupon, Magbanua applied for a writ of preliminary injunction, in Case No. 5986, to restrain the defendants therein from ejecting her (Magbanua) from said stalls, and tried to appeal from the decision in Case No. 6021; but, Judge Arellano denied her motion for a writ of preliminary injunction in Case No. 5986 and disapproved the Record on Appeal, the notice of appeal and the appeal bond filed by her in Case No. 6021, as well as caused the corresponding writ of execution to issue therein.

A reconsideration of the orders to this effect having been denied, Magbanua filed Case CA-G. R. No. 29283-R of the Court of Appeals, for certiorari and mandamus with preliminary in-junction, against Judge Arellano, the City of Bacolod, its City Treasurer, the Provincial Sheriff of Negros Occidental and "the spouses Sy Chai Tan and Concepcion Cornelio", to annul said orders and to compel Judge Arellano to allow Magbanua's inter-vention in Case No. 6021. In due course, the Court of Appeals rendered a decision, on October 7, 1961, upholding Judge Arellano's refusal to give due course to Magbanua's appeal in Case No. 6021, but declaring that he had erred in denying the motion for a writ of preliminary injunction in Case No. 5986 and in issuing the afore-mentioned writ of execution in Case No. 6021, and, accordingly, enjoining the respondents permanently from enforcing and execut-ing the judgment therein rendered, pending final disposition of Civil Case No. 5986.

On April 10, 1963, a decision was rendered in said Civil Case No. 5986, the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:

"(1) dismissing the case against the de-fendants;

"(2) declaring that defendant Concepcion Cornelio is entitled to the possession of stalls Nos. 236, 237 and 1/2 of 238 at the public market of the City of Bacolod;

"(3) ordering the plaintiff to vacate the same; and

"(4) if the defendants desire to use the im-provements made by the plaintiff upon the property, they should pay the plaintiff the sum of Five Hun-dred Pesos (P500.00), otherwise the plaintiff may remove the same. Without special pronouncement as to costs."

Both parties appealed from this decision to the Court of Appeals, which reversed it and declared Magbanua "entitled to Stalls Nos. 236, 237 and 238", with the "costs against x x x Cor-nelio." Such decision is the object of the present petition for review on certiorari.

It will be recalled that the award of Stalls Nos. 236, 237 and 238, made by the Market Committee, in favor of

Magbanua, on August 11, 1958, had been declared by the Secretary of Finance, on February 6, 1959, to be "without force and effect", upon the ground that the Committee was, on the date first mentioned, irregularly constituted and incomplete, because the market vendors were not represented therein. The Court of Appeals found this action of the Secretary of Finance untenable, for the reason that the Market Committee established by ordinances of the City of Bacolod consisted of six members all of whom, except the representative of the market vendors - that is to say, five members - attended the meeting of the Committee, on August 11, 1958; that said present members constituted a quorum and were competent to transact business, as well as to make the aforementioned award; that the absence of a representative of the market vendors at said meeting was due to their failure to agree on the person who would represent them; and that the Committee was not supposed to be immobilized in the meanwhile.

It should be noted, however, that Magbanua did not appeal from or seek a review of the action taken by the Secretary of Finance on February 6, 1959. Magbanua could have appealed from said action to the President,[1] but she did not do so. If she felt that the Secretary of Finance had acted without jurisdiction or with grave abuse of discretion, she could have had it annulled by competent court in a special civil action for certiorari. Neither did she apply for such relief. Accordingly, the matter of allocating the stalls in dispute was remanded to the Market Committee, which, after making an ocular inspection, decided, in its meeting of August 9, 1960, to award Stalls Nos. 236, 237 and half of No. 238 to Cornelio, and the other half thereof, in addition to Stalls Nos. 239 and 240, to Magbanua. Magbanua moved for a reconsideration of these awards, but the motion was denied and the awards were, on November 2, 1960, affirmed by the Secretary of Finance. Once again, Magbanua did not ask a reconsideration of this act of the Secretary of Finance, or appeal therefrom to a higher authority, or seek its annulment by writ of certiorari. As a consequence, the affirmance of the second award by the Secretary of Finance must be deemed to have settled the matter of allocation of the stalls in question and become executory.[2] In other words, the merits thereof - that is to say, the wisdom of the action thus taken by the Secretary of Finance - may not be indirectly reviewed by courts of justice in an ordinary action, such as the one at bar, for the enforcement of the first award.

At any rate, even if this were a special civil action for certiorari to annul the approval given by the Secretary of Finance to the second award - which it is not - Magbanua may not be granted such relief: (1) because the Secretary of Finance, who is indispensable therefor,¹ is not a party in the present case; (2) because it is not disputed that he had jurisdiction to act on the second award; and (3) because, in affirming such award, there had been no abuse of discretion on the part of said officer.

Indeed, the records show that the questioned action of the Secretary of Finance mainly sought to do justice to both parties; that Cornelio was not even considered by the Market Committee in making its first award; that this was due to a purely technical ground, namely, that she had not applied for stalls in the sari-sari section; that this ground is untenable, inasmuch as the stalls in question (Nos. 236 to 240) were not in the sari-sari section, but in a "reserved" one; that the Secretary of Finance set aside the first award in order to give Cornelio a chance to participate in the award of stalls in said reserved section, for, like Magbanua, she was a former holder of sari-sari stalls; that, before making its second award, the Market Committee made an ocular inspection for the purpose of ascertaining the location of the stalls held by the parties, before the destruction of the old market by fire, in relation to the market stalls in the new market to be the object of the second award; that said Committee awarded Stalls Nos. 236, 237 and half of No. 238 to Cornelio, upon the theory that they are the stalls nearest to the location of her sari-sari stalls in the old market, prior to its destruction; and that there is nothing to indicate that this finding of fact of the Market Committee - which was impliedly affirmed by the Secretary of Finance - does not conform substantially to the objective truth.

It is thus clear that the Secretary of Finance has not abused his discretion, much less exceeded his jurisdiction, in affirming the second award.

We have not overlooked the statement, made in the decision of the Court of Appeals, to the effect that the award for Stalls Nos. 239 and 240 to Magbanua could not be implemented, because the former is "in the possession of Falconera Cortez while the latter is the subject of a controversy between Jose Magbanua and Rosario Llander." This circumstance does not detract, however, from the validity of the second award in favor of Cornelio or of the affirmance thereof by the Secretary of Finance. The proper relief for Magbanua is to demand compliance by the proper authorities with the second award in her favor, and, should they fail to do so, to seek the corresponding relief from the courts of justice, as Cornelio did in Civil Case No. 6021.

WHEREFORE, the decision of the Court of Appeals should be, as it is hereby reversed, and another one shall be entered affirming that of the Court of First Instance of Negros Occidental, with costs against respondent herein, Socorro Magbanua.

IT IS SO ORDERED.

Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.
Reyes JBL, and Dizon, JJ., on official leave.

[1] *Marinduque Iron Mines v. Secretary of Public Works*, L-15982, May 31, 1963; *Bongcawil v. The Provincial Board*, L-20368, Feb. 28, 1964; *Regala v. De Guzman*, L-17337, Oct. 30, 1964; *Lacson-Magallanes v. Paño*, L-27811, Nov. 17, 1967.

[2] *Castillo v. Rodriguez*, L-17189, June 22, 1965; *Lacson-Magallanes v. Paño*, *supra*.

1 *Castillo v. Rodriguez*, *supra*.

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