

THE MUNICIPALITY OF CAMILING, PLAINTIFF AND APPELLANT, VS. DIEGO Z. LOPEZ, DEFENDANT AND APPELLEE.

G.R. No. L-8945. May 23, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Tarlac, Hon. Bernabe de Aquino, presiding, dismissing the complaint, certified to us by the Court of Appeals as only questions of law are involved in the appeal.

The facts, according to the court a quo, are as follows:

"On April 30, 1949, a contract of lease was executed by the Municipality of Camiling in favor of the defendant, Diego Z. Lopez, leasing to the latter certain fisheries of the Municipality of Camiling for three consecutive years, 1946-1949, for the sum of P9,150, the rental to be payable in three yearly installment, each installment to consist of P3,050. The defendant had paid all the lease rentals for the first two years of the lease and part of the rental for the third year of the lease, but defendant failed to pay a balance of P1,779.17 corresponding to the third year. It is the last amount which the Municipality of Camiling seeks to recover by virtue of this action." (p. 42, record on appeal).

In his answer in the Court of First Instance, because the case originated in the justice of the peace court, the defendant alleged as special defenses that the contract of lease was null and void ab initio and that if there was any valid or legal obligation at all, the same had been condoned and released. It appears from a statement in the decision appealed from that the case was submitted to the court a quo on the legal point of whether or not the lease contract executed between the municipality of Camiling and the defendant is a valid contract or a void contract. This is confirmed in appellee's brief (pp. 4 and 5).

The trial judge held that the contract of lease on which the action is based was not approved by the provincial governor in violation of section 2196 of the Revised Administrative Code, and, therefore, the contract was void and non-existent; and that the mere fact that the lessee took possession of the leased property and paid the corresponding rentals for more than two years does not validate the contract of lease. As authority for this ruling *Municipality of Hagonoy vs. Evangelista*, 73 Phil., 586, is cited.

In the above case, in which the Municipality of Hagonoy sought to enforce a penal clause contained in contracts of lease of fishponds, which provided that in case of non-fulfillment by the lessee the latter would pay a surcharge of 20 per cent, the contracts of lease involved were not approved by the provincial governor as required by section 2196 of the Revised Administrative Code. The court held that the contracts were null and void, because of Article 4 of the old Civil Code which provides:

"Son nulos los actos ejecutados contra lo dispuesto en la ley, salvo los casos en que la misma ley ordene su validez."

The court also said that as the principal obligation was void, its nullity carried with it that of the penal clause.

(Art-1155, old Civil Code.)

The appellant does not dispute the applicability to the case at bar of Art. 4 of the old Civil Code, or of the decision in the above case of Municipality of Hagonoy vs. Evangelista, nor, the correctness of the theory or principle enunciated therein. We must in all frankness state that we doubt if the theory of said decision is in consonance with the sense or spirit of the article cited or of the other principles related to its application. We will now, therefore, proceed to explain our views in this respect. What creates our doubt is the incorrect interpretation given the term "nulos" in Article 4 of the old Civil Code. The acts declared void (actos nulos) are those executed in violation of the provisions of law. Not all of these are ipso facto void. They may be of two kinds, those that are ipso facto void and those which are merely voidable. (1 Manresa 119). The approval by the provincial governor of contracts entered into and executed by a municipal council, as required in section 2196 of the Revised Administrative Code, is part of the system of supervision that the provincial government exercises over the municipal governments. It is not a prohibition against municipal councils entering into contracts regarding municipal properties subject of municipal administration or control. It does not deny the power, right or capacity of municipal councils to enter into such contracts; such power or capacity is recognized. Only the exercise thereof is subject to supervision by approval or disapproval, i.e., contracts entered in pursuance of the power would ordinarily be approved if entered into in good faith and for the best interests of the municipality; they would be denied approval if found illegal or unfavorable to public or municipal interest. The absence of the approval, therefore, does not per se make the contracts null and void. In the case at bar, except for the lack of said approval, the contract of lease is a perfectly legitimate one. The subject thereof are fisheries belonging to the municipality, subject to management and administration by itself. Neither is there anything in the contract of lease which would taint it with illegality, like a violation of public order or public morality, or a breach of a declared national policy. The contract is not ipso facto absolutely null and void. It could have been ratified after its execution in the ordinary course of administration. It is merely voidable at the option of the party who in law is granted the right to invoke its invalidity.

On the one hand, it should be noted that Article 1302 of the old Civil Code provides that persons capable of entering into a contract may not invoke the incapacity of those with whom they contract. In accordance with the above provision, the lessee in the case at bar could not allege that the contract could not be enforced against him because the contract was not approved by the governor.

On the other hand, we must take into account that the defendant, who was the lessee, actually entered into the possession of the fisheries subject of the lease and paid the rentals for two years, except the amount of P1,779.17 sought in the action, without questioning the validity of the contract because it was not approved by the governor. The defendant could have raised the objection against the enforceability of the contract before its terms were carried out. But he did not do so and actually waived the objection thereto, entering upon the fisheries subject of the lease and paying the rentals agreed upon for two years. After he had taken advantage of the contract, entering upon the possession of the fisheries and enjoying its fruits, with knowledge of the existence of a defect in the said contracts, which knowledge is presumed, he should not thereafter be permitted to attack it on the ground that the contract did not bear the approval of the provincial governor as required by law. (Tuakon vs. Domingo Lim, 10 Phil., 50; PP. Agustinos Recoietos vs. Lichauco, 34 Phil., 5; Behn, Meyer & Co. vs. Rosatzin, 5 Phil., 660; Chamber of Commerce, vs. Pua Te Ching, 14 Phil., 222.)

From the foregoing considerations, the judgment appealed from should be reversed and the defendant-appellee ordered to pay the plaintiff municipality the sum of P1,779.17, with costs. .

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, Reyes, J. B. L., and Endenda, JJ., concur.

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