

**IGNACIO GONE, BRUNO TENIO, LUCILA ALBA, GERUNDIO TORION,
EUGENIO TENIO, CONSULACION TENIO, LIBRADA MONTEDERAMOS,
SOTERA ALVAR, LEOPOLDO ALVAR, BENIGNO MINA, JOVENAL
PALERMO, SAL...***G.R. No. L-22782. August 29, 1975*

Ponente: FERNANDO, J.

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A dispute on the barrio, or barangay level, the more appropriate term under the present dispensation, is before us with this appeal from an order of dismissal by the lower court based on the failure to show a cause of action.[1] The matter was pursued with singular tenacity on the part of plaintiffs, now appellants, who were unable to reconcile themselves to the thought that the plans for a proposed barrio stage would be altered by the barrio council without their consent having been obtained. Unfortunately, the original complaint filed did not take into account the applicable Barrio Charter Act.[2] Its dismissal was then sought.[3] There was a motion to amend, plaintiffs hoping thereby that this time a legal basis was laid for judicial relief. At that, a more adequate grasp of the law would have diluted their optimism. Their principal objection this time was the, alleged absence of consent on the part of the Municipal Mayor and the Provincial Governor to the Contract by virtue of which the objectionable features for petitioners were allegedly made possible. As pointed out in the appealed order, the language of the statute did not sustain their plea. No such consent was required. No real property or interest therein was conveyed by the contract. Even if it were otherwise, there is this other obstacle, and assuming the consent of the Provincial Governor was necessary, there was no showing that he had been approached so that he could indicate his decision on the matter. Should there be disapproval on his part, under plaintiffs' own view, they would have gained their objective. There was then no need for any court proceeding. The administrative remedy could thus have been pursued. The defect consisting of a lack of cause of action even under this assumption was still there. The lower court did not err, therefore, in refusing the amendment and dismissing the complaint. We have to affirm.

The relevant facts are set forth in the appealed order of dismissal thus: "Before us is a motion to dismiss signed by Assistant Provincial Fiscal Siayngco in behalf of the District Engineer, the Engineer In-Charge, Project Section and the Building Inspector, all of the Bureau of Public Works of Southern Leyte on the ground that the complaint states no cause of action. No opposition has been interposed. It is argued in support of the motion that the complaint is based on the provision of Rep. Act No. 2370 to the effect that the contract entered into by barrio captain Eutiquio Vecina to remodel, remove, destroy, fill up any portion or alter in any manner the plan of the Banday Public Stage has not been ratified by the barrio assembly of Banday nor [has it given] any authority to its Barrio Council and much less to its barrio captain Eutiquio Vecina; hence the said contract was null and void for the original complaint was filed on October 10, 1963 and Rep. Act No. 3590 (Revised Barrio Charter) which repealed Republic Act No. 2370 took effect on June 22, 1963. Section 14(b) of Rep. Act No. 3590 empowers the barrio lieutenant (now barrio captain) to negotiate, sign and enter into contracts for and in behalf of the barrio,

upon authorization of the barrio council.' It appearing that the barrio council of Banday, Malitbog, Southern Leyte in its meeting held last September 8, 1963 at the Banday Public Stage authorized its barrio captain Eutiquio Vecina to enter into a negotiated contract with defendant District Engineer for the completion of the Banday Public Stage in its Resolution No. 60, *** the contract is valid and binding. Considering that the herein defendants proceeded with the work for the completion of the Banday Public Stage in accordance with the contract dated September 10, 1963 *** implementing Resolution No. 60, *** dated September 8, 1963, it stands to reason that the motion to dismiss is in order. The contract in question does not convey real property or interest therein or create a lien upon the same as contemplated in Section 13, (0) RA 3590 and therefore does not need the approval of the Municipal Mayor and the Provincial Governor. Having arrived at the conclusion that RA 3590 is the one applicable and not RA 2370 in which the original complaint is based, there is therefore no cause of action against defendants. Besides, there is no doubt that the proposed alteration or change embodied in the contract will make the stage more artistic and useful to the people of Banday in particular and the public in general. [Wherefore], this case is dismissed with costs against the plaintiffs."[4]

As set forth at the outset, the appealed order of dismissal must be sustained.

1. It cannot be otherwise, considering the rather obvious fact that plaintiffs on the face of their complaint were unable to show a legal right set at naught or disregarded by respondents. There was nothing that could have been infringed upon. Redress through the courts was simply out of the question. Instead, the action taken by the latter was in pursuance of what was ordained by the barrio council duly empowered to do so. What was done had the sanction of the applicable statute. Through inadvertence or otherwise, the complaint did not even reflect awareness of its terms. Counsel, his attention called by the motion to dismiss, sought to remedy matters. He would seek permission to amend. It would have been understandable if through such a move he could demonstrate that there indeed was a cause of action. That he was unable to do, for the right asserted by plaintiffs had no basis in the text of the applicable law. For listed among the powers of a barrio council is the power to "enter into contracts for and in behalf of the barrio and [authorize] the barrio lieutenant to do so and the barrio treasurer to make direct purchases amounting to not more than one hundred pesos at any one time for the ordinary and essential needs of the barrio. When the contract conveys real property or interest therein or which creates a lien upon the same, such contracts shall be executed in behalf of the barrio by the barrio lieutenant upon resolution of the barrio council with the approval of the municipal mayor and the provincial governor."[5] Plaintiffs would cite the requirement that where there is conveyance of real estate or interest therein, the consent of the municipal mayor and the provincial governor is necessary. It did not help matters any. As was clearly pointed out in the appealed order, such a proviso did not come into play. There was clearly no cause of action, and its dismissal was proper.[6]

2. One other matter. Plaintiffs should have realized that even from their own theory of the case, there was still available an administrative remedy. It could be assumed that the then Municipal Mayor was agreeable to what was done by the barrio council. Still, their interpretation of the law would indicate that there was another obstacle to reckon with, the Provincial Governor. Consistency alone, not to mention the likelihood that pursuit of such a course would assure prompt and expeditious attendance of their claim, ought to have counseled them against rushing to court. As pointed out earlier, there was in reality no need for such a consent. The law does not cover the present situation. If, however, their assumption is correct, then clearly they could not expect anything except an order of dismissal. In *Municipality of Hinabangan vs. Municipality of Wright*,[7] this Court, through Justice J.B.L. Reyes, took pains to stress: "It must be pointed out, furthermore, that the court below based its order of dismissal upon the non-exhaustion of administrative remedies, a question that may be taken up by it motu proprio at any time, since it affects the cause of action."[8] The doctrine of exhaustion of administrative remedies is one of the most deep-seated concepts in Philippine law.[9] There again, its disregard indicates even more clearly the futility of this appeal.

WHEREFORE, the appealed order of dismissal of January 24, 1963 is affirmed. No costs.

Makalintal, C.J., Barredo, and Concepcion, Jr., JJ., concur.

Aquino, J., concurs in the result.

Antonio, J., is on official leave.

[1] The appeal was taken before Republic Act No. 5440 (1969).

[2] Republic Act No. 3590 (1963).

[3] The principal respondent is the then District Engineer Ignacio Gone of the Bureau of Public Highways of Maasin, Southern Leyte. The other respondents are the Engineer in-charge to the Project Section and the Building Inspector of the then Bureau of Public Highways. The fourth respondent is Emeterio Escaño, the then Municipal Mayor of Malitbog, Southern Leyte, while the last two are the then Barrio Captain and Barrio Lieutenant of Barrio Banday, Malitbog, Southern Leyte.

[4] Order of the lower court dated January 24, 1963.

[5] Republic Act No. 3590, Article III, Section 12(o) (1963).

[6] Cf. *De Jesus vs. Manglapus*, 81 Phil. 114 (1948); *Concepcion vs. Santos*, 89 Phil. 429 (1951); *Aller vs. Osmena, Jr.*, 105 Phil. 243 (1959); *Municipality of Hinabangan vs. Municipality of Wright*, 107 Phil. 394 (1960); *Lim vs. De los Santos*, L-18137, Aug. 31, 1963, 8 SCRA 798; *Vda. de Valencia vs. Deudor*, L-21598, May 19, 1966, 17 SCRA 133; *Municipality of Tacurong vs. Abragan*, L-25314, Feb. 10, 1968, 22 SCRA 518; *Martinez vs. United Finance Corporation*, L-24017, Aug. 31, 1970, 34 SCRA 524; *Phil. Columbia Enterprises Co. vs. Lantin*, L-29072, June 7, 1971, 39 SCRA 376; *Gabila vs. Barriga*, L-28917, Sept. 30, 1971, 41 SCRA 131; *Galeon vs. Galeon*, L-30380, Feb. 28, 1973, 49 SCRA 516.

[7] 107 Phil. 394 (1960).

[8] *Ibid*, 398.

[9] Cf. *Secretary of Agriculture vs. De los Angeles*, L-30215, Feb. 29, 1972, 43 SCRA 494 which traced the growth of the doctrine of exhaustion of administrative remedies from *Ang Tuan Kai vs. Import Control Commission*, 91 Phil. 143 (1952) to *Allied Brokerage Corp. vs. Commissioner of Customs*, L-27641, Aug. 31, 1971, 40 SCRA 555, citing forty decisions in all. Since then, such a norm has been applied in the following cases: *Commissioner of Immigration vs. Vamenta Jr.*, L-34030, May 31, 1972, 45 SCRA 342; *Barte vs. Dichoso*, L-28715, Sept. 28, 1972, 47 SCRA 77; *Sanoy vs. Tantuico, Jr.*, L-31945, April 30, 1973, 50 SCRA 455; *Quintos Jr. vs. National Stud Farm*, L-37052, Nov. 29, 1973, 54 SCRA 210; *Imbong vs. Oil Industry Commission*, L-34725-30, Jan. 17, 1974, 55 SCRA 95; *Nation Multi Service Labor Union vs. Agcaoile*, L-39741, May 30, 1975.

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