

THE CITY OF NAGA, PETITIONER, VS. THE COURT OF APPEALS AND APOLONIO G. MALENIZA, RESPONDENTS.

G.R. No. L-37289. April 12, 1989

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a Petition to Review by certiorari the decision of the Court of Appeals dated July 31, 1973 in CA-G.R. No. 32440--R entitled, "Apolonio G. Maleniza, Plaintiff-Appellee vs. City of Naga, Defendant-Appellant," affirming the Decision of the Court of First Instance (now Regional Trial Court) of Camarines Sur dated June 27, 1962 with however one modification -- the grant of indemnity to the City of Naga, for the improvements it had made on the athletes' Quarters and the ground floor of the new grandstand. (Rollo, p. 8). The dispositive portion of said appellate judgment reads as follows:

"WHEREFORE, with the foregoing modification, the judgment appealed from is hereby affirmed with costs against the defendant-appellant, City of Naga.

The plaintiff-appellee is hereby ordered to amend his complaint by adding his capacity as Provincial Governor of the Province of Camarines Sur and joining the said Province as co-plaintiff to conform to the evidence within fifteen (15) days from notice of this decision. The defendant-appellant is also hereby ordered to amend its answer, special defenses and counterclaims to accord with the evidence within a like period.

MODIFIED." (p. 36, Rollo)

The facts are stated in the decision appealed from. We quote:

In the general elections of November, 1959 Provincial Governor Juan Trivino, a Nacionalista of Camarines Sur was defeated by the plaintiff, Apolonio G. Maleniza, a Liberal. The latter won with a new set of members of the Provincial Board. Before bowing out of office the lameduck provincial administration passed Resolution No. 1103 authorizing Provincial Governor Trivino to execute a deed of sale without consideration in favor of the City of Naga of two parcels of land with improvements, belonging to the province. Pursuant to said resolution on November 23, 1959 Provincial Governor Trivino executed two deeds of sale: one (Exh. G) conveying the title and possession of a parcel containing 80,000 square meters on which the Camarines Sur High School complex (classroom buildings, library building, grandstand, etc.) are erected; and another (Exh. G-1) conveying the title and possession of a parcel of land containing 19,044 square meters which is devoted to horticulture, farming, gardening and to the study of poultry and pig-raising. The consideration for each sale is one peso (P1.00) which has never been paid.

On November 25, 1959 the City of Naga moved its offices to the athletes' quarters, a newly constructed building and the ground floor of the new grandstand, within the High School Complex. The police and fire departments and the assessment division of the city are thus housed in the ground floor of the grandstand.

The City spent P14,901.14 for improving the Athletes' Quarters and the groundfloor of the grandstand to make

them fit for offices.

On December 9, 1959, Private Respondent Hon. Apolonio G. Maleniza, as taxpayer and governor-elect of Camarines Sur filed a complaint against the Province of Camarines Sur and the City of Naga. The complaint prays for the annulment of the two conveyances in favor of defendant city of Naga of real properties belonging to defendant Province of Camarines Sur. The complaint also prays for damages in the form of specified monthly rentals and for the issuance of a writ of preliminary injunction to restrain defendants from effecting the transfer of the "administration" of the said properties from the Province of Camarines Sur to the City of Naga.

The complaint alleges that plaintiff is a taxpayer and governor-elect of the Province of Camarines Sur and as such "has an interest in his private as well as in his official capacity in the higher education of youth and in the properties of the said province." (Rollo, p. 38, Defendant-Appellant's Brief)

Plain copies of the documents are attached to the complaint which contain similar items except the descriptions of the two different parcels of land which are respectively set forth therein. The said documents purport to be public documents. They provide that the properties respectively described therein are sold, ceded, transferred and conveyed by J.F. Trivino, Governor of the Province of Camarines Sur, pursuant to the authority granted upon a resolution of the Provincial Board of the Province of Camarines Sur, by way of Absolute Sale in favor of the City of Naga. The said documents also provide that, from the date thereon, November 23, 1959, possession and dominion of the said properties are "hereby ceded to the City of Naga, and the lawful enjoyment of the same is hereby warranted." (Defendant-Appellant's Brief, pp. 3-4, Rollo, p. 38).

The conveyances of the said properties in favor of the City of Naga are alleged to be -

"Null and Void ab initio for they are against the law and public policy, since as the properties of the Province of Camarines Sur devoted to public use, they cannot be the subject matter of contracts for they are outside the commerce of man, and as donations of real properties they have not been accepted in public documents by the defendant, City of Naga." (Defendants-Appellants' Brief, p. 5; Rollo, p. 38)

The defendant Provincial Board (old) moved to dismiss the complaint on the ground that it does not state a cause of action; that the plaintiff has no personality to bring the action nor the legal capacity to sue; and that the sales sought to be annulled are subject to the approval of the President of the Philippines --- hence, the action is premature (RA, pp. 57-58). The said motion was denied and defendant board was required to file an answer to the complaint. (Order of December 26, 1959, Ibid., pp. 59-60) In the interim plaintiff Apolonio G. Maleniza and the newly elected members assumed office as Provincial Governor and members of the Provincial Board in January, 1960 and on January 29 passed Resolution, No. 42, S. of 1960 (Exh. I), revoking Resolution No. 1103, S. of 1959.

Understandably, the old Provincial Board having ceased to exist, did not file an answer to the complaint as required by the court a quo; and on March 26, 1960, it was declared in default. (Ibid., pp. 94-95) (Rollo, p. 24)

The City of Naga filed its answer, alleging lack of knowledge of the material averment of the complaint and setting up affirmative and special defenses that the plaintiff has no personality to bring the action nor legal capacity to sue; that the complaint states no cause of action; that the sales sought to be annulled are subject to the approval of the President of the Philippines; therefore, the action is premature.

It also filed a counterclaim for damages against the plaintiff which the latter denies specifically.

In the interim on petition of plaintiff, a writ of preliminary injunction was issued, enjoining the City of Naga or its agents from occupying the properties in question except the ground floor of the new grandstand and the new building (athletes' Quarters) and the old Provincial Board or its agents from transferring the administration of the

Camarines Sur High School to the City. (Writ of Preliminary Injunction dated January 5, 1960, R.A. pp. 71-75, Rollo, p. 2)

The Republic of the Philippines filed a motion to intervene on the ground that the Camarines Sur Trade School which is located on one of the lots conveyed to the City of Naga, has been converted into a National School of Arts and Trades by R.A. No. 825; and that, as a prerequisite to the conversion, the Province of Camarines Sur has been required to immediately transfer to the National Government the present School Site buildings etc., belonging to the Camarines Sur Trade School. After negotiation between the National Government and the City of Naga the latter agreed to waive whatever rights it has over the portion occupied as school site of the Camarines Sur Trade School buildings, etc., and authorized the city attorney to make the corresponding manifestation of waiver, which he did in February, 1960. (Rollo, p. 25)

Upon the joinder of the issues, the case was tried. In the course of the trial on June 7, 1961 Assistant Provincial Fiscal Jose Nepomuceno appeared for the plaintiff. The plaintiff was also represented by Attorney Luis Contreras. The city attorney at once objected to the appearance of Assistant Provincial Fiscal Nepomuceno because previous stand of the office of the Provincial Fiscal, as shown in its motion to dismiss the complaint, is inconsistent with his (Nepomuceno's) advocacy as one of the counsel of the plaintiff. Assistant Provincial Fiscal Nepomuceno countered by saying that he is now appearing for the Provincial Governor (Plaintiff-Maleniza). The City Attorney rejoined that in that case it is necessary to amend the complaint since the original allegation is to the effect that plaintiff Maleniza filed the same in his capacity as a private citizen and Governor-elect. The court a quo permitted Assistant Provincial Fiscal Nepomuceno "to appear for the Provincial Governor, although it is not alleged in the pleadings that Honorable Apolonio Maleniza is not (sic) the Provincial Governor at the time, but only a governor-elect and that cannot be denied." (Rollo, p. 26)

In its memorandum filed in the court a quo the City of Naga prayed, inter alia, that in the event that the sales are annulled, the Province be ordered to pay P20,000 for the value of its improvements. (Rollo, p. 26)

After trial the court a quo virtually decided the case in favor of the Province of Camarines Sur in its decision dated June 27, 1962, the decretal portion reading as follows:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered: (a) declaring Resolution No. 1103 series of 1959, and deeds of sale (Exhs. G and G-1) of the properties described in paragraph III of the complaint, null and void; (b) ordering the defendant, City of Naga, to vacate the premises in question; (c) ordering the defendant, City of Naga, to pay the Province of Camarines Sur the sum of P600.00 per month as damages for the use of the Athletes' Quarter and the ground floor of the new grandstand since November 25, 1959, until the final restitution thereof; (d) declaring the writ of preliminary injunction permanent; and (e) ordering the defendant, City of Naga to pay the costs." (Rollo, p. 8)

Appeal was timely made by the herein petitioner, City of Naga, to the Respondent Court of Appeals, docketed as CA-G.R. No. 32440. On July 30, 1973, the Respondent Honorable Court of Appeals, Special Sixth Division, promulgated a Decision affirming the judgment of the Court of First Instance (now Regional Trial Court) of Camarines Sur.

Hence, this petition, with the following assigned errors.

(A) THE RESPONDENT COURT OF APPEALS ERRED IN NULLIFYING THE TWO CONVEYANCES OF LAND IN FAVOR OF PETITIONER.

(B) RESPONDENT COURT OF APPEALS ERRED IN AWARDING DAMAGES AGAINST THE CITY OF NAGA (Rollo, p. 9).

We find the petition meritless.

Section 2068 of the Revised Administrative Code provides that,

"When the government of a province is a party to a deed or instrument conveying the title of real property, such deed or instrument shall be executed on behalf of the said Government by the Provincial Governor, upon resolution of the provincial board, and with the approval of the President." (Sec. 2068, Rev. Adm. Code)

Without the needed Presidential approval, it is evident that the conveyances were void. Note that up to now, said approval has not been obtained.

The respondent Court cannot likewise be faulted for awarding damages to the City of Naga, for the improvements it had introduced on the premises. To eliminate this award would certainly be less than fair. The damages can be set off against the rentals to be paid by the City.

In the Supplemental Petition filed in this Court after the filing of the Original Petition, petitioner raises two points: the termination of office of the private respondent as governor, and the transfer of the lots to the National Government. Since both points are factual in nature, and since the pleadings filed in the courts below do not refer to them. We cannot consider them now, since Our Court is not a trier of facts.

WHEREFORE, the petition and the supplemental petitions are both DENIED, for lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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