

CANUTO A. LIM, ET AL, PETITIONERS AND APPELLANTS, VS. TOMAS V. SABARRE, AS JUSTICE OF THE PEACE OF CALBIGA, SAMAR, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. L-22002. July 20, 1968*

Ponente: CONCEPCION, C. J.

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Direct appeal from an order of dismissal of the Court of First Instance of Samar.

Appellants Canuto A. Lim and Lorenza. Alcoy own two (2) fishing boats, of which their co-appellants[1] are crew members. Sometime in August, 1960, appellants were accused, in Criminal Cases Nos. 1778 and 1785 of the Justice of the Peace Court of Calbiga, Samar, of a violation of Municipal Ordinance No. 20 series of 1956, of said municipality, prohibiting trawl fish-ing. After entering a plea of not guilty, upon arraignment, appellants filed, on September 3, 1960, a motion to quash the complaints against them, on the ground that said ordinance had been disapproved by the Secretary of Agriculture and Natural Resources - hereinafter referred to as the Secretary - on March 12, 1957. As Justice of the Peace of Calbiga, herein appellee, Tomas V. Sabarre, denied said motion and then set the aforementioned cases for trial on March 25 and April 3, 1961, which trial was later postponed.

Subsequently, or on May 15, 1961, appellants commenced the present action, in the Court of First Instance of Samar - here-inafter referred to as the CFI - against respondent Sabarre, as well as against Ildefonso S. Abancio and Jose Latorre, as Municipal Mayor and Municipal Treasurer, respectively, of Calbiga, for a writ of prohibition and mandamus, with preliminary injunct-ion, to restrain the enforcement of said municipal ordinance, particularly the hearing of said Criminal Cases Nos. 1778 and 1785 to annul the ordinance aforementioned and compel respondent Sabarre to quash the complaints against appellants herein; to secure the refund of P800 allegedly collected from them by the municipal treasurer, upon the authority of said ordinance; and to recover damages.

In their answer to the complaint herein, Sabarre, Abancio and Latorre - hereinafter referred to collectively as respondents - admitted some allegations of said pleading, denied other allegations thereof, and alleged by way of affirmative defenses, inter alia: (1) that the complaint states no cause of action, and (2) that no notice in writing of the alleged disapproval of the ordinance in question by the Secretary had been given to the Municipal council of Calbiga.

When the case at bar was heard in the CFI, on July 23, 1963, appellants' counsel seems to have advanced the theory - as he did in a motion for reconsideration filed on August 15, 1963 - that respondent Sabarre had no jurisdiction to try said criminal cases, because the validity of a municipal ordinance was involved therein. In an order dated July 27, 1963, the CFI overruled this pretense and held that respondent Sabarre "should be afforded the opportunity to hear the criminal cases now before him and decide the same," even if the "legality or constitutionality" of said ordinance, were in issue therein; that appellants can appeal from the decision of respondent Sabarre; that, accordingly, they have a "plain, speedy and adequate remedy in the ordinary course of law"; and that the complaint in Case No. 4891 was "without merit", for which reason it was dismissed, with costs

against the appellants. A reconsideration of said order having been denied, appellants interposed the present appeal.

They maintain that the lower court erred: (1) in dismissing the complaint summarily, instead of hearing the case on the merits and giving the parties an opportunity to prove their contentions; (2) in not declaring that the Justice of the Peace and the Mayor had acted without or in excess of their jurisdiction or with grave abuse of discretion; and (3) in declaring that the right to appeal from a possible judgment of conviction by the Justice of the Peace is a plain, speedy and adequate remedy.

We find no merit in this appeal. It is well settled that a writ of prohibition will not issue, unless it appears that the party against whom it is sought has acted without or in excess of his jurisdiction or with grave abuse of discretion¹ that a writ of mandamus is not proper except to exact compliance with a clear legal duty and cannot be availed of to control the exercise of judgment, much less discretion² that, a motion to quash is addressed mainly to the court's discretion³ and that prohibition is not the proper remedy to review an order denying such motion.⁴ As a matter of fact, the general practice - which is sound - is either to deny the motion, or to defer its resolution until the case is decided on the merits, when the grounds relied upon are not indubitable.

In the case at bar, appellants' motion to quash the criminal complaints against them was based upon a premise that is not indubitable, namely, that the municipal ordinance they had allegedly violated was not in force, because the Secretary had disapproved it. Indeed, the Secretary's authority thereon is found in Section 4 of Act No. 4003, as amended, pursuant to which -

"All ordinances, rules or regulations pertaining to fishing or fisheries promulgated or enacted by provincial boards, municipal boards or councils or municipal district councils shall be submitted to the Secretary of Agriculture and Natural Resources for approval and shall have full force and effect unless notice in writing of its disapproval is communicated by the Secretary to the board or council concerned within 30 days after submission of the ordinance, rule or regulation."

Appellants have not even intimated the time when the ordinance in question was submitted to the Secretary. Besides, the ordinance was allegedly disapproved by him on March 12, 1957, or over five (5) months after its approval by the Municipal Mayor, on September 24, 1956. Again, there is no allegation that said disapproval had been communicated to the municipal council of Calbiga. What is more, respondents explicitly averred, in their answer to the complaint herein, that notice of the alleged disapproval of the ordinance had "never" been received by, either the Municipal Mayor, or the municipal council of Calbiga. In fact, appellants' contention is merely predicated upon hearsay, namely, an alleged letter of the Director of Fisheries, dated August 9, 1960, addressed to appellant Lim.

Under these circumstances, it is obvious that respondent Sabarre had not acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion in denying appellants' motion to quash said criminal complaints. Furthermore, he had no other choice in the matter - considering that appellants had not satisfactorily established their pretense - unless he deferred the resolution of said motion until the conclusion of the trial of the criminal cases and the same were submitted for decision on the merits. At any rate, said denial of the motion to quash does not bar appellants from trying to prove, at their trial, in said cases, that the ordinance has not acquired any force or effect whatsoever, on account of its alleged disapproval by the Secretary.

Appellants now seem to entertain the notion that the CFI should have proceeded to receive evidence on the question whether or not the ordinance had been disapproved in accordance with law. Such, however, is not the subject-matter of the present case, which is one merely for prohibition and mandamus. The only issue therein is whether respondent Sabarre had committed a grave abuse of discretion in denying the motion to quash. The

determination of this issue must, necessarily, depend upon the pleadings and the facts before said respondent, when he denied the motion. Consequently, the CFI did not err in dismissing the complaint herein.

WHEREFORE, the order appealed from is hereby affirmed, with costs against petitioners-appellants.

IT IS SO ORDERED.

Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

[1] Dionisio Cuazon, Francisco Rosario, Manuel Conde, Zoilo Lucero, Rodolfo Ibañez, Miguel Dumas, Aniano Albos, Nonilon Lamban, Alejo Salentes, Liberato Albesa, Raymundo Albesa, Pablito Gilbang, Federico Sayson, Antonio Lardes, Amado Conde, Juanita Aras, and Pablito Orlanda.

1 Rule 65, Section 2, Rules of Court.

2 Dy Cueco v. Secretary of Justice, L-18069, May 26, 1962; Padilla v. Zaldivar, L-22789, October 30, 1964; Hanlo v. Dimaporo, L-21905, March 31, 1966.

3 Assistant Fiscal of Bataan v. Dollete, L-12196, May 28, 1958.

4 Solidum v. Hernandez, L-16570, February 28, 1963.

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