

ILDEFONSA CORONADO, PETITIONER VS. HONORABLE BIENVENIDO A. TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, CATALINA ESTEBAN AND PELAGIO VICTORINO, RESPONDENTS.

G.R. No. L-6530. March 31, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

Statement.—Petition for certiorari to annul the two orders of the respondent judge of January 26 and 27, 1953 allowing the other respondent Catalina Esteban to operate the Makati-Jolo Ferry, and for mandamus to return to the petitioner the possession of the same ferry.

Facts.—The pleadings and their annexes disclose the following material facts:

- Pursuant to a lease contract properly executed, Catalina Esteban was the lessee and operator of the Makati-Jolo Ferry in the municipality of Makati, Rizal during the fiscal year July 1, 1951 to June 30, 1952;
- On September 15, 1952 the municipality advertized for bids for the operation of said ferry during the fiscal year October 1, 1952 to September 30, 1953;
- At the public bidding Ildefonso Coronado, the petitioner, offered the highest bid;
- Consequently, by authority of the council, the mayor formalized the corresponding lease contract with petitioner (marked Annex 6) which was ratified and approved by the council on October 19, 1952;
- Immediately thereafter and until January 26, 1953. the petitioner operated the aforesaid ferry in accordance with the terms of her lease contract;
- On January 22, 1953, the respondent Catalina Esteban, assisted by her husband Pelagio Victorino filed, in the court of first instance of Rizal, against herein petitioner and the mayor and councilors of Makati, Rizal, a complaint alleging that the lease contract Annex B was illegal and void, and requesting that her previous contract be declared subsisting. Catalina also prayed for a preliminary writ enjoining the aforesaid defendants from making use or enforcing the contract with Ildefonso Coronado;
- By his order of January 26, 1953 the respondent judge issued the writ as prayed for; and on the next day he amended such writ "to the effect that the plaintiff is allowed to operate the ferry service * * * during the pendency" of the case;
- After failing in a move to reconsider, the petitioner came to this Court with a petition, which, rejected at first for lack of supporting papers, was subsequently amended to meet procedural requirements;
- As requested in the amended petition, we issued a writ of preliminary injunction to prevent the execution of the complained of directives of the respondent judge.

Discussion.—It is not denied that the notice calling for bids on September 15, 1952 contained this essential

condition:

"That the fares per crossing to be collected shall not exceed the following:

For adult P0.05

For children 03

For every bicycle 08

For every head of pig, goat, etc..... .10

For every sack of rice, corn, camote, darak, etc..... .10,"

It is also admitted that the contract (Annex B) extended in favor of Ildefonza Coronado, after she had won the public bidding, contained in addition to the above quoted condition the special stipulation,

"Provided however that from 7:00 p.m. to 5:00 a.m. the Second Party (Ildefonza Coronado) may collect twice the amount of rates" (above itemized).

When the municipal council ratified the contract, it passed a resolution (No. 144) taking notice of the additional provision; but it explained it was prevailing custom since time immemorial of ferry concessionaries to charge such double rates for night work.

However, prosecuted later for falsification of public document—on account of such addition—the mayor of Makati and Ildefonza Coronado were convicted after trial, by the Honorable Bienvenido Tan, who branded the resolution No. 144 as "of doubtful creation" and expressed the opinion that it could not legalize an act illegal per se. The conviction has been appealed to the Court of Appeals, where it is presently pending.

In issuing the preliminary mandatory injunction commanding petitioner to desist from operating the ferry and placing Catalina Esteban in possession thereof, the respondent judge obviously acted upon the strength of two legal propositions, to wit: (a) by reason of the falsification, the contract of lease in favor of petitioner became null and void and (b) Catalina Esteban has a valid contract of lease, which must be enforced.

As to the first, it appears that in the criminal case for falsification the defense was that the insertion or addition merely expressed a well-known practice of concessionaries, and that the municipal council had approved it. The judge did not need such defense, being of the opinion that the council had no power to approve the "amendment". Without in any way reviewing the criminal case, we can appreciate the argument of defense that such circumstances belie any criminal intent of the accused. Perhaps it is also plausible to contend on behalf of Ildefonza Coronado that even if there was falsification by the insertion of additional provisions, such insertion did not avoid the whole contract; only the additional stipulation may be disregarded. Wherefore, the least that may be said on the first legal proposition is that it is a fair subject of debate that should be decided after the hearing of the case on the merits.

The second proposition is still more debatable. Catalina's contract expressly referred to the year 1951-1952. It is true she alleged that the Mayor had agreed to renew it for another year. But the Mayor has no authority to grant such extension; and she knows it, because notwithstanding such alleged renewal, she participated in the bidding, in which Ildefonza turned out to be the highest bidder.

It may therefore be concluded that the issuance of the preliminary writ by the respondent judge rested upon two debatable legal propositions. And considering your doctrines,

"The writ of injunction is not, as a general rule, proper where its purposes is to take property out of the possession

or control of one person and place the same in the hands of another, whose title has not been clearly established." (Asombra vs. Dorado-36 Phil., 883; Wagan vs. Sideco 60 Phil., 685 and many cases. See Moran, Rules of Court 1952 ed. Vol. 2 p. 70)

"Since an injunction mandatory in nature usually tends to do more than to maintain the status quo, it is generally improper to issue such an injunction prior to the final hearing except in cases of extreme urgency or where the right is very clear" (Manila Electric Co. vs. Del Rosario 22 Phil., 433; Eusebio vs. Aguas 47 Phil., 567.)

Judgment. We must declare that the issuance in the lower court of the mandatory injunction herein discussed was improper and constituted an abuse of discretion.

Wherefore, the petition is granted,, with costs against respondents Catalina Esteban and Pelagio Victorino. So ordered.

Paras, C.J., Pablo, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Petition granted.

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