

THE MUNICIPALITY OF SOGOD, PETITIONER, VS. HON. AVELINO S. ROSAL, AS JUDGE OF THE COURT OF FIRST INSTANCE OF SOUTHERN LEYTE, BRANCH III, THE PROVINCIAL BOARD OF SOUTHERN LEYTE, ...

G.R. Nos. L-38204 & L-38205. September 24, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This refers to two (2) petitions for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the assailed orders of respondent judge which dismissed the complaints filed with the trial court, as having been issued with grave abuse of discretion, and to order the same respondent to assume jurisdiction and proceed with the determination of the cases on the merits.

The antecedent facts of each case are as follows:

G.R. No. 38204

On June 15, 1950, Congress passed Republic Act No. 522 creating the municipality of Bontoc, formerly a barrio of the municipality of Sogod in the province of Leyte, which shall be composed of the barrios of Bontoc Divisoria, Pacu, Beniton, Catmon, Hilaan, Taa, Sta. Cruz, Mahayahay and their corresponding sitios.

A boundary dispute however, later arose between the municipality of Bontoc and the municipality of Sogod with the latter claiming that the former exercised jurisdiction not only over the barrios above-mentioned but also over other ten (10) barrios allegedly belonging to Sogod.

On June 17, 1952, the Provincial Board of Leyte issued Resolution No. 617 directing the holding of a plebiscite among the barrios of Pangi, Taa part of Sta. Cruz, Tuburan, Lawgawan and their corresponding sitios. The purpose of the plebiscite is to determine whether the people in these barrios would like to remain with the municipality of Sogod or with Bontoc. The plebiscite was conducted on August 1, 1952, and the results thereof show that more votes were cast in favor of Sogod than those in favor of Bontoc.

On April 4, 1959, the Provincial Board of Leyte issued Resolution No. 519 recommending to the President of the Philippines and/or to the Congress of the Philippines that Republic Act 522 be amended so as to include in said Act creating the municipality of Bontoc, the following barrios claimed by Sogod which are in the heart of Bontoc but not included in said law, namely: Baugo, Hithakilo, Esperanza, Hibagwan, Pamahawan, Mahayahay, Bunga, Da-o and Maoylab. The Board also recommended that a law be enacted annexing to the municipality of Sogod the following barrios which are very near Sogod and are claimed by the latter but are included in the law creating Bontoc, namely: Laogawan, Ta-a, Tuburan, Sta. Cruz and Pangi. The board further recommended that the boundary line between the two municipalities be placed at Granada Creek.

On December 28, 1959, Carlos P. Garcia, then President of the Philippines, promulgated Executive Order No.

368, which approved the recommendation of the provincial board of Leyte, and reconstituted the barrios and sitios which shall compose the municipalities of Bontoc and Sogod. The executive order also specified Granada Creek as the boundary line separating Bontoc and Sogod.

However, on July 14, 1960, the President of the Philippines, thru then Executive Secretary Castillo sent a telegram to the Provincial Board of Southern Leyte which states as follows:

"BY DIRECTION OF PRESIDENT PLEASE SUSPEND IMPLEMENTATION OF EXECUTIVE ORDER 368 SERIES 1959 RECONSTITUTION (sic) BARRIOS AND SITIOS TO COMPOSE MUNICIPALITIES OF SOGOD AND BONTOC AND READJUSTING TERRITORIES SAID MUNICIPALITIES UNTIL FURTHER ADVISE STOP TO DETERMINE TRUE WISHES OF INHABITANTS PLEASE SUPERVISE HOLDING OF PLEBISCITE IN BARRIO AND SITIOS AFFECTED ADVISING THIS OFFICE IMMEDIATELY OF RESULT.

SEC. CASTILLO" (p. 20, Rollo)

On July 18, 1960, the Provincial Board of Southern Leyte passed Resolution No. 62 suspending the implementation of Executive Order 368. The Board also created a committee to conduct the holding of a plebiscite in the barrios and sitios affected by Executive Order 368 and to finally settle the boundary dispute.

On June 24, 1970, the municipality of Sogod filed Civil Case No. R-1706 for certiorari and prohibition with the Court of First Instance of Southern Leyte (now Regional Trial Court), to enjoin the provincial board and provincial governor from taking cognizance of the long pending boundary dispute between the two municipalities and to enjoin the municipality of Bontoc from exercising territorial jurisdiction over the barrios of Pangi, Taa, Casao, Sta. Cruz, Tuburan and Laogawan all allegedly belonging to the municipality of Sogod.

On August 31, 1973, the trial court dismissed the action for lack of jurisdiction over the subject matter of the case. On December 17, 1973, the trial court denied petitioner's motion for reconsideration.

Hence, this petition was filed alleging that the respondent judge acted with grave abuse of discretion in dismissing the case.

G.R. No. 38205

On December 7, 1970, the municipality of Sogod filed Civil Case No. R-1707 with the Court of First Instance of Southern Leyte (now Regional Trial Court) for recovery of taxes with receivership against the municipality of Bontoc. The complaint alleged that the municipality of Bontoc, without any legal basis, exercised jurisdiction not only over the barrios enumerated in Republic Act No. 522 but also over ten (10) barrios belonging to the complainant municipality of Sogod. The complaint prayed that the municipality of Bontoc be ordered to pay Sogod one-half of the total amount of taxes collected by the former from the inhabitants of the aforesaid barrios during the period from 1950 to 1959.

On August 31, 1973, the trial court issued an order dismissing Civil Case No. R-1707 on the ground that the right to collect taxes would ultimately depend on Civil Case No. R-1706, which was already dismissed for lack of jurisdiction and that the issue as to boundary dispute have not yet been decided in a plebiscite for that purpose.

Hence this petition for certiorari under Rule 65 seeking to annul the above order of the judge.

The common issue to be resolved in these petitions is whether or not the trial court gravely erred in dismissing the two cases for lack of jurisdiction.

Jurisdiction has been defined as the power and authority to hear and determine a cause or the right to act in a case (Herrera v. Barretto and Joaquin, 25 Phil. 245; Conchada v. Director of Prisons, 31 Phil. 4). Jurisdiction is

conferred only by the Constitution or by law. It cannot be fixed by the will of the parties nor can it be acquired or diminished by any act of the parties. In determining whether a case lies within or outside the jurisdiction of a court, reference to the applicable statute on the matter is indispensable. It is a settled rule that jurisdiction of a court is determined by the statute in force at the time of commencement of action (*Tolentino v. Social Security Commission*, L-28870, September 6, 1985, 138 SCRA 428; *Lee v. Municipal Trial Court of Legaspi City Br. I*, No. 68789, November 10, 1986, 145 SCRA 408; *Dela Cruz v. Moya*, No. 65192, April 27, 1988, 160 SCRA 838).

At the time the civil actions were filed with the trial court by petitioner municipality in 1970, the applicable laws necessary for the determination of the question of whether the trial court has the authority to decide on the municipal boundary dispute are the following: 1) Republic Act No. 522, creating the municipality of Bontoc; 2) Republic Act No. 3590, the Revised Barrio Charter, revising Republic Act No. 2370; and 3) Section 2167 of the Revised Administrative Code of 1917.

Republic Act No. 522 defines the jurisdiction of the municipality of Bontoc. It clearly enumerates the barrios which shall compose the municipality of Bontoc, to wit: Bontoc, Divisoria, Onion, Pacu, Beniton, Catmon, Hilaan, Taa, Sta. Cruz, Mahayahay and their corresponding sitios. This means that all the other barrios in Southern Leyte which are not included in the law creating the municipality of Bontoc are deemed to remain under the jurisdiction of the municipality of Sogod. Although the said law is clear as to which territories shall belong to each municipality, the law is silent however, as to the specifications of the boundary line which will separate the two municipalities.

With the passage of Republic Act No. 2370 which took effect on January 1, 1960 as revised by Republic Act No. 3590 on June 22, 1963, known as the Revised Barrio Charter, barrios may be created and their boundaries altered only by Act of Congress or by the corresponding provincial board upon petition of the majority of the voters in the area affected and the recommendation of the municipality in which the proposed barrios are situated. Thus, the provincial board was empowered under the said law to determine and alter boundaries of municipalities and barrios.

Further, the law then vested the right to settle boundary disputes between municipalities on the provincial board pursuant to Section 2167 of the Revised Administrative Code, which reads:

“SEC. 2167. Municipal boundary disputes. — How settled. — Disputes as to jurisdiction of municipal governments over places or barrios shall be decided by the provincial boards of the provinces in which such municipalities are situated, after an investigation at which the municipalities concerned shall be duly heard. From the decision of the provincial board appeal may be taken by the municipality aggrieved to the Secretary of the Interior (now the Office of the Executive Secretary), whose decision shall be final. Where the places or barrios in dispute are claimed by municipalities situated in different provinces, the provincial boards of the provinces concerned shall come to an agreement if possible, but, in the event of their failing to agree, an appeal shall be had to the Secretary of Interior (Executive Secretary), whose decision shall be final.” (*Municipality of Hinabañgan v. Municipality of Wright*, 107 Phil. 394).

It is clear from the aforestated legal provision that the authority to hear and resolve municipal boundary disputes belongs to the provincial boards and not to the trial courts. The decisions of the boards are then appealable to the Executive Secretary. Records in the instant case show that when petitioner municipality filed the civil actions in 1970 before the trial court, the provincial board of Southern Leyte had not yet conducted a plebiscite as ordered by the Executive Department in 1960 or rendered any order settling the dispute. Petitioner municipality should have elevated the matter of delay to the then Secretary of Interior (now Executive Secretary) for action instead of bringing it to the trial court. Although existing laws then vested on the provincial board the power to determine or even alter municipal boundaries, the Secretary of Interior or the Executive Department for that matter, was not

precluded during that time from taking necessary steps for the speedy settlement of the boundary dispute. In *Pelaez v. Auditor General*, No. L-23825, December 24, 1965, 15 SCRA 569, which applied Republic Act No. 2370, known as the Barrio Charter, We held that the power to fix common boundaries in order to avoid or settle conflicts of jurisdiction between adjoining municipalities may also partake of an administrative nature that can be decided by the administrative department, involving as it does, the adoption of means and ways to carry into effect the laws creating said municipalities.

Considering the foregoing, We find that the trial court acted correctly in dismissing the cases for want of jurisdiction and in allowing the provincial board to continue with the pending investigation and proceedings on the boundary dispute.

It is worthy to note however, that up to this time, the controversy between these two municipalities has not been settled. However, this dispute has already been overtaken by events, namely, the enactment of the 1987 Constitution and the New Local Government Code on February 10, 1983, which imposed new mandatory requirements and procedures on the fixing of boundaries between municipalities. The 1987 Constitution now mandates that no province, city, municipality or barangay may be created, divided, merged, abolished or its boundary substantially altered except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. Hence, any alteration or modification of the boundaries of the municipalities shall only be by a law to be enacted by Congress subject to the approval by a majority of the votes cast in a plebiscite in the barrios affected (Section 134, Local Government Code). Thus, under present laws, the function of the provincial board to fix the municipal boundaries are now strictly limited to the factual determination of the boundary lines between municipalities, to be specified by natural boundaries or by metes and bounds in accordance with the laws creating said municipalities.

In view of the length of time that this municipal boundary dispute had remained unresolved, due to the possibility that Republic Act No. 522 has lost its practicability or has become obsolete considering the geographical location of barrios in Southern Leyte, especially those enumerated in Republic Act No. 522, which apparently, are much nearer to Sogod than to Bontoc, this Court finds that this matter should be referred to the Congress of the Philippines for whatever legislative action that may be necessary under the circumstances.

ACCORDINGLY, the petitions are DISMISSED. The assailed orders of the respondent judge dated August 31, 1973 and December 17, 1973 in G.R. No. L-38204 and orders dated August 31, 1973 and December 17, 1973 in G.R. No. L-38205 are AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Griño-Aquino, JJ., concur.

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