

THE MUNICIPALITY OF PASACAO, PETITIONER-APPELLANT, VS. THE PROVINCIAL BOARD OF CAMARINES SUR AND THE MUNICIPALITY OF LIBMANAN, RESPONDENTS-APPELLANTS.

G.R. No. L-21788. August 28, 1969

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The municipalities of Pasacao and Libmanan, both of the province of Camarines Sur, are situated along the Ragay Gulf. At the coastal barrio of Tinalmud they are separated by a river, which also divides their respective marine waters from which they derive income by leasing the same to fishing concessionaires. Sometime in 1952 a dispute arose between them when the municipality of Libmanan began claiming a certain portion of the marine waters allegedly belonging to the municipality of Pasacao. They agreed to refer the dispute to the Provincial Board of Camarines Sur for decision. The Board in turn referred the matter to a commissioner for investigation and after the commissioner submitted his report dated January 2, 1953, the Board, on February 13, 1954, approved Resolution No. 57 awarding the disputed area to the Municipality of Libmanan.

On April 5, 1954 the municipality of Libmanan filed an ordinary civil action (Civil Case No. 2631) against the municipality of Pasacao in the Court of First Instance of Camarines Sur for recovery of possession of the municipal waters awarded to the former by virtue of Resolution No. 57. On March 21, 1961, while the said action was still pending trial, the municipality of Pasacao instituted its own proceeding - a petition for certiorari against the municipality of Libmanan and the Provincial Board of Camarines Sur for the annulment of Resolution No. 57, alleging that the same had been enacted by the Board with grave abuse of discretion because: (1) the petitioner was not informed of the report of the commissioner who had been directed to investigate the dispute between the two municipalities nor given a hearing thereon before the resolution was passed; (2) the resolution did not have the concurrence of the Provincial Governor, but only of the two members of the Provincial Board; and (3) the report of the Commissioner was actually in favor of the petitioner.

The respondents respectively answered the petition but the municipality of Libmanan subsequently filed a motion to dismiss, which was granted by the trial court in an order issued on January 10, 1963. The herein petitioner moved to reconsider the order of dismissal, and after the motion was denied elevated the case to us on appeal.

The order appealed from must be sustained. The parties are agreed that the law which governs the dispute between the two municipalities is Section 2167 of the Revised Administrative Code, which provides:

"Section 2167. - Municipal boundary dispute - 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 Interior (now Office of the Executive Secretary), whose decision shall be final. x x x "

The circumstance that the Provincial Board enacted the questioned resolution without first informing the

petitioner of the commissioner's report was not a grave abuse of discretion, as pointed out by the trial court, but a mere irregularity which could have been a ground to ask the Board to reconsider its action, and if turned down, to appeal to the proper authority. The fact is that when the respondent municipality filed Civil Case No. 2631 on April 5, 1954, less than two months after the approval of Resolution No. 57, the petitioner came to know of its existence, since it was alleged in the complaint as the ground for the right of possession sought to be enforced; and subsequently, in May 1955, a copy of said resolution was presented in evidence. Even then, therefore, the petitioner should have taken the necessary steps to elevate the matter on appeal to the office of the President, pursuant to Section 2167 of the Revised Administrative Code. Or if the petitioner believed that its remedy lay in asking for the annulment of the resolution, it should have filed the corresponding action for that purpose at the time, or put up the alleged nullity as a defense in the action itself filed by the respondent municipality for recovery of possession. Certiorari is not a proper substitute for appeal, or for an action or defense which is available, since it is justified only when there is no plain, speedy and adequate remedy in the ordinary course of law. And when, as in this case, the petition for certiorari was not filed until after the lapse of more than six years from the time the question should have been brought up, laches would constitute an additional obstacle to the proceeding.

The contention that the challenged resolution is null and void because it did not have the concurrence of the Provincial Governor does not deserve serious consideration. It appears that when the resolution was approved the said official was absent on official business, and one of the two Board members acted in his place as presiding officer in the session held for the purpose. The fact that the Governor did not thereafter question the authority of the said Board member to preside was in effect a ratification of the action taken. The petitioner has not cited any law to support the suggestion that whenever the Provincial Governor is absent the Provincial Board is rendered powerless to carry on its corporate functions.

The last argument of the petitioner is that the Provincial Board did not follow the recommendation of the Commissioner whom it had empowered to investigate the dispute. This, however, is beside the point, because the decision was in the hands of the Board, subject only to appeal to the office of the President, and the issue in this case is one of power or authority, not the correctness of the decision actually rendered and embodied in Resolution No. 57.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Concepcion, C.J., Dizon, Sanchez, Castro, Fernando, Capistrano, Teehankee and Barredo, JJ., concur.
Reyes and Zaldivar, JJ., are on leave.

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