

PEDRO O. CASIMIRO, PLAINTIFF AND APPELLANT, VS. LEON EOQUE AND ERNESTO GONZALES, DEFENDANTS AND APPELLEES.*G.R. No. L-7643. April 27, 1956*

Ponente: MONTEMAYOR, J.

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Plaintiff Pedro O. Casimiro is appealing from the decision of the Court of First Instance of Rizal dated January 22, 1954, dismissing his petition and ordering him to pay to defendant Leon Eoque the suras of P500 as damages and , P1.500 as attorney's fees. Involving only questions of law, the appeal was taken directly to us. The facts in the case are the following.

Since November, 1953, defendant Rogue had been operating a cockpit known as the grace park cockpit on 3rd Avenue, Grace Park, Caloocan, Rizal under the authority of Ordinance No. 6, series of 1953, of the Municipality of Caloocan, which authorizes among others the operation of cockpits within said municipality beyond a distance of 250 lineal meters from any city, municipal or provincial building, public plazas, schools, churches, etc. Claiming that Ordinance No, 6 was illegal and void for being in conflict with the provisions of Presidential Executive Order No. 318, series of 1941 which prohibits the operation of cockpits within a radius of 1,00.0 lineal meters from any of the public places and buildings above-mentioned; that as a matter of fact the Office of the President of the Philippines had ordered the Provincial Treasurer of Rizal to stop the operation of the Grace Park. Cockpit; and that although defendant Rogue had received the corresponding notification from the Provincial Treasurer, nevertheless, he continued operating his cockpit, plaintiff, Casimiro filed the petition which initiated the present proceedings to have the court declare Ordinance No. 6, series of 1953 null and void, and that Rogue be perpetually enjoined from operating his cockpit.

Acting upon the prayer in the petition for, the issuance of a writ of preliminary injunction, the trial court issued an order to defendant Roque and the municipal authorities concerned to stop the operation of the cockpit in question upon the filing of a bond in the amount of P2,000. Subsequently, this writ of preliminary injunction was dissolved upon the filing of a counterbond of f2,000 by the defendant.

In his amended answer defendant claimed that the cockpit was being operated lawfully and in compliance with the requirements of municipal ordinance No, 6; that the said ordinance is legal and valid; that Presidential Executive Order No. 318 on the other hand, is null and void and Commonwealth Act No. 601 approved on August 19, 1940, under whose authority the Presidential Executive Order No. 318 was issued, is unconstitutional; and that plaintiff has no personality to institute the present action, he, not being a party in interest.

The petition was originally brought against Leon Roque as alleged concessionaire of the cockpit and Ernesto Gonzales as alleged owner of the location of said cockpit. However, by agreement of the parties, Ernesto Gonzales was eliminated as party-defendant. After agreeing to certain facts of minor importance counsels for both parties expressed their willingness to submit the case for final, decision by the trial court on the pleadings under such agreement after filing their respective memoranda. Judge Bienvenido A. Tan, presiding over the trial court,

deciding the case found that the cockpit in question was being operated legally and in accordance with' the requirements of Ordinance No. 6,; that defendant Roque was expressly authorized by municipal resolution to operate the said cockpit under the said Ordinance until the latter is duly disapproved by the Provincial Board, by the court or by order of competent authorities, and that the corresponding permit for the operation of the cockpit had been duly issued. The trial court also held that Municipal Ordinance, No. 6 prescribing an area of 250 lineal meters was legal and valid because it was enacted by the Municipal Council by virtue of its delegated powers conferred upon it by section 2243- (i) of the Revised Administrative Code authorizing municipal councils "to regulate' cockpits, cock- fighting; and the 'keeping or training of fighting cocks Or prohibit either."

From the record we gather that the municipal ordinance in question,was subsequently disapproved by the Provincial Board of Rizal. The trial court,. however, held, citing judicial authorities, that the Provincial Board has no' authority to disapprove municipal ordinances enacted by municipal councils in the exercise of their delegated powers merely on grounds of unreasonableness or unconstitutionality or against, public policy, and that provincial boards may disapprove a municipal ordinance only on one ground, namely, when it is enacted beyond the powers granted upon it by its charter. The trial court equally held that Commonwealth Act No- 601 on the strength of which Presidential Executive Order No. 318 was issued,'conferring as it does "upon the President complete, absolute and unlimited power to promulgate regulations governing the establishment and operation.of places of amusements, including cockpits" "makes an unconditional surrender of legislative powers unto the Executive without any limitation whatsoever" and so is unconstitutional and, consequently, Presidential Executive Order No. 318 must be held to be inoperative for the reason that the power or authority from which it emanates is 'invalid. The trial court added that assuming that Commonwealth Act No. 601 is not unconstitutional, nevertheless, Presidential Executive Order No. 318 is invalid for being unreasonable, oppressive and prohibitive for the reason that if the restriction of 1,000 lineal meters prescribed in it were to be enforced, it would be tantamount to prohibiting the establishment of cockpits in many municipalities and will, operate to remove from municipal councils the power to' regulate amusement places and deprive them of a good source of income.

Lastly, the trial court held that the plaintiff, has no personality to sue in this case, because there is no showing that the result of this action will affect said plaintiff one way or another. It said:

"There is no showing upon the complaint that the plaintiff is a cockpit operator anywhere in the Municipality of Caloocan which might be affected by the operation of the cockpit' in question; there is no showing that the result of this action will affect him personally or his interest; there is no showing that the result of this action will affect him one way or another. As a matter of fact, plaintiff is not even a resident of the Municipality of Caloocan."

For the reasons and findings above mentioned, as already stated, the trial court dismissed the petition and ordered plaintiff to pay to defendant P500 as damages and P1,500 as attorney's fees.

Inasmuch as we find the question of the personality of plaintiff squarely raised in the appeal to be decisive,' we propose to limit our discussion and consideration of the appeal to this issue, deeming it unnecessary to pass upon the other legal points raised in the assignment of errors. As correctly held by the trial court, the petition of the plaintiff does not show that he is an operator of a cockpit in the Municipality of Caloocan, which might be affected by the continued operation of the cockpit of defendant Roque. It is true that in his petition, plaintiff in paragraph 10 alleges that he applied for a similar permit to operate a cockpit under said Ordinance No. 6 but was denied the same on the ground that said Ordinance was illegal and void and the place where plaintiff planned to operate it was within the distance prohibited by Executive Order No. 318. The petition did not specify before what office or entity he made his application for a permit to operate a cockpit. However, in his motion for reconsideration of the decision, he explained that he made such application with the office of the President of the

Philippines, and that it was denied because it violated the provisions of Presidential Executive Order No. 318, particularly the portion thereof regarding the restrictive area or distance of 1,000 lineal meters, and that in connection with said denial, when the Office of the president was informed of the promulgation of Ordinance No. 6 of Caloocan, and the operation of the Grace Park Cockpit by defendant Roque, the Executive Secretary directed the closure of said cockpit, at, the same time expressing the opinion that Ordinance No. 6 was void as violating the provisions of Presidential Executive Order No. 318.

To show that he is a party in interest, plaintiff in his motion for new trial for the first time claimed that he is a partner of the partnership denominated "GUISON, CASIMIRO and JOSE" duly registered in the Securities and Exchange Commission on December 29, 1950; that the partnership maintains and operates a cockpit in the barrio of La Loma, Quezon City, "which, although not within the territorial limits of Caloocan, is in competition with and rival in business of the cockpit of the defendant." Defendant correctly objected to the motion for new trial in order to introduce this supposedly newly discovered evidence of partnership, and the trial court properly denied said motion because plaintiff had this evidence all along which he should have introduced during the regular hearing to establish his legal interest in the case. Furthermore, even considering this new evidence, and assuming for a moment that although the cockpit being operated by the partnership of which the plaintiff is a partner is outside the town of Caloocan where the Grace Park Cockpit was being operated by the defendant, nevertheless there would be competition which would affect the financial interests of the partnership, then it should be the partnership and not plaintiff as a mere partner that was the real party in interest, and the petition in this case should have been filed in its name. Moreover, if as claimed by plaintiff the Office of the President itself had directed the closure of the Grace Park Cockpit for operating against the provisions of Presidential Executive Order No. 318, then the remedy now sought by plaintiff could well be obtained in the Executive Department instead of the courts.

For the information of the parties herein, particularly plaintiff-appellant, it may not be out of place to invite their attention to our decision in a similar case—Rodriguez and Rodriguez vs. Sotero Baluyot, et al. (97 Phil., 420) promulgated August 11, 1955, particularly the following portion thereof:

"Commonwealth Act No. 601 prohibited the licensing' of certain places of amusement except in accordance with rules? and regulations to be promulgated by the President of the Philippines. On the authority of this Act, the President promulgated Executive Order No. 327, series of 1941, prohibiting the maintenance or operation of bowling alleys within a radius of 200 lineal meters from certain public places, among; them, public parks and institutions of learning. But on May 21, 1954, Republic Act No. 979 was approved, placing in the hands of municipal councils the power of regulating bowling alleys and billiard pools within their respective' territorial jurisdictions, but providing that they were not to be established within a radius of 50Q lineal meters 'from any public building, schools, hospitals and churches.' As the exercise of the regulatory power granted to the President by Commonwealth Act No- 601 is inconsistent "with the exercise of that same power by the municipal councils as authorized by Republic Act No. 979, th? former enactment (along with the executive orders issued thereunder) must be deemed repealed by section 2 of the later Act, which provides that 'any law, executive order or parts thereof inconsistent with, the provisions of this Act are hereby repealed.' "

And on May 17, 1955, Republic Act No. 1224 was approved amending Republic Act No. 979, section 1 of which reads in part:

"Section 1 The municipal 'or city hoard or council of each chartered city and the municipal council of each municipality and municipal district shall have the power to, regulate or prohibit by ordinance the establishment, maintenance and operation of night clubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billiard pools, and other similar places of amusement within its territorial jurisdiction: Provided, however, That no such places of amusement mentioned herein shall be established, maintained,

and/or operated within a radius of two hundred lineal meters in the case of night clubs, cabarets, pavilions, or other similar places, and fifty lineal meters in the case of dancing schools, bars, saloons, billiard pools, bowling alleys, or other similar places, except cockpits, , the distance of which shall be left to the discretion of the municipal or city board or council, from any public building, schools, hospitals and churches: " *, " (Italics supplied)

The relevancy of or effect of the above quotations, if any, on the parties, the latter will decide for themselves.

In view of the foregoing, we affirm the decision appealed from in so far as it dismisses the petition on the ground that plaintiff has no personality to sue, not being a real party in interest and in so far? as it orders plaintiff to pay to defendant P500 as damages and P1.500 as attorney's fees. With costs.

Paras, C. J., Bengzon, Reyes, A., Jugo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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