

THE MUNICIPALITY OF SAN MIGUEL, PROVINCE OF LEYTE, PETITIONER AND APPELLANT, VS. THE PROVINCIAL BOARD OF LEYTE AND THE MUNICIPALITY OF ALANGALANG, PROVINCE OF LEYTE, RESPONDENTS...

G. R .No. 41131. August 09, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

Sometime before the year 1909 the municipalities of San Miguel and Alangalang of the Province of Leyte were consolidated. In 1909 the Governor-General by executive order No. 81 ordered the separation of these two municipalities. That order provided that the municipality of Alangalang should be composed of its actual territory less the territory of the former municipality of San Miguel and that the municipality of San Miguel should be reestablished with its former territory. A dispute arose as to the jurisdiction over four barrios, Cabadsan, Lucay, Garang (now Borseth) and Gibucawan. The municipality of San Miguel claimed that these barrios were within its former jurisdiction and the municipality of Alangalang claimed that they belonged to the jurisdiction of that municipality. On November 23, 1914, the provincial board of Leyte settled this dispute by adjudicating the abovementioned barrios to the municipality of Alangalang by its resolution No. 928. This action of the board was taken by virtue of Act No. 82, as amended by section 1 of Act No. 344. Neither of these acts provided for an appeal from the decision of the provincial board in such cases. On August 31, 1932, the municipality of San Miguel filed this certiorari proceeding against the provincial board of Leyte and the municipality of Alangalang before the Court of First Instance of that province and prayed:

"1. Que decrete la expedicion de un mandamiento de certiorari ordenando a la Junta Provincial recurrida para que eleve a este Juzgado testimonio del expediente del asunto ante dicha Junta en 1914 por el recurrente contra el municipio recurrido sobre los barrios en cuestion, para su revision por este Juzgado.

"2. Que se ordene al Municipio de Alangalang, Leyte, sus funcionarios, agentes y abogados para que pendiente la resolution de este juicio se abstengan en absoluto de ejercer jurisdiccion sobre dichos barrios.

"3. Que previa la tramitacion correspondiente se dicte sentencia declarando nula y sin ningun valor ni efecto la resolution No. 928, serie de 1914, de la Junta Provincial recurrida dictada en dicho asunto y prohibiendo al propio tiempo a perpetuidad al municipio recurrido a que continuara ejerciendo jurisdiccion sobre los referidos1 barrios, con las costas de este juicio a cargo de los recurridos."

The provincial fiscal of that province in representation of the respondent province and municipality filed a demurrer in which he alleged:

"1. Que el tribunal no tiene jurisdiccion sobre la materia litigiosa;

"2. Que los hechos alegados en la demanda no son constitutivos de derecho de accion; y

"3. Que el remedio solicitado es improcedente."

The trial court sustained this demurrer and allowed the petitioner ten days within which to amend its petition. As the petition was not amended within that time, the trial court dismissed this case and the municipality of San Miguel appealed from that order.

It will be noted that this certiorari proceeding was filed before the Court of First Instance of Leyte eighteen years after the provincial board of that province adjudicated the barrios in question to the municipality of Alangalang. In view of this, it is not necessary to go into the merits of this case.

Eighteen years after the provincial board of Leyte adjudicated the barrios in question to the municipality of Alangalang is1 certainly not a reasonable time within which to file an application for a writ of certiorari.

In the case of Cortes vs. Court of First Instance of Capiz (52 Phil, 214, 215), in which a writ of mandamus was applied for nearly two years after the decision in question in that case was handed down by the trial court, this court dismissed the petition and held:

"* * * Without deciding what would constitute an application within a reasonable time after the refusal of a trial judge to sign the bill of exceptions, it is apparent that the delay in ordinary cases should not be more than the longest period allowed in the lower court for the party to take action, which is thirty days. It is well settled that laches in making an application for the writ of mandamus affords sufficient cause for its denial. * * *"

In the case of Po Sun Tun vs. Mapa (59 Phil., 459), this court held:

"Furthermore, we find that said petitioner had incurred in an unreasonable delay by his failure to file this petition sooner and to take any step to that effect more than four months from the issuance of the latter order and more than eight months from the promulgation of the former, without any justifiable cause whatsoever."

In that case the petition for a writ of certiorari was dismissed.

"In the absence of special statutory provisions it is well settled that before the court will grant the writ it must appear not only that the inferior tribunal has committed some error of law, but also that the error has caused substantial harm, and that the petitioner has been guilty of no laches in seeking his remedy." (5 R. C. L. 255.)

The order of the trial court denying the writ of certiorari is affirmed without costs.

Malcolm, Villa-Real, Imperial, and Butte, JJ., concur.

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