

**SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS,
SECRETARY OF FINANCE, AND EXECUTIVE SECRETARY,
PETITIONERS, VS. HON. BIENVENIDO TAN, JUDGE OF THE COURT OF
FIRST INSTANCE OF RIZAL,...**

G.R. No. L-5987. November 25, 1953

Ponente: JUGO, J.

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JUGO, J.:

The Marikina Toll Bridge was constructed under the provisions of Act No. 3500. The pertinent provisions of said Act are as follows:

"SECTION 1. The sum of five million pesos is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated, to constitute a revolving fund for the construction of permanent bridges on interprovincial or intercoastal roads in the Philippines, which shall be expended under the supervision of the Secretary of Commerce and Communications. Said bridges shall be declared toll bridges for a period not exceeding fifteen years and tolls shall be collected from all traffic using such bridges in accordance with rates to be fixed by a board composed of the Secretary of Commerce and Communications as chairman, the Secretary of Finance, and the Insular Auditor, as members: Provided, however, That no toll charges shall be collected from pedestrians.

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"SEC. 4. When the total cost of a bridge, plus interest of four per centum per annum, is fully recovered, the board created in section one of this Act shall so certify to the Governor-General who, by means of an Executive Order, shall turn over the bridge to the provincial board concerned and order the collection of tolls to be discontinued. The cost of maintaining bridges financed under the provisions hereof shall be charged to the road and bridge fund of the province in which said bridges are situated."

On March 4, 1952, Narciso G. Isidro filed a complaint in the Court of First Instance of Rizal against the petitioners herein, the Secretary of Public Works and Communications, the Secretary of Finance and the Executive Secretary, and the Provincial Treasurer and the District Engineer of Rizal, alleging, among other things, that he is an operator of several buses with proper certificates of public convenience which pass over said bridge in their trips from Manila to Marikina and vice versa, and that the defendants (petitioners herein), have been collecting tolls for the use of said bridge; that the period of fifteen years had passed since the construction of said bridge and that the cost of the same plus 4 per cent interest per annum had been fully recovered from the tolls collected up to the filing of the complaint, and praying that a writ of preliminary injunction be issued restraining the defendants from continuing the collection of tolls, and that an order be issued requiring the defendants to certify to the President of the Philippines that the cost of the construction of said bridge had been fully recovered from the tolls collected. The Provincial Board of Rizal as an interested party filed a complaint in intervention, making substantially the same allegations and the same prayer as Narciso G. Isidro.

The Secretary of Public Works and Communications, the Secretary of Finance and the Executive Secretary filed an answer in the Court of First Instance alleging in substance that the money borrowed from the Agricultural and Industrial Bank for the construction of said bridge had not yet been fully paid.

The respondent Court of First Instance issued the writ of preliminary injunction prayed for in the complaint of Isidro, restraining the defendants, their representatives etc., from continuing the collection of tolls on said bridge, upon the filing by the plaintiff of a bond in the sum of P2,000. The defendants (petitioners herein), have filed a petition in this Court for a writ of certiorari, praying that a preliminary injunction be issued prohibiting the enforcement of the preliminary injunction issued by the Court of First Instance and that after hearing said injunction be declared null and void.

It should be borne in mind that the lower court has not yet tried the case on the merits and has not yet rendered a final judgment, the only question before us being whether the court acted in excess of its jurisdiction or with abuse of its discretion in issuing said writ of preliminary injunction. In this connection, it should be considered that the Provincial Board of Rizal alleges that the total cost of the bridge plus 4 per cent interest per annum had been recovered with excess from the tolls already collected and that the period of fifteen years from the opening of the bridge had elapsed since the year 1945. However, the petitioners raise the technical point that it is not within the authority of the defendant officers to order the discontinuance of the collection of tolls but only to certify to the (Governor-General) President of the Philippines that the cost of the bridge plus 4 per cent interest had already been recovered.

In the first place, more than fifteen years had elapsed since the opening of the bridge and this fact does not require any certification. In the second place, the above-mentioned board has failed to comply with its ministerial duty to certify to the President the fact that the cost of the bridge plus 4 per cent interest per annum has been recovered with excess, a fact which is asserted by the Provincial Board of Rizal and not seriously denied by any party. The allegation of the defendants (petitioners herein), in their answer that the money borrowed from the Agricultural and Industrial Bank to construct the bridge, has not been fully paid, if true, is immaterial, for it would not be the fault of the plaintiff Isidro that the toll collections had not been turned over to the said bank or its successor, in payment of the alleged debt. It would appear, therefore, from the allegations in the pleadings that the respondent judge did not exceed his jurisdiction or abuse his discretion in issuing the writ of injunction above-mentioned.

Without prejudice to the holding of the trial on the merits in the court below and the rendition of final judgment by it, the petition for the writ of certiorari is hereby denied without costs. It is so ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Bautista Angelo, and Labrador, JJ., concur.

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