

**JOSE B. ESCUETA, PETITIONER VS. THE CITY MAYOR, THE CITY TREASURER, THE MARKET MASTER AND THE MUNICIPAL BOARD, ALL OF PASAY CITY, RESPONDENTS.***G. R. No. L-18481. April 30, 1963*

Ponente: CONCEPCION, J.

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This is an original action for prohibition and mandamus, with preliminary injunction, against the City Mayor, the City Treasurer; the Market Master and the Municipal Board, all of Pasay City.

In his petition, filed in the afternoon of June 13, 1961, Jose B. Escueta alleges that on July 8, 1949, the Secretary of Finance appointed him as member of the Market Committee of Pasay City, representing the market vendors, which appointment is, still in full force and effect; that said market committee is a public office created by Department Order No. 32 of the Department of Finance, dated November 29, 1946, as amended by Department Order No. 42, dated March 12, 1947, whose duty is to conduct the drawing of lots and opening of bids in connection with the adjudication of vacant or newly created stalls or booths in the city or municipal markets; that said Department Orders were issued in pursuance of the provisions of Republic Act No. 37, which authorizes the Secretary of Finance to promulgate rules and regulations governing the leasing of public markets, one of which is the Pasay Public Market, better known as Libertad Market; that pursuant to said department orders the Market Committee in chartered cities shall be composed of (1) the city treasurer, as Chairman, (2) a representative of the mayor, (3) a representative of the Municipal Board or City Council, (4) a representative of the Secretary of Finance, (5) a representative of the City Fiscal, and (6) "a representative of the Market Vendors to be appointed by the Secretary of Finance"; that, acting without or in excess of jurisdiction, the Municipal Board of Pasay City, enacted Ordinance No. 120, series of 1958, section 15 of which sought to create a market committee different from that established in said department orders and excluding the petitioner from membership in said committee, which municipal ordinance is null and void for being ultra vires and contrary to law; that on April 12, 1961, the Secretary of Finance denied the request of the Mayor of Pasay City, that the composition of the Market Committee thereof as established by the aforementioned department orders be changed; that, this notwithstanding, said City Mayor, as well as the City Treasurer and the Market Master, of Pasay City, acting in violation of the said department orders, in wanton disregard of Escueta's rights and in excess of or outside their jurisdiction or authority, unduly usurped and arrogated unto themselves the powers and functions legally pertaining to and vested upon the Market Committee of Pasay City, by adjudicating and awarding, "as they still continue to adjudicate and award the stalls in the \* \* \* reconstructed Libertad Market to applicants of their own choice"; that, despite repeated demands of Escueta upon the City Treasurer of Pasay City, as chairman of the Market Committee created under the aforesaid department orders, that he convene the said Committee so that it may exercise its functions pursuant to law, said City Treasurer has not only failed and refused and still fails and refuses to do so, but, also, has, together with the City Mayor and said Market Master unlawfully persisted, as they still unlawfully persist, in usurping and arrogating upon themselves the functions of said Market Committee, thereby unlawfully

excluding petitioner from the use and enjoyment of a right or office to which he is legally entitled; and that he has no other plain, speedy and adequate remedy in the ordinary course of law than to petition for a writ of mandamus and prohibition, under Rule 67 of the Rules of Court.

Petitioner prayed, therefore, that section 15 of said Ordinance No. 120, series of 1958, be declared null and void and without legal force and effect; that the awards made by the City Mayor, the City Treasurer and the Market Master of stalls in the Libertad Market be, likewise, annulled; that respondents be commanded to desist from further proceeding With the award and adjudication of stalls in said market, and from further excluding the petitioner from the use and enjoyment of his office as member of the Market Committee of Pasay City; that the City Treasurer of Pasay City be commanded to convene said committee immediately or as soon as practicable so that it may exercise its functions; and that respondents be commanded to desist from formally opening and inaugurating the Libertad Market unless and until the adjudication of stalls therein is made in conformity with the aforesaid department orders.

Further alleging that respondents would proceed with the award and adjudication of the stalls in the Libertad Market, as well as to open and inaugurate the said market on June 14, 1961, unless restrained therefrom, Escueta prayed, also, for a writ of preliminary injunction.

In their answer, respondents admitted the aforementioned appointment of the petitioner, but denied that it is still inforce, upon the. ground: 1) that the market vendors of Pasay City had made representations for the appointment of one Valeriano Pestanas as their representative in the aforementioned Market Committee; 2).that. Mr. Pestanas had .been "unanimously qualified" and admitted as vendors' respresentative by the members of said Committe; and 3) that the petitioner is not a market vendor, "nor does he carry the recommendation' and support of the market vendors." Respondents alleged, also, that the stalls in the Libertad Market were awarded and adjudicated by a market committee constituted in conformity with the aforementioned department orders, consisting as the City Treasurer, as Chairman, the City Mayor, a representative of the Secretary of Finance, the City Attorney, two councilors, as representatives of the Municipal Board and said Valeriano Pestanas, as representative of the Market Vendors; that even, if Escueta were still the market vendors' de jure representative in the Market Committee, his sole vote can not prevail over the unanimous vote cast, by the other members of the Committee in the award and adjudication of the stalls in the Libertad Market; that Escueta "is now estopped' from whatever rights, he, might have had," owing to his failure, for almost a year, to seek judicial action on the alleged refusal of the City Treasurer to perform his duties as Chairman of the Market Committee; and that the acts of Valeriano Pestanas, as member of said Committee, are valid under the de facto doctrine.

It being admitted that a Market Committee for the City of Pasay has been established and organized pursuant to Department Order No. 32, dated November 29, .1946, and Department Order No. 42, dated March 12, 1947, both of the Department of Finance, acting in accordance with Republic Act No. 37, as amended by Republic Act No. 183, and that petitioner Escueta was, on July 8, 1949, appointed member of said committee, as representative of the market vendors of said city, the main issue in this case is whether or not said petitioner still holds said office and has a right to perform the duties thereof. The facts of record,show beyond doubt that the answer' must be in the 'affirmative.

Indeed, as stated by the Secretary of Finance in his communication of June 18', 1960, attached to the petition herein as Annex A, inasmuch as Escueta has not resigned from said office—which has no fixed, term—and no other person has been appointed thereto, aside from the fact that the record does not disclose and respondents do not claim that 'petitioner's right to said position has been extinguished by any other means—such, as abandonment, acceptance of an incompatible office, abolition of office, removal, impeachment, retirement, reaching of the statutory age limit, recall—he is "still the lawful incumbent of the position in question and, as such, authorized to

participate in the deliberations of the Market Committee" aforementioned.

Respondents' allegation to the effect that petitioner is not qualified to represent the market vendors in said Committee, he not being, a market vendor, cannot be sustained. The Department Orders above referred do not require this status as a qualification for appointment as representative of the market vendors. Furthermore, the title of the holder of an appointive office, even if he were merely a de facto officer, may be questioned, not collaterally, but in quo warranto proceedings, which may be instituted only by the person who claims to be entitled to the office or by the Republic of the Philippines, represented by the "Solicitor General or a fiscal" (Rule 68, sections 1, 3, 4 and 6, Rules of Court).

Although respondents specifically denied petitioner's allegation of repeated demands by the latter to respondent City Treasurer for the exercise of his duties as Chairman of the Market Committee and of exclusion of petitioner from the use and enjoyment of his rights as a member of said Committee, the other allegations in respondents' answer—particularly the alleged recognition by said Committee (of which respondents City Treasurer and City Mayor are Chairman and member, respectively) of Valeriano Pestanas as the representative therein of the market vendors and the allegations to the effect that said committee had awarded and adjudicated the stalls above referred to with the participation of Pestanas, in lieu of petitioner herein, and "that there is no office from the use and enjoyment of which the petitioner had been excluded" —prove that petitioner's allegations are true.

With respect to the legality of the awards and adjudications made by said committee without the intervention of petitioner herein, or without, at least, notice to him in order that he could perform his functions as member of the committee, we do not believe it proper to pass upon such question in the present case, for lack of the necessary parties, namely, the awardees of stalls, whose interests may be adversely affected thereby.

Wherefore, petitioner Jose B. Escueta is hereby declared to be still a member of the Market Committee for Pasay City, in representation of the market vendors thereof, and entitled to discharge his duties as such, and respondents herein are hereby ordered to recognize and acknowledge him as member of said committee, in representation of the aforementioned market vendors, as well as to refrain from recognizing and acknowledging any other person as such representative of the market vendors, with the costs against respondents City Treasurer and City Mayor. It is so ordered.

Bengzon, C. J., Bautista Angelo, Labrador, Barrera, Paredes, Regala and Makalintal, JJ., concur.

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