

**ANACLETO TRINIDAD AND DIONISIO BARROGA, PETITIONERS, VS.
HON. JOSE L. MOYA AND MUNICIPALITY OF IRIGA, RESPONDENTS.***G.R. No. L-16886. April 30, 1965*

Ponente: DIZON, J.

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Petition for certiorari filed by Anacleto Trinidad and Dionisio Barroga against the Municipality of Iriga, Camarines Sur, and the Hon. Jose L. Moya, Presiding J of the third branch of the Court of First Instance of marines Sur, to annul the latter's order of March 22, in Civil Case No. 4836, "commanding the defendants Anacleto Trinidad, Dionisio Barroga, and their agents to refrain and desist from collecting the rents, fees, and other benefits from the Iriga Central Market and Sagrada Market in Iriga, respectively, during the pendency of this action".

On December 11, 1959, pursuant to a resolution approved by the Municipal Council of Iriga, Camarines Sur, authorizing the leasing of the Central Public Market and the Sagrada Public Market of said municipality to private persons, the Municipal Mayor, Perfecto I. Tanduran, representing said municipality leased the Central Public Market to petitioner Trinidad and the Sagrada Public Market to petitioner Barroga, for P24,000.00 and P360.00 yearly, respectively, both payable quarterly in advance within the first ten days of every quarter, for a period of one year beginning January 1, 1960 extendible to another four years, subject to the approval of the Provincial Board. The Municipal Council approved said lease agreements on December 29, 1959 in its Resolution No. 70, s. of 1959, and on January 1, 1960 the lessees, after paying the rentals corresponding to the first quarter, took over the operation and administration of the said markets, collecting rents, market fees and other benefits therein.

On February 16, 1960 respondent Municipality of Iriga commenced an action in the Court of First Instance of Camarines Stir against petitioners and its former mayor, Perfecto Tanduran, (Civil Case No. 836) to annul the aforementioned lease contracts, with a prayer for the issuance ex-parte of a writ of preliminary injunction restraining petitioners from collecting rents, market fees and other benefits in the leased premises during the pendency of the action, and damages. The complaint alleged that, prior to the leasing of the markets to petitioners, respondent Municipality had been earning an average net income of no less than P35.000.00 annually from the operation thereof; that on or about the 26 day of December, 1959, Perfecto Tanduran, who was then the municipal mayor of Iriga, Camarines Sur, and who at the time knew that he lost his bid for reelection in the 1959 elections, in collusion and connivance with Anacleto Trinidad and Dionisio Barroga, with intent to defraud the municipality in the approximate sum of P1 1,000.00, Philippine Currency, for their own persona! gain and benefit, maliciously, irregularly and in deliberate disregard of the law governing the lease of public markets to private persons, leased in behalf of the plaintiff the said Iriga Central Market to defendant Anacleto Trinidad for a period of one year beginning January 1, 1960 in the patently unreasonable amount of P24.000.00, and the said Sagrada Market to defendant Dionisio Barroga for a similar period of one year beginning January 1f 1960 in the patently unreasonable amount of P360.00; that respondent municipality, thru its then mayor and municipal council, had demanded petitioners to turn over to them the operation and administration of the premises, which the latter refused; and that to allow petitioners to continue collecting rents and market fees during the pendency of the

action would cause great and irreparable injury to respondent municipality.

Petitioners' motion to require respondent municipality to specify in its complaint the facts and circumstances constituting the fraud, connivance and collusion alleged therein having been denied, they filed their answer on March 11, 1960 alleging that the lease contracts were entered into and executed with all the requirements of the law; that the municipal council authorized the lease and approved said contracts because it believed that they were to the advantage of the municipality; and that the present suit was instigated for political reasons by the incumbent mayor, vice-mayor and councilors of said municipality who, conspiring together, immediately upon assuming office passed a resolution annulling the contracts of lease in question without any authority to do so; that by virtue thereof, petitioners have suffered damages which they seek to recover from the above-mentioned municipal officials by means of a third-party complaint filed against them.

Subsequently, on March 22, 1960, the Court issued an order granting ex-parte the writ of preliminary injunction prayed for in the complaint for the following reasons:

"It appearing from the facts set forth in the complaint, verified by the oath of the Provincial Fiscal as attorney for the plaintiff, that it (Municipality of Iriga) is entitled to the relief it seeks, that the continued collection of the rents and fees from the two markets in question by the defendants Anacleto Trinidad and Dionisio Barroga will likely cause irreparable injury to the plaintiff as the amount of these rentals and fees depends on the patronage of the public and it will be difficult to determine it with certainty if they are collected by private individuals, while this is not so where the collection is done by public officials who are under obligation to issue receipts for moneys coming into their possession; that although the complaint prays for the issuance of a writ of preliminary injunction, the defendants did not deny in their answer the facts averred in support thereof; and that under the circumstances, a writ of preliminary injunction may be granted 'ex-parte' (Moran, Rules of Court, Vol. I, 500-501), ***."

Their motion to set aside the order of preliminary injunction having been denied, petitioners filed the present action.

It is petitioners' contention now that the respondent Judge committed a grave abuse of discretion in issuing the writ of preliminary injunction mentioned above in denying their motion to set it aside. We find no merit in this claim.

The general rule it is true is that a writ of preliminary injunction should be issued in proper cases only after Notice served upon the party sought to be enjoined, but the Rules of Court give the court discretion to issue the ex-parte upon a showing that the party seeking the injunction will suffer irreparable injury should the writ not be issued immediately.

In the present case, considering the allegations made in the complaint filed in Civil Case No. 4836 of the Court of First Instance of Camarines Sur for the annulment of the lease contracts mentioned heretofore, we do not believe that the respondent judge committed any abuse of discretion at all in issuing ex-parte the writ complained of, considering that, had not said writ been issued, the defendants in said action would have continued administering and operating the public markets subject of the contracts of lease and would have continued collecting rents and fees in connection therewith, without any assurance that the Municipality of Iriga would be able to recover the amounts thus collected should the lease contracts be finally annulled. At any rate, on matters where trial courts are given the right to use their discretion in granting or denying relief to a party in an action pending before them, our policy is not to interfere with the exercise of said discretion unless it is clearly shown that it was abused in a serious manner a circumstance not obtaining in the present case.

WHEREFORE, the writ prayed for is denied, with costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrerra, Paredes, Regain, Makalintal Bengzon, J.P. and Zaldivar, JJ., concur.

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