

**HON. JUAN P. ENRIQUEZ, AS JUDGE OF FIRST INSTANCE OF MANILA,
BENITO FERMIN, JESUS S. TENCHAVEZ, TAN BOON SIONG, JOSE
TIONG-SON, QUIRINO APACIBLE, MARCOS D. MASA AND TAN TO,
PETI...**

G.R. No. L-18877. August 31, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by certiorari from a decision of the Court of Appeals.

On February 26, 1960, S.G.V. Chaves, Octaviano Ladeña, See Kui, Thomas K.C. Uy, Felipe Juico, Jaime A. Vergara and Gilberto Neri - hereinafter referred to as Chaves et al. - commenced Civil Case No. 42650 of the Court of First Instance of Manila, in the name of Quezon City Export and Import, Inc. - hereinafter referred to as the Corporation - against Benito Fermin, Jesus S. Tenchavez, Tan Boon Siong, Jose O. Tiongson, Quirino Apacible and Marcos D. Masa - hereinafter referred to as Fermin et al. - to restrain the latter from holding meetings, passing resolutions or otherwise acting for the Corporation, upon the ground that they had ceased to be officers thereof and that Chaves et al. are now the officers of the Corporation, and, as such, entitled to manage the same. Chaves et al., likewise, prayed that defendant Quirino Apacible be ordered to surrender to them all papers of the Corporation in his possession and that Fermin et al. be sentenced to pay damages. Soon later, Fermin et al., Arsenio Tenchavez and Tan To, instituted Civil Case No. 42704 of the same court, against Chaves et al., for the purpose of securing a judgment declaring that plaintiffs therein, not Chaves et al., are the directors and officers of the Corporation and ordering Chaves et al. to refrain from acting as officers thereof, in addition to sentencing them for damages.

On March 16, 1960, Fermin et al. filed a motion to dismiss the complaint in case No. 42650, but, the motion was denied. Subsequently, they filed their answer in case No. 42650, which was substantially identical to the allegations in the complaint in case No. 42704. Similarly, Chaves et al. filed their answer in said case No. 42704, making substantially the same averments contained in their complaint in case No. 42650. Later on, the Judge presiding Branch XIV of the Court of First Instance of Manila, to which case No. 42704 had been assigned, issued an order transferring the same to Branch VIII of the same court, before which case No. 42650 was pending, upon the ground that the issues in case No. 42704 were identical to those raised in the earlier case, No. 42650.

On January 13, 1961, after a joint trial, Hon. Juan P. Enriquez, who then presided said Branch VIII, rendered, in both cases, a decision the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered dismissing the complaint in Civil Case No. 42650 without pronouncement as to costs. In Civil Case No. 42704 judgment is rendered in favor of the plaintiffs and against the respondents, declaring the former lawfully entitled to the positions claimed by them in the complaint. Respondents are sentenced to pay jointly and severally to complainants moral damages in the sum of P5,000.00 and attorney's fees in the sum of P2,000.00 plus costs, making the preliminary injunction dated

September 24, 1960 final against the respondents."

Twenty-eight days after notice of this decision, or on March 21, 1961, Chaves et al. filed a notice of appeal, a record on appeal and an appeal bond, in case No. 42650. Fermin et al., in turn, filed, on March 28, 1961, a motion for execution of said decision, upon the ground that it had become final, no appeal having been taken therefrom within fifteen (15) days from notice thereof, which Fermin et al. claimed to be the period applicable, upon the theory that the two cases are in the nature of quo warranto proceedings. Chaves et al., in turn, maintained that they had thirty (30) days within which to appeal from said decision, because case No. 42650, they argued, is, not a quo warranto proceeding, but an action for injunction. Judge Enriquez overruled this contention and sustained that of Fermin et al., and, accordingly, refused to give due course to the appeal.

A reconsideration of the order to this effect having been denied and the motion of Fermin et al. for a writ of execution having been granted, Chaves et al. instituted the present case C.A.-G.R. No. 29254-R of the Court of Appeals, for mandamus, against Fermin et al. and Judge Enriquez, to compel the latter to give due course to said appeal and secure a writ of injunction restraining the execution of the decision of the trial court. After appropriate proceedings, the Court of Appeals rendered judgment for Chaves et al. Hence, Fermin et al. filed the present petition for review by certiorari.

This case hinges on whether said Civil Case No. 42650 is a quo warranto proceeding or not, it being conceded that, if the answer were in the affirmative, the appeal of Chaves et al., from the decision of the trial court, was taken after the same had become final and executory. The Court of Appeals held:

"We find that the nature of Civil Case No. 42650 as one for injunction and the sufficiency of the allegations of the complaint to constitute a cause of action, were sustained by the order of the lower court denying defendants' motion to dismiss and by the very words of its decision expressly making reference to Civil Case No. 42650 as an action for injunction. The case having proceeded, been tried, decided, and an appeal therefrom perfected on the theory that it was an action for injunction, it was error for the lower court to reverse things by abruptly ruling that the action was 'more in the nature of quo warranto rather than injunction', for the purpose of disallowing the appeal. We therefore, hold that the appeal in Civil Case No. 42650 for injunction having been perfected within the reglementary period of 30 days, should have been allowed."

We can not accept this view. To begin with, the Court of Appeals did not state why it held case No. 42650 as "one for injunction." Moreover, it seemingly assumed that said finding negated that the case was a quo warranto proceeding. Such assumption is unwarranted, for an injunctive relief may, and is often, if not generally, sought in quo warranto proceedings. In fact, the very Court of Appeals admitted, in its appealed decision, that case No. 42704 "could have been a combined action for quo warranto and injunction."

Secondly, the prayer for injunction in case No. 42650 is predicated upon the allegation that, despite the election and qualification of Chaves et al., in 1960, as members of the board of directors and officers of the Corporation, and "knowing full well that they (Fermin et al.) are no longer members of the board of directors nor the duly constituted officers of the corporation," Fermin et al. "persist and continue to unlawfully represent themselves not only as members of the board of directors, but, also, as officers of the corporation, acting on matters affecting the interests of the corporation and misrepresenting themselves to the public as individually and collectively acting for and on behalf of the corporation on corporate matters and affairs." Upon the other hand, in their answer to said complaint, Fermin et al. controverted the legality of the alleged election and qualification of Chaves et al., as members of the board of directors and officers of the Corporation, and averred that they (Fermin et al.) - not Chaves et al. - "are lawfully entitled to the positions they (Fermin et al.) now occupy in the corporation."

The main issue in the case was, therefore, whether or not Fermin et al. were board members and officers of the Corporation. In other words, the proceeding was essentially one for quo warranto.[1] As pointed out in said

answer of Fermin et al., in case No. 42650, the aforementioned "complaint seeks to have" the Court "look into" their right "to the offices and/or positions they occupy in the corporation," although they questioned the sufficiency or regularity of the complaint, the same having been filed in the name of the Corporation, instead of that of Fermin et al., who claim to be entitled to said offices and/or positions.

Thirdly, the very decision of the Court of Appeals points out the substantial identity of the allegations, on the one hand, in the complaint of Chaves et al. in case No. 42650 and their answer in case No. 42704, and, on the other, of the complaint of Fermin et al. in case No. 42704 and their answer in case No. 42650. Thus, the issues in both cases are admittedly identical. Then, again, it is not disputed that the complaint in case No. 42704 properly states that it is one for "quo warranto," as, in fact, it is, the injunction therein prayed, like the one applied for by Chaves et al. in case No. 42650, being merely auxiliary to or in aid of the declaration of lack of title of their respective opponents.

The statement made by the Court of Appeals to the effect that case No. 42650 had been "tried, decided and the appeal thereon perfected upon the theory that it was an action for injunction," is not entirely accurate. The first paragraph of the decision of the trial court[2] adverted to the fact that each party claimed title to the offices in question and assailed that of their opponents thereto, and that both sought an injunction as a means to enforce their respective titles. In fact, His Honor the trial Judge had explicitly declared that case No. 42650 was "more in the nature of quo warranto x x x than injunction."

One other factor must be reckoned with. The decision in case No. 42704 is now final and executory, no appeal having been taken therefrom. Hence, the question as to which of the two groups - Fermin et al. or Chaves et al. - are the lawful members of the board of directors and officers of the Corporation, has been definitely settled in said case in favor of the first group. This being the case, it may no longer be litigated in case No. 42650.[3] The claim of Chaves et al. in such case is now barred by the decision in case No. 42704.[4]

WHEREFORE, the appealed decision of the Court of Appeals is hereby reversed, and the petition for mandamus in the case at bar should be, as it is hereby, dismissed and the writ denied, with costs against Chaves, et al.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Angeles, and Fernando, JJ., concur.
Sanchez and Castro, JJ., did not take part.

[1] Sec. 1, Rule 66, Rules of Court; *Acosta vs. Flor*, 5 Phil., 18; *Lino Luna vs. Rodriguez*, 36 Phil., 401; *Cesar vs. Garrido*, 53 Phil., 97; *Nueno vs. Angeles*, 76 Phil., 12; *Cuyekeng vs. Cruz*, L-16263, July 26, 1960; *Board of Directors of the Phil. Charity Sweepstakes vs. Alandy*, L-15391, Oct. 31, 1960.

[2] "Under the complaint in Civil Case No. 42650 for injunction, plaintiff corporation seeks ouster of defendants Benito Fermin, Jose C. Tiongson, Jesus Tenchavez, Tan Boon Siong, Quirino Apacible and Marcos D. Masa from their offices in the corporation, alleging that J.C.V. Chaves, See Kui, Felipe Juico, Octaviano Ludeña, Thomas K.C. Uy, Jaime C. Vergara and Gilberto Neri were chosen in an election held on February 15, 1960 by its stockholders owning more than 50% of the total paid-up shares, on the strength of the order issued by this Court (Branch XIX) in Civil Case No. 42385. Defendants assert ownership of about 95% of the paid-up shares of the company and rightful possession of the offices they were then holding. This is the same position taken by said defendants and two others, namely, Arsenio Tenchavez and Tan To as plaintiffs in their complaint for Quo Warranto, Civil Case No. 42704, against Chaves et als., praying in turn for injunction against the latter, including damages, attorney's fees and costs. Respondents' answer in the second case is a reaffirmation of the stand taken by

them in the first case, No. 42650."

[3] Kidpalos vs. Baguio Gold Mining Co., L-19944, Aug. 14, 1965; Garcia vs. Court of Appeals, et al., L-19783, July 30, 1965; Banco Espanol-Filipino vs. Palanca, 37 Phil., 921, 942; Ferinion vs. Sta. Romana et al., L-25521, Feb. 28, 1966; Revised Rules of Court, Rule 39, Sec. 49, Effect of Judgments.

[4] Angcao, et al. vs. Punzalan, et al., L-20521, Dec. 28, 1964; Prieto vs. Arroyo, et al., L-17885, June 30, 1965; Malabon Restaurant, et al. vs. Hearing Officer, et al., L-22199, Jan. 31, 1966; and Republic vs. Planas, et al., L-21224, Sept. 27, 1966.

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