

ALFREDO ABERIN AND OTHERS NAMED IT THE LIST APPENDED TO ANNEX “A” OF THE BASIC PETITION IN THE TRIAL COURT, AND HONORABLE LOURDES P. SAN DIEGO, THEN PRESIDING JUDGE OF BRANCH IX...

G.R. No. L-28521. January 21, 1977

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals in C.A-G.R. No. 37968-R, entitled "Quezon City, et al. vs. Hon. Lourdes P. San Diego, Judge, Court of First Instance (C.F.I.) of Rizal, Branch IX, Quezon City, et al.", granting the petition for certiorari with preliminary injunction and setting aside the order of execution dated August 1, 1966, issued by the trial court in Civil Case No. Q-8129 thereof, entitled "Alfredo Aberin, et al. vs. Quezon City, et al."

The case arose from the following facts:

1. Petitioners Alfredo Aberin, et al., all licensed vendors of fresh meat, fruits, vegetables, fish and other perishable goods and stall holders in the city markets of Kamuning, Camp Murphy and Project 2, Quezon City, filed Civil Case No. Q-8129, of the C.F.I. of Rizal, Quezon City Branch (IX), for certiorari, prohibition, mandamus, and/or declaratory relief with preliminary injunction against Quezon City and its Mayor, Norberto S. Amoranto, Nereo J. Paculdo and Gloria G. Paculdo as proprietors and operators of the private market, Nepa-Q-Mart; Mariano Sta. Romana, Jr., as Vice Mayor; and Eduardo T. Paredes, Saturnino V. Bermudez, Romulo G. Lucasan and Florentino A. Lapuz, as members of the Quezon City Council. The case aims to establish as "ultra vires, null and void, without force and effect", the contract to operate the market and slaughterhouse allegedly entered into illegally between Quezon City and the Paculdos, as authorized by Quezon City Council Resolution No. 6750, S-64, which granted the questioned contract or "franchise";
2. Petitioners Aberin, et al., claimed to have suffered a diminution of their business because of the alleged illegal operation by the Paculdos of the Nepa-Q-Mart with the sanction and approval of the Quezon City officials cited as respondents in that case;
3. Both parties in Civil Case No. Q-8129 entered into a partial stipulation of facts, agreeing to submit for decision the validity of the questioned contract; or as to whether or not it was executed within the corporate powers of Quezon City and, whether or not it was executed in a regular and valid manner; whether or not petitioners had capacity to question the contract, and whether or not the petition is proper and valid in form and substance;
4. Hon. Lourdes P. San Diego, then judge of the C.F.I. of Rizal, Branch IX, Quezon City, decided Civil Case No. Q-8129, in favor of the petitioners, finding and declaring the contract executed between Quezon City and the Paculdos without lawful authority and not pursuant to any valid resolution of the Quezon City Council; that petitioners had the capacity to bring the action and are entitled to the relief sought, the procedure followed being

valid and proper. The dispositive part of the decision dated March 28, 1966 reads:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court holds and declares that the contract (Exhibit 'E') and the resolutions authorizing and approving it (Exhibits 'A' and 'G') are ultra vires, null and void, and without force and effect, and the respondents are all directed to refrain from enforcing or in any manner allowing the enforcement thereof. The respondent City Mayor is ordered to forthwith revoke, cancel and withdraw any and all permits and authorizations issued to respondent Paculdo for the operation of the Nepa-Q-Mart slaughterhouse and the sale of perishable goods, except that the operation of a private shopping center therein for the sale of non-perishable goods shall remain unaffected. No pronouncements as to costs and attorney's fees."

5. Petitioners filed a motion for immediate execution of the aforementioned decision on April 18, 1966, contending that the case "greatly affects public interest and the injunctive relief granted in the decision must be immediately enforced", for "the delays occasioned by appeal are such that they may extend beyond the terms of the respondent city officials which will expire in 1967", and that "no amount of supersedeas bonds can adequately protect the public interest that will suffer by non-enforcement of the decision";

6. Respondents in Civil Case No. Q-8129 opposed said motion for immediate execution on the principal ground that a writ of immediate execution pending appeal can only be issued under Sec. 2 of Rule 39, Rules of Court, when there are good reasons for doing so and there are no such good reasons in this case;

7. Then trial Judge Lourdes P. San Diego of the C.F.I. of Rizal, Branch IX, Quezon City, granted the motion for immediate execution in an order dated August 1, 1966, ordering that "without prejudice to the appeal of the respondents taking its course upon their compliance with the requirements for appeal, let a writ of execution be issued forthwith to enforce the Decision of this Court, upon petitioners' posting a bond of P100,000.00".

8. The aforementioned order for immediate execution was elevated by certiorari with preliminary injunction to the respondent Court of Appeals which granted the writ and set aside the order in C.A. Case No. 37968-R.

The questioned decision of respondent Court of Appeals in C.A. No. 37968-R now before us for review shows that three Appellate Justices^[1] constituting the majority of a Special Division of Five believed that the appellate court acquired jurisdiction over the case because the main case included not only questions of law (validity of the contract and ultra vires acts of Quezon City) but also questions of fact (whether or not therein respondents Paculdo failed to meet conditions pertaining to sanitation of the market and to provide for proper cold storage). The majority opinion held that "the question of the herein petitioners' (Quezon City officials) supposed 'official excesses', which have abetted the operation of the Nepa-Q-Mart, is something best left for resolution in the main appeal". Consequently the appellate court granted the petition and set aside the lower court's order of immediate execution pending appeal, dated August 1, 1966.

Pending the Court's deliberation on the case for determination of the issues, respondent Paculdo filed his manifestation dated October 31, 1976 furnishing the Court with copy of the lower court's Order dated October 25, 1976 dismissing the mother case as moot and academic.

Required to comment thereon, the Quezon City Government, through its city attorney, Jose T. Torcuator, "express(ed) its conformity to the motion and manifestation of co-respondents Nereo J. Paculdo and Gloria G. Paculdo as well as to the Order of October 25, 1976 of the Court of First Instance of Rizal (Quezon City Branch IX) dismissing the mother case for being moot and academic", as per its comment dated November 15, 1976.

Petitioners in their comment dated November 22, 1976 filed through their counsel, Gregorio R. Puruganan, likewise expressed their conformity to the dismissal of the case for having become moot and academic as follows:

"1. An on-the-spot investigation conducted at the premises of the NEPA-Q-MART Slaughterhouse owned by the respondent Nereo J. Paculdo confirms that said slaughterhouse is no longer in operation, as stated in the certification of the City Veterinarian of Quezon City dated September 9, 1976 which is attached as Annex '2' of said respondent's 'Manifestation' dated October 31, 1976;

"2. Likewise, the respondent Paculdo's market was burned down by the fire that took place on February 7, 1972, and the undersigned counsel has found out that the present market was reconstructed under the authority of Resolution No. 9314 passed by the City Council of Quezon City on February 13, 1973;

"3. The respondents in the mother case below (Civil Case No. Q-8129) include the former City Mayor and former Councilors of Quezon City who are now no longer in office, and the acts complained of by herein petitioners in the lower court refer to the contract which was authorized and allowed by said respondents; there being a change of the situation as of this date, the case has truly become moot and academic;

"4. In view of the fact that what remains pending now before this Honorable Court is only the propriety of the lower court's order of execution pending appeal, and said order being intended to enforce the decision of the lower court which has become moot and academic, there are no more acts which can be complained of by herein petitioners."

ACCORDINGLY, the petition at bar is dismissed for having become moot and academic. No costs.

Makasiar, Antonio, Muñoz Palma, and Concepcion, Jr., JJ., concur.

* Special Division of Five Justices, composed of Rodriguez, J., ponente; Lucero, Yatco, Perez and Martin, JJ.

[1] Composed of Justices Jose S. Rodriguez, ponente, Nicasio A. Yatco and Ruperto G. Martin. Dissenting were Justices Antonio G. Lucero and Jesus Y. Perez.

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