

LEONARDO NAVARRO, PLAINTIFF-APPELLANT, VS. LUIS L. LARDIZABAL, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-25361. September 28, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

An action for Prohibition and Injunction, with prayer for a writ of preliminary mandatory injunction, was filed before the Court of First Instance of Baguio City, on June 3, 1963, by Leonardo Navarro against Luis L. Lardizabal, Leopoldo Nievera, Domingo Cabili and Jacinto Rillera who are the City Mayor, Chief of Police, City Treasurer and Market Superintendent, of Baguio City, respectively.

It is alleged in the complaint, that plaintiff Leonardo Navarro was an occupant of stall No. 87 of the City Market of Baguio, for more than six (6) months prior to the filing of the case in court - "having previously acquired full ownership of the business conducted thereon (stall) by lawful transfer of ownership from the former lessee or stallholder (Juanita Cachero)"; that he had paid the regular fees for the occupancy of said stall; that in accordance with Ordinance No. 314-A of the City of Baguio, plaintiff filed an application for the award to him of said stall, to the proper authorities of the City of Baguio; that "said application is pending consideration before the City Market Committee which has taken cognizance of said application" at the time the complaint was filed in court; that the defendants have interfered with the possession of the plaintiff of the stall by threats and intimidation that on June 3, 1963, the City Mayor issued an order directing the Chief of Police to eject the plaintiff from the said stall, and the latter official, in compliance with the order, on June 4, 1963, forcibly removed plaintiff's stock in trade inside the stall, brought them to the Police Department, and prevented him from occupying the stall; that the order of the City Mayor and the acts of the Chief of Police "are without or in excess of jurisdiction of said defendants"; and that plaintiff suffered damages as a result of the illegal and arbitrary acts of the defendants. For relief, plaintiff prayed that a writ of preliminary mandatory injunction be issued, and after a hearing, the same be made permanent; that the defendants and their agents be permanently restrained from harassing and disturbing the plaintiff in the occupation and use of said stall; and that the defendants be sentenced to pay damages.

Ordinance No. 314-A of the City of Baguio, referred to in the complaint, reads thus:

"Section 1. - The Market Committee be, as it is hereby, authorized:

- (a) To award stalls which may be declared vacant under existing regulations, directly to actual occupants of such stalls, who are operating, capitalizing and managing or conducting the business thereof;
- (b) To award stalls directly to persons qualified to lease market stalls, who may have acquired the business conducted therein thru any of the recognized modes of transferring ownership, from the former lessee or stallholder:

Provided, That the direct award shall only be made to Filipino citizens, who are qualified to hold or lease a stall in the City Market."

In their answer, the defendants traversed the allegations in the complaint; and by way of special defense, alleged: (a) that plaintiff has no approved application to lease or occupy the stall No. 87; (b) that Juanita Cachero is the lawful and recognized lessee of said stall by virtue of a valid and subsisting contract of lease; (c) that plaintiff is neither a helper nor recognized partner of Juanita Cachero in the business being conducted in said stall; (d) that the City Mayor, by virtue of the powers vested in him by the Charter of Baguio City and Republic Act No. 37, as implemented by Order No. 32 of the Department of Finance, has the general and exclusive supervision and control over public markets in the City of Baguio; and (e) that plaintiff not being a lawful lessee of stall No. 87, was an illegal occupant thereof.

From the documentary evidence presented during the trial, and upon the pleadings of the parties, and the annexes thereto, upon which the case was submitted for decision, it appears that Juanita Cachero is the lawful and recognized present holder of the stall in question under a valid and subsisting contract of lease with the city authorities. The plaintiff, however, was able to occupy the stall, for more than six (6) months prior to the filing of the case in court, presumably with the consent of Juanita Cachero (not a party in the case), upon an alleged agreement between Cachero and Navarro whereby the former transferred to the latter the ownership of, the business being conducted in said stall. Realizing, however, that his (Navarro's) occupancy of the stall was not legal until and unless a contract of lease of the stall is awarded in his favor by the city authorities, he filed an application for the transfer of said stall in his name. Plaintiff's application, however, was protested by a D. B. Baton, on the ground that the stall applied for is not vacant. In view of the protest of Baton, the City Market Committee, the office authorized to make awards of stalls, indefinitely postponed the consideration of the application, and at the time the complaint was filed in court, the application has not yet been acted upon nor approved City Market Committee.

After trial, decision was rendered dismissing the complaint. Hence, this appeal by the plaintiff.

The right to lease and occupy a stall in a public market, is not a common right but a purely statutory privilege, governed by laws and ordinances. (*Samson vs. Fugoso*, 45 Off. Gaz. 300) Therefore, for an applicant to be able to claim a right to occupy a stall in a public market, he is bound to comply strictly with the provisions of the laws and ordinances on the matter.

In the case at bar, cognizant of his status as an illegal occupant of the stall in question, the plaintiff filed an application to lease the stall occupied by him with the market authorities; however, in view of the protest of D. B. Baton against the application, and to enable the City Market Committee, the body authorized to make the awards of stalls in the city market, to determine whether the applicant Navarro possesses all the qualifications and none of the disqualifications to be a lessee of a stall in the city market, the City Market Committee postponed indefinitely the consideration of Navarro's application. In fact, it is not denied that at the time the complaint was filed in court, Navarro's application has not yet been approved.

The contention of the plaintiff that because he has acquired "full ownership of the business conducted thereon (stall) by transfer of ownership from the former lessee or stallholder" (Juanita Cachero), and, therefore, he had acquired a valid right to occupy the stall, can have no relevant consideration in support of his claim of preferential right to the stall, for the following reasons: First, the contention is denied by the defendants, and plaintiff's own admission that he has no contract of lease or award of the stall in his favor, nor permission, even temporarily, to occupy the same, are facts and matters which defeat his claim to occupy the stall; Second, no competent evidence, oral or documentary, has been presented which would justify a finding that Juanita Cachero has entered into the supposed agreement, and for the further reason that the latter is not a party in the case; Third, admitting in gratia argumenti the existence of the alleged agreement, the same cannot have the effect of a legal and valid transfer or assignment of the right to occupy the stall, because said agreement is contrary to Section 5, Department of

Finance Order No. 32 which prohibits the transfer of possession or occupancy of a stall from a partner to a co-partner; Fourth the agreement between Cachero and Navarro contemplated a transfer only of the business or stock in trade but not of the right to occupy the stall; Fifth, paragraph (h) of Ordinance No. 314-A above-quoted, as the trial court held:

"x x is repugnant and contrary to Republic Act No. 37 and Department Order No. 32, because under said Department Order, particularly Section 5 and 6, any market stallholder who enters into business partnership with any party after he has acquired the right to lease such a stall shall have no authority to transfer to his partner or partners the right to occupy the stall, so that since plaintiff disclosed having acquired full ownership, occupancy and use of said stall No. 87 by transfer and there is no evidence that he is either a helper or relative within the third degree, as a requisite thereof, his alleged claim to occupy said stall should perforce be cancelled, as it was cancelled. It is evident he acquired no privilege, much less a right, to occupy said stall."

and; Sixth, admitting *ad arguendo*, that said paragraph (h) of Ordinance 314-A is not in conflict with Department Order No. 32, and the agreement is valid, the City Market Committee has the discretion to approve or disapprove the same, and under the facts obtaining in the case, it clearly appears that the City Market Committee has not yet approved plaintiff's application to occupy the stall.

Even under Ordinance 314-A of the City of Baguio, it is required that before market stall may be awarded to an applicant, it is necessary that said stall first be declared vacant (*par. [a]*), and that the proper authority has determined that the applicant has all the qualifications to lease a stall in the city market, which conditions are not present in the case at bar.

The foregoing, taken into account together with the indubitable fact that Juanita Cachero is still the lawful and recognized lessee of the stall in question, which is not vacant, on one hand, and Navarro's application to lease said stall has not yet been approved by, the City Market Committee, on the other hand, and the fact that the occupancy of a stall in a public market cannot be the subject of a valid contract unless approved by the city authority (*Mercado vs. Aguilar*, 45 Off. Gaz. No. 5, supp. 118) afford solid support to the conclusion that the plaintiff has not established a valid and legal right to occupy said stall. The complaint, therefore, states no cause of action, and the trial court was correct in dismissing the complaint.

It clearly appears on the record that the remedy of prohibition sought by the plaintiff basically seeks to determine his right to occupy the stall No. 87 of the City Market. The remedy is improper, since its only function is to prevent a usurpation of jurisdiction, and to restrain the doing of some act about to be done. The petitioner must clearly show that he has a legal right to the subject of the action without which he shall fail. As the maintenance, operation, supervision and control of public markets within a city or municipality is within the exclusive jurisdiction of the municipal authorities, and considering that the plaintiff has no valid and legal right to occupy the stall in question, therefore, the order of the defendant City Mayor to have the plaintiff ejected from the stall is within his power and authority, and the facts obtaining in the case do not indicate, that in the exercise of his authority, the City Mayor had committed gross abuse of discretion. The mere fact that in the exercise of such power, the person to whom the execution of the order of ejectment was entrusted had committed alleged arbitrary acts, the chief of police having forcibly ejected the plaintiff from the stall – which has not been proven, does not entitle the aggrieved party to the remedy of prohibition or injunction. The plaintiff has some other appropriate remedy recognized in law.

For the foregoing considerations, the appeal is denied, with costs against the appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando and Capistrano, JJ., concur.
Zaldivar, J., is on official leave of absence.

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