

THE MUNICIPAL MAYOR OF SAN PEDRO, LAGUNA, BENEDICTO AUSTRIA, PETITIONER, VS. NICASIO YATCO, JUDGE OF THE COURT OF FIRST INSTANCE OF LAGUNA, AND COLEGIO DE SAN JOSE, INC., RESPON...

G.R. No. L-3860. November 24, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

The incumbent municipal mayor of San Pedro, Laguna requests the annulment of the writ of preliminary injunction issued by the respondent judge of the court of first instance of said province restraining him and the municipal police force of San Pedro from executing Municipal Ordinance No. 12 of said municipality, which purports to regulate the use of "the irrigation system of this municipality" and gives the municipal mayor authority to issue the necessary orders for the use and appropriation of the waters thereof. The injunction was issued in civil case No. 9039 at the request of the Colegio de San Jose Inc., plaintiff therein.

The prayer is based principally upon the grounds that said municipal mayor was not a party to that case, wherein the irrigation system was not litigated, that the ordinance's validity may not be collaterally attacked, and that the writ was otherwise illegally issued.

It appears that in said Civil Case No. 9039 the Colegio de San Jose petitioned for revival of a certain judgment entered in civil case No. 6663 of the said court where more than 700 tenants of the Hacienda de San Pedro Tunasan lost to the Colegio de San Jose, owner of the Hacienda, the judgment in its dispositive part providing:

"Por tanto, y en vista de las consideraciones arriba expuestas, se absuelve a los demandados de la demanda de los demandantes; se declara que los demandantes y sus causahabientes carecen de derecho de continuar ocupando, por si o por medio de otros, terrenos y solares de la Hacienda, se los condena a vacarlos enteramente y a entregarlos a los demandados, libre de toda edificacion o mejora que pertenezca a dichos demandantes y sus causahabientes; se ordena que los demandados sean puestos en posesion de los solares y terrenos ocupados por los demandantes y sus causahabientes, con demolicion de edificaciones y mejoras pertenecientes a dichos demandantes, a pagar a la Hacienda sus repectivas deudas hasta el 31 de diciembre de 1935, segun aparecen relacionada en los Exhs. 8 y 9 de los demandados, conforme ha sido revisados por el comisionado Sandejas, cuyas deudas en total asciendan a P29,628.23, con sus intereses legales desde el 3 de agosto de 1935, en que se presento la reconvencion de los demandados; se condena a los demandantes a pagar ademas, a los demandados, el alquiler de los terrenos y solares desde el 1.o de enero de 1936 hasta que los hayan entregado y desalojado, a base de la renta anual consignada en la columna correspondiente del Exh. 9, con sus intereses legales desde la fecha de esta decision; se prohíbe perpetuamente a los demandantes y cada uno de ellos inmiscuirse en los otros terrenos y solares de la Hacienda y en los regadios de la misma, o molestar a los demandados y a sus empleados en laposesion y administracion de dichas terrenos, solares y regadios, con las costas." (*Italics ours*).

Upon the request of the plaintiff Colegio de San Jose a receiver was appointed (and qualified) to take charge of

the Hacienda and its improvements and crops.

It also appears that after the receivership had been established, the Municipal Ordinance in question was approved, which, referring as it does, to the irrigation system of the Hacienda San Pedro Tunasan as the only system in the municipality, in effect interferes with the right of possession and administration of the receiver of the Hacienda.

Wherefore, it was no more than proper for the court of first instance to enjoin the enforcement of said ordinance.

Petitioner is in error when he contends that the municipality and its officers were not parties to the litigation. The record shows that in April 1936 the municipality intervened in it by the corresponding pleading subscribed by Attorney Feliciano Gomez.

Anyway, we are advised by respondents' supplementary answer that the Provincial Board of Laguna, per Resolution No. 591 dated August 9, 1950, declared Municipal Ordinance No. 12 null and void because the irrigation system within the San Pedro Tunasan Estate is a privately owned system.

That administrative action should destroy and destroys the petitioner's case, if he had any. There is no ordinance to enforce. And the Board acted within its powers, there being no question that the ordinance attempts to interfere with a private irrigation system which under the law, the municipal corporation has no power to regulate nor control.

Petition dismissed, with costs.

Moran, C.J., Paras, Feria, Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista, JJ., concur.

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