

JUAN BAUTISTA, PLAINTIFF AND APPELLANT, VS. THE MUNICIPAL COUNCIL OF MANDALUYONG, RIZAL, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. L-7200. February 11, 1956

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal by plaintiff Juan Bautista from an order of the Court of First Instance of Rizal dismissing his petition in civil case No. 1649.

It appears that on February 19, 1952, plaintiff Bautista filed in the court below against the Municipal Council and Mayor of the municipality of Mandaluyong, province of Rizal, the following petition:

"Comes NOW petitioner, by and through his undersigned counsel and to this Honorable Court, most respectfully alleges:

- That petitioner is of legal age and residing at 1067 Int. 1, Dart, Paco, Manila, and that respondents are the Municipal Council of . Mandaluyohg, Rizal and Bonifacio Javier, Mayor of the said municipality of Mandaluyong, Bizal,-where they may both be served with summons;

- That petitioner is engaged' in guard and watchman business, duly licensed and doing business, under the firm name 'Allied Investigation Bureau', the principal office of which is at Manila, Philippines;

- That on September 22, 1946, the respondent Municipal Council of the municipality of Mandaluyong, Rizal, passed and promulgated Ordinance No. 13, series of 1946, hereto' attached as Annex "A" and made an integral part hereof;

- That a portion of section 3 of the said ordinance is as follows: .

* * * * Provided however, only one Special Watchmen's Agency shall be granted the exclusive privilege or right to conduct a special watchman's agency within the territorial Jinyts of this municipality subject to the power of the Municipal Mayor to revoke their license in view of the reasons provided elsewhere in this Ordinance.'

- That said ordinance wasv approved by respondent Bonifacio Javier, as Mayor of the 'Municipality of Mandaluyon£', Rizal;

- That the. aforementioned ordinance, is invalid, being1 in viola- tion of the law;

- That petitioner, being1 engaged and duly licensed in the guard and watchmen business, has contracted to guard and has in fact guards assigned to watch the Wack Wack Golf and .County Club at Mandaluyong, Rizal;

- That his rights as one engaged in Guard and watchmen's business arc affected by the ordinance aforesaid. Wherefore, it is most respectfully prayed of this Honorable Court, that judgment be rendered declaring the Municipal .Ordinance No. 13, series of 1946 of the municipality of Mandaluyong, Rizal on September 22, 1946,

null and void, it being violative of the law." (Rec. App., pp. 1-3.)

The defendants, represented by the provincial fiscal, moved on March 14, 1952 for the dismissal of the petition on the ground of lack of a cause of action, or for a bill of particulars for failure of the petition to specify which particular law was allegedly violated by the ordinance in question. The said motion was set for hearing on March 19, 1952. On March 17, plaintiff's counsel filed a written motion to postpone the hearing of defendants' motion to dismiss or for a bill of particulars, because he was to appear in a legistration proceeding in Pampanga on the same date. The Court, however, denied the motion for postponement in its order of March 19, 1952 and, at the same time, granted defendants' motion to dismiss and ordered the dismissal of the petition. Plaintiff moved but failed to have the order of dismissal reconsidered, so he appealed to this court. For some reason or another, the records were sent to the Court of Appeals, which forwarded the case to us for raising only questions of law.

We find no merit in the appeal.

In the first place, the motion was not made with the three days' advance notice required by the rules (Rule 26), and the lower court had discretion to refuse to hear a motion on shorter notice.

In the second place, motions for continuance are addressed to the sound discretion of the trial court, and we can not consider the lower court's denial of appellant's motion to postpone an abuse of discretion, for as it correctly held, appellant was represented by the law firm of Macapagal, Punzalan, and Yabut; so the absence of one attorney did not excuse the failure of another member of the law firm to appear at the date of the hearing. And even granting that Attorney Canilao, was sole counsel for appellant, he had no right to assume that his motion to postpone would be granted (specially on less than 5 days' notice) and should have sent a representative at the hearing in his behalf to argue the merits of his motion for continuance, or else, he could have simply submitted a written, answer or reply to the motion to dismiss, or even amended his petition.

In the third place, appellant's petition was correctly dismissed by the Court below; for failure to allege facts sufficient to constitute a cause of action. The rule is that a person who questions the validity of a statute or law must show that he has sustained, or is in immediate danger of sustaining, some direct injury as the result of its enforcement (*Custodio vs. President of Senate*, (42 OS. Gat. 1243) November 7, 1945; *Manila Race Horse Trainers' Assn. vs. De la Fuente*, (88 Phil., 60) January 11, 1951). Appellant's petition does not show that his interests are, or about to be, adversely affected or prejudiced by the enforcement of the ordinance which he claims to be invalid. On the other hand, it appears that he still has a license to engage in the guard and watchman business, and there is no showing of any threat that his license would be revoked or cancelled.

The order appealed from is affirmed, without prejudice to appellant's right to file another complaint alleging a sufficient cause of action. Costs against appellant Juan Bautista. So ordered.

Parás, C. J., Padilla, Montemayor, Reyes, A., Bautista Angela, Labrador, Concepcion, and Endencia, JJ., concur.

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