

HON. JOAQUIN F. ENRIQUEZ, JR., IN HIS CAPACITY AS CITY MAYOR OF ZAMBOANGA CITY, PETITIONER, VS. HON. ABDULWAHID BIDIN, AS JUDGE OF THE COURT OF FIRST INSTANCE OF ZAMBOANGA CITY;...

G.R. No. L-29620. October 12, 1972

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An original action for certiorari and prohibition filed by petitioner mayor of Zamboanga City to set aside respondent court's order of July 22, 1968, ordering upon the filing of a P100.-bond by each of respondents (as petitioners below) the issuance of a writ of "preliminary injunction and preliminary mandatory injunction" against petitioner mayor (as respondent below) "restraining him from demolishing and closing petitioners' buildings and stores at the East Reclaimed Area, this City, and further requiring him to issue and/or renew the business permits to petitioners who were actually in business at the East Reclaimed Area, on April 17, 1968, when respondent revoked their license and closed their stores, upon payment of the necessary license fees and dues, pending the termination of this litigation, and/or unless a contrary order is issued by this Court."

The action for mandamus[1] to compel petitioner mayor to issue and/or renew the business permits of respondents-operators of beer and carinderia establishments known as night market stores at the East Reclaimed Area (a government property administered by the Bureau of Lands) was filed on July 6, 1968 with respondent court. Respondents alleged that they had been licensed to do business in the premises for the past ten years under previous city administrations; that after petitioner mayor assumed office as the new city mayor, he issued their permits for the first quarter of 1968 and later circularized a letter giving them as operators of the tiendas until December 31, 1968 to continue with their business under certain conditions, among which was the removal of sleeping quarters and other unauthorized additions introduced in the buildings; and that for failure to comply with said conditions and because their stores "have been the scene of brawls, fights and serious crimes" petitioner wrote them on April 17, 1968 informing them of the revocation of their permits and rejected their requests for renewal of their business permits.[2]

Summary hearing was held on respondents' motion for the issuance of preliminary writs of mandatory and prohibitory injunction pendente lite in the course of which petitioner presented various exhibits showing that the licenses issued to respondents were provisional and revocable, that they had failed to comply with the conditions of removing sleeping quarters and unauthorized additions, that they had bound themselves to vacate the land occupied by them at the East Reclaimed Area when the government would need the space, and that they had committed various violations of the city's Sanitary Code and Building Ordinance and other ordinances, while respondents on the other hand showed that their businesses had been permitted and licensed for over ten years and they had introduced considerable improvements in reliance thereon and that their business had thereby acquired a "certain degree of stability and character of permanence," as stated by respondent court in its injunction order.[3]

After the hearing, petitioner mayor filed a Manifestation on July 15, 1968 questioning respondent court's authority to order him to issue or renew the business permits — since the mayor's authority involved the exercise of judgment and discretion and was not merely ministerial, but at the same time expressing his willingness to defer implementation of his demolition orders until the termination of the case on the merits. Such Manifestation was however taken by respondent court as "in effect (admitting) the propriety of the issuance of the preliminary injunction against (petitioner)" in its order of July 22, 1968, wherein it ordered the issuance of the above-quoted writs of preliminary prohibitory and mandatory injunction.

Respondent court having denied reconsideration of its injunction order per its order of October 3, 1968, petitioner mayor filed this action on October 8, 1968. Summons was issued and hearing on the petitioner's prayer for preliminary injunction was held on October 22, 1968. On November 28, 1968, the Court issued upon petitioner's P200.-bond filed pursuant to its resolution of November 13, 1968, a writ of preliminary injunction restraining enforcement of respondent court's order of July 22, 1968 "which in effect would require the herein petitioner mayor to issue licenses and permits to respondents herein, owners of the night market stores."

Hearing on the merits was held on January 28, 1969, and pursuant to the Court's instructions at the hearing, petitioner with his pleading entitled "Petition to submit further evidence" of January 29, 1969, submitted documentary evidence attesting to certain events that had taken place after the issuance of the Court's writ of preliminary injunction, principally among them:

- (a) The decision dated December 5, 1968 of Vice President Fernando Lopez as Secretary of Agriculture and Natural Resources affirming the order of rejection of the revocable permit application of Maria Depacaquive and twenty-two others to the land applied for within the East Reclaimed Area on the ground that the same "is needed by the government as port area, customs zone and (for) the construction of the post office building as certified by the city engineer thereat;" and
- (b) City engineer's letter dated January 9, 1969 informing petitioner of the program of work for improvement of the wharf facilities and the authority from the Director of Public Works to start the fencing of the proposed customs zone, which fenced zone includes the area occupied by respondents' night market stores as per the city engineer's letter dated January 17, 1969.

In its resolution of April 14, 1969, the Court resolved to overrule respondents' opposition and to admit into the records the said documents submitted by petitioner.

Evidence has likewise been submitted by petitioner, without opposition or denial from respondents, (supplementing those presented before respondent court) that the premises of the night market stores are "occupied as living quarters making this area very insanitary,"[4] and that the road constructed by the city to ease the heavy traffic along the customs zone could not serve the purpose as a night market store building obstructed the free flow of traffic thereat.

Under the facts and circumstances of record, the Court is satisfied that petitioner mayor's action of closing respondents' building and night market stores and of refusing to issue or renew their business permits was based upon compelling considerations of the public welfare which must prevail over the private interests of respondents and that such action was in the valid exercise of his authority as granted in the city charter.[5]

The authority and discretion of petitioner mayor under the city charter to issue or refuse to issue the business permits sought by respondents, while not absolute, is not subject to a writ of mandamus by respondent court in the absence of a showing of a gross abuse or misuse of power. As was held in *Regala vs. de Guzman*,[6] in administrative matters falling within a city mayor's powers, the courts would not intervene in the mayor's exercise of his authority, where petitioner-complainant has not "proven abuse of authority on the part of said official" or

shown "misuse of power."

In the case at bar, petitioner mayor's action of refusing to issue or renew respondents' business permits was not only far from arbitrary or oppressive, but was further based on the additional ground that respondents had no right to remain in the premises of the East Reclaimed Area, since the national government had already rejected all revocable permit applications therefor from private individuals and had set the same aside for the specific public purposes of a port area, customs zone and a post office building.[7]

Indeed, the Court has but recently reiterated in *Pimentel vs. de los Angeles*[8] the fundamental rule governing the prerogative writ of mandamus that " '(T)he granting of writs of prohibition and mandamus,' as observed by the Chief Justice, 'is ordinarily within the sound discretion of the courts, to be exercised on equitable principles and * * * said writs should be issued when the right to the relief is clear.' As restated by Mr. Justice Castro for the Court in *Lemi vs. Valencia*, 'it is essential, therefore, for a writ of mandamus to issue, that the plaintiff has a legal right to the thing demanded and that it is the imperative duty of the defendant to perform the act required. The legal right of the plaintiff to the thing demanded must be well defined, clear and certain. The corresponding duty of the defendant to perform the required act must also be clear and specific.' "

Respondents utterly fail this test, since they can assert no rights to the business permits sought by them that are well-defined, clear and certain, nor claim a clear and specific duty on petitioner mayor's part to perform as a ministerial act the required act of issuing them the permits.

* * * * *

With reference to the Court's resolution of November 13, 1968, directing the issuance of the writ of preliminary injunction sought by petitioner upon a P200.-bond, which writ was eventually issued on November 28, 1968, petitioner, upon his counsel's telegraphed request to be informed by wire collect of any injunction resolution as may be issued by the Court, was so informed by the clerk of court on November 15, 1968. Upon telegraphed request of Atty. Rolando E. de Leon, one of respondents' counsels, seeking confirmation thereof, as news of the Court's resolution had been circulated over the radio and in the local newspaper in Zamboanga City, the clerk of court, in two telegrams collect sent on November 18, and 19, 1968, in reply to two successive telegraphed inquiries, confirmed the issuance of the Court's said resolution of November 13, 1968.

Atty. de Leon had filed his ex-parte manifestation dated November 18, 1968, complaining that the clerk's office had sent notices only to petitioner and there seemed to "exist an unsavory tie which links the herein petitioner with some people in the Supreme Court in a manner deliberately if not maliciously designed to prejudice the lawful interests of your respondents."

The then clerk of court, now court of first instance judge Celso L. Magsino, submitted a report and answer to the Court,[9] recounting that his office had duly served both parties with all notices and complaining that "by the above stated baseless, wild and irresponsible charges, counsel for respondents have maliciously cast doubts upon the integrity of the Supreme Court and its administrative machinery when notices of the aforesaid resolutions have been sent within the regular period and thru the customary manner established by settled practice and procedure, and when the Clerk, now and before, wires notices of resolutions, it is as an act of courtesy and public service at the request and expense of the party concerned, even though such requests impose additional burden upon the employees and funds of the Court for the messenger's transportation from the Office to the telegraph station and return." Pursuant to the clerk's prayer, the Court issued its resolution of December 11, 1968, requiring respondents' counsels to show cause why they should not be subject to disciplinary action for their said statements.

Atty. de Leon submitted his explanation of January 6, 1969, assuming sole and absolute responsibility for the statements in his manifestation to the exclusion of his co-counsel, Atty. Hector C. Suarez and submitted "a narration of facts which tempered his mood and prompted him to make that statement — (against some personnel) — obviously and certainly without malice to this Court" and declaring his "honest and avowed intention of preserving the utmost dignity and integrity that is due this Honorable Court."

Acting on the premises, the Court feels that a great part of Atty. de Leon's misconception was due to Zamboanga City's distance from Manila and the deficiencies of the mail service as well as to his failure to file a similar request, as the city fiscal on behalf of petitioner mayor, to be advised by wire collect of the Court's action on petitioner's motion for preliminary injunction which was heard on October 22, 1968. The records show that the formal notice of the Court's said injunction resolution of November 13, 1968, although sent on November 15, 1968 by air-mail special delivery to petitioner with P0.60-postage pre-paid, was received by petitioner's counsel through ordinary mail only on November 27, 1968.[10]

Under the circumstances, the Court deems that an admonition with warning to Atty. de Leon for having precipitately made such rash statements without basis that unduly reflected upon the personnel in the office of the clerk of court would suffice to uphold the ends of justice.

ACCORDINGLY, the petition for the issuance of a writ of certiorari and prohibition is granted and respondent court's order of July 22, 1968 is ordered set aside and declared null and void. The writ of preliminary injunction heretofore issued against said order is hereby made permanent.

On the incident of the rash statements made by Atty. Rolando E. de Leon in his manifestation of November 18, 1968, the Court hereby admonishes him therefor with warning that repetition of the same act in the future will be dealt with more severity. Let a copy hereof be entered in his personal record.

No pronouncement as to costs.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Makalintal, J., on official leave.

[1] Civil Case No. 1213 of the Court of First Instance of Zamboanga City entitled "Francisco Asuncion, et al. vs. Joaquin F. Enriquez, Jr., etc."

[2] As per Order of October 3, 1968.

[3] Idem.

[4] The sanitary inspector's letter-report of June 23, 1969 to the city health officer finds that "human wastes, garbage and rubbish are scattered which will be a good breeding place for flies, cockroaches and other disease-carrying animals" (Annex A, petitioner's urgent motion of Feb. 18, 1972). The city health officer's letter-report of July 13, 1971 to the city fiscal recites that "the toilet facilities of these buildings are all out of order and their continued use make the place very insanitary. Septic tanks are full thus excess drain water overflows the septic vault reaching up to the corner of P. Lorenzo St." and "strongly recommends the demolition of those buildings formerly used as night market stores" (Annex D, idem).

[5] Sec. 9 (k) of the Zamboanga city charter, C. A. No. 39, as amended, enumerates among the city mayor's powers:

"To grant and refuse municipal licenses or permits of all classes and to revoke same, in conformity with the

provisions of law or ordinance, for violation of the conditions upon which they were granted or if acts prohibited by law or municipal ordinance are being committed under the protection of such license or in the premises which the business for which the same have been granted is carried, or for any other good reason of general interest."

[6] 12 SCRA 204 (1964), involving the city mayor's assignment of market stalls.

[7] See *City of Manila vs. Garcia*, 19 SCRA 413 (1967).

[8] 45 SCRA 396, 401 (June 15, 1972); italics copied.

[9] Rollo, pp. 130-139.

[10] Rollo, p. 127.

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