

R. B. INDUSTRIAL DEVELOPMENT COMPANY, LIMITED, AND RAY N. KITILSTVEDT, PETITIONERS, VS. HON. MANUEL LOPEZ ENAGE, JUDGE OF THE COURT OF FIRST INSTANCE OF AGUSAN, BRANCH II, AND ...

G.R. No. L-27741. July 29, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

This original action for certiorari and prohibition asks us to strike down the power of the Court of First Instance of Agusan to proceed with its Civil Case 1087.[1] Petitioners R.B. Industrial Development Company, Limited (Industrial, for short) and Ray N. Kittilstvedt, with vehemence say, inter alia, that private respondent Eastern Timber Corporation (hereinafter referred to simply as Eastern) has no cause of action against them; and, that the lower court is without jurisdiction to take cognizance of said case. Petitioners expressed grave concern over the great probability that the lower court would issue an injunction to prevent Industrial from logging within the forest area covered by its concession. We, accordingly issued a cease-and-desist order upon petitioners' application.

The present controversy has its roots in facts now to be recited.

Ray N. Kittilstvedt was granted by the Bureau of Forestry a forest concession in Cabadbaran, Agusan, with an area of 6,850 hectares under Ordinary Timber License 1286-'59 (New) dated January 22, 1959 to expire on June 30 1959. Said license was on its face non-transferable. And yet, on December 22, 1959, i.e., five months and twenty-nine days after the license expired, Eastern, at the time still in the process of organization,[2] became Kittilstvedt assignee of the lapsed license aforesaid in exchange for 400 shares with a par value of P40,000 of Eastern's capital stock. Soon thereafter, that is, on March 30, 1960, Kittilstvedt sold his 400 shares in Eastern for the same consideration of P40,000 to Democrito O. Plaza, now Eastern's stockholder. Of interest is that immediately after the transfer of the license, Kittilstvedt was made vice-president of Eastern. Claim is now advanced that inspite of the fact that Kittilstvedt is supposed to own 96.15% of the paid-up, capital stock,[3] he (vice-president) did not share in the corporation's management.

Kittilstvedt's timber license was, extended on March 6, 1963, denominated as Ordinary Timber License 878-'63 in his name. It was again renewed, likewise in his name, on October 27, 1965, this time as Ordinary Timber License 847-61566. While the license appears in Kittilstvedt's name, averment is made by Eastern that the expenses for the renewal of the license such as application fees license fees, forestry bonds and other incidental expenses were paid for by Eastern.

The day following the issuance of the last renewed license (847-61566), or on October 28, 1965, Kittilstvedt transferred the same to Industrial.

Industrial thus obtained its own Ordinary Timber License 981-103166 (New).

On December 21, 1965, Eastern lodged a complaint with the Director of Forestry against R. B. Mining Co., Ltd. (instead of Industrial) and Kittilstvedt, praying for (1) the cancellation of the ordinary timber license allegedly issued in the name of R.B. Mining Co., Ltd., and (2) the issuance in lieu thereof of another license in the name of Eastern; and (3) in the meantime, for an order stopping R.B. Mining Co., Ltd. or any person to conduct logging operations within the forest area covered by Ordinary Timber License 981-103166 (New). The remedy pursued in the Bureau of Forestry was thereafter abandoned.

Came the court case (Civil Case 1087) filed on February 4, 1966 in the court of first instance adverted to at the beginning of this opinion.[4] This time, Eastern sued Kittilstvedt and Industrial asking for the following reliefs: (1) preliminary injunction to stop logging operations in the area under Industrial's timber license; (2) nullification of the transfer of Kittilstvedt to Industrial; (3) declaration that plaintiff is the owner of the said timber license appearing in the name of Industrial; (4) directing defendants to transfer said license in Eastern's name; and, (5) accounting by defendants of logs and forest products, damages, attorneys' fees, and costs.

This complaint was met by defendants' motion to dismiss mainly upon the two grounds heretofore mentioned. The court held in abeyance resolution on the motion to dismiss. Defendants moved to reconsider.

Then, on May 2, 1967, the trial court issued an order[5] (1) denying the motion to reconsider; (2) denying plaintiff's ex-parte motion to declare defendants in default; (3) ordering defendants to answer the complaint within the reglementary period; and (4) setting for hearing on June 5, 1967 plaintiff's urgent motion for preliminary injunction.

On June 1, 1967, defendants went to the Court of Appeals on certiorari (CA-G.R. 31431-R). Since jurisdiction was the main question involved therein, cognizable only by the Supreme Court, the Court of Appeals, on June 14, 1967, dismissed the petition.

Meanwhile, on June 5, 1967, at a time when the certiorari petition was pending consideration by the Court of Appeals, respondent judge issued two orders: the first, declaring defendants in default and denying their counsel's request to defer the proceedings, and giving leave to plaintiff to present evidence before the deputy clerk of court; the second, authorizing the deputy clerk of court to receive plaintiff's evidence in connection with the latter's (Eastern's) application for a preliminary injunction.

Defendants below, Industrial and Kittilstvedt, lost no time in coming to this Court on certiorari and prohibition aforesaid.

We will now proceed to discuss the legal issues tendered by the petition and the return, and the written arguments of the parties.

1. The forefront question is whether or not Eastern, plaintiff below (respondent here), has a cause of action against defendants (herein petitioners) Industrial and Kittilstvedt. For, indeed, if Eastern did not have a cause of action, it would be futile to proceed any further.

Eastern's cause of action is anchored on the deed of assignment and affidavit both executed by Kittilstvedt on December 29, 1959 conveying to Eastern all his rights under Ordinary Timber License 1286-'59 (New). But did Eastern acquire any right under these documents to entitle it to sue for the performance of any prestation thereunder by Kittilstvedt?

Our answer is No. First, the license had already expired. There was no license to transfer. Second, the license itself says that such license is non-transferable. And Eastern is duty bound to be guided by that prohibition. Third, the conveyance was illegal. *Ex dolo malo non oritur actio*. A party to an illegal contract cannot come to court and

ask to have his illegal objects carried out.[6] Forestry Administrative Order No. 21, dated September 18, 1954,[7] expressly prohibits such transfer. This order reads:

"The transfer, sale or conveyance of any license, permit or lease issued by the Director of Forestry, now or hereafter authorized under the forest laws, rules and regulations in favor of any individual, companies or private corporations within the period of three years after the issuance of such license, permit or lease, or any transaction under any guise which will allow or permit others to enjoy the privilege granted therein, is hereby prohibited.

After the period of three years from the issuance of the license, permit or lease, the licensee, permittee or lessee may, with the approval of the Secretary of Agriculture and Natural Resources, be allowed to transfer, sell or convey his license, permit or lease in favor of qualified persons, companies or corporations provided that the licensee, permittee or lessee has fully complied with all the requirements of the law and the rules and regulations thereunder promulgated by the Director of Forestry; and provided further, that there is no evidence that such transfer, sale or conveyance is being made for purposes of speculation".[8]

Forestry administrative Order No. 21 was issued by the Secretary of Agriculture and Natural Resources upon recommendation of the Director of Forestry on authority of Sections 79(b) and 1817 of the Revised Administrative Code. Judicial test has since recognized that administrative orders of this nature have the force and effect of law.[9]

Why then should transfer of licenses be regulated by the Bureau of Forestry?

We look at Forestry Administrative Order No. 21 just transcribed. We perceive that it is not without reason. By Section 1824 of the Revised Administrative Code, the governing principle is that the public forests of the Philippines "shall be held and administered for the protection of the public interests, the utility and safety of the forests, and the perpetuation thereof in productive condition by wise use". This is but an echo of Section 1817 of the same Code which, speaking of regulations of the Bureau of Forestry, states that such "regulations of the Bureau of Forestry, with the approval of the Department Head first had, shall, among other things, contain provisions deemed expedient or necessary to secure the protection and conservation of the public forests in such manner as to insure a continued supply of valuable timber and other forest products for the future, and regulating the use and occupancy of the forests and forest reserves, to the same end".

We have recently said that there is the pressing need for forest preservation, conservation, protection, development and reforestation.[10] "And, it is to be observed that in the administrative order heretofore adverted to, there is a discernible purpose at once laudable. With tremendous profits that logging operations may bring, the probability of the government having to cope with unscrupulous loggers is not altogether remote. The transfer, sale or conveyance of forest concessions, so the rule says, should not be "made for purposes of speculation". One without a legitimate purpose to operate a logging concession may obtain a license to be able to peddle it and thus make the proverbial quick peso. There is the other concessionaire already with a license covering a sufficient area, who may be driven by greed to acquire more with detriment to public interests. Is it then too far-fetched to say that it is the bounden duty of those called upon to enforce our forest laws to minimize, if not totally curb, the activities or emergence of those speculators and dummies?

It is within the area of the State's concern to encourage the exploitation of our natural resources by honest, qualified licensees who are willing and able to exert their utmost efforts and dare the risks and privations concomitant to the opening of frontiers. Like-wise, it is the State's responsibility to see to it that benefits accrue both to the concessionaire and the country in general. It is not out of place then to say that the law may grant or withhold the transfer of timber licenses.

To repeat, Eastern seeks relief in the court below upon a deed of conveyance of a forest license eleven months and seven days after the issuance thereof, and after its term has expired. This is contrary to the prohibition in Forestry Administrative Order No. 21. It is illegal, Eastern acquired no rights therefrom. Eastern cannot compel Kittilstvedt to comply with the terms of that contract. For, there is no duty where the law forbids.[11] And even if we concede that the transfer were valid, the same would not produce any effect until and unless approved by the Director of Forestry and the Secretary of Agriculture and Natural Resources.

And the suit below being one for specific performance of an illegal conveyance will not prosper for lack of cause of action.

2. Eastern may complain about its investment. We are in no position to bring to the surface what has actually transpired in the relations between Eastern and Kittilstvedt. We observe though that the consideration in shares of stock for P40,000 was purportedly given on December 29, 1959. Quite interesting to note is that there is in the record a statement that the same shares of stock were transferred by Kittilstvedt to Democrito O. Plaza on March 30, 1960 in consideration of P40,000. And yet, surprisingly enough, the first payment of P10,000 (on the P40,000) was made by Democrito O. Plaza on December 4, 1959 in cash, which according to the receipt signed by Kittilstvedt was for "partial payment of the purchase price of my 400 shares of stock with the Eastern Timber Corporation". That payment to Kittilstvedt of P10,000, it thus appears, preceded even the transfer of the license and the acquisition by Kittilstvedt the stocks sold. Not escaping our notice also is the fact that for five years, Eastern made no move to transfer to its name Kittilstvedt license. But, by its own representations to the Bureau of Forestry and to this Court, Eastern says that it spent "for the renewal of the license such as application fees, license fees, forestry bonds and other incidental expenses involved in the renewal of the O. T. License issued to Kittilstvedt".[12] It is a wonder, too, why, despite his clear majority in stockholdings, Kittilstvedt would complain of being shut off from Eastern's management, when he can easily dispose of the other directors or whip them into line.

The conduct observed by the parties but emphasizes the unique relationship between Kittilstvedt and Eastern and the latter's stockholders.

Those are matters that should first be looked into by the Bureau of Forestry. Then the Bureau of Forestry, on the basis of its findings of fact, must first rule on whether or not transfer license should be allowed, and its conclusions if favorable must be approved by the Secretary of Agriculture and Natural Resources. It is only after all these shall have happened - and they have not that Eastern can lay claim, if any it has, to the transfer of the license in its name.

And again we say that Eastern has no cause of action.

3. We now come to the jurisdictional issue. The thrust of the reliefs sought by Eastern is that it be declared owner of the timber license now in the name of Industrial, and that, in consequence, the transfer thereof; by Kittilstvedt to Industrial be annulled. But the question of whether or not Industrial's timber license should be cancelled and a new one issue in Eastern's name in lieu thereof is one, upon the facts of record, beyond the reach of the courts. Such a prerogative is vested Bureau of Forestry by Section 1816 of the Revised administrative Code. This codal provision reads:

SEC. 1816. Jurisdiction of Bureau of Forestry. - The Bureau of Forestry shall have jurisdiction and authority over the demarcation, protection, management, reproduction, reforestation, occupancy, and use of all public forests and forest reserves and over the granting of licenses for game, and fish, and for the taking of forest products, including stone and earth, therefrom".

A doctrine long recognized is that where the law confines in an administrative office the power to determine

particular questions or matters, upon the facts to be presented, the jurisdiction of such office shall prevail over the courts.[13] Respondent Eastern had gone to the Bureau of Forestry. It withdrew its complaint. Eastern may not go to the courts of justice which have no jurisdiction in the first instance to approve the alleged transfer and to direct the issuance of the license in favor of Eastern. At this stage, the jurisdiction of the court may not be invoked.

Absent a cause of action and the lower court's jurisdiction, there was grave abuse of discretion in that court's refusal to dismiss the case under review.

For the reasons given, the petition for certiorari and prohibition is hereby granted; the writ of preliminary injunction heretofore issued is made permanent; and the respondent judge or whoever takes his place is hereby directed to dismiss Civil Case 1087 of the Court of First Instance of Agusan, entitled "Eastern Timber Corporation, Plaintiff, vs. Ray Kittilstvedt and R.B. Industrial Development Company, Limited, Defendants".

Costs against private respondent Eastern Timber Corporation.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Entitled "Eastern Timber Corporation, Plaintiff, vs. Ray N. Kittilstvedt and R.B. Industrial Development Company, Limited, Defendants".

[2] It was only registered with the Securities and Exchange Commission on November 22, 1962.

[3] Total paid-up capital stock is P10,400.00 distributed as follows: P10,000.00 - Ray N. Kittilstvedt; P100.00 - Valentina D. Plaza; P100.00 - Felipe B. Plaza; P100.00 - Ursula A. Galido; and P100.00 - Alfredo A. Cayas.

[4] Civil Case 1087, entitled "Eastern Timber Corporation, Plaintiff vs. Ray N. Kittilstvedt and R.B. Industrial Development Company Limited, Defendants".

[5] Order dated May 2, 1967 was allegedly received by defendants on May 25, 1967.

[6] Bough and Bough vs Cantiveros and Hanopol, 40 Phil. 209, 216; Rellosa vs. Gaw Chee Hun, 93 Phil. 827, 831.

[7] 50 O.G. No. 11, pp. 5244-5245.

[8] Emphasis supplied.

[9] Director of Forestry vs. Muñoz, L-24796, June 23, 1968, and cases cited therein.

[10] Director of Forestry vs. Muñoz supra.

[11] Gonzaga vs. Crown Life Insurance Co., 91 Phil. 10, 14.

[12] Complaint filed with the Bureau of Forestry, par. 9; Rollo, p. 12, Annex A of the Petition. Respondents' Answer, par. 6; Rollo, p. 56.

[13] See: Pacis vs. Averia, ????, November 29, 1966 and Romual vs. Arca, L-20516, November 15, 1967, 1967D Phil. 373, 375, where we held that, by the rule of primacy of administrative jurisdiction courts of first instance possess no jurisdiction over replevin cases involving property subject of seizure and forfeiture proceedings in the Bureau of Customs.

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