

FELIPE ALIDO, PETITIONER, V. GARRY C. DOMINGO, RODULFO DIMAISIP, AND MAMERTO VILLANUEVA, RESPONDENTS.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Before Us is the "PETITION FOR MANDAMUS"[1] ("Petition" for brevity) filed by petitioner Felipe Alido ("petitioner" for brevity) under Rule 65 of the Rules of Court against respondents Garry C. Domingo, Rodulfo Dimaisip, and Mamerto Villanueva ("respondents" for brevity), as officers of the Business Permits and Licensing Office of Quezon City[2].

At the outset, the Petition[3] is dismissible for being an improper remedy.[4] The Petition[5] sought the performance by respondents of their duties under Section 10 of Republic Act No. 9257 ("R.A. No. 9257" for brevity), otherwise known as the "Expanded Senior Citizen Act of 2003".[6] Specifically, petitioner prayed that respondents be compelled to do the following:

- "1. Cause the cancellation or revocation of the business permit to operate, franchise, and other similar privileges granted to Kowloon House Restaurant located at 20 Matalino St., Central Diliman, Quezon City.
2. Pay the damages and cost of suit in favor of the Petitioner."[7] (Emphasis Supplied)

However, a Petition for Mandamus under Rules 65 of the Rules of Court is available to compel the performance of a ministerial act or "one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done."[8]

Here, the acts which petitioner sought for respondents to perform involved the exercise of discretion or judgment on the part of respondents, and were therefore not ministerial. This is so, considering that Section 10 of R.A. No. 9257 gives respondents the right to decide whether or not to impose the penalty of cancellation or revocation of business permits "after due notice and hearing". Section 10 of R.A. No. 9257 states:

"SEC. 10. Penalties. – Any person who violates any provision of this Act shall suffer the following penalties:

xxx

Upon filling an appropriate complaint, and after due notice and hearing, the proper authorities may also cause the cancellation or revocation of the business permit, permit to operate, franchise and other similar privileges granted to any business entity that fails to abide by the provisions of this Act." (Emphasis and Underscoring supplied)

A Petition for Mandamus is available only to compel the performance of a ministerial act, and not an act which involves the exercise of discretion or judgment, or when the officer is given the right to decide whether or not to perform the duty. This is in accordance with the following pronouncement of the Supreme Court in *Philippine Coconut Authority vs. Primex Coco Products, Inc.*, G.R. No. 163088, July 20, 2006:

"Mandamus lies to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment. When an official is required and authorized to do a prescribed act upon a prescribed contingency, his functions are ministerial only, and mandamus may be issued to control his action upon the happening of the contingency.

For a writ of mandamus to be issued, it is essential that petitioner should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed. Mandamus applies as a remedy only where petitioner's right is founded clearly in law and not when it is doubtful. The writ will not be granted where its issuance would be unavailing, nugatory, or useless.

If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial." (Emphasis Supplied)

IN VIEW OF ALL THESE, the Petition for Mandamus is DISMISSED.

SO ORDERED.

Dicdican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 3-8

[2] Rollo, p. 5

[3] Rollo, pp. 3-8

[4] Philippine Coconut Authority vs. Primex Coco Products, Inc., G.R. No. 163088, July 20, 2006

[5] Rollo, pp. 3-8

[6] Rollo, pp. 4-6

[7] Rollo, p. 6

[8] Spouses Fernando and Angelina Edralin vs, Philippine Veterans Bank, G.R. No. 168523, March 9, 2011

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