

PABLO M. BERBERABE, PETITIONER, VS. HON. NICANOR P. NICOLAS, JUDGE OF THE COURT OF FIRST INSTANCE OF ORIENTAL MINDORO, BRANCH I, THE MUNICIPALITY OF NAUJAN THROUGH THE HON. AMAD...

G.R. No. L-38843. August 26, 1977

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari and mandamus, with a prayer for the issuance of a writ of preliminary injunction.

On December 31, 1968, the herein petitioner, Pablo M. Berberabe, and the respondent Municipality of Naujan, Oriental Mindoro, entered into a contract whereby the said respondent municipality leased unto the petitioner the Naujan Butas Fishery for a period of ten (10) years, from January 1, 1969 to December 31, 1978, for an annual rental of P202,500.00, to be paid quarterly.[1]

By reason of an alleged violation of the aforesaid contract by the lessor, the herein petitioner filed a complaint against the Municipality of Naujan on June 18, 1973 for the rescission of the contract of lease and for damages. The case was docketed in the Court of First Instance of Mindoro Oriental as Civil Case No. R-2427, and assigned to Branch I, presided by the respondent Judge Nicanor P. Nicolas.[2]

Upon petition of the respondent municipal corporation, the respondent court, on August 24, 1973, appointed the Acting Clerk of Court, Eliseo Q. Oliva, the Provincial Sheriff, Juan M. Abadejos, and the Provincial Auditor, Francisco Serrano, as receivers of the Butas Fishery.[3]

On November 8, 1973, the respondent Municipality of Naujan filed a complaint for the rescission of the same contract of lease and foreclosure of mortgage against the petitioner for the alleged failure of the latter to pay two (2) quarterly rentals. The case was docketed as Civil Case No. R-2444 of the Court of First Instance of Mindoro Oriental. Both cases are still pending resolution.[4]

The petitioner vigorously objected to the appointment of receivers over the leased property so that on February 25, 1974, he filed a petition for certiorari and mandamus with this Court, to annul the order of the respondent court placing the property under receivership and for the return of the management and possession of the Fishery to him. The case was docketed as G.R. No. L-38257, entitled, "Pablo M. Berberabe, petitioner, versus Hon. Nicanor P. Nicolas, etc., et al., respondents."

After appropriate proceedings, this Court issued a Resolution on March 11, 1974, which reads, as follows:

"L- 38257 (Pablo M. Berberabe, vs. Hon. Nicanor P. Nicolas, etc., et al.).- At the hearing of this case this morning, the following appeared and orally argued:

"Atty. Isidoro A. Aclan for the petitioner, and Provincial Fiscal Nestor Andrada for respondents.

"After hearing both parties and being apprised by them of all aspects of the case, including the equities of the

situation, and considering that both parties have asked in their respective actions in the lower court for the rescission of the subject contract, and, therefore, there can be no obstacle to the respondent municipality recovering immediately the possession of the subject matter of the said contract, in order that it may deal with it according to law, with the consequent dissolution of the receivership impugned in the petition herein, the Court RESOLVED, upon agreement of the parties, to DISMISS the herein petition, without pre-judice to petitioner limiting his relief in his action in the respondent court to demand for damages for alleged breach of the subject contract, and without prejudice also to the immediate dissolution of the receivership upon delivery by petitioner to respondent municipality of the subject matter of said contract, as agreed upon in open hearing.

"The Court reiterates its policy of looking with disfavor at the appointment of officials and employees of the trial courts either as receivers or as helpers, in any category, of receivers. At the same time, looking into the equities herein involved, the Court advised the Provincial Fiscal of Oriental Mindoro as well as the Mayor of Naujan, who were personally present, to try to effect the most equitable arrangements, permitted by law, by which both parties, the Municipality of Naujan and the petitioner, may not be unnecessarily pre-judiced by what has happened to the contract which they must have both entered into in good faith."[5]

Upon the ground that this Court, in its Resolution of March 11, 1974, had directed the immediate dissolution of the receivership upon delivery of the Naujan Butas Fishery by petitioner to the Municipality of Naujan, and claiming that there should be a prior return of the leased property to him in order to comply with this Court's resolution of March 11, 1974, the petitioner filed motions, seeking authority to withdraw from the Philippine National Bank, Calapan Branch, all the proceeds from the Naujan Butas Fishery deposited by the receivers with the said bank,[6] and for the delivery to him of the Naujan Butas Fishery and all the properties being used thereat.[7]

On May 31, 1974, the respondent court, instead, upon the recommendation of the Provincial Fiscal, ordered the delivery of all the money in the hands of receivers and those deposited in the Philippine National Bank to the Provincial Treasurer of Oriental Mindoro.[8] In another order of the same date, the respondent court directed the receivers "to effect the material delivery of the Naujan Butas Fishery and all properties appurtenant to its operation to the Municipal Corporation."[9]

Claiming that the orders of May 31, 1974 were issued by the respondent court in excess of its jurisdiction, and in contravention of this Court's resolution of March 11, 1974 in case G.R. No. L-38257, entitled, "Pablo M. Berberabe, petitioner, versus Hon. Nicanor P. Nicolas, etc., et al., respondents," the petitioner filed the instant petition, praying that a writ of preliminary injunction be issued restraining the respondents, their agents and employees from continuing to spend, and desist from spending the amount of P98,893.35 or any fraction thereof now deposited with the Provincial Treasurer of Oriental Mindoro and P2,011.03 in the hands of Miss Lydia M. Basco and likewise ordering the respondents to immediately turn over to the petitioner the said amount of money; and after a hearing, to render judgment:

(a) Commanding or ordering the respondent to deliver or cause the delivery to the petitioner the amount of P98,893.35 deposited with the Provincial Treasurer of Oriental Mindoro as well as the amount of P2,011.03 in the hands of Miss Lydia M. Basco;

(b) Order the respondent Municipality of Naujan to reimburse the petitioner the amount of P668,972.50 as one-half (1/2) of the value of useful improvements introduced by petitioner at Naujan Butas Fishery, suitable to the use for which it was intended without altering the substance of the property leased; or command or order the respondents, Municipality of Naujan, to allow petitioner to remove all his improvements, in the event said respondent municipality refused to make the reimbursement;

(c) Command or order the respondent receiver and the respondent Judge to settle the account of receivership

and deliver or cause the delivery of all the properties, documents, money and other belongings to the petitioner, which lawfully belongs to him;

(d) Annul the order of the respondent Judge ordering the receiver to deliver, Naujan Butas Fishery to respondent Municipality of Naujan and in lieu thereof, order that the said Naujan Butas Fishery be first turned over or delivered to the petitioner; after petitioner have been reimbursed the amount of P668,972.50 by respondent municipality, then petitioner shall deliver subject property to respondent municipality of Naujan; but should the municipality of Naujan refuse to make the reimbursement, then petitioner shall remove his improvements pursuant to the provisions of Article 1678 of the New Civil Code;

(e) Annul the order of the respondent Judge ordering the money deposited with the Philippine National Bank, Calapan Branch, be deposited with the office of the Provincial Treasurer as this was made simply to unlawfully exclude petitioner from the use and enjoyment of said cash;

(f) Annul or declare unlawful all the expenses of the receivers amounting to P144,206.01 taken from the P245,110.39 proceed of Naujan Butas Fishery, this being the exclusive money of petitioner; and order the respondents to reimburse the amount in full to the petitioner;

(g) Order the respondents to pay damages sustained by the petitioner by reason of their acts and/or omission; and

(h) Order the respondents to pay the expenses of litigation; attorney's fee for P5,000.00, and likewise pay the cost of the suit.[10]

Commenting on the petition, the Provincial Fiscal of Oriental Mindoro, in behalf of the respondents, stated that the claim of the petitioner is a matter of evidence which the petitioner should have presented in the hearing of the case in the lower court and which this Court cannot possibly decide without a hearing of the case on its merits.

Indeed, the demands of the petitioner for the delivery of certain sums of money to him are not based on judgments for the payment of money, the execution of which may be enforced by mandamus, but a mere money claim which has yet to be determined after a hearing and the presentation of evidence by the parties, so that mandamus is not the proper remedy.

The claim of the petitioner that the Order of May 31, 1974, directing the receivers to deliver the Butas Fishery to the, municipality of Naujan, had infringed upon this Court's resolution of March 11, 1974 in case G.R. No. L-38257, wherein the Court had allegedly enjoined the receiver to deliver the leased property first to the petitioner so that the petitioner can, in turn, deliver the same to the municipality, is without merit. In the said resolution of March 11, 1974, "the Court RESOLVED, upon agreement of the parties, to DISMISS the herein petition, without prejudice to petitioner limiting his relief in his action in the respondent court to demand for damages for alleged breach of the subject contract, and without prejudice also to the immediate dissolution of the receivership upon delivery by petitioner to respondent municipality of the subject-matter of said contract, as agreed upon in open hearing." In the "open hearing" referred to in the said resolution, the following transpired:

"Honorable Justice Barredo:

To cut the proceeding short, as you can see all these proceedings are on the record. Can we enter into a resolution by agreement of the parties, that this petition be dismissed without prejudice of claim for damages in the lower court and without prejudice for the dissolution of the receivership?

"Atty. Aclan:

Yes, Your Honor.

"Honorable Justice Zaldivar:

What does the Fiscal say?

"Fiscal Andrada:

Yes, Your Honor." [11]

It could be seen therefrom that this Court did not order the dissolution of the receivership; nor did it order the delivery of the Naujan Butas Fishery to the petitioner for the latter to give to the respondent municipality as a precondition for the dissolution of the receivership. Hence, the orders complained of cannot be said to contravene this Court's resolution of March 11, 1974 in case G.R. No. L- 38257.

At any rate, the orders complained of are without doubt interlocutory in nature which could be resolved in the appeal of the main cases, and this Court, as a rule, does not entertain a petition for certiorari questioning the legality and validity of an interlocutory order unless grave abuse of discretion is patently committed in its issuance, or that the lower court has acted capriciously and whimsically, in which case, this Court may exercise its supervisory authority to correct the error committed. [12] The instant petition does not present a clear case of abuse of discretion which may justify the Court's intervention at this stage of the proceedings in the court below.

WHEREFORE, the instant petition should be, as it is hereby, DISMISSED. Costs against the petitioner.

Fernando, (Chairman), Barredo, Antonio, and Santos, JJ., concur.

Aquino, J., concurs. The matters raised in the petition should be taken up in Civil Case No. R-2427, the trial of which should be consolidated with Civil Case No. R-2444. The disposition of the two cases should be expedited.

The sense of this Court's resolution of March 11, 1974 is that the fishpond should be returned to the municipality of Naujan. That means ipso facto the dissolution of the receivership. Whether it is the receiver or the petitioner who should effect the return is immaterial.

The restoration of the possession of the fishpond to the municipality is without prejudice to petitioner lessee's claim for damages.

[1] Rollo, p. 20.

[2] par. 4, Petition, Rollo, p. 4.

[3] par. 6, Petition; See also p. 33, Rollo of G.R. No. L-38257.

[4] Rollo, p. 83.

[5] Id., p. 27; See also p. 117, Rollo of G.R. No. L-38257.

[6] Id., p. 29.

[7] Id., p. 61.

[8] Id., p. 38.

[9] Id., p. 66.

[10] Id., pp. 17-18.

[11] Id., p. 70.

[12] Manila Electric Co. vs. Enriquez, 110 Phil. 499; Savory Luncheonette vs. Lakas Ng Manggagawang Filipino,

G.R. No. L- 38964, Jan. 31, 1975, 62 SCRA 258; De Midgely vs. Ferandos, G.R. No. L-34314, May 13, 1975, 71 O.G. No. 41, p. 6830, 64 SCRA 23.

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