

EULOGIO DATU, ELEUTERIO GARCIA, MACARIO TORRES, GABRIEL LUGTU, FELIPE SIBUG, REYMUNDO TURLA, MELANIO TONGOL, HERMAN NUQUI, AMBROCIO DE JESUS AND RODOLFO PALAD, PETITIONERS, VS. ...

G.R. No. L-23178. May 28, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Herein petitioners filed on July 14, 1964, this petition for certiorari and prohibition seeking to nullify the orders of respondent judge of the Court of First Instance of Pampanga, dated March 17, 1964 and April 16, 1964, respectively, dissolving the writ of preliminary injunction issued on December 12, 1963 in Civil Case No. 2426 and approving the bond of P5,000.00 filed by herein respondents for said dissolution. The petition alleges, among others, that the herein petitioners are fishermen of Minalin, Pampanga and were granted an annual license to fish with nets known as "biacus" in specific municipal waters of Minalin until December 31, 1963, with the right to renew the same for the year 1964; that the municipality of Minalin enacted Resolution No. 99 series of 1963, withdrawing from the access of the petitioners the public waters and streams of Minalin and providing that the license to fish in such municipal water could be granted only to the highest bidder after a public auction, and fixing the minimum price for such exclusive grant of fishing privilege; that the notice of such auction sale, dated November 25, 1963 was, accordingly, issued by the respondent municipal treasurer of Minalin setting the auction sale on December 16, 1963; that because the herein respondents municipal council and municipal treasurer of Minalin rejected the demands of herein petitioners that the said Municipal Resolution No. 99 be not enforced as ultra vires, that the public auction sale should not be held, and that they be issued a fishing license for the year 1964 at the same rate of P10.00 for each "biacus" in accordance with Section 12 of Municipal Ordinance No. 1, series of 1956, herein petitioners filed a complaint with the Court of First Instance of Pampanga praying for the issuance of a writ of preliminary injunction ex parte against defendants municipal council and municipal treasurer; that the respondent judge, in an order dated December 12, 1963, granted the writ of preliminary injunction enjoining the defendants from holding the public bidding scheduled on December 16, 1963, upon the posting of a bond in the sum of P1,000.00 by herein petitioners; that after filing their answer in said Civil Case No. 2426, the defendants municipal council and municipal treasurer moved for the dissolution of the writ of preliminary injunction, which motion was granted and the preliminary injunction accordingly dissolved by the challenged order dated March 17, 1964, followed by the questioned order dated April 15, 1964 approving the counter-bond of P5,000.00 for the dissolution of the writ of preliminary injunction.

In their answer to the instant petition, herein respondents denied the aforesaid allegations and asserted, among others, that herein petitioners were granted for the year 1963 after the bidding therefor, the exclusive privilege to erect fish corrals in specific municipal waters of Minalin and not the license to fish with "biacus"; and that Resolution No. 99 is within the authority of the municipal council to enact.

On September 30, 1964, herein petitioners filed their memorandum, while the memorandum of respondents was

filed on October 14, 1964, after which the case was deemed submitted for decision.

In an order dated August 15, 1969, the Court of First Instance of Pampanga sent the records of Civil Case No. 2426 to the archives in view of the fact that the parties failed to set the case for hearing, for which reason, in Our resolution dated February 22, 1974, We required the parties to show cause within ten (10) days from notice why this case at bar should not be dismissed for failure to prosecute. Counsels for herein petitioners and respondents have not complied with the said resolution, which they received respectively on March 4 and March 5, 1974.

Considering that the main prayer of herein petitioners in Civil Case No. 2426 was for the renewal of their license to fish with "biacus" for the year 1964, which had long expired, it is obvious that the instant case is now moot and academic.

CONSEQUENTLY, THE SAME IS HEREBY DISMISSED WITHOUT COSTS.

Makalintal, C.J., Castro, Teehankee, Esguerra, and Munoz Palma, JJ., concur.

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