

SALVADOR APRUEBA AND ASUNCION MODOC, PETITIONERS AND APPELLANTS, VS. HON. RODOLFO GANZON, RESPONDENT AND APPELLEE.

G.R. No. L-20867. September 03, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

On October 24, 1960, petitioners Salvador Aprueba and Asuncion Modoc filed with the Court of First Instance of Iloilo a petition for mandamus against respondent City Mayor of Iloilo City, alleging among others, that they are owners and operators of a cafeteria located in Stall 17-C of the city market since 1950 to October 1, 1960 when respondent city mayor ordered his policemen to close it for alleged violation of city ordinance as they did on same date despite their protest; that when petitioner Aprueba saw respondent on October 3, 1960, he was informed by the latter that the store could only be reopened if petitioners paid all their back accounts; that after paying the back accounts, respondent still refused to allow reopening of the store and instead chided him for working against respondent's candidacy in the last elections; that respondent told petitioner Aprueba to comply with health rules and regulations which he did; that respondent told him later that the store space would be used as an extension (bodega) of the city health office; that petitioners have no delinquency in rentals and have complied with health rules and regulations and it is the ministerial duty of respondent to allow them to operate the cafeteria and refreshment parlor business; that in refusing them to reopen their business, respondent unlawfully excluded them from the use and enjoyment of a right they are entitled to, or unlawfully neglected performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station; that respondent's acts were motivated by personal and selfish considerations and intended to persecute, harass, and ridicule his political enemies; that petitioners as a result suffered moral damages and incurred attorneys fees in the sum of P5,500.00. Petitioners prayed that a preliminary mandatory injunction issue commanding respondent to order the reopening of the cafeteria and allow petitioners to operate their business, and pay P5,500.00 as damages and attorneys fees and P5.00 daily from October 1, 1960 until reopening of the cafeteria.

To this complaint respondent filed an answer with counterclaim on November 3, 1960 (later amended on July 25, 1962) denying the material allegations of said complaint and alleging as defense that the remedy of mandamus cannot be resorted to for the purpose of compelling him to reopen the stall, as petitioners' privilege to remain therein rests on an implied contract of lease and that obligations that rest solely on contract cannot be enforced by mandamus where there is no question of trust or official duty; that even if mandamus may be the proper remedy, petitioners have no cause of action against respondent, because petitioner Aprueba, who is lessee of stall 17-C, allowed his co-petitioner Modoc to conduct business therein, in gross violation of Ordinance No. 93, s. 1947 which prohibits a person other than the lessee of a market stall from conducting business therein; that petitioner Modoc has no legal capacity to sue respondent as she is merely occupying a market stall leased to her co-petitioner Aprueba in gross violation of Ordinance No. 93, s. 1947; that respondent's refusal to allow the opening of the cafeteria was in accordance with Section 10(m) of the city charter. Respondent prayed that the

petition be dismissed and, on the counterclaim, judgment be rendered ordering petitioners to pay respondent P5,500.00 as moral damages. On November 1, 1962, petitioners filed answer to the counterclaim.

On November 19, 1962, the trial court issued an order dismissing the petition, which in pertinent part, reads:

"x x x this Court, finding the reasons of respondent's counsel to be well taken, is of the opinion and so holds that the remedy of mandamus applied for by the petitioner is not the proper remedy, but if at all, the action must be an action for specific performance based on a contractual obligation. The right to the occupancy of stall No. 17-C of the Public Market of the City of Iloilo by petitioner, is but a privilege which the respondent Mayor may or may not grant, but not a duty enjoined upon him by law, by reason of his position."

Their motion for reconsideration of said order having been denied, petitioners brought to us the present appeal.

The only issue to be resolved in this appeal is whether or not the Court of First Instance correctly dismissed the petitioners' petition for mandamus. In refusing to grant mandamus, the trial court premised its action on the fact that petitioners' occupancy of Stall 17-C in question in Iloilo City market "is but a privilege which the respondent mayor may or may not grant, but not a duty enjoined upon him by law, by reason of his position". Note also that the refusal of respondent to allow reopening of the cafeteria is predicated on the provision of Section 10(m) of the City Charter which states:

"SEC. 10. General duties and powers of the Mayor. - The mayor shall have immediate control over the executive functions of the several departments of the City, and shall have the following general duties and powers:

x x x x x

"(m) To grant and refuse municipal licenses and to revoke the same 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 licenses or in the premises in which the business for which the same have been granted is carried out, or for any other good reason of general interest."

Moreover, the privilege of petitioners to obtain a renewal of the permit (after the implied lease contract expired) rested on the sound discretion of respondent and refusal on his part to grant the continuance of the privilege (especially after petitioner Aprueba's alleged violation of city ordinance by allowing co-petitioner Modoc to operate business in stall 17-C) cannot be the subject of an action for mandamus. In a long line of decisions, this Court had held that mandamus will not issue to control or review the exercise of discretion of a public officer where the law imposes on him the right or duty to exercise judgment in reference to any matter in which he is required to act (*Blanco v. Board* 46 Phil. 192; *Lee Wing v. Collector*, 30 Phil. 363; see *II Moran*, Comments on the Rules of Court, 170-171). And where the legal rights of petitioners, as in the present case, are not well-defined, clear, and certain, the petition for mandamus must be dismissed (*Viuda de Zamora v. Wright*, 53 Phil. 613). The privilege of operating a market stall under license is always subject to the police power of the city government and may be refused or granted for reasons of public policy and sound public administration. Such privilege is not absolute but revocable under an implied lease contract subject to the general welfare clause. Another rule is that a contractual obligation, as the lease to petitioner Aprueba of the stall in question, is not a duty specifically enjoined by law resulting from office, trust, or station, and the rule universally accepted is that mandamus never lies to enforce the performance of contractual obligations (*City of Manila vs. Posadas*, 40 Phil. 309; *Florida & Peninsular R. Co. vs. State ex rel. Tansvere*, 20 LRA 419). As the trial court correctly observed, petitioners' remedy is an action for specific performance, if proper, based on a contractual obligation (*Quiogue vs. Romualdez*, 46 Phil. 337; *Jacinto vs. Director*, 49 Phil. 853) and not mandamus.

WHEREFORE, finding no error in the order appealed from, the same is hereby affirmed, with costs against the

petitioners-appellants.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, JP, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.
Regala, J., on leave, no part.

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