

**MUNICIPALITY OF SAN NARCISO, QUEZON; MAYOR JUAN K. UY;
COUNCILORS: DEOGRACIAS R. ARGOSINO III, BENITO T. CAPIO,
EMMANUEL R. CORTEZ, NORMANDO MONTILLA, LEONARDO C. UY,
FIDEL C. A...**

G.R. No. 103702. December 06, 1994

Ponente: VITUG, J.

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VITUG, J.:

On 20 August 1959, President Carlos P. Garcia, issued, pursuant to the then Sections 68 and 2630 of the Revised Administrative Code, as amended, Executive Order No. 353 creating the municipal district of San Andres, Quezon, by segregating from the municipality of San Narciso of the same province, the barrios of San Andres, Mangero, Alibijaban, Pansoy, Camflora and Tala along with their respective sitios.

Executive Order No. 353 was issued upon the request, addressed to the President and coursed through the Provincial Board of Quezon, of the municipal council of San Narciso, Quezon, in its Resolution No. 8 of 24 May 1959.[1]

By virtue of Executive Order No. 174, dated 05 October 1965, issued by President Diosdado Macapagal, the municipal district of San Andres was later officially recognized to have gained the status of a fifth class municipality beginning 01 July 1963 by operation of Section 2 of Republic Act No. 1515.[2] The executive order added that "(t)he conversion of this municipal district into (a) municipality as proposed in House Bill No. 4864 was approved by the House of Representatives."

On 05 June 1989, the Municipality of San Narciso filed a petition for quo warranto with the Regional Trial Court, Branch 62, in Gumaca, Quezon, against the officials of the Municipality of San Andres. Docketed Special Civil Action No. 2014-G, the petition sought the declaration of nullity of Executive Order No. 353 and prayed that the respondent local officials of the Municipality of San Andres be permanently ordered to refrain from performing the duties and functions of their respective offices.[3] Invoking the ruling of this Court in *Pelaez v. Auditor General*,[4] the petitioning municipality contended that Executive Order No. 353, a presidential act, was a clear usurpation of the inherent powers of the legislature and in violation of the constitutional principle of separation of powers. Hence, petitioner municipality argued, the officials of the Municipality or Municipal District of San Andres had no right to exercise the duties and functions of their respective offices that rightfully belonged to the corresponding officials of the Municipality of San Narciso.

In their answer, respondents asked for the dismissal of the petition, averring, by way of affirmative and special defenses, that since it was at the instance of petitioner municipality that the Municipality of San Andres was given life with the issuance of Executive Order No. 353, it (petitioner municipality) should be deemed estopped from questioning the creation of the new municipality;[5] that because the Municipality of San Andres had been in existence since 1959, its corporate personality could no longer be assailed; and that, considering the petition to be one for quo warranto, petitioner municipality was not the proper party to bring the action, that prerogative being

reserved to the State acting through the Solicitor General.[6]

On 18 July 1991, after the parties had submitted their respective pre-trial briefs, the trial court resolved to defer action on the motion to dismiss and to deny a judgment on the pleadings.

On 27 November 1991, the Municipality of San Andres filed anew a motion to dismiss alleging that the case had become moot and academic with the enactment of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, which took effect on 01 January 1991. The movant municipality cited Section 442(d) of the law, reading thusly:

Sec. 442. Requisites for Creation. - x x x.

"(d) Municipalities existing as of the date of the effectivity of this Code shall continue to exist and operate as such. Existing municipal districts organized pursuant to presidential issuances or executive orders and which have their respective set of elective municipal officials holding office at the time of the effectivity of this Code shall henceforth be considered as regular municipalities."

The motion was opposed by petitioner municipality, contending that the above provision of law was inapplicable to the Municipality of San Andres since the enactment referred to legally existing municipalities and not to those whose mode of creation had been void ab initio.[7]

In its Order of 02 December 1991, the lower court[8] finally dismissed the petition[9] for lack of cause of action on what it felt was a matter that belonged to the State, adding that "whatever defects (were) present in the creation of municipal districts by the President pursuant to presidential issuances and executive orders, (were) cured by the enactment of R.A. 7160, otherwise known as Local Government Code of 1991." In an order, dated 17 January 1992, the same court denied petitioner municipality's motion for reconsideration.

Hence, this petition "for review on certiorari." Petitioners[10] argue that in issuing the orders of 02 December 1991 and 17 January 1992, the lower court has "acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction." Petitioners assert that the existence of a municipality created by a null and void presidential order may be attacked either directly or even collaterally by anyone whose interests or rights are affected, and that an unconstitutional act is not a law, creates no office and is inoperative such as though it has never been passed.[11]

Petitioners consider the instant petition to be one for "review on certiorari" under Rules 42 and 45 of the Rules of Court; at the same time, however, they question the orders of the lower court for having been issued with "grave abuse of discretion amounting to lack of or in excess of jurisdiction, and that there is no other plain, speedy and adequate remedy in the ordinary course of law available to petitioners to correct said Orders, to protect their rights and to secure a final and definitive interpretation of the legal issues involved." [12] Evidently, then, the petitioners intend to submit their case in this instance under Rule 65. We shall disregard the procedural incongruence.

The special civil action of quo warranto is a "prerogative writ by which the Government can call upon any person to show by what warrant he holds a public office or exercises a public franchise." [13] When the inquiry is focused on the legal existence of a body politic, the action is reserved to the State in a proceeding for quo warranto or any other direct proceeding. [14] It must be brought "in the name of the Republic of the Philippines" [15] and commenced by the Solicitor General or the fiscal "when directed by the President of the Philippines x x x." [16] Such officers may, under certain circumstances, bring such an action "at the request and upon the relation of another person" with the permission of the court. [17] The Rules of Court also allows an individual to commence an action for quo warranto in his own name but this initiative can be done when he claims to be "entitled to a public office or position usurped or unlawfully held or exercised by another." [18] While the quo warranto

proceedings filed below by petitioner municipality has so named only the officials of the Municipality of San Andres as respondents, it is virtually, however, a denunciation of the authority of the Municipality or Municipal District of San Andres to exist and to act in that capacity.

At any rate, in the interest of resolving any further doubt on the legal status of the Municipality of San Andres, the Court shall delve into the merits of the petition.

While petitioners would grant that the enactment of Republic Act No. 7160 may have converted the Municipality of San Andres into a de facto municipality, they, however, contend that since the petition for quo warranto had been filed prior to the passage of said law, petitioner municipality had acquired a vested right to seek the nullification of Executive Order No. 353, and any attempt to apply Section 442 of Republic Act 7160 to the petition would perforce be violative of due process and the equal protection clause of the Constitution.

Petitioners' theory might perhaps be a point to consider had the case been seasonably brought. Executive Order No. 353 creating the municipal district of San Andres was issued on 20 August 1959 but it was only after almost thirty (30) years, or on 05 June 1989, that the municipality of San Narciso finally decided to challenge the legality of the executive order. In the meantime, the Municipal District, and later the Municipality, of San Andres, began and continued to exercise the powers and authority of a duly created local government unit. In the same manner that the failure of a public officer to question his ouster or the right of another to hold a position within a one-year period can abrogate an action belatedly filed,[19] so also, if not indeed with greatest imperativeness, must a quo warranto proceeding assailing the lawful authority of a political subdivision be timely raised.[20] Public interest demands it.

Granting that Executive Order No. 353 was a complete nullity for being the result of an unconstitutional delegation of legislative power, the peculiar circumstances obtaining in this case hardly could offer a choice other than to consider the Municipality of San Andres to have at least attained a status uniquely of its own closely approximating, if not in fact attaining, that of a de facto municipal corporation. Conventional wisdom cannot allow it to be otherwise. Created in 1959 by virtue of Executive Order No. 353, the Municipality of San Andres had been in existence for more than six years when, on 24 December 1965, *Pelaez v. Auditor General* was promulgated. The ruling could have sounded the call for a similar declaration of the unconstitutionality of Executive Order No. 353 but it was not to be the case. On the contrary, certain governmental acts all pointed to the State's recognition of the continued existence of the Municipality of San Andres. Thus, after more than five years as a municipal district, Executive Order No. 174 classified the Municipality of San Andres as a fifth class municipality after having surpassed the income requirement laid out in Republic Act No. 1515. Section 31 of *Batas Pambansa Blg. 129*, otherwise known as the Judiciary Reorganization Act of 1980, constituted as municipal circuits, in the establishment of Municipal Circuit Trial Courts in the country, certain municipalities that comprised the municipal circuits organized under Administrative Order No. 33, dated 13 June 1978, issued by this Court pursuant to Presidential Decree No. 537. Under this administrative order, the Municipality of San Andres had been covered by the 10th Municipal Circuit Court of San Francisco-San Andres for the province of Quezon.

At the present time, all doubts on the de jure standing of the municipality must be dispelled. Under the Ordinance (adopted on 15 October 1986) apportioning the seats of the House of Representatives, appended to the 1987 Constitution, the Municipality of San Andres has been considered to be one of the twelve (12) municipalities composing the Third District of the province of Quezon. Equally significant is Section 442(d) of the Local Government Code to the effect that municipal districts "organized pursuant to presidential issuances or executive orders and which have their respective sets of elective municipal officials holding office at the time of the effectivity of (the) Code shall henceforth be considered as regular municipalities." No pretension of unconstitutionality per se of Section 442(d) of the Local Government Code is proffered. It is doubtful whether

such a pretext, even if made, would succeed. The power to create political subdivisions is a function of the legislature. Congress did just that when it has incorporated Section 442(d) in the Code. Curative laws, which in essence are retrospective,[21] and aimed at giving "validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with," are validly accepted in this jurisdiction, subject to the usual qualification against impairment of vested rights.[22]

All considered, the de jure status of the Municipality of San Andres in the province of Quezon must now be conceded.

WHEREFORE, the instant petition for certiorari is hereby DISMISSED. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan, and Mendoza, JJ., concur.
Feliciano, J., on leave.

[1] Present at the meeting when the municipal council of San Narciso, Quezon adopted Resolution No. 8 were Municipal Mayor Godofredo M. Tan, Vice-Mayor Jesus R. Cortez, and Councilors Maximino F. Rivadulla, Eleuterio Aurellana, Juanito Conjares, Dominador Nadres and Felix Aurellana. Councilor Eduardo L. Ausa was absent. The reasons for the adoption of Resolution No. 8 are stated in the following clauses:

"WHEREAS, this body has been informed that the chance for the approval of the bill creating the barrios of San Andres, Mangero, Alibijaban, Pansoy, Camflora and Tala, into a regular Municipality is very slim;

WHEREAS, the reason behind such disapproval is the patent inability of the proposed Municipality to pay its would-to-be (sic) employees at the rate required in the Minimum Wage Law;

WHEREAS, this body in particular, and the great majority of the people of San Andres in general, notwithstanding the provision of the Minimum Wage Law, agitate for the separation or segregation of the abovementioned barrios so as to have a corporate personality in the eyes of the Provincial Board, in the eyes of Congress and in the eyes of the President;

WHEREAS, once said barrios acquire a corporate personality in the eyes of the Provincial Board, of Congress and of the President, the development of said barrios and practically the whole southern tip of the Bondoc Peninsula will be hastened. (Rollo, p. 162.)

[2] This act has provided for a more autonomous government for municipal districts, amending for the purpose Art. VI, Chapter 64 of the Administrative Code. Sec. 2 thereof states that "any first class municipal district the annual receipts of which shall average more than four thousand pesos for four consecutive fiscal years shall ipso facto be classified as a fifth class municipality and shall thereafter be governed by the provisions of Articles one to five, Chapter 64 of the same Code."

[3] Rollo, pp. 77-80.

[4] 15 SCRA 569, holding that the authority to create municipalities is essentially legislative in nature.

[5] Invoked was the Court's ruling in Municipality of Malabang v. Benito 27 SCRA 533.

[6] Rollo, pp. 81-83.

[7] Rollo, p. 102.

[8] Presided by Judge Antonio V. Mendez, Sr.

[9] Rollo, pp. 71-74.

[10] Named co-petitioners of the Municipality of San Narciso before this Court are its municipal mayor and thirteen (13) councilors.

[11] Rollo, pp. 183-185.

[12] Ibid., pp. 2 & 21; Ibid., p. 50.

[13] Moran, COMMENTS ON THE RULES OF COURT, Vol. 3, 1970 ed., p. 208 citing *Newman v. U.S.*, 238 U.S. 537, 545, 56 L.Ed. 513.

[14] Only in few exceptions may a private person exercise this function of government, an example of which is when the state law allows a private person to question the regularity of the incorporation of an entity; see E. McQuillin, THE LAW OF MUNICIPAL CORPORATIONS, sec. 3.49, p. 592 (3rd ed. 1949).

[15] Sec. 1 (c), Rule 66, Rules of Court.

[16] Sec. 3, *ibid.*

[17] Sec. 4, *ibid.*

[18] Sec. 6, *ibid.*

[19] *Tumulak v. Egay*, 82 Phil. 828; *Tavora v. Ofiana*, 83 Phil. 672; *Unabia v. City Mayor* (99 Phil. 253). In *Castro v. Del Rosario* (19 SCRA 196), the Court stated that the one-year limitation for filing a quo warranto proceedings is "an expression of policy on the part of the State that persons claiming a right to an office of which they are illegally dispossessed should immediately take steps to recover said office and that if they do not do so within a period of one year, they shall be considered as having lost their right thereto by abandonment."

[20] Noteworthy is Section 16, Rule 66, of the Rules of Court which sets a five-year limitation for filing a quo warranto action if its purpose is to bring about the "forfeiture of charter" of a corporation, that period to be counted from the time "the act complained of was done or committed."

[21] *Briad Agro Development Corporation v. De la Serna*, *supra* at p. 534; *SSK Parts Corporation v. Camas*, 181 SCRA 675.

[22] *Briad Agro Development Corporation v. De la Serna*, 174 SCRA 524, 532 citing *Government of P.I. v. Municipality of Binalonan*, 32 Phil. 634.

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