

MUNICIPALITY OF JIMENEZ, THROUGH ITS MAYOR ELEUTERIO A. QUIMBO, VICE MAYOR ROBINSON B. LOMO, COUNCILORS TEOFILO GALORIO, CASIANO ADORABLE, MARIO APAO, ANTONIO BIENES, VEDE SULLA...

G.R. No. 105746. December 02, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision dated March 4, 1992 of the Regional Trial Court, Branch 14 of Oroquieta City,[1] affirming the legal existence of the Municipality of Sinacaban in Misamis Occidental and ordering the relocation of its boundary for the purpose of determining whether certain areas claimed by it belong to it.

The antecedent facts are as follows:

The Municipality of Sinacaban was created by Executive Order No. 258 of then President Elpidio Quirino, pursuant to §68 of the Revised Administrative Code of 1917. The full text of the Order reads:

EXECUTIVE ORDER NO. 258

CREATING THE MUNICIPALITY OF SINACABAN,
IN THE PROVINCE OF MISAMIS OCCIDENTAL

Upon the recommendation of the Secretary of the Interior, and pursuant to the provisions of Section 68 of the Revised Administrative Code, there is hereby created, in the Province of Misamis Occidental, a municipality to be known as the municipality of Sinacaban, which shall consist of the southern portion of the municipality of Jimenez, Misamis Occidental, more particularly described and bounded as follows:

On the north by a line starting from point 1, the center of the lighthouse on the Tabo-o point S. 840 30'W., 7,250 meters to point 2 which is on the bank of Palilan River branch; thence following Palilan River branch 2,400 meters southwesterly to point 3, thence a straight line S 870 00' W, 22,550 meters to point 4, where this intersects the Misamis Occidental-Zamboanga boundary; on the west, by the present Misamis Occidental-Zamboanga boundary; and on the south by the present Jimenez-Tudela boundary; and on the east, by the limits of the municipal waters which the municipality of Sinacaban shall have pursuant to section 2321 of the Revised Administrative Code, (Description based on data shown in Enlarged Map of Poblacion of Jimenez, Scale 1:8:000).

The municipality of Sinacabn contains the barrios of Sinacaban, which shall be the seat of the municipal government, Sinonoc, Libertad, the southern portion of the barrio of Macabayao, and the sitios of Tipan, Katipunon, Estrella, Flores, Senior, Adorable, San Isidro, Cagayanon, Kamanse, Kulupan and Libertad Alto.

The municipality of Jimenez shall have its present territory, minus the portion thereof included in the municipality of Sinacaban.

The municipality of Sinacaban shall begin to exist upon the appointment and qualification of the mayor, vice-mayor, and a majority of the councilors thereof. The new municipality shall, however, assume payment of a proportionate share of the loan of the municipality of Jimenez with the Rehabilitation Finance Corporation as may be outstanding on the date of its organization, the proportion of such payment to be determined by the Department of Finance.

Done in the City of Manila, this 30th day of August, in the year of Our Lord, nineteen hundred and forty-nine, and of the Independence of the Philippines, the fourth.

(SGD.) ELPIDIO QUIRINO

President of the Philippines

By the President:

(SGD.) TEODORO EVANGELISTA

Executive Secretary

By virtue of Municipal Council Resolution No. 171,[2] dated November 22, 1988, Sinacaban laid claim to a portion of Barrio Tabo-o and to Barrios Macabayao, Adorable, Sinara Baja, and Sinara Alto,[3] based on the technical description in E.O. No. 258. The claim was filed with the Provincial Board of Misamis Occidental against the Municipality of Jimenez.

In its answer, the Municipality of Jimenez, while conceding that under E.O. No. 258 the disputed area is part of Sinacaban, nonetheless asserted jurisdiction on the basis of an agreement it had with the Municipality of Sinacaban. This agreement was approved by the Provincial Board of Misamis Occidental, in its Resolution No. 77, dated February 18, 1950, which fixed the common boundary of Sinacaban and Jimenez as follows:[4]

From a point at Cagayanon Beach follow Macabayao Road until it intersects Tabangag Creek at the back of the Macabayao Elementary school. Follow the Tabangag Creek until it intersect the Macabayao River at upper Adorable. Follow the Macabayao River such that the barrio of Macabayao, Sitio Adorable and site will be a part of the Jimenez down and the sitios of San Vicente, Donan, Estrella, Mapula will be a part of Sinacaban. (Emphasis added)

In its decision dated October 11, 1989,[5] the Provincial Board declared the disputed area to be part of Sinacaban. It held that the previous resolution approving the agreement between the municipalities was void because the Board had no power to alter the boundaries of Sinacaban as fixed in E.O. No. 258, that power being vested in Congress pursuant to the Constitution and the Local Government Code of 1983 (B.P. Blg. 337), §134.[6] The Provincial Board denied in its Resolution No. 13-90 dated January 30, 1990 the motion of Jimenez seeking reconsideration.[7]

On March 20, 1990, Jimenez filed a petition for certiorari, prohibition, and mandamus in the Regional Trial Court of Oroquieta City, Branch 14. The suit was filed against Sinacaban, the Province of Misamis Occidental and its Provincial Board, the Commission on Audit, the Departments of Local Government, Budget and Management, and the Executive Secretary. Jimenez alleged that, in accordance with the decision in *Pelaez v. Auditor General*,[8] the power to create municipalities is essentially legislative and consequently Sinacaban, which was created by an executive order, had no legal personality and no right to assert a territorial claim vis-à-vis Jimenez, of which it remains part. Jimenez prayed that Sinacaban be enjoined from assuming control and supervision over the disputed barrios; that the Provincial Board be enjoined from assuming jurisdiction over the claim of Sinacaban; that E.O. No. 258 be declared null and void; that the decision dated October 11, 1989 and Resolution No. 13-90 of the Provincial Board be set aside for having been rendered without jurisdiction; that the Commission on Audit be enjoined from passing in audit any expenditure of public funds by Sinacaban; that the Department of

Budget and Management be enjoined from allotting public funds to Sinacaban; and that the Executive Secretary be enjoined from exercising control and supervision over said municipality.

During pre-trial, the parties agreed to limit the issues to the following:

- A. Whether the Municipality of Sinacaban is a legal juridical entity, duly created in accordance with law;
- B. If not, whether it is a de facto juridical entity;
- C. Whether the validity of the existence of the Municipality can be properly questioned in this action on certiorari;
- D. Whether the Municipality of Jimenez which had recognized the existence of the municipality for more than 40 years is estopped to question its existence;
- E. Whether the existence of the municipality has been recognized by the laws of the land; and
- F. Whether the decision of the Provincial Board had acquired finality.

On February 10, 1992, the RTC rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, it is the finding of this Court that the petition must be denied and judgment is hereby rendered declaring a STATUS QUO, that is, the municipality of Sinacaban shall continue to exist and operate as a regular municipality; declaring the decision dated October 11, 1989 rendered by the Sangguniang Panlalawigan fixing the boundaries between Sinacaban and Jimenez, Misamis Occi. as null and void, the same not being in accordance with the boundaries provided for in Executive order No. 258 creating the municipality of Sinacaban; dismissing the petition for lack of merit, without pronouncement as to cost and damages. With respect to the counterclaim, the same is hereby ordered dismissed.

The Commissioners are hereby ordered to conduct the relocation survey of the boundary of Sinacaban within 60 days from the time the decision shall have become final and executory and another 60 days within which to submit their report from the completion of the said relocation survey.

SO ORDERED.

The RTC, inter alia, held that Sinacaban is a de facto corporation since it had completely organized itself even prior to the Pelaez case and exercised corporate powers for forty years before the existence was questioned; that Jimenez did not have the legal standing to question the existence of Sinacaban, the same being reserved to the State as represented by the Office of the Solicitor General in a quo warranto proceeding; that Jimenez was estopped from questioning the legal existence of Sinacaban by entering into an agreement with it concerning their common boundary; and that any question as to the legal existence of Sinacaban had been rendered moot by §442 (d) of the Local Government Code of 1991 (R.A. No. 7160), which provides:

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.

On March 17, 1990, petitioner moved for a reconsideration of the decision but its motion was denied by the RTC. Hence this petition raising the following issues: (1) whether Sinacaban has legal personality to file a claim, and (2) if it has, whether it is the boundary provided for in E.O. No. 258 or in resolution No. 77 of the Provincial Board of Misamis Occidental which should be used as the basis for adjudicating Sinacaban's territorial claim.

First. The preliminary issue concerns the legal existence of Sinacaban. If Sinacaban legally exist, then it has

standing to bring a claim in the Provincial Board. Otherwise, it cannot.

The principal basis for the view that Sinacaban was not validly created as a municipal corporation is the ruling in *Pelaez v. Auditor General* that the creation of municipal corporations is essentially a legislative matter and therefore the President was without power to create by executive order the Municipality of Sinacaban. The ruling in this case has been reiterated in a number of cases^[9] later decided. However, we have since held that where a municipality created as such by executive order is later impliedly recognized and its acts are accorded legal validity, its creation can no longer be questioned. In *Municipality of San Narciso, Quezon v. Mendez, Sr.*,^[10] this Court considered the following factors as having validated the creation of a municipal corporation, which, like the Municipality of Sinacaban, was created by executive order of the President before the ruling in *Pelaez v. Auditor General*: (1) the fact that for nearly 30 years the validity of the creation of the municipality had never been challenged; (2) the fact that following the ruling in *Pelaez* no quo warranto suit was filed to question the validity of the executive order creating such municipality; and (3) the fact that the municipality was later classified as a fifth class municipality, organized as part of a municipal circuit court and considered part of a legislative district in the Constitution apportioning the seats in the House of Representatives. Above all, it was held that whatever doubt there might be as to the de jure character of the municipality must be deemed to have been put to rest by the local Government Code of 1991 (R.A. no. 7160), §442 (d) of which provides that "municipal districts organized pursuant to presidential issuances or executive orders and which have their respective sets of elective officials holding office at the time of the effectivity of this Code shall henceforth be considered as regular municipalities."

Here, the same factors are present so as to confer on Sinacaban the status of at least a de facto municipal corporation in the sense that its legal existence has been recognized and acquiesced publicly and officially. Sinacaban had been in existence for sixteen years when *Pelaez v. Auditor General* was decided on December 24, 1965. Yet the validity of E.O. No. 258 creating it had never been questioned. Created in 1949, it was only 40 years later that its existence was questioned and only because it had laid claim to an area that apparently is desired for its revenue. This fact must be underscored because under Rule 66, §16 of the Rules of Court, a quo warranto suit against a corporation for forfeiture of its charter must be commenced within five (5) years from the time the act complained of was done or committed. On the contrary, the State and even the municipality of Jimenez itself have recognized Sinacaban's corporate existence. Under Administrative order no. 33 dated June 13, 1978 of this Court, as reiterated by §31 of the judiciary Reorganization Act of 1980 (B.P. Blg. 129), Sinacaban is constituted part of municipal circuit for purposes of the establishment of Municipal Circuit Trial Courts in the country. For its part, Jimenez had earlier recognized Sinacaban in 1950 by entering into an agreement with it regarding their common boundary. The agreement was embodied in Resolution no. 77 of the Provincial Board of Misamis Occidental.

Indeed Sinacaban has attained de jure status by virtue of the Ordinance appended to the 1987 Constitution, apportioning legislative districts throughout the country, which considered Sinacaban part of the Second District of Misamis Occidental. Moreover following the ruling in *Municipality of San Narciso, Quezon v. Mendez, Sr.*, §442(d) of the Local Government Code of 1991 must be deemed to have cured any defect in the creation of Sinacaban. This provision states:

Municipalities existing as of the date of the effectivity of this Code shall continue to exist and operate as such. Existing municipal district 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 the Code shall henceforth be considered as regular municipalities.

Second. Jimenez claims, however, that R.A. No. 7160, §442(d) is invalid, since it does not conform to the constitutional and statutory requirements for the holding of plebiscites in the creation of new municipalities.^[11]

This contention will not bear analysis. Since, as previously explained, Sinacaban had attained de facto status at the time the 1987 Constitution took effect on February 2, 1987, it is not subject to the plebiscite requirement. This requirement applies only to new municipalities created for the first time under the Constitution. Actually, the requirement of plebiscite was originally contained in Art. XI, §3 of the previous Constitution which took effect on January 17, 1973. It cannot, therefore, be applied to municipal corporations created before, such as the municipality of Sinacaban in the case at bar.

Third. Finally Jimenez argues that the RTC erred in ordering a relocation survey of the boundary of Sinacaban because the barangays which Sinacaban are claiming are not enumerated in E.O. No. 258 and that in any event in 1950 the parties entered into an agreement whereby the barangays in question were considered part of the territory of Jimenez.

E.O. no. 258 does not say that Sinacaban comprises only the barrios (now called Barangays) therein mentioned. What it says is that "Sinacaban contains" those barrios, without saying they are the only ones comprising it. The reason for this is that the technical description, containing the metes and bounds of its territory, is controlling. The trial court correctly ordered a relocation and consequently the question to which the municipality the barangays in question belong.

Now, as already stated, in 1950 the two municipalities agreed that certain barrios belonged to Jimenez, while certain other ones belonged to Sinacaban. This agreement was subsequently approved by the Provincial board of Misamis Occidental. Whether this agreement conforms to E.O. no. 258 will be determined by the result of the survey. Jimenez contends however, that regardless of its conformity to E.O. No. 258, the agreement as embodied in resolution No. 77 of the Provincial Board, is binding on Sinacaban. This raises the question whether the provincial board had authority to approve the agreement or, to put it in another way, whether it had the power to declare certain barrios part of the one or the other municipality. We hold it did not if effect would be to amend the area as described in E.O. no. 258 creating the Municipality of Sinacaban.

At the time the Provincial Board passed Resolution No. 77 on February 18, 1950, the applicable law was §2167 of the Revised Administrative Code of 1917 which provided:

SEC. 2167. Municipal boundary disputes. " How settled. " Disputes as to jurisdiction of municipal governments over places or barrios shall be decided by the provincial boards of the provinces in which such municipalities are situated, after an investigation at which the municipalities concerned shall be duly heard. From the decision of the provincial board appeal may be taken by the municipality aggrieved to the Secretary of the Interior [now the Office of the Executive Secretary], whose decision shall be final. Where the places or barrios in dispute are claimed by municipalities situated in different provinces, the provincial boards of the provinces concerned shall come to an agreement if possible, but, in the event of their failing to agree, an appeal shall be had to the Secretary of Interior [Executive Secretary], whose decision shall be final.

As held in *Pelaez v. Auditor General*,^[12] the power of provincial boards to settle boundary disputes is "of an administrative nature - involving as it does, the adoption of means and ways to carry into effect the law creating said municipalities." It is a power "to fix common boundary, in order to avoid or settle conflicts of jurisdiction between adjoining municipalities." It is thus limited to implementing the law creating a municipality. It is obvious that any alteration of boundaries that is not in accordance with the law creating a municipality is not the carrying into effect of that law but its amendment.^[13] If, therefore, Resolution No. 77 of the Provincial Board of Misamis Occidental is contrary to the technical description of the territory of Sinacaban, it cannot be used by Jimenez as basis for opposing the claim of Sinacaban.

Jimenez properly brought to the RTC for review the decision of October 11, 1989 and Resolution No. 13-90 of the Provincial Board. Its action is in accordance with the local Government Code of 1983, §79 of which provides

that I case no settlement of boundary disputes is made the dispute should be elevated to the RTC of the province. In 1989, when the action was brought by Jimenez, this Code was the governing law. The governing law is now the Local Government Code of 1991 (R.A. No. 7160), §§118-119.

Jimenez's contention that the RTC failed to decide the case "within one year form the start of proceeding" as required by §79 of the Local Government Code of 1983 and the 90-day period provided for in the Article VIII, §15 of the Constitution does not affect the validity of the decision rendered. For even granting that the court failed to decide within the period prescribed by law, its failure did not divest it of its jurisdiction to decide the case but only makes the judge thereof liable for possible administrative sanction.[14]

WHEREFORE, the petition is DENIED and the decision of the Regional Trial Court of Oroquieta City, Branch 14 is AFFIRMED.

SO ORDERED

Narvasa C.J., Padilla, Regalado, Davide Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, Hermosisima Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] Per Judge Vicente T. Baz, Jr.

[2] Petition, Annex Z; Rollo, pp. 183-184.

[3] These barrios are currently under Jimenez's jurisdiction. Jimenez claims that Sinacaban filed its territorial claim because it desired the revenues from the oil mill in Tabo-o.

[4] Petition, Annex GG; Rollo, p. 220.

[5] Id., Annex BB; Id., pp. 186-188.

[6] B.P. Blg. 337, §134 provides:

§134 Manner of Creation.- A municipality may be created, named and its boundaries defined, altered or modified only by an Act of the Batasang Pambansa, subject to the approval by a majority of the votes cast in a plebiscite to be held in the unit or units affected. Except as may be otherwise be provided in said Act, the plebiscite shall be conducted by the Commission on Elections within one hundred twenty days from the date of its effectivity.

[7] Petition, Annex EE; Rollo, p. 194.

[8] 122 Phil. 965 (1965).

[9] Municipality of San Joaquin v. Siva, 19 SCRA 599 (1967); Municipality of Malabang. Lanao del Sur v. Benito, 27 SCRA 533 (1969); Municipality of Kapalong v. Moya, 166 SCRA 70 (1985).

[10] 239 SCRA 11 (1994). Accord, Municipality of Candijay v. Court of Appeals, 251 SCRA 530 (1995).

[11] Petitioner cites the following:

CONST., Art. X, §10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

R.A. No. 7160, §10. Plebiscite Requirement. - No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted

by the Commission on Elections (Comelec) within one hundred twenty (120) days from the date of effectivity of the law or ordinance affecting such action, unless said law or ordinance fixes another date.

Id., §441. Manner of Creation. - A municipality may be created, divided, merged, abolished, or its boundary substantially altered only by an Act of Congress and subject to the approval by a majority of the votes cast in a plebiscite to be conducted by the Comelec in the local government unit or units directly affected. Except as may otherwise be provided in the said Act, the plebiscite shall be held within one hundred twenty (120) days from the date of its effectivity.

[12] 122 Phil. at 973.

[13] Which only Congress can do. See *Municipality of Sogod v. Rosal*, 201 SCRA 232 (1991).

[14] *Marcelino v. Cruz, Jr.*, 121 SCRA 51 (1983).

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