

**HON. ALFREDO LIM AND RAFAELITO GARAYBLAS, PETITIONERS,
VS. THE COURT OF APPEALS, HON. WILFREDO REYES AND BISTRO
PIGALLE, INC., RESPONDENTS.**

G.R. No. 111397. August 12, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

Before us is a petition for review on certiorari[1] of the Decision of the Court of Appeals dated March 25, 1993,[2] and its Resolution dated July 13, 1993[3] which denied petitioners' motion for reconsideration. The assailed Decision sustained the orders dated December 29, 1992, January 20, 1993 and March 2, 1993,[4] issued by Branch 36 of the Regional Trial Court of Manila. The trial court's orders enjoined petitioner Alfredo Lim ("Lim" for brevity), then Mayor of Manila, from investigating, impeding or closing down the business operations of the New Bangkok Club and the Exotic Garden Restaurant owned by respondent Bistro Pigalle Inc. ("Bistro" for brevity).

The Antecedent Facts

On December 7, 1992 Bistro filed before the trial court a petition[5] for mandamus and prohibition, with prayer for temporary restraining order or writ of preliminary injunction, against Lim in his capacity as Mayor of the City of Manila. Bistro filed the case because policemen under Lim's instructions inspected and investigated Bistro's license as well as the work permits and health certificates of its staff. This caused the stoppage of work in Bistro's night club and restaurant operations.[6] Lim also refused to accept Bistro's application for a business license, as well as the work permit applications of Bistro's staff, for the year 1993.[7]

In its petition, Bistro argued that Lim's refusal to issue the business license and work permits violated the doctrine laid down this Court in *De la Cruz vs. Paras*,[8] to wit:

"Municipal corporations cannot prohibit the operation of nightclubs. They may be regulated, but not prevented from carrying on their business."

Acting on Bistro's application for injunctive relief, the trial court issued the first assailed temporary restraining order on December 29, 1992, the dispositive portion of which reads:

"WHEREFORE, respondent and/or his agents and representatives are ordered to refrain from inspecting or otherwise interfering in the operation of the establishments of petitioner (Bistro Pigalle, Inc.)."[9]

At the hearing, the parties submitted their evidence in support of their respective positions. On January 20, 1993, the trial court granted Bistro's application for a writ of prohibitory preliminary injunction. The dispositive portion of the trial court's order declared:

"WHEREFORE, in view of all the foregoing, Petitioners' application for a writ of prohibitory preliminary injunction is granted, and Respondent, and any/all persons acting under his authority, are and (sic) ordered to cease and desist from inspecting, investigating and otherwise closing or impeding the business operations of

Petitioner Corporation's establishments while the petition here is pending resolution on the merits.

Considering that the Respondent is a government official and this injunction relates to his official duties, the posting of an injunction bond by the Petitioners is not required.

On the other hand, Petitioners' application for a writ of mandatory injunction is hereby denied, for to grant the same would amount to granting the writ of mandamus prayed for. The Court reserves resolution thereof until the parties shall have been heard on the merits.”[10]

However, despite the trial court's order, Lim still issued a closure order on Bistro's operations effective January 23, 1993, even sending policemen to carry out his closure order.

On January 25, 1993, Bistro filed an “Urgent Motion for Contempt” against Lim and the policemen who stopped Bistro's operations on January 23, 1993. At the hearing of the motion for contempt on January 29, 1993, Bistro withdrew its motion on condition that Lim would respect the court's injunction.

However, on February 12, 13, 15, 26 and 27, and on March 1 and 2, 1993, Lim, acting through his agents and policemen, again disrupted Bistro's business operations.

Meanwhile, on February 17, 1993, Lim filed a motion to dissolve the injunctive order of January 20, 1993 and to dismiss the case. Lim insisted that the power of a mayor to inspect and investigate commercial establishments and their staff is implicit in the statutory power of the city mayor to issue, suspend or revoke business permits and licenses. This statutory power is expressly provided for in Section 11 (I), Article II of the Revised Charter of the City of Manila and in Section 455, paragraph 3 (iv) of the Local Government Code of 1991.

The trial court denied Lim's motion to dissolve the injunction and to dismiss the case in an order dated March 2, 1993, the dispositive portion of which stated:

“WHEREFORE, premises considered, the Court hereby orders:

(1) The denial of respondent's motion to dissolve the writ of preliminary prohibitory injunction or the dismissal of the instant case;

(2) Petitioner-corporation is authorized to remove the wooden cross-bars or any other impediments which were placed at its establishments, namely, New

Bangkok Club and Exotic Garden Restaurant on February 12, 1993 and February 15, 1993, respectively, and thereafter said establishments are allowed to resume their operations;

(3) All the other petitioners are allowed to continue working in the aforementioned establishments of petitioner-corporation if they have not yet reported; and

(4) The hearing on the contempt proceedings is deferred to give sufficient time to respondent to elevate the matters assailed herein to the Supreme Court.”[11]

On March 10, 1993, Lim filed with the Court of Appeals a petition for certiorari, prohibition and mandamus against Bistro and Judge Wilfredo Reyes. Lim claimed that the trial judge committed grave abuse of discretion amounting to lack of jurisdiction in issuing the writ of prohibitory preliminary injunction.

On March 25, 1993, the Court of Appeals rendered the assailed decision.[12] In a resolution dated July 13, 1993, the Court of Appeals denied Lim's motion for reconsideration.[13]

On July 1, 1993, Manila City Ordinance No. 7783[14] took effect. On the same day, Lim ordered the Western Police District Command to permanently close down the operations of Bistro, which order the police implemented

at once.[15]

The Ruling of the Court of Appeals

In denying Lim's petition, the Court of Appeals held that the trial court did not commit grave abuse of discretion since it issued the writ after hearing on the basis of the evidence adduced.

The Court of Appeals reasoned thus:

"x x x. A writ of preliminary injunction may issue if the act sought to be enjoined will cause irreparable injury to the movant or destroy the status quo before a full hearing can be had on the merits of the case.

A writ of preliminary injunction, as an ancillary or preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action. It is primarily intended to maintain the status quo between the parties existing prior to the filing of the case.

In the case at bar, We find that the respondent Judge did not act improvidently in issuing the assailed orders granting the writ of preliminary injunction in order to maintain the status quo, while the petition is pending resolution on the merits. The private respondent correctly points out that the questioned writ was regularly issued after several hearings, in which the parties were allowed to adduce evidence, and argue their respective positions.

The issuance of a writ of preliminary injunction is within the limits of the sound exercise of discretion of the court and the appellate court will not interfere, except, in a clear case of abuse thereof. x x x.

WHEREFORE, the petition is DENIED DUE COURSE and is accordingly DISMISSED."[16]

Hence, this petition.

The Issues

In their Memorandum, petitioners raise the following issues:

- "DID RESPONDENT JUDGE COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING HIS SAID ASSAILED ORDERS OF DECEMBER 29, 1992, JANUARY 20, 1993 AND MARCH 2, 1993?"
- "DID RESPONDENT COURT OF APPEALS COMMIT REVERSIBLE ERRORS IN RENDERING ITS ASSAILED DECISION OF MARCH 25, 1993 AND ITS ASSAILED RESOLUTION OF JULY 13, 1993?"
- "DID SAID CIVIL CASE NO. 92-63712 AND SAID CA-G.R. SP NO. 30381 BECOME MOOT AND ACADEMIC WHEN THE NEW BANGKOK CLUB AND THE EXOTIC GARDEN RESTAURANT OF PRIVATE RESPONDENT WERE CLOSED ON JULY 1, 1993 PURSUANT TO ORDINANCE NO. 7783?"

The Ruling of the Court

The petition is without merit.

Considering that the constitutionality of Ordinance No. 7783 was not raised before the trial court or the Court of Appeals, and this issue is still under litigation in another case,[17] the Court will deal only with the first two issues raised by petitioner.

Validity of the Preliminary Injunction

Bistro's cause of action in the mandamus and prohibition proceedings before the trial court is the violation of its property right under its license to operate. The violation consists of the work disruption in Bistro's operations

caused by Lim and his subordinates as well as Lim's refusal to issue a business license to Bistro and work permits to its staff for the year 1993. The primary relief prayed for by Bistro is the issuance of writs of mandatory and prohibitory injunction. The mandatory injunction seeks to compel Lim to accept Bistro's 1993 business license application and to issue Bistro's business license. Also, the mandatory injunction seeks to compel Lim to accept the applications of Bistro's staff for work permits. The writ of prohibitory injunction seeks to enjoin Lim from interfering, impeding or otherwise closing down Bistro's operations.

The trial court granted only the prohibitory injunction. This enjoined Lim from interfering, impeding or otherwise closing down Bistro's operations pending resolution of whether Lim can validly refuse to issue Bistro's business license and its staff's work permits for the year 1993.

Lim contends that the Court of Appeals erred in upholding the prohibitory injunction. Lim relies primarily on his power, as Mayor of the City of Manila, to grant and refuse municipal licenses and business permits as expressly provided for in the Local Government Code and the Revised Charter of the City of Manila. Lim argues that the powers granted by these laws implicitly include the power to inspect, investigate and close down Bistro's operations for violation of the conditions of its licenses and permits.

On the other hand, Bistro asserts that the legal provisions relied upon by Lim do not apply to the instant case. Bistro maintains that the Local Government Code and the Revised Charter of the City of Manila do not expressly or impliedly grant Lim any power to prohibit the operation of night clubs. Lim failed to specify any violation by Bistro of the conditions of its licenses and permits. In refusing to accept Bistro's business license application for the year 1993, Bistro claims that Lim denied Bistro due process of law.

The Court of Appeals held that the trial court did not commit grave abuse of discretion in issuing the prohibitory preliminary injunction.

We uphold the findings of the Court of Appeals.

The authority of mayors to issue business licenses and permits is beyond question. The law expressly provides for such authority. Section 11 (1), Article II of the Revised Charter of the City of Manila, reads:

"Sec. 11. General duties and powers of the mayor. The general duties and powers of the mayor shall be:

x x x.

(1) To grant and refuse municipal licenses or permits of all classes and to revoke the same for violation of the conditions upon which they were granted, or if acts prohibited by law or municipal ordinances 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 on, or for any other reason of general interest." (Emphasis supplied)

On the other hand, Section 455 (3) (iv) of the Local Government Code provides:

"Sec. 455. Chief Executive, Powers, Duties and Compensation: xxx.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the City and its inhabitants pursuant to Section 16 of this Code, the City Mayor shall:

(3) x x x.

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the condition upon which said licenses or permits had been issued, pursuant to law or ordinance." (Emphasis supplied)

From the language of the two laws, it is clear that the power of the mayor to issue business licenses and permits necessarily includes the corollary power to suspend, revoke or even refuse to issue the same. However, the power

to suspend or revoke these licenses and permits is expressly premised on the violation of the conditions of these permits and licenses. The laws specifically refer to the “violation of the condition(s)” on which the licenses and permits were issued. Similarly, the power to refuse to issue such licenses and permits is premised on non-compliance with the prerequisites for the issuance of such licenses and permits. The mayor must observe due process in exercising these powers, which means that the mayor must give the applicant or licensee notice and opportunity to be heard.

True, the mayor has the power to inspect and investigate private commercial establishments for any violation of the conditions of their licenses and permits. However, the mayor has no power to order a police raid on these establishments in the guise of inspecting or investigating these commercial establishments. Lim acted beyond his authority when he directed policemen to raid the New Bangkok Club and the Exotic Garden Restaurant. Such act of Lim violated Ordinance No. 7716[18] which expressly prohibits police raids and inspections, to wit:

“Section 1. No member of the Western Police District shall conduct inspection of food and other business establishments for the purpose of enforcing sanitary rules and regulations, inspecting licenses and permits, and/or enforcing internal revenue and customs laws and regulations. This responsibility should be properly exercised by Local Government Authorities and other concerned agencies.” (Emphasis supplied)

These local government officials include the City Health Officer or his representative, pursuant to the Revised City Ordinances of the City of Manila,[19] and the City Treasurer pursuant to Section 470 of the Local Government Code.[20]

Lim has no authority to close down Bistro’s business or any business establishment in Manila without due process of law. Lim cannot take refuge under the Revised Charter of the City of Manila and the Local Government Code. There is no provision in these laws expressly or impliedly granting the mayor authority to close down private commercial establishments without notice and hearing, and even if there is, such provision would be void. The due process clause of the Constitution requires that Lim should have given Bistro an opportunity to rebut the allegations that it violated the conditions of its licenses and permits.

The regulatory powers granted to municipal corporations must always be exercised in accordance with law, with utmost observance of the rights of the people to due process and equal protection of the law.[21] Such power cannot be exercised whimsically, arbitrarily or despotically. In the instant case, we find that Lim’s exercise of this power violated Bistro’s property rights that are protected under the due process clause of the Constitution.

Lim did not charge Bistro with any specific violation of the conditions of its business license or permits. Still, Lim closed down Bistro’s operations even before the expiration of its business license on December 31, 1992. Lim also refused to accept Bistro’s license application for 1993, in effect denying the application without examining whether it complies with legal prerequisites.

Lim’s zeal in his campaign against prostitution is commendable. The presumption is that he acted in good faith and was motivated by his concern for his constituents when he implemented his campaign against prostitution in the Ermita-Malate area. However, there is no excusing Lim for arbitrarily closing down, without due process of law, the business operations of Bistro. For this reason, the trial court properly restrained the acts of Lim.

Consequently, the Court of Appeals did not err in upholding the trial court’s orders. The sole objective of a writ of preliminary injunction is to preserve the status quo until the merits of the case can be heard fully. It is generally availed of to prevent actual or threatened acts, until the merits of the case can be disposed of.[22] In the instant case, the issuance of the writ of prohibitory preliminary injunction did not dispose of the main case for mandamus. The trial court issued the injunction in view of the disruptions and stoppage in Bistro’s operations as a consequence of Lim’s closure orders. The injunction was intended to maintain the status quo while the petition

has not been resolved on the merits.

WHEREFORE, the petition is denied for lack of merit. The assailed Decision of the Court of Appeals in CA-G.R. SP NO. 30381 is AFFIRMED in toto.

SO ORDERED.

Puno, (Chairman), and Panganiban, JJ., concur. Sandoval-Gutierrez, J., on leave.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Justice Consuelo Ynares-Santiago and concurred in by Justices Luis Javellana and Minerva Gonzaga-Reyes, Rollo, pp. 193-196.

[3] Rollo, p. 209.

[4] Temporary restraining order dated December 29, 1992; Order of Injunction dated January 20, 1993 and Order of Denial of petitioners' Motion to Dissolve Injunction dated March 2, 1993, issued by Judge Wilfredo Reyes, Regional Trial Court of Manila, Branch 36; Rollo pp. 76-77, 94-100, and 145-152, respectively.

[5] Docketed as Civil Case No. 92-63712.

[6] The New Bangkok Club and the Exotic Garden Restaurant.

[7] Bistro Pigalle, Inc., the owner-operator of the New Bangkok Club and the Exotic Garden Restaurant, was issued Mayor's Permit by then Manila Mayor Gemiliano Lopez to operate as a night club, restaurant, with a café day club which permit was valid until December 31, 1992.

[8] 123 SCRA 569 (1983).

[9] Rollo, pp. 76-77.

[10] Rollo, pp. 94-100.

[11] Rollo, p. 152.

[12] Supra, see note 2.

[13] Supra, see note 3.

[14] An Ordinance Prohibiting the Establishment or Operation of Businesses providing Certain Forms of Amusement, Entertainment, Services and Facilities in the Ermita-Malate Area.

[15] Rollo, pp. 218-219.

[16] Supra, see note 2; CA Decision, pp. 3-4, Rollo, pp. 195-196.

[17] Pending before the 2nd Division of the Court of Appeals, docketed as CA-S.P. G.R. No. 44429, entitled "Cotton Club Corp. vs. Hon. Alfredo Lim"; Rollo, p. 415.

[18] An Ordinance Amending Section 1 of Ordinance No. 6507. This ordinance was approved on December 22, 1989 by then Manila Mayor Gemiliano Lopez.

[19] "Section 994: Inspection and Supervision: All articles of food and drink sold or offered for sale, all places for their preparation, manufacture or sale, and all food travelers or persons engaged in the preparation, manufacture or sale of any kind of food or drink shall be at all times subject to inspection and supervision by the Director of Health (now City Health Officer) and to such rules and regulations as are promulgated or may be promulgated by him. x x x"

[20] "Section 470. (d), sub-par 4: Inspect private commercial and industrial establishments within the jurisdiction of the local government unit concerned in relation to the implementation of tax ordinances, pursuant to the provisions under Book II of this Code."

[21] Acebedo Optical Company, Inc. vs. Court of Appeals, 329 SCRA 314 (2000).

[22] Miriam College Foundation, Inc. vs. Court of Appeals, 348 SCRA 265 (2000).

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