

LEONARDO GARCIA, PLAINTIFF AND APPELLANT, VS. FRANCISCO BONIFACIO AND SIMPLICIO PEÑA, DEFENDANTS AND APPELLEES.*G. R. No. 11153. September 30, 1958*

Ponente: BENGZON, J.

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Leonardo Garcia has appealed the order of the Manila court of first instance, dismissing his complaint whereby he attempted to recover damages and compel defendants to convey to him the certificate of public convenience issued by the Public Service Commission covering a certain jeepney. He claimed to have purchased both. The Hon. Bienvenido Tan, Judge, held that plaintiff had no rights enforceable before the courts—not even damages—since he had not secured the sale's approval by the said Commission. Thither, he implied, plaintiff should go for relief.

Such certificate of public convenience plaintiff-appellant relates—"was issued by the Public Service Commission, to Eustacio Lazcano in PSC Case No. 63399 (Exhibit G). Lazcano sold this certificate to defendant Simplicio Peña on February 15, 1953 (Exhibit A), and Peña in turn sold it to defendant Francisco Bonifacio on June 19, 1953 (Exhibit B). Plaintiff acquired the said certificate from Bonifacio by deed of absolute sale dated February 27, 1956 (Exhibit F), together with one TPU jeepney."

Subsequently, the plaintiff discovered that the certificate in the name of Lazcano which he bought from defendant Bonifacio "had already been cancelled" because defendant Peña presented to the Commission a false deed of sale by Lazcano to him of April 28, 1955, and obtained another certificate for himself, even as he requested for—and received—permission to drop from the service the very jeepney he (Peña) had previously transferred to Bonifacio (which plaintiff acquired). For that reason, plaintiff avers, he was prevented from operating the jeepney.

There are other circumstances, which defendants-appellees bring to our attention to explain their side, particularly to support their defense that upon plaintiff's failure to secure the Commission's approval, steps had to be taken to prevent the certificate's cancellation through abandonment. But these need not be recounted, inasmuch as we agree that the courts were not the appropriate place wherein to obtain what the plaintiff desired: conveyance of the certificate, with the concomitant privilege to operate the jeepney as common carrier.

The law is quite clear and specific. No sale of a certificate of public convenience shall be operative.[1] without the approval of the Public Service Commission, which may be given even after the contract of sale is perfected. The consummation of the sale, however, takes place and the operation under the certificate begins, on the date to be fixed by the Commission in its decree of approval.

Here are the statutory provisions;

"SEC. 20.—Acts requiring the approval of the Commission.—Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had * * *

"(g) To sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights, or any part thereof; * * * The approval herein required shall be given, after notice to the public and after hearing the persons interested at a public hearing, if it be shown that there are just and reasonable grounds for making * * * the sale, alienation, lease, merger, or consolidation to be approved, and that the same are not detrimental to the public interest, and in case of a sale, the date on which the same is to be consummated shall be fixed in the order of approval: Provided, however, That nothing herein contained shall be construed to prevent the transaction from being negotiated or completed before its approval. * * * "

Obviously, the Manila court had no authority to grant the relief demanded, because the sale had not been okayed by the Commission. Plaintiff admitted he never asked for such approval, which, by the way is not a mere formality that could be dispensed with or taken for granted. As the statute directs, the Commission must, before approving, be convinced after a hearing and notice, that the sale shall not hinder the public's convenience.

"I could not properly go to the Commission"—argues appellant—"because there was a dispute as to the terms of the sale: whereas I claimed the whole certificate for three jeepneys, defendant Bonifacio asserted he had sold part only." "The Commission," he continues "can not be expected to act on a petition for approval of a sale if the vendor himself denies having made the sale."

Herein lies the erroneous assumption, root and basis of plaintiffs, contentions.

In *Del Rosario vs. Vergara*[2] the alleged seller denied having made the sale (of certificate) for which the approval of the Commission was requested by the purchaser. The Commission, after listening to both sides, approved the sale notwithstanding the seller's objection. On appeal, we affirmed.

Indeed, if as appellant represents, the certificate sold to him was later illegally transferred to Peña, who now holds the Commission's approval and certificate, there is no better place than the Commission itself to thresh out the respective rights of the parties, bearing in mind that said Commission is the only entity empowered to withdraw the certificate from Peña and to transfer it to herein plaintiff or grant him a new certificate. Of course, if the evidence and the law applicable thereto so warranted.

Again, appellant doubts the usefulness of a resort to the Commission, because he wishes to collect monetary damages, which, he believes, that Body has no power to award.

Let us concede, for the moment, the alleged lack of authority on the Commission's part—a point we do not decide.

Plaintiff's amended complaint asked for:

"P-2a. Damages, by way of loss of earning, from February 28, 1956, up to the time the certificate of public convenience above referred to is finally conveyed to plaintiff, at the rate of P30.00 per day;

P-2b. Moral damages in the sum of P2,000.00;

P-2c. Attorney's fees in the sum of P1,000.00, plus the costs of this suit;

P-3. Ordering defendant Simplicio Peña to pay to plaintiff exemplary damages, by way of example or correction for the public good, in the sum of P1,000.00."

The first item could not evidently be granted, because plaintiff had no right to operate the jeepney without having previously secured the approval of the Commission which he never asked. Therefore, he could claim no loss of earning. The moral and exemplary damages may only be recovered, if at all, after plaintiff's position is upheld. Yet even if the sale be disapproved, perhaps plaintiff may recover, if such disapproval should rest on actionable acts of defendants, or one of them. At any rate, damages if any should be awarded only after the matter of the sale has been clarified, and/or approved.

As to attorney's fees, when the complaint is dismissed—as in this case—the defendant could not obviously be charged with plaintiff's counsel fees.

In view of the foregoing, and finding no reversible error in the appealed order, we hereby affirm it, with costs against appellant.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1]Cebu Autobus Co. vs. Lozano, 66 Phil. 51.

[2]L-11648 decided April 28, 1958.

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