

ABELARDO LANDINGIN, PLAINTIFF AND APPELLANT, VS. PAULO GACAD, DEFENDANT AND APPELLEE.*G.R. No. 12659. October 28, 1960*

Ponente: PAREDES, J.

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Plaintiff Abelardo Landingin is the owner of two fishing contraptions locally known as parigdig constructed in 1954, in Calpay Shoal, Municipality of Sual, Pangasinan for which he paid the municipal licenses thereof up to the year 1955. In 1949, an ordinance was enacted and approved by the Municipal Council of Sual, limiting the distance of fish corrals to a minimum of 200 meters from each other. About January 3, 1955, defendant Paulo Gacad commenced the construction of a parigdig 10 meters from and at a place north and fronting the parigdig of plaintiff, nearer to the center of Calpay Shoal, thereby blocking the flow of fish locally known as "Armang" to plaintiff's parigdig. A committee appointed by the municipal Mayor of Sual to investigate the case, reported that defendant's parigdig was constructed within 10 meters from plaintiff's parigdig. As defendant insisted to continue with the operation of his parigdig the plaintiff filed an action for injunction in the Court of First Instance of Pangasinan to compel the defendant to remove his parigdig. A writ of preliminary injunction was issued, commanding the defendant to desist from committing further acts tending to block, fully or partially, the flow of fish locally known as "armang" to the plaintiff's parigdig. On March 18, 1955, the trial court granted the motion to dismiss filed by defendant, based upon the ground that the complaint states no cause of action. The plaintiff appealed and in his brief alleged that the order of dismissal was erroneous.

The pertinent portions of Ordinance No. 9 of the Municipal Council of Sual, provide:

Section. 1. License and Fees. The privilege of taking fish from the municipal waters other than erecting fish corrals, traps and other fishing tackles, operating fishponds, or oysters culture beds, or catching barigos fry shall be granted to persons qualified to pay all necessary fees promulgated by this ordinance, payment of the corresponding fees for the fishing apparatus used herein specified: Provided, that no fisherman or fishermen shall catch fish within 200 meters from a fish corral unless himself is the owner of the corral, provided further, that this fees herein which is an annual fee, may be paid quarterly, if so desired by the applicant:

a) Fish Corrals, baclad or pasabing:

From 1 m.....

3 m.high.....

P40.00

3 m.....

5 m.

80.00

5 m.....

above

120.00

b) Sapiao one light only.....

120.00

Sapiao with two or more lights.....

200.00

c) Salambao or Parigdig

40.00

(Italics supplied.)

Plaintiff-appellant claims that the case comes within the operation and purview of the above quoted ordinance, stating that (1) a parigdig is a fish corral; (2) The defendant has not secured the required license for his parigdig, and, therefore, is not entitled to the Court's protection, and (3) Granting, arguendo, that the ordinance does not embrace parigdig, in the distance limitations, the court, nevertheless, is called upon to determine the necessity of a reasonable distance between parigdigs.

There is no question in our mind that parigdig is not a fish corral. From the very ordinance just quoted, "fish corrals, baclad or pasabing," under (a), and "Salambao" or parigdig, under (c), are entirely distinct and separate items. If the intention of the municipal council was to consider fish corral and parigdig as the same fishing contraptions, it would have listed the two items together, inasmuch as they all have the same license fees, in one group. Moreover, Act No. 4003, as amended by Commonwealth Act No. 471, defines fish corral as follows:

"A 'fish corral' or 'baclad' means a stationary weir or trap devised to intercept and capture fish, consisting of rows or stakes or bamboo, palma brava or ether materials fenced with either split bamboo mattings or wire nettings with one or more enclosures usually with easy entrance but difficult exit, and with or without leaders to direct the fish to the catching chambers or pound."

The alleged sketch showing the construction of parigdig, attached as Annex 'A' to the Opposition to the Motion to Dismiss, submitted by plaintiff-appellant, is not before us. Counsel for plaintiff-appellant, however, described the parigdig as follows:

"As can be seen in the sketch, parigdig constitutes two (2) identical structures 12 meters apart. Each structure is composed of two parallel posts, 5 rows of posts parallel to each other,"- on top of which are joined bamboo railings similar to raft. Between these two structures, a fishing net is hanged with a circumference of 50 meters, more or less, attached to four posts equipped with ropes and pulley to enable the net to be raised or lowered at will."

This description of a parigdig, does not coincide with the description of a fish corral given in the said Act No.

4003r which further strengthens the conclusion that a parigdig is not the same as a "fish corral". The failure of said ordinance to prescribe a distance limitation for contraptions other than fish corrals, shows the legislative intention of allowing the use of parigdig and contraptions, other than fish corrals, at any place the fisherman may choose, without regard to distance. In other words, one parigdig may be constructed and operated at a distance of less than 200 meters from another parigdig.

Having reached the above conclusion, it follows that the complaint must be dismissed, for failure to state a cause of action, irrespective of whether the defendant has or has no license to construct and operate a parigdig. At any rate, the municipality of Sual, and not the plaintiff, can take action for the enforcement of the ordinance in question. Regarding the necessity of determining and prescribing distances between parigdigs, so as to avoid chaos and confusion among fishermen, the plaintiff may make representations to the same Municipal Council to that effect.

Wherefore, the decision appealed from is affirmed, without costs.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, and Gutierrez David, JJ., concur.

Judgement affirmed.

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