

ABELARDO SUBIDO, PETITIONER AND APPELLANT, VS. CITY OF MANILA, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. 14800. May 30, 1960*

Ponente: GUTIERREZ DAVID, J.

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This is an appeal from a decision of the Court of First Instance of Manila dismissing herein appellant's petition for prohibition with preliminary injunction.

On July 16, 1957, the proposed budget of the City of Manila for the fiscal year 1957-1958, which later became Ordinance No. 3993, was published by authority of the Municipal Board of Manila in the Mabuhay and Philippines Herald newspapers. On December 3, 1957, the said budget ordinance was enacted by the Municipal Board and was sent to the Office of the City Mayor for his approval. The same was disapproved by Mayor Lacson, and on December 19, 1957, it was returned to the Municipal Board. After the latter had introduced amendments thereto to obviate the Mayor's objections, the proposed budget ordinance was taken up in an executive session on February 26, 1958, and two days later, or on February 28, the same was approved by the Board. The ordinance, as amended, was signed by Mayor Lacson on March 14, 1958, and shortly thereafter, it was finally published in the Herald and Mabuhay newspapers.

The petitioner-appellant is a lawyer, a resident of the City of Manila, and formerly an employee of the City Major's office. He has a claim for gratuity, which, according to the record, is still pending approval. The object of his petition is to contest the validity of said Ordinance 3993 on the grounds that (1) the said ordinance was never published in two daily newspapers of general circulation in the city before it was discussed and allegedly enacted by the Municipal Board in accordance with Section 17, Republic Act No. 409, as amended, or, if published, it was not done in full; (2) it was never actually put into a vote for approval, and the yeas and nays were not taken and recorded as required by Section 17, Republic Act No. 409; as amended; (3) on February 28, 1958, the said ordinance was signed by Jesus Marcos Rocas as presiding officer when his right to preside over the Municipal Board had ceased, since he had already become Acting Mayor on November 13, 1957, by operation of law, as a result of a vacancy which occurred in the office of the Mayor of Manila following the resignation of Arsenio H. Lacson on said date; (4) the said ordinance lacks the signature of Leonardo Garcia as presiding officer; (5) it was approved on March 14, 1958 by Arsenio H. Lacson when he was no longer a de jure or a de facto officer, said Mr. Lacson having tendered his irrevocable resignation to President Garcia on November 13, 1957; and (6) it lacks the signature of Jesus Marcos Rocas as Acting Mayor.

The prayer for the issuance of a writ of preliminary injunction was, after due hearing at the commencement of the action, denied by the lower court.

Answering the petition, the respondents denied the allegations of the complaint and put up the following affirmative defenses: (1) the proposed budget of the City of Manila for the fiscal year 1957-1958 was published in toto in two daily newspapers of general circulation in the city— the Philippines Herald and Mabuhay—in their

respective issues of July 16, 1957; (2) Ordinance No. 3993 was enacted by the Municipal Board on February 28, 1958, substantially in accordance with the requirements of Section 17 of Republic Act No. 409, known as the Revised Charter of the City of Manila; (3) respondent Arsenio H. Lacson, although he tendered his resignation on November 13, 1957, did not vacate or abandon his office as Mayor of the City of Manila, but remained therein and continued performing the duties thereof pending acceptance of his resignation by the President; (4) the resignation tendered by Mayor Lacson was formally rejected by the President in a letter dated April 11, 1958; and (5) the claim of the petitioner for gratuity, being still pending action by the office of the President as alleged in the petition has not as yet ripened into a right.

After hearing, the lower court rendered judgment dismissing the petition. The validity of an ordinance being the question at issue, the case was appealed direct to us.

Without first going into the validity of the said Ordinance 3993 of the City of Manila, we find that the petition for prohibition must fail on the ground that the petitioner-appellant has no personality to maintain the suit. Section 2, Rule 3 of the Rules of Court requires that actions must be prosecuted for or against the real party in interest, and to be considered a real party in interest, such party would be benefited or injured by the judgment or that he is entitled to the avails of the suit (*Salonga vs. Warner, Barnes & Co., Ltd.*, 88 Phil., 125, cited in *Subido vs. Sarmiento, et al.*, supra, p. 150). In the present case, it has not been sufficiently shown that the passage of the ordinance under question would be prejudicial to the interests of the petitioner-appellant who is just one among the general tax-paying public. While it may be true that he has a claim for retirement gratuity, it appears, however, that the said claim has not yet been approved. In other words, as correctly stated by the lower court, petitioner-appellant's right to the gratuity, if any, is merely inchoate or provisional. And it has not been proved, nor even pretended that with the passage of the contested ordinance, if appellant's gratuity claim is approved, the City of Manila would have no more funds to meet its obligation/to pay that gratuity. Clearly, the petitioner-appellant has no special standing different from the public at large to entitle him to bring the action.

In the very recent case of *Subido vs. Sarmiento, et al.*, supra, the same petitioner again brought an action against some city officials of Manila contesting the reassignment of a detective captain in the Manila Police Department and the payment of his salary during his alleged illegal assignment. This Court there also ruled that appellant *Subido*, as a mere taxpayer and private citizen, although having a pending claim for gratuity, has no right to institute the proceedings. The following authorities cited therein are also applicable in the case at bar:

"Where nothing had been done or is proposed to be done which will create any burden on the taxpayers of the community, the mere fact that the defendant municipal officials have done, or proposed to do, an authorized or illegal act confers on his (taxpayer) no right to maintain a proceeding" (*Shoemaker vs. Des Moines*, 129 Iowa 244, 105 NW 520, 3 LRA (NS) 382; *Mississippi Road Supply Co. vs. Hester*, 185 Miss. 839, 188 So. 381, 124 ALR 574).

"Public wrongs or neglect or breach of public duty cannot be redressed at a suit in the name of the individual or individuals whose interest in the right asserted does not differ from that of the public generally. * * *

"To entitle a private individual to invoke the judicial power to determine the" validity of executive or legislative action, he must show that he has sustained or is in immediate danger of sustaining a direct injury as a result of that action, and it is not sufficient that he has merely a general interest common to all members of the public." (*Ex parte Levitt*, 302 US 633, 82 L ed. 493, 68 S Ct 1.).

Even granting that appellant has a legal standing to institute these proceedings, his petition still cannot prosper.

It is first contended by petitioner-appellant that the budget ordinance after its veto by the City Mayor and subsequent amendment by the Municipal Board of Manila, should have been published again before its discussion

in the executive session of February 26 and 28, 1958. We note from a reading of Section 17, Republic Act No. 409, which provides for the legislative procedure to be followed by the Municipal Board of Manila that there really is a requirement to publish each and every proposed ordinance, once before it is enacted by the Municipal Board, and again after its approval by the Mayor. But nowhere in the section is it provided that pre-discussion publication must take place after every amendment or modification on the proposed ordinance during the process of its enactment. Indeed, it is not the intendment of the law that everytime an amendment is introduced the proposed ordinance has to be published again, for this would incur tremendous expense and unnecessary delays in the passage of municipal legislation.

The next point raised by petitioner-appellant is the legality of the enactment of the ordinance on February 28, 1958, without having been included in the agenda for that day. Again, there is nothing in the law that requires that matters discussed by the Municipal Board be placed in the agenda. If there is any such requirement it is wholly parliamentary and procedural non-compliance with which does not affect the validity of the ordinance (43 C. J. p. 527).

As to the question of nominal voting, there is authority to the effect that "where the council of a municipality is composed of a certain number of members and it appears from the minutes of a meeting that such number voted in favor of a resolution this is equivalent to stating that the members voted "yes" and it is substantial and sufficient compliance with a statute requiring yea and nay votes on any such resolution" (37 Am. Jur. pp. 756-757). It appears from the minutes of the Board meeting of February 28, 1958 that the names of the members present as well as those who were absent have been recorded, and that all those present took active part in the debates and deliberations. At the end of the session, when the presiding officer asked the members if there were any objections to the approval of the proposed budget, only one councilor raised an objection. The minutes, therefore, could readily show who of the members present in the deliberations voted pro and who voted con.

"While the mandatory prerequisites to enactment must be substantially observed, exactness in the manner of enactment may not be required, since non compliance with merely formal requirements in the manner of enactment ordinarily is considered by the courts as no ground for declaring an ordinance void. * * * (62 C. J. S. 798).

We agree with the trial court that petitioner-appellant should no longer be heard to complain that Mayor Lacson was not the mayor when the budget ordinance was signed by him on March 14, 1958, due to his resignation on November 13, 1957, because previous to these proceedings, petitioner-appellant had filed two other petitions for prohibition raising the same question on the continuance of Mayor Lacson in office, which petitions were dismissed. The decision in both cases should bind the petitioner, following the principle of res judicata.

In view whereof, the judgment of dismissal is hereby sustained. No costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, and Barrera, JJ., concur.
Concepcion, J., concurs in the result.

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