

FLAVIANO LOTA, PETITIONER, VS. THE COURT OF APPEALS AND MOISES SANGALANG, RESPONDENTS.

G.R. No. 14803. June 30, 1961

Ponente: NATIVIDAD, J.

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NATIVIDAD, J.:

This is an appeal by certiorari from the decision rendered by the Court of Appeals in Civil Case CA-G.R. No. 21246, Moises Sangalang, plaintiff-appellee, vs. Flaviano Lota, etc., et al., defendants, Flaviano Lota, defendant-appellant, declaring Moises Sangalang entitled to hold, and continue in, the office of caretaker of the municipal cemetery of Taal, Batangas.

The facts, as found by the Court of Appeals, are as follows:

"The petitioner is Moises Sangalang who alleges that, as a duly appointed caretaker of the municipal cemetery of Taal, Batangas, he was unlawfully ousted from office. The respondents are Flaviano Lota, mayor of Taal, who allegedly ousted Moises from office; Jose Sangalang, the new appointee for the position; and Aurelio Beron, in his capacity as municipal treasurer. Respondent Lota contends that Moises was unlawfully occupying the position of cemetery caretaker and the latter having abandoned it after all, he appointed Jose in his place in the interest of the public.

"After hearing, the Court of First Instance of Batangas rendered judgment, the dispositive part of which reads thus:

"Wherefore, judgment is hereby rendered:

- '1. Declaring the plaintiff Moises Sangalang to be legally appointed cemetery porter of Taal, Batangas;
- '2. Ousting the defendant Jose Sangalang from the office in question and altogether excluding him therefrom;
- '3. Ordering the defendants Flaviano M. Lota and Aurelio Beron to pay the salary of the plaintiff from February 15, 1956, as well as his salary differential corresponding to the increase of his salary from P20.00 to P25.00 a month from July 1, 1955 to February 14, 1956; and
- '4. Ordering the defendant Flaviano M. Lota to pay P200.00 to the plaintiff in the concept of moral damages, and the costs of this action.

'So ordered'

Only Mayor Lota appealed from the decision and now claims that:

- '1. The trial court erred in not dismissing plaintiff-appellee's complaint on the ground that the real party in interest, which is the municipality of Lipa was not made party-defendant.
- '2. The trial court erred in not dismissing the complaint on the ground that appellee was not validly appointed to the post of municipal cemetery of Taal.'

"There is no question that Moises had been discharging the duties of cemetery caretaker, from 1951 until Mayor Lota appointed Jose in his place on February 13, 1956 (Annex D). On June 30, 1955, the local Health Officer, Dr. Gregorio M. Noche, extended a new appointment to Moises under Section 2199 of the Revised Administrative Code to take effect on July 1, 1955 seemingly to enable him to receive the increase of his salary from P240.00 to P300.00 per annum. For reasons which have not been explained, the appointment was not acted upon immediately by the corresponding authorities. Having been received in the office of the Commissioner of Civil Service on April 20, 1956 it was approved shortly thereafter. For such appointment the recommendation of the Municipal Mayor was required by the law and the appointment extended to Moises Sangalang by Dr. Gregorio M. Noche failed to show in the beginning the recommendation of the then incumbent mayor, Dr. Ignacio Ilagan. His recommendation was secured only in March, 1956 when he was no longer the municipal mayor. As to why the recommendation of the municipal mayor was secured so late was explained by Dr. Noche in the sense that when his attention was called to the omission of such legal requirement, he made inquiry as to who was the mayor whose recommendation was necessary. As a result, the District Health Officer of Batangas opined that the recommendation of the incumbent mayor at the time of the appointment was the one necessary."

Based upon the above facts, respondent Court of Appeals, declining to act on the question whether or not respondent Moises Sangalang is entitled to the payment of salary and salary differential, on the ground that such matters are governed by law and the administrative officials concerned should be given the opportunity to comply with their respective duties, rendered a decision the dispositive part of which reads:

"For all the foregoing, we declare that Moises Sangalang is entitled to hold and continue in the office as cemetery caretaker, and with the modification indicated above, the decision appealed from is hereby affirmed, without costs."

It is contended by the petitioner that the respondent Court erred in holding that the present action is one of quo warranto; in not dismissing the action for failure of the plaintiff to join therein the Municipality of Taal, Batangas, as party defendant, and in declaring that respondent Moises Sangalang is entitled to hold, and continue in, the office of caretaker of the municipal cemetery of that municipality. It is argued that, as the Court of Appeals found that respondent Moises Sangalang was the duly appointed caretaker of the municipal cemetery of Taal, Batangas, and he was "unlawfully ousted from office", the remedy available to said respondent is mandamus, not quo warranto; that said Court, instead of proceeding with the action, should have dismissed it, for failure of the plaintiff to join therein the real party in interest, the municipality of Taal, Batangas, under the doctrine laid down by this Court in the case of *Rufino Cabo Kho vs. Jose Rodriguez*, G. R. No. L-9032, September 28, 1957; and that the respondent Court should not have declared the plaintiff Moises Sangalang entitled to hold, and continue in, the office of caretaker of the municipal cemetery of said municipality, for he had been duly replaced in that office by Jose Sangalang.

We do not find merits in appellant's contentions. The claim that the instant action is one of mandamus, not quo warranto, is devoid of basis. While quo warranto and mandamus are often concurrent remedies, however, there exists a clear distinction between the two. The authorities are agreed that quo warranto is the remedy to try the right to an office or franchise and to oust the holder from its enjoyment, while mandamus only lies to enforce clear legal duties, not to try disputed titles, 38 C. J. 546; 2 Moran, *Comments on the Rules of Court*, 1957 ed., 200; that where there is usurpation or intrusion into an office, quo warranto is the proper remedy, *Lino Luna vs. Rodriguez*, 36 Phil., 401; and that where the respondent, without claiming any right to an office, excludes the petitioner therefrom, the remedy is mandamus, not quo warranto. *Manalo vs. Sevilla*, 24 Phil., 609; *Lino Luna vs. Rodriguez*, *supra*.

As we analyze the facts in the light of the above rules, the instant action is clearly one of quo warranto, although

mandamus is also invoked therein as an ancillary remedy. The facts, as found by the Court of Appeals, show that respondent Moises Sangalang "was holding the position of cemetery caretaker from 1951 until he was extended a new appointment on July 1, 1955 by Dr. Noche"; that "until then he had not resigned nor intended to abandon the office"; that on February 13, 1956, the petitioner, Flaviano M. Lota, appointed defendant Jose Sangalang as cemetery caretaker of Taal to take Moises Sangalang's place, and that Jose Sangalang claims to be the duly appointed caretaker of said municipal cemetery. It also appears that Moises Sangalang alleges in his complaint that he had the right to the possession and enjoyment of said office to which he had legally been appointed, and asks that Jose Sangalang, who is occupying it unlawfully, be ousted. The present action, therefore, is one whose purpose is to try the right or title to a public office and oust the alleged unlawful holder from its enjoyment. Such proceeding and remedy could only be litigated in a quo warranto action according to the authorities.

We also find no merit in the claim that the action should have been dismissed by the respondent Court for failure of the plaintiff to implead the municipality of Taal. According to the jurisprudence, any person claiming to be entitled to a public office may bring an action of quo warranto without the intervention of the Solicitor-General or the Fiscal, *Navarro vs. Gimenez*, 10 Phil., 226; *Lino Luna vs. Rodriguez*, supra; and that only the person who is in unlawful possession of the office, and all who claim to be entitled to that office, may be made parties in order to determine their respective rights thereto in the same action. 2 *Moran*, Comments on the Rules of Court, 1957 ed., 209, 210. The municipality of Taal does not claim that it wanted and had the right to occupy and enjoy the office of caretaker of its own municipal cemetery; its pretension, as voiced by its mayor, is that Jose Sangalang is the party who had the right to occupy said office. It is not necessary for that municipality to appropriate funds for the payment of Moises Sangalang's salary and salary differentials; there already exist funds appropriated for the purpose, and what remained to be done was for the municipal treasurer to disburse them in accordance with law. The municipality of Taal, therefore, is not an essential, nor even a necessary party, to this action. The doctrine laid down by this Court in the case of *Rulino Cabo Kho vs. Rodriguez*, supra, invoked by the petitioner, has no application in the instant action. Unlike the case at bar, that case was one of mandamus, and it appeared that the City of Cebu had need of appropriating funds for the payment of the salary of the petitioner therein, for the party who in the meantime occupied the office involved in the case had been paid the corresponding salary. Hence, the City of Cebu was a necessary party to that action.

We likewise find unfounded the claim that the respondent Court erred in declaring respondent Moises Sangalang entitled to hold, and continue in, the office of caretaker of the municipal cemetery of Taal. Upon the facts as found by the respondent Court and quoted above, which is binding upon this Court, we are fully persuaded that the holding complained of is correct. As aptly held by that Court:

"In the instant case, we should not lose sight of the fact that Moises was holding the position of cemetery caretaker from 1951 until he was extended a new appointment on July 1, 1955 by Dr. Noche. His appointment by which he performed his duties of a cemetery caretaker from 1951 until he was extended a new appointment is not in dispute. That being the case, it is to be presumed that his appointment was legal from 1951 to July 1, 1955 and until then he had not resigned from or intended to abandon the office. His new appointment so-called promotional, was intended to afford him an opportunity to receive the difference of the salary from P240.00 to P300.00 per annum, so that should the new appointment be disapproved, he could continue to discharge his duties for he was still a cemetery caretaker under his old appointment at the salary of P240.00 a year. He is supposed to hold his office, save in case of resignation, abandonment or dismissal for cause.

"Under section 2199 of the Revised Administrative Code, the local health officer is the government official empowered to appoint a cemetery caretaker in a municipality. The municipal mayor can only indorse favorably or not the appointment. He can 'for cause' suspend any non-elective officer or employee over whose position he has the power of appointment, for a period of not exceeding ten days, without pay, which suspension may be continued for a longer period by the council; and by and with the consent of a majority of all the members

of the council he may discharge any such officer or employee' (Sec. 2201, Revised Adm. Code). But be it the local health officer or the municipal mayor, he cannot dismiss a duly appointed cemetery caretaker without cause. In the case at bar, no formal charges for any irregularities have been filed against Moises before his ouster."

For the foregoing, we find that the judgment of the Court of Appeals whose review is herein sought is in accordance with law and supported by the evidence. Consequently, the same is hereby affirmed, with costs. It is so ordered.

Bengzon, C.J., Padilla, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon JJ., concur.

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