CONCEPCION PARAYNO, PETITIONER, VS. JOSE JOVELLANOS AND THE MUNICIPALITY OF CALASIAO, PANGASINAN, RESPONDENTS.

G.R. NO. 148408. July 14, 2006

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Court questioning the resolution of the Court of Appeals (CA) which dismissed the petition for certiorari, mandamus and prohibition, with prayer for issuance of a preliminary and mandatory injunction, filed by petitioner Concepcion Parayno against respondents Jose Jovellanos and the Municipality of Calasiao, Pangasinan.

Petitioner was the owner of a gasoline filling station in Calasiao, Pangasinan. In 1989, some residents of Calasiao petitioned the Sangguniang Bayan (SB) of said municipality for the closure or transfer of the station to another location. The matter was referred to the Municipal Engineer, Chief of Police, Municipal Health Officer and the Bureau of Fire Protection for investigation. Upon their advise, the Sangguniang Bayan recommended to the Mayor the closure or transfer of location of petitioner's gasoline station. In Resolution No. 50, it declared:

> a) xxx the existing gasoline station is a blatant violation and disregard of existing law to wit:
>
> The Official Zoning Code of Calasiao, Art. 6, Section 44,[1] the nearest school building which is San Miguel Elementary School and church, the distances are less than 100 meters. No neighbors were called as witnesses when actual measurements were done by HLURB Staff, Baguio City dated 22 June 1989.
>
> b) The gasoline station remains in thickly populated area with commercial/residential buildings, houses closed (sic) to each other which still endangers the lives and safety of the people in case of fire. Moreover, additional selling and storing of several LPG tanks in the station (sic).
>
> c) The residents of our barangay always complain of the irritating smell of gasoline most of the time especially during gas filling which tend to expose residents especially children to frequent colds, asthma, cough and the like nowadays.
>
> d) xxx the gasoline station violated Building and Fire Safety Codes because the station has 2nd floor storey building used for business rental offices, with iron grilled windows, no firewalls. It also endangers the lives of people upstairs.
>
> e) It hampers the flow of traffic, the gasoline station is too small and narrow, the entrance and exit are closed to the street property lines. It couldn't cope situation (sic) on traffic because the place is a congested area.[2]

Petitioner moved for the reconsideration of the SB resolution but it was denied. Hence, she filed a special civil action for prohibition and mandamus with the Regional Trial Court (RTC) of Dagupan City, Branch 44 against respondents. The case, docketed as SP Civil Case No. 99-03010-D, was raffled to the sala of Judge Crispin Laron.

Petitioner claimed that her gasoline station was not covered by Section 44 of the Official Zoning Code since it was not a "gasoline service station" but a "gasoline filling station" governed by Section 21 thereof. She added that

the decision of the Housing and Land Use Regulatory Board (HLURB),[3] in a previous case filed by the same respondent Jovellanos against her predecessor (Dennis Parayno), barred the grounds invoked by respondent municipality in Resolution No. 50. In the HLURB case, respondent Jovellanos opposed the establishment of the gas station on the grounds that: (1) it was within the 100-meter prohibited radius under Section 44 and (2) it posed a pernicious effect on the health and safety of the people in Calasiao.

After the hearing on the propriety of issuing a writ of preliminary prohibitory and mandatory injunction, the trial court ruled:

> There is no basis for the court to issue a writ of preliminary prohibitory and mandatory injunction. Albeit, Section 44 of the Official Zoning Code of respondent municipality does not mention a gasoline filling station, [but] following the principle of ejusdem generis, a gasoline filling station falls within the ambit of Section 44. The gasoline filling station of the petitioner is located under the establishment belonging to the petitioner and is very near several buildings occupied by several persons. Justice dictates that the same should not be allowed to continue operating its business on that particular place. Further, the gasoline filling station endangers the lives and safety of people because once there is fire, the establishment and houses nearby will be razed to the ground.[4] (emphasis supplied)

Petitioner moved for reconsideration of the decision but it was denied by the trial court.

Petitioner elevated the case to the CA via a petition for certiorari, prohibition and mandamus,[5] with a prayer for injunctive relief. She ascribed grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of Judge Laron who dismissed her case.

After the CA dismissed the petition, petitioner filed a motion for reconsideration but the same was denied. Hence, this appeal.

Before us, petitioner insists that (1) the legal maxim of ejusdem generis did not apply to her case; (2) the closure/transfer of her gasoline filling station by respondent municipality was an invalid exercise of the latter's police powers and (3) it was the principle of res judicata that applied in this case.[6]

We find merit in the petition.

THE PRINCIPLE OF EJUSDEM GENERIS

We hold that the zoning ordinance of respondent municipality made a clear distinction between "gasoline service station" and "gasoline filling station." The pertinent provisions read:

xxx xxx xxx

> Section 21. Filling Station. A retail station servicing automobiles and other motor vehicles with gasoline and oil only.[7]
>
> xxx xxx xxx
>
> Section 42. Service Station. A building and its premises where gasoline oil, grease, batteries, tires and car accessories may be supplied and dispensed at retail and where, in addition, the following services may be rendered and sales and no other.
>
> - Sale and servicing of spark plugs, batteries, and distributor parts;
>
> - Tire servicing and repair, but not recapping or regrooving;
>
> - Replacement of mufflers and tail pipes, water hose, fan belts, brake fluids, light bulbs, fuses, floor mats, seat

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covers, windshield wipers and wiper blades, grease retainers, wheel, bearing, mirrors and the like;

- Radiator cleaning and flushing;

- Washing and polishing, and sale of automobile washing and polishing materials;

- Grease and lubricating;

- Emergency wiring repairs;

- Minor servicing of carburators;

- Adjusting and repairing brakes;

- Minor motor adjustments not involving removal of the head or crankcase, or raising the motor.[8]

xxx xxx xxx

It is evident from the foregoing that the ordinance intended these two terms to be separate and distinct from each other. Even respondent municipality's counsel admitted this dissimilarity during the hearing on the application for the issuance of a writ of preliminary prohibitory and mandatory injunction. Counsel in fact admitted:

- That there exist[ed] an official zoning code of Calasiao, Pangasinan which [was] not yet amended;

- That under Article III of said official zoning code there [were] certain distinctions made by said municipality about the designation of the gasoline filling station and that of the gasoline service station as appearing in Article III, Nos. 21 and 42, [respectively];

- That the business of the petitioner [was] one of a gasoline filling station as defined in Article III, Section 21 of the zoning code and not as a service station as differently defined under Article 42 of the said official zoning code;

- That under Section 44 of the official zoning code of Calasiao, the term filling station as clearly defined under Article III, Section 21, [did] not appear in the wordings thereof;[9] (emphasis supplied)

The foregoing were judicial admissions which were conclusive on the municipality, the party making them.[10] Respondent municipality thus could not find solace in the legal maxim of ejusdem generis[11] which means "of the same kind, class or nature." Under this maxim, where general words follow the enumeration of particular classes of persons or things, the general words will apply only to persons or things of the same general nature or class as those enumerated.[12] Instead, what applied in this case was the legal maxim expressio unius est exclusio alterius which means that the express mention of one thing implies the exclusion of others.[13] Hence, because of the distinct and definite meanings alluded to the two terms by the zoning ordinance, respondents could not insist that "gasoline service station" under Section 44 necessarily included "gasoline filling station" under Section 21. Indeed, the activities undertaken in a "gas service station" did not automatically embrace those in a "gas filling station."

THE EXERCISE OF POLICE POWERS

Respondent municipality invalidly used its police powers in ordering the closure/transfer of petitioner's gasoline station. While it had, under RA 7160,[14] the power to take actions and enact measures to promote the health and general welfare of its constituents, it should have given due deference to the law and the rights of petitioner.

A local government is considered to have properly exercised its police powers only when the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require the

interference of the State and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive.[15] The first requirement refers to the equal protection clause and the second, to the due process clause of the Constitution.[16]

Respondent municipality failed to comply with the due process clause when it passed Resolution No. 50. While it maintained that the gasoline filling station of petitioner was less than 100 meters from the nearest public school and church, the records do not show that it even attempted to measure the distance, notwithstanding that such distance was crucial in determining whether there was an actual violation of Section 44. The different local offices that respondent municipality tapped to conduct an investigation never conducted such measurement either.

Moreover, petitioner's business could not be considered a nuisance which respondent municipality could summarily abate in the guise of exercising its police powers. The abatement of a nuisance without judicial proceedings is possible only if it is a nuisance per se. A gas station is not a nuisance per se or one affecting the immediate safety of persons and property,[17] hence, it cannot be closed down or transferred summarily to another location.

As a rule, this Court does not pass upon evidence submitted by the parties in the lower courts.[18] We deem it necessary, however, to recall the findings of the HLURB which petitioner submitted as evidence during the proceedings before the trial court, if only to underscore petitioner's compliance with the requirements of law before she put up her gasoline station.

> Another factor that should not be left unnoticed is the diligence exercised by [petitioner] in complying with the requirements of the several laws prior to the actual implementation of the project as can be attested by the fact that [petitioner] has secured the necessary building permit and approval of [her] application for authority to relocate as per the letter of the Energy Regulatory Board xxx.[19]

On the alleged hazardous effects of the gasoline station to the lives and properties of the people of Calasiao, we again note:

> Relative to the allegations that the project (gasoline station) is hazardous to life and property, the Board takes cognizance of the respondent's contention that the project "is not a fire hazard since petroleum products shall be safely stored in underground tanks and that the installation and construction of the underground tanks shall be in accordance with the Caltex Engineering Procedures which is true to all gasoline stations in the country. xxx
>
> Hence, the Board is inclined to believe that the project being hazardous to life and property is more perceived than factual. For, after all, even the Fire Station Commander, after studying the plans and specifications of the subject proposed construction, recommended on 20 January 1989, "to build such buildings after conform (sic) all the requirements of PP 1185." It is further alleged by the complainants that the proposed location is "in the heart of the thickly populated residential area of Calasiao." Again, findings of the [HLURB] staff negate the allegations as the same is within a designated Business/Commercial Zone per the Zoning Ordinance. xxx[20] (emphasis supplied)

The findings of fact of the HLURB are binding as they are already final and conclusive vis-á-vis the evidence submitted by respondents.

THE PRINCIPLE OF RES JUDICATA

Petitioner points out that the HLURB decision in the previous case filed against her predecessor (Dennis Parayno) by respondent Jovellanos had effectively barred the issues in Resolution No. 50 based on the principle of res judicata. We agree.

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.[21] For res judicata to apply, the following elements must be present: (1) the judgment or order must be final; (2) the judgment must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties and (4) there must be, between the first and second actions, identity of parties, of subject matter and of cause of action.[22]

Respondent municipality does not contest the first, second and third requisites. However, it claims that it was not a party to the HLURB case but only its co-respondent Jovellanos, hence, the fourth requisite was not met. The argument is untenable.

The absolute identity of parties is not required for the principle of res judicata to apply.[23] A shared identity of interests is sufficient to invoke the application of this principle.[24] The proscription may not be evaded by the mere expedient of including an additional party.[25] Res judicata may lie as long as there is a community of interests between a party in the first case and a party in the second case although the latter may not have been impleaded in the first.[26]

In the assailed resolution of respondent municipality, it raised the same grounds invoked by its co-respondent in the HLURB: (1) that the resolution aimed to close down or transfer the gasoline station to another location due to the alleged violation of Section 44 of the zoning ordinance and (2) that the hazards of said gasoline station threatened the health and safety of the public. The HLURB had already settled these concerns and its adjudication had long attained finality. It is to the interest of the public that there should be an end to litigation by the parties over a subject matter already fully and fairly adjudged. Furthermore, an individual should not be vexed twice for the same cause.[27]

WHEREFORE, the petition is hereby GRANTED. The assailed resolution of the Court of the Appeals is REVERSED and SET ASIDE. Respondent Municipality of Calasiao is hereby directed to cease and desist from enforcing Resolution No. 50 against petitioner insofar as it seeks to close down or transfer her gasoline station to another location.

No costs.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[*] Hon. Crispin C. Laron, of the Regional Trial Court of Dagupan City, Branch 44, was impleaded as respondent. Under Section 4, Rule 45 of the 1997 Rules of Court, lower courts or judges thereof need not be impleaded either as petitioners or respondents.

[1] Section 44. Gasoline Service Stations:
In business or industrial zones, no gasoline service station, commercial gasoline bus station or public parking lot shall be allowed within one hundred (100) meters away from any public or private school, public library, playground, church, and hospital based on the straight line method measured from the nearest side of the building nearest the lot if there are no intervening buildings to the nearest pump of the gasoline station; records, pp. 69-70. (italics supplied)

[2] Rollo, pp. 9-10.

[3] HLURB Case No. TPZ-C-01-9-0003, entitled "Jose Jovellanos v. Dennis Parayno."

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[4] Rollo, pp. 72-75.

[5] CA-G.R. SP No. 61838.

[6] Rollo, p. 7.

[7] Rollo, p. 39.

[8] Id., p. 40.

[9] Annex "E," rollo, p. 70.

[10] Section 4, Rule 129, Rules of Court; see also Evidence, by R.J. Francisco, 1996 Edition.

[11] Memorandum of Respondent, rollo, p. 125.

[12] Ching v. Salinas, G.R. No. 161295, 29 June 2005.

[13] NFA v. Masada Security Agency, Inc., G.R. No. 163448, 8 March 2005, 453 SCRA 70; Strong v. Repide, 6 Phil. 680 (1906).

[14] The Local Government Code of 1991; Section 16. General Welfare. Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare within their respective territorial jurisdictions. Local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents xxx.

[15] Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc., G.R. No. 148339, 23 February 2005, 452 SCRA 174.

[16] Id.

[17] Monteverde v. Generoso, 52 Phil. 123 (1982).

[18] Factual issues are not within the province of the Supreme Court, as it is not a trier of facts and it is not required to examine or contrast the oral and documentary evidence de novo. Nevertheless, the Court has the authority to review, even reverse, the factual findings of lower courts in exceptional instances. (Lagon v. Hooven Comalco Industries, Inc., G.R. No. 135657, 17 January 2001, 349 SCRA 363.)

[19] Rollo, p. 66.

[20] Id., p. 65.

[21] Taganas v. Emuslan, G.R. No. 146980, 2 September 2003, 410 SCRA 237.

[22] Development Bank of the Philippines v. La Campana Development Corporation, G.R. No. 137694, 17 January 2005, 448 SCRA 384.

[23] Carlet v. Court of Appeals, 341 Phil. 99 (1997).

[24] Id.

[25] Heirs of the Late Faustina Adalid v. Court of Appeals, G.R. No. 122202, 26 May 2005, 459 SCRA 27.

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[26] Sempio v. Court of Appeals, 348 Phil. 627 (1998).

[27] Id.

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