

**ARSENIO L. CANLAS AND ADENA GONZALES-CANLAS, PETITIONERS,
VS. HON. BERNABE DE AQUINO, AS JUDGE OF THE COURT OF FIRST
INSTANCE OF TARLAC AND JAIME TAYAG, RESPONDENTS.**

G.R. No. 16815. July 24, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Original action for a writ of certiorari to annul an order of the Court of First Instance of Tarlac.

On December 11, 1957, petitioners herein, Arsenio L. Canlas and Adena Gonzales-Canlas, who are husband and wife, as well as doctors of medicine by profession, were granted a permit for the construction of a house in the barrio of San Jose, municipality of Concepcion, province of Tarlac. Their purpose was to establish, operate and maintain in said house a private hospital with an accommodation of fifteen (15) beds, two (2) of which would be for charity cases. When half of the house was finished, in January 1958, petitioners opened therein a medical clinic of (5) emergency beds, one of which was for charity. Subsequently, or on December 1, 1958, they applied from the Director of Hospitals for authority to operate and maintain the aforementioned hospital. Soon thereafter, or on January 14, 1959, the Provincial Board of Tarlac passed a resolution (No. 64) recommending approval of said application, which was approved on August 24, 1959. Meanwhile or on October 30, 1958, respondent Jaime Tayag had obtained a permit to construct a ricemill in front of the Canlas Clinic, just across the street. It appears, however, that Chapter VII of Municipal Ordinance No. 44 of Concepcion, Tarlac, requires a sanitary permit, issued by the local health officer, for the operation of any establishment which may exhale foul odor or cause physical discomfort to such degree as to constitute a nuisance. Purporting to act pursuant to such ordinance, the municipal health officer of Concepcion revoked or cancelled the aforementioned permit issued to Tayag, who was advised of this action in a letter of said officer reading:

"A permit for a construction of a Rice Mill at Bo. San Jose, Concepcion, Tarlac, has been granted to you on September 22, 1959, on condition that Municipal Ordinances are strictly observed.

"In view of the fact that we found out a Clinic of Dr. Arsenio Canlas has been established since January 1958, and that according to Sec. 111 Chapter VII Ordinance No. 44 Series of 1952. The operation of a Rice Mill in the above mention place is contrary to this Ordinance, thus repealing permit given to you on September 22, 1959.

"I hope you will not continue the construction of your Rice Mill in accordance with Municipal Ordinance, attached is a true copy of said Ordinance."

Inasmuch as Tayag was about to proceed with the construction of his ricemill despite this communication, on or about October 19, 1959, petitioners herein filed, against him, a complaint, which was docketed as Civil Case No. 3512 of the Court of First Instance of Tarlac, setting forth therein the above facts and alleging that should the ricemill be eventually constructed, the operation of the Canlas Clinic "which has been in actual operation since January, 1959, rendering hospitalization, medical aid, cure and treatment, not only to the people of the

municipality of Concepcion, but, also, to the people of the neighboring municipalities"—would have to be stopped altogether "because the smoke, vapor, palay husk, dust and dirt and the constant noise generated from the operation of said ricemill would not be conducive to the quiet, cleanliness, tranquility and fresh air and wholesome atmosphere needed and prescribed in the hospital area, its environs and surroundings for the health, comfort and well-being of its inmates and patients", and "that the Bureau of Hospitals has made it clear that if and should the said ricemill be eventually constructed and begin operation, the permit already issued for the said hospital * * * would be revoked and cancelled and the Canlas Clinic itself would be ordered closed", thereby working irreparable loss, damage and injury to petitioners herein, who had already spent not less than P40,000 for the construction of their aforementioned house and the equipment necessary for the operation of said hospital.

On October 22, 1959, the Court of First Instance of Tarlac, then presided over by Hon. Zoilo Hilario, Judge, issued an order authorizing the issuance of a writ of preliminary injunction, enjoining respondent Tayag from constructing the aforementioned ricemill, upon the filing of a bond in the sum of P1,000.00. Soon later, or on November 4, 1959, respondent Tayag filed an unverified motion for the dissolution of said writ of preliminary injunction, alleging that the same "would work great damage to defendant who has already spent a considerable sum of money", and that petitioners "can be fully compensated for any damages that they may suffer as" respondent Tayag "is not only solvent but is willing to put up a bond in such amount as" the court may fix. Despite the opposition filed by petitioners herein, who contested the truth of these allegations of respondent Tayag, said court, then presided over by Hon. Bernabe de Aquino, Judge, one of the respondents herein, issued an order dated February 4, 1960, granting said motion and dissolving the aforementioned writ of preliminary injunction, upon the filing by Tayag of a bond in the sum of P2,000, which was approved by the court on February 8, 1960. A reconsideration of this order having been denied by respondent Judge, petitioners herein instituted the present action to annul said order of February 4, 1960, upon the ground that in issuing the same the aforementioned respondent had acted without or in excess of his jurisdiction, as well as arbitrarily and with grave abuse of discretion, apart from prejudging said Civil Case No. 3512.

In his answer to the petition herein, respondent Tayag maintained the legality of the order complained of. He, likewise, annexed to said pleading, as part thereof, his answer in the main action, in which he averred that the municipal health officer of Concepcion, Tarlac, had no authority to revoke the building permit issued to him (Tayag) by the municipal mayor on October 30, 1959; that on January 11, 1960, Chapter VII of Municipal Ordinance No. 44 was amended by Ordinance No. 7, which dispensed with the sanitary permit formerly required, and gave the local health officer no more than the power to promulgate rules and regulations for the operation of the establishments referred to in said Chapter VII; and that to remove doubts, the requisite building permit was reissued to respondent Tayag on January 13, 1960.

Petitioners herein are entitled to the writ prayed for. The motion of respondent Tayag for the dissolution of the writ of preliminary injunction issued on October 22, 1959, was unverified. Moreover, Rule 60, section 6, of the Rules of Court, provides:

"The injunction may be refused, or, if granted ex parte, may be dissolved, upon the insufficiency of the complaint as shown by the complaint itself or upon affidavits on the part of the defendant, which may be opposed by the plaintiff also by affidavits. It may also be refused, or, if granted ex parte, may be dissolved, if it appears that the plaintiff is entitled to the injunction, but the issuance or continuance thereof, as the case may be, would cause great damage to the defendant, while the plaintiff can be fully compensated for such damages as he may suffer, and the defendant files a bond in an amount fixed by the judge conditioned that the defendant will pay all damages which the plaintiff may suffer by reason of the continuance during the action of the acts complained of. If it appears that the extent of the preliminary injunction granted is too great, it must be modified. On any of these grounds, the defendant may object to the injunction applied for, or may move that

the same be dissolved or modified if already granted ex parte".

Instead of alleging facts establishing the presence of the conditions prescribed in this section, respondent Tayag merely reproduced the language thereof, in his aforementioned motion, thus relying upon abstract conclusions, without any concrete or specific premise to bear out said conclusions. Again, although, in their opposition to said motion, petitioners impugned the accuracy of the conclusions therein alleged, respondent Judge accepted such conclusions on their face value, without any evidence, or, even, affidavit in support thereof. Worst still, it is obvious that the operation of a hospital is a matter that, not only concerns its owners or operators, but, also, if not more particularly, affects the health and welfare of the community, and that the damage sustained by the latter, in consequence, either of the obstruction to the proper operation of said hospital or of its closing, can not possibly be compensated in full.

Then, too, it would appear that respondent Judge issued the order complained of on account of "very reliable information" he had received privately, to the effect that "these days a ricemill can be operated without causing any noise or emitting any smoke in such a way as (not) to be a nuisance to the neighborhood". In this order of March 10, 1960, refusing to reconsider the order of February 4, 1960, respondent stated, by way of justification for his reliance upon said "information", that, immediately after the construction of Tayag's ricemill, the court intended to inspect the same "and see whether it really can be operated without noise or smoke" and that, if the ricemill was then found to "cause noise and emit smoke while In operation", the court would "immediately enjoin its operation". This process of reasoning entails such a serious error of judgment as to constitute a grave abuse of discretion, amounting to excess of jurisdiction.

Indeed, the main action was filed by petitioners herein for the purpose of enjoining and prohibiting Tayag from constructing a ricemill, so that, upon the construction thereof, said action would become futile. Besides, the intention of respondent Judge to prohibit the continuance of the operation of said ricemill, should it later be found to be a nuisance, is not sufficient to offset the harm already done to the operation of the hospital, specially the injury suffered by the patients therein and the public in general, which are hardly susceptible of estimation or compensation. Needless to say, by permitting Tayag to construct his building, and purchase and install the machinery for the operation of the ricemill, respondent Judge exposed him to much greater damage than that which could possibly have resulted had the writ of preliminary injunction been maintained until the final disposition of the case.

Wherefore, the aforementioned order of February 4, 1960 is hereby annulled, with costs against respondent Jaime Tayag. It is so ordered.

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

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