

DANILO A. DU, PETITIONER, VS. VENANCIO R. JAYOMA, THEN MUNICIPAL MAYOR OF MABINI, BOHOL, VICENTE GULLE, JR., JOVENIANO MIANO, WILFREDO MENDEZ, AGAPITO VALLESPIN, RENE BUCIO, JES...

G.R. No. 175042. April 23, 2012

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

In the absence of a legal right in favor of the plaintiff, there can be no cause of action.

This Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assails the Decision[2] dated July 11, 2006 and the Resolution[3] dated October 4, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 00492.

Factual Antecedents

On July 7, 1988, the Sangguniang Bayan of the Municipality of Mabini, Bohol, enacted Municipal Ordinance No. 1, series of 1988,[4] requiring the conduct of a public bidding for the operation of a cockpit in the said municipality every four years.

For the period January 1, 1989 to December 31, 1992, the winning bidder was Engr. Edgardo Carabuena.[5] However, due to his failure to comply with the legal requirements for operating a cockpit, the Sangguniang Bayan on December 1, 1988 adopted Resolution No. 127, series of 1988,[6] authorizing petitioner Danilo Du to continue his cockpit operation until the winning bidder complies with the legal requirements.[7]

On July 9, 1997, upon discovering that petitioner has been operating his cockpit in violation of Municipal Ordinance No. 1, series of 1988, the Sangguniang Bayan passed Municipal Resolution No. 065, series of 1997,[8] suspending petitioner's cockpit operation effective upon approval.[9]

On July 11, 1997, pursuant to Municipal Resolution No. 065, series of 1997, respondent Venancio R. Jayoma, then Mayor of Mabini, in a letter,[10] ordered petitioner to desist from holding any cockfighting activity effective immediately.[11]

Feeling aggrieved, petitioner filed with Branch 51 of the Regional Trial Court (RTC) of Bohol, a Petition for Prohibition,[12] docketed as Special Civil Action No. 4, against respondent mayor and nine members of the Sangguniang Bayan of Mabini, namely: Vicente Gulle, Jr., Joveniano Miano, Wilfredo Mendez, Agapito Vallespin, Rene Bucio, Jesus Tutor, Crescencio Bernales, Edgardo Ybanez and Rey Pagalan. Petitioner prayed that a preliminary injunction and/or a temporary restraining order be issued to prevent respondents from suspending his cockpit operation.[13] Petitioner claimed that he has a business permit to operate until December 31, 1997;[14] and that the Municipal Resolution No. 065, series of 1997, was unlawfully issued as it deprived him of due process.[15]

In their Answer,[16] respondents interposed that under the Local Government Code (LGC) of 1991, the power to

authorize and license the establishment, operation and maintenance of a cockpit is lodged in the Sangguniang Bayan;[17] that respondent mayor, in ordering the suspension of petitioner's cockpit operation, was merely exercising his executive power to regulate the establishment of cockpits in the municipality, pursuant to the ordinances and resolutions enacted by the Sangguniang Bayan;[18] and that Municipal Resolution No. 065, series of 1997, does not need to be approved by the Sangguniang Panlalawigan because it is not an ordinance but an expression of sentiments of the Sangguniang Bayan of Mabini.[19]

On October 22, 1997, a Temporary Restraining Order[20] was issued by the RTC enjoining respondents from suspending the cockpit operation of petitioner until further orders from the court.[21]

The Petition for Prohibition was later amended[22] to include damages, which the RTC admitted in an Order[23] dated January 21, 1998.

Ruling of the Regional Trial Court

On October 5, 2004, the RTC rendered a Decision[24] in favor of petitioner, to wit:

WHEREFORE, and on the ground that petitioner was able to prove his case with preponderance of evidence, judgment is hereby rendered in favor of the petitioner and against the respondents, ordering the respondents jointly and severally to pay the petitioner:

1. The amount of Twenty Thousand Pesos (P20,000.00) in the concept of moral damages;
2. The amount of Sixty Thousand Pesos (P60,000.00) in the concept of unearned income considering the un rebutted testimony of the petitioner [that] he lost Four Thousand Pesos (P4,000.00) for each of the fifteen (15) Sundays that his cockpit was closed as its operation was ordered suspended by the respondent. By mathematical computation $P4,000.00 \times 15$ amounts to P60,000.00;
3. The amount of Ten Thousand Pesos (P10,000.00) as exemplary damages to deter other public officials from committing similar acts;
4. The amount of Twenty Thousand Pesos (P20,000.00) as attorney's fees, and to pay the cost.

SO ORDERED.[25]

Ruling of the Court of Appeals

On appeal, the CA reversed the Decision of the RTC. According to the CA, petitioner did not acquire a vested right to operate a cockpit in the municipality as he was only granted a temporary privilege by the Sangguniang Bayan.[26] Hence, there being no right in esse, petitioner is not entitled to damages.[27] Thus, the dispositive portion reads:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The assailed decision granting petitioner the award of damages is SET ASIDE and the petition filed by petitioner against respondents is DISMISSED.

SO ORDERED.[28]

Petitioner moved for reconsideration which was denied by the CA in a Resolution[29] dated October 4, 2006.

Issue

Hence, the instant petition raising the core issue of whether the CA erred in finding that petitioner is not entitled to damages.[30]

Petitioner's Arguments

Petitioner contends that Municipal Resolution No. 065, series of 1997, is ultra vires as it was maliciously, hastily, and unlawfully enforced by respondent mayor two days after its passage without the review or approval of the Sangguniang Panlalawigan of Bohol.[31] He alleges that respondents suspended the operation of his cockpit without due process and that the suspension was politically motivated.[32] In addition, he claims that as a result of the incident, he is entitled to actual, moral and exemplary damages as well as attorney's fees.[33]

Respondents' Arguments

Echoing the ruling of the CA, respondents insist that petitioner is not entitled to damages because he did not acquire a vested right to operate a cockpit in the municipality.[34] They also maintain that the suspension of petitioner's cockpit operation was pursuant to law and prevailing ordinance.[35]

Our Ruling

The petition lacks merit.

A cause of action is defined as "the act or omission by which a party violates a right of another." [36]

Corollarily, the essential elements of a cause of action are: (1) a right in favor of the plaintiff; (2) an obligation on the part of the defendant to respect such right; and (3) an act or omission on the part of the defendant in violation of the plaintiff's right with a resulting injury or damage to the plaintiff for which the latter may file an action for the recovery of damages or other appropriate relief. [37]

Petitioner has no legal right to operate a cockpit.

In this case, we find that petitioner has no cause of action against the respondents as he has no legal right to operate a cockpit in the municipality. Under Resolution No. 127, series of 1988, the Sangguniang Bayan allowed him to continue to operate his cockpit only because the winning bidder for the period January 1, 1989 to December 31, 1992 failed to comply with the legal requirements for operating a cockpit. Clearly, under the said resolution, petitioner's authority to operate the cockpit would end on December 31, 1992 or upon compliance by the winning bidder with the legal requirements for operating a cockpit, whichever comes first. As we see it, the only reason he was able to continue operating until July 1997 was because the Sangguniang Bayan of Mabini failed to monitor the status of the cockpit in their municipality.

And even if he was able to get a business permit from respondent mayor for the period January 1, 1997 to December 31, 1997, this did not give him a license to operate a cockpit. Under Section 447(a)(3)(v) of the LGC, it is the Sangguniang Bayan which is empowered to "authorize and license the establishment, operation and maintenance of cockpits, and regulate cockfighting and commercial breeding of gamecocks." Considering that no public bidding was conducted for the operation of a cockpit from January 1, 1993 to December 31, 1997, petitioner cannot claim that he was duly authorized by the Sangguniang Bayan to operate his cockpit in the municipality for the period January 1, 1997 to December 31, 1997. Respondent members of the Sangguniang Bayan, therefore, had every reason to suspend the operation of petitioner's cockpit by enacting Municipal Resolution No. 065, series of 1997. As the chief executive of the municipal government, respondent mayor was duty-bound to enforce the suspension of the operation of petitioner's cockpit pursuant to the said Resolution.

It bears stressing that no evidence was presented to show that upon review by the Sangguniang Panlalawigan of Bohol, the resolution was declared invalid or that the resolution was issued beyond the powers of the Sangguniang Bayan or mayor. Jurisprudence consistently holds that an ordinance, or in this case a resolution, is "presumed

valid in the absence of evidence showing that it is not in accordance with the law.”[38] Hence, we find no reason to invalidate Municipal Resolution No. 065, series of 1997.

License to operate a cockpit is a mere privilege.

In addition, it is well enshrined in our jurisprudence that “a license authorizing the operation and exploitation of a cockpit is not property of which the holder may not be deprived without due process of law, but a mere privilege that may be revoked when public interests so require.”[39] Having said that, petitioner’s allegation that he was deprived of due process has no leg to stand on.

Petitioner not entitled to damages

Without any legal right to operate a cockpit in the municipality, petitioner is not entitled to damages. Injury alone does not give petitioner the right to recover damages; he must also have a right of action for the legal wrong inflicted by the respondents.[40] We need not belabor that “in order that the law will give redress for an act causing damage, there must be *damnum et injuria* – that act must be not only hurtful, but wrongful.”[41]

All told, we find no error on the part of the CA in dismissing petitioner’s case.

WHEREFORE, the petition is hereby DENIED. The assailed Decision dated July 11, 2006 and the Resolution dated October 4, 2006 of the Court of Appeals in CA-G.R. SP No. 00492 are hereby AFFIRMED.

SO ORDERED.

Corona, C. J., Chairperson, Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 3-107 with Annexes “A” to “J-1” inclusive.

[2] Id. at 85-93; penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Vicente L. Yap and Romeo F. Barza.

[3] Id. at 104-105; penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Romeo F. Barza and Antonio L. Villamor.

[4] Id. at 40.

[5] Id. at 86.

[6] Id. at 41.

[7] Id. at 86.

[8] Records, p. 8.

[9] Rollo, pp. 86-87.

[10] Records, p. 7.

[11] Rollo, pp. 87-88.

[12] Id. at 29-33.

[13] Id. at 32.

[14] Id. at 29.

- [15] Id. at 31-32.
- [16] Id. at 34-39.
- [17] Id. at 35.
- [18] Id.
- [19] Id.
- [20] Records, p. 54.
- [21] Rollo, p. 88.
- [22] Id. at 44-50.
- [23] Id. at 51.
- [24] Id. at 52-61; penned by Executive Presiding Judge Patsita Sarmiento-Gamutan.
- [25] Id. at 61.
- [26] Id. at 91-92.
- [27] Id.
- [28] Id. at 92-93.
- [29] Id. at 104-105.
- [30] Id. at 146-147 and 169.
- [31] Id. at 148.
- [32] Id.
- [33] Id. at 148-149.
- [34] Id. at 169-172.
- [35] Id.
- [36] Rules of Court, Rule 2, Section 2.
- [37] *Soloil, Inc. v. Philippine Coconut Authority*, G.R. No. 174806, August 11, 2010, 628 SCRA 185, 190.
- [38] *Judge Leynes v. Commission on Audit*, 463 Phil. 557, 580 (2003).
- [39] *Pedro v. Provincial Board of Rizal*, 56 Phil. 123, 132 (1931).
- [40] *Tan v. Pereña*, 492 Phil. 200, 210 (2005).
- [41] Id.

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