

THE CHIEF OF THE PHILIPPINE CONSTABULARY, PETITIONER, VS. SABUNGAN BAGONG SILANG, INC., ARTEMIO PAGUIA AND THE HON. GUILLERMO TORRES, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZ...

G.R. No. 22609. February 28, 1966

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an original action for certiorari and prohibition, with preliminary injunction, to set aside an order of respondent Hon. Guillermo Torres, as Judge of First Instance of Rizal. Upon the filing of the petition herein we issued a writ of preliminary mandatory injunction, thus, in effect, suspending the operation of the order complained of. Subsequently, respondents moved to lift said writ of preliminary mandatory injunction, but action on the motion was deferred until the case is considered on the merits.

The main facts are not disputed. On January 24, 1963, Municipal Ordinance No. 1, Series of 1963, of the Municipality of Mandaluyong, Rizal, was passed by its Municipal Council and approved by the Municipal Mayor. Section 1 of the Ordinance prohibits cockfighting or pintakasi, except in a duly licensed cockpit. Section II provides that:

"Except on those days authorized by law or statute it shall be unlawful for any person, whether natural or juridical, to maintain, operate or otherwise hold the game of cockfight or pintakasi in any place within the jurisdiction of the Municipality of Mandaluyong, Rizal however, when the same is intended or dedicated for charitable purposes, pursuant to the provisions of Republic Act No. 979, pintakasi may be permitted or allowed at the sound discretion of the Municipal Mayor, provided further, that the permit issued by the Municipal Mayor for the holding of any pintakasi, shall not exceed one (1) day for each week for any duly licensed cockpit, provided finally, that the Municipal Mayor may, on his discretion, extend the pintakasi from daytime to nighttime, should circumstances so warrant". (Italics supplied.)

Section III repeals all resolutions, ordinances, orders or parts hereof inconsistent with said Ordinance. Section IV prescribes penalties for violations thereof, whereas Section V provides that the Ordinance shall take effect upon its approval.

On or about January 30, 1963, respondent Sabungan Bagong Silang, Inc.—hereinafter referred to as the Corporation—commenced Civil Case No. 7544 of the Court of First Instance of Rizal against herein petitioner, the Chief of the Philippine Constabulary. It was alleged in the complaint therein that said Corporation is the operator of a duly licensed cockpit in Mandaluyong, Rizal; that acting in pursuance of said Ordinance No. 1, the Mayor of Mandaluyong had issued permits authorizing the Corporation to hold cockfights every Wednesday; that, despite said permits, petitioner herein was threatening to prevent the Corporation from holding cockfights, even if for charitable purposes, on Wednesdays, and to arrest and prosecute the Corporation and its representatives if said

cockfights were held; and that such attitude of herein petitioner is not only unjustified, improper and illegal, but, also, beyond his jurisdiction and constitutes a grave abuse of discretion, amounting to lack of jurisdiction, from which there is no appeal or other plain, speedy and adequate remedy in the ordinary course of law.

Accordingly, the Corporation prayed that judgment be rendered in due time prohibiting petitioner herein "and his alter egos" from preventing the holding of said cockfights, as permitted by the Mayor of Mandaluyong, Rizal, when "intended and dedicated for charitable purposes", and that, meanwhile; a restraining order or writ of preliminary injunction directing said petitioner, his agents and representatives to refrain or desist from interfering in the holding of said cockfights.

Upon the filing of said complaint, or on January 30, 1963, respondent Judge issued a restraining order against petitioner herein, and his agents and representatives, and set the prayer for a writ of preliminary injunction for hearing on February 12, 1963. Respondent Judge, likewise, directed said petitioner to answer within ten (10) days from notice.

In due course, herein petitioner filed his answer to the complaint and objected to the issuance of the writ of preliminary injunction. Apart, from denying some allegations of the complaint, petitioner alleged in his answer, by way of special affirmative defenses, that the complaint failed to state a cause of action and that the Corporation is not entitled to the writ prayed for. Accordingly, petitioner prayed that the case be dismissed and that the issuance of said writ be denied. In the meantime, the hearing on said writ had been, on motion of the Corporation, postponed, first to February 23, then to March 19, later to June 5, and still later to July 24, 1963, despite petitioner's objection thereto, upon the ground that the Corporation was merely delaying said hearing, taking advantage of the ex-parte restraining order above referred to. Hence, on July 22, 1963, petitioner filed a motion alleging that the only issue in the case is one of law and praying, therefore, that the motion to dismiss and the special and affirmative defenses contained in its aforementioned answer, be considered submitted.

Respondent Judge having failed to act on this motion of July 22, 1963, petitioner filed, on February 18, 1964, another motion to lift the restraining order of January 30, 1963. Neither was any action taken on this motion, which was heard and submitted on February 28, 1964. Hence, the case at bar was, on March 19, 1964, instituted in this Court against the Corporation, its president Artemio Pagua and respondent Judge. Apart from setting forth the foregoing facts, petitioner herein alleges that he has exhausted all available remedies and that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law, against the then 15-month ex-parte restraining order. Thereupon, or on March 23, 1964, we issued the preliminary mandatory injunction adverted to above.

In their answer, filed on April 10, 1964, to the petition herein, respondents did not controvert the allegations of fact made in said petition and merely averred that the main case has already been submitted and is now pending resolution before respondent Judge, who, seemingly, has not decided it up to the present.

Thus, the issue as to whether the restraining order of January 30, 1963, should be set aside or not has not been resolved by respondent Judge, despite the fact that petitioner herein had repeatedly urged its early determination. Such inaction for over three (3) years clearly constitutes a grave abuse of discretion, amounting to lack or excess of jurisdiction, warranting the issuance of the writs of certiorari and prohibition prayed for by petitioner herein. Such abuse of discretion becomes compounded by the fact that as early as May 30, 1961 this Court had declared, in *Quimsing vs. Lachica* (112 Phil. 110), that similar Ordinances of the Municipality of Molo, Iloilo, authorizing the operation of cockpits on Thursdays, violated Sections 2285 and 2286 of the Revised Administrative Code and, hence, were null and void, despite the provision of Republic Act No. 938 authorizing "the municipal or city board or council of each municipality and municipal district * * * to regulate * * * the establishment, maintenance and

operation of * * * cockpits * * * within its territorial jurisdiction * * * " and that the attention of respondent Judge had been called thereto in the answer filed by petitioner herein in the main case on February 8, 1963. Said provision of Republic Act No. 938 is reproduced in Republic Act No. 979, upon which respondents herein rely.

Wherefore, the aforementioned restraining order of January 30, 1963, is hereby annulled and the writ of preliminary mandatory injunction issued by this Court on March 24, 1963, made permanent, with costs against respondents Sabungan Bagong Silang, Inc. and Artemio Paguia.

It is so ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanchez, JJ., concur.

Writ granted.

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