

BACOLOD-MURCIA MILLING CO., INC. AND HON. JOSE F. FERNANDEZ, PETITIONERS, VS. CAPITOL SUBDIVISION, INC., AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 25887. July 26, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The Bacolod-Murcia Milling Co., Inc., applied for a writ of certiorari to annul and set aside the resolution adopted on 18 March 1966 by the Fourth Division of the Court of Appeals in its Case CA-G.R. No. 37141-R, entitled Capitol Subdivision, Inc. vs. Judge Jose F. Fernandez and Bacolod-Murcia Milling Co., Inc., enjoining enforcement of a writ of Preliminary injunction issued by respondent Judge Fernandez in Civil Case No. 7698 of the Court of First Instance of Occidental Negros, upon posting by the Capitol Subdivision, Inc. of a bond in the sum of P50,000.00

On 11 April 1966, we enjoined enforcement of the resolution of the Court of Appeals upon the Milling Company's putting up a bond of P100,000.00.

The entire case originated in a suit filed on 10 October 1965 by Bacolod-Murcia Milling Company (hereinafter termed the Central) against Capitol Subdivision, Inc. (herein designated as the Subdivision) "to award plaintiff a legal easement of right of way over defendant's property known as "Hacienda Mandalagan", particularly Lots 410-B and 1205 of the Bacolod cadastre. The complaint averred that on 30 August 1920 the original owners of said "Hacienda" had entered into a milling contract with the Central for a period of 30 years, later extended to 45 years, from the crop year 1920-1921; that the contract stipulated that the planter gratuitously ceded for the period of 45 years a right of way for the railways, canals, water pipes and telephone lines that the Central might require; and that altho a certain portion of the "Hacienda" was intended for subdivision the easement of right of way granted would be always respected; that pursuant to the stipulation, the Central had built a railroad line occupying 2,438 lineal meters in length and seven (7) meters wide, over the lands of the "Hacienda Mandalagan", using the same for transporting to Sto. Niño Dock the export sugar of the Central and its adherent planters, and other materials; that the milling contract would expire on the crop year 1964-1965, and the Subdivision had demanded from plaintiff Central the removal of the railroad tracks and threatened to close the same; that such action, if carried out, would cause irreparable damage to the Central and its planters, who have to fill a yearly quota which is part of the commitment of the Republic to the United States, unless the right of way and its continued use be legally recognized as a legal easement of right of way, upon payment of reasonable compensation, for a period coterminous with the existence and operation of the Central. Plaintiff then prayed for a writ of preliminary injunction to restrain the Subdivision from interfering, obstructing, or preventing the passage of the Central's locomotives and cars, as otherwise plaintiff's mill operation would be completely paralyzed.

Over the Subdivision's objections and motion to dismiss, on the ground that the complaint stated no cause of action, the Court of First Instance, as previously noted, issued, on 13 October 1965, the preliminary injunction

prayed for by the Central. Its motions for reconsideration having proved unavailing, the Subdivision resorted to the Court of Appeals on certiorari, alleging abuse of discretion, and the Fourth Division, after answer by the Central, issued the resolution of 18 March 1966, which recites as follow:

"It being admitted in respondents' answer to the petition for certiorari, etc., that the questions—whether or not the sugar central of respondent's Bacolod-Murcia abuts a public highway; whether or not said respondent's mill actually abuts a principal city street, and whether or not the said public highway is inadequate or insufficient—are matters of evidence that should be first established during the trial of the merits of Civil Case 7698, Bacolod-Murcia Milling Co., Inc., vs. Capitol Subdivision, Inc., before respondent Judge; that pending decision of the case just mentioned, it cannot be safely assumed that respondent Bacolod-Murcia Milling Co., Inc., is entitled to the legal easement prayed for in its complaint therein; that when respondent Judge issued the writ of preliminary injunction complained of, the contractual easement had already expired, hence the said injunction was issued on the premature assumption that respondent Bacolod-Murcia Milling Co., Inc., is entitled to the legal easement prayed for by it; that one of the purposes for the issuance of a writ of Preliminary injunction is to maintain the status quo, which in this case is the fact that the right of respondent Bacolod-Murcia Milling Co., Inc., to operate the right of way over petitioner's property had already ceased with the said expiration or termination of its contractual easement, and that for these reasons in addition to those adduced by petitioner in its said petition for certiorari etc., and in its rejoinder to respondent's answer, it follows that herein petitioner is entitled to the issuance of a writ of preliminary injunction restraining respondent Bacolod-Murcia Milling Co., Inc., its agents, representatives and employees from committing acts of trespass upon the property of petitioner, more specifically, from passing its locomotives and rail cars through the said property, and respondent Judge from enforcing the writ of preliminary injunction that he has authorized under his order dated October 13, 1965—it is ordered that, upon the filing of bond in the amount of P50,000.00, the said writ of preliminary injunction prayed for by petitioner will be issued, until further order of this Court.

'SO ORDERED.' "

The Central in turn resorted to this Court for certiorari against the resolution of the Court of Appeals, alleging that the same virtually decides the case, usurping the functions of the trial judge, and, unless restrained, would enervate and render nugatory whatever judgment might be rendered in the main case.

After mature consideration and deliberation, this Court has reached the conclusion that the present petition of the Central is unmeritorious, and should be dismissed. The records submitted by the parties show that the Court of Appeals has correctly pointed out a fatal defect in the issuance of the preliminary injunction by the Court of origin, and that is its having ignored the undisputed fact that the Central's right to use the railway across the lands of the respondent subdivision expired with its milling contract, i.e., on 30 September 1965. From and after that date, the Central had to rely strictly on its being entitled to a compulsory servitude of right of way, under the Civil Code, and it could not claim any such servitude without first establishing the preconditions for its grant fixed by articles 649 and 650 of the Civil Code of the Philippines:

- (1) That it is surrounded by other immovables and has no adequate outlet to a public highway (Art. 649, par. 1) ;
- (2) After payment of proper indemnity (Art. 649, par. 1, end);
- (3) That the isolation was not due to the Central's own acts (Art. 649, last par.); and
- (4) That the right of way claimed is "at the point least prejudicial to the servient estate; and in so far as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest" (Art. 650).

By express provision of law, therefore, a compulsory right of way can not be obtained unless the four requisites enumerated are first shown to exist, and the burden of proof to show their existence was on the Central. Nowhere

in the complaint is any specific averment, nor is there in the Court of First Instance orders for the issuance of the writ of temporary injunction, and denying its reconsideration, any specific finding, even preliminary, that each and everyone of the four statutory preconditions do exist. The Central's original complaint only makes reference to a reasonable compensation in paragraph 14 and no more. Assuming that such expression can be stretched into a manifestation that the Central is willing to pay such compensation as may be ultimately fixed by the Court, it still is not the prepayment required by Article 649 of the Civil Code; so that all four requisites are lacking. This deficiency made the issuance of a preliminary injunction improvident and arbitrary, for the first condition for the granting of the writ is "that the plaintiff is entitled to the relief demanded" (sec. 3(a), Rule 58, Revised Rules) and "that the complaint in the action is verified, and shows facts entitling the plaintiff to the relief demanded" (section 4 (a), Rule 58. None of the four requisites for compelling the grant of a right of way being shown, the title Or right of petitioner Central to the relief demanded is not clearly established, and the extraordinary writ of injunction should not have been issued, since injunction, whether preliminary or final, is not designed to protect contingent or future rights.

The basic rule in this matter is laid down in 32 C. J. 34, quoted with approval in *North Negros Sugar Co., vs. Hidalgo*, 63 Phil., 671, 677:

"* * * Where it is clear that the complainant does not have the right that he claims, he is not entitled to an injunction, either temporary or perpetual, to prevent a violation of such supposed right. * * * 'An injunction will not issue to protect a right not in esse and which may never arise or to restrain an act which does not give rise to a cause of action, * * *.' (32 C. J., pp. 34, 35.)"

To the same effect is the rule stated in *American Jurisprudence* (Vol. 28, section 26), p. 517):

" 'Injunction, like other equitable remedies, will issue only at the instance of a suitor who has sufficient interest or title in the right or property sought to be protected. A court of equity has no power to issue an injunction where only abstract rights are involved. For the court to act there must be an existing basis of facts affording a present right which is directly threatened by the act sought to be enjoined. An impending or threatened invasion of some legal right of the complainant, and some interest in preventing the wrong sought to be perpetrated must be shown. It is always a ground for denying injunction that the party seeking it has insufficient title or interest to sustain it, and no claim to the ultimate relief sought— in other words, that he shows no equity. Want of equity on the part of the plaintiff in attempting to use the injunctive process of the court to enforce a mere barren right will justify the court in refusing the relief even though the defendant has little equity on his side. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of suits to establish title, and will not lend its preventive aid by injunction where the complaint's title or right is doubtful or disputed. He must stand on the strength of his own right or title, rather than on the weakness of that claimed by his adversary.' (28 Am. Jur., Sec. 26, *Italics supplied*) "

The possibility of irreparable damage, without proof or violation of an actually existing right, is no ground for an injunction, being mere *damnum absque injuria*. In *Boix, et al., vs. Ilao, et al.*, G. R. No. 20010, 30 October 1962, this Court held:

"It may be observed that the original order of March 29, 1962, granting the writ of preliminary injunction that restrained petitioners from obstructing the passage of Batalla's trucks, was based on the allegation in the complaint of the existence of plaintiffs right to the use of the road. In its order of June 18, 1962, dissolving the writ of injunction, the lower court found otherwise and declared the said road as "belonging to defendants and that plaintiff has not acquired any right to use the same for her logging purposes." Later however, or on July 13, 1962, the lower court, without setting aside this order of June 18, 1962 expressly declaring the road as belonging to defendants and that plaintiff has not acquired any right to use the same, the respondent judge revived the injunction on the mere representation of plaintiff that she had to load and ship her lumber on July 18, 1962. This, we believe, constitutes no sufficient justification for her use of petitioner Boix' road, against the

latter's will. Upon facts before the court at the time, 'it was irregular and improper and VJCIS a grave abuse of discretion to issue or revive the mandatory injunction compelling respondent Boix to permit the use of his private road by the plaintiff who up to that time the court has declared not to have acquired any right to use the same.' " (Italics supplied)

In truth, the court of origin seems to have proceeded on the erroneous assumption that, even after expiration, of its contractual right of way, petitioner Central was entitled to a compulsory right of way in the same location and route it had been using up to the present. This is not true: the Central's use of the present railway for the preceding 45 years was based on the assent of the Subdivision's predecessors-in-interest, as evidenced by their milling contract, while a compulsory servitude of right of way on the same spot and route must be predicated on the minimum inconvenience to the would-be servient estate, in addition to the other requisites above set forth. There is no specific finding by the court of origin that the pre-requisites exist, and the lack of it suffices to negate the Central's right to the servitude claimed, as it likewise negates the propriety of the temporary injunction issued.

In issuing the preliminary writ for defendant to permit the Central to use its railway, in the manner established under the milling contract, the court of origin in effect extended that corresponding part of the contract even beyond the term stipulated by the parties. Such action is not warranted by law. The function of an injunction is the maintenance of the status quo as of the time of its issuance, and at that time, the right of the Central under the milling contract had uncontrovertibly expired. It needs no emphasizing that the court can not create contracts between the parties.

Neither can it be said that the isolation in which petitioner Central would find itself, if not allowed to use its contractual right of way, was not due to its own acts. The Central had every reason to know that its continued operation of the railway in its present route would expire on 30 September 1965, and is held bound to know the requisites upon which the law conditions the right to demand a compulsory right of way. Yet the record is bereft of any showing that the petitioner Central took seasonable steps, legal or otherwise, to secure the uninterrupted operation of the railway in question. This laches of the Central is another reason that makes the issuance of the preliminary injunction complained of entirely unwarranted and abusive, for a remedy based on equity may not be awarded in favor of those who sleep on their rights.

Finally, the charge of petitioner Central, that the resolution of the Court of Appeals anticipated the final decision on the merits by the court below, is without merit. Said resolution correctly declared that the preliminary injunction was issued on an erroneous premise, "the premature assumption that respondent Bacolod-Murcia Milling Co., Inc., is entitled to the legal easement prayed for by it", since the existence of the statutory requisites for such easement had not been properly averred or proved, as elsewhere discussed in this decision. Of course, petitioner may duly show at the hearing on the merits that the preconditions required by the Civil Code do actually exist; but until that is done, the right to the legal servitude is not clear, and the writ of injunction is unwarranted, and issued in grave abuse of discretion.

Wherefore, the petition for certiorari is dismissed, and the preliminary injunction previously issued by this Court is lifted and set aside, and the injunction of the Court of Appeals is restored. Costs against petitioner, Bacolod-Murcia Milling Co., Inc.

Concepción, C. J., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanchez, JJ., concur.

Petition dismissed.

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