

SY YAM BIO ET AL., PETITIONERS, VS. CONRADO BARRIOS AND MARIANO BUYSON LAMPA, JUDGES OF THE COURT OF FIRST INSTANCE OF ILOILO, RESPONDENTS.

G. R. No. 45261. July 21, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Charging the herein respondents, Conrado Barrios and Mariano Buyson Lampa, with having exceeded their jurisdiction and abused their discretion in issuing their respective orders of March 20, and 29, 1936, the former order dissolving the preliminary injunction issued ex parte in civil case No. 10466, wherein the herein petitioners were plaintiffs and the municipal council of Iloilo and Amando Perlas, as chief of police of the municipality of Iloilo, were defendants, which injunction restrained said defendants, until further orders, from enforcing Ordinance No. 1, series of 1936, of the municipal council of Iloilo, only with respect to the commercial establishments of said plaintiffs; and the latter order denying the motion for reconsideration of the former order, this petition for a writ of certiorari was filed praying for the annulment of the orders in question.

The pertinent facts necessary for the resolution of the legal question raised in this petition are as follows:

On March 14, 1936, the herein petitioners filed a complaint in the Court of First Instance of Iloilo praying that judgment be rendered declaring Ordinance No. 1, series of 1936, of the municipal council of Iloilo, illegal, null and void, and unconstitutional; and that pending the case and upon the filing by said plaintiffs of a bond to be fixed by the court, the effects of said ordinance be suspended, permitting said plaintiffs to open their commercial establishments in said municipality of Iloilo on Sundays, if they so desire. In view of said complaint, the respondent Judge Conrado Barrios issued ex parte the order of March 14, 1936, directing the issuance of the preliminary injunction applied for upon the filing of a bond in the sum of ₱500. Inasmuch as the provincial fiscal of Iloilo, representing the defendants municipal council of Iloilo and Amando Perlas, as chief of police of the municipality of Iloilo, had filed a motion on March 18, 1936, praying for the immediate hearing and decision of the case, said respondent judge called the case for hearing on the 19th of said month and year. Manuel O. Soriano, attorney for the plaintiffs, appeared at the hearing and asked for the postponement thereof to April 16, 1936, alleging that he had not yet coordinated his evidence due to the fact that the complaint was filed hastily on March 14, 1936, when the ordinance the annulment of which is sought went into effect. Said provincial fiscal and the attorney for the Iloilo Capitalists & Employers Association, Borra, opposed the petition for postponement alleging that said ordinance affected the welfare of employees and laborers in general and that suspension of the effects thereof would be damaging to said employees and laborers, including the owners of establishments and employees who were not plaintiffs therein and stated that if the motion for postponement were to be granted, the writ of preliminary injunction which was worthless and without merit for lack of evidence in support thereof, should be dissolved. After hearing the parties, the court decided that the motion for postponement should be granted but that the granting thereof should be compatible with the interests of the plaintiffs and the administration of justice. Inasmuch as the plaintiffs were not ready to uphold the correctness and legality of the writ of preliminary injunction in question by means of evidence, and because the continuance thereof during the pendency of the case would be prejudicial to the rights of the

defendants and public interest in general, said respondent Judge Conrado Barrios, on March 20, 1936, ordered the dissolution of the writ of preliminary injunction issued by him therein on March 14, 1936. On March 21, 1936, the attorney for the therein plaintiffs and herein petitioners filed a motion for reconsideration of said order of March 20, 1936, setting aside the above cited writ of preliminary injunction of March 14, 1936. The respondent Mariano Buyson Lampa, in the absence of the other respondent Conrado Barrios, denied said motion for reconsideration, no new facts justifying the amendment of said order of March 20, 1936, had been alleged therein.

The only question to be decided in this petition is whether or not the respondent Conrado Barrios exceeded his jurisdiction and abused his discretion in setting aside his order of March 14, 1936, and in annulling the writ of preliminary injunction issued by virtue thereof.

In maintaining the affirmative, the petitioners allege that the respondent Conrado Barrios issued his said order of March 20, 1936, in violation of the provisions of section 169 of Act No. 190, inasmuch as he set aside said order and directed the dissolution of said writ of injunction without any formal petition of the parties and without having followed the procedure prescribed by said section for the reconsideration of the order of March 14, 1936, directing the issuance of a writ of preliminary injunction, as prayed for in the petitioners' complaint.

Section 169 of Act No. 190 does not prescribe the manner of filing the application to annul or modify a writ of preliminary injunction. It simply states that if a temporary injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice to the adverse party, to the judge who granted the injunction, or to the judge of the court in which the action was brought, to dissolve or modify the same.

In the order of March 20, 1936, which is attached to the application as annex D., the respondent Conrado Barrios states that when the attorney for the petitioners asked for the postponement of the hearing of the case wherein the writ of temporary injunction was issued ex parte, the provincial fiscal stated that if the petition for postponement of the hearing were to be granted, the writ of preliminary injunction should be dissolved inasmuch as the issuance thereof was entirely without justification for failure of the petitioners to present evidence in support of their application. Therefore, although it was made verbally and indirectly, there was on the part of the defendants an application to dissolve the writ of preliminary injunction, based upon the insufficiency of the complaint which served as the basis of the application for the issuance of said writ of preliminary injunction, of which verbal application the attorney for the petitioners had knowledge inasmuch as it was precisely presented as a condition for the granting of the postponement of the hearing asked by him. Therefore there was sufficient substantial compliance on the part of the defendants with the requisites prescribed in section 169 of Act No. 190 relative to the filing of an application for the dissolution of a writ of preliminary injunction and notice to the herein petitioners and therein plaintiffs. Having heard the parties and weighed the reasons adduced by the provincial fiscal, in representation of the defendants, in support of the verbal application for the dissolution of the preliminary injunction; and inasmuch as the therein plaintiffs and herein petitioners, by themselves or through counsel, failed to present evidence justifying the continuance of said writ of injunction, the respondent Conrado Barrios, who had jurisdiction to try the case and, consequently, all the incidents thereof, did not exceed his jurisdiction nor abuse his discretion in granting the verbal motion for the dissolution of the temporary injunction, filed by the provincial fiscal of Iloilo in representation of the defendants.

For the foregoing considerations, we are of the opinion and so hold that an indirect verbal application for the dissolution of an ex parte writ of temporary injunction, made by a party as a condition for the granting of a petition for postponement of hearing filed by the other party, which application is based on the fact that the continuance of said temporary injunction, pending the case, would be prejudicial and harmful to public interest in general, is sufficient compliance with the provisions of section 169 of Act No. 190, and the court granting said

application does not exceed its jurisdiction nor abuse its discretion.

Wherefore, and finding no merit in the petition for certiorari, it is denied and dismissed, with costs to the petitioners. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Recto, and Laurel, JJ., concur.

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