

B. H.SILEN, S. J. WILSON, J. GEORGE, C. R. LUZURIAGA, AND FRANCIS LUSK, PETITIONERS, VS.T JOSE O, VERA, JUDGE OF FIRST INSTANCE OF MANILA, LEON ROSENTHAL, FREDERIC H. STEVENS, A...

G. R. No. 45574. October 27, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition for certiorari filed by B. H. Silen, S. J. Wilson, J. George, C. R. Luzuriaga and Francis Lusk against the Honorable Jose O. Vera, Judge of the Court of First Instance of Manila, Leon Rosenthal, Frederic H. Stevens and Gonzalo P. Nava praying, for the reasons stated in their pleadings, that, after the proper proceedings, the Court of First Instance of Manila, presided over by the respondent judge, be declared to have acted without or abused its jurisdiction in issuing a writ of preliminary injunction in case No. 51014 of the Court of First Instance of Manila.

The question to be decided in this case is whether or not the Court of First Instance of Manila, presided over by the respondent judge, acted without or exceeded its jurisdiction and abused its discretion in issuing in civil case No. 51014 of said court the writ of preliminary injunction, which is the subject matter of this petition, pending the trial and determination of said case.

In the complaint filed by the herein respondents Leon Rosenthal, Frederic H. Stevens and Gonzalo P. Nava against the herein petitioners on March 4, 1937, in said civil case No. 51014 of the Court of First Instance of Manila, it was prayed that the general meeting of stockholders of the Zambales Chroniite Mining Co., Inc., held on March 1, 1937, the election of the defendants, other than Francis Lusk, as directors, and the election of defendants B. H. Silen, S. J. Wilson, J. George and Francis Lusk, as president, vice-president, treasurer and secretary, respectively, of said corporation, be declared null and void and without effect; that each of the latter be ousted from his respective office on the ground that the election in question was not held in accordance with the by-laws, and that they be prohibited from molesting the therein plaintiffs and herein respondents and from interfering in the discharge of their rights, privileges and duties as directors and officers of said corporation.

Section 208 of the Code of Civil Procedure impliedly authorizes the bringing of an action against the directors of a corporation by means of quo warranto proceedings to determine the legality or illegality of their election. By its purpose and by the implied admission of the parties, the action brought by the herein respondents against the herein petitioners in the Court of First Instance of Manila is, therefore, in the nature of a quo warranto. When the writ of preliminary injunction was issued ex parte in said case, the question of the legality or illegality of the election of the herein petitioners, as directors of the Zambales Chromite Mining Co., Inc., held on March 1, 1937, had not yet been decided. It is inferred from the application and from the resolution of the respondent judge, denying the motion to dissolve the writ of preliminary injunction, that said directors, upon their election, entered upon the discharge of their offices and, in turn, chose their officers who, as soon as they were elected, likewise began performing their respective functions by issuing checks, withdrawing funds from the Philippine National

Bank and transacting business in the name of the corporation.

On said date, March 1, 1937, the herein respondents Leon Rosenthal, Frederic H. Stevens and Gonzalo P. Nava were discharging the offices of directors and of president, vicepresident and secretary-treasurer, respectively, of said corporation, by virtue of the election held by the board of directors at its meeting on March 5, 1936.

In a decision in case G. R. No. 45473, promulgated on March 13, 1937,[1] this court declared null and void the election of said respondents as directors and officers of the Zambales Chromite Mining Co., Inc., at the general meeting of stockholders on March 2, 1936, and ordered the holding of a new election of officers of said corporation. Inasmuch as section I of the by-laws of said corporation provides that the directors thereof shall hold office for one year or until their successors are elected and qualified, said respondents continued to discharge their respective offices while said decision had not yet become final and the new election ordered therein had not yet been held. However, pending the resolution of the motion for reconsideration of the decision in question filed by said respondents, March 1, 1937, the date of the expiration of their term of office of one year, arrived. A general meeting of stockholders was, therefore, held in accordance with the by-laws of the corporation, resulting, as already stated, in the election as directors of the corporation of the herein petitioners who immediately entered upon the discharge of their offices and elected their officers, who, upon their election, in turn began to perform their respective functions. This election of the petitioners as directors of the Zambales Chromite Mining Co., Inc., and their assumption of office as such directors ended the term of office of the former directors, the herein respondents, by virtue of the provisions of said section I of the by-laws.

As a consequence of the issuance of the writ of preliminary injunction under consideration, the therein defendants, petitioners herein, were suspended from discharging the offices of directors, president, vice-president and secretary-treasurer, respectively, of the Zambales Chromite Mining Co., Inc., then being occupied by them as a result of the election held at the general meeting of stockholders on March 1/1937, and the plaintiffs therein, respondents herein, were reinstated in their respective offices of directors, president, vice-president, secretary and treasurer of said corporation in which they had already ceased, as stated above. Therefore, the defendants therein, petitioners herein, were practically ousted from their respective offices, and the former directors and officers, the plaintiffs therein and respondents herein, reinstated in the same offices in which they had already ceased ipso jure.

It is clear, therefore, that in the present case the preliminary injunction has supplanted the quo warranto proceedings in which it was issued as an ancillary remedy, thereby becoming a principal remedy, a function thereof not contemplated by section 162 of the Code of Civil Procedure. "Injunction is not the proper remedy for the removal of an officer of a private corporation, nor for restoring one wrongfully removed" (32 C. J., 240). Therefore, the respondent judge acted in excess of his jurisdiction and abused his discretion in issuing the writ N of preliminary injunction the nullity of which is sought, and the writ of certiorari applied for should be issued (Chua Ke vs. Abeto, 63 Phil., 539, and the decisions cited therein).

For the foregoing considerations, this court is of the opinion and so holds that in quo warranto proceedings instituted for the sole purpose of questioning the legality of the election of the directors of a corporation, held at a general meeting of stockholders, and of the election of the officers thereof held by the board of directors, all in the full performance of their respective functions, a preliminary injunction does not lie to prevent said directors and officers from discharging their offices and to restore the former directors, and the issuance thereof constitutes an excess of jurisdiction and an abuse of discretion.

Wherefore, the remedy of certiorari applied for is granted and the preliminary injunction, issued in case No. 51014 of the Court of First Instance of Manila, is declared null and void, with the costs to the respondents except the respondent judge, the Honorable Jose O. Vera. So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

[1]Lusk vs. Stevens.

DISSENTING

AVANCENA, C. J.,

I dissent. In my opinion the petition should be denied.

The respondents, with the exception of the Honorable Jose O. Vera, are the officers who were administering the corporation Zambales Chromite Mining Co., Inc., during the year 1936. The petitioners are the officers elected on March 1, 1937, to replace the respondents. However, the respondents immediately instituted quo warranto proceedings to impugn the election of the petitioners as null and void, and the petitioners were in possession of their offices for only one day when the preliminary injunction was issued in said case. The issuance of the preliminary injunction is discretionary on the part of the court and it is justified in this case. Its purpose being to maintain the status quo, if any, in this case, the status quo to be maintained in order to avoid confusion is, without doubt, the administration of the respondents which began a year before, and not that of one day on the part of the petitioners.

It cannot be said that in the present case the preliminary injunction has replaced the quo warranto proceedings, thereby becoming the principal remedy, because, although by nature it amounts to an advanced execution of the judgment that in a sense would be rendered in the principal case, it is merely provisional and is subject to dissolution or confirmation according to the decision which may finally be rendered on the merits of the principal case.

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