

ANSELMO CLAUDIO, MANUEL G. GOYENA, AND LUIS S. FLORES, AS DIRECTORS OF THE "COTABATO & CAGAYAN MINING ASSOCIATION"; PETITIONERS, VS. FRANCISCO ZANDUETA, JUDGE OF FIRST INSTANCE ...

G. R. No. 45664. September 28, 1937

Ponente: DIAZ, J.

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DIAZ, J.:

The questions raised by the petition for certiorari and the answer thereto, filed in this case, may be summarized as follows:

- (a) When the facts alleged in support of a complaint praying for the appointment of a receiver, are denied under oath in an answer thereto, and it is affirmed in both pleadings that there are many other interested parties not joined in the case either directly or indirectly, may such appointment be made without committing an excess or abuse of jurisdiction, no evidence of any kind having been taken to determine in some way the truth of said facts and no order having been issued for the joinder of the other interested parties?
- (b) Did the respondent judge exceed his jurisdiction and abuse his discretion in appointing as he did a receiver in civil case No. 51510 of the Court of First Instance of Manila entitled C. P. Neuffer et al., plaintiffs, vs. Anselmo Claudio et al., defendants, for rendition of accounts, appointment of a receiver, issuance of a preliminary injunction and dissolution of an association?
- (c) Is the "Cotabato & Cagayan Mining Association" a legally organized association in the sense that it is entitled to acquire mining properties in the Provinces of Cagayan and Cotabato and to be joined as party in civil case No. 51510?

It should be borne in mind that civil case No. 51510 of the Court of First Instance of Manila was instituted by the respondents, except the respondent judge and J. C. Cowper, to ask for: (1) the dissolution of the association named "Cotabato & Cagayan Mining Association"; (2) an accounting by the petitioners, the defendants in the above-entitled case, of the money and property, personal or otherwise, belonging to said association, that have passed through their hands, and of those still in their possession; and (3) the appointment of a receiver to take charge of the properties of the association until the court directs otherwise. To this effect it was alleged: (a), that the articles of association of the "Cotabato & Cagayan Mining Association" have not been registered in the Mercantile Registry of the Bureau of Commerce and Industry, as required by law; (b) that notwithstanding the fact that the herein petitioners, defendants in the above-entitled case, had not secured a permit to sell shares of said association, as required by law, they had been selling and offering for sale to the public, and they "themselves acquired, some of said shares; (c) that notwithstanding the fact that the association has 279 members who have subscribed to the original shares thereof, no meeting was ever held with the exception of that held in September, 1936, at which M. W. Rice was elected president of the executive committee, Anselmo Claudio as vice-president, Manuel G. Goyena as secretary-treasurer, and Luis S. Flores and C. P. Neuffer as members; (d) that as M. W.

Rice had resigned his position as president, Anselmo Claudio was elected to succeed him by the members of the executive committee; (e) that notwithstanding the fact that the association had been formed for purposes of location, exploration and exploitation of mining claims in Cagayan, Island of Luzon, and Cotabato, Island of Mindanao, it never had and does not actually have any mining claim of any kind; (f) that as said association has no legal existence, the defendants, as members of the executive committee thereof, are not authorized to discharge the offices to which they were elected; (g) that the defendants have squandered the funds of the association for salaries and in payment of other expenses, and have abandoned the properties thereof located at Palimbang Kiver, Cotabato; and (h) that to avoid the squandering of the funds of the association and the loss of its other properties, a receiver should be appointed in the meantime to take charge of keeping and preserving the same.

The therein defendants, petitioners herein, answering the petition of the therein plaintiffs and herein respondents for the issuance of a writ of preliminary injunction and for the appointment of a receiver, admitted it as a fact that they organized the "Cotabato & Cagayan Mining Association" on August 28, 1936, claiming, however, to have done so at the instance and solicitation of M. W. Rice. They specially alleged under oath that said M. W. Rice is the moving spirit of the association, being the owner of one-fifth of its subscribed capital; that in spite thereof, the plaintiffs did not include him in their complaint either as a plaintiff or as a defendant, and did not even mention him therein, although said fact is known to their attorney, who is the one who filed the complaint, for the reason that said M. W. Rice is also his client for whom he had been negotiating with the executive committee of the association, up to the last hour, the payment to him of certain salaries due him and of other sums allegedly owed him by the executive committee; that the allegation of the plaintiffs that the association has been offering its original shares for sale to the public is false and malicious; that certificates of shares were issued only to those who have completed payment of their subscriptions; that the allegation that they abandoned the properties of the association situated at Palimbang River is likewise false, and that it was precisely M. W. Rice, in connivance with the plaintiff C. P. Neuffer, who did so; that the true interested party in the case is M. W. Rice, who is attempting to collect from the association his salaries and other sums which he claims to have paid for the association; and that if the plaintiffs did not include him in their complaint, it was to prevent the court from acquiring jurisdiction over his person so as not to compel him to transfer to the association the 45 mining claims located and registered by him in the registry with money belonging to the association.

It is well settled in this jurisdiction that the remedy of certiorari lies to prevent acts in excess of authority or jurisdiction as well as to correct manifest abuses of discretion committed by an inferior tribunal, when an appeal does not prove to be a more speedy and adequate remedy (*Valdez vs. Querubin*, 37 Phil., 774; *Leung Ben vs. O'Brien*, 38 Phil., 182; *Salvador Campos y Cia. vs. Del Rosario*, 41 Phil., 45; *Sabado vs. Cristina Gonzalez, Inc.*, 53 Phil., 770; *Westminster Bank vs. Torres and K. Nassoor, Inc.*, 57 Phil., 422). This being known, it is now the duty of this court to determine, by taking into consideration the facts inferred from the pleadings of the parties, which are the ones briefly stated hereinbefore, whether or not the respondent judge acted in excess of his jurisdiction and abused his discretion, there being as there is no necessity of determining whether or not he has authority to appoint a receiver because he has authority to do so under certain circumstances, by virtue of the provisions of sections 173 et seq. of Act No. 190.

In order that, a receiver may be appointed in a case, an application under oath to that effect must be filed, alleging all the facts necessary to convince the court to grant the same, for the purpose of preserving the property which is the subject of litigation and protecting thereby the rights of all the parties interested therein. This is due to the fact that, as stated by this court in the case of *Velasco & Co. vs. Gochuico & Co.* (28 Phil., 39), the power to appoint a receiver is a delicate one; that said power should be exercised with extreme caution and only when the circumstances so demand, either because there is imminent danger that the property sought to be placed in the hands of a receiver be lost or because they run the risk of being impaired, endeavoring to avoid that the injury

thereby caused be greater than the one sought to be averted. For this reason, before the remedy is granted, the consequences or effects thereof should be considered or, at least, estimated in order to avoid causing irreparable injustice or injury, to others who are entitled to as much consideration as those seeking it. (Velasco & Co, vs. Gochuico & Co., supra.)

In the complaint itself, which is at the same time a petition for the appointment of a receiver filed by the herein respondents in civil case No. 51510, it has been emphatically alleged that the "Cotabato & Cagayan Mining Association" is composed of 279 members; but in spite thereof, the respondents failed to include them as parties in said case, except only the petitioners, personally and as members of the executive committee of the association, without pretending that they brought the action not only for their own benefit but also for the benefit of the other members. Neither did they include said association, in spite of the fact that their principal purpose is to obtain the dissolution of the same. The association, as a party affected thereby, is undoubtedly as much entitled, if not more entitled than the plaintiffs and defendants, to be heard in the case, in matters affecting its existence as well as the appointment of a receiver applied for. It is of no avail to allege that it has no legal personality or existence because if it has none under the provisions of the Code of Commerce (arts. 116, 117, 119, 123 and 17 of the Code of Commerce), or under those of the Corporation Law, it undoubtedly has legal personality or existence by virtue of the provisions of articles 38, 37, 36 and 35, paragraph 2, in connection with article 1667 of the Civil Code. (Compania Agricola de Ultramar vs. Reyes, 4 Phil, 2).

The law certainly provides that when the controversy is one of common or general interest to many persons, and the parties are so numerous that it is impracticable to bring them all before the court, one or more may sue or defend, but this is permissible only in cases where those who do so act for the benefit of all (sec. 118, Act No. 190). There is nothing in the pleadings filed in civil case No. 51510 from which it may be inferred that the defendants acted for the benefit of the "Cotabato & Cagayan Mining Association" or all the members thereof, much less that the plaintiffs, in turn, sued not only for their own benefit but also for the benefit of all the other members.

It necessarily follows from the foregoing that in order that the respondent judge could exercise his jurisdiction or authority to appoint a receiver in the case under consideration, he should have required the inclusion therein, as necessary parties, of the "Cotabato-Cagayan Mining Association" or of the other members not included as such parties; or at least, the plaintiffs should have brought the action for themselves and in the name of the association in question, or for the benefit of the other members. Not having done so, and it appearing clearly from the pleadings that the persons who might be affected by the remedy applied for were not parties to the case, the respondent judge undoubtedly acted in excess of his jurisdiction and abused his discretion.

For all the foregoing, and holding as it is hereby held that the questions raised should be answered favorably to the petitioners, that is, the first, in the negative sense, and the last two, in the affirmative sense, the remedy applied for is granted, and the order of the respondent judge, of July 19, 1937, appointing J. C. Cowper receiver in civil case No. 51510 of the Court of First Instance of Manila, is hereby declared null and void, with the costs to the respondents C. P. Neuffer, William Meyer, Arthur Skiles and Jose Araneta. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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