

RAMON A. GONZALES, PETITIONER, VS. NATIONAL HOUSING CORPORATION, BENJAMIN DEL ROSARIO, GREGORIO S. LICAROS, ROBERTO S. BENEDICTO, GILBERTO TEODORO, ESTEBAN BERNIDO, SOCIAL SECUR...

G.R. No. 50092. December 18, 1979

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a taxpayer's suit.

On June 26, 1968, respondent National Housing Corporation (NHC) was formed, with an authorized capital of P100,000.00, and with respondents Benjamin del Rosario, Gregorio S. Licaros, Roberto S. Benedicto, Gilberto Teodoro and Esteban Bernido, as respective heads of the GSIS, DBP, PNB, SSS and PHHC, as incorporators and subscribers to shares of the capital stock of the firm. The primary purpose of the corporation was to assist in and coordinate the massive low-cost housing program of the Government.

On July 15, 1968, its capitalization was increased to P100 million, with the Social Security System (SSS), the Government Service insurance System (GSIS), the Philippine National Bank (PNB), and the Development Bank of the Philippines (DBP) subscribing to P19,980,000.00 worth of shares.

On July 25, 1968, Teodoro assigned his shares (or subscriptions) to the SSS; Benedicto and Bernido assigned theirs to the NIDC and PHHC on August 8, 1968, respectively; del Rosario assigned his rights to the GSIS sometime in August, 1968; while Licaros assigned his subscriptions to the DBP on an unspecified date.

On November 21, 1968, NHC entered into a contract with respondent Hildebrand Maschinehandel, GMDH (Hildebrand, for short), a German corporation, for the supply of machinery and equipment for an integrated plant for the manufacture of low-cost homes and school buildings, at the total price of DM 64,000,000.00.

On March 1, 1969, petitioner Ramon A. Gonzales filed a Complaint against respondents before the Court of First Instance of Manila in Civil Case No. 7587 for annulment of the Hildebrand contract. He alleged that he was suing as a taxpayer; that said contract was null and void on the ground that NHC, being a government-controlled corporation, was illegally created since it was organized under a general law, the Corporation Law, instead of a special act of Congress as provided for by the Constitution; that the creation of the NHC violates the Anti-Graft Law and is against public policy; that the DBP, SSS, and the GSIS are without power to invest in NHC; that NHC, being a void corporation, is without authority to enter into contracts, hence, the Hildebrand contract is void and unenforceable; that respondents del Rosario, Licaros, Benedicto, Teodoro and Bernido are jointly and severally liable in their personal capacities for the refund of payments made under said contract; and that petitioner has been compelled to come to Court to protect the interests of taxpayers and is entitled to attorney's fees.

It appears that prior to the filing of the aforementioned Complaint, or on January 24, 1969, petitioner had already

filed before this Court a Petition for Prohibition with Preliminary Injunction (G. R. No. L-30080) wherein petitioner prayed that the creation of the NHC be declared null and void ab initio. The petition was dismissed in the Resolution of this Court dated February 1, 1969, with the statement that the proper remedy, under the facts alleged in the Petition, being quo warranto.

The record also discloses that on February 24, 1969, upon instructions of the President, the Solicitor General had filed a petition for quo warranto with the Court of First Instance of Rizal, Pasig Branch (Civil Case No. 11583, entitled Republic of the Philippines vs. Benedicto, et al.), directly putting in issue the legality or illegality of the creation of the NHC.

Apparently not satisfied with the filing of the foregoing suits, petitioner filed the present taxpayer's action on March 1, 1969.

In their special and affirmative defenses, respondents alleged that the NHC is a private corporation and that its funds are not public funds; that the Hildebrand contract does not involve expenditure of public funds which can be enjoined in a taxpayer's suit; that what is purportedly a suit for "annulment of a contract with preliminary injunction" is actually a reiteration of the grounds alleged and arguments adduced in the Petition for Prohibition with Preliminary Injunction filed in the above-mentioned G.R. No. L-30080; and, finally, that the present suit is barred by the prior action for quo warranto (Civil Case No. 11583, supra), pending before the Court of First Instance of Pasig, Rizal, directly attacking the corporate existence of NHC. By way of counterclaim, respondents asked for moral damages, attorney's fees, and litigation expenses.

On June 23, 1970, the trial Court rendered a Decision dismissing petitioner's Complaint on the principal grounds that the special civil action for Prohibition with Preliminary Injunction (G.R. No. L-30080) constitutes res judicata; and that the suit for quo warranto (Civil Case No. 11583) constitutes a "prejudicial question" that must first be resolved before an action for annulment of the Hildebrand contract can be filed.

With respect to the counterclaim for damages, the trial Court dismissed the same believing that the zeal of a citizen as a taxpayer, howsoever irritating and vexatious it may be, should not be discouraged.

Respondents appealed the dismissal of their counterclaim to the Court of Appeals and on "questions of both fact and law". Petitioner moved to dismiss on the ground that since only questions of law are involved in the appeal, the same should have been elevated to the Supreme Court. The Court of Appeals deferred ruling thereon until judgment on the merits.

Before the appellate tribunal, respondents attributed the following errors to the trial Court:

1. x x x in ruling that the instant case is simply a representative suit filed by a taxpayer against public officials and government entities;
2. x x x in not finding that the instant case is clearly unfounded civil action or proceeding against herein defendants-appellants;
3. x x x in not awarding attorney's fees and cost of litigation to the herein defendants-appellants.

On August 2, 1978, the Court of Appeals handed down its Decision* modifying that of the trial Court by awarding respondents attorney's fees in the amount of P5,000.00 and litigation expenses in the sum of P1,000.00 and costs, upon a finding that petitioner's case is "without any proper basis or foundation and therefore clearly unfounded." Petitioner's Motion for Reconsideration of that Decision was denied on February 14, 1979.

A Petition for Review before us was filed by petitioner on April 7, 1979 alleging that the Court of Appeals had erred in assuming jurisdiction as only a question of law is involved. In an Amended Petition for Review, he

alleged additionally that the Court of Appeals had erred in granting respondents' claim for attorneys' fees and expenses of litigation and reversing the trial Court on the matter.

On November 21, 1979, after requiring respondents to submit their Comment, with which they have complied, we resolved to give limited due course only in so far as attorney's fees and litigation expenses awarded by the Court of Appeals are concerned, dispensed with the submittal of Briefs and Memoranda, and declared the case submitted for decision on said issue.

Partial due course only was given as we were of the opinion that the Court of Appeals had correctly assumed jurisdiction inasmuch as mixed questions of fact and law were raised by respondents in their appeal to the Court of Appeals as embodied in the assignments of error which they had raised. The question of whether or not there was fraudulent or deceitful intent or malice in the institution of the case so as to entitle respondents to damages, is a question of fact.[1] The reasonableness of attorney's fees is likewise a question of fact.[2] These are questions of fact as they call for an examination of the probative value of the evidence of parties litigants as contrasted to questions of law, which do not call for such examination of probative value of evidence but raise doubt or difference of opinion as to what the law is on a certain state of facts.[3]

We have held in various cases that fraud cannot be presumed, and it must be established by clear and sufficient evidence.[4] We have also held that there is need of some proof as to the amount of attorney's fees[5] to be granted by a Court.

On the foregoing considerations, we find merit in petitioner's contention that attorney's fees were erroneously awarded by the appellate Court. As held in the case of *Herrera vs. Luy Kim Guan*,[6] in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith. Where the complaint was filed in good faith, attorney's fees cannot be granted to the defendants simply because the judgment was favorable to them, for that may amount to imposing a premium on the right to redress grievances in Court. In this case, we find no sufficient showing of bad faith in petitioner's having filed this taxpayer's suit. Petitioner's persistence could, perhaps, be attributed more to erroneous conviction on his part in the righteousness of his cause rather than an act of harassment or vexation against respondents.

WHEREFORE, the judgment of the Court of Appeals, in so far as it upheld the decision of the trial Court dismissing respondents' appeal, is hereby affirmed; but in so far as it awarded attorney's fees and expenses of litigation to private respondents, it is hereby reversed and set aside.

Without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, and De Castro, JJ., concur.

Makasiar, J., took no part as he was the Solicitor General at the time Civil Case No. 11583 for Quo Warranto was filed before the Court of First Instance of Rizal, Pasig Branch.

* Penned by Justice Serafin R. Cuevas, and concurred in by Justices Lourdes P. San Diego and Hugo E. Gutierrez, Jr.

[1] III Francisco, Revised Rules of Court, 1968 edition, p. 158.

[2] Ibid., p. 159.

[3] Crisolo vs. CA, 68 SCRA 435, 1975.

[4] Carreon vs. Agcaoili, 1 SCRA 521 (1961); Gutierrez vs. Villegas, 8 SCRA 527 (1963); Santos vs. Buenaventura, 18 SCRA 207 (1966).

[5] Medenilla vs. Kayanan, 40 SCRA 154 (1971).

[6] 1 SCRA 406 (1961).

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