

ALFREDO CHANCO, PLAINTIFF AND APPELLANT, VS. THE MUNICIPALITY OF ROMBLON ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 5265. January 26, 1910

Ponente: CARSON, J.

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CARSON, J.:

This action was brought by the plaintiff to compel the specific performance of an alleged contract whereby the defendant municipality is alleged to have obligated itself to sell and convey to the plaintiff a certain tract of land described in the complaint.

The following agreed statement of facts was submitted to the court below:

"1. That on July 6, 1907, the plaintiff applied to the municipality of Romblon requesting that a parcel of land or building lot owned by the said municipality be sold to him at the rate of one peso per square meter; the description of the same is as follows:

"A parcel of land with an area of 469 square meters, the limits and boundaries of which are: On the north the road that leads to Bagacay or the walk to the pier; on the south the convent walls; on the east the plaza 'Libertad;' and on the west the mountain called 'Santiago.'

"2. That on the 8th of the said month of July, 1907, the council of said municipality of Romblon agreed to the sale requested by the plaintiff and resolved to sell him said land at the rate of one peso per square meter.

"3. That when said resolution was submitted to the provincial governor of Romblon, Senor Bonifacio Marron, the sale thereof was authorized on the 12th of the aforesaid month of July, 1907, but at the rate of one peso and twenty centavos (P1.20) per square meter, for the reason that according to the last assessment the latter was the assessed value of the land, not one peso only.

"4. That said modification in the price was accepted by the municipal council of Romblon and by the plaintiff, and at the session held by the council on the 15th of July, 1907, the execution of the bill of sale in favor of the plaintiff was agreed to.

"5. That at the session held by the said municipal council of Romblon on the 31st of July, 1907, it resolved to authorize the municipal president, Sr. Juan Mazo, to execute said bill of sale in favor of the plaintiff for the price of P1.20 for each square meter, in accordance with the authority granted by the ex-provincial governor of Romblon on July 12, 1907.

"6. That on the day after the resolution of the 31st of July, 1907, was taken by the municipal council, the protest of several residents of Romblon, against the resolution of the municipal council in connection with the sale of said land to Sr. Alfredo Chanco, the plaintiff, was forwarded to the provincial board of Capiz.

"7. That the provincial board of Capiz, at its sitting of August 5, 1907, resolved to annul the resolution of the municipal council of Romblon of July 8, 1907; with reference to the sale of said lot to Sr. Alfredo Chanco.

"8. That by reason of the consolidation of the two Provinces of Capiz and Romblon, the latter becoming a

sub-province from the 15th of July, 1907, the provincial board of Capiz took charge of all matters intrusted to the abolished provincial board of Romblon.

"9. That the said resolution of the provincial board of Capiz of August 5, 1907, was, on the 9th of said month and year, transmitted by wire to the municipal council of Romblon through the lieutenant-governor, and, in view of said resolution of the provincial board of Capiz, the municipal council of Romblon, at its sessions of the 12th, 15th, and 30th of August, 1907, resolved to annul its own resolution of the 8th of July, 1907."

Upon this agreed statement of facts, the trial court gave judgment in favor of the defendants for costs, from which judgment plaintiff appealed.

In his brief, counsel for appellant makes but one assignment of error, as follows:

"The court below erred in dismissing the complaint, inasmuch as the contract involved in this case is valid and binding."

The judgment of the trial court is based upon the provisions of section 1 of Act No. 676, amending section 41 of the Municipal Code (in force at the time when the above set-out transactions took place, but itself amended by the provisions of Act No. 1791), which is as follows:

"Section forty-one of Act Numbered Eighty-two, known as the Municipal Code, is hereby amended by striking out all of the section as it appears in the Act, and substituting in lieu thereof the following:

"SEC. 41. Whenever the council is desirous of securing a legal opinion upon questions arising in relation to the constitution or attributes of the municipal government, it shall frame the questions in writing and submit them to the provincial fiscal for decision. It shall be the duty of the secretary of the municipal council to forward, immediately after their passage, certified copies of all resolutions, ordinances, and other acts of the municipal council to the provincial governor. It shall be the duty of the president of each municipality whenever he makes a formal executive order which is published, to direct the municipal secretary to forward a certified copy of the same to the governor of the province. In case the governor shall think it probable that any act, ordinance, or resolution of the municipal council, or any executive order of the municipal president is not within its or his legal power, as conferred by the Municipal Code and its amendments, he shall bring the same to the attention of the provincial board, which shall request the opinion of the provincial fiscal as to the validity of the act, ordinance, resolution, or order in question, and if, after receiving the opinion of the provincial fiscal, the board shall conclude that such act, ordinance, resolution, or executive order is in violation of the powers conferred by the Municipal Code upon the council or the president making the same, the provincial board shall have the power, and it shall be its duty, to declare such act, ordinance, resolution, or executive order to be null and void, and shall immediately notify the council or the president, as the case may be, of its action. Any attempt to enforce such act, ordinance, resolution, or executive order, after the provincial board shall have declared it to be null and after the action of the provincial board shall be brought to the attention of the municipal authorities, shall be sufficient ground for the dismissal of the officer or officers attempting to enforce the same. Should the council or the president be dissatisfied with the decision of the provincial board, an appeal may be taken by it or by him to the Civil Governor, who shall decide the same question which was presented to the provincial board and either affirm or reverse the decision of the provincial board. If the decision of the provincial board is affirmed, the act, ordinance, resolution, or executive order involved shall be annulled. If, however, he shall reverse the decision of the provincial board, then and in that case notice of his decision shall be given to the provincial governor, to the president or council of the municipality appealing, and upon receipt of notice by the appellant, the act, ordinance, resolution, or executive order shall be revived and come into force again. Pending the decision on appeal from an order of the provincial board annulling any act, ordinance, resolution, or executive order the same shall have no force and effect. Nothing in this section shall be construed to deprive any judicial tribunal of power to hold void for want of statutory authority any act, ordinance, or resolution of a municipal council or executive order of a municipal president the validity of

which shall be involved in any cause arising before such tribunal, without respect to the decision of the executive authorities."

Section 41 of Act No. 82, thus amended, is as follows:

"Questions which may arise relative to the constitution or attributes of the municipal government shall be submitted to the provincial fiscal for decision."

Counsel for appellant insists that this section does not authorize the provincial board to declare null and void resolutions or acts of the municipal council whereby the council undertakes to exercise authority vested in it by subsection (c) of section 40 of the Municipal Code, which empowers the municipal council "to purchase, receive, hold, sell, lease, convey, and dispose of property, real and personal, for the benefit of the municipality, provided that the express authorization of the provincial governor shall be necessary to alienate or constitute any lien upon any real property of the municipality." Counsel urges that the "acts, ordinances, and resolutions" of the municipal council which may be declared null and void under the provisions of section 41, as amended, should be construed so as to include those only of a legislative or administrative character, and not those of a contractual nature, adopted in pursuance of the authority conferred under subsection (c) of section 40 of the Municipal Code. But we find nothing in the provisions of law above cited which supports the contention of appellant's counsel, and indeed, section 41 of the Municipal Code, as amended, following, as it does, immediately after sections 39 and 40 wherein the duties and powers of the municipal council are enumerated, and containing no provision excepting any particular class of acts, ordinances, or resolutions,, clearly indicates the intention of the legislator to confer authority upon the various provincial boards upon the terms and conditions set out in the amended section, to declare null and void all acts, ordinances, and resolutions of municipal councils, and executive orders of municipal presidents, of every kind and character whatsoever.

Counsel contends, further, that since there was no provision of law requiring the express approbation of acts, ordinances, and resolutions of municipal councils by their respective provincial boards, at the time when those transactions took place, all such acts, ordinances, and resolutions must be taken to be valid and of binding force and effect, until and unless they are expressly and formally disapproved by the provincial board; and that the municipality of Romblon having obligated itself to sell the land in question by a valid resolution, of binding force and effect, is not relieved of its obligation so to do by the fact that thereafter the resolution was annulled. But while it is true that prior to the enactment of Act No. 1791 there was no express provision of law for the approbation of such acts, ordinances, and resolutions by the provincial board, it is clear that under the provisions of section 41 of the Act, as amended by Act No. 676, such acts, ordinances, and resolutions were always adopted (so long as the provisions of the latter Act were in force) subject to the invalidating action of the provincial board, and that all persons dealing with the municipal council or in any wise affected by its acts, ordinances, and resolutions must be taken to have had knowledge of that fact. The agreement of the municipality to sell the land in question, so far as its resolutions can properly be said to constitute an agreement, must, therefore, be taken to have been subject to the implied condition that the agreement would be invalidated in the event that before it was actually executed the provincial board should annul the resolution. As disclosed by the agreed statement of facts, the resolution was in fact annulled before the agreement was executed, and plaintiff's claim of specific performance can not therefore be maintained.

It may be admitted that in some cases great inconvenience and embarrassment might have arisen from the exercise by provincial boards of the authority conferred upon the under section 41 of the code, as amended by Act No. 676, to annul resolutions of a contractual nature adopted by municipal councils, but such considerations address themselves to the legislature rather than to the courts, except in cases where they may become important in construing doubtful and uncertain language of a statute. And it is worthy of observation that the Commission in

amending the provisions of this section by the enactment of Act No. 1791, appears to have been fully cognizant of its defective character, and to have sought to remedy its defects by the passage of the amendments therein contained.

It is contended, however, that the only ground upon which the provincial board was authorized to annul a resolution of the municipal council was that it was in violation of the powers conferred by the Municipal Code upon the council, and that the resolution in question having been clearly within the powers conferred upon the municipal council by the provisions of subsection (c) of section 40, the provincial board had no authority to annul it. It is to be observed, however, that the provisions of section 41 of the code, as amended by section 1 of Act No. 676, authorize and make it a duty of the provincial board to 'declare acts, ordinances, or resolutions of municipal councils null and void when "the board shall conclude that such act, ordinance, or resolution, or executive order is in violation of the powers conferred by the Municipal Code upon the council or the president making the same."' And it is clear that it was the intention of the lawmaker that except in case of administrative appeal by the council, such action when taken by the provincial board should have the effect of annulling the act, ordinance, or resolution against which it was directed, whether the board erred or not in the conclusions upon which it based its action. It is not suggested, nor does it appear from the agreed statement of facts, that when the annulling resolution of the provincial board was adopted, the board neglected or failed to comply with the provisions of section 41, as amended by Act No. 676, in the proceedings had in this connection, and its action, therefore, must be taken to have been had in conformity with and in pursuance of the provisions of law investing it with authority to annul resolutions of the municipal council.

The judgment appealed from should be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Moreland, and Elliott, JJ., concur.

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