

RICARDO L. COOTAUCO, PETITIONER, VS. THE HON. COURT OF APPEALS, HON. DOMINGO M. ANGELES, PRESIDING JUDGE OF BRANCH I, CFI, CAMARINES NORTE, AND FELIX L. LUZARRAGA, RESPONDENTS.

G.R. No. 56565. June 16, 1988

Ponente: GRÑO-AQUINO. J.

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GRÑO-AQUINO. J.

This is a contest which began in 1980 between two rival cockpit operators for the right to operate in the one-cockpit town of Labo, Camarines Norte, whose population does not exceed 100,000 residents. The temporary restraining order (later replaced by a writ of preliminary injunction) which the trial court issued, and which the Court of Appeals declined to set aside, is before Us for determination.

The petitioner, Ricardo L. Cootauco, is a duly licensed operator of a cockpit, known as "Gallera Lapu-Lapu" in Labo, Camarines Norte. In 1979 he built another cockpit in the new recreational zone in Bo. Bocal where he planned to transfer the Gallera Lapu-Lapu.

The private respondent Felix L. Luzarraga, is the owner and operator of a rival cockpit, known as "Gallera Plaridel" whose license was revoked by the Municipal Mayor of Labo on September 14, 1977, on recommendation of the PC Provincial Commander because it was inside the residential district and near public buildings and the church, in violation of Section 5 (c) of P.D. 449 (Cockfighting Law of 1974).

In 1979, Raul Luzarraga, brother of Felix, filed an application with the PC Regional Commander for a Renewal Permit to Operate the "Plaridel Cockpit." The application was denied on the ground that the Plaridel had been phased out or ceased to operate in 1977, hence, "the application for renewal is out of place." Furthermore, as explained by PC General A. Racela:

"Under Section 5(b) of PD 449, otherwise known as the Cockfighting Law of 1974, only one cockpit is allowed to operate in a city or municipality with a population of not exceeding 100,000. There is no dispute that the population of the Municipality of Labo, Camarines Norte is less than 100,000.

"Inasmuch as one cockpit has already been licensed or authorized to operate, represented by one Ricardo Cootauco and Associates, it would be a wanton defiance of the above-quoted law to issue another license to Mr. Raul Luzarraga who desires to re-open or resume operation of his cockpit, the Gallera Plaridel, which has been earlier phased out and ceased to operate since 1977."

On May 2, 1980, Luzarraga filed against Ricardo Cootauco, Sergio Cootauco, and Mayor Mario Villafuerte of Labo in the Court of First Instance of Camarines Norte Civil Case No. 4753 entitled "Felix Luzarraga, plaintiff, versus Ricardo Cootauco, et al, defendants" for Specific Performance, Annulment of Ordinance, Damages with a Prayer for Preliminary Injunction. The complaint prayed for annulment of the permit which Mayor

Villafuerte had issued to the Gallera Lapu-Lapu, as well as of the Municipal Council's Resolution No. 85

amending Municipal Ordinance No. 10, and also asked for the issuance of a writ of preliminary injunction to stop the operation of the Lapu-Lapu and the construction of a new cockpit by the Cootaucos in Barangay Bocal, Labo. The defendants filed separate answers to the complaint.

On June 2, 1980, the Court of First Instance issued a temporary restraining order, enjoining Cootauco and his agents from proceeding with the construction of their new cockpit in Barangay Bocal and from conducting cockfights therein. On June 4, 1980, Cootauco filed an urgent motion to lift the temporary restraining order. The court set it for hearing together with Luzarraga's application for a writ of preliminary injunction.

On June 9, 1980, the trial court issued an order of injunction, whose dispositive portion reads as follows:

"WHEREFORE, premises considered, defendant Ricardo Cootauco's Urgent motion to recall and set aside the temporary restraining order of June 2, 1980 is hereby DENIED; and upon the filing of a bond by the plaintiff Felix Luzarraga in the amount of P15,000.00, to respond to all damages which defendant Ricardo Cootauco may sustain by reason of the writ of preliminary injunction if this Court finally decides that the plaintiff is not entitled thereto, let a writ of preliminary injunction be issued ordering defendant Ricardo Cootauco or any other person, employee or agent, acting for him and in his behalf, to refrain from proceeding with the further construction of the New Cockpit (not the old and existing Gallera Lapu-Lapu), situated at Barrio Bokal, Labo, Camarines Norte, except to complete its unfinished pipe and plastic roofing on the eastern side, the joining of the concrete fence at the rear and the placing of a door on the entrance to the premises; if defendant Ricardo Cootauco still opts to do so; and, from conducting cockfight in the said new cockpit, until further orders from this Court."

Cootauco filed a petition for certiorari in the Court of Appeals on June 11, 1980 (CA-G.R. No. 10832-SP), entitled "RICARDO COOTAUCO v. JUDGE DOMINGO ANGELES, ET AL." assailing the temporary restraining order/writ of preliminary injunction issued by the lower court. Upon receipt of the petition, the Court of Appeals enjoined the lower court "from proceeding with the pre-trial in Civil Case No. 4753 set for September 29, 1980 and any other hearing in the said case, until further orders from this Court." (Annex J.)

However, on January 12, 1981, it denied the petition for certiorari and lifted the temporary restraining order which it had issued. It held that the error, if any, of the respondent Judge in issuing the Order of June 2, 1980, was "an error of judgment correctible by appeal in due time, but definitely not one made in grave abuse of discretion x x x." (Annex K, Petition).

Cootauco appealed to the Supreme Court, praying for the issuance of a writ of preliminary injunction which this Court issued on April 29, 1981 upon the petitioner's filing an injunction bond of P15,000. The writ restrained the lower court "from enforcing the restraining and injunction orders dated June 2, 1980 and June 9, 1980 issued in Civil Case No. 4753 x x x and from taking any further action, and/or proceeding in said Civil Case No. 4753" "effective immediately and until further order from this Court." (p. 152, Rollo.)

In a nutshell, the petition alleges that the Court of Appeals erred in denying the petition for certiorari and in not holding that the lower court acted with grave abuse of discretion amounting to lack of jurisdiction in enjoining the operation of the petitioner's new cockpit.

The appeal is meritorious.

Under PD No. 449 dated May 9, 1974, otherwise known as the Cockfighting Law of 1974 [superseded since 1981 by PDs 1802, 1802-A, and by the Local Government Code of 1983 (B.P. Big. 337)], the Chief of the Constabulary was vested with authority to approve the issuance of licenses by the city and municipal mayors for the operation of cockpits (Sec. 6). He could promulgate rules and regulations implementing the law in order to effectively control and regulate cockfighting in the Philippines. City and Municipal Mayors could issue licenses

for the operation and maintenance of cockpits, subject to the approval of the Chief of Constabulary or his authorized representative in the provinces.

A writ of preliminary injunction is a provisional remedy to which parties litigant may resort for the preservation or protection of their rights or interests, and for no other purpose, during the pendency of the principal action (Calo v. Roldan, 76 Phil. 445; Commissioner of Customs v. Cloribel, 19 SCRA 234). Thus, Section 3, Rule 58 enumerates only three (3) grounds for the issuance of a preliminary injunction, and they are:

"(a) That the plaintiff is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;

"(b) That the commission or continuance of some act complained of during the litigation or the non-performance thereof would probably work injustice to the plaintiff; or

"(c) That the defendant is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual."

The issuance of the injunction order by the trial court, at the instance of Luzarraga, to stop the petitioner Cootauco from operating his cockpit at its new site in Barrio Bocal was improper for several reasons: First, because the plaintiff Luzarraga had no right that needed to be protected or preserved by a writ of preliminary injunction during the pendency of the case. The operation of petitioner's cockpit did not, and would not, violate any right of Luzarraga who was not operating, and had no license to operate, a cockpit.

Secondly, the status quo at the commencement of Civil Case No. 4753 and 1980 was that Cootauco was duly licensed to operate, and was operating, the "Gallera Lapu-Lapu," had been authorized to transfer its location to the new recreational zone in Barrio Bocal, and had constructed a new cockpit arena there which was almost completed and was operational. On the other hand, the plaintiff Luzarraga was not operating the "Gallera Plaridel" because his license had been cancelled in 1977, three (3) years before the filing of the case. The issuance of the writ of preliminary injunction for the purpose of closing the new "Gallera Lapu-Lapu" during the pendency of the case, disturbed that status quo instead of preserving it.

Thirdly, the issuance of the writ of preliminary injunction would irreparably damage the petitioner because it would, for no lawful cause, deprive him of the use of his license to operate his cockpit. On the other hand, Luzarraga would not be prejudiced by the lifting of the writ for the simple reason that he does not — for want of a license — operate a cockpit with which Cootauco's cockpit would compete.

Another issue raised by the petitioner in the Court of Appeals was the lower court's lack of jurisdiction over the subject matter of Civil Case No. 4753. The courts have no authority to grant or cancel permits to operate cockpits duly issued by the municipal or city mayors with the approval of the PC provincial commander. Under P.D. No. 449, the power to approve or disapprove the issuance of cockpit licenses by the city and municipal mayors was reposed in the Chief of the Philippine Constabulary. The denial by the PC Provincial Commander of Luzarraga's application for renewal of his cockpit license was appealable to the PC Chief. He should have exhausted that administrative remedy. In view of his failure to do so, his judicial action was premature. The court had no jurisdiction to intervene and grant him relief. (Manuel vs. Jimenez, 17 SCRA 55; Bongkawil vs. Provincial Board of Lanao del Norte, 10 SCRA 327; Acting Collector of Customs vs. Caluag, 20 SCRA 204; Garcia vs. Teehankee, 27 SCRA 937.)

We, therefore, hold that Civil Case No. 4753 was filed prematurely and that the Court of First Instance of

Camarines Norte does not have jurisdiction to hear and decide the case, hence all its proceedings therein are null and void.

We should mention, in this connection, that on January 16, 1981, barely four (4) days after the Court of Appeals rendered its decision in CA-G.R. No. 10832-SP, the Philippine Gamefowl Commission (PGC) was created under P.D. No. 1802-A. This decree has given to city and municipal mayors, with the concurrence of their respective Sanggunians, the authority "to license and regulate regular cockfighting pursuant to the rules and regulations of the Commission and subject to its review and supervision." As indicated by this Court in *Philippine Gamefowl Commission vs. Intermediate Appellate Court*, 146 SCRA 294, the PGC's "power of review includes the power to disapprove." The respondent should exhaust its remedies in the Commission.

WHEREFORE, the appealed decision of the Court of Appeals in CA-G.R. No. 10832-SP, and the orders dated June 2, 1980 and June 9, 1980 and the writ of preliminary injunction which were issued by the Court of First Instance (now Regional Trial Court) of Camarines Norte in Civil Case No. 4753, are set aside. Civil Case No. 4753 is dismissed.

SO ORDERED.

Narvasa, Gancayco, and Medialdea, JJ., concur.

Cruz, J., see separate concurrence.

CONCURRING

CRUZ, J.,

I concur subject to the reservations made in *Philippine Gamefowl Commission v. Intermediate Appellate Court*, 146 SCRA 294, regarding the review powers of the PGC over cockpit licenses issued by city and municipal mayors.

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