

SPOUSES LYDIA TERRADO & MARTIN ROSARIO, AND DOMINGO FERNANDEZ, PETITIONERS, VS. HON. COURT OF APPEALS, HON. FELICIDAD CARANDANG VILLALON, JUDGE, CFI OF PANGASINAN, DEPUTY SHERIF...

G.R. No. 58794. August 24, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

Pursuant to Act No. 4041 of the Philippine Legislature approved January 21, 1933, the Fisheries situated in the locality known as Mangabul, Bayambang, Pangasinan, and fall-ing within Plan No. Ipd. Ninety-two of the Bureau of Lands and recently declared by the courts as public land was reserved and the usufruct thereof ceded to the municipality of Bayambang, Province of Pangasinan, to be used or disposed of in accordance with the general municipal law relative to the letting of fisheries in municipal waters: Provided, That the timber and other forest products therein shall be placed under the administration and control of the forest service; Provided further, that the cession shall not be interpreted as limiting the power of the Secretary of Agriculture and Natural Resources to prescribe rules and regulations for the protection of game birds, mammals or fish within the area ceded to the municipality of Bayambang. (Section 1, Act 4041. This Act was declared enforced by Proclamation No. 545 (1933).

On May 15, 1974, the Sanggunian Bayan of Bayambang, Pangasinan passed Resolution No. 35 enacting Ordinance No. 8, series of 1974, establishing the Bayambang Fishery and Hunting Park and Municipal Water Shed embracing all the vast area of the Mangabul Fisheries consisting of about 2,061 hectares with 19 fishponds and not less than 1,500 hectares of watershed area. In the said ordinance, the municipality designated, appointed and constituted pri-vate respondent Geruncio Lacuesta as Manager-Administrator for a period of 25 years, renewable for another 25 years, under the condition that said respondent shall pay the muni-cipality a sum equivalent to 10% of the annual gross income that may be derived from the sale of forest products, wild game and fish, which amount shall not be less than P200,000.00 annually. He was further required to post a bond in the amount of P200,000.00 to guaranty payment of the 10% due the municipality.

Municipal Ordinance No. 8 was approved by the Provincial Board of Pangasinan on October 11, 1974 and thereafter was forwarded to the then Secretary of Agriculture and Natural Resources for approval pursuant to the provisions of the Fisheries Act, Act No. 4003.

On April 4, 1975, the Secretary disapproved the Ordi-nance because it grants fishery privileges to respondent Lacuesta without the benefit of competitive public hearing in contravention of the provisions of Act 4003 as amended.

Respondent Lacuesta interposed an appeal from the dis-approval by the Secretary of Agriculture and Natural Resources to the Office of the President but the appeal was withdrawn by said respondent in his letter dated July 14, 1977.

The Municipality then informed respondent Lacuesta of the disapproval of the Ordinance by the Secretary of Agriculture & Natural Resources and directed him to refrain and desist from acting as Administrator-Manager under the contract but the latter refused and insisted in maintaining possession of the fisheries. In spite of such refusal, the Sanggunian Bayan of Bayambang, Pangasinan passed Resolution No. 31, series of 1977, resolving to advertise for public bidding all fisheries at the Mangabul area for four years and to direct the Municipal Treasurer to prepare the necessary notices of public bidding, and accordingly, the Municipal Mayor and the Municipal Treasurer caused to issue a Notice of Public Bidding scheduled July 5, 6, and 7, 1977. Among the winning bidders were the petitioners herein, the spouses Lydia Terrado and Martin Rosario and Domingo Fernandez who were immediately placed in possession of the Mangabul fisheries as of July 6, 1977.

Private respondent Geruncio Lacuesta immediately filed on July 8, 1977 a petition for prohibition and mandamus with damages with the Court of First Instance of Pangasinan, Branch IX in San Carlos City, presided by Judge Augusto Saroca against the Municipal Mayor, the Municipal Treasurer, the Sanggunian Bayan and the members thereof, praying that the respondent municipal officials named therein be prohibited from executing any contract of lease with the winning bidders and from enforcing Resolution No. 31, series of 1977, and further asked that a temporary restraining order be issued against said respondent officials from performing the acts enjoined.

Pursuant to the prayer in the petition for prohibition in Civil Case No. 516, Judge Saroca issued a restraining order enjoining and prohibiting all the respondents, their agents, representatives and/or anybody acting for and on their own behalf, from executing any contract of lease with the winning bidders in the biddings conducted on July 5, 6, and 7, 1977 and from enforcing Resolution No. 31, series of 1977 until further orders from the court. Respondents in this Civil Case No. 516 filed a motion to dissolve the temporary restraining order but was denied on August 17, 1977.

Upon ex-parte motion by Lacuesta asking that the Sheriff of the court be authorized to enforce the restraining order of July 11, 1977 and to arrest and keep in his custody all persons violating the same, Judge Saroca issued on October 7, 1977 an order directing Deputy Sheriff Alberto V. Soriano to proceed to the Mangabul fisheries and enforce the restraining order of July 11, 1977 against the respondent municipal officials, their agents and representatives and to arrest and keep in custody any and all persons found to be violating said order. Thereafter, the Deputy Sheriff informed the court on October 26, 1977 that he served copies of the restraining order dated July 11, 1977 on all parties concerned and that they peacefully vacated and gave the possession of the fisheries without interposing any formal objection, to the plaintiffs, Geruncio Lacuesta, et al.

Still in Civil Case No. 516, Lacuesta filed a petition dated September 16, 1977 asking that the defendants named in said petition including the spouses Lydia Terrado Rosario and Martin Rosario and others be ordered to explain why they should not be punished for contempt and that they be arrested immediately and kept in custody until they stop violating the restraining order of July 11, 1977, further alleging that said spouses employing misrepresentation, strategies, deceit, threat and force took over the Mayor fishery and illegally fished therein and are continuing to fish the same including the Manansan, Alangigan, Tubor and Banawang na Dueg Fisheries which they had previously took over from the movant Lacuesta.

The situation became serious as on October 10, 1977 the Sanggunian Bayan passed Resolution No. 34, series of 1977 "requesting the assistance from the Department of Natural Resources, the Philippine Constabulary, Department of Justice, the Provincial Fiscal, the Provincial Governor and other agencies, for them to enjoin respondent from disturbing and interfering with the administration by the Municipality of Mangabul Fisheries and other areas."

In the meantime that these incidents were pending before Judge Saroca, the members of the Sanggunian Bayan as

petitioners filed on November 15, 1977 a petition for certiorari with the defunct Court of Appeals against Judge Saroca, the INP Station Commander, Deputy Sheriff Soriano, and Geruncio Lacuesta and others assailing the order issued on July 11, 1977 as well as the order issued October 7, 1977 as null and void, the same having been issued without jurisdiction and with grave abuse of discretion, the case docketed as CA-G.R. No. SP-07252-R. The appellate court denied the petition for certiorari and held that Judge Saroca did not act without or in excess of jurisdiction or with grave abuse of discretion in issuing the restraining order of July 11, 1977. The Sanggunian Bayan members elevated the case on a petition for review on certiorari, G.R. No. 49064 but was denied for lack of merit per Our resolution dated October 16, 1978.

While the certiorari proceeding was pending before the Court of Appeals, the resolution on the motion for contempt before Judge Saroca was held in abeyance but upon final decision by the court, Lacuesta moved the court on July 15, 1979 to resolve the contempt motion as well as for the order of their arrest. After hearing, Judge Saroca issued the order dated August 30, 1979 holding that the continued possession of the spouses Lydia Terrado Rosario and Martin Rosario as winning bidders constituted disobedience to and unlawful interference with the temporary restraining order of July 11, 1977 and directed Deputy Sheriff Soriano to enforce the July 11 and October 7, 1977 orders, to cause the arrest of said Rosario spouses including their agents and representatives and any and all person representing them-selves as winning bidders in the public bidding held on July 6, 1977 and to hold them in custody until further orders of the court, unless said spouses and their agents and the winning bidders voluntarily refrain from disobeying and interfering with the process of the court, in which case they may be discharged from custody. In the same order, Judge Saroca set a pre-trial conference and hearing on the merits on September 25, 26, and 27, 1979.

Having been adjudged in contempt of court and their immediate arrest ordered by Judge Saroca in the order mentioned above dated August 30, 1979, the spouses Lydia Terrado Rosario and Martin Rosario filed the petition for prohibition with the prayer for a writ of preliminary mandatory injunction assailing the questioned order as null and void, having been issued in grave abuse of discretion amounting to lack of jurisdiction and praying that respondent Judge Saroca be restrained from implementing the same, the petition docketed as CA-G.R. No. SP-09724.

Resolving the petition (CA-G.R. No. SP-09724), the Court of Appeals, acting through the Former Eleventh Division with Justices Victoriano, J., ponente, and Reyes and Nocon, JJ., concurring, ruled and set aside the assailed order of August 30, 1979, holding that the Rosario spouses were not parties to the case, hence, they could not be bound by the restraining order of July 11, 1977 which enjoined and prohibited the parties: "(1) from executing any contract of lease with the winning bidders in the bidding conducted on July 5, 6, and 7, 1977; and/or (2) from enforcing resolution No. 31, series of 1977 of the Sangguniang Bayan of Bayambang, Pangasinan, until further orders from this court." The order of Judge Saroca dated August 30, 1979 was, therefore, ordered set aside as having been issued in excess of jurisdiction and with grave abuse of discretion. The decision of the Court of Appeals in CA-G.R. No. SP-09724 was promulgated January 24, 1980 thereby upholding the possession of the spouses Lydia Terrado and Martin Rosario.

Meanwhile, the Municipality of Bayambang, represented by Mayor Jaime P. Junio and the Sangguniang Bayan of Bayam-bang represented by the members thereof, filed on September 5, 1979 Civil Case No. SCC-648 in the Court of First Instance of Pangasinan, Branch X, San Carlos City against Geruncio Lacuesta for annulment of the contract entered into between the Municipality and Lacuesta under Ordinance No. 8 hereinbefore mentioned, injunction and damages with prayer for the issuance of a writ of preliminary injunction. After the hearing of the incident for the issuance of the writ of preliminary injunction, Judge Saroca issued an order dated November 15, 1979 granted the writ as prayed for and ordered the defendant Lacuesta, his agents, lawyers, representatives,

laborers and other person or persons under his employ to re-frain and desist from interfering with and molesting the plaintiffs in the use of and in the exercise of plaintiffs' usufructury rights until further orders from the court. On November 16, 1979, the day Judge Saroca retired from the service, he issued another order to the sheriff to cause defendant Lacuesta to refrain from and desist from enforcing and implementing Resolution No. 35 enacting Ordinance No. 8, series of 1974 and the contract of management and administration, restraining them further from interfering with and molesting the plaintiffs in the use of and in the exercise of the latter's usufructury rights until further orders from the court.

On November 23, 1979, Lacuesta elevated to the Supreme Court the November 15 And 16 orders of Judge Saroca in a petition for certiorari with prayer for preliminary injunction docketed as G.R. No. 51984. In Our resolution of January 14, 1980, the petition for certiorari was denied for lack of merit. His motion for reconsideration was also denied in Our resolution of February 18, 1980.

With the retirement of Judge Saroca, the case was transferred to Branch III, Court of First Instance of Pangasinan, Dagupan City, presided over by Judge Felicidad Carandang-Villalon, the case now docketed and numbered as D-5118. Lacuesta then filed a Motion to Dissolve the Injunction and to Order Plaintiffs to Vacate and Turn All the Fisheries to Defendants (the injunction previously issued by Judge Saroca dated November 15, 1979). The Motion was granted by Judge Carandang-Villalon on the ground that "after the plaintiffs have recognized and confirmed the validity of the resolution and the contract, and after the defendant had started to perform his duties and obligations under the contract, the legal and factual ground which led the court to issue the writ has ceased to exist, and consequently, the dissolution of the writ of preliminary mandatory injunction dated November 15, 1979 appears warranted by prevailing circumstances." Plaintiff Municipality moved for reconsideration which was denied in the court's order of March 9, 1981 which also ordered the issuance of the writ of execution after the approval of defendant Lacuesta's bond of P200,000.00.

The plaintiff Municipality thereafter assailed the above orders of Judge Carandang-Villalon dated November 8, 1981 and March 9, 1981 in the former's petition for certiorari with prayer for writ of preliminary injunction, the petition filed in the Court of Appeals and docketed as CA-G.R. 12586, dated June 16, 1981.

In the decision of the Court of Appeals, Seventh Division, promulgated September 29, 1981, the court held that "being bereft of merit, as shown above, the instant petition is hereby denied due course and outrightly dismissed. Accordingly, the temporary restraining order heretofore issued is hereby lifted and the urgent motion to lift restraining order filed on August 19, 1981 and on August 27, 1981 are hereby left uncon-sidered for having been rendered moot and academic by the resolution." The motion for reconsideration of the decision was denied by resolution of the appellate court on November 11, 1981.

Meanwhile, when the Court of First Instance of Pangasinan, Branch III, Judge Carandang-Villalon presiding, received copy of the decision in SP-12586 promulgated September 29, 1981, the court issued an order on October 5, 1981 for the execution of its previous order to dissolve the preliminary injunction and place Lacuesta in possession of the contested fisheries and accordingly, a writ of execution was issued on October 7, 1981.

Another petition for certiorari was filed by the spouses Lydia Terrado and Martin Rosario and Domingo Fernandez docketed as CA-G.R. No. SP-13175, assailing the issuance of the order and writ dated October 5, and 7, 1981 respectively for allegedly violating due process as they were issued before the lapse of the 15-day reglementary period. In this petition, SP-13175, the court required respondent Judge and Lacuesta to comment, the same time issuing a temporary restraining order against the assailed order and writ of October 5 and 7, 1981 of the respondent court.

On November 7, 1981, the appellate court (through the Seventh Division and ponente who handled both

SP-12586 and SP-13175), rendered its resolution in SP-13175 dismissing the petition for lack of merit and setting aside the order of October 14, 1981 to include the lifting of the restraining order of even date. The appellate court ruled that:

"Our decision in said CA-G.R. No. SP-12586 held in effect that the impugned orders (like the order of January 8, 1981), were pro-perly issued by the respondent court. Hence, those interlocutory orders, the effectivity of which were suspended by the certiorari proceedings in CA-G.R. No. SP-12586, presumed to be immediately executory upon the lifting of the restraining order as done in the decision of September 29, 1981. This must be so, notwithstanding the filing on October 21, 1981 of an 'Urgent Ex-Parte Motion For Extension' to file motion for reconsideration of said decision because an injunction, once dissolved, cannot be revived except by a new exercise of judicial power, and no appeal by a dissatisfied party can of itself revive it. (Watcon vs. Enriquez, 1 Phil. 480; Sitia Teco vs. Ventura, 9 Phil. 497; II Martin, Rules of Court, 1969 Ed., p. 84).

Thus, when respondent court issued its herein impugned order of October 5, 1981 and the Writ of Execution pursuant thereto on October 7, 1981, it was merely putting into effect the immediately operative interlocutory order dissolving the injunction. There was therefore, no abuse of discretion."

When the resolution in SP-13175 was received in the lower court, Judge Villalon issued on November 6, 1981 an "Alias Writ of Execution and Possession" which reiterated its writ of October 7, 1981. The alias writ was received by the Municipality, through counsel, on November 12, 1981.

On November 16, 1981, the Municipality of Bayambang, represented by its Mayor, filed another certiorari petition to annul the alias writ of November 6, 1981, in CA-G.R. No. 13353 against Judge Carandang-Villalon and Geruncio Lacuesta, the petition being signed by Atty. Oliver O. Lozano.

Since CA-G.R. No. SP-12586 and CA-G.R. No. SP-13353 involve the same subject matter, the Special Sixth Division of the Court of Appeals to which CA-G.R. No. SP-13353 was assigned or raffled, resolved in its Resolution of November 27, 1981 to consolidate the case with CA-G.R. No. SP-12586 then pending with the Seventh Division of the Court of Appeals as to the plaintiff Municipality's motion for reconsideration.

The two certiorari petitions, CA-G.R. No. 12586 and CA-G.R. No. SP-13353, now consolidated in the Seventh Division, were resolved in the Resolution dated December 4, 1981, thus: "WHEREFORE, the foregoing considered, the petition in 13353 is hereby dismissed for being a scrap of paper, the temporary restraining order heretofore issued is hereby lifted, and the scheduled hearing on December 10, 1981 hereby discontinued. The motion for reconsideration in SP-12586 is hereby denied for lack of merit."

Since the Court of Appeals, Seventh Division, dismissed the petition in CA-G.R. No. SP-13353 as a mere scrap of paper because Atty. Oliver O. Lozano was not authorized to represent the petitioner Municipality, Atty. Lozano submitted the required authority in his Motion for Reconsideration of the resolution dismissing the petition, further praying that the resolution of the Sixth Division giving due course to the petition as well as the temporary restraining order issued therein be reinstated or restored.

Acting on the motion of the Municipality entitled "Ex-Parte Reiteration of Motion for Restoration of Temporary Restraining Order" filed on December 22, 1981 and the "Urgent Ex-Parte Motion to Stop Arrest of Petitioner's Laborers" filed on December 23, 1981, the court in its Resolution of December 24, 1981 set the hearing of the first motion on January 15, 1982 and as to the second motion, the court deemed "it wise and proper in the spirit of love and compassion this Christmastime, to order that no arrests be ordered by the respondent court against persons involved in 'those fisheries in areas covered by existing lease contracts executed by plaintiff Municipality in favor of entities and/or persons before November 15, 1979' until after the results of the November 15 hearing are received. x x x In effect, therefore, we are ordering, as it is hereby ordered that a partial temporary restraining

order be issued only as involved the areas with existing lease contract entered into by the Municipality prior to November 15, 1979."

After the hearing on January 15, 1982 as alluded to above, the court promulgated its Resolution dated January 28, 1982, holding that the pleadings signed by Atty. Oliver O. Lozano are deemed valid for purposes of considering the incidents therein and that the impugned alias writ of execution issued by respondent court on November 6, 1981 is hereby declared void only insofar as it has deleted the exception involving "those fisheries and areas covered by existing lease contract executed by the plaintiff Municipality in favor of entities and/or persons before November 15, 1979. Further, the respondent court was directed to conduct a factual determination of (a) who are the persons or what are the entities involved, and (b) the clearly specified areas covered by their contracts, and that prior to the holding of such factual determination however, the respondent court was ordered to settle the nature of those "lease contracts" - i.e., whether ordinary lease contract over a fishery area or contract of lease of services. Finally, the Court of Appeals ordered that "in case the respondent court finds, after putting to rest the nature of those lease contracts referred to in the original order of dissolution and after making the factual determination herein ordered, that such contracts no longer exist, then the Partial Temporary Res-training Order above mentioned shall be deemed ineffective for having then become moot and academic." The Motion for Contempt of Court filed by Lacuesta on January 13, 1982 was also denied by the court.

Pursuant to the resolution of the Court of Appeals dated January 28, 1982 and in compliance therewith in conducting a factual determination of who are the persons or what are the entities involved and the clearly specified areas covered by their contracts, Judge Villalon, after conducting hearings, submitted to the appellate court in her 1st Indorsement dated April 30, 1982, stating that "it is definite that there are admittedly no areas covered by any existing lease contract executed by the plaintiff Municipality in favor of entities and/or persons before November 15, 1979 within the contemplation of the Order dated January 8, 1981 which order has ordered the dissolution of the writ of preliminary mandatory injunction dated November 15, 1979 issued by then retired Hon. Judge Augusto Saroca for reasons set forth in the Order."

Acting upon the above report of Judge Villalon, the Court of Appeals promulgated its Resolution dated July 7, 1982, resolving that "in view of the above, the partial temporary restraining order has become ineffective for having then become moot and academic. WHEREFORE, the motion filed by private respondent is hereby granted (Motion Ex-Parte for Total Lifting of Partial Restraining Order). The Partial Temporary Restraining Order issued on December 24, 1981 is hereby lifted and set aside.

Two other petitions for certiorari were also filed with the Court of Appeals assailing the October 8, 1982 Order of Judge Villalon which ordered the issuance of a writ of execution and implementation of the Order of January 8, 1981, the first being CA-G.R. No. 15033 entitled "Spouses Lydia Terrado and Martin Rosario, et al. vs. Hon. Felicidad Carandang-Villalon, et al.," filed October 18, 1982 and the second, CA-G.R. No. 13175, "Spouses Lydia Terrado, et al. vs. Hon. Felicidad Carandang-Villalon, et al." dated October 9, 1981. CA-G.R. No. 15033 was dismissed on March 22, 1983, while CA-G.R. No. 13175 on November 5, 1981.

The five (5) cases relating to the same subject matter, which are CA-G.R. No. 15033-SP, CA-G.R. 14501-SP, CA-G.R. 13353-SP, CA-G.R. No. 13175-SP and CA-G.R. No. 12586-SP, were then consolidated in the decision of the Court of Appeals promulgated March 22, 1983.

The dismissal of the petition in CA-G.R. No. 13175 and the issuance of the alias writ of execution and possession issued by respondent Judge Villalon in Civil Case No. D-5118 is now elevated to Us in G.R. No. 58794.

Likewise, the decision of the appellate court dismissing the petition in CA-G.R. No. 15033-SP and the Order issued by the trial court dated January 8, 1981 have been raised to Us in G.R. No. 64489. Both petitions at bar,

G.R. No. 58794 and G.R. No. 64489, have been consolidated per Our Resolution of August 24, 1983.

The records of the petition before Us in G.R. No. 64489 disclose that upon written request of Judge Felicidad Carandang-Villalon that she be relieved from taking further cognizance of Civil Case No. SCC-648 (D-5118) entitled "Geruncio Lacuesta, et al. vs. The Municipality of Bayambang, the Supreme Court in its Resolution en banc dated June 7, 1983 granted the request of the Judge and directed the Clerk of Court of the Regional Trial Court of Dagupan to transfer the records of the case to the Clerk of the Regional Trial Court of San Carlos City for raffling among the two branches thereat. Accordingly, Judge Carandang-Villalon issued an Order dated June 17, 1983 directing the Stenographer who took the pro-ceedings 30 days to make complete transcript of the same and the Officer-in-Charge of the court to prepare the voluminous exhibits and thereafter effect the transmittal of the full records of the case. Notwithstanding her relief, the same Judge issued a further order dated September 2, 1983 command-ing the Sheriff and the Commanding Officer of the 153rd PC Company to restore defendant Lacuesta and his men to posses-sion of all the fisheries and areas covered by his contract pursuant to the Order of the court dated October 8, 1982. This Order was implemented according to the Sheriff's Return dated September 20, 1983.

Through the maze and muddle of this protracted legal controversy, it is plain and clear that the complaints and petitions including all legal incidents and motions filed in the trial court, the appellate court and before this Tribunal are traceable in origin to the enactment and imple-mentation of Municipal Ordinance No. 8, series of 1974, of the Municipality of Bayambang, Pangasinan, establishing the Bayambang Fishery & Hunting Park and Municipal Watershed covering the so-called Mangabul Fisheries. As stated in Section 3 of the Ordinance, the purposes of the Park are: 1. To attract tourists to Bayambang and thus increase the income of the municipality and create new employment and new sources of income for the people; 2. To restore and conserve the natural environment of the area by means of reforestation of the forest or timberland reserved, thru engineering works, and other means within the Ipd-92 area; 3. To restore or improve, conserve and develop the fisheries, zones, and exploit the fish resources of all the fisheries therein; 4. To supply agro-industrial enterprises that may be estab-lished in Bayambang with raw materials from the area; and 5. To provide sports and recreation facilities and wholesome sports and recreational activities for the people.

Further, under the Ordinance, the Municipality desig-nated, appointed and constituted private respondent Lacuesta as Manager-Administrator for a period of twenty-five (25) years, renewable for another twenty-five (25) years upon mutual agreement (Section 4). Among the powers, duties and obligations of the Manager-Administrator are: 1. To reforest with woods or economic value all the timberland portions in-dicated in Plan Ipd-92 and those that need to be reforested for ecological purposes; 2. To stock the forest with wild-life or economic value, protect the forest products and wildlife and regulate their multiplication in accordance with existing laws; 3. To deepen the fisheries, swamps and tributary streams by dredging, employing modern scientific and technological methods to restore or improve and develop the fisheries to increase the fees yield; 4. To conduct and regulate sports fishing and hunting in the park and collect fees therefrom; 5. To use or dispose of the fisheries portion in accordance with the general law on municipal waters; 6. To establish in a suitable site within the park a fishing and hunting camp to be called "Camp Imelda". In Section 7 of the Ordinance, the Manager-Administrator shall pay to the municipal government the sum equivalent to ten (10%) percent of the annual gross income derived from all fees charged for fishing and hunting in the park and entry into Camp Imelda, from the sale of forest products, wild games and fish from the area, but not less than P200,000.00.

In accordance with the Ordinance, a Contract of Manage-ment and Administration was executed by the Municipality, represented by its Municipal Mayor as the Usufructuary and Atty. Geruncio Lacuesta as the Manager-Administrator, setting forth therein the terms and conditions laid down in the Or-dinance as well as the

mode and manner of the payment of the sum of P200,000.00 annually due to the Municipality including the posting of a surety bond and other details of the management and administration of the fisheries by the Manager-Administrator, which contract was executed on January 28, 1975 at Bayambang, Pangasinan.

Thus, the validity or legality of the Municipal Ordinance in question is the crucial and vital issue that must be re-solved once and for all to put an end to this raging litigation that has become the tug-of-war between the Municipality and Lacuesta, together with other interested parties, over the vast and rich fishing grounds. In resolving said issue and ultimately the very root of the conflict, the following undisputed facts are controlling and decisive: 1. That Municipal Ordinance No. 8 has been disapproved by the Secretary of Agriculture and Natural Resources; and 2. That private respondent has since died as shown in the Return of the Postmaster of Bayambang as noted in Our Resolution of July 2, 1984.

1. Ordinance No. 8, having been submitted to the Provincial Board of Pangasinan and approved by it by virtue of Resolution No. 171 dated October 11, 1974, the same was submitted to the Secretary of Agriculture & Natural Resources as required by Section 4 of Act No. 4003, The Fisheries Act, as amended by Commonwealth Act No. 471 passed June 16, 1939, and further amended by RA No. 659 approved June 16, 1951, thus:

"Sec. 4. Instructions, orders, rules and regulations. - The Secretary of Agriculture and Commerce shall from time to time issue instructions, orders, rules and regulations consistent with this Act, as may be necessary and proper to carry into effect the provisions thereof and for the conduct of proceedings arising under such provisions; and all licenses, permits, leases and contracts issued, granted or made herein shall be subject to the same.

All ordinances, rules or regulations pertaining to fishing or fisheries promulgated or enacted by provincial boards, municipal boards or councils, or municipal district councils shall be submitted to the Secretary of Agriculture and Commerce for approval and shall have full force and effect unless notice in writing of their disapproval is communicated by the secretary to the board or council concerned within thirty days after submission of the ordinance, rule, or regulation."

From the evidence on record, it appears that a Master Plan for the Bayambang Fishing and Hunting Park and Municipal Watershed (Mangabul Fisheries Reservation) of Atty. Geruncio Lacuesta, Manager-Administrator of the said park, was submitted to the Bureau of Fisheries and Aquatic Resources. In the Indorsement of the Director of Fisheries & Aquatic Resources to the Secretary, Department of Natural Resources, the Comments, among others, state: "2. Records of this bureau show that Resolution No. 171, s. 174 of the Provincial Board of Pangasinan, embodying Resolution No. 35, s. 1974, enacting Ordinance No. 8, s. 1974 of the Municipal Council of Bayambang, Pangasinan and Resolution No. 24, s. 1975 of the same council requesting reconsideration and rectification of the 5th Indorsement of that department dated April 4, 1975, were returned DISAPPROVED and denied, respectively, by the Secretary of Natural Resources to the Municipal Council of Bayambang, Pangasinan."

Upon the recommendation of the Director of Fisheries and Aquatic Resources that "In the light, therefore, of the foregoing, the Master Plan for the Bayambang Fishing and Hunting Park and Municipal Watershed (Mangabul Fisheries Reservation), insofar as fishing and fisheries thereat are concerned should not be given due course and should be DISAPPROVED in the absence of adequate provisions thereon to the effect that the grant of the exclusive fishery privileges within its municipal waters shall be granted by the municipal council (now sangguniang bayan) to the highest bidder conformable with a fishery ordinance duly approved by the Secretary of Natural Resources, pursuant to Sections 4, 67 and 69 of Act No. 4003, as amended (now sections 4, 29 and 30 of Presidential Decree No. 704)," the Secretary of the Department of Natural Resources disapproved the Master

Plan.

The legal basis for the disapproval of the Ordinance No. 8 and the Master Plan mentioned above is clear and explicit in Sections 4, 67 and 69 of Act No. 4003 as amended by PD 704, Revising and Consolidating All Laws and Decrees Affecting Fishing and Fisheries. These Sections provide:

"Sec. 4. Jurisdiction of the Bureau. - The Bureau shall have jurisdiction and responsibility in the management, conservation, development, protection, utilization and disposition of all fishery and aquatic resources of the country except municipal waters which shall be under the municipal or city government concerned: Provided, That fish pens and seaweed culture in municipal centers shall be under the jurisdiction of the Bureau: Provided, further, That all municipal or city ordinances and resolutions affecting fishing and fisheries and any disposition thereunder shall be submitted to the Secretary for appropriate action and shall have full force and effect only upon his approval. The Bureau shall also have the authority to regulate and supervise the production, capture and gathering of fish and fishery/aquatic products.

The Bureau shall prepare and implement, upon approval of the Fishery Industry Development Council, a Fishery Industry Development Program."

"Section 29. Grant of Fishery Privileges. - A municipal or city council, conformably with an ordinance duly approved by the Secretary pursuant to section 4 hereof, may: (a) grant to the highest qualified bidder the exclusive privilege of construction and operating fish corrals, oyster culture beds, or of gathering "bangus" fry, or the fry of other species in municipal waters for a period not exceeding five (5) years: x x x"

"Section 30. Municipal concessions and leases concerning fisheries. - No lease or concession granted by a municipal or city council under authority of an ordinance approved pursuant to section 4 hereof, concerning fishing or fisheries in streams, lakes, rivers, inland and/or municipal waters, shall be valid and enforceable unless the Secretary, upon recommendation of the Director, approves the same."

Indeed, the Ordinance is clearly against the provisions of the law for it granted exclusive fishery privileges to the private respondent without benefit of public bidding. Under the Fisheries Act, the Municipality may not delegate to a private individual as Manager-Administrator to "use or dispose of the fisheries portion in accordance with the general law on municipal waters" nor to charge fees for fishing and hunting in the park, much less sell forest products, wild games and fish from the area.

Neither can the Municipality grant the exclusive privilege of fishing for a period more than five (5) years, whereas in the instant case, the period granted the Manager-Administrator was for twenty-five (25) years, renewable for another twenty-five years.

Moreover, under the specific provision of Act No. 4041, there is the proviso that the timber and other forest products therein shall be placed under the administration and control of the forest service so that insofar as the ordinance relates to the timber and other forest products and the re-forestation of the timberland portions indicated in Plan Ipd-92 including the powers, duties and responsibilities of the Manager-Administrator affecting the forestry portions are violative of Act No. 4041.

It is of no moment that at the pre-trial hearing of Civil Case No. SCC-648 (which was transferred to Branch III, CFI Dagupan and docketed as D-5118) the parties had admitted the legality of Ordinance No. 8. The issue as to the legality of Ordinance No. 8 is not a question of fact that the parties may stipulate and agree at the pre-trial hearing of the case which is for annulment of the contract under Ordinance No. 8. Such is a question of law for if the Ordinance is illegal and contrary to law, the contract executed in pursuance thereto is consequently illegal. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. (Art. 5, New Civil Code).

From Our jurisprudence, We cite a number of cases ruling that a public bidding is essential to the validity of the grant of exclusive privilege of fishery to a private party, thus:

"The law (Sec. 2323 of the Revised Administrative Code) requires that when the exclusive privilege of fishery or the right to conduct a fish-breeding ground is granted to a private party, the same shall be let to the highest bidder in the same manner as is being done in exploiting a ferry, a market or a slaughterhouse belonging to the municipality (See Municipality of San Luis vs. Ventura, et al., 56 Phil. 329). The requirement of competitive bidding is for the purpose of inviting competition and to guard against favoritism, fraud and corruption in letting of fishery privileges (See 3 McQuillin, Municipal Corporations, 2nd Ed., p. 1170; Harles Gaslight Co. vs. New York, 83 N.Y. 309; and 2 Dillon, Municipal Corporations, p. 1219)" (San Diego vs. The Municipality of Naujan, Province of Mindoro, 107 Phil. 118).

"It may thus be restated that the law that governs the award of fishery privileges in municipal waters is the provisions of Section 67 and 69 of Act No. 4003, as amended by Commonwealth Acts Nos. 115 and 471. The provisions of Sections 2321, 2323 and 2319 of the Revised Administrative Code of 1917 have thereby been modified by Act 4003, as amended. Under the applicable law the Municipal Council may lease fishery privileges for a period not exceeding five years to the highest bidder in a public bidding held, where the call for bid had specified the period for the lease." (San Buenaventura vs. Municipality of San Jose, Camarines Sur, et al., 121 Phil. 101, 114).

"The Municipal Council cannot extend the period of lease once it had been fixed on the basis of the period provided in the call for bids. In the lease of fishery privileges for a period not exceeding five years the previous approval of the provincial Board is not necessary. If the lease is for a period of more than five years, but not exceeding ten years, the previous approval of the Provincial Board is necessary. If the lease is for a period exceeding ten years, but not more than twenty years, the prior approval of the Secretary of Agriculture and Natural Resources is necessary. In all cases the lease must be based on a competitive public bidding." (San Buenaventura vs. Municipality of San Jose, Camarines Sur, et al., supra, p. 115).

While the respondent appellate court in CA-G.R. No. 12586-SP made the pronouncement that:

"Besides, Sec. 4, Act No. 4003 (which was then the law in force before being superseded by PD 704 on May 16, 1975) provides that an ordinance affecting fishing and fisheries 'shall have full force and effect unless notice in writing of (its) disapproval is communicated by the Secretary to the Board of council concerned, within thirty days after submission of the ordinance.' The ordinance was submitted for approval on January 2, 1975 and the disapproval came only 102 days after such submission, on April 14, 1975. Paragraph (a) of the pre-trial stipulation (Annex "6" of Respondent's Comment) states that 'the said ordinance was submitted to the then Secretary of Natural Resources who disapproved the ordinance, insofar as fishing and fisheries are concerned after 30 days from submission,'"

We cannot sustain the above holding in view of Our holding in the case of *Nepomuceno, et al. vs. Ocampo, et al.*, supra, wherein We held that the only purpose in the enactment of Republic Act 659 which required the Secretary of Agriculture and Natural Resources to approve municipal ordinances pertaining to fishing or fisheries within 30 days after submission of the ordinance, rule or regulation is simply to expedite prompt action by the Department Chief concerned. Since Ordinance No. 8 granted fishery privileges exclusively to the private respondent without benefit of public bidding and for a period exceeding five (5) years, the said ordinance and the contract of management executed in accordance therewith were null and void ab initio, such that the failure of the Secretary of Agriculture & Natural Resources to disapprove the same within 30 days from its submission does not render validity to the illegal legislation of the municipal council nor to the contract executed under the same.

From the foregoing conclusion that the ordinance is illegal and void, per force the contract of management and administration between the Municipality and Lacuesta is likewise null and void. It also follows that the complaint

filed by Lacuesta for prohibition in Civil Case No. 516 to enjoin the Municipal Council of Bayambang from leasing the Mangabul Fisheries upon public bidding as authorized in its Resolution No. 31, series of 1977 is without legal basis and merit for Lacuesta has no right or interest under the void ordinance and contract. The suit must be dismissed and We hereby order its immediate dismissal.

2. We have noted earlier the death of Lacuesta in Our Resolution of July 2, 1984. His death is an irreversible fact that throws an entirely new bearing on the legal controversy at hand. For essentially, the contract of management and administration between the Municipality and Lacuesta is one of agency whereby a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. (Article 1868, New Civil Code). Here in the case at bar, Lacuesta bound himself as Manager-Administrator of the Bayambang Fishing & Hunting Park and Municipal Watershed to render service or perform duties and responsibilities in representation or on behalf of the Municipality of Bayambang, with the consent or authority of the latter pursuant to Ordinance No. 8. Under Article 1919, New Civil Code, agency is extinguished by the death of the agent. His rights and obligations arising from the contract are not transmittable to his heirs. (Art. 1311, New Civil Code).

3. Petitioners in both cases before Us, G.R. No. 58794 and G.R. No. 64489, anchor their claims to certain portions of the Mangabul Fisheries which they allege to have won in public bidding under the authority of Resolution No. 31, series of 1977 of the Municipal Council of Bayambang which leased the fisheries for a four-year period. The period has already lapsed, hence their fishing privilege is no longer effective as of June 30, 1981. To restore and place petitioners in possession of the fisheries would be an extension of their four-year period lease which is not authorized under the ordinance cited above.

Nonetheless, the assailed order of Judge Villalon dated September 3, 1983 restoring possession of the fisheries to Lacuesta and his men which was issued after her relief from the case upon her own request is clearly irregular and without authority. There should be and there ought to be full obedience and compliance by a subordinate court of the orders and resolutions of this Court. There cannot be any iota of discipline much less efficiency in the administration of justice if the lower echelons in the judicial hierarchy can freely act as they wish in spite of their relief. This should be a stern warning to all judges and personnel in all the courts.

We brush aside the procedural aspects raised in the petitions before Us and in the interest of public welfare and speedy administration of justice, avoiding further multiplicity of suits, We consider the intrinsic merits of the controversy which as We pointed out previously, rest on the validity of the Municipal Ordinance in question. Thus, in sum and substance, We hereby pronounce the nullity of Ordinance No. 8, series of 1974 of the Municipal Council of Bayambang, Pangasinan and the contract of management and supervision executed between the Municipality of Bayambang and Geruncio Lacuesta as Manager-Administrator of the Bayambang Fishery & Hunting Park and Municipal Watershed.

Since Ordinance No. 8 and the contract of management and supervision are both null and void, the Alias Writ of Execution and Possession dated November 6, 1981 and the Order of October 8, 1982 for the issuance of writ of execution and possession to place and restore possession of the Mangabul Fisheries, of portions thereof or fisheries therein to Geruncio Lacuesta, his agents, men and/or representatives under the said contract and by virtue of the ordinance are, including the writ also issued on October 8, 1982, without legal force and effect.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Alias Writ of Execution and Possession issued November 6, 1981 and assailed in G.R. No. 58794, as well as the Order and Writ dated October 8, 1982 raised in G.R. No. 64489, are hereby NULLIFIED and SET ASIDE. No costs.

SO ORDERED.

Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

Makasiar, J., (Chairman), on official leave.

Aquino, J., in the result.

Abad Santos, J., reserves his vote.

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