

RODERICO M. DEANG, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND MAYOR FRANCISCO G. NEPOMUCENO, RESPONDENTS.

G.R. No. 71313. September 24, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the then Intermediate Appellate Court which reversed the resolution of the Philippine Gamefowl Commission in PGC Case No. 22 and set aside the order for the issuance in favor of the petitioner of a mayor's permit to operate a cockpit.

Petitioner Roderico Deang is the owner of a cockpit known as "Angeles Amusement Center" located at barrio Claro M. Recto, Angeles City, Pampanga. Deang purchased the cockpit in 1977 from Ponciano Dayrit, its operator since 1945. From the time he bought the cockpit, the petitioner was annually granted a license to operate the same until 1980.

In 1979, Mabuhay Consolidated Incorporated, a cockpit operator in San Fernando, Pampanga, filed with the then Court of First Instance of Pampanga, Civil Case No. 5256 questioning the continued operation of several cockpits, including the Angeles Amusement Center, on the ground of their improper locations. The City of Angeles, through then Mayor Rafael Lazatin, intervened by joining with the plaintiff. On December 5, 1979, however, the parties filed a joint motion to dismiss which reads as follows:

"COME NOW plaintiff, defendant Angeles Amusement Center, plaintiff-intervenor, herein represented by their counsels of record, to this Honorable Court respectfully move that the complaint be dismissed, the counterclaim filed by the defendant Angeles Amusement Center be dismissed, and the intervention of the plaintiff-intervenor be dismissed with prejudice insofar as the plaintiff's complaint and defendant's counterclaim are concerned, but without prejudice insofar as the intervenor's future cause of action is concerned against the defendant, without pronouncement as to costs." (p. 62, Rollo)

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On December 6, 1979, the motion was granted and the case was ordered dismissed. Thereafter, the cockpit resumed its operation.

In 1981, when the petitioner applied for the renewal of the cockpit's permit to operate, the city's new mayor, Mr. Francisco Nepomuceno, refused to grant it on the ground of improper location. According to Mayor Nepomuceno, the cockpit is located near two schools, a church, and a public building, contrary to law. The mayor also found that the cockpit encroaches on a public street known as C. Pineda Street.

The petitioner, therefore, went to the Philippine Gamefowl Commission (PGC) in a petition for review. On February 1, 1983, the PGC found that the cockpit's location did not violate zoning regulations. It, however, ruled that it had no jurisdiction to pass upon the issue of encroachment on a public street as this issue properly pertains

to the regular courts. Resolving the petition, the PGC ordered the respondent mayor to issue the necessary permit.

The respondent then went on appeal to the then Intermediate Appellate Court, now Court of Appeals.

On May 2, 1985, the Intermediate Appellate Court reversed the resolution of the PGC and dismissed the petition on the ground that the petitioner has not shown that his cockpit is legally occupying the portion of C. Pineda Street on which it is located. The appellate court ruled that "[I]f petitioner-[appellee] wants to question the respondent's-[appellant's] determination in this regard, he must seek relief from the courts. In the meantime, the Commission cannot pre-empt the jurisdiction of the regular courts by ordering the Mayor to issue the permit." (p. 32, Rollo)

The petitioner filed a motion for reconsideration and contended that the issue of encroachment is now *res judicata* between the parties as this was resolved in Civil Case No. 5256 entitled "Mabuhay Consolidated, Inc. v. Angeles Amusement Center, Inc., et al." He further alleged that the portion of the street occupied by the cockpit is no longer public property because an equivalent area of the lot on the opposite side of the street was exchanged for it by Ponciano Dayrit.

On June 26, 1985, the appellate court denied the motion for reconsideration for lack of merit. It held that the dismissal order issued in Civil Case No. 5256 clearly states that it is "without prejudice insofar as the intervenor's (City of Angeles) future cause of action is concerned against the defendant (Angeles Amusement Center)" (pp. 34-35, Rollo). As to the alleged property exchange, the appellate court ruled that the "assertion must be substantiated by evidence to be presented in a full-blown hearing originated in the lower courts." (Ibid).

Hence, this petition for review on certiorari filed by the petitioner on August 14, 1985.

The petitioner assails the appellate court's reversal of the PGC resolution and propounds the issue of *res judicata* which allegedly results from the dismissal order issued in Civil Case No. 5256. He contends that the dismissal order which states that it is "without prejudice insofar as the intervenor's future cause of action is concerned x x x" refers to causes of action which may arise between them after the issuance of the order and not to the causes of action, such as improper location and encroachment on a public street, which have already been resolved in the aforesaid case.

The petitioner's contentions have no merit.

The Court has repeatedly held that for a judgment to be a bar to a subsequent case, the following requisites must concur: (1) it must be a final judgment; (2) the court which rendered it had jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be identity between the two cases, as to parties, subject matter and cause of action. (*Bringas v. Hernando*, 144 SCRA 346, 359, citing the cases of *Martinez v. Court of Appeals*, 139 SCRA 558; *Carandang v. Venturanza*, 133 SCRA 344; *Pantranco North Express, Inc. v. National Labor Relations Commission*, 126 SCRA 526; and *Gatus v. Court of Appeals*, 95 SCRA 530).

The records show that the trial court did not rule on the merits of the case. A judgment on the merits is one rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point (*Santos v. Intermediate Appellate Court*, 145 SCRA 238, 245-246). There is no evidence that a trial was conducted in Civil Case No. 5256. On the contrary, the records show that the court, after considering the joint motion to dismiss submitted by the parties, merely refrained from proceeding with the case and granted the motion with some clarifications. We do not find merit in the petitioner's contention that the issue of encroachment is not a future cause of action which arises after the issuance of the court order. The petitioner's occupation of a public street is continuous. The cause of action, therefore, subsists as

long as the street is occupied. There must be a showing that the portion of Pineda Street on which the cockpit is located was validly withdrawn from use as a public street and that the alleged exchange of a lot on the street's opposite side for the occupied portion was likewise legally consummated.

There is another reason why we uphold the appellate court's decision. In the case of Philippine Gamefowl Commission v. Intermediate Appellate Court (146 SCRA 294) the Court compared and made clear the powers vested in the Philippine Gamefowl Commission vis-a-vis the powers of the city and municipal officials under the applicable laws, namely, P.D. 1802, P.D. 1802-A and the Local Government Code. This Court held:

"A study of the above-cited powers shows that it is the municipal mayor with the authorization of the Sangguniang Bayan that has the primary power to issue licenses for the operation of ordinary cockpits. Even the regulation of cockpits is vested in the municipal officials, subject only to the guidelines laid down by the Philippine Gamefowl Commission. Its power to license is limited only to international derbies and does not extend to ordinary cockpits. Over the latter kind of cockpits, it has the power not of control but only of review and supervision.

"We have consistently held that supervision means 'overseeing or the power or authority of an officer to see that their subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or steps as prescribed by law to make them perform their duties.' Supervision is a lesser power than control, which connotes 'the power of the officer to alter or modify or set aside what a subordinate had done in the performance of his duties and to substitute the judgment of the former for that of the latter.' Review on the other hand, is a reconsideration or re-examination for purposes of correction.

"As thus defined, the power of supervision does not allow the supervisor to annul the acts of the subordinate, for that comes under the power of control. What it can do only is to see to it that the subordinate performs his duties in accordance with law. The power of review is exercised to determine whether it is necessary to correct the acts of the subordinate. If such correction is necessary, it must be done by the authority exercising control over the subordinate or through the instrumentality of the courts of justice, unless the subordinate *motu proprio* corrects himself after his error is called to his attention by the official exercising the power of supervision and review over him.

"At that, even the power of review vested in the Philippine Gamefowl Commission by P.D. 1802-A may have been modified by the Local Government Code, which became effective on February 14, 1983. Under the Code, the Sangguniang Panlalawigan is supposed to examine the ordinances, resolutions and executive orders issued by the municipal government and to annul the same, but only on one ground, to wit, that it is beyond the powers of the municipality or *ultra vires*. Significantly, no similar authority is conferred in such categorical terms on the Philippine Gamefowl Commission regarding the licensing and regulation of cockpits by the municipal government.

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"At any rate, assuming that the resolution of the Sangguniang Bayan authorizing the issuance of a cockpit license to Sevilla was subject to reversal by the PGC, such action could be justified only if based upon a proven violation of law by the municipal officials. It may not be made only for the purpose of substituting its own discretion for the discretion exercised by the municipal authorities in determining the applicant to which the lone cockpit license should be issued."

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The power given by law to city and municipal mayors in the issuance of licenses to operate cockpits is clear. The

resolution of the PGC ordering the mayor to issue a permit to operate in favor of the petitioner was, therefore, promulgated without proper authority.

IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED. The decision of the respondent Intermediate Appellate Court dated May 2, 1985 and its resolution dated June 26, 1985 are AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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