

GEORGIA ADLAWAN, OWNER, RAMON VILLORDON AND MANUEL VILLORDON, SHAREHOLDERS AND OPERATORS/MANAGERS OF THE GALLERA BAGONG LIPUNAN, AND THE SANGGUNIAMG BAYAN OF MINGLANILLA, CEBU, ...*G.R. No. 73022. February 09, 1989*

Ponente: REGALADO, J.

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Before the Court is a petition to declare null and void the decision of the former Court of First Instance of Cebu, Branch XIII, in Special Civil Action No. R-13186 for declaratory relief with injunction, and the resolution of the then Intermediate Appellate Court dismissing the appeal therefrom. Petitioner's further seek the cancellation or setting aside of the entry of judgment made on September 17, 1985 by the respondent appellate court consequent to its aforesaid dismissal of the appeal.

Prior to the advent of martial law, there were two cockpits operating under license in the municipality of Minglanilla, Cebu, namely, (1) the Minglanilla Junior Coliseum (hereinafter also referred to as the Coliseum), which has been existing since July, 1955, now owned and operated by private respondents after their acquisition thereof from their predecessor-in-interest Felix Obejero,[1] and which is located in the center of the poblacion of the Municipality of Minglanilla; and (2) the Gallera Bagong Lipunan, formerly known as Bag-Ong Bulangan, and later also known as La Gallera de Minglanilla (hereinafter also referred to as Gallera), which was established in 1967, then owned and operated by Catalino Villaflor who was succeeded by several operators and eventually by herein petitioners, and which is located in Barrio Calajo-an of the same municipality.[2]

With the promulgation of Presidential Decree No. 449, otherwise known as the Cockfighting Law of 1974, which provided for the "one cockpit for every municipality" rule, the present controversy arose.

The findings of respondent trial court establish that on November 27, 1972, the Office of the Mayor of Minglanilla, Cebu, received a radio message from the Cebu Provincial command of the Philippine Constabulary laying down the policy governing cockpits, the pertinent provisions of which state that: (1) only Licensed municipal cockpits shall be allowed to operate in every municipality; (2) barrio cockpits, even if licensed shall not be allowed to operate; (3) if there is no municipal cockpit, a barrio cockpit may be allowed or considered a municipal cockpit when the mayor certifies to that effect; and (4) in no case shall the operation of more than one cockpit be allowed in every municipality. With the receipt of the aforesaid message, the question arose as to which cockpit shall remain to operate and which shall be closed, the final determination whereof was held in abeyance, with the municipal council of Minglanilla instead referring the matter to the Philippine Constabulary unit which had jurisdiction over the same. Thereafter, the Provincial Command rendered a decision, dated December 8, 1972, upholding the Coliseum, private respondents' cockpit, as the municipal cockpit of Minglanilla, Cebu. The then operator of the barrio cockpit Bag-Ong Bulangan, or Gallera as previously indicated, appealed the decision to the Zone Commander who in turn referred the matter back to said municipal council.[3]

Thereafter, the Committee on Laws and Ordinances of the Municipal Council of Minglanilla submitted a report on the cockpit controversy, which was adopted[4] and later approved by the Municipal Council[5] recommending the retention and certification of the Bag-Ong Bulangan, or the Gallera, as the municipal cockpit of Minglanilla. The Committee based its recommendation on Section 1 of Republic Act No. 1224, which was approved on May 7, 1955 and was then the prevailing law on cockpits, and an Unnumbered Provincial Circular, supposedly circularized by the Office of the Provincial Governor of Cebu on January 3, 1969 and entitled "Prohibition to Establish and/or Operate Cockpits within the Poblaciones of Municipalities and Municipal Districts and within a Radius of 200 Lineal Meters from any Public Building, Schools, Hospitals and Churches, Request for –".[6]

The committee reported that under Republic Act No. 1224 the power to determine the distance limit of cockpits from certain public structures is left to the discretion of the municipal board or council, except that no municipal ordinance fixing the distances of cockpits shall apply to those already licensed and operating, at the time of the enactment of such municipal ordinance. It also noted that Paragraph 5 of the aforesaid Unnumbered Provincial Circular provides that, in the exercise of their discretion, the local officials are requested to prohibit the establishment, maintenance and/or operation of cockpits within the poblacion of the municipality, the same to be allowed only within a reasonable distance but in no case less than 200 lineal meters from any public buildings, schools, hospitals and churches, as in the case of other amusement places mentioned in the law.[7]

On the basis of the actual distances of the Coliseum and the Gallera cockpits from the aforesaid public structures, the committee concluded that the Coliseum failed to meet the required distance limit, hence it opined that the Gallera should rightfully be maintained as the municipal cockpit. The committee agreed that Republic Act No. 1224 prohibits the retroactive application of any municipal ordinance, which may subsequently be passed pursuant thereto, to a licensed cockpit already existing at the time of the enactment of the ordinance. In this regard, the committee observed that Municipal Ordinance No. 4 adopted by the Municipal Council on February 9, 1969 provided for only a 50-meter limit, but it contended that said ordinance could not be properly invoked by herein private respondents because of its theory that the same is not valid and enforceable for lack of approval from the Provincial Board of Cebu.[8]

Subsequently, Resolution No. 40, Series of 1973, was passed wherein the municipal council "resolved to request the Municipal Mayor of this municipality to make and issue a Certification to the effect that the "BAG-ONG BULANGAN" Cockpit is the Municipal Cockpit at Calajo-an of this municipality x x x."[9]

Aggrieved by the actuations and resolutions of the municipal council, herein private respondents Nicolas Enad and Abelardo Larumbe filed an action for declaratory relief with injunction, as petitioners praying for a judicial interpretation of their rights under all pertinent laws governing cockpits, against the municipal council, the mayor of Minglanilla and Catalino Villaflor, the then owner of Gallera, before the aforementioned Court of First Instance of Cebu which in due course rendered the decision subject of this petition, the fallo of which reads:

"IN VIEW OF THE FOREGOING, Judgment is hereby rendered in favor of the petitioners and against the respondents, as follows:

- a. Orders the Municipal Mayor to issue immediately upon receipt of the decision the license-permit for the year 1982 to and in favor of petitioners for having complied (sic) all requirements of pertinent laws;
- b. Orders the Sangguniang Bayan of Minglanilla to pass a resolution confirming the license-permit issued by the Mayor to the petitioners immediately upon receipt of this decision;
- c. Orders the Philippine Gamefowl Commission to register, accept the registration or cause the registration immediately upon receipt of this decision, the petitioners' cockpit for the year 1982 and all the years thereafter;

d. Orders the immediate closure of respondent's cockpit, Bag-ong Bulangan, now known as Gallera de Minglanilla; and

e. Declare (sic) the Writ of Preliminary Injunction as PERMANENT, against the Municipal Mayor of Minglanilla, Cebu, the Sangguniang Bayan of Minglanilla, Cebu, all police agencies local or otherwise and the Philippine Gamefowl Commission."[10]

From this decision, Ma. Luz Rosete Diores, who had acquired the Gallera cockpit from Catalino Villaflor, appealed to the then Intermediate Appellate Court under CA-GR UDK No. 4914. During the pendency of this appeal, Diores executed a deed of absolute sale, dated July 14, 1984, whereby she ceded and transferred all her rights and interests over the Gallera cockpit to herein petitioner Georgia Adlawan, payable on installment basis until October 15, 1985.[11]

Thereafter, Diores filed a motion to withdraw and/or dismiss her appeal on September 12, 1985 and respondent appellate court granted the same and considered the appeal withdrawn.[12] Said resolution became final and was entered on September 13, 1985.[13]

On September 19, 1985, petitioner Georgia Adlawan, allegedly as the new owner of the Gallera, filed a motion for the reconsideration of the aforesaid order of dismissal alleging, inter alia, that Diores acted with malice and bad faith in moving for the withdrawal and/or dismissal of the appeal since the latter was no longer the owner of the Gallera cockpit the same having been sold to said petitioner who thus became the real party in interest in the appeal.[14]

On October 14, 1985, upon motion of herein private respondents, the trial court ordered the issuance of a writ of execution for the enforcement of its decision by reason of the dismissal of the appeal therefrom.[15]

Meanwhile, on October 10, 1985 the Philippine Gamefowl Commission passed a resolution ordering the cancellation and revocation of the certificate of registration of Gallera Bagong Lipunan and approving the registration of Minglanilla Junior Coliseum.[16]

Subsequently, on November 27, 1985 the Intermediate Appellate Court denied petitioner's motion for reconsideration on the ground that entry of judgment had already been made on September 13, 1985.[17]

Hence, this resort to Us, petitioners contending that the decision of the respondent trial court is illegal for having been rendered with obvious disregard of existing laws and is, therefore, null and void.

Such submission cannot be sustained; the denial of this recourse is irremissible.

Prior to the imposition of martial law, the governing law on Philippine cockfighting was Republic Act No. 1224, effective on May 17, 1955, which specifically vested regulatory and supervisory powers over cockpits in the local legislative bodies, thus:

"Section 1. The municipal or city board or council or each chartered city and the municipal council of each municipality and municipal district shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of cockpits, x x x and other similar places of amusement within its territorial jurisdiction: Provided, however, That no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of 200 lineal meters in the case of nightclubs, x x x, and 50 lineal meters in the case of dancing schools, x x x except cockpits the distance of which shall be left to the discretion of the municipal council, from any public schools, hospitals and churches: Provided, further, that no municipal or city ordinance fixing distances at which such places of amusement may be established or operated shall apply to those already licensed and operating at the time of the enactment of such municipal ordinance, nor will the subject opening of any public building or other premises from which distances shall be measured

prejudice any place of amusement already then licensed and operating, x x x" (Underscoring supplied).

It is clear from this statutory provision that it is discretionary upon the municipal council to fix the location of cockpits in their jurisdiction and determine the allowable distance thereof from public buildings, thru the passage of a municipal ordinance. Republic Act No. 1224, however, specifically prohibits the retroactive application of any such municipal ordinance to cockpits already existing at the time of its enactment, specifically with respect to the fixing of distances at which said cockpits may be established.

In accordance therewith and as hereinbefore stated, the Municipal Council of Minglanilla passed Ordinance No. 4 on February 9, 1969 which provided that municipal cockpits must be at least 50 lineal meters away from public buildings.

Considering the specific proscription against the retroactive application of such municipal ordinances, since the Minglanilla Junior Coliseum was established in 1955 whereas Municipal Ordinance No. 4 was passed only in 1969, obviously the provisions thereof cannot prejudice or adversely affect the existence and operation of said cockpit.

Assuming arguendo that private respondents' cockpit is indeed covered by the municipal ordinance, the same is well within the limits allowed therein. It was duly certified by the Provincial Engineer of Cebu City,[18] after proper investigation, that the Minglanilla cockpit is located more than the required 50 lineal meter distance from the public buildings contemplated, in accordance with the mandate of the pertinent local legislation.

Contrary to petitioners' pretension that the law unqualifiedly provides for a 200 lineal meter distance limit, a cursory perusal of Presidential Decree No. 449 (Cockfighting Law) and Presidential Decree No. 1802 (creating the Philippine Gamefowl Commission) reveals that neither of these issuances imposed any mandatory delimitation except when there is no existing local ordinance which prescribes a limit on distances.

Presidential Decree No. 449 specifically states in Section 5 thereof that:

"(c) Cockpits Site and Construction. - Cockpits shall be constructed and operated within the appropriate areas as prescribed in the Zoning Law or Ordinance. In the absence of such law or ordinance, the local executives shall see to it that no cockpits are constructed within or near existing residential or commercial areas, hospitals, school buildings, churches, or other public buildings. x x x"

This subsequent law merely adopted and upheld the discretionary power of the local officials in determining the proper location of cockpits vis-a-vis the public contemplated in and recognized by Republic Act No. 1224. That the limitation prescribed by the zoning ordinance controls is further stressed by the later enactment, Presidential Decree No. 449. This discretionary power was thereafter exercised with the passage of Municipal Ordinance No. 4. We do not find the enactment of said ordinance to have been attended with grave abuse of discretion or any flaw which would render it invalid and for which reason it should remain enforceable until it is repealed or revoked.

On this score, We have reviewed the research findings of the court a quo which are hereunder quoted with approval:

"A careful study on all laws on cockpits as: RA 1224, PD 449 and PD 1802, this Court finds that it is not mandatory that a cockpit should not be less than 200 meters from a public building except when there is no ordinance in a given municipality. As petitioners had correctly claimed, there is no law before, during and after Martial Law which mandates that a cockpit should not be less than 200 meters from a public building. While RA 1224 mentions about 200 meters distance from public buildings, the same refers only to nightclubs, cabarets, and similar places, but when it comes to cockpit, the local government is given the authority to

determine the distance. Again this (sic) substantially reiterated in Sec. 6, PD 449; while PD 1802 is silent on the specific distance of a cockpit from a public building. The implementing rules and regulations duly promulgated by the Philippine Gamefowl Commission practically quoted and reproduced verbatim Sec. 6 of PD 449. It reiterates the provision in PD 449 that a cockpit shall be operated in accordance with existing ordinance. This is the first phase of the provision. In the absence of an existing ordinance the local executive, referring to the mayor, must see to it that no cockpit shall be allowed to operate within 200 meters from a residential or commercial area. In the Municipality of Minglanilla Ordinance No. 4 is the prevailing ordinance."^[19]

The Municipal Council of Minglanilla, relying on the Unnumbered Provincial Circular^[20] in recommending the retention of Bag-Ong Bulangan, or Gallera, as the municipal cockpit, merely cited the title of the alleged circular. However, there is no showing, nor did the council demonstrate, how that circular affected or could have negated application of the exclusionary clause in Section 1 of Republic Act No. 1224. Consequently, such exception continues to operate in favor of private respondents' cockpit.

Section 6 of Presidential Decree No. 449 empowered the municipal mayors to issue licenses for the operation of cockpits, initially subject to the approval of the Chief of Constabulary or his authorized representative and, as later amended, subject to the review and supervision of the Philippine Gamefowl Commission.^[21] For all intents and purposes, this provision of law specifically entrusts the sole authority to issue permits to the mayors. The municipal council's duty is merely to ratify the mayor's decision before the same can be actually implemented.

But the Council cannot, on its own instance or initiative, pass upon the licensability of a particular cockpit and thereafter recommend it to the mayor for approval. This reverse procedure is what petitioners would wish to be adopted, albeit erroneously, in pleading the aforementioned Resolution No. 40 which recognized petitioners' Gallera as the legal municipal cockpit. Furthermore, Resolution No. 40 was passed by the Municipal Council of Minglanilla with the concurrence only of the vice-mayor. The then mayor of Minglanilla, the late Felicisimo Cana, had no participation therein, as correctly found by the trial court.^[22] On these considerations, said ultra vires resolution has no binding effect and cannot be plausibly invoked by petitioners.

Advertence is made to the fact that the Philippine Gamefowl Commission subsequently ordered the cancellation of the registration certificate of petitioner's cockpit, but that in 1986 it granted an interlocutory order to Gallera to operate. We have, however, held that with regard to ordinary local cockpits, and where the holding of international derbies is not involved, it is the mayor who has the primary authority to issue permits, with the authorization of the Sanggunian and on the basis of guidelines issued by said commission. The commission can merely supervise compliance with said guidelines but cannot disapprove a license granted by the mayor and issue a cockpit license to another. Its aforesaid actuations, therefore, do not detract from the factual and legal conclusions as hereinbefore discussed.^[23]

The observations of the trial court correctly show that the equities of this case also decidedly incline in favor of private respondents' cause. While the contending cockpits both possess the qualifications as to distance, even from the standpoint of seniority the Coliseum enjoys the distinct advantage of having been in operation since 1955 while the Gallera was established only in 1967. Also, the former is located in the poblacion while the latter is in a barrio. These, and the other points already discussed, establish the right of private respondents' Coliseum to be considered the municipal cockpit of Minglanilla, Cebu.

With the resolution of the foregoing decisive issues, it is not necessary to pass upon the other minutiae posed by the parties, some of which are of dubious factual or probative value.

A note on a procedural aspect in this case is, however, in order. This action was initiated on a petition for declaratory relief, ostensibly for a declaration of the rights and obligations of the parties under the laws and

ordinances involved therein or invoked by them. Consequently, in each special civil action the judgment does not essentially entail an executory process since generally, other than a declaration of such rights and duties,[24] other affirmative reliefs, as these are understood in ordinary civil actions, are not sought by the proponent.

However, the Court has held that although the action is for a declaratory judgment but the allegations in the complaints are sufficient to make out a case for specific performance[25] or recovery of property[26] with claims for damages, and the defendants did not raise an issue in the trial court to challenge the remedy or form of the action availed of, the court can grant such affirmative relief as may be warranted by the evidence. This decisional rule applies to the case at bar.

WHEREFORE, the petition is DENIED and the challenged decision and resolution are AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Petition, Annex B, 3; Rollo, 35.

[2] Ibid., *ibid.*, 1; Rollo, 33.

[3] Ibid., *ibid.*, 1-2; *ibid.*, 33-34.

[4] Resolution No. 38; Rollo, 21-31.

[5] Resolution No. 39; *ibid.*, 31.

[6] Rollo, 24-25.

[7] Ibid., 26-27.

[8] Ibid., 26-27.

[9] Ibid., 31-32.

[10] Petition, Annex B, 10; Rollo, 40.

[11] Ibid., Annex H; Rollo, 56-57.

[12] Ibid., Annex C; Rollo, 42; Third Civil Cases Division, Jorge R. Coquia, J., Chairman, Mariano A. Zosa and Floreliana Castro-Bartolome, JJ., Members.

[13] Ibid., Annex G; *ibid.*, 55.

[14] Ibid., Annex E; 45.

[15] Ibid., Annex D; *ibid.*, 43.

[16] Counter-Argument to Urgent Motion for Preliminary Mandatory Injunction, Annex 5; Rollo, 139.

[17] Petition, Annex F; Rollo, 53.

[18] Ibid., Annex I; Rollo, 58.

[19] Rollo, 39. Penned by Presiding Judge Celso Avelino.

[20] Rollo, 24.

[21] Sec. 4, P.D. 1802, as amended by Sec. 1, P.D. 1802-A.

[22] Rollo, 36.

[23] Philippine Gamefowl Commission, et al. vs. Hon. Intermediate Appellate Court, et al., 146 SCRA 294 (1986); Municipality of Malolos vs. Libangang Malolos, Inc., et al. G.R. No. 78592, April 8, 1988.

[24] Sec. 1, Rule 64, Rules of Court.

[25] Santos vs. Intermediate Appellate Court, et al., 145 SCRA 592 (1986).

[26] Congressional Commercial Corporation, et al. vs. Court of Appeals, et al., 146 SCRA 90 (1986).

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