

**ROSALINA BUAN, RODOLFO TOLENTINO, TOMAS MERCADO,  
CECILIA MORALES, LIZA OCAMPO, QUIAPO CHURCH VENDORS, FOR  
THEMSELVES AND ALL OTHERS SIMILARLY SITUATED AS  
THEMSELVES, PETITIONERS...**

*G.R. No. 75349. October 13, 1986*

Ponente: NARVASA, J.

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**NARVASA, J.:**

On august 5, 1986 petitioners instituted in this court a special civil action for prohibition to the end that respondent gemiliano c. Lopez, jr., acting as mayor of the city of manila, be "perpetually prohibited from arbitrarily, whimsically and capriciously revoking or cancelling x x x their licenses or permits (as hawkers or street vendors) and threatening the physical demolition of their respective business stalls in the places specified in such licenses or permits.[1] they also sought a temporary restraining order in view of mayor lopez' actual threats of physical demolition of their respective small business establishment at 12:00 noon today." this the court granted on the same day.[2]

Petitioners claim to be five of about 130 "licensed and duly authorized vendors of x x x religious articles, medicine herbs and plants around the quiapo church, x x x manila," bringing suit "for themselves and all others similarly situated as themselves." [3] they allege that their licenses "were revoked or cancelled (by respondent mayor) for reasons unknown to them which is tantamount to deprivation of property without due process of laws," written notice of such cancellation having been served on them on or about may 30 (actually may 3), 1986; that the revocation of their licenses was beyond respondent mayor's competence, since section 171 (n) of the local government code (b.p. Blg. 337) Authorizes the same only "for violation of the law or ordinances or conditions upon which they have been granted," and no such violation had been committed by them; [4] but this notwithstanding, respondent mayor "had given (them) an ultimatum of 7:00 up to 12:00 o'clock in the afternoon" (of august 5, 1986) to vacate the premises where their respective stalls are situated or suffer physical demolition thereof." [5]

In the light of the facts disclosed by the pleadings [6] and at the hearing of the case on august 13, 1986, the petition must be given short shrift.

The action must in the first place be abated on the ground of *lis pendens*, or more correctly, *auter action pendant*; pendency of another action between the same parties for the same cause. [7]

It appears that on july 7, 1986 there was filed in the regional trial court of manila, docketed as civil case no. 86-36563, A special civil action of "prohibition with preliminary injunction" against acting manila city mayor gemiliano lopez, jr. [8] it was filed by *samahang kapatiran sa hanapbuhay ng bagong lipunan, inc.* (hereafter, simply "*samahan*") composed, according to the petition, of "some 300 individual owners and operators of separate business stalls x x x mostly at the periphery immediately beyond the fence of the quiapo church." the president of the *samahan* is rosalina buan and its press relations officer, liza ocampo. [9] rosalina buan and liza ocampo are two

of the five petitioners in the case at bar,[10] described in the petition before this court as suing "for themselves and all others similarly situated as themselves": I.e., vendors "around the quiapo church." [11] the three other petitioners also appear to be samahan members.[12]

The petition in case no. 86-36563 Is grounded on the sane facts as those in the case at bar: the members of the samahan had been legitimately engaged "in their respective business of selling sundry merchandise, more particularly religious articles, flowers and ornamental plants, and medicinal herbs"; they had been religiously paying "the corresponding license and permit fees imposed by prevailing ordinances of the city of manila," but this notwithstanding they had been given written notice dated may 3, 1986 emanating from the mayor's office, advising of the cancellation of their permits and their possible relocation to another site; and these acts "are unjust, illegal, arbitrary, oppressive and constitute grave abuse of discretion on the part of the respondent."

There thus exists between the action before this court and rtc case no. 86-36563 Identity of parties, or at least such parties as represent the same interests in both actions, as well as identity of rights asserted and relief prayed for, the relief being founded on the same facts, and the identity on the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to res adjudicata in the action under consideration: all the requisites, in fine, of auter action pendant.[13]

Indeed, the petitioners in both actions, described in their petitions as vendors of religious articles, herbs and plants, and sundry merchandise around the quiapo church or its "periphery," have incurred not only the sanction of dismissal of their case before this court in accordance with rule 16 of the rules of court, but also the punitive measure of dismissal of both their actions, that in this court and that in the regional trial court as well. Quite recently, upon substantially identical factual premises, the court en banc had occasion to condemn and penalize the act of litigants of filing the same suit in different courts, aptly described as "forum-shopping," viz:

"The acts of petitioners constitute a clear case of forum-shopping, an act of malpractice that is proscribed and condemned as trifling with the courts and abusing their processes. It is improper conduct that tends to degrade the administration of justice. The rule has been formalized in section 17 of the interim rules and guidelines issued by this court on january 11, 1983 in connection with the implementation of the judiciary reorganisation act, specifically with the grant in section 9 of b.p. Bldg. 129 Of equal original jurisdiction to the intermediate appellate court to issue writs of mandamus, prohibition, etc., and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction. Thus, the cited rule provides that no such petition may be filed in the intermediate appellate court 'if another similar petition has been filed or is still pending in the supreme court' and vice-versa. The rule orders that 'a violation of the rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned.' the rule applies with equal force where the party having filed an action in the supreme court shops for the same remedy of prohibition and a restraining order or injunction in the regional trial court x x x (or vice-versa). x x x"[14]

As already observed, there is between the action at bar and rtc case no. 86-36563, An identity as regards parties, or interests represented, rights asserted and relief sought, as well as basis thereof, to a degree sufficient to give rise to the ground for dismissal known as auter action pendant or lis pendens.[15] that same identity puts into operation the sanction of twin dismissals just mentioned. The application of this sanction will prevent any further delay in the settlement of the controversy which might ensue from attempts to seek reconsideration of or to appeal from the order of the regional trial court in civil case no. 86-36563 Promulgated on july 15, 1986, which dismissed the petition upon grounds which appear persuasive.[16]

It would seem that after the filing by rosanna buan and liza ocampo (president and press relations officer, respectively, of the quiapo church vendors' association known as the samahan) of the petition in this case, "for themselves and all others similarly situated as themselves" (I.e., the members of the samahan, who are vendors in

the area of quiapo church) they came to the belated realization that in view of the pendency of the identical action filed by them in the regional trial court (case no. 86-36563), They were vulnerable to the accusation of "forum shopping," and thus amenable to its dire consequences. This explains the filing in this court by their lawyers of a "manifestation with affidavit of withdrawal" on august 11, 1986,[17] another "manifestation and motion" on august 29, 1986, and an "urgent manifestation and motion to strike-out the name rosalina buan and liza ocampo" on september 13, 1986. In these manifestations the claim is made that the five (5) petitioners in the action before this court who are members of the samahan, "were forcibly brainwashed and guarded by x x x (atty. Reynaldo aralar) and his associates to accede to the invitation of the said counsel x x x to appear for them and file the case before the honorable court knowingly (sic) that he was furnished the status quo-order of the same case pending before the regional trial court branch 45 of manila", and/or said atty. Aralar and his associates had perpetrated "piracy" of clients and "should be condemned and suspended for committing act of 'shopping for courts'." the claim does not inspire belief. It is so out of the ordinary as to require clear and convincing evidence of its actuality, which is lacking in this case. It is also belied by the fact that rosalina buan and liza ocampo themselves were among those who verified the petition at bar before a notary public.[18] and the claim is undermined by the misrepresentation in buan's and ocampo's "joint affidavit of withdrawal" that the status quo order in rtc case no. 86-36563 Was still subsisting and the case still pending trial[19] when in truth, the case had already been dismissed and the restraining order lifted by order of july 27, 1986.

Yet another reason exists for the denial of the petition. Not one of the petitioners or the "others similarly situated as themselves" had a valid and subsisting license or permit as of the date of the filing of their petition in this court, august 5, 1986, all licenses and permits having expired prior thereto.[20] this is confirmed by the few receipts submitted by petitioners[21] which all set out expiry dates before august 5, 1986. The petitioners thus have no basis whatever to postulate a right to ply their trade in the quiapo area or elsewhere. The argument that the non-renewal by the municipal authorities of their licenses was in effect a cancellation or revocation thereof without cause is puerile.[22]

Finally, the action for prohibition has become moot and academic by the occurrence of the acts sought to be inhibited. The petitioners' permits and licenses have all expired; hence, there can be no occasion whatsoever to speak of the inhibition of any revocation or cancellation thereof. And the "physical demolition of their respective business stalls" has already been consummated.

Wherefore, the petition is denied for lack of merit, and the regional trial court is commanded to dismiss civil case no. 86-36563 And to conduct no further proceedings in connection therewith save in accordance with and in implementation of this decision. Costs against petitioners.

So ordered.

Yap (chairman), melencio-herrera, cruz, and feliciano, jj., concur.

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[1] Rollo, pp. 5-10.

[2] Rollo, pp. 15-16.

[3] Rollo, p. 6.

[4] Rollo, p. 8.

[5] Rollo, p. 7.

[6] Aside from the petition itself, respondent's comment (rollo, pp. 20-28), Manifestation with affidavit of

withdrawal filed on august 11, 1986 by atty. Lumen policarpio (rollo, pp. 65--70); Manifestation and motion, august 29, 1986; urgent manifestation, etc., september 13, 1989; compliance, august 30, 1986.

[7] Sec. 1(C), rule 16, rules of court.

[8] Rollo, pp. 33-36.

[9] Rollo, pp. 36, 68-70.

[10] Rollo, p. 5.

[11] See footnote no. 3 And related text.

[12] Rollo, pp. 65, 66, 68.

[13] Moran, comments on the rules, 1979 ed., vol. 1, Pp. 484-485 And cases therein collated; see also: salacup vs. Maddela, jr., 91 scra 275 (1979); pnb vs. Ca, 98 scra 207 (1980); punongbayan vs. Pineda, 131 scra 496 (1984); arceo vs. Oliveros, 134 scra 308 (1985); laroza vs. Guia, 134 scra 341 (1985).

[14] E. Razon, inc., et al. Vs. Philippine port authority, et al., g.r. No. 75197, Resolution, july 31, 1986; see also, peo. V. Court of appeals, 101 scra 450, 463-464.

[15] See footnote 13.

[16] Rollo, pp. 37-40.

[17] Rollo, pp. 65-70.

[18] Rollo, p. 11.

[19] Rollo, p. 69.

[20] Tsn, august 13, 1986, pp. 25-26.

[21] Rollo, pp. 81-89; Compliance dtd. August 30, 1986 and its annexes.

[22] See footnote 14 and related text.

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