

VICMAR DEVELOPMENT CORP., AND/OR VICENTE L. ANGLIONGTO, PETITIONERS, VS. THE COURT OF APPEALS, THE SECURITIES & EXCHANGE COMMISSION, ALBERTO P. ATAS, AND RUFINO T. NASSER, RESPO...

G.R. No. 81547. May 21, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari contesting the validity of the January 21, 1988 decision* of the Court of Appeals in CA-G.R. SP No. 10756 entitled "Vicmar Development Corporation and/or Vicente L. Angliongto v. The Securities and Exchange Commission, et al.", which in effect affirmed the challenged orders of the Securities and Exchange Commission** (a) dated March 18, 1986 which recalled its order of March 5, 1986 directing the Provincial Commander of Cagayan de Oro City to effect/implement the service of the writ of injunction issued on September 19, 1983 and (b) dated May 13, 1986 denying petitioner's motion for reconsideration.

The antecedent facts as summarized by the Solicitor General are as follows:

"1. Sometime in August, 1982, a conflict arose between petitioner Vicente Angliongto and private respondent Rufino T. Nasser on the matter of exclusive control and management of petitioner corporation.

"2. On July 7, 1983, petitioner Corporation by petitioner Angliongto, filed a verified petition in the public respondent SEC against private respondent Nasser, docketed as SEC Case No. 2490, alleging, that private respondent Nasser was a director, Executive Vice-President and General Manager of petitioner Corporation from 1974 to August 26, 1982 but during the annual meeting of stockholders of petitioner corporation held on August 26, 1982, private respondent Nasser was not re-elected as member of the Board of Directors or to his previous management positions. In view of the result of the annual stockholders' meeting, private respondent Nasser was then advised by the incoming president, herein petitioner Angliongto that the latter would actively manage the corporate affairs of petitioner corporation. In view thereof, private respondent Nasser was asked to turn over all corporate books and records in his possession to the duly elected officers, among others, which demand remained (un)heeded by private respondent Nasser as the latter continued to hold office as Executive Vice-President and General Manager of petitioner Corporation, performing acts and entering into transactions inimical to the interests of the petitioner Corporation and its stockholders. Said petition also prayed for the issuance of a restraining order and thereafter, a permanent injunction to enjoin private respondent Nasser from representing himself as an officer of petitioner Corporation, among other things, and for him, to surrender all corporate books and records to the duly elected officers of said Corporation.

"3. On September 19, 1983, after due hearing in the aforesaid Case No. 2490 respondent SEC, through respondent Hearing Officer. Alberto Atas, issued a Writ of Preliminary Injunction, enjoining private respondent Nasser from acting as, and/or representing himself to be, the Executive Vice-President and/or General Manager and/or officer in any capacity of petitioner Corporation.

"4. Thereafter, private respondent Nasser filed a petition for certiorari, prohibition and mandamus with prayer

for preliminary injunction and restraining order with then Intermediate Appellate Court (now Court of Appeals), docketed as AC-G.R. SP No. 01518 praying for the nullification of the Writ of Preliminary Injunction earlier issued by public respondent SEC as well as an earlier order temporarily restraining private respondent Nasser from acting or representing himself to be the Executive Vice-President and/or General Manager and/or as officer in any capacity of petitioner Corporation.

"5. On April 30, 1985, the then Intermediate Appellate Court rendered its decision in AC-G.R. SP No. 01518, denying/dismissing the petition of private respondent Nasser.

"6. Meanwhile, sometime in November, 1983, and during the pendency of AC-G.R. SP No. 01518, in the Intermediate Appellate Court, petitioner Angliongto and private respondent Nasser entered into an Agreement dated November 10, 1983. Pertinent portion of said Agreement reads:

‘Simultaneously with the delivery by ANGLIONGTO to NASSER of all corporate books in his possession including the stock and transfer book, stock certificate books, and all stock certificates of Vicmar duly indorsed in blank, NASSER shall likewise deliver to ANGLIONGTO the sum of FOUR MILLION TWO HUNDRED THOUSAND (P4,200,000.00) PESOS as part of the consideration for this settlement. Implementation of this stipulation shall be immediately made and completed not later than the close of office hours on November 10, 1983 x x x.’

"7. On February 10, 1986, and after the decision in AC-G.R. SP. No. 01518 became final and executory, petitioner Corporation filed with the SEC an Ex-Parte Motion for Implementation of the Writ of Preliminary Injunction issued on September 19, 1983.

"8. On March 5, 1986, respondent Hearing Officer Atas granted the Ex-Parte Motion for Implementation of the Writ of Preliminary Injunction, with the directive to the Provincial Commander of Cagayan de Oro City to effect/implement the service of the order/writ of injunction dated September 19, 1983.

"9. On March 17, 1986, private respondent Nasser filed with public respondent SEC a Manifestation and Motion to the effect that petitioner Angliongto, and his associates and relatives, transferred all their shares of stock in petitioner Corporation and turned over all their shares of stock to private respondent Nasser pursuant to and in accordance with the Agreement dated November 10, 1983, executed between petitioners and private respondent Nasser.

"10. On March 18, 1986, acting on th(e) aforesaid Manifestation and Motion of private respondent Nasser, respondent SEC thru Hearing Officer Atas issued an Order, recalling the Order of March 5, 1986, which directed the Provincial Commander of Cagayan de Oro City to effect/implement the service of the Writ of Injunction issued by the SEC on September 19, 1983.

"11. Petitioner Corporation filed a Motion for Reconsideration dated March 26, 1986 which was denied by respondent Hearing Officer Atas in an Order dated May 13, 1986.

"12. Thereafter, petitioner Corporation presented its evidence in support of its Opposition to the Manifestation and Motion dated March 17, 1986, of private respondent Nasser, and on September 16, 1986, formally offered its exhibits.

"13. The formal offer of exhibits of petitioner Corporation was admitted by respondent Hearing Officer Atas in an Order dated October 9, 1986.

"14. On December 3, 1986, Vicmar Development (petitioners) Corporation and Angliongto filed with the then Intermediate Appellate Court (now Court of Appeals) a Petition for Certiorari, Prohibition and Mandamus with Prayer for Preliminary Injunction and Temporary Restraining Order against respondents SEC and Hearing Officer Atas and private respondent Nasser, docketed as IAC-G.R. No. 10756. The petition was directed against and questioned the orders of respondents SEC and Atas dated March 18, 1986 and May 13, 1986.

"15. On January 21, 1988, the Court of Appeals promulgated its decision in IAC-G.R. SP No. 10756 case, the dispositive portion of which reads:

"WHEREFORE, the petition is hereby DISMISSED. The temporary restraining order issued on December 9, 1986 is hereby dissolved. Costs against petitioner.

"SO ORDERED."

(Emphasis supplied, Memorandum for the public respondent, pp. 344-349, Rollo)

Hence, this petition.

The petition was given due course and the parties were required to submit simultaneous memoranda in the resolution of August 21, 1989 (Ibid, p. 342). Public respondents submitted their memorandum on September 22, 1989 (Ibid., p. 344) while private respondent's memorandum was filed on October 6, 1989 (Ibid., p. 362). Memorandum for petitioners was filed on October 9, 1989 (Ibid., p. 386).

The main issue in this case is whether or not the Securities and Exchange Commission has abused its discretion in recalling its Order to enforce a writ of preliminary injunction.

The dispute between petitioners Vicmar Development Corporation and Vicente Angliongto on the one hand and private respondent Rufino Nasser on the other, for the exclusive control and management of petitioner Corporation, triggered off the filing of SEC Case No. 2490, an intracorporate controversy over which the Securities and Exchange Commission has original and exclusive jurisdiction under Presidential Decree No. 902-A.

In order to effectively exercise such jurisdiction, the SEC possesses, inter alia, the power to issue preliminary or permanent injunction, whether prohibitory or mandatory in accordance with the pertinent provisions of the Rules of Court (Section 6-a, P.D. 902-A).

At times referred to as the "Strong Arm of Equity", the writ of preliminary injunction whether prohibitory or mandatory, is sought for the protection of the rights of a party before the final determination of his rights vis-a-vis others' in a pending case before the court. It will issue only upon a showing that there exists a clear and present right to be protected and that the facts upon which the writ is to be directed are violative of said right (Roxas, Inc., et al. v. Intermediate Appellate Court, G.R. No. 67195; Roxas, Inc. v. Gonzales, G.R. No. 78618; Roxas, Inc. v. Bautista, G.R. No. 78619-20, May 20, 1989).

The facts reveal that the writ of preliminary injunction issued on September 19, 1983 enjoined private respondent Nasser from acting as, and/or representing himself to be, the Executive Vice-President and/or General Manager and/or officer in any capacity of petitioner Corporation. Upon presentment of the Agreement dated November 10, 1983 showing a transfer of ownership, control and management of Vicmar Corporation by Vicente Angliongto unto Nasser, the SEC correctly recalled the order of March 5, 1986 directing the implementation of the aforesaid writ, pending hearing on the motion dated March 17, 1986. To allow execution of the writ of preliminary injunction in favor of the petitioners despite having transferred their rights of ownership, control and management over said corporation to respondent Nasser would be baseless, the contract having shown prima facie that the latter is entitled to remain as Vice-President and General Manager of petitioner Corporation.

In justifying the recall of the order of March 5, 1986, the SEC discoursed:

"Considering the allegation of the respondent as contained in the Manifestation and Motion dated March 17, 1986, to the effect that 'As early as November 10, 1983, Mr. Vicente Angliongto, Sr. who then controlled the petitioner corporation, together with his associates and relatives, transferred all of their shares of stock in

petitioner corporation by indorsing in blank and delivering the covering certificates therefor, and turned over all corporate books, to herein respondent so as to constitute the latter as the virtual owner of all the shares in petitioner corporation' all in pursuance to and in accordance with the Agreement executed by the parties on November 10, 1983, this Commission finds cogent reason to recall and rescind its order of March 5, 1986, which directed the Provincial Commander of Cagayan de Oro City to effect/implement the service of the writ of Injunction issued on September 19, 1983.

"In the meantime, the respondent's Manifestation and Motion, dated March 17, 1986, is hereby set for hearing on April 9, 1986 at 9:00 o'clock in the morning." (Rollo, pp. 129-130).

Thus, no grave abuse of discretion can be attributed to the SEC in recalling the order to enforce a writ of preliminary injunction in this wise. After all, the issuance or recall of preliminary writ of injunction is an interlocutory matter that remains at all times within the control of the court (*Alvaro v. Zapata*, 118 SCRA 728 [1982]). The grant or denial of an injunction rests upon the sound discretion of the lower tribunal, in the exercise of which the Supreme Court will not interfere except in a clear case of abuse (*Sales v. Securities and Exchange Commission*, G.R. No. 54330, January 13, 1989).

The only question involved in certiorari is jurisdiction, either the want or excess thereof. Abuse of discretion warrants the issuance of the extraordinary remedy of certiorari only when the same was so grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility, and it must be so patent and so gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction (*Pure Foods Corporation v. National Labor Relations Commission*, G.R. No. 78591, March 21, 1989), which finds no application in the case at bar.

Moreover, the determination as to who between the parties has the exclusive right of ownership, control and management of petitioner corporation under the Agreement of November 10, 1983 vests with the SEC, as the issue involves an intracorporate controversy which calls for the jurisdiction of the Securities and Exchange Commission, that is, "one which arises between the stockholder and the corporation." "There is no distinction, qualification, or any exemption whatsoever" (*Sales v. Securities and Exchange Commission*, *supra*).

Noteworthy is the fact that the petitioners only filed their petition for certiorari to annul the order of March 18, 1986 on December 3, 1986, that is, after the lapse of almost nine (9) months and after having formally offered their evidence before the SEC. Indeed, petitioners are estopped from contesting said orders. Estoppel by laches arises from negligence or omission to assert a right within a reasonable time (*Cimfranca v. Intermediate Appellate Court*, 147 SCRA 611 [1987]) and after having submitted to the jurisdiction of the tribunal (*Meram v. Edralin*, 154 SCRA 238 [1987]).

PREMISES CONSIDERED, the petition is hereby DENIED and the judgment of the Court of Appeals is hereby AFFIRMED in toto.

SO ORDERED.

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

* Penned by Justice Arturo B. Buena, concurred in by Justices Santiago M. Kapunan and Eduardo R. Bengzon

** Penned by Hearing Officer Alberto P. Atas

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