

**GREATER BALANGA DEVELOPMENT CORPORATION, PETITIONER,
VS. MUNICIPALITY OF BALANGA, BATAAN; SANGGUNIAN BAYAN
OF BALANGA, BATAAN; HON. MELANIO S. BANZON, JR.,; HON.
DOMINGO D. DIZ...**

G.R. No. 83987. December 27, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari, prohibition and mandamus under Rule 65 of the Revised Rules of Court to annul Executive Order No. 1, s-88 and Resolution No. 12, s-88 issued, respectively, by the Mayor and the Sangguniang Bayan of Balanga, Bataan.

I

This case involves a parcel of land, Lot 261-B-6-A-3 of the subdivision plan Psd 03-007623, situated in Barrio San Jose, Municipality of Balanga, Province of Bataan. The lot has an area of 8,467 square meters. It is registered under Transfer Certificate of Title No. 120152 issued on January 11, 1988 by the Register of Deeds of the Province of Bataan in the name of petitioner Greater Balanga Development Corporation. Petitioner is a domestic corporation owned and controlled by the Camacho family, which donated to the Municipality of Balanga the present site of the Balanga Public Market. The lot in dispute lies behind the Balanga Public Market.

In 1987, petitioner conducted a relocation survey of the area. It discovered that certain portions of the property had been "unlawfully usurped and invaded" by the Municipality of Balanga, which had "allowed/tolerated/abetted" the construction of shanties and market stalls while charging market fees and market entrance fees from the occupants and users of the area. A portion of the lot had also been utilized as an unloading site ("bagsakan") of transient vegetable vendors, who were charged market and entrance fees by the municipality.

On January 11, 1988, petitioner applied with the Office of the Mayor of Balanga for a business permit to engage in business in the said area. On the same day, Mayor Melanio S. Banzon, Jr. issued Mayor's Permit No. 2729, granting petitioner the privilege of a "real estate dealer/private--owned public market operator" under the trade name of Balanga Central Market. The permit was to expire on December 31, 1988. Petitioner likewise registered "Balanga Central Market" as a trade name with the Bureau of Trade Regulations and Consumer Protection.

On February 19, 1988, however, the Sangguniang Bayan of Balanga passed Resolution No. 12, s-88 annulling the Mayor's permit issued to petitioner and advising the Mayor to revoke the permit "to operate a public market."

Pursuant to said Resolution, Mayor Banzon, on March 7, 1988, issued Executive Order No. 1, s-88 revoking the permit insofar as it authorized the operation of a public market.

On July 13, 1988, petitioner filed the instant petition with a prayer for the issuance of a writ of preliminary mandatory and prohibitory injunction or restraining order aimed at the reinstatement of the Mayor's permit and

the curtailment of the municipality's collection of market fees and market entrance fees. The Court did not issue the preliminary reliefs prayed for.

Respondents asserted that as the local chief executive, the Mayor may issue, deny or revoke municipal licenses and permits. They contended that Resolution No. 12, s-88 of the Sangguniang Bayan, the basis of Executive Order No. 1, s-88, was a legitimate exercise of local legislative authority and, as such, the revocation of petitioner's permit was not tainted with any grave abuse of discretion.

Petitioner replied that since it had not violated any law or ordinance, there was no reason for respondents to revoke the Mayor's permit issued to it. On the contrary, petitioner asserted that the executive order and the resolution in question were quasi-judicial acts and not mere exercises of police power. It questioned respondents' failure to observe due process in revoking the permit and challenged the legality of the collection of the market and entrance fees by the municipality.

In their Rejoinder, respondents pointed out that petitioner had violated an existing municipal ordinance when it failed to disclose the true status of the area involved in the permit and when it did not secure separate permits for its two businesses, i.e., one as "real estate dealer" and another as "privately-owned public market operator." Respondents referred to Section 3A-06(b) of the Balanga Revenue Code which, inter alia, enjoins an applicant for a Mayor's permit from making a false statement in his application and provides for the penalties for violation of any existing ordinance regulating business establishments.

II

Mayor's Permit No. 2729 was revoked by Executive Order No. 1, s-88, which reads as follows:

"By virtue of the authority vested upon me by law as Mayor of the Municipality of Balanga, and as per Resolution No. 12, s-88 of the Sangguniang Bayan of Balanga, the Mayor's Permit in the latter portion of its purpose, i.e. 'to operate a public-market,' issued to the Greater Balanga Development Corporation, is hereby REVOKED, effective immediately.

"IN WITNESS WHEREOF, I hereunto have set my hand this 7th day of March 1988, at Balanga, Bataan.

(SGD.) MELANIO S. BANZON, JR.

Municipal Mayor"

(Rollo, p. 36)

The authority of the Mayor to revoke a permit he issued is premised on a violation by the grantee of any of the conditions for which the permit had been granted. Respondents claimed that petitioner had violated the provisions of Section 3A-06(b) of the Balanga Revenue Code when it failed to inform the Mayor that the lot in controversy was the subject of adverse claims for which a civil case was filed.

Section 3A-06 (b) of the Balanga Revenue Code reads:

x x x x x x x x

"(b) The application for a Mayor's permit shall state the name, residence and citizenship of (sic) the applicant's full description of the business, the particular place where (sic) the same shall be conducted, and such other pertinent information and date (sic) as any (sic) be required. If the applicant deliberately makes a false statement in the application form, the Municipal Mayor may revoke the permit and the applicant may be prosecuted and penalized in accordance with the pertinent provisions of penal laws.

"In case a person desires to conduct the same kind or line of business in another place within the Municipality,

in addition to or aside from the establishment specified in his permit, he shall secure a separate permit for each business and pay the corresponding fee imposed in this article. If a person desires to engage in more than one kind or line of business, he shall pay the fee imposed on each separate business, notwithstanding the fact that he may conduct or operate all distinct business (sic), trades or, occupation in one place only.

x x x x x x x x

"(h) Revocation of Permit. -- The Municipal Mayor may revoke a permit, in effect close the establishment, upon a violation of existing ordinance regulating business establishments or any provisions of this article, in addition to the fine and imprisonment that they (sic) may be imposed by the court for violation of this article" (Memorandum of the Solicitor General, pp. 16-17; Rollo, p. 322).

Respondents claim that petitioner (1) deliberately made a false statement in the application form when it failed to provide the information that their place of business is the subject of adverse claims; and (2) failed to apply for two separate permits for the two lines of business it proposed to engage in.

The application for Mayor's permit in the case at bench requires the applicant to state what type of "business, profession, occupation and/or calling privileges" is being applied for. Petitioner left this entry blank in its application form (Rollo, p. 324). It is only in the Mayor's permit itself that petitioner's lines of business appear, which in this case are two separate types, one as real estate dealer and another as public market operator.

The permit should not have been issued without the required information given in the application form itself. Revoking the permit, however, because of a false statement in the application form cannot be justified under the aforementioned provision. There must be proof of willful misrepresentation and deliberate intent to make a false statement. Good faith is always presumed, and as it happened, petitioner did not make any false statement in the pertinent entry.

Neither was petitioner's applying for two businesses in one permit a ground for revocation. The second paragraph of Section 3A-06(b) does not expressly require two permits for the conduct of two or more businesses in one place, but only that separate fees be paid for each business. The powers of municipal corporations are to be construed in strictissimi juris and any doubt or ambiguity must be construed against the municipality (City of Ozamiz v. Lumapas, 65 SCRA 33 [1975]). Granting, however, that separate permits are actually required, the application form does not contain any entry as regards the number of businesses the applicant wishes to engage in.

Respondents insinuated bad faith on the part of petitioner in failing to supply the pertinent information in the application form and for taking advantage of the fact that Mayor Banzon was then newly installed as Mayor of Balanga. The absence of the material information in the application form was nonetheless supplied in the face of the permit signed and issued by Mayor Banzon himself (Rollo, p. 17).

Under the law, the Sangguniang Bayan has the power to provide for the establishment and maintenance of public markets in the municipality and "to regulate any business subject to municipal license tax or fees and prescribe the conditions under which a municipal license may be revoked" (B.P. Blg. 337, Sec. 149 [1] [f & r]). It was this authority which respondent Sangguniang Bayan invoked when it issued Resolution No. 12, s-88.

The said Resolution stated that the land subject of this case was earmarked for the expansion of the Balanga Public Market; that this land was owned not by petitioner but by the plaintiffs in Civil Case No. 3803 entitled "Leoncia Dizon, et. al. v. Aurora B. Camacho"; that the Municipality of Balanga was not apprised of the existence of the civil case; that the decision awarding the lot to the plaintiffs and the issuance of the Mayor's permit to petitioner who was not the rightful owner had caused "anxiety, uncertainty and restiveness" among the stallholders and traders in the subject lot; and that the Sangguniang Bayan therefore resolved to annul the said Mayor's permit insofar as it concerns the operation of a public market.

As may be gleaned from said Resolution, the main reason for the revocation of the Mayor's permit was the controversy engendered by the filing of Civil Case No. 3803 before the Regional Trial Court, Balanga, Bataan involving the ownership of certain portions of Lot 261-B, the land from which Lot 261-B-6-A-3 was derived.

Lot 261-B was originally owned and registered in the name of Aurora T. Banzon Camacho, who subdivided the land into nine lots under LRC Psd-277050 and designated them as Lots 261-B-1 to 261-B-9. She donated some of the lots to the Municipality of Balanga which now comprise the Balanga Public Market, and sold others to third persons.

On January 30, 1974, five buyers of certain portions of Lot 261-B filed Civil Case No. 3803 against Camacho for partition and delivery of titles. Camacho was declared in default and the plaintiffs forthwith presented their evidence. On December 20, 1974, the trial court rendered a decision ordering the defendant to segregate the definite portions sold to the plaintiffs and deliver to them the corresponding titles thereto. This decision was affirmed by the Court of Appeals on January 30, 1981 in CA-G.R. No. 59148-R (G.R. No. 62223, Rollo, pp. 50-58).

The defendant elevated the matter to this Court. In a Resolution dated March 21, 1983, we denied the petition for lack of merit (G.R. No. 62223, Rollo, p. 100).

The question now is whether Lot 261-B-6-A-3 is a part of the land adjudged by the trial court in Civil Case No. 3803 to the plaintiffs, or any one of them.

Lot 261-B-6-A-3 was originally registered in the name of Camacho under TCT No. T-104438. She donated the land to her daughter, Aurora Fe (Rollo, p. 329). TCT No. 104438 was then cancelled and TCT No. T-104461 issued in the donee's name, who in turn, transferred the land to herein petitioner. TCT No. 104461 of Aurora Fe was cancelled and TCT No. 120152 was issued in petitioner's name on January 11, 1988. On the same day, the Mayor's permit to operate the lot as a public market was also granted.

It is the position of respondents that the series of transfers of the subject lot reveals a scheme to avoid the application of the decision in Civil Case No. 3803.

There is no question that Lot 261-B-6-A-3 is a portion of Lot 261-B-6, and the claims of the plaintiffs in the civil case were on Lots 261-B-6 and 261-B-7 (Rollo, p. 327). As to whether plaintiffs' claims embraced specifically Lot 261-B-6-A-3 could not be determined from the face of the decision in the civil case. There is no showing that Lot 261-B-6-A-3 was awarded by the court to one of the plaintiffs therein. There is no proof either that the judgment in said case had already been executed and the titles delivered to the plaintiffs.

The question of ownership over Lot 261-B had already been settled with finality by the Supreme Court in 1983 in G.R. No. 62223. Entry of judgment was, likewise, made in the same year. When the Mayor's permit was revoked on February 19, 1988, five years had already elapsed since the case was decided. Petitioner was able to survey the land and have the survey approved on March 21, 1984 (Rollo, pp. 15-16), and on January 11, 1988, petitioner obtained in its name TCT No. 120152 "without any memorandum of encumbrance or encumbrances pertaining to any decision rendered in any civil case" (Rollo, p. 199). Clearly, for all intents and purposes, petitioner appeared to be the true owner of Lot 261-B-6-A-3 when respondents revoked its permit to engage in business on its own land.

Assuming *arguendo* that Lot 261-B-6-A-3 was actually one of those awarded to the plaintiffs in Civil Case No. 3803 and the Transfer Certificate of Title of petitioner is spurious, this still does not justify the revocation of the Mayor's permit.

A close scrutiny of the records reveals that the Sangguniang Bayan did not establish or maintain any public market on the subject lot. The resolution merely mentioned the plan to acquire the lot for expansion of the public market adjacent thereto. Until expropriation proceedings are instituted in court, the landowner cannot be deprived of its right over the land (*Province of Rizal v. San Diego*, 105 Phil. 33 [1959]; *Republic v. Baylosis*, 96 Phil. 461 [1955]). Of course, the Sangguniang Bayan has the duty in the exercise of its police powers to regulate any business subject to municipal license fees and prescribe the conditions under which a municipal license already issued may be revoked (B.P. Blg. 337, Sec. 149 [1] [r]). But the "anxiety, uncertainty, restiveness" among the stallholders and traders cannot be a valid ground for revoking the permit of petitioner. After all, the stallholders and traders were doing business on property not belonging to the Municipal government. Indeed, the claim that the executive order and resolution were measures "designed to promote peace and order and protect the general welfare of the people of Balanga" is too amorphous and convenient an excuse to justify respondents' acts (*Villacorta v. Bernardo*, 143 SCRA 480 [1986]).

Moreover, we find that the manner by which the Mayor revoked the permit transgressed petitioner's right to due process (*Gordon v. Veridiano II*, 167 SCRA 51 [1988]). The alleged violation of Section 3A-06(b) of the Balanga Revenue Code was not stated in the order of revocation, and neither was petitioner informed of this specific violation until the Rejoinder was filed in the instant case. In fact, with all the more reason should due process have been observed in view of the questioned Resolution of the Sangguniang Bayan.

The knowledge of the pendency of Civil Case No. 3803 could not ipso facto nullify any claim petitioner had on the lot. This necessitated first and foremost a determination of the exact parameters of the lot and a finding that petitioner is not the true owner thereof. The finding that Civil Case No. 3803 was already settled by the Supreme Court should have apprised respondents of the possibility that the decision therein may have already been executed.

Indeed, the cases of *Austin Hardware Co., Inc. v. Court of Appeals*, 69 SCRA 564 (1976) and *Enriquez v. Bidin*, 47 SCRA 183 (1972) are not in point. In these cases, the revocation of the Mayor's permit was upheld by this Court because the grounds for revocation were admitted and not disputed.

If only for the violation of due process which is manifest from Executive Order No. 1, s-88 and Resolution No. 12, s-88, the Mayor's arbitrary action can be annulled.

In view of the undisputed fact that the respondent Municipality is not the owner of Lot 261-B-6-A-3, then there is no legal basis for it to impose and collect market fees and market entrance fees. Only the owner has the right to do so.

Be that as it may, the Mayor's permit issued on January 11, 1988 cannot now be reinstated despite the nullity of its revocation. The permit expired on December 31, 1988.

WHEREFORE, (1) the petition for certiorari and prohibition is GRANTED and Executive Order No. 1, s-88 and Resolution No. 12, s-88 issued, respectively, by respondents Mayor and Sangguniang Bayan of Balanga, Bataan are NULLIFIED for having been issued in grave abuse of discretion; and (2) the petition for mandamus is DISMISSED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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