

NORBERTO ASUNCION ET AL., PETITIONERS AND APPELLANTS, VS. MANUEL DE YRIARTE, RESPONDENT AND APPELLEE.

G.R. No. 9321. September 24, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action to obtain a writ of mandamus to compel the chief of the division of archives of the Executive Bureau to file certain articles of incorporation.

The chief of the division of archives, the respondent refused to file the articles of incorporation, hereinafter referred to, upon the ground that the object of the corporation, as stated in the articles, was not lawful and that, in pursuance of section 6 of Act No. 1459, they were not registerable.

The proposed incorporators began an action in the Court of First Instance of the city of Manila to compel the chief of the division of archives to receive and register said articles of incorporation and to do any and all acts necessary for the complete incorporation of the persons named in the articles. The court below found in favor of the defendant and refused to order the registration of the articles mentioned, maintaining and holding that the defendant, under the Corporation Law, had authority to determine both the sufficiency of the form of the articles and the legality of the object of the proposed corporation. This appeal is taken from that judgment.

The first question that arises is whether or not the chief of the division of archives has authority, under the Corporation Law, on being presented with articles of incorporation for registration, to decide not only as to the sufficiency of the of the articles, but also as to the lawfulness of the purposes of the proposed corporation.

It is strongly urged on the part of the appellants that the duties appellants that the duties of the defendant are purely ministerial and that he has no authority to pass upon the lawfulness, of the object for which the incorporators propose to organize. No authorities are cited to support this proposition and we are of the opinion that it is not sound.

Section 6 of the Corporation Law reads in part as follows:

"Five or more persons, not exceeding fifteen, a majority of whom are residents of the Philippine Islands, may form a private corporation for any lawful purpose by filing with the division of archives, patents, copyrights, and trademarks of the Executive Bureau articles of incorporation duly executed and acknowledged before a notary public, * * *"

Simply because the duties of an official happen to be ministerial, it does not necessarily follow that he may not, in the administration of his office, determine questions of law. We are of the opinion that it is the duty of the when articles of incorporation are presented for registration, to determine whether the objects of the corporation expressed in the articles are lawful. We do not believe that, simply because articles of incorporation presented for registration are perfect in form, the division of archives must accept and register them and issue the corresponding certificate of incorporation no matter what the purpose of the corporation may be as expressed in the articles. We

do not believe it was intended that the division of archives should issue a certificate of incorporation to, and thereby put the seal of approval of the Government upon, a corporation which was organized for base or immoral purposes. That such corporation might later, if it sought to carry out such purposes, be dissolved, or its officials imprisoned or itself heavily fined furnishes no reason why it should have been created in the first instance. It seems to us to be not only the right but the duty of the division of archives to determine the lawfulness of the objects and purposes of the corporation before it issues a certificate of incorporation.

It having been determined that the division of archives, through its officials, has authority to determine not only the sufficiency as to form of the articles of incorporation offered for registration, but also the lawfulness of the purposes of the corporation as stated in those articles, the next inquiry leads us to the determination of the question whether or not the chief of the division of archives, who is the representative thereof and clothed by it with authority to deal with articles of incorporation offered for registration, is subject to mandamus in the performance of his duties.

We are of the opinion that he may be mandamus if he act in violation of law or if he refuses, unduly, to comply with the law. While we have held that defendant has power to pass upon the lawfulness of the purposes of the proposed corporation and that he may, in the fulfillment of his duties, determine the question of law whether or not those purposes are lawful and embraced within that class concerning which the law permits corporations to be formed, this does not necessarily mean, as we have already intimated, that his duties are not ministerial. On the contrary, there is no incompatibility in holding, as we do hold, that his duties are ministerial and that he has no authority to exercise discretion in receiving and registering articles of incorporation. He may exercise judgment—that is, the judicial function—in the determination of the question of law referred to, but he may not use discretion. The question whether or not the objects of a proposed corporation are lawful is one that can be decided one way only. If he err in the determination of that question and refuse to file articles which should be filed under the law, that decision is subject to review and correction and, upon proper showing, he will be ordered to file the articles. This is the same kind of determination which a court makes when it decides a case upon the merits. When, a case is presented to a court upon the merits, the court can decide only one way and be right. As a matter of law, there is only one course to pursued. In a case where the court or other official has discretion in the resolution of a question, then, within certain limitations, he may decide the question either way and still be right. Discretion, it may be said generally, is a faculty conferred upon a court or other official by which he may decide a question either way and still be right. The power conferred upon the division of archives with respect to the registration of articles of incorporation is not of that character. It is of the same character as the determination of a lawsuit by a court upon the merits. It can be decided only one way correctly.

If, therefore, the defendant erred in determining the question presented when the articles were offered for registration, then that error will be corrected by this court in this action and he will be compelled to register the articles as offered. If, however, he did not commit an error, but decided that question correctly, then, of course, his action will be affirmed to the extent that we will deny the relief prayed for.

The next question leads us to the determination of whether or not the purposes of the corporation as stated in the articles of incorporation are lawful within the meaning of the Corporation Law.

The purpose of the incorporation as stated in the articles is: "That the object of the corporation is (a) to organize and regulate the management, disposition, administration and control which the barrio of Pulo or San Miguel or its inhabitants or residents have over the common property of said residents or inhabitants or property belonging to the whole barrio as such; and (b) to use the natural products of the said property for institutions, foundations, and charitable works of common utility and advantage to the barrio or its inhabitants."

The municipality of Pasig as recognized by law contains within its limits several barrios or small settlements, like Pulo or San Miguel, which have no local government of their own but are governed by the municipality of Pasig through its municipal president and council. The president and members of the municipal council are elected by a general vote of the municipality, the qualified electors of all the barrios having the right to participate.

The municipality of Pasig is a municipal corporation organized by law. It has the control of all property of the municipality. The various barrios of the municipality have no right to own or hold property, they not being recognized as legal entities by any law. The residents of the barrios participate in the advantages which accrue to the municipality from public property and receive all of the benefits incident to residence in a municipality organized by law. If there is any public property situated in the barrio of Pulo or San Miguel not belonging to the general government or the province, it belongs to the municipality of Pasig and the sole authority to manage and administer the same resides in that municipality. Until the present laws upon the subject are changed no other entity can be the owner of such property or control or administer it.

The object of the proposed corporation, as appears from the articles offered for registration, is to make of the barrio of Pulo or San Miguel a corporation which will become the owner of and have the right to control and administer any property belonging to the municipality of Pasig found within the limits of that barrio. This clearly cannot be permitted. Otherwise municipalities as now established by law could be deprived of the property which they now own and administer. Each barrio of the municipality would become, under the scheme proposed, a separate corporation, would take over the ownership, administration, and control of that portion of the municipal territory within its limits. This would disrupt, in a sense, the municipalities of the Islands by dividing them into a series of smaller municipalities entirely independent of the original municipality.

What the law does not permit cannot be obtained by indirection. The object of the proposed corporation is clearly repugnant to the provisions of the Municipal Code and the governments of municipalities as they have been organized thereunder. (Act.No. 82, Philippine Commission.)

The judgment appealed from is affirmed, with costs against appellants.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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