

ONE HEART SPORTING CLUB, INC., ANGELES B. CUENCA, THE PROVINCIAL COMMANDER OF ZAMBOANGA DEL NORTE, AND THE CITIES OF DIPOLOG AND DAPITAN, PETITIONERS, VS. THE COURT OF APPEALS A...

G.R. Nos. 53790-53972. October 23, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

These two (2) cases involve the decision of the Court of Appeals dated March 26, 1980, the dispositive portion of which reads as follows:

"WHEREFORE, the decision of the lower court of Dec. 8, 1978 is hereby SET ASIDE and respondent PC Command is hereby ordered to allow petitioner DIPOLOG COLISEUM to resume the operation of its cockpit. In-view of the time element involved, this Decision shall become effective immediately (just like an execution pending appeal) and DIPOLOG COLISEUM can transfer its cockpit to an appropriate location prior to June 11, 1980.

"Without pronouncement as to costs.

"SO ORDERED."

The name of "Judge Simplicio M. Apalisok in his capacity as Judge of Court of First Instance of Zamboanga del Norte, Branch I" has been dropped since he need not be impleaded as a petitioner, even as a formal party.[1]

The facts of these cases are as follows:

On May 9, 1974, Presidential Decree No. 449, otherwise known as the "Cockfighting Law of the Philippines" was promulgated by the President of the Philippines, requiring among others that cockpits "shall be constructed and operated within the appropriate areas as prescribed in the zoning law or ordinance and in the absence of such law or ordinance, no cockpits shall be constructed within or near existing residential or commercial areas, hospitals, school buildings, churches or other public buildings." P.D. 449 gave owners, lessees or operators of cockpits then in existence which do not conform to the requirement three (3) years from the date of the effectivity of said decree to comply therewith.

At the time of the promulgation of the said Presidential Decree, private respondent Dipolog Coliseum, Inc. was a duly registered corporation operating a cockpit in Miputac, Dipolog City, which was located within the prohibited area. When the 3-year period expired, P.D. 1140 was promulgated extending "for another year the period within which owners, lessees and operators of cockpits shall conform to the provisions of Cockpit Law of 1974, with respect to cockpit sites and their construction" to expire on May 9, 1978.

On May 10, 1978, petitioner One Heart Sporting Club, Inc. (hereinafter referred to as Sporting Club) a corporation still in the process of organization, through its manager Angeles B. Cuenca, applied for a permit to

construct and operate a new cockpit at an appropriate site in Sta. Filomena, Dipolog City. A mayor's permit was granted and approved by the PC Regional Commander on September 19, 1978.[2] The Sporting Club was incorporated with the Securities and Exchange Commission on September 19, 1978 and the sports complex built by the Sporting Club was inaugurated on September 24, 1978 and subsequently commenced its operation.

On September 29, 1978 the Bulletin Today reported that the President of the Philippines had issued P.D. 1535 on June 11, 1978 extending for another two (2) years from the date of the effectivity of the decree, or until June 11, 1980, within which existing cockpits could relocate within permissible areas.

On the same date, September 29, 1978, private respondent officially and formally requested the City Mayor of Dipolog City to allow it to resume cockpit operations in view of the extension granted by P.D. 1535- The City Mayor granted the request but the PC Provincial Command denied private respondent's application for a business permit for the reason that there was already an existing authorized cockpit in Dipolog City at the time, which is the Sporting Club, and the City can operate only one (1) cockpit at a time pursuant to Sec. 5(b) of P.D. 1535.[3]

Due to this denial, private respondent instituted Civil Case No. 3067 before the Court of First Instance of Zamboanga del Norte for declaratory relief, prohibition, mandamus, annulment and, damages with preliminary prohibitory injunction. Petitioners filed their answer and after several more pleadings and documentary evidences which the parties submitted, the lower court in its order dated December 8, 1978 dismissed the complaint and granted damages in favor of the Sporting Club.

On December 16, 1978 private respondent filed a petition for certiorari, prohibition, mandamus with preliminary injunction before the Court of Appeals. After a joint answer of petitioners and the respective memoranda of the parties have been filed, the Court of Appeals, as already adverted to, on March 26, 1980, promulgated its decision allowing private respondent Dipolog Coliseum, Inc. to resume the operation of its cockpit and to transfer its cockpit to an appropriate location prior to June 11, 1980. The Court of Appeals said that:

"The question involved in this case resulted from tardy knowledge of the promulgation of PD 1535. As a result thereof, the SPORTING CLUB continued with the building of its cockpit, which was inaugurated on September 24, 1978. It would thus appear it would be inequitable to close the same as the cockpit was established in good faith.

"On the other hand, it is a basic principle that 'ignorantia legis non excusat', and the principle is expressly provided in Article 3 of the Civil Code- Considering that DIPOLOG COLISEUM has the right to continue the operation of its cockpit up to June 11, 1980, such legal right cannot be defeated by the existence of the SPORTING CLUB although established in good faith in ignorance of PD 1535. Technically, SPORTING CLUB should have stopped its project upon the promulgation of PD 1535 on June 11, 1978.

"PD 1535 repealed, superseded, modified, or amended 'all laws, decrees, orders, letters of instruction, rules and regulations or parts thereof that are inconsistent with the provisions of (the) decree' (Sec. 2). The comprehensiveness of that provision should include the permit granted to SPORTING CLUB, which is of lesser category than laws, decrees, orders, etc."

The Sporting Club sought to reconsider the decision of the Court of Appeals but before the latter could rule on the motion for reconsideration, the Sporting Club filed before this Court on May 9, 1980, a petition for certiorari and prohibition with preliminary injunction and restraining order which was docketed as G.R. No. 53790.

On May 23, 1980 We issued a temporary restraining order enjoining Dipolog Coliseum, Inc. from operating a cockpit in Dipolog City and respondent Court of Appeals from executing its decision dated March 26, 1980. In the meanwhile, the Court of Appeals, on May 12, 1980, denied herein petitioners' motion for reconsideration hence, on July 31, 1980 petitioners filed a petition for review on certiorari docketed as G.R. No. 53972. In the

resolution of September 12, 1980, the petitions were given due course and G.R. Nos. 53790 and 53972 were consolidated.

In G.R. No. 53790, petitioners, in seeking to set aside the questioned decision of the Court of Appeals rely on the following grounds:

"FIRST GROUND—THE SUIT IN THE COURT OF APPEALS IS NOT IN AID OF ITS APPELLATE

JURISDICTION.

"SECOND GROUND—

PRIVATE RESPONDENT CANNOT AVAIL OF THE EXTENSION GIVEN UNDER P.D. 1535.

"THIRD. GROUND—

FAIRNESS, EQUITY AND PRACTICAL CONSIDERATION."

In G.R. No. 53972, petitioners allege that in filing the petition for review, they cannot be considered to have abandoned their special civil action for the reason that without the latter, the ordinary appeal would be inadequate since respondents are poised to immediately execute the decision of the Court of Appeals. G.R. No. 53972 is therefore a mere supplement to said special civil action, to raise ordinary errors of law in the appealed decision, i.e., the Court of Appeals:

"erred in not finding that private respondent had failed to exhaust administrative remedies; and 'failed to include a necessary party—the Regional Philippine Constabulary Commander—in the suit!"

The main issue involved in these cases is whether or not private respondent is entitled to the extension granted by P.D. 1535. The pertinent provision of P.D. 1535,-dated June 11, 1978 states:

"Section 1. Owners, lessees or operators of cockpits which are now in existence and have not conformed with the zoning requirements prescribed by law or ordinance are given two (2) more years from the date of effectivity of this Decree to comply therewith."

Petitioners allege that said decree did not extend the period which had lapsed on May 9, 1978 but rather gave a new period starting June 11, 1978 up to June 11, 1980 to "owners, lessees or operators of cockpits which are now in existence and have not conformed with the zoning requirements prescribed by law or ordinance" to comply with P.D. 1535. The operation and effect of the decree is simply to give two (2) years more to those cockpits which were still in existence as of June 11, 1978. Petitioners state that private respondent phased out not only by law but in actual fact, its operation as a cockpit as of May 8, 1978 and therefore it was not in existence as of June 11, 1978 and is not entitled to the two-year extension.

Contrary to the above assertion, P.D. 1535 clearly intended to grant an extension to cockpits which are still located within the prohibited area to relocate the same in an appropriate site. P.D. 1535 would be a dead law if not applied to private respondent and others similarly situated, because legally, there would be no longer any cockpits existing in the country who failed to relocate its site on May 9, 1978 or if cockpits were still in existence within the prohibited area on said date, they would be operating illegally. The better view is to hold that private respondent's cockpit was still legally in existence when P.D. 1535 took effect. To hold otherwise would lead to a situation where there would be no cockpits that could avail of the extension granted by P.D. 1535.

The late release of P.D. 1535 is the cause of all the confusion. It was published in Bulletin Today only on

September 29, 1978 and in the Official Gazette on January 15, 1979. Undoubtedly, P.D. 1535 is intended to cover cockpits which have been granted an extension by a previous law, P.D. 1140.

Petitioners also allege that respondent court has no jurisdiction to entertain the suit of special civil action for certiorari, mandamus and prohibition in this case because the litigation involves purely questions of law, namely, the interpretation of Presidential Decree Nos. 449, 1140 and 1535, and consequently, respondent court cannot be possibly acting in aid of its appellate jurisdiction.

This argument has been literally raised before the respondent court and the latter ruled that questions of fact are involved herein considering that the court a quo in dismissing the case, awarded damages in favor of herein petitioners. We agree with respondent court when it says:

"The grant of damages against petitioner (Dipolog Coliseum, Inc.) in the assailed Order of December 8, 1978 of respondent Judge should have some basis in evidence (Francisco vs. GSIS, 7 SCRA 577). In granting such damages, Respondent Judge may have done so in the thought that certain facts indubitable in nature were brought to his attention, which could support his grant of damages. The amounts of the damages which had been assessed, are, in a way, conclusions or questions of fact and cannot be classified as questions of law which would not give this Court appellate jurisdiction if an appeal had, or could have, been taken."

Furthermore, it appears that after the parties had submitted their respective memoranda before the Court of Appeals, counsel for petitioners filed a motion dated April 24, 1979 before the respondent court praying that the entire records be elevated to it from the court a quo to enable the former to have a clearer and better understanding of the facts and issues involved. On May 16, 1979, respondent court issued a resolution ordering the court a quo to elevate the records after which the case will be deemed submitted for decision. After the records were transmitted to the Court of Appeals, the case was submitted for decision on June 26, 1979. When the case was decided against petitioners, they filed a motion for reconsideration before the respondent court alleging, and as alleged in these instant petitions, that said court has no jurisdiction over the case.

Most of all, the records of these cases clearly demonstrate, as pointed out by private respondent, that after the parties have submitted their memoranda, it was petitioners themselves who urged the respondent court to order the court a quo to elevate the entire records of the cases. And in their joint answer before the respondent court, they never questioned the authority of said court to take cognizance of the cases. It was only after the Court of Appeals had decided against them that herein petitioners would want this Court to declare that respondent court has acted without authority.

We have already ruled that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court. We frown upon the "undesirable practice" of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse.⁴ Furthermore, a party who files his memorandum and submits his case to the Court of Appeals for decision, without questioning the latter's jurisdiction until decision is rendered therein, should be considered as having voluntarily waived so much of his claim as would exceed the jurisdiction of said Appellate Court. The reason is that a contrary rule would encourage the undesirable practice of the parties submitting their cases for decision to the Court of Appeals in expectation of favorable judgment, but with intent of attacking its jurisdiction should the decision be unfavorable.^[5]

Lastly, petitioners contend that private respondent failed to exhaust administrative remedy before coming to the courts. Accordingly, when the PC Provincial Commander denied private respondent's application to operate its cockpit, it should have appealed to the PC Regional Commander or to the Chief of PC.

The principle requiring the previous exhaustion of administrative remedies is not applicable where question in

dispute is purely a legal one.[6] In the present case, the specific question submitted for resolution before the court a quo is whether or not P.D. 1535 intended to grant Dipolog Coliseum, Inc. an extension in the operation of its cockpit. The question being purely legal, there was no need for private respondent to exhaust administrative remedies and its action in seeking judicial redress is therefore justified.

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals is hereby affirmed, and Dipolog Coliseum, Inc. is given six (6) months from notice within which to transfer its cockpit to an appropriate location, without prejudice to the proper authorities' resolving the question of which of the two parties herein shall continue with the operation of their cockpits or whether both may continue with the same in view of the exceptional circumstances involved. The temporary restraining order issued by this Court on May 23, 1980 is hereby lifted. No costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero and Melencio-Herrera, JJ., concur.

[*] Mr. Justice de Castro was designated to sit with the First Division under Special Order No. 225.

[1] Sec. 11, Rule 3, Rules of Court.

[2] P.D. 1535, Sec. b. Licensing of Cockpits—City and municipal mayors are authorized to issue licenses for the operation and maintenance of cockpits subject to the approval of the Chief of Constabulary or his authorized representatives, ...

[3] Sec. 5, (b) Establishment of Cockpits—Only one cockpit shall be allowed in each city or municipality, except that in cities or municipalities with population of over one hundred thousand, two cockpits may be established, maintained and operated.

[4] *Tijam vs. Sibonghanoy*, 23 SCRA 29.

[5] *Pindangan Agricultural Company, Inc. vs. Dans*, 6 SCRA 14.

[6] *Dauan vs. Secretary of Agriculture and Natural Resources*, 19 SCRA 223; *Mitra vs. Subido*, 21 SCRA 127; *Gutierrez vs. Court of Appeals*, 26 SCRA 33; *Provincial Board of Zamboanga del Norte vs. De Guzman*, 21 SCRA 957; *Escalante vs. Subido*, 30 SCRA 398.

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