

[G. R. No. 16692. May 24, 1922]

FORTUNATO LIANGKO, PLAINTIFF AND APPELLANT, VS. THE MUNICIPALITY OF TABACO, ALBAY, THE MUNICIPAL COUNCIL OF TABACO, AND THE PROVINCIAL BOARD OF ALBAY, DEFENDANTS AND APPELLANTS.

D E C I S I O N

ROMUALDEZ, J.:

On May 30, 1919, the municipal council of Tabaco, of the Province of Albay, approved ordinance No. 1 fixing the marine zone for fishing purposes of that municipality and resolved to grant exclusive fishing privileges in that zone for periods of four years and a half beginning with July 1, 1919, such concessions to be granted at public auction at the price of not less than three thousand pesos (P3,000) payable quarterly and in advance.

This ordinance was approved by the provincial board of that province on June 17, 1919, by resolution No. 331; and on the 20th of that same month a public auction was held and the herein plaintiff, Fortunato Liangko, was declared the highest bidder and the concession was duly awarded to him on the 23d of that same month and year.

The plaintiff paid the corresponding fee for the privilege for the first quarter and commenced the use and enjoyment of the concession. He continued as a concessionaire and paid the fee pertaining to the second quarter, that is, from October to December, 1919.

On the night of November 19, of the same year, by means of a public crier, the municipality of Tabaco published within the municipal market the fact that the adjudication of the fishing privilege had been annulled, warning the fishermen not to deliver to the concessionaire the fish caught within the fishing zone, for which reason the fishermen from that time refused to deliver to the plaintiff the one-tenth part of their catch.

Such action of said municipal council was in accordance with resolution No. 138 which was approved on the said 19th of November, 1919, in a special session annulling ordinance No.

1 aforesaid. This resolution was adopted in harmony with resolution No. 584 of the provincial board disapproving the said ordinance No. 1 entirely, for the reason that it was in excess of the powers conferred upon municipal councils and therefore was null and void.

On November 24 of the same year, the plaintiff filed a complaint against the municipality of Tabaco, its municipal council and the provincial board of Albay praying that he be declared to have the right to use and enjoy the fishing privilege in question under the concession granted to him; that resolutions No. 584 of the provincial board of Albay and Nos. 138 and 139 of the municipal council of Tabaco be declared null and illegal; that the said municipality be sentenced to pay the plaintiff the amount of P9.70 by way of damages beginning with November 20, 1919; that a preliminary injunction be issued against the defendants enjoining them from preventing the herein plaintiff from enjoying the privilege in question; that the defendants be ordered to inform the fishermen above referred to to resume the delivery of one-tenth of their catch to the herein plaintiff; and that the defendants pay the costs.

The provincial board filed a general denial and as a special defense alleged that the foreshore lands of Tabaco had not been divided into fishing zones; that the concession had been obtained illegally, maliciously, and fraudulently, and that the legal requisites had not been complied with. The municipality and the municipal council of Tabaco in defense alleged that ordinance No. 1 had not been approved by the provincial board and the division into zones alleged by the provincial board had not been made.

Plaintiff alleged in his replication that the defendants were in estoppel and could not therefore be permitted to plead or prove the facts contained in their special defenses.

On December 20, 1919, upon the filing by the plaintiff of a bond in the amount of P500, the court issued the preliminary injunction prayed for in the complaint.

Two days before, that is on the 18th of that same month, the trial of the case had taken place and the court had rendered a decision in conformity with all that was prayed for in the complaint except as regards the damages claimed and exempting the plaintiff from paying the fees due up to that time and ordering the defendant municipality to refund to the plaintiff the proportional fee from November 20, 1919, until the final execution of the judgment.

Defendants have appealed from this judgment and the plaintiff also appealed insofar as no damages were allowed to him by the court below.

The essential point in this case is whether the resolutions Nos. 584 and 138, respectively, of the provincial board and of the municipal council annulling the former resolution of the defendant council by which the fishing privilege was adjudicated to the herein plaintiff, are valid or not.

Such adjudication has no legal validity because it was a fishing privilege granted for a period of more than one year and the resolution or action of the council in so adjudicating it required the approval of the provincial board in order to give it validity.

The lease of fisheries must be made in accordance with section 2319 of the Administrative Code.

Section 2319 provides that when the lease, as the one now before us, is for a longer period than one year, it must be submitted to the provincial board for approval. And section 2320, second paragraph, of the same Code which completes the provisions of the former section, provides that *"The decision of a municipal council rejecting any bid or awarding any such privilege shall be subject to final revisal by the provincial board."*

In the present case, the provincial board in the exercise of such powers revised the lease and finally disapproved it. This action of the provincial board was in accordance with law and it must be given all its effects.

We affirm the judgment appealed from insofar as it denies the plaintiff his right to claim damages. We reverse it in other respects and hold that the action of the defendants in annulling the letting of the concession in question is valid and the preliminary injunction issued in this case is hereby dissolved, without special pronouncement as to costs. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, and Ostrand, JJ., concur.

