2 Phil. 217

[G.R. No. 1055. May 13, 1903]

JOSE ACUNA, PLAINTIFF AND APPELLEE, VS. MUNICIPALITY OR THE CITY OF ILOILO, DEFENDANT AND APPELLANT.

D E C I S I O N

COOPER, J.:

On the 16th of March, 1901, the appellee, Jose Acuna, made a contract with Fermin del Rosario, the then municipal attorney of the city of Iloilo, as representative of the municipality, by which Seiior Acuiia undertook from the 18th day of March until the 31st day of December, 1901, the performance of the service of cleaning and watering the streets comprehended within a certain zone in the city of Iloilo, for which he was to receive the sum of 450 pesos monthly, to be paid at the end of each month.

About four months after the celebration of the contract the provincial governor of Iloilo, by letter written to the president of the municipality, ordered the municipal council to rescind all contracts then existing between that municipality and persons contracting with it.

In compliance with this direction the municipal council, on the 29th day of June, 1901, declared as rescinded the contract above referred to.

Senor Acuna instituted this action in the Court of First Instance of Iloilo to recover from the municipality indemnification for liis damages, by reason of the failure of the city to comply with the terms of the contract, alleging the amount to be 2,220 pesos.

The city of Iloilo answered the complaint, justifying its Action on the grounds that the rescission had been made in obedience to the order of the provincial governor, and further that the municipal attorney had no authority to execute the contract, and that the contract was invalid.

To this a.llegation the plaintiff replied that, if the contract was not valid at the date of its

inception, it was subsequently ratified by the municipal council.

The Court of First Instance rendered judgment in favor of Senor Acuna for the sum of 700 pesos, with interest at the rate of 6 per cent per annum from the 1st day of January, 1902, and costs of suit.

The case is appealed by the city of Iloilo by bill of exception.

A number of errors have been assigned by the appellant. It will be necessary to consider only that assignment which relates to the power of the municipal attorney to enter into the contract in behalf of the city, and the assignment which relates to the sufficiency of the proof to show a subsequent ratification of the contract by the municipality.

Under the provisions of article 53 of General Orders, No. 40, of the United States Military Governor, by and under which municipalities Avere created and governed, of dute the 29th day of March, 1900, it is provided that the governor of the province shall be *ex officio president* of all ihe municipal councils within the province and shall have general supervisory charge of the municipal affairs of tin1 several towns and cities organized under the order.

While it is true that this provision of law was in force at the date of the entering into the contract, yet, at the time the provincial governor directed the cancellation of: the contract the Municipal Act, as contained in General Orders, No. 40, had been repealed by act of the Philippine Commission, No. 82, for the organization of municipal governments in the Philippine Islands. In this act the provisions referred to as contained in article 53, General Orders, No. 40, were omitted, and at the date of the order of the provincial governor directing the cancellation of the contract he had no control over municipal affairs.

By clause 6 of article 33 of General Orders, No. 40, which was in force at the date of the making of the contract, the municipal council was empowered to provide for lighting and sprinkling the streets.

Article 20 of said order created the office of municipal attorney and denned his duties and powers. It imposed upon him the duty to attend to all suits and matters and things in which the town was legally interested; to give his advice or opinion in writing whenever required by the alcalde or municipal council; to act as censor of the minutes of the sessions of the municipal council and all other documents decreed or provided for by the municipality; to attend all sessions of the council and to do and perform all such things touching his office as

may be required by ordinance or by the council.

The contract in question purports to have been entered into by and between Seiior Acuiia on the one part, and by Beiior Fermin del Rosario, as municipal attorney, in representation of the municipality. It was signed in the name of Fermin del Kosario and was approved by Senor Jose M. Gay, *alcalde* of Iloilo.

It is very clear from the provisions of General Orders, No. 40, which has been cited, that the municipal attorney had no authority to enter into such a contract, and that the power to make such contract was vested in the municipal council alone.

By article 39 of said General Orders, No. 40, it is provided that the ayes and noes of the council shall be taken upon the passage of all ordinances and propositions to create any liability against the town, and shall be entered upon the journal, and that the concurrence of the majority of the members shall be necessary to the passage of any ordinance or of any proposition creating indebtedness.

The contract between Acuna and the municipal council was a contract creating an indebtedness under the provisions of this article, and it was necessary to the making of a valid contract that a concurrence of the majority of the members of the municipal council should be had.

It is not. claimed that any ordinance was passed by the municipal council under which the contract between Acuna and the municipal council was made. All that was shown upon this subject at the trial was a resolution passed by the city council on the 7th day of March, 1901, which reads as follows:

> "The secretary having read the opinion of the municipal attorney, Soil or Fermin del llosario, upon the communication received from the contractor for the cleaning and watering of the streets of this city, wherein he asks an increase of l50 pesos per month over the stipulated sum therefor or a rescission of the contract, the members of the council resolved that said contract be rescinded with the forfeiture of fhe bond, at the same time tendering a vote of confidence to the Heiior Alcalde and that he take such action as he may deem expedient in order that this service be not interrupted."

If the terms of the contract with Acuna had been duly agreed upon by Acuiia and the

municipal council, then the authority might have been conferred upon the *alcalde* to execute the contract in the name and in behalf of the city, but no such contract has been shown. It is clear that this resolution does not evidence any contract between Acuiia. and the municipal council; on the contrary, it shows very clearly that the contract had not at that time been entered into and that the proposition made by Acuna to the citv had been withdrawn. ‘

The subsequent ratification relied upon by the plaintiff arises solely from the fact that he had cleaned and sprinkled the streets in accordance with the contract made with the municipal attorney, and had received his compensation for such work up to the time of the cancellation and rescission of the contract. It does not appear from whom he received the compensation, or whether there was an allowance voted by the municipal council or otherwise, nor whether a majority of the city council participated at any subsequent meeting which may have occurred. A ratification, whatever its form may be, must be made by the principal or the party having originally the authority to act. If a contract is not made in accordance with the law, and is invalid by reason of the failure to comply with its provisions, its ratification by the corporation requires the observance of the same formalities necessary for the making of a valid contract in the first instance. The power to ratify necessarily presupposes the power to make the contract. In order that there should have been a valid ratification of the contract with Actifia the concurrence of a majority of the members of the municipal council was necessary, for this was the requirement of the law in order that the municipal council may have legally entered into the contract in the first instance.

If the express provisions of the statute, in which the mode and manner of contracting by the municipal council is prescribed, can be dispensed with by subsequent ratification in a less formal way than that originally required, or by officers who are not shown to have the authority to make such contract, this would result in virtually repealing the statute.

It appears from the record that Acuila has collected the full amount for the work which he performed and for which the city received the benefits. It is, therefore, unnecessary to determine whether he could have maintained an action on an implied contract, or quantum merit it, for the work and services actually performed.

For the reasons herein indicated, the judgment of the lower court must be reversed and the cause remanded, and the costs of this appeal is adjudged against the appellee, Jose Acuna.

It is so ordered and directed.

Torres and *Ladd, JJ.:*

We concur in the opinion, but think that direction should be given that the case be remanded to the court below with instructions to enter judgment for the defendant.

Arellano, C. J., and *Willard, J.,* concur in the results of this opinion.

Mapa and McDonough, JJ., did not sit in this case.

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