

THIRD DIVISION

[G.R. No. 188448, January 11, 2017]

**RODOLFO LAYGO AND WILLIE LAYGO, PETITIONERS, VS.
MUNICIPAL MAYOR OF SOLANO, NUEVA VIZCAYA, RESPONDENT.**

DECISION

JARDELEZA, J.:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court from the Decision^[2] dated December 16, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 103922 and its Resolution^[3] dated June 19, 2009.

Facts

In July 2005, Aniza Bandrang (Bandrang) sent two letter-complaints^[4] to then Municipal Mayor Santiago O. Dickson (Mayor Dickson) and the *Sangguniang Bayan* of Solano, Nueva Vizcaya, informing them of the illegal sublease she entered into with petitioners Rodolfo Laygo and Willie Laygo over Public Market Stalls No. 77-A, 77-B, 78-A, and 78-B, which petitioners leased from the Municipal Government. Bandrang claimed that petitioners told her to vacate the stalls, which they subsequently subleased to another. Bandrang expressed her willingness to testify against petitioners if need be, and appealed that she be given priority in the future to lease the stalls she vacated.^[5]

In August 2005, the *Sangguniang Bayan* endorsed the letter of Bandrang and a copy of Resolution No. 183-2004^[6] to Mayor Dickson for appropriate action. The *Sangguniang* informed Mayor Dickson that the matter falls under the jurisdiction of his office since it (*Sangguniang*) has already passed and approved Resolution No. 183-2004, which authorized Mayor Dickson to enforce the provision against subleasing of stalls in the public market.^[7]

Mayor Dickson, in response, informed the *Sangguniang* that the stalls were constructed under a Build-Operate-Transfer (BOT) scheme, which meant that the petitioners had the right to keep their stalls until the BOT agreement was satisfied. He then asked the *Sangguniang* if provisions were made to sanction lessees under the BOT scheme similar to the provision against subleasing (Item No. 9) in the contract of lease.^[8]

Thereafter, Bandrang wrote another letter to the *Sangguniang*, praying and recommending to Mayor Dickson, by way of a resolution, the cancellation of the lease contract between the Municipality and petitioners for violating the provision on subleasing. She suggested that after which, the stalls can be bid upon anew and leased to the successful bidder. She made the suggestion because Mayor Dickson did not act on her concerns even after the *Sangguniang* referred them to him.^[9]

The *Sangguniang* once again referred the letter of Bandrang, together with a copy of Resolution No. 183-2004, to Mayor Dickson for appropriate action. The *Sangguniang* opined that they no longer need to make any recommendation to Mayor Dickson because Resolution No. 183-2004 already empowered and authorized him to cancel the lease contracts pursuant to its pertinent provisions.^[10]

Mayor Dickson, however, did not act on the letter of Bandrang and on the referrals of the *Sangguniang*. Thus, Bandrang filed a Petition for *Mandamus*^[11] against him before the Regional Trial Court of Bayombong, Nueva Vizcaya (RTC). Subsequently, she amended her petition to implead petitioners.^[12] Bandrang alleged that despite already being aware of the violations of the lease contracts of petitioners with the Municipality, Mayor Dickson still refused to enforce the provisions of the lease contracts against subleasing. Bandrang concluded that Mayor Dickson's inaction can only be construed as an unlawful neglect in the performance and enforcement of his public duty as the Chief Executive of Solano, Nueva Vizcaya. Thus, she sought an order directing Mayor Dickson to immediately cancel the lease between the Municipal Government and petitioners over Public Market Stall Nos. 77-A, 77-B, 78-A, and 78-B, and to lease the vacated stalls to interested persons.^[13]

In his Answer with Special and Affirmative Defenses,^[14] Mayor Dickson claimed that under the principle of *pari delicto*, Bandrang had no right to seek remedy with the court as she was guilty herself in leasing the market stalls. Mayor Dickson insisted that he acted in accordance with law by referring the matter to the *Sangguniang* for appropriate action. He also argued that Bandrang had no cause of action against him and that she was not a real-party-in-interest. He likewise asserted that the subject of the *mandamus* was not proper as it entailed an act which was purely discretionary on his part.^[15]

In his Pre-Trial Brief,^[16] Mayor Dickson elaborated that Bandrang had no cause of action because the stalls were on a BOT scheme covered by an ordinance. During the hearing, Mayor Dickson presented a copy of the resolution of the *Sangguniang* indicating that there was a directive to all stall owners in the public market of Solano, Nueva Vizcaya to build their own stalls after a fire gutted the public market.^[17]

On the other hand, petitioners denied that they were the lessees of Stalls 77 A and B and 78 A and B. They clarified that Clarita Laygo (Clarita), their mother, was the lessee of the stalls by virtue of a BOT scheme of the Municipality. At the time they entered into a contract of lease with Bandrang, it was agreed that the contract was subject to the consent of the other heirs of Clarita. The consent, however, was never given; hence, there was no subleasing to speak of. Even on the assumption that there was, petitioners maintained that the prohibition on subleasing would not apply because the contract between the Municipality and Clarita was one under a BOT scheme. Resolution No. 183-2004 only covered stall holders who violated their lease contracts with the Municipal Government. Since their contract with the Municipal Government was not a lease contract but a BOT agreement, Resolution No. 183-2004 would neither apply to them, nor be enforced against them.^[18] Further, even granting *arguendo* that the prohibition would apply, petitioners claimed that there was no more ground for the revocation of the lease because the subleasing claimed

by Bandrang had ended and the subsequent receipt by the Municipality of payments ratified the contract with petitioners.^[19]

Meanwhile, on July 23, 2007, the RTC issued an Order directing the substitution of then incumbent mayor Hon. Philip A. Dacayo (Mayor Dacayo) as respondent in place of Mayor Dickson.^[20]

Bandrang filed a Motion for Summary Judgment^[21] on January 8, 2008 arguing that no genuine factual issues existed to necessitate trial. Bandrang reiterated the violation of petitioners against subletting in their lease contracts with the Municipal Government. She stated that the will of the *Sangguniang* to enforce the policy against subleasing was bolstered by the fact that it passed two more resolutions, Resolution No. 017-2006 and Resolution No. 135-2007, reiterating the implementation of Resolution No. 183-2004.^[22] She also alleged for the first time that after the filing of the case, another violation besides the prohibition on subletting surfaced: the nonpayment of stall rental fees. She pointed out that petitioners admitted this violation when they exhibited during a hearing the receipt of payment of rentals in arrears for over 17 months. Bandrang quoted Section 7B.06 (a) of Municipal Ordinance No. 164, Series of 1994, which stated that failure to pay the rental fee for three consecutive months shall cause automatic cancellation of the contract of lease of space or stall. She then concluded that this section left Mayor Dickson with no choice but to comply.^[23]

RTC Ruling

In its Resolution dated January 28, 2008, the RTC granted the petition. Thus:

"WHEREFORE, in view of all the foregoing, let a Writ of *Mandamus* to issue ordering the Municipal Mayor of Solano to implement Nos. 9 and 11 of the provisions of the Contract of lease of stall between the Municipal Government of Solano and private respondents Rodolfo and Willie Laygo.

The Municipal Mayor of Solano, Hon. Philip A. Dacayo, is hereby ordered as it is his duty to enforce [*Sangguniang Bayan*] Resolution Nos. 183-2004 and (135]-2007 immediately and without further delay.

SO ORDERED."^[24]

The RTC held that the contract between petitioners and the Municipal Government was a lease contract, as evidenced by a certification signed by Mayor Epifanio LD. Galima (Mayor Galima) dated September 17, 2006.^[25] The RTC brushed aside the non-presentation of the written contract of lease, noting that public policy and public interest must prevail. The RTC also held that even on the assumption that there was a BOT agreement between petitioners and the Municipal Government, petitioners had already been compensated for it, as evidenced by certifications of the Municipal Government dated August 28, 2006 and September 17, 2006.^[26]

As regards the non-payment of stall rentals, the RTC ruled that petitioners deemed to have admitted the allegation when they exhibited to the court the receipt of payment of rentals in arrears.^[27]

The RTC, thus, concluded that petitioners clearly violated the terms and conditions of the lease contract, which gave rise to the enactment of Resolution No. 183-2004. Since Mayor Dickson failed in his duty to enforce the resolution and delayed its implementation without valid reason, *mandamus* is a proper remedy.^[28]

Petitioners appealed to the CA, while then incumbent Mayor Dacayo filed a manifestation expressing his willingness to implement Resolutions No. 183-2004 and 135-2007.^[29]

Court of Appeals Ruling

On December 16, 2008, the CA rendered the now assailed Decision^[30] dismissing the appeal and sustaining the resolution of the RTC.

The CA affirmed the finding of the RTC that the contract between petitioners and the Municipal Government is a lease contract and, thus, Resolution No. 183-2004 applies to them.^[31]

On the issue of whether *mandamus* is proper, the CA also affirmed the ruling of the RTC stating that although *mandamus* is properly availed of to compel a ministerial duty, it is also available to compel action in matters involving judgment and discretion but not to direct an action in a particular way, to wit:

x x x However, **mandamus is available to compel action, when refused, in matters involving judgment and discretion**, though not to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either.

In the case at bar, the *Sangguniang Bayan* of Solano ("Sangguniang") **delegated** to Mayor Dickson and subsequently to incumbent Mayor Dacayo, **the power to cancel the lease contracts of those market stallholders who violated their contracts with the Municipality**. Inferred from this power is the power of the Mayor to determine who among the market stallholders violated their lease contracts with the Municipality. Such power connotes an exercise of discretion.

When then Mayor Dickson refused to exercise this discretion, even after the *Sangguniang* assured him that the subject resolution empowered him to have the lease contracts of the Laygos cancelled, said act of refusal became proper subject of *mandamus*, as it involved a duty expected of him to be performed. So with the incumbent Mayor, the Hon. Philip Dacayo, as was ordered by the Court below.^[32]

Willie Laygo filed a Motion for Reconsideration dated January 20, 2009, which was denied by the CA in a Resolution^[33] dated June 19, 2009.

Hence, this petition, which raised the following questions:

1. May the *Sangguniang Bayan* Resolution No. 183-2004 be applied against petitioners despite the absence of a contract of lease between them and the

Municipal Government of Solano, Nueva Vizcaya?

2. May the *Sangguniang Bayan* Resolution No. 183-2004 be enforced by anybody else, except Mayor Dickson?

Petitioners reiterate their position that Resolution No. 183-2004 cannot be enforced against them because there was no contract of lease between them and the Municipal Government and therefore, there cannot be any occasion for petitioner to violate any provision.

Moreover, petitioners argue that the resolution can only be enforced by Mayor Dickson because it specified Mayor Dickson and no other. Consequently, since Mayor Dickson is no longer in office, he cannot now enforce Resolution No. 183-2004.^[34]

The Municipal Government, through the Provincial Legal Officer of Nueva Vizcaya, stated in its Comment^[35] that the policy against subleasing was bolstered by the enactment of the *Sangguniang* of another resolution, Resolution No. 135-2007, with the same purpose, but authorizing then Mayor Dacayo to implement the No.9 and No. 11 provisions. in the contract of lease.^[36]

Our Ruling

We grant the petition.

*There is preponderant evidence
that the contract between
petitioners and the Municipal
Government is one of lease.*

The type of contract existing between petitioners and the Municipal Government is disputed. The Municipal Government asserts that it is one of lease, while petitioners insist that it is a BOT agreement. Both parties, however, failed to present the contracts which they purport to have. It is likewise uncertain whether the contract would fall under the coverage of the Statute of Frauds and would, thus, be only proven through written evidence. In spite of these, we find that the Municipal Government was able to prove its claim, through secondary evidence, that its contract with petitioners was one of lease.

We have no reason to doubt the certifications of the former mayor of Solano, Mayor Galima, and the Municipal Planning and Development Office (MPDO)^[37] which show that the contract of the Municipal Government with petitioners' mother, Clarita, was converted into a BOT agreement for a time in 1992 due to the fire that razed the public market. These certifications were presented and offered in evidence by petitioners themselves. They prove that Clarita was allowed to construct her stalls that were destroyed using her own funds, and with the payment of the lease rentals being suspended until she recovers the cost she spent on the construction. The construction was, in fact, supervised by the MPDO for a period of three months. The stalls were eventually constructed completely and awarded to Clarita. She thereafter reoccupied the stalls under a lease contract with the Municipal Government. In fact, in his Notice dated August 21, 2007, the Municipal Treasurer of Solano reminded petitioners of their delinquent stall rentals from May 2006 to July 2007.^[38] As