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[G.R. NO. 149743, February 18, 2005]

LEONARDO TAN, ROBERT UY AND LAMBERTO TE, PETITIONERS, VS. SOCORRO Y. PEREÑA, RESPONDENT.

D E C I S I O N

TINGA, J.:

The resolution of the present petition effectively settles the question of how many cockpits may be allowed to operate in a city or municipality.

There are two competing values of high order that come to fore in this case—the traditional power of the national government to enact police power measures, on one hand, and the vague principle of local autonomy now enshrined in the Constitution on the other. The facts are simple, but may be best appreciated taking into account the legal milieu which frames them.

In 1974, Presidential Decree (P.D.) No. 449, otherwise known as the Cockfighting Law of 1974, was enacted. Section 5(b) of the Decree provided for limits on the number of cockpits that may be established in cities and municipalities in the following manner:

> Section 5. Cockpits and Cockfighting in General. –
>
> (b) Establishment of Cockpits. – Only one cockpit shall be allowed in each city or municipality, except that in cities or municipalities with a population of over one hundred thousand, two cockpits may be established, maintained and operated.

With the enactment of the Local Government Code of 1991,[1] the municipal sangguniang bayan were empowered, "[a]ny law to the contrary notwithstanding," to "authorize and license the establishment, operation and maintenance of cockpits, and regulate cockfighting and commercial breeding of gamecocks."[2]

In 1993, the Sangguniang Bayan of the municipality of Daanbantayan,[3] Cebu Province, enacted Municipal Ordinance No. 6 (Ordinance No. 6), Series of 1993, which served as the Revised Omnibus Ordinance prescribing and promulgating the rules and regulations governing cockpit operations in Daanbantayan.[4] Section 5 thereof, relative to the number of cockpits allowed in the municipality, stated:

> Section 5. There shall be allowed to operate in the Municipality of Daanbantayan, Province of Cebu, not more than its equal number of cockpits based upon the population provided for in PD 449, provided however, that this specific section can be amended for purposes of

establishing additional cockpits, if the Municipal population so warrants. [5]

Shortly thereafter, the Sangguniang Bayan passed an amendatory ordinance, Municipal Ordinance No. 7 (Ordinance No. 7), Series of 1993, which amended the aforequoted Section 5 to now read as follows:

> Section 5. Establishment of Cockpit. There shall be allowed to operate in the Municipality of Daanbantayan, Province of Cebu, not more than three (3) cockpits.[6]

On 8 November 1995, petitioner Leonardo Tan (Tan) applied with the Municipal Gamefowl Commission for the issuance of a permit/license to establish and operate a cockpit in Sitio Combado, Bagay, in Daanbantayan. At the time of his application, there was already another cockpit in operation in Daanbantayan, operated by respondent Socorro Y. Pereña (Pereña), who was the duly franchised and licensed cockpit operator in the municipality since the 1970s. Pereña's franchise, per records, was valid until 2002.[7]

The Municipal Gamefowl Commission favorably recommended to the mayor of Daanbantayan, petitioner Lamberto Te (Te), that a permit be issued to Tan. On 20 January 1996, Te issued a mayor's permit allowing Tan "to establish/operate/conduct" the business of a cockpit in Combado, Bagay, Daanbantayan, Cebu for the period from 20 January 1996 to 31 December 1996.[8]

This act of the mayor served as cause for Pereña to file a Complaint for damages with a prayer for injunction against Tan, Te, and Roberto Uy, the latter allegedly an agent of Tan.[9] Pereña alleged that there was no lawful basis for the establishment of a second cockpit. She claimed that Tan conducted his cockpit fights not in Combado, but in Malingin, at a site less than five kilometers away from her own cockpit. She insisted that the unlawful operation of Tan's cockpit has caused injury to her own legitimate business, and demanded damages of at least Ten Thousand Pesos (P10,000.00) per month as actual damages, One Hundred Fifty Thousand Pesos (P150,000.00) as moral damages, and Fifty Thousand Pesos (P50,000.00) as exemplary damages. Pereña also prayed that the permit issued by Te in favor of Tan be declared as null and void, and that a permanent writ of injunction be issued against Te and Tan preventing Tan from conducting cockfights within the municipality and Te from issuing any authority for Tan to pursue such activity.[10]

The case was heard by the Regional Trial Court (RTC),[11] Branch 61 of Bogo, Cebu, which initially granted a writ of preliminary injunction.[12] During trial, herein petitioners asserted that under the Local Government Code of 1991, the sangguniang bayan of each municipality now had the power and authority to grant franchises and enact ordinances authorizing the establishment, licensing, operation and maintenance of cockpits.[13] By virtue of such authority, the Sangguniang Bayan of Daanbantayan promulgated Ordinance Nos. 6 and 7. On the other hand, Pereña claimed that the amendment authorizing the operation of not more than three (3) cockpits in Daanbantayan violated Section 5(b) of the Cockfighting Law of 1974, which allowed for only one cockpit in a municipality with a population as Daanbantayan.[14]

In a *Decision* dated 10 March 1997, the RTC dismissed the complaint. The court observed that Section 5 of Ordinance No. 6, prior to its amendment, was by specific provision, an implementation of the Cockfighting Law.[15] Yet according to the RTC, questions could be raised as to the efficacy of the subsequent amendment under Ordinance No. 7, since under the old Section 5, an amendment allowing additional cockpits could be had only "if the municipal population so warrants."[16] While the RTC seemed to doubt whether this condition had actually been fulfilled, it nonetheless declared that since the case was only for damages, "the [RTC] cannot grant more relief than that prayed for."[17] It ruled that there was no evidence, testimonial or documentary, to show that plaintiff had actually suffered damages. Neither was there evidence that Te, by issuing the permit to Tan, had acted in bad faith, since such issuance was pursuant to municipal ordinances that nonetheless remained in force.[18] Finally, the RTC noted that the assailed permit had expired on 31 December 1996, and there was no showing that it had been renewed.[19]

Pereña filed a *Motion for Reconsideration* which was denied in an Order dated 24 February 1998. In this Order, the RTC categorically stated that Ordinance Nos. 6 and 7 were "valid and legal for all intents and purpose[s]."[20] The RTC also noted that the Sangguniang Bayan had also promulgated Resolution No. 78-96, conferring on Tan a franchise to operate a cockpit for a period of ten (10) years from February 1996 to 2006.[21] This Resolution was likewise affirmed as valid by the RTC. The RTC noted that while the ordinances seemed to be in conflict with the Cockfighting Law, any doubt in interpretation should be resolved in favor of the grant of more power to the local government unit, following the principles of devolution under the Local Government Code.[22]

The *Decision* and *Order* of the RTC were assailed by Pereña on an appeal with the Court of Appeals which on 21 May 2001, rendered the *Decision* now assailed.[23] The perspective from which the Court of Appeals viewed the issue was markedly different from that adopted by the RTC. Its analysis of the Local Government Code, particularly Section 447(a)(3)(V), was that the provision vesting unto the sangguniang bayan the power to authorize and license the establishment of cockpits did not do away with the Cockfighting Law, as these two laws are not necessarily inconsistent with each other. What the provision of the Local Government Code did, according to the Court of Appeals, was to transfer to the sangguniang bayan powers that were previously conferred on the Municipal Gamefowl Commission.[24]

Given these premises, the appellate court declared as follows:

> Ordinance No. 7 should [be] held invalid for allowing, in unconditional terms, the operation of "not more than three cockpits in Daan Bantayan" (sic), clearly dispensing with the standard set forth in PD 449. However, this issue appears to have been mooted by the expiration of the Mayor's Permit granted to the defendant which has not been renewed.[25]

As to the question of damages, the Court of Appeals agreed with the findings of the RTC that Pereña was not entitled to damages. Thus, it affirmed the previous ruling denying the claim for damages. However, the Court of Appeals modified the RTC's *Decision* in that it now ordered that Tan be enjoined from operating a cockpit and conducting any cockfights within Daanbantayan.[26]

Thus, the present *Petition for Review on Certiorari*.

Petitioners present two legal questions for determination: whether the Local Government Code has rendered inoperative the Cockfighting Law; and whether the validity of a municipal ordinance may be determined in an action for damages which does not even contain a prayer to declare the ordinance invalid.[27] As the denial of the prayer for damages by the lower court is not put in issue before this Court, it shall not be passed upon on review.

The first question raised is particularly interesting, and any definitive resolution on that point would have obvious ramifications not only to Daanbantayan, but all other municipalities and cities. However, we must first determine the proper scope of judicial inquiry that we could engage in, given the nature of the initiatory complaint and the rulings rendered thereupon, the exact point raised in the second question.

Petitioners claim that the Court of Appeals, in declaring Ordinance No. 7 as invalid, embarked on an unwarranted collateral attack on the validity of a municipal ordinance.[28] Pereña's complaint, which was for damages with preliminary injunction, did not pray for the nullity of Ordinance No. 7. The Municipality of Daanbantayan as a local government unit was not made a party to the case, nor did any legal counsel on its behalf enter any appearance. Neither was the Office of the Solicitor General given any notice of the case.[29]

These concerns are not trivial.[30] Yet, we must point out that the Court of Appeals did not expressly nullify Ordinance No. 7, or any ordinance for that matter. What the appellate court did was to say that Ordinance No. 7 **"should therefore be held invalid"** for being in violation of the Cockfighting Law.[31] In the next breath though, the Court of Appeals backtracked, saying that "this issue appears to have been mooted by the expiration of the Mayor's Permit granted" to Tan.[32]

But our curiosity is aroused by the dispositive portion of the assailed *Decision*, wherein the Court of Appeals enjoined Tan "from operating a cockpit and conducting any cockfights within" Daanbantayan.[33] Absent the invalidity of Ordinance No. 7, there would be no basis for this injunction. After all, any future operation of a cockpit by Tan in Daanbantayan, assuming all other requisites are complied with, would be validly authorized should Ordinance No. 7 subsist.

So it seems, for all intents and purposes, that the Court of Appeals did deem Ordinance No. 7 a nullity. Through such resort, did the appellate court in effect allow a collateral attack on the validity of an ordinance through an action for damages, as the petitioners argue?

The initiatory *Complaint* filed by Pereña deserves close scrutiny. Immediately, it can be seen that it is not only an action for damages, but also one for injunction. An action for injunction will require judicial determination whether there exists a right *in esse* which is to be protected, and if there is an act constituting a violation of such right against which injunction is sought. At the same time, the mere fact of injury alone does not give rise to a right to recover damages. To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted

by the defendant, and damage resulting to the plaintiff therefrom. In other words, in order that the law will give redress for an act causing damage, there must be *damnum et injuria*-that act must be not only hurtful, but wrongful.[34]

Indubitably, the determination of whether injunction or damages avail in this case requires the ascertainment of whether a second cockpit may be legally allowed in Daanbantayan. If this is permissible, Pereña would not be entitled either to injunctive relief or damages.

Moreover, an examination of the specific allegations in the *Complaint* reveals that Pereña therein puts into question the legal basis for allowing Tan to operate another cockpit in Daanbantayan. She asserted that "there is no lawful basis for the establishment of a second cockpit considering the small population of [Daanbantayan]," [35] a claim which alludes to Section 5(b) of the Cockfighting Law which prohibits the establishment of a second cockpit in municipalities of less than ten thousand (10,000) in population. Pereña likewise assails the validity of the permit issued to Tan and prays for its annulment, and also seeks that Te be enjoined from issuing any special permit not only to Tan, but also to "any other person outside of a duly licensed cockpit in Daanbantayan, Cebu."[36]

It would have been preferable had Pereña expressly sought the annulment of Ordinance No. 7. Yet it is apparent from her *Complaint* that she sufficiently alleges that there is no legal basis for the establishment of a second cockpit. More importantly, the petitioners themselves raised the valid effect of Ordinance No. 7 at the heart of their defense against the complaint, as adverted to in their *Answer*.[37] The averment in the *Answer* that Ordinance No. 7 is valid can be considered as an affirmative defense, as it is the allegation of a new matter which, while hypothetically admitting the material allegations in the complaint, would nevertheless bar recovery.[38] Clearly then, the validity of Ordinance No. 7 became a justiciable matter for the RTC, and indeed Pereña squarely raised the argument during trial that said ordinance violated the Cockfighting Law.[39]

Moreover, the assailed rulings of the RTC, its *Decision* and subsequent *Order* denying Pereña's *Motion for Reconsideration*, both discuss the validity of Ordinance No. 7. In the *Decision*, the RTC evaded making a categorical ruling on the ordinance's validity because the case was "only for damages, [thus the RTC could] not grant more relief than that prayed for." This reasoning is unjustified, considering that Pereña also prayed for an injunction, as well as for the annulment of Tan's permit. The resolution of these two questions could very well hinge on the validity of Ordinance No. 7.

Still, in the *Order* denying Pereña's *Motion for Reconsideration*, the RTC felt less inhibited and promptly declared as valid not only Ordinance No. 7, but also Resolution No. 78-96 of the Sangguniang Bayan dated 23 February 1996, which conferred on Tan a franchise to operate a cockpit from 1996 to 2006.[40] In the *Order*, the RTC ruled that while Ordinance No. 7 was in apparent conflict with the Cockfighting Law, the ordinance was justified under Section 447(a)(3)(v) of the Local Government Code.

This express affirmation of the validity of Ordinance No. 7 by the RTC was the first