

EN BANC

[G.R. Nos. 138336-37, February 16, 2004]

ATTY. BIENVENIDO P. JABAN AND ATTY. BIENVENIDO DOUGLAS LUKE B. JABAN, PETITIONERS, VS. CITY OF CEBU, CITY MAYOR ALVIN GARCIA, SANGGUNIANG PANGLUNGSOD OF THE CITY OF CEBU, HON. RENATO OSMEÑA, AS PRESIDING OFFICER OF SANGGUNIANG PANG-LUNGSOD AND CITOM CHAIRMAN, ALAN GAVIOLA, AS CITOM CHIEF, CITOM TRAFFIC ENFORCER E.A. ROMEO AND CITOM TRAFFIC ENFORCER LITO GILBUENA, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

This is a petition for review on certiorari, under Rule 45 of the 1997 Rules on Civil Procedure, of the Decision^[1] of the Regional Trial Court of Cebu City, Branch 58 in Civil Case No. CEB-20629, and its April 8, 1999 Joint Order which denied the petitioners' Omnibus Motion for the reconsideration of the decision of the court.

The Antecedents

The petitioners Atty. Bienvenido P. Jaban, Sr. and Atty. Bienvenido Douglas Luke B. Jaban are practicing lawyers in Cebu City and holders of non-professional drivers' licenses. They are the respective owners of a Daewoo Sedan Car Racer Model 1995 with Plate No. GEU-992 and a Ford Telstar 5 Speed with Plate No. GOF-758.^[2]

In the afternoon of June 23, 1997, the petitioner Atty. Bienvenido P. Jaban, Sr. went to his office at F. Macaraya Building, Colon Street, Cebu City to pick up some important court records. He parked his car at Gullas Street, formerly known as Manalili Street, just near the back portion of the GAW Department Store. When he went back to his car after a few minutes, he found that a denver boat immobilizer had clamped it. There was also a notice posted on the front windshield that it would be a criminal offense to break the clamp. The car was later brought to the office of the Cebu City Traffic Operations Management (CITOM) where Atty. Jaban, Sr. obtained the release of his car, but only after being compelled to pay a fine amounting to P4,200.00.^[3]

A similar episode of clamping and immobilization was encountered by the petitioner Atty. Bienvenido Douglas Luke Jaban, Jr. on May 19, 1997. He had parked his car in a secluded area which did not have a "No Parking Sign" therein. He, too, was compelled to pay a fine amounting to P1,400.00 to obtain the release of his car from impoundment.^[4]

On July 29, 1997, the petitioners filed a Civil Complaint for Damages and to declare Cebu City Traffic Code Ordinance No. 801, as amended by Ordinance No. 1642 and

1664, as unconstitutional and contrary to law, with a plea for injunctive relief. The petitioners alleged in their complaint that Cebu City Traffic Code Ordinance No. 801, as amended by Ordinance No. 1642 and Ordinance No. 1664, is oppressive, arbitrary and discriminatory; it is not commensurate with the objective of general and public welfare and public order, and is even contrary to statutes. According to the petitioners, the clamping of vehicles was used to compel drivers to pay fines and other alleged previous fines imposed under the aforesaid ordinances without the benefit of a prior court hearing.^[5] The complaint, which was docketed as Civil Case No. CEB-20629, was subsequently consolidated with a similar complaint docketed as Civil Case No. CEB-20700, filed on August 11, 1997 by one Atty. Valentino Legaspi whose car was, to the same extent, clamped and immobilized by the traffic enforcers on an alleged traffic infraction pursuant to the aforementioned city ordinances. The trial court did not issue any temporary restraining order or writ of preliminary injunction.

On February 12, 1998, the trial court issued a Pre-Trial Order limiting the issues as follows:

- a) Whether or not Ordinance No. 1664 is valid and constitutional and, if so, whether or not plaintiffs violated the ordinance; and
- b) Whether or not the plaintiffs are entitled to damages in accordance with their complaints and the defendants in accordance with their counterclaims.^[6]

The trial court also stated that any matter to be corrected in the Pre-Trial Order shall be brought to the attention of the court within five days from receipt thereof. Thereafter, no correction would be entertained. The petitioner did not file any motion for the revision or correction of the Order. Both parties commenced adducing testimonial and documentary evidence. In their Memorandum, the petitioners submitted that Ordinance No. 801 is unconstitutional and void for the added reason that it conflicts with Section 62 of Republic Act No. 4163, the Traffic Code of the Philippines.

After trial, the trial court promulgated its Decision on January 22, 1999, in favor of the petitioners declaring Ordinance No. 1664 unconstitutional and ordering the respondents to pay damages. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring Ordinance No. 1664 unconstitutional and directing the defendant City of Cebu to pay the plaintiff Valentino L. Legaspi the sum of P110,000.00 representing the value of his car, and to all the plaintiffs, Valentino L. Legaspi, Bienvenido P. Jaban and Bienvenido Douglas Luke Bradbury Jaban, the sum of P100,000.00 each or P300,000.00 all as nominal damages and another P100,000.00 each or P300,000.00 all as temperate or moderate damages. With costs against defendant City of Cebu.^[7]

The respondents filed a motion for the reconsideration of the decision of the trial court. For their part, the petitioners filed on March 26, 1999, an Omnibus Motion praying that the trial court partially reconsider its decision on the following grounds:

1.- The DECISION of this Honorable Court only declares CITY ORDINANCE NO. 1664 as UNCONSTITUTIONAL and NOT the also (sic) CITY ORDINANCE NO. 801, the Cebu City TRAFFIC CODE as AMENDED BY CITY ORDINANCE NO. 1664 and with all other amendments, as PRAYED for in the COMPLAINT.

2.- The DECISION in the above entitled case did not issue a PERMANENT INJUNCTION prayed for in the COMPLAINT.^[8]

The petitioners prayed that the trial court also declare as void and unconstitutional City Ordinance No. 801, and for that it issue a permanent injunction restraining the enforcement of Ordinance No. 1664.^[9] The respondents opposed the motion, contending that the issue of the unconstitutionality of Ordinance No. 801 was not included in the Pre-Trial Order of the court; hence, the court was proscribed from delving into and resolving its unconstitutionality.

Acting on the foregoing motions, the trial court, on April 8, 1999, issued a Joint Order,^[10] denying both the respondents' motion for reconsideration and the petitioners' Omnibus Motion. The trial court justified the denial of the petitioners' motion on the parties' failure to agree during the pre-trial to litigate the issue of the unconstitutionality of Ordinance No. 801, the only issues to be resolved by the court being those defined in the Pre-Trial Order. Furthermore, it was inappropriate for it to issue a permanent injunction since it did not issue any writ of preliminary injunction in the first place. The respondents appealed the decision.

The respondents filed their Notice of Appeal on April 19, 1999. The trial court issued an Order on April 26, 1999 giving due course to the appeal^[11] and ordered the Branch Clerk of Court to elevate the records to the Court of Appeals (CA). The petitioners filed a motion to dismiss the appeal on the following grounds: (a) the respondents did not indicate in their notice of appeal to which court the appeal was made; and, (b) the appeal should be to the Supreme Court which has appellate jurisdiction to review decisions of the RTC involving the constitutionality of ordinances under Article VIII, Section 5(2) of the Constitution. On May 25, 1999, the Court issued an Order denying the said motion.^[12] The appeal of the respondents was docketed in the CA as CA-G.R. CV No. 63566.

The petitioners filed a motion to dismiss the respondents' appeal on the ground that their remedy from the decision of the trial court was via a petition for review to this Court under Rule 45 of the Rules of Court, as amended, considering that under Article VIII, Section 5(2)(a) of the Constitution, the Court is vested with jurisdiction to review, revise, modify or affirm a decision of the trial court on the constitutionality of an ordinance. On October 19, 1999, the CA issued a Resolution denying the motion to dismiss on the following grounds: (a) the appeal of the respondents to the CA via a writ of error was proper, considering that both questions of facts and law were raised therein; (b) the Constitution does not vest exclusive appellate jurisdiction to the Supreme Court to review, reverse or affirm decisions of the trial court involving the constitutionality of laws and ordinances;^[13] and (c) the CA has appellate jurisdiction to review a decision of the trial court on the constitutionality of an ordinance. The petitioners filed a motion for the reconsideration of the resolution but the CA issued a resolution denying the same.^[14] The petitioners filed a petition for review on certiorari with this Court for the

reversal of the said resolutions, docketed as G.R. No. 142512. This Court denied the petition with finality.

Instead of appealing the decision of the trial court to the CA, the petitioners filed their Petition for Review on Certiorari with this Court on May 11, 1999 under Rule 45 of the Rules of Court, contending that the decision of the trial court involves the constitutionality of Ordinance No. 801 and under Article VIII, Section 5(2)(a) of the Constitution, this Court is vested with appellate jurisdiction to review, reverse or affirm decisions of trial courts involving the constitutionality of ordinances.

The petitioners contend that the trial court erred in failing to delve into and resolve the issue of the constitutionality of Ordinance No. 801 and to issue a writ of permanent injunction to enjoin the respondents, pending final resolution of their appeal, from enforcing Ordinance No. 1664 which it had already declared unconstitutional. The petitioners aver that although the issue of the unconstitutionality of the said ordinance is not included in the Pre-Trial Order of the court, the parties, nonetheless, raised the said issue in their pleadings. Hence, the issue should have been resolved by the trial court. Moreover, as gleaned from the trial court's Pre-Trial Order, the petitioners asserted that Ordinance No. 801 amended Republic Act No. 4136 and was in conflict with the said law. According to the petitioners, the trial court erred in issuing its April 8, 1999 Order denying their Omnibus Motion, in refusing to amend its decision and declare Ordinance No. 801 unconstitutional and to issue a permanent writ of injunction.

The petitioners prayed that the Court not only declare Ordinance No. 801 unconstitutional and issue a writ of final injunction, but also affirm the trial court's decision declaring Ordinance No. 1664 unconstitutional, thus:

PRAYER

WHEREFORE, inview (sic) of the foregoing, it is most respectfully prayed:

(a) That upon the filing of this PETITION, a preliminary mandatory injunction be issued enjoining the respondents not to implement Cebu City Ordinance No. 1664 which was declared by the lower court void and UNCONSTITUTIONAL until final orders of this Court, and praying also that petitioners herein be exempted from he (sic) filing of a bond for the issuance of said preliminary injunction for they may not have the financial capacity to put up said bond especially the amount is so big unless it (sic) so nominal and affordable.

(b) That the Cebu City ORDINANCE NO. 801, as amended, be declared VOID and UNCONSTITUTIONAL.

(c) That the DECISION of the trial court declaring Cebu City ORDINANCE NO. 1664 to be VOID and UNCONSTITUTIONAL be AFFIRMED.

(d) That a PERMANENT INJUNCTION be issued enjoining the respondents not to enforce and implement the said Cebu City Ordinance No. 801, as amended, and the Cebu City ORDINANCE NO. 1664 declared by this Court to be VOID and UNCONSTITUTIONAL.