

SIXTEENTH DIVISION

[CA-G.R. SP NO. 125768, June 13, 2014]

ANTONIO S. ASCAÑO, JR., CONSOLACION D. DANTES, BASILISA A. OBALO, JULIETA D. TOLEDO, ERIC S. PASTRANA, JOSEPH Z. MAAC, EMILIANO E. LOMBOY, TITA F. BERNARDO, IGMEDIO L. NOGUERA, FIDEL SARMIENTO, SR., DAN T. TAUNAN, AMALIA G. SANTOS, AVELINA M. COLONIA, AND MARIVEL B. ISON, PETITIONERS, VS. HON. JUDGE JOSE S. JACINTO, JR., IN HIS CAPACITY AS THE ACTING PRESIDING JUDGE, BRANCH 46, REGIONAL TRIAL COURT, SAN JOSE, OCCIDENTAL MINDORO, THE MUNICIPALITY OF SAN JOSE, OCCIDENTAL MINDORO, AND HON. MAYOR JOSE T. VILLAROSA, MUNICIPAL MAYOR OF SAN JOSE, OCCIDENTAL MINDORO, RESPONDENTS.

DECISION

CORALES, J.:

This is a Petition for *Certiorari* and Prohibition^[1] with prayer for the issuance of temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) assailing the July 2, 2012 Order^[2] of the Regional Trial Court, Branch 46, San Jose, Occidental Mindoro (RTC) declining to extend the seventy two (72) hours TRO earlier issued in Special Civil Action No. R-1731 entitled "*Antonio Ascaño Jr., Consolacion Dantis, Basilisa Obalo, Julieta Toledo, Eric S. Pastrana, Joseph Z. Maac, Aurora M. Francisco, Emiliano E. Lumboy, Tita F. Bernardo, Igmedio L. Noguera, Avelina Colonia, and Marivel B. Ison v. The Municipality of San Jose, Occidental Mindoro, and Hon. Mayor Jose T. Villarosa*".

The Antecedents

Petitioners Antonio Ascaño, Jr., Consolacion D. Dantes,^[3] Basilisa Obalo, Julieta Toledo, Eric S. Pastrana, Joseph Z. Maac, Aurora M. Francisco, Emiliano E. Lumboy, Tita F. Bernardo, Igmedio L. Noguera, Avelina Colonia, and Marivel B. Ison are allegedly lessees of market stalls in San Jose, Occidental Mindoro Public Market (public market). On June 19, 2012, they filed a petition for prohibition with urgent application for the issuance of TRO and WPI^[4] against Mayor Jose T. Villarosa (Mayor Villarosa) and the Municipality of San Jose (Municipality) for collecting "goodwill fee", threatening to evict petitioners from their market stalls, demolishing the existing public market, and constructing a modern commercial market building.

Petitioners alleged that upon his assumption to office, Mayor Villarosa immediately informed the market lessees of his plans to construct a modern public market and that each lessee should pay a P200,000.00 "goodwill fee" per stall, including a 25% downpayment, in order to preserve their rights to the rented space. Mayor Villarosa also clarified that those vendors who pay their spaces by tickets, commonly referred to as "squatters", have no space in the proposed modern commercial building. In

November 2011, he called for a meeting inside the public market and announced that each market lessee should pay tickets, permits, and monthly dues, otherwise, they will be evicted by February 2012. With the turn of events, petitioners sought an audience with Occidental Mindoro Governor Josephine Y. Ramirez-Sato (Gov. Ramirez-Sato) to express their concerns regarding Mayor Villarosa's plans for the public market. While the meeting with Gov. Ramirez-Sato was going on, Mayor Villarosa publicly announced that all those present in the meeting will not be given any stall/space in the new market complex.

Petitioners further averred that on March 6, 2012, Mayor Villarosa caused the circulation of a notice entitled "*Pabatid / Palibot-Liham*",^[5] which was addressed to "*lahat ng mga nakapwestong may negosyo*" and "*lahat ng mga naninirahan*" at the Magsaysay Parking Area, informing them of the imminent start of the construction of the "*Bagong Pamilihang Bayan* (New Public Market)" and giving the occupants two (2) weeks to vacate the premises. On June 1, 2012, the Municipal Administrator supposedly sent to market lessees notices for the temporary relocation of their stalls in view of the upcoming construction of the San Jose Commercial Complex.^[6] Thus, some of the market lessees were prompted to pay the "goodwill fees" under protest.^[7] Subsequently, demolition started despite the objection of over 600 market lessees who signed a "*Pahayag ng Pagtutol ng Alyansa ng mga Manininda at Mangangalakal sa San Jose Public Market Laban sa Banta ng Demolisyon para sa Pagtatayo ng San Jose Commercial Complex ng Pamahalaang Bayan ng San Jose sa Pamumuno ni Mayor Jose Tapales Villarosa*" (*Pahayag*).^[8]

The petition further alleged that the collection of "goodwill fees" had already been disapproved by the *Sangguniang Panlalawigan* of Occidental Mindoro through its Resolution No. 59,^[9] series of 2012 while the intended demolition of the public market and the planned construction of the San Jose Commercial Complex in its stead is without any valid authority, done in utter bad faith and in total disregard of petitioners right to due process, and would cause serious irreparable injuries to the market vendors and the government.

To bolster their cause, petitioners submitted their sworn statements;^[10] a June 1, 2012 notice to vacate;^[11] receipts for payments of "reservation/goodwill fees";^[12] and copies of their *Pahayag*.^[13] They also presented a copy of *Sangguniang Panlalawigan* Resolution No. 59^[14] which reiterated the stand of the provincial government to disapprove Ordinance No. 764, series of 2011 of the *Sangguniang Bayan ng San Jose*, entitled "*An Ordinance Prescribing the Rate of Rental Fee and Imposition of Goodwill Fee/Option to Lease for the Occupation of Aroma Café Building and Premises, and Stalls at the Acacia Park, Aroma Beachwalk and the Proposed San Jose Commercial Complex*".

On June 27, 2012, Judge Jacinto issued a 72-hour TRO^[15] enjoining Mayor Villarosa, the Municipality, and any of their representatives, agents or persons acting on their behalf to refrain from proceeding with the collection of the disapproved "goodwill fees", the eviction of the petitioners from their leased stalls/spaces, the demolition of the present public market and the construction of the proposed commercial complex during the said period unless otherwise ordered by the court.

However, after the July 2, 2012 hearing for the application of the WPI, the RTC issued the assailed Order^[16] which reads:

After the manifestation and counter-manifestation of the petitioners' counsel and the respondents' counsel for a continuance and considering that the Temporary Restraining Order (TRO) which is for seventy two (72) hours and which (*sic*) shall last up to 5:00 o'clock this afternoon, on the basis of the initial testimony of this first witness by the petitioners, **the Court is not inclined to extend for seventeen (17) days the said TRO counted from today but the hearing on the prayer for a TRO and conversion of the same** shall continue and hereby set tomorrow, July 3, 2012 at 2:00 o'clock in the afternoon.

SO ORDERED. (Emphasis supplied)

Unfazed, petitioners filed the instant petition for *certiorari* anchored on this ground:

THE ASSAILED ORDER WAS ISSUED WITHOUT OR IN EXCESS OF JURISDICTION, IN FLAGRANT VIOLATION OF THE PETITIONERS' FUNDAMENTAL AND CONSTITUTIONAL RIGHT TO DUE PROCESS, AN OPPRESSIVE TRANSGRESSION OF A CLEAR CONSTITUTIONAL GUARANTEE, AND IN ISSUING THE SAID ORDER, THE HON. PUBLIC RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION, TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION.

Parenthetically, petitioners invoke the exceptions to the rule that a motion for reconsideration is a condition *sine qua non* to a petition for *certiorari*. They claim that the motion for reconsideration is a futile technicality that would only cause further delay in the proceedings which would prejudice their interest considering that they have been deprived of their fundamental right to due process and time is of the essence in this petition.^[17]

Petitioners argue that Judge Jacinto abused his discretion when he disregarded the un rebutted testimonies and evidence they presented to prove their entitlement to the issuance of a TRO. The testimonies of their witnesses had allegedly established their rights as lawful possessors of the market stalls which have been illegally disturbed and threatened by Mayor Villarosa without due process of law. According to them, the construction of a new commercial complex to replace the present public market, which is being gradually demolished, is neither supported by any approved resolution and budget appropriation nor compliant with the requirements of law. They further claim to suffer irreparable and serious injuries from the demolition of the existing public market and aver that such action on the part of the Municipality would only cause imminent danger of violence, chaos, tumult, mayhem or bloodshed.

They also impute bias, prejudice, and partiality against Judge Jacinto allegedly demonstrated by his following conducts: he actively and personally examined witnesses Toledo and Santos; he excluded from the courtroom the other petitioners while their witness and co-petitioner took the stand; he disregarded Toledo's claims that she had "inherited" her present market space from her mother and grandmother, had obtained all the necessary documents and paid the appropriate fees for the stall she is occupying; he gave Mayor Villarosa and the Municipality a very long 30-day period within which to file their position paper on the merits of petitioners' application for injunctive relief; and he reset the hearing to September 14, 2012.^[18]