

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-27150 November 28, 1969

LUZ JALANDONI VDA. DE SERRA, as Judicial Administratrix of the Estate of the late Rosario Jalandoni, petitioner-appellee,

vs.

HON. RAFAEL M. SALAS, as Executive Secretary, HON. VITALIANO BERNARDINO, as Director of Public Schools, and HON. FAUSTINO SYCHANGCO, as Budget Commissioner, respondents-appellants.

Ramon A. Gonzales for petitioner-appellee.

Office of the Solicitor General Antonio P. Barredo, Assistant Solicitor General Isidro C. Borromeo and Solicitor Bernardo P. Pardo for respondents-appellants.

SANCHEZ, J.:

Appeal from the November 2, 1966 judgment of the Court of First Instance of Manila — in a suit for *mandamus* and prohibition¹ — directing respondents "to release the sum of P1,000,000.00 with legal interest thereon from December 31, 1965 until fully paid and the further sum of P775,000.00 with legal interest thereon from June 30, 1966 until fully paid," the two sums representing the purchase price of two (2) parcels of land situate in Iloilo City and occupied by the Iloilo Normal School, by virtue of a deed of sale of September 24, 1965 executed by petitioner, bearing the conformity of respondent Director of Public Schools, who signed in behalf of the government, and which was approved on December 24, 1965 by then Executive Secretary Ramon A. Diaz, by authority of the President.

The factual antecedents are:

Original owner of the two lots in question, Lots 3748 and 3860, La Paz Cadastre, Iloilo City, was Francisco Jalandoni who died on November 7, 1918. Since 1919, however, the government has been in possession of said lots, devoted them to educational purposes — site of Iloilo Normal School. The government's occupation was, in the beginning, thought to be based on a donation. Pursuant to a decree of registration dated October 9, 1919, at a time when the government was already in possession, Original Certificates of Title 15139 and 15188 were issued, for Lots 3748 and 3860, respectively, in the name of the deceased Francisco Jalandoni.

It was only thirty-five (35) years following the issuance of the decree of registration, or to be precise, on October 4, 1954, that Rosario T. Jalandoni, daughter and sole heir of Francisco Jalandoni, registered a petition in the Court of First Instance of Iloilo for the issuance of a writ of

possession to her over said lots. The Provincial Governor of Iloilo opposed. After trial on the merits, the Iloilo court ruled that "Francisco Jalandoni ha dejado de ser dueño de dichos lotes," and accordingly denied the writ of possession prayed for. Rosario T. Jalandoni then went on to the Court of Appeals on appeal.² The appellate court, on October 18, 1961, reversed and granted the writ of possession.

Thereafter, respondent Director of Public Schools attempted to negotiate with petitioner to purchase said lots. For this reason, the writ of possession was not immediately enforced.

Parenthetically, there is in the record an appraisal made by the Iloilo Appraisal Committee (composed of the Assistant City Treasurer-Assessor, City Auditor and City Engineer) fixing the fair and reasonable market value of the lots at P297,272 as of January 30, 1964.

The negotiations failed. Because of this, on March 15, 1965, the Republic of the Philippines, through the Solicitor General, instituted a new case in the Iloilo Court of First Instance.³ The judicial reliefs sought were to restrain petitioner from enforcing the writ of possession; to constitute a board of appraisers to fix the fair and reasonable value of said lots at the time the same were taken for a public purpose; and to authorize the Republic to pay, and to direct the defendant therein to accept, the value of said lots as determined as of the time of the taking thereof with legal interest.

Defendant moved to dismiss. The reasons given were that the petition stated on cause of action and that the cause of action, if any, was barred by prior judgment. On August 31, 1965, the Iloilo court granted the motion over the Republic's opposition. Reconsideration having been rejected, the Republic appealed. But this appeal was thrown out by the lower court, on defendant's motion and over the Republic's opposition, upon the given ground that the petition had become moot and academic because of a negotiated contract of sale between the parties over the same properties.

The Republic sought a writ of *mandamus* from this Court to compel allowance of the appeal.⁴ On May 29, 1969, we granted the writ and ordered the lower court to give due course to the appeal. That case on appeal is now before us.⁵

The negotiated contract of sale just mentioned came about in this manner. Shortly after the Republic's case asking the Iloilo court to fix the price for the lots was filed, Congress enacted Republic Act 4642, which took effect on July 1, 1965. It carried an appropriation of P1,755,000 for the purchase and payment of the two lots here involved, P1 million to be immediately available and P775,000 to be taken from the surplus at the end of the fiscal year. On September 24, 1965, petitioner executed a "deed of conveyance" over the two lots in favor of the Republic represented by the Director of Public Schools, Vitaliano Bernardino. By the contract, petitioner conveyed the title to the lots "*with all the improvements found therein*" for P1,775,000, the sum of P1 million being payable "upon approval of this contract by the President of the Republic of the Philippines and the Court of First Instance of Iloilo," and the balance of P775,000 to be paid on or before June 30, 1966. The Director of Public Schools wrote on the

face of the deed: "Conforme" below which was his signature. On December 24, 1965, Executive Secretary Ramon A. Diaz, "[b]y authority of the President," approved the contract, after clearance thereto was given by the Undersecretary of Justice on December 23, 1965. The approval of the Court of First Instance of Iloilo was obtained on December 31, 1965.

Came the new administration of President Ferdinand E. Marcos. On January 4, 1966, respondent Executive Secretary wired the Director of Public Schools as follows: "Please stop payment of one million seven hundred seventy five thousand pesos for Rosario T. Jalandoni estate site Normal School Iloilo City previously approved Former Executive Secretary Ramon Diaz on December 24, 1965 and return papers to Office of the President for further study."

On January 12, 1966, petitioner, through her attorney-in-fact, Eduardo J. Jalandoni, sought reconsideration from respondent Executive Secretary.

Then, on July 26, 1966, no action on the motion for reconsideration having been handed down by respondent Executive Secretary, petitioner commenced the present proceedings for *mandamus* and prohibition in the Court of First Instance of Manila against respondents Executive Secretary Rafael Salas, Director of Public Schools Vitaliano Bernardino and Budget Commissioner Faustino Sychangco. Prohibition was prayed for to restrain respondents from enforcing the stop-payment directive of respondent Executive Secretary, and *mandamus* was sought to compel respondents to authorize the payment, for the release to petitioner of the sum of P1,775,000.

At the pre-trial, the parties agreed to submit the case for decision on the pleadings.

On November 2, 1966, the trial judge rendered the judgment appealed from. He there stated that "[a]lthough in the beginning the lots seemed to have been donated, later by a final decision of the Court of Appeals, no such donation was proven." The judgment thus ordered respondents to release the sums heretofore at the beginning recited.

Projected in the Republic's appeal direct to this Court is the claimed error of the trial court in ruling that respondents' obligation to pay becomes ministerial.

It is upon the contract of September 24, 1965 heretofore described that the petition for *mandamus* was made to rest. As will hereinafter be explained, such petition runs into legal difficulties.

A rule long familiar is that *mandamus* never issues in doubtful cases.⁶ It requires a showing of a complete and clear legal right in the petitioner to the performance of ministerial acts.⁷ In varying language, the principle echoed and re-echoed is that legal rights may be enforced by *mandamus* only if those rights are well-defined, clear and certain.⁸ Otherwise, the *mandamus* petition must be dismissed.⁹ This is not to say of course, that we should overlook the equally tested precept that where government contracts are completely performed on the part of the private party, and *there is nothing more to do but to effect*

payment, mandamus will avail to command the government's proper officials to sign and issue the corresponding warrants.¹⁰

The poser then is this: Has petitioner established a clear legal right in her and a clear legal duty on the part of respondents to compel release of the sums sought?

In the solution on the problem, there is no escaping from the full impact of Section 607 and Section 608, Revised Administrative Code. They provide:

SEC. 607. *Certificate showing appropriation to meet contract.* — Except in the case of a contract for personal service or for supplies to be carried in stock, no contract involving an expenditure by the National Government of three thousand pesos or more shall be entered into or authorized until the Auditor General shall have certified to the officer entering into such obligation *that funds have been duly appropriated* for such purpose and *that the amount necessary to cover the proposed contract is available for expenditure* on account thereof. When application is made to the Auditor General for the certificate herein required, a copy of the proposed contract or agreement shall be submitted to him accompanied by a statement in writing from the officer making the application showing all obligations not yet presented for audit which have been incurred against the appropriation to which the contract in question would be chargeable; and such certificate, when signed by the Auditor, shall be attached to and become a part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the Government is discharged from the contract in question.

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SEC. 608. *Void contract — Liability of officer.* — *A purported contract entered into contrary to the requirements of the next preceding section hereof shall be wholly void*, and the officer assuming to make such contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.¹¹

Worth underscoring is that the contract here involved calls for the disbursement of a big amount — P1,775,000. It easily comes within the compass of the legal provisions just quoted. Section 607 is clear. The injunction therein is imperative. No contract, it says, "shall be *entered* into or authorized until the Auditor General shall have certified to the officer entering into such obligation that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof." Section 607 exacts as an indispensable requisite that such a certificate signed by the Auditor General "be attached to and *become a part* of the proposed contract." The plain, unadulterated import of this is that a contract executed without the required certificate of the Auditor General is no contract at all. And to make the statutory requirement more emphatic,

the following Section 608 gave the firm warning that "[a] purported contract entered into contrary to the requirements of the next preceding section hereof shall be *wholly void*."

Petitioner herein concedes that this certification by the Auditor General is — by Section 607 of the Revised Administrative Code — a necessity. And yet, there is no certification attached to the contract herein, the actionable document appended to the petition below. That contract, then, is not merely incomplete, the certification being a part thereof; worse, by the very terms of Section 608, it is wholly void.

But petitioner, in an effort to compel payment under the contract, now falls back on the legal presumptions that official duty has been regularly performed and that private transactions are regular. Further, petitioner argues that this question has never been raised in the court below and can no longer be ventilated now on appeal.

We cannot indulge in the presumptions pointed out by petitioner. And this, because the certification required from the Auditor General is, by the law, *to be attached to the contract to become a part thereof*. Rather, we say that failure to so attach affects petitioner's right to sue for *mandamus*. Without the certification, petitioner is without prop to sustain her case. For, compliance of a *void contract* may not be exacted. And, the petition for *mandamus* herein suffers from a lack of cause of action.

Furthermore, we cannot read Sections 607 and 608 to give them a meaning other than that so clearly conveyed by the plain, clear terms thereof. To take a contrary view is to invite misuse of the power to contract, to give a watered-down version of the law, and to unwarrantedly invade the constitutional domain of Congress to write down what the law should be.

We, accordingly, hold that petitioner has not established a well-defined, clear and certain legal right that would entitle her to the issuance of a writ of *mandamus*. At the very least, the right to *mandamus* which she claims is nebulous. In any event, *mandamus* will not issue.

UPON THE VIEW WE TAKE OF THIS CASE, the judgment of the lower court is hereby reversed, and the petition for *mandamus* and prohibition is hereby dismissed.

Costs against petitioner Luz Jalandoni Vda. de Serra. So ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Castro, and Teehankee, JJ., concur. Makalintal, Zaldivar, Fernando and Barredo, JJ., took no part.

Footnotes

¹ Civil Case 66225, entitled "Luz Jalandoni Vda. de Serra, as Judicial Administratrix of the Estate of the late Rosario Jalandoni, Petitioner, versus Hon. Rafael M. Salas, as Executive Secretary, Hon. Vitaliano Bernardino, as Director of Public Schools, and Hon. Faustino Sychangco, as Budget Commissioner, Respondents."

² CA-G. R. No. 19920-R.

³ Civil Case 6738, entitled "Republic of the Philippines, Plaintiff, versus Rosario T. Jalandoni, represented by the Administratrix of her estate, Luz Jalandoni Vda. de Serra, Defendant.

⁴ G.R. No. L-26056, entitled "Republic of the Philippines, Petitioner, versus Hon. Judge Jesus S. Rodriguez, in his capacity as Judge of the Court of First Instance of Iloilo, 11th Judicial District, Branch VI, and Rosario T. Jalandoni, represented by the administratrix of her estate, Luz T. Jalandoni Vda. de Serra, Respondents."

⁵ G.R. No. L-30981, "Republic of the Philippines, Petitioner, versus The Hon. Presiding Judge, Court of First Instance of Iloilo, and Rosario T. Jalandoni, represented by the Administratrix of her estate, Luz Jalandoni Vda. de Serra, Respondents."

⁶ Valdez vs. Gutierrez (1968), 23 SCRA 661, 664, citing Aprueba vs. Ganzon (1966), 18 SCRA 8, 12.

⁷ Section 3, Rule 65, Rules of Court; Palileo vs. Ruiz Castro, 85 Phil. 272, 275; Aquino vs. General Manager (1968), 22 SCRA 415, 420, *citing* Zamora vs. Wright, 53 Phil. 613, Palileo vs. Ruiz Castro, *supra*, Cochoco vs. Icasiano, L-599, March 20, 1954, and Aprueba vs. Ganzon, *supra*. See also: Ramos vs. Diaz (1967), 21 SCRA 1243, 1246.

⁸ JRS Business Corporation vs. Montesa (1968), 23 SCRA 190, 197-198, *citing* cases.

⁹ *Id.*, *citing* 3 Moran Comments on the Rules of Court [1963 ed.] 172 *See also*: Viuda de Hijos de Crispulo Zamora vs. Wright, 53 Phil. 613, 621; Alzate vs. Aldana (1963), 8 SCRA 219, 223, *citing* Tabigne vs. Duvall, 16 Phil. 324.

¹⁰ Hoey vs. Baldwin, 1 Phil. 551, 558; Compañia General de Tabacos vs. French, 39 Phil. 34, 59; Quiogue vs. Romualdez, 46 Phil. 337, 341. *See also*: Villegas vs. Auditor General (1966), 18 SCRA 877, 888-890, 893, *citing* Hoey vs. Baldwin, *supra*, Ynchausti & Co. vs. Wright, 47 Phil. 866, 891, Radiowealth, Inc. vs. Agregado, 86 Phil. 429, 440, and Guevara vs. Gimenez (1962), 6 SCRA 807, 812-813.

¹¹ Emphasis supplied.