Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-9920 February 29, 1960

BARTOLOME E. SAN DIEGO, plaintiff-appellee,
vs.
THE MUNICIPALITY OF NAUJAN, PROVINCE OF ORIENTAL MINDORO, defendant-appellant.

Rodegelio M. Jalandoni and Jose P. Laurel for appellee.
Delgado, Flores, Macapagal and Dizon and the Provincial Fiscal of Oriental Mindoro for appellant.

GUTIERREZ DAVID, *J.*:

Following a public bidding conducted by the municipality of Naujan, Oriental Mindoro for the lease of its municipal waters, Resolution 46, series of 1947 was passed by the municipal council thereof awarding the concession of the Butas River and the Naujan Lake to the highest bidder Bartolome San Diego. Consequently, a contract was entered into between the said San Diego and the municipality, stipulating that for a period of five (5) years, from January 1, 1948 to December 31, 1952, the former was to be the lessee of "the exclusive privilege of erecting fish corrals along the Butas River beginning from its junction with the San Agustin River up to the Naujan Lake itself," for annual rental of P26,300.00, or a total of P131,500.00 for five years. Upon petition by the lessee, however, the said council reduced the annual rental by 20% by virtue of Resolution 59, series of 1949.

On September 5, 1950, the lessee requested for a five-year extension of the original lease period. The request was, for some time, left pending before the municipal council, but on December 1, 1951, after the lessee had reiterated his petition for extension, for the reason that the typhoon "Wanda", which took place that month, destroyed most of his fish corrals, the council adopted Resolution 222, series of 1951 extending the lease for another five (5) years beginning January 1, 1952, with the express condition that the plaintiff would waive the privilege to seek for reduction of the amount of rent which was to be based on the original contract. After the resolution had been approved by the Provincial Board of Oriental Mindoro, the lessor and the lessee, on December 23, 1951, contracted for the extension of the period of the lease. The contract was approved and confirmed on December 29, 1951 by Resolution 229, series of 1951, of the municipal council of Naujan whose term was then about to expire. Pursuant to the said contract, the lessee filed a surety bond of P52,000.00 and then reconstructed his fish corrals and stocked the Naujan Lake with bañgus fingerlings.

On January 2, 1952, the municipal council of Naujan, this time composed of a new set of members, adopted Resolution 3, series of 1952, revoking Resolution 222, series of 1951. On the same date, the new council also passed Resolution 11, revoking Resolution 229 of the old council which confirmed the extension of the lease period. The lessee requested for reconsideration and recall of Resolution 3, on the ground, among others, that it violated the contract executed between him and the municipality on December 23, 1951, and, therefore, contrary to Article III, section 1, clause 10 of the Constitution. The request, however, was not granted.

On September 4, 1952, the lessee instituted this proceedings in the court below seeking to have Resolution 3, series of 1952, of the municipal council of Naujan, declared null and void, for being unconstitutional, and praying for an order enjoining the defendant municipality from conducting a public bidding for the leasing of the Naujan fisheries to any person other than the plaintiff during the period from January 1, 1953 to December 31, 1957.

Answering the complaint, the defendant asserted the validity of Resolution 3, series of 1951, alleging by the way of special defense that the resolution authorizing the original lease contract, reducing the lease rentals and renewing the lease are null and void for not having been passed in accordance with law. Defendant further put up a counterclaim for the amount representing the illegal reduction of 20% of the original rentals, plus the sum of P2,191.60 per month beginning December 1, 1952 until the case shall have been terminated.

After trial, the lower court rendered judgment upholding the validity of the lease contract, as well at is extension, and declaring Resolution 3, series of 1952, null and void. The municipality of Naujan has taken this appeal.

The main question to be decided is whether or not Resolution No. 3, series of 1952, revoking Resolution 222, series of 1951, of the municipal council of Naujan is valid.

For clarity, we have to reiterate that Resolution 222, series of 1951, is an approval of plaintiff-appellee's petition for extension for another five years, effective January 1, 1953, of his five-year lease concession granted under Resolution 46, series of 1947. Said Resolution 222, however, was revoked by the municipal council under a new set of members in its Resolution 3, series of 1952, for the reason, among others, that the extension was illegal, it having been granted without competitive public bidding. It is this last mentioned resolution that has been declared null and void by the trial court.

The law (Sec. 2323 of the Revised Administrative Code) requires that when the exclusive privilege of fishery or the right to conduct a fish-breeding ground is granted to a private party, the same shall be let to the highest bidder in the same manner as is being done in exploiting a ferry, a market or a slaughterhouse belonging to the municipality (See Municipality of San Luis vs. Ventura, et al., 56 Phil., 329). The requirement of competitive bidding is for the purpose of inviting competition and to guard against favoritism, fraud and corruption in the letting of

fishery privileges (*See* 3 McQuillin, Municipal Corporations, 2nd Ed., p. 1170; Harles Gaslight Co. vs. New York, 33 N.Y. 309; and 2 Dillon, Municipal Corporation, p. 1219).

There is no doubt that the original lease contract in this case was awarded to the highest bidder, but the reduction of the rental and the extension of the term of the lease appear to have been granted without previous public bidding. In the case of Caltex (Phil.), Inc., et al. *vs*. Delgado Bros., Inc., et al., 96 Phil., 368, the amendment to an arrastre contract was declared null and void on the ground that it was made without previous public bidding. In so declaring, this Court has adopted the following opinion:

> . . . it is the opinion of the Court that the said agreement .. executed and entered into without previous public bidding, is null and void, and cannot adversely affect the rights of third parties . . . and of the public in general. The Court agrees with the contention of counsel for the plaintiffs that the due execution of a contract after public bidding is a limitation upon the right of the contradicting parties to alter or amend it without another public bidding, for otherwise what would a public bidding be good for if after the execution of a contract after public bidding, the contracting parties may alter or amend the contract or even cancel it, at their will? Public biddings are held for the protection of the public, and to give the public the best possible advantages by means of open competition between the bidders. He who bids or offers the best terms is awarded the contract subject of the bid, and it is obvious that such protection and best possible advantages to the public will disappear if the parties to a contract executed after public bidding may alter or amend it without another previous public bidding.

While in that case we ruled that although the "arrastre contract" therein questioned authorized the parties to alter or amend any of the terms thereof, such authority must be considered as being subject to the requirement of previous public bidding, a formality observed before the original contract was awarded, with more reason should the rule requiring such public bidding be strickly applied in the instant case where no such authority to alter or amend the terms of the contract was reserved.

Furthermore, it has been ruled that statutes requiring public bidding apply to amendments of any contract already executed in compliance with the law where such amendments alter the original contract in some vital and essential particular (*See* Morse *vs*. Boston, 148 N.E. 813253 Mass. 247.) Inasmuch as the period in a lease is a vital and essential particular to the contract, we believe that the extension of the lease period in this case, which was granted without the essential requisite of public bidding, is not in accordance with law. And it follows the Resolution 222, series of 1951, and the contract authorized thereby, extending the original five-year lease to another five years are null and void as contrary to law and public policy.

We agree with the defendant-appellant in that the question Resolution 3 is not an impairment of the obligation of contract, because the constitutional provision on impairment refers only to contract legally executed. While, apparently, Resolution 3 tended to abrogate the contract

extending the lease, legally speaking, there was no contract abrogated because, as we have said, the extension contract is void and inexistent.

The lower court, in holding that the defendant-appellant municipality has been estopped from assailing the validity of the contract into which it entered on December 23, 1951, seems to have overlooked the general rule that —

> . . . the doctrine of estoppel cannot be applied as against a municipal corporation to validate a contract which it has no power to make or which it is authorized to make only under prescribed conditions, within prescribed limitations, or in a prescribed mode or manner, although the corporation has accepted the benefits thereof and the other party has fully performed his part of the agreement, or has expended large sums in preparation for performance. A reason frequently assigned for this rule is that to apply the doctrine of estoppel against a municipality in such case would be to enable it to do indirectly what it cannot do directly. Also, where a contract is violative of public policy, the municipality executing it cannot be estopped to assert the invalidity of a contract which has ceded away, controlled, or embarrassed its legislative or government powers. (38 Am. Jur. pp. 202-204).

As pointed out above, "public biddings are held for the best protection of the public and to give the public the best possible advantages by means of open competition between the bidders." Thus, contracts requiring public bidding affect public interest, and to change them without complying with that requirement would indeed be against public policy. There is, therefore, nothing to plaintiff-appellee's contention that the parties in this case being in *pari delicto* should be left in the situation where they are found, for "although the parties are in *pari delicto*, yet the court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by a plaintiff who is in equal guilt with defendant. But here the guilt of the parties is not considered as equal to the higher right of the public, and the guilty party to whom the relief is granted is simply the instrument by which the public is served." (13 C.J. p. 497)

In view of the foregoing, we hold that the municipal council of Naujan acted aright in adopting Resolution 3, series of 1952, now in question.

In consonance with the principles enunciated above, Resolution 59, series of 1947, reducing the rentals by 20% of the original price, which was also passed without public bidding, should likewise be held void, since a reduction of the rental to be paid by the lessee is a substantial alternation in the contract, making it a distinct and different lease contract which requires the prescribed formality of public bidding.

There seems to be no necessity of passing on the validity of Resolution 46, series of 1947, for defendant-appellant, apparently, did not mean to have it annulled, as may be seen from its prayer in the court below and also in this appeal. At any rate, the validity of said resolution does

not alter our finding to the effect that Resolution 59, series of 1949, and Resolution 222, series of 1951, are illegal and void; and that Resolution 3, series of 1952, is valid.

Wherefore, the appealed judgment is reversed; plaintiff-appellee is hereby ordered to pay the defendant-appellant under the latter's counterclaim the sum of P17,971.60 representing the unapproved and ineffective reduction by 20% of the original stipulated rental, for the period from July 1, 1949 to December 1, 1952 plus the further sum of P2,191.60 per month beginning December 1, 1952, to December 31, 1957, as reasonable compensation for the illegal retention of the Naujan fisheries. Without special pronouncement as to costs.

*Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Barrera, JJ.,*concur.

R E S O L U T I O N

April 18, 1960

GUTIERREZ DAVID, *J.*:

In the above entitled case, which was decided on February 29, 1960, the plaintiff-appellee moves for reconsideration of the decision on the grounds (1) that in virtue of the dispositive portion thereof the plaintiff-appellee is ordered to pay the sum of P2,191.60 per month beginning December 1, 1952 to December 31, 1957 as reasonable compensation for the illegal retention of the Naujan fisheries, while the contract, which was declared illegal and void covered the period January 1, 1953 to December 31, 1957, so the period of payment of the sum of P2,191.60 should begin not from December 1, 1952 but from January 1, 1953; (2) that plaintiff-appellee has already paid to the defendant-appellant the said sum of P2,191.60 every month, from January 1, 1953 to December 31, 1957; (3) that by clerical error in the statement of facts of the decision (second paragraph) it appears that the extension of the lease contract commenced January 1, 1952, instead of January 1, 1953; and (4)that this Court ordered the plaintiff-appellee to pay defendant-appellant the sum of P17,971.60 representing the unapproved and ineffective reduction by 20% of the originally stipulated rental, which order, from the strictly legal point of view, cannot be assailed, yet on equitable grounds relief from such payment of the sum could be given for the reasons alleged in the motion.

The defendant-appellant, on other hand, filed an "Answer to the Motion for Reconsideration and Application for Damages". The answer states:

> According to the evidence in this case, after the approval, in June, 1949, of Resolution 59, series of 1949, reducing the rental by 20%, the plaintiff-appellee paid defendant-appellant the reduced rentals from July 1, 1949 to December 31, 1952. The original lease contract "Exhibit "A", stipulates an annual rental of P26,300.00 payable every trimester, and 20% thereof is P5,260.00 or P1,315.00 per trimester, which amount

> plaintiff consequently failed to pay from July 1, 1949 to December 31, 1952. Since the period from July 1, 1949 to December 31, 1952 consists of 14 trimesters, the plaintiff-appellee failed to pay accordingly, the amount of P18,410.00 during the said period (session of April 12, 1955, t.s.n., pp. 10-11). However, this Honorable Court, in ordering the plaintiff to pay the sum of P17,971.60 computed and based the said amount from July 1, 1949 to December 1, 1952, such that the rental corresponding to the month of December, 1952 was not included in the decision (P18,410 -- P438.34 [representing 20% monthly reduction] — P17,971.60 (which should be P17,971.66 to be exact). And since the total unpaid reduction amounting to P17,971.60 as found by the court in its decisions, does not include the rental for the month of December, 1952, this Court consequently had to order the plaintiff to pay defendant the full amount of the rental of P2,191.60 (P2,191.66 to be exact), which is one-twelfth (1/2) of P26,300.00, commencing from December 1, 1952 to December 31, 1967, otherwise, there would be a gap of one month, that is, there would be no rental for the entire month of December 1952. . . .

After a careful consideration of grounds 1, 2 and 3 of the motion and the answer thereto, which involve clerical errors, this Court deems it necessary to amend the decision as follows:

Part of the second paragraph to read:

> . . . the council adopted Resolution 222, series of 1951 extending the lease for another five (5) years beginning January 1, 1953, with the express condition that the plaintiff would waive the privilege to seek for reduction of the amount of rent which was to be based on the original contract.

The dispositive portion to read:

> Wherefore, the appealed judgment is reversed; plaintiff-appellee is hereby ordered to pay defendant-appellant under the latter's counterclaim the sum of P18,410.00 representing the unapproved and ineffective reduction by 20% of the originally stipulated rental, for the period from July 1, 1949 to *December 31, 1952*, plus the further sum of P2,191.60 per month beginning *January 1, 1953* to December 31, 1957, as reasonable compensation for the illegal retention of the Naujan fisheries, *unless the said sum of P2,191.60 per month has already been paid by the plaintiff-appellee to the defendant-appellant during the said period*.

Ground 4 of the Motion for Reconsideration is denied for lack of merit. And defendant-appellant's application for damages is likewise denied, but without prejudice to the filing of the same in the proper court.

*Paras, C.J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Barrera, JJ.,*concur.