

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-17908 **April 23, 1968**

FLORENCIO MORENO, Secretary of Public Works, JULIAN A. BUENDIA, Director of Public Works, JOSE IGNACIO, Ex-Project Engineer of Public Works, and FEDERICO ILUSTRE, Chief Architect of Public Works, and FEDERICO ILUSTRE, Chief Architect of Public Works, petitioners,

vs.

HON. HIGINIO MACADEG, Judge of the Court of First Instance of Manila, JUAN R. SUMERARIZ, JOSE CARREON, SEVERO ACOSTA, LENCIO DALIVA, CLAUDIO LEAL, SOFRONIO DALIMOGON, RUFINO LORENZO, ZACARIAS LOGARIO, JR., SERVILLANO MABALOT, JUAN YASONIA, RODOLFO LAPUZ, LORENZO CIPRIANO and DAVID ARBOLADO, respondents.

Office of the Solicitor General for petitioners.

Rodrigo Santa Ana and Alfredo Gomez for respondents.

MAKALINTAL, J.:

This is a petition for a writ of prohibition to enjoin respondent Judge of the Court of First Instance of Manila from proceeding with Civil Case No. 37552 filed by herein respondents Jose Carreon, et al., as plaintiffs, against their co-respondent Juan R. Sumerariz, the Associated Insurance Company Inc., and herein petitioners, namely, the Secretary of Public Works and Communications, the Director of Public Works, the Project Engineer and the Chief Architect of Public Works.

The complaint filed below on September 16, 1958 contains three causes of action. The first is against herein respondent Juan R. Sumerariz and alleges that he was the contractor for the construction of the National Orthopedic Hospital in Quezon City; that the plaintiffs, laborers in the construction project, had a claim for unpaid wages in the total amount of P21,502.36; that they filed a claim for collection against Sumerariz in Regional Office No. 3 of the Department of Labor which, after hearing, upheld the same in its decision; that as a result of that decision the Auditor General authorized the release of P6,144.00 as partial payment from the 10% retention fund withheld by the Bureau of Public Works "from the collection" of the contractor; that the said office released only P5,154.76, leaving an unpaid balance of P16382.36; and that the said amount has not been paid by defendant Sumerariz in spite of repeated demands by the plaintiffs.

The second cause of action is against the Associated Insurance Company, Inc., by virtue of a surety bond posted by it together with the contractor as co-principal, to guarantee payment of wages of laborers in the construction of the National Orthopedic Hospital.

The third cause of action is against herein petitioners Buendia, Ignacio and Ilustre, seeking to hold them solidarily liable with the other defendants on the ground that they opposed payment to the plaintiffs from the redemption fund withheld by the Bureau of Public Works precisely to answer for unpaid wages of laborers according to the contract with Juan Sumerariz. It is also alleged that these defendants, now petitioners, were negligent in approving the surety bond referred to in the second cause of action, which bond, according to the Associated Insurance Co., Inc. was not binding upon it because it had been signed without authority by its supposed agent, the Royal Underwriters Co., Inc..

The prayer in all the three causes of action is that all the defendants be ordered, jointly and severally, to pay plaintiffs the sum of P16,382.36, plus 15% thereof as attorney's fees, and costs.

In his answer to the complaint Sumerariz admitted some allegations and denied others, and at the same time filed a cross-claim against defendants Julian A. Buendia, Jose Ignacio and Federico Ilustre, now petitioners, alleging in substance that the contract for the construction of the National Orthopedic Hospital in Quezon City was for the price of P1,183,290.00, the work to be done within 400 calendar days, excluding Sundays and holidays; that the cross-claimant started to work on the project and was ahead of schedule when, in March 1957, the said cross-defendants, as Director, Project Engineering and Constructing Architect, respectively, of the Bureau of Public Works, started harassing him by arbitrary and unreasonable actions (specified in the cross-claim) calculated to impede him from fulfillment the contract; that on June 14, 1957, upon their recommendation the Secretary of Public Works, who was thereafter made a party in the amended cross-claim, rescinded the construction contract; that in making such recommendation the cross-defendants acted arbitrarily, with grave abuse and against the law, and in violation of the contract with the cross-claimant; that as a result he suffered actual damages in the sum of P244,132.68 and loss of expected profits in the sum of P148,329.00; and that because of the refusal of the cross-defendants to pay the plaintiffs' claim for unpaid wages out of the retention fund withheld by the Bureau of Public Works the cross-claimant also stood to suffer damages in the amount of such claim.

To the cross-claim herein petitioners filed their answer. Thereafter they moved to dismiss both the complaint and the cross-claim against them on two grounds: (1) that the said complaint and cross-claim do not state a cause of action; and (2) that the Court of First Instance of Manila is not the court of proper venue. Opposition to the motion was filed by the plaintiffs, after which the motion to dismiss was denied for lack of merit, as was also the motion for reconsideration subsequently presented.

In the instant petition for prohibition it is contended by petitioners that the complaint and cross-claim do not state facts sufficient to constitute a cause of action in view of Section 52 of

the "General Conditions" in the contract for the construction of the National Orthopedic Hospital, which reads as follows:

. . . In the event that the total expenditures of the Government on completion of the work, including all charges against the project prior to the rescission of the contract are not in excess of the contract price, then the difference between the said total expenditures of the Government and the contract price may be applied to settle claims filed under paragraph thirty seven (37), and the balance if any may be paid to the contractor, but no amount in excess of the combined value of the unpaid completed work, retained percentage and usable materials taken over by the Government at the time of the rescission of the contract shall be so paid, nor shall any claim for prospective profits on the work done after rescission of the contract, be considered or allowed.

Under the foregoing stipulation, it is argued, no action on the contract may be commenced until after the construction is completed. It is doubtful, at least, whether or not the claims of laborers for unpaid wages, directed against the retention fund in the hands of the defendant Public Works officials, are within the contemplation of the stipulation of the contract aforequoted. This stipulation refers to the final liquidation between the Government and the contractor — assuming that the contract has been rescinded — but does not prohibit payment of laborers' claims for wages in the meantime, especially where, as in this case, such claims have already been adjudicated favorably by Regional Office No. 3 of the Department of Labor. In any event, as far as the complaint against herein petitioners is concerned the grounds relied upon in their motion to dismiss is at best, not indubitable. The order denying such motion is merely interlocutory, and unless it constituted clearly a grave abuse of discretion or was issued without or in excess of jurisdiction the error, if any, should be corrected by appeal in due time, after trial and judgment on the merits, and not by the extraordinary writ of prohibition.

The same observation holds true concerning the cross-claim of respondent Sumerariz, which is for damages allegedly suffered by him as a result of the unjustified rescission of the contract by petitioners. If there is any liability at all for such damages on the part of herein petitioners, the determination thereof need not await the completion of the construction project.

The second ground for the petition has reference to the venue of the action, which according to petitioners should be in Quezon City in view of section 1 of Act No. 3688 entitled "An Act for the Protection of Persons Furnishing Materials and Labor for the Construction of Public Works," which states as follows:

. . . If no suit should be brought by the Government of the Philippines Islands within six months from the completion and final settlement of said contract, or if the Government expressly waives its right to institute action on the penal bond, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavits to the department under the direction of which said work has been prosecuted, that labor or materials for prosecution of such work have been supplied by him or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon

which he or they shall have a right of action, and shall be, and are hereby, authorized to *bring suit in the name of the Government of the Philippine Islands in the Court for First Instance in the district in which said contract was to be performed and executed, and not elsewhere*, for his or their use and benefit against said contractor and his sureties, and to prosecute the same to final judgment and execution; *Provided*, That where suit is instituted by any of such creditors on the bond of the contractor if shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later. . . . (emphasis supplied)

The action of the laborers as against herein petitioners does not fall under the foregoing provision. They seek to recover unpaid wages not in the name of the Government but in their own, and insofar as they do so against petitioning officials the action is not upon the bond but rather for the release by them of the corresponding amount from the retention fund withheld by the Bureau of Public Works. Plaintiff laborers are residents of Manila, and therefore the venue of their action is properly laid, pursuant to Section 1, Republic Act No. 1171, which provides; *1awphi1.ñët*

Any provision of law or the Rules of Court the contrary notwithstanding, civil actions on claims of employees, laborers and other helps may be commenced and tried in the court of competent jurisdiction where the defendants or any of the defendants resides or may be found, or *where the plaintiff or any of the plaintiff resides, at the election of the plaintiff*. (emphasis supplied)

With respect to petitioner's contention that the action is in effect one against the Government, which cannot be sued without its consent, it need only be repeated that the action is only to compel said petitioners to release the amount claimed from the funds already set aside and retained for the purpose. A similar contention as that advanced by petitioners, upon facts analogous to those obtaining here, was rejected by us in *Ruiz, et al., vs. Hon. SOTERO CABAUG*, 54 O.G. 351.

There being no grave abuse of discretion or excess of jurisdiction committed by respondent court, the writ prayed for is denied, with costs against petitioners.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon and Regala, JJ., concur.
Labrador, J., took no part.