

**DIOSDADO A. SITCHON, ET AL, PETITIONERS AND APPELLANTS, VS. ALEJO AQUINO, IN HIS CAPACITY AS CITY ENGINEER OF THE CITY OF MANILA, RESPONDENT AND APPELLEE.***G.R. No. L-8191. February 27, 1956*

Ponente: BAUTISTA ANGELO, J.

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These are six (6) class suits against the City Engineer of Manila to enjoin him from carrying out his threat to demolish the houses of petitioners herein, upon the ground that said houses constitute public nuisances. In due course, the Court of First Instance of Manila rendered separate, but substantially identical, decisions adverse to the petitioners, who have appealed therefrom directly to this Court. Inasmuch as the facts are not disputed and the same issues have been raised in all these cases, which were jointly heard before this Court, we deem it fit to dispose of the appeals in one decision.

- Case No. L-8191 (Case No. 21530 of the Court of First Instance of Manila) was instituted by Diosdado A. Sitchon, Luis Gavino and Ponciano Adoremos, in their own behalf and in representation of twenty-two (22) persons, named in an annex to the petition. In 1947 and 1948, said petitioners occupied portions of the public street known as Calabash Road, City of Manila, and constructed houses thereon, without the consent of the authorities. Later on, some of them paid "concession fees or damages, for the use" of said portions of the street, to a collector of the city treasurer, who issued receipts with an annotation reading: "without prejudice to the order to vacate." On or about July 5, 1952, respondent City Engineer advised and ordered them to vacate the place and remove their houses therefrom before August 5, 1952, with the warning that otherwise he would effect the demolition of said houses at their expense. This notice having been unheeded, a demolition team of the office of the City Engineer informed the petitioners in December, 1953, that their houses would be removed, whereupon the case was instituted for the purpose already stated. At the instance of petitioners herein, the lower court issued a writ of preliminary injunction.

- Case No. L-8397 (Case No. 21755 of the Court of First Instance of Manila) was brought by Ricardo de la Cruz, Isidro Perez and Fernando Figuerroa, in their behalf and in representation of two hundred and sixty-seven (267) persons, who, sometime after the liberation of Manila, occupied portions of Antipolo and Algeciras Streets, of said city, and constructed houses thereon, without any authority therefor. Several petitioners later paid "concession fees or damages" to a collector of the city treasurer, and were given receipts with the annotation: "without prejudice to the order to vacate." The constructions were such that the roads and drainage on both sides thereof were obstructed. In some places, the ditches used for drainage purposes were completely obliterated. What is more, said ditches cannot be opened, repaired or placed in proper condition because of said houses. On or about May 15, 1952, respondent City Engineer advised them to vacate the place and remove their houses within a stated period, with the warning already referred to. Hence, the institution of the case, upon the filing of which a writ of preliminary injunction was issued.

- Felino Peña, Francisco Morales and Jose Villanueva filed case No. L-8500 (Case No. 21535 of the Court of First Instance of Manila), on their own behalf and in representation of about thirty (30) persons, who, without the aforementioned authority, occupied portions of the street area of R. Papa Extension, City of Manila, sometime after its liberation. As in the preceding cases, several petitioners paid "concession fees or damages" to a collector of the city treasurer, "without prejudice to the order to vacate", which was given on May 10, 1932, with the warning that should they fail to remove said houses, respondent would do so, at their expense. Upon being advised, later on, of the intention of respondent's agents to carry out said threat, the corresponding petition was filed and a writ of preliminary injunction secured.

- Santiago Brotamonte, Godofredo Blanquiso and Salvador Justiniano commenced case No. L-8513 (Case No. 21531 of the Court of First Instance of Manila), on their behalf and in representation of forty-two (42) other persons, who, without any authority, occupied portions of the bed of a branch of the Estero de San, Miguel, City of Manila, and constructed houses thereon, sometime in 1947 and 1948. As in the cases already mentioned, some of them paid concession fees or damages, "without prejudice to the order to vacate", which was given, with the usual warning, in December, 1953. The institution of the case and a writ of preliminary injunction soon followed.

- In case No. L-8516 (Case No. 21580 of the Court of First Instance of Manila), Ernesto Navarro, Pablo Salas and Herminigildo Digap are petitioners, on their own behalf and in that of fifteen (15) persons, who, sometime after the liberation of Manila, occupied portions of the bed of the Pasig River, at about the end of Rio Vista Street, San Miguel, Manila, which are covered and uncovered by the tide, and erected houses thereon without any authority therefor. "Concession fees or damages" were paid by some of them, "without prejudice to the order to vacate". After giving, on or about June 20, 1952, the corresponding notice and warning, which were not heeded, respondent threatened to demolish said houses at petitioners' expense, whereupon the case was instituted and a writ of preliminary injunction secured.

- Case No. L-8620 (Case No. 22143 of the Court of First Instance of Manila) was filed by Amado Sayo, Marciano Laraeo and Victor Bernardo, on their behalf and in that of twenty-two (22) other persons, who, in 1946 and 1947, occupied portions of Torres Bugallon, Cavite, Misericordia and Antipolo Streets, in the City of Manila, and constructed houses thereon, without any authority therefor. Some paid "monthly rentals and/or damages, and/or concession fees" from 1946 to 1951, "without prejudice to the order to vacate", which was given on May 1, 1952, with the usual warning, followed, about two (2) years later, by a threat to demolish said houses. Hence, the case, upon the filing of which writ of preliminary injunction was issued.

After appropriate proceedings, the Court of First Instance of Manila rendered separate decisions, the dispositive part of which, except in case No. L-8620, is of the following tenor:

"Por tanto, el Juzgado sobresee esta. causa por falta de meritos y ordena al ingeniero de la ciudad de Manila que haga la demolicion o la remocion de las citadas casas, dentro de quince dias despues de liaber avisado al efecto a los aqui reeurrentes, y a costa de los niismos."

In said case No. L-8620, the lower court rendered judgment as follows:

"In view of the foregoing considerations the Court hereby declares:

"(a) that the houses of all petitioners in this case erected on the land which forms part of Torres Bugallon, Cavite, Misericordia and Antipolo Streets constitute public nuisance as denned by section 1112 of Ordinance No. 1600 of the City of Manila and by Article 694 paragraphs 4 and 5 of the Civil Code and

"(b) that the City Engineer of the City of Manila is the official authorized by Article 1112 of Ordinance No. 3600 of the City of Manila and Article 699, paragraph 3 of the Civil Code to abate said public nuisance and charge the expenses thereof to petitioners."

Petitioners contend that said decisions should be reversed upon the ground that, in trying to demolish their respective houses without notice and hearing, the city engineer sought to deprive them of their property without due process of law, apart from the fact that, under Articles 701 and 702 of the new Civil Code, the power to remove public nuisances is vested in the district health officer, not in respondent city engineer. It should be noted, however, that, before expressing his intent to demolish the houses in question, respondent had advised and ordered the petitioners to remove said houses, within the periods stated in the corresponding notices; "that petitioners do not question, and have not questioned, the: reasonableness or sufficiency of said periods; and that they have never asked respondent herein to give them an opportunity to show that their' houses do not constitute public nuisances. Besides, it, is not disputed that said houses are standing on. public streets, with the exception of the houses involved in cases Nos. 8518 and 8516, which are built on portions of river beds. It is clear, therefore, that said houses are public nuisances,' pursuant to Articles 694 and 695 of the Civil Code of the Philippines, which is Republic Act No. 386, reading:

Art. 694.—"A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

"(1) Injures or endangers the health or safety of others; or

"(2) Annoys or offends the senses; or

"(3) Shocks, defies or disregards decency or morality; or

"(4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or

"(5) Hinders or impairs the use of property."

ART. 695.—"Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance is one that is not included in the foregoing definition." (Italics supplied.)

It is true that Articles 700 and 702 of the same Code provide:

ART. 700.—"The district health officer shall take care that one, or all of the remedies against a public nuisance are availed of"

ART. 702.—"The district health officer 'shall determine whether or not abatement, without judicial proceedings) is the best remedy against a public nuisance."

However, section 31 of Republic Act No. 409, the Revised Charter of the City of Manila, specifically places upon the city engineer the duty; among others, "to have charge of the \* \* \* care ,of \* \* \* streets, canals and esteros \* \* \*"; to "prevent the encroachment of private buildings \* \* \* on the streets and public places \* \* \*"; to "have supervision \* \* \* of all private docks, wharves, piers \* \* \* and other property bordering on the harbor, rivers, esteros and waterways \* \* \* and \* \* \* issue permits for the construction, repair and removal of the same and enforce all ordinances relating to the same"; to "have the care and custody of all sources of water supply \* \* \*"; to "cause buildings dangerous to the public to be \* \* \* torn down"; and to "order the removal of buildings and structures erected in violation of the ordinances \* \* \*". Obviously, articles 700 and 702 of Republic Act No. 386, should yield to said section 31 of Republic Act No. 409, not only because the former preceded the latter, but, also, because said section 31 of Republic Act No. 409 is a special provision specifically designed for the City of Manila, whereas said Articles 700 and 702 of the Civil Code are general provisions' applicable throughout the Philippines. Moreover, section 1122 of the Revised Ordinance of the City of Manila (No. 1600) explicitly authorizes the action sought to be taken by respondent herein, by providing:

"Whenever the owner or person responsible for any unauthorized obstruction shall, after official notice from

the proper department, refuse or neglect to remove the same within a reasonable time, such obstruction shall be deemed a public nuisance, and the city engineer is authorized to remove the same at the owner's expense."

Again, houses constructed, without governmental authority, on public streets and waterways, obstruct at all times the free use by the public of said streets and waterways, and, accordingly, constitute nuisances per se, aside from public nuisances. As such, the summary removal thereof, without judicial process or proceedings may be authorized by the statute or municipal ordinance, despite the due process clause. (66 C.J.S. 733-734.)

"The police power of the state justifies the abatement or destruction, by summary proceedings, of whatever may be regarded as a public nuisance; and the legislature, may authorize the summary abatement of a nuisance without judicial process or proceeding.

"\* \* \* The remedy of summary abatement for violation of a municipal ordinance may be used against a public nuisance." (66 C.J.S. 855, 856.)

"When necessary to insure the public safety, the legislature may under its police power authorize municipal authorities summarily to destroy property without legal process or previous notice to the owner.

"\* \* \* It is not an objection to the validity of a police regulation that it does not provide for a hearing or for notice to the owner before his property is subjected to restraint or destruction." (12 Am. Jur. 356, 357.)

Municipal Corporations generally have power to cause the abatement of public nuisances summarily without resort to legal proceedings." (39 Am. Jur. 455, 456, 467.)"

Being in conformity with the facts and the law, the decisions appealed from are hereby affirmed in toto, and the writs of preliminary injunction issued by the lower court dissolved, with costs against petitioners-appellants. It is so ordered.

Parás, C. J., Padilla, Montemayor, Reyes, A. Jugo, Bautista Angelo, Labrador, Reyes, J. B. L. and Endencia, JJ., concur.

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