

ALFREDO HALILI AND TOMAS P. JACOB FOR THEMSELVES AND IN BEHALF AND FOR THE BENEFIT OF FORTY-ONE OTHER PERSONS ALL OWNING THEIR RESPECTIVE HOUSES INSIDE THE PALOMAR COMPOUND, TON...*G.R. No. L-8892. April 11, 1956*

Ponente: BAUTISTA ANGELO, J.

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Petitioners in their behalf and for the benefit of forty-one (41) other occupants of portions of the land known as Palomar Compound situated in Tondo, Manila, filed this petition for certiorari with the Court of First Instance of Manila seeking to enjoin respondents from carrying out their order of demolition of the houses they had erected inside said compound. The City of Manila, being a party in interest, was allowed to intervene.

Petitioners allege that they built their houses inside said compound way back in 1945, 1946 and 1947 and as soon as the City of Manila learned of this fact, it allowed them to occupy the land either by entering into a contract of lease with them or by allowing them to pay rentals for the portions occupied, and that on May 5, 1952, in line with the policy to restore the lawful use by the public of streets, parks, plazas, esteros and other public lands, respondents ordered the removal of said houses on the ground that they constitute a public nuisance. They claim this action to be arbitrary and illegal.

Respondents, on the other hand, claim that petitioners occupied the premises in question without any authority from the City of Manila although subsequently two of them Alfredo R. Halili and Tomas B. Jacob, succeeded in securing from the city mayor a written permit to occupy them subject to certain conditions, among others; (a) that the permission may be revoked by the city mayor at will after thirty days' notice; (b) that if the proposed city planning for Greater Manila would in any way affect the structures, the same would be removed within such reasonable period as might be specified in a notice to be issued by the city engineer, without any obligation or cost to the Government; (c) that all expenses for removing the structures would be for their account and if they fail to remove them within the period specified, the Government may undertake the removal charging the expenses against them; (d) that no permanent structure should be erected on the property; and (e) that they shall abide by whatever future action the city might take on the property.

Issues having been joined, and considering that the facts submitted in both pleadings furnish sufficient basis for a decision on the merits, the court proceeded to render decision "without further hearing. Accordingly, the court dismissed the petition and ordered petitioners to vacate the premises occupied by them and remove the structures they may have erected thereon within a period of thirty days from receipt of the order with the warning that, upon failure on their part to do so, the city engineer may order their demolition at their cost pursuant to the Revised Ordinance of the City of Manila. From this decision, petitioners have appealed.

It is undisputed that petitioners occupied the premises inside the Palomar Compound without the knowledge, authority or consent of the City of Manila, although later two of them succeeded in securing from the city mayor a

sort of written permission wherein they agreed to occupy the premises under certain specified conditions. This was allowed by the City of Manila simply upon tolerance in view of the fact that they lost their homes and their properties as a result of the battle for the liberation of said city, and one of the conditions upon which their occupancy was allowed is that they will remove the structures they had erected and vacate the premises within such time as may be specified in a notice to be issued by the city engineer; the cost of the removal to be charged against them. And this condition is with more reason demandable from the rest who had entered the premises without authority and were merely allowed to continue therein upon sufferance. And considering that said structures constitute an obstruction to the use by the , public of the parks, plazas, streets, and sidewalks that are affected by them, they constitute a public nuisance within the meaning of the law (articles 694 and 695, new Civil Code), which can be ordered demolished by the city authorities pursuant to section 1122 of the Revised Ordinance of the City of Manila (No. 1600; Sitchon, et al, vs. Aquino, supra, p. 458). The respondents, therefore, acted within the scope of their authority when they ordered the demolition of the structures belonging to petitioners upon their refusal to heed the advice given to them by the city engineer.

Petitioners contend that at least with regard to petitioners Halili and Jacob the order to vacate has been issued illegally because it ignored the contracts of lease entered into between them and the city even if the same do not contain any specific period within which said petitioners may be allowed to hold the premises. This contention is untenable for it disregards the very condition contained therein to the effect that petitioners should vacate the premises and remove their structures when properly required to do so by the city authorities. But it appears that the so-called lease contracts are but written permits extended to the petitioners apparently as a mere concession on the part of the then City Mayor Valeriano Fugoso. This can be clearly seen upon a perusal of the documents embodying said permits (Annexes A and B of Bill of Particulars).

Petitioners next contend that said contracts of lease are null and void because they were entered into by the City of Manila without having any right to do so because the Palomar Compound cannot be the subject of lease or settlement having been reserved for school site by the President in a proclamation issued on January 31, 1941. This contention is also untenable if we consider that said con-tracts are merely in the nature of a written permit issued by the city mayor for the satisfaction and contentment of the petitioners, and this has to be done in view of the fact that petitioners had occupied the premises without even the knowledge or authority of the City of Manila. And it is preposterous to contend that the Palomar Compound is not owned by the City of Manila simply because it was reserved as a school site by the President, for obviously, by such reservation, the President did not intend to deprive the city of its dominion over the compound.

Petitioners finally contend that even if the contracts of lease were to be declared null and void because of such alleged lack of authority on the part of the City of Manila, they are however entitled to the refund of the rentals they had paid under article 1412; sub-paragraph 2, of the new Civil Code, which provides:

"ARTICLE 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

* * * * *

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise." (Italics supplied.)

Again, this contention is based on a wrong premise. It presupposes that the City of Manila acted without authority in allowing the petitioners to occupy the premises upon payment of nominal rentals. As already stated, the City of Manila did not voluntarily enter into any contract of lease for the occupation of the Palomar Compound but

merely tolerated in one form or another its occupation by the petitioners considering their sad plight as a result of the battle for liberation. Far from laying the blame on the city for permitting such occupation, petitioners should show their appreciation for such an act of grace by cooperating with the policy of restoring normalcy to the City of Manila. And it is even more unfair for them to make the city return the rentals they had voluntarily paid for the use and enjoyment of the premises knowing fully well that such rentals, being nominal, cannot even be considered as a compensation for the benefit they had derived therefrom.

Premises considered, we find that the lower court did not commit any error in ordering petitioners to vacate the premises under the terms and conditions specified in its decision and, hence, we hereby affirm the same without costs.

Paras, Padilla, Reyes, A., Jugo, Reyes, J. B. L., Bengzon, Montemayor, Labrador, Concepcion, and Endencia, JJ., concur.

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