

HERMENEGILDO ENRIQUEZ, PETITIONER, VS. HON. REMIGIO E. ZARI, JUDGE OF THE CITY COURT, QUEZON CITY; HON. CITY FISCAL OF QUEZON CITY, HON. CITY ENGINEER OF QUEZON CITY; AND FERNAN...

G.R. No. L-43473. January 27, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Certiorari to review the actuations of respondent Judge Remigio E. Zari in Criminal Case No. VI-6556 of the City Court of Quezon City.

On July 17, 1975, an information for violation of City Ordinances Nos. 1530, s. 1952 and 10700, s. 1974 was filed in the City Court of Quezon City against Hermenegildo Enriquez and Fernando Santos who was included therein by handwriting his name (the significance of which will become apparent hereafter) and which reads as follows:

"That on or about the 10th day of June, 1975, in Quezon City, Philippines, the above-named accused did then and there, willfully and unlawfully, build, construct and/or caused to be constructed 1 sty residence without having previously obtained the necessary building permit from the Office of the City Engineer of Quezon City as required by said Ordinance." (Rollo, p. 22.)

On November 10, 1975, Judge Zari issued the following order which reads as follows:

"In the interest of Justice, and, so as to prevent the herein accused, and all persons acting for and in his behalf from continuing with the illegal construction of the subject-building, for which no permit has been secured from the authorities concerned, said accused is hereby directed by the Court, *motu proprio*, to maintain the status-quo, immediately upon receipt hereof, and to desist from adding anything to the subject-building, until after the above-entitled case has been finally resolved.

"Non-compliance hereto shall render the above-named accused liable for contempt of Court.

"FURTHER, let this case be set for hearing on December 4, 1975, at 8:30 in the morning." (Rollo, p. 23.)

On January 22, 1976, Judge Zari pronounced a sentence as follows:

"When this case was called for arraignment today, the accused, FERNANDO SANTOS, after conferring with his counsel de-oficio, Atty. Ven Calpotura, entered a plea of 'GUILTY' to the offense charged.

"When asked by the Court as to whether he is fully aware of the consequences of his plea, the said accused readily answered in the positive.

"Thereafter, the Prosecuting Fiscal recommended that the penalty of P100.00 fine plus costs, be imposed upon the accused.

"WHEREFORE, premises above-considered, this Court finds the accused, FERNANDO SANTOS, GUILTY beyond reasonable doubt of the offense charged and hereby sentences him to pay a fine of P100.00 plus costs with subsidiary imprisonment in case of insolvency.

"Further, the accused is hereby directed to demolish the house subject of this case within thirty (30) days from today. Otherwise, after the expiration of thirty (30) days, if the subject illegal construction is still existing, the City Engineer of Quezon City shall demolish the same at the expense and for the account of the accused." (Rollo, pp. 24-25.)

Hermenegildo Enriquez who did not plead guilty filed a motion on February 10, 1976, which reads as follows:

"ACCUSED HERMENEGILDO ENRIQUEZ, through the undersigned counsel, to this Honorable Court respectfully asks for a reconsideration of the order dated January 22, 1976.

"The ground for reconsideration is that the order for the demolition of the building affects the right of the accused Hermenegildo Enriquez who is the actual tenant and possessor of the premises as lessee of Dr. Fernando Santos. Said order was prematurely issued considering that the case against co-accused Enriquez is still pending.

"Statement of the Case

"This is a case of alleged illegal construction of the house of Dr. Santos located at No. 62, 15th Ave., Murphy, Cubao, Quezon City, which has been occupied by Enriquez, as lessee, since 1961. Dr. Santos wanted to increase the rent of the premises from P50.00 to P150.00 monthly, which is contrary to Presidential Decree No. 20 dated Oct. 12, 1972. Enriquez refused to pay the increased rent and to vacate the premises.

"In order to forcibly eject Enriquez from the premises, Dr. Santos caused the filing of the present case of illegal construction and had pleaded guilty to the charge in order that this Honorable Court may order the demolition of the house which is being occupied by his co-accused, Hermenegildo Enriquez. In fact, there has been no illegal construction made by either of the accused since the house rented by Enriquez was an old house without additional improvements. This is a case of false charges filed by the fiscal upon the complaint of Building Inspector Armando Santos in connivance with the owner of the house, Dr. Fernando Santos who pleaded guilty to the charge.

"The case against Enriquez has been set for arraignment on February 12, 1976 at 8:30 a.m. but it is feared that the court may order the demolition at anytime in view of a plea of guilty entered by Dr. Santos on January 22, 1976.

"Argument

"Since there are two accused in this case, one who is the owner of the house and the other who is the tenant or lessee, it is unjust and illegal to order the demolition without first giving the accused Enriquez who is the tenant the right to be heard or given his day in court. In fact, both the building inspector Armando Santos and the owner Fernando Santos are guilty of incriminatory machination or false accusation by filing the present case. The facts clearly show that both Santos have connived together to have the house demolished in order to forcibly eject Enriquez from the premises.

"Prayer

"PREMISES CONSIDERED, it is respectfully prayed that the order of the Court of January 22, 1976 in so far as it refers to the demolition of the house in question be reconsidered and set aside until the whole case is finally heard and decided for both accused." (Rollo, pp. 26-27.)

Judge Zari denied the motion on February 12, 1976 "for lack of merit - the grounds for the motion for reconsideration are evidentiary in nature."

A motion to hold in abeyance the order of demolition which was filed by Enriquez was denied for lack of merit by Judge Zari on March 1, 1976. (Rollo, p. 28.). However, the respondent judge issued an order on March 18, 1976, which reads in part:

"When this instant case against the accused Enriquez was called for trial on March 4, 1976, the Court ordered the counsel for the accused to secure an injunction within fifteen (15) days from date. For failure to do so, the trial will proceed accordingly on April 8, 1976.

"WHEREFORE, above premises considered, and in the interest of justice, let the order of demolition of the subject illegal construction be held in abeyance until further orders from the Court.

"Let, also, a copy of this Order be furnished the Office of the City Engineer, Quezon City, for his information."
(Rollo, p. 51.)

On April 6, 1976, Enriquez filed with this Court his petition for certiorari wherein he prays that the order of demolition issued by the respondent judge be annulled for having been issued contrary to law and with grave abuse of discretion. Enriquez also prayed for the issuance of a restraining order which We did on April 6, 1976.

There is reason to believe the claim of petitioner Enriquez that the filing of the criminal case was a scheme to oust him from the leased premises.

Item: The information does not specifically describe and locate the building alleged to have been illegally constructed. It merely states that it is a "1 sty residence" which could be any building in Quezon City. It is fatally defective because it is impossible on its face to identify the house allegedly constructed without the necessary building permit. It can be quashed.

Item: The person accused of illegal construction is a mere lessee, the petitioner Enriquez who has occupied the premises since 1961; whereas the lessor and owner of the building was also accused as an afterthought by handwriting his name in the information. Why a mere lessee and not the owner alone be charged of illegal construction passes understanding.

Item: The owner of the building, Fernando Santos is presumably a doctor of medicine. Why should a doctor-lessor be represented by a mere counsel de oficio in the City Court but by a reputable law firm (Syquia Law Offices) in this Court?

Judge Zari, whether knowingly or unknowingly, appears to have allowed himself to be used in the scheme. He issued several orders in respect of the building owned by Dr. Santos, namely: (a) November 10, 1975, "to maintain the status-quo" under pain of contempt of court; (b) January 22, 1976, directing Dr. Santos "to demolish the house subject of this case"; and (c) March 18, 1976, holding in abeyance the order of demolition. But the judge himself could not have known what building was the subject of his orders because the prosecution did not identify it and he had rejected the identification made by the accused Enriquez because it was "evidentiary in nature." Moreover, his order for immediate demolition of the house does not follow as an accessory penalty from the conviction of Fernando Santos. On the contrary, Section 9 of Ordinance No. 1530, s. 1952, provides for demolition as a last resort as follows:

"SECTION 9. Any violation of the provisions of this Ordinance shall be punished by a fine of One Hundred Pesos (P100.00) and imprisonment of not less than five (5) days but not more than thirty (30) days in the discretion of the Court, Provided, that notwithstanding the imposition of such fine and imprisonment the property owner shall be required to secure the necessary building permit and to pay the corresponding fees in case the building or structure was constructed without the necessary building permit. In case the construction of the said building or structure is not in conformity with existing building and/or zoning regulations, the owner thereof shall further be required to make the necessary correction and if the same is not possible, the

said building or structure or parts thereof shall be removed or demolished by the owner within fifteen (15) days upon receipt of the order of demolition. Upon failure of the owner to remove the non-conforming structure within the fifteen-day period, the city shall undertake the demolition thereof at the expense of the owner. (Memorandum of respondent City Engineer, Rollo, pp. 95-96.)

WHEREFORE, the petition is granted; the orders of respondent judge dated February 12, 1976 and March 1, 1976, are hereby set aside for lack of legal basis. Costs against the private respondent.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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