

APOLONIO DE LOS SANTOS, PLAINTIFF AND APPELLANT, VS. BENJAMIN V. LIMBAGA, ETC., DEFENDANT AND APPELLEE.

G.R. No. L-15976. January 31, 1962

Ponente: DE LEON, J.

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DE LEON, J.:

This is an appeal from an order of the Court of First Instance of Basilan City dismissing a petition for mandamus to compel Benjamin V. Limbaga, the engineer of that city, to authorize Apolonio de los Santos to construct a residential house on the land described in the petition.

It is alleged in the petition that on November 19, 1952, Apolonio de los Santos applied with the respondent city engineer for a permit to construct a residential house on his land situated in Lamitan, Basilan City; that the respondent without any lawful cause refused to grant said permit; and that in view of this refusal, petitioner suffered damages in the amount of P18,000.

In his answer, the respondent, represented by the City Fiscal of Basilan, denied the allegations of the petition and interposed the following affirmative defenses; that after a fire which occurred in Lamitan that raged down a major portion of the market site therein, the city government approved the purchase of an additional area to enlarge the said site and that, incidentally, the lot claimed by the petitioner was included in the area; that by virtue thereof, expropriation proceedings had been instituted thereon, hence, the denial of the permit applied for by petitioner.

On December 5, 1958, the city fiscal moved to dismiss the petition on the following grounds: that mandamus will not lie since the issuance of the permit applied for was a discretionary and not a ministerial duty on the part of the city engineer; that petitioner's application for permit to construct a residential building, of strong material, on the lot in question had to be denied by the city engineer for the lot was within the area of the proposed market site which was already under expropriation proceedings instituted by Basilan City pursuant to a resolution approved by the City Council; and in view of the fact that on March 24, 1958, while this case was pending, petitioner filed an application in the name of another person (Marcial Quilaton) to construct a temporary movable store on the same site in question, which was approved and thereafter a mobile store was actually constructed thereon and consequently, petitioner is deemed to have abandoned his application to construct the building of strong material and necessarily the remedy of mandamus being sought by petitioner had lost its merit.

On March 11, 1959, the trial court issued an order of dismissal based on the following grounds: that mandamus could not be granted as it was not a ministerial duty on the part of the city engineer to approve petitioner's application for construction of buildings but approval of the same needed sound discretion in the said engineer's exercise of his official functions; and that the site in question, which petitioner wanted for the construction of a building as per his application, has already been utilized by him for the construction of another building which now exists thereon—an act which purports of an abandonment of his petition for mandamus.

From the order of dismissal, petitioner has appealed direct to this Court raising only questions of law.

Without touching on the various issues raised, We would say that mandamus cannot prosper in this case for the simple reason that, as the record shows, the land in question is already the subject matter of expropriation proceeding instituted by Basilan City pursuant to a resolution approved by the City Council, which proceeding is now pending in the Court of First Instance of Basilan. Moreover, herein petitioner has failed to exhaust the administrative remedies available to him. Petitioner should have first brought the matter to the Director of Public Works who, under the law, exercise supervision and control over city engineers of chartered cities (see Commonwealth Act No. 424), and if he was not satisfied with the Director's decision he should have appealed to the Secretary of Public Works and Communications. (*Miguel vs. Reyes*. 93 Phil., 542), The principle is fundamental that a party aggrieved by a decision of an administrative official should, before coming to court, apply for review of such decision by higher administrative authority (*De la Torre vs. Trinidad*. 108 Phil., 635; 58 Off, Gaz., [23] 4398; *Perez vs. City Mayor, et al.*, 113 Phil., 418), This principle rests on the presumption that the administrative agency, if afforded a Complete chance to pass upon the matter, will decide the same correctly.

In view hereof, the order of dismissal is hereby affirmed, with costs. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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