

HON. PIO MARCOS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF BAGUIO CITY; THE SHERIFF OF BAGUIO CITY AND LUZ APACIBLE, PETITIONERS, VS. ALFREDO BLANCO, ...

G.R. No. L-22740. February 25, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for review on certiorari of the decision of the Court of Appeals declaring null and void the order of December 2, 1963, of the Court of First Instance of Baguio issued in its Civil Case No. 1105, entitled "Luz Apacible vs. Alfredo Blanco", and making permanent the writ of preliminary injunction issued by the appellate court, on December 13, 1963, until Civil Case No. 1105 is decided on appeal.

The facts are as follows:

In April, 1959, petitioner Luz Apacible signed a contract of lease with the City of Baguio for Room No. 2 of the new market building. A month prior to the signing of the lease contract, the City Council of Baguio adopted Ordinance No. 316 prescribing rules and regulations for the lease of the new market building at Plaza Market and the temporary building adjacent thereto. In the same ordinance, the City Council in Section 2 thereof provided that the Market Committee of the Council shall make a direct award of Room No. 2 to Mrs. Luz Apacible. Section 7 prohibits sub-leasing without prior authority of the City, and Section 8 provides for the term of not exceeding one year for the lease, renewable upon consent of both parties, provided no violation of any of the conditions set forth in the contract is committed by the lessee.

Mrs. Luz Apacible, soon thereafter, verbally subleased Room No. 2 to Alfredo Blanco for a period of not less than ten years, on a month to month at basis, at the stipulated rentals of P400.00 per month from December to May, and P350.00 from June to November.

On August 1, 1961, Apacible advised Blanco in writing of the termination of the verbal contract of lease and asked him to vacate the premises within three months from notice. Blanco paid the corresponding rentals up to January 31, 1962. On November 10, 1961, Apacible instituted an action for ejectment against Blanco in the Municipal Court of Baguio. On February 13, 1962, the Municipal Court rendered judgment for plaintiff Apacible ordering Blanco to vacate the premises within seven months from finality of the judgment and to pay the monthly rental from February, 1962, until such time as he actually vacates the same. Blanco appealed from this decision to the Court of First Instance of Baguio City where the case was docketed as Civil Case No. 1105.

Meanwhile on February 8, 1962, the City Council of Baguio passed Ordinance No. 373, the explanatory note of which read as follows:

"This ordinance seeks to remedy an injustice bordering on discrimination, unwittingly committed on Mr. Alfredo Blanco, a sub-lessee at the new market building, . . . whose name, when Ordinance No. 316 was

passed, was inadvertently omitted. Mr. Blanco has been occupying the premises of Room No. 2 of said building for ten (10) years, a period antedating the approval in 1959 of Ordinance 316.

"This ordinance therefore, would amend the provisions of Ordinance 316 so as to award to Mr. Blanco the premises of Room No. 2 at the new market building, especially now that the contract of lease between the City of Baguio and Mrs. Luz Apacible has expired." (*Italics supplied*)

This particular ordinance was however vetoed by the Mayor on February 21, 1962. In the meantime, or on February 13, 1962, the City of Baguio represented by the Mayor entered again into a contract of lease with Apacible over the same Room No. 2 of the new market building. The City Council of Baguio repassed Ordinance No. 373 over the Mayor's veto and said ordinance which was made effective on March 17, 1962, declared the lease contract of Apacible over Room No. 2 expired and directed the Market Committee to award the same to Blanco.

On January 8, 1963, the City Mayor of Baguio executed a contract of lease again with Apacible over Room No. 2. Upon discovery thereof, Blanco filed with the CFI of Baguio City an action for mandamus, annulment of the contract of lease, with preliminary injunction and damages, docketed as Civil Case No. 1285.

Meanwhile the ejectment case between Apacible and Blanco appealed to the CFI (Civil Case No. 1105) was being heard. On March 6, 1963, judgment was rendered for Apacible ordering Blanco to pay P4,900.00 as rentals from February, 1962, to February, 1963, within thirty days from notice of the decision, with interest at the legal rate from November 10, 1961, the date of the filing of the complaint. However, defendant Blanco was allowed until June, 1963, to occupy the premises in question provided he paid the monthly rentals from March 1963 to June 1963, inclusive, within the first ten days of every month, and the sum of P4,900.00. On June 14, 1963, Blanco's motion for reconsideration and new trial based on Ordinance 373 which awarded to him the room in question was denied.

On July 5, 1963, Blanco filed a notice of appeal with the corresponding appeal bond. On July 15, 1963, he filed a second motion for reconsideration and/or new trial on the ground of newly discovered evidence-Resolution No. 68 passed by the Market Committee of the City of Baguio on July 10, 1963, directing Room No. 2 to be awarded to Blanco. The second motion for reconsideration was denied on October 29, 1963, and Blanco was ordered to vacate the premises within ten days and to pay Apacible the accumulated rentals amounting to P7,850.00.

On November 8, 1963, Blanco filed a motion seeking approval of the supersedeas bond to stay execution pending appeal. This was denied on December 2, 1963, at the same time the lower court ordering the immediate issuance of a writ of execution for the enforcement of the judgment of the court as set forth in its order of October 29, 1963. But upon Blanco's motion for reconsideration of the order, the lower court on December 5, 1963 gave him up to December 22, 1963, within which to vacate the premises and thus held in abeyance the writ of execution.

On December 12, 1963, Blanco filed a Petition for Certiorari and Prohibition with prayer for a writ of preliminary injunction to enjoin respondents therein from enforcing the writ of execution as ordered on December 2, 1963, on the pount that the trial court acted with grave abuse of discretion in ordering the issuance of the writ and in brushing aside the effectivity of Ordinance 373, series of 1962, and Resolution No. 68 of the Market Committee which directed an award of the premises under question to Blanco. The Court of Appeals issued the writ of preliminary injunction on December 13, 1963, upon petitioner Blanco's putting up of a bond in the amount of P1,000.00.

On March 13, 1964, the Court of Appeals rendered judgment in favor of Blanco, declaring the order of December 2, 1963, null and void, at the same time making permanent the preliminary injunction it had earlier issued until Civil Case No. 1105 (now on appeal and docketed as CA-G.R. No. 34361-R) is decided. Hence this petition for

review of said judgment.

As the ejectment suit in Civil Case No. 1105 is still pending decision in the Court of Appeals, We are only called upon to resolve the question of whether or not the Court of Appeals erred in declaring null and void the order of the Court of First Instance dated December 2, 1963, for the execution of the judgment of ejectment pending appeal. Stated differently, was the order of December 2, 1963, issued with gave abuse of discretion and or in excess of the court's jurisdiction?

We rule against the petitioner. A careful review of the record discloses that there was no good reason to justify the issuance of the questioned order of December 2, 1963. While the contract of lease of April, 1959, executed between Apacible and the City of Baguio had all the appearances of validity as it was executed pursuant to Ordinance 316, the conditions set forth therein were violated by Apacible, thus: (a) Where the ordinance required an annual renewal of the lease contract, nowhere in the record could We find compliance therewith (Not until the 13th of February 1962) and the fact of non-renewal was admitted by no less than the Mayor himself in his veto message of Ordinance 373 dated February 21, 1962. Although the Mayor opines that Apacible's continuous stay in the premises coupled with her regular payment of the rentals due was tantamount to a tacit renewal, there was need for the execution of a renewed lease contract as mandated by Section 8 of Ordinance 316. This was not done. (b) While the ordinance in its Section 7 prohibits a sub-lease of the room, Apacible flagrantly violated the same by subleasing it to Blanco for a period of not less than ten years, despite the fact that she has obtained no renewal of the lease contract.

And assuming that the Mayor is right in his claim that there existed an implied renewal, the subsequent passage of Ordinance No. 373, first enacted on February 8, 1962, vetoed by the Mayor on February 21, 1962, but repassed by the City Council over his veto and made effective on March 17, 1962, clearly manifested the intent of the City Council to terminate the contractual relation previously existing between Apacible and the City. The subsequent lease contract entered into by the Mayor with petitioner Apacible on January 8, 1963, was unavailing as the market room in question had been awarded to respondent Blanco. A perusal of the City Charter of Baguio bolsters the stand of the City Council in so awarding the room to Blanco, for it is provided therein that:

"Section 2553. — The City Council. Powers — The City Council shall have power by ordinance or resolution —
(a) ...

(v) to establish or authorize the establishment of the slaughterhouse and markets, and inspect and regulate the use of the same; ...;

(11) to make such further ordinances and regulations not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred by this chapter and such as shall seem necessary and proper to provide for the health and safety ..."

In *Julia Lorenzo and Mariano Estrella vs. Municipal Council of Naic, Cavite*^[1] this exercise of the authority to regulate the use of city markets was explained viz:

"... When a municipality itself administers a market, then under its authority to regulate the use thereof it may distribute and award spaces therein to be occupied by stores and stalls under conditions and regulations it may impose. . . ." (Italics ours)

Ordinance No. 373 which amended Ordinance No. 316 sought to implement this power of the City Council and the promulgation thereof was a valid exercise of the authority of the City Council to regulate the use of markets.

We have likewise noted that Apacible executed a contract of lease over Room No. 2 with the City of Baguio represented by the Mayor only on February 13, 1962, in haste because the renewal was entered into at a time

when they already had knowledge of the Ordinance 373 passed by the City Council on February 8, 1962, awarding Room No. 2 to Blanco instead of Apacible. The proposed ordinance was with the Mayor for his signature when they executed the contract of lease dated February 13, 1962, and which was acknowledged only on February 26, 1962, after a period of almost two weeks from its execution. Relative to the act of the Mayor, what was said in *Juan Posadas et al. vs. Go Hap et al.*[2] is relevant:

"When Martina Fernando abandoned her stalls they actually became vacant and from that time arose the right of the adjoining occupants to occupy them. While Ng Woo occupied them immediately, he did so illegally to the prejudice of the adjoining occupants and against the spirit of the ordinances. Nothing is added by the fact that the Mayor approved the occupation of Ng Woo, because he is not authorized to give such approval and he can not stamp it upon an act which is impliedly prohibited by the ordinances." (Italics ours)

Similarly, the passage of Resolution No. 68 of the Market Committee on July 10, 1963, awarding Room No. 2 to Blanco and the subsequent execution of a lease contract between the City and Blanco himself on January 7, 1964, greatly changed not only the relationship between, but the situation of, the parties and rendered it inequitable to execute the judgment of ejectment of October 29, 1963, pending appeal. It is evident that the enforcement of the same would only muddle up the situation for a person who had no more right to the market room in question under the City Ordinance would have such right under a judgment that has been rendered moot and academic by supervening circumstances. An execution pending appeal, as We have consistently held,[3] should only be issued upon good reasons. Petitioner Apacible's contention that execution should immediately issue upon "failure" of Blanco to file a supersedeas bond is not of itself a sufficient ground or a good reason because the trial court disapproved the bond so that the judgment could be immediately executed, although it extended his occupancy of the premises.

If the judgment is executed and on appeal the same is reversed, damages often arise which cannot be fully compensated although there are provisions for restitution.[4] A reversal by Us of the judgment of the Court of Appeals would result in the ejectment of Blanco and the giving of the premises to Apacible who, by the turn of events, is no longer entitled to possess the same. Hence the respondent judge should have abstained from ordering the execution of the judgment of ejectment. Furthermore, Blanco is occupying Room No. 2 while Apacible occupies the mezzanine thereof. The status quo pending judgment of the Court of Appeals on the main case should have been maintained.

WHEREFORE, the judgment of the Court of Appeals, declaring null and void the order of the respondent court of December 2, 1963, and making permanent the writ of preliminary injunction issued by said appellate court on December 13, 1963, until Civil Case No. 1105 (docketed therein as CA-G.R. No. 34361-R) is decided, is hereby affirmed. Without costs.

Castro, Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

[1] L-2652, 47 O.G. No. 5, 2350, 2352, 85 Phil. 92.

[2] No. 45595, 67 Phil. 446, 448.

[3] *Aguilos vs. Barrios* 72 Phil. 285, 287.

[4] *Ibid.*

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