

**SEGUNDO AGUSTIN, ISAURO SANTIAGO, JOSEFINA PHODACA,
AMADO HERNANDEZ, VICENTE CRUZ, AND SALVADOR MARIÑO,
PETITIONERS, VS. MANUEL DE LA FUENTE, MAYOR OF CITY OF
MANILA, RESPONDENT.**

G.R. No. L-2345. August 31, 1949

Ponente: REYES, J.

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REYES, J.:

To rid the City of Manila of the caused by the many vendors and peddlers plying their trade on the plazas and streets of its crowded downtown districts, the city authorities conceived the idea of establishing a central market for them, and to carry out this idea, the mayor recommended to the municipal board the conversion of certain buildings in Osmeña Park into such a market and the setting aside of the sum of P52,500 to cover the costs of remodelling the buildings. In its session of March 18, 1948, the board approved the recommendation in principle, and five days later its president so informed the mayor in writing with the suggestion that "in view of the urgent need of undertaking this project," the city treasurer, pending publication of the proposed ordinance in the Official Gazette, be authorized to release the fund for the purpose already specified. Acting on this information, the mayor, on March 27, 1948, authorized the immediate release and expenditure of the fund, and with the work of remodelling the buildings started on the following month, it was completed on July 1 of the same year, at an expenditure of approximately P52,000. Thereafter, the plazas and streets in Quiapo and Sta. Cruz were cleared of vendors and peddlers, and most of these were assigned stalls in the remodelled buildings now designated as "Central Market." Shortly before this, however, the sidewalk vendors and peddlers protested the idea of their being transferred to the Central Market, and the majority of the municipal board, composed of a block opposed to the mayor, heeding the protest, approved on June 28, 1948, an amendment to the proposed ordinance in question in the sense that the sum of P52,500 therein appropriated for the Central Market was to be expended for the construction of "school buildings at the same site." As the amended ordinance as approved was vetoed by the Mayor, the said majority members of the board, on July 9, 1948, brought the present action to prohibit the mayor from "converting, using, and adopting" the buildings in question for market purposes, alleging that the mayor has no authority to establish a public market in Manila as that power resides in the municipal board under section 2444, paragraph (z) of the Revised Administrative Code.

Prohibition is a preventive remedy. Its function is to restrain the doing of some act about to be done. It is not intended to provide a remedy for acts already accomplished. (*Cabañero vs. Torres*, 61 Phil., 522.) If the thing be already done, the writ of prohibition cannot undo it. (*U. S. vs. Hoffman*, 4 Wall., 158, 161; 18 Law. ed., 354.)

In the Philippine case above cited, a writ of prohibition was sought to annul a provisional license which the Secretary of Labor had issued to a foreign corporation not registered here, authorizing it to recruit laborers, and the petition also sought to prohibit the renewal of said license. But this Court denied the petition on the ground that the writ of prohibition is not intended to provide a remedy for acts already accomplished, the Court furthermore declaring that—

"Even if the Secretary of Labor had acted illegally or in excess of his authority when he issued the provisional or temporary license in question, prohibition is not the proper remedy."

In the case now before us, it appears that when the petition was filed the remodelling of the buildings for the central market had already been completed and that very shortly thereafter, Plaza Miranda, Quezon Boulevard, Carriedo Street, and other streets in the districts of Quiapo and Sta. Cruz were cleared of curb vendors and hawkers, thanks to the establishment of said market, which gave accommodation to those of them who cared to continue their trade.

The petitioners argue that at the time of the filing of the petition the remodelling of the buildings for the central market had not yet been totally finished as the toilet facilities therein, compared with those in other city markets, were inadequate and the stall holders were still constructing their booths. These, however, are mere details. The city engineer has certified that on July 1, 1948, the buildings had already been completely remodelled for the purpose intended and were on that date ready for occupancy by the vendors, while according to the city treasurer, the vendors have, since their ejection from the streets on the tenth of that month, been assigned places in said buildings and were, on the day he gave the information, actually doing business therein. The establishment of the Central Market is thus a consummated act which can no longer be prevented. Under the rule governing the issuance of the writ of prohibition, this preventive remedy is not now available.

The petition is, therefore, denied, but without special pronouncement as to costs.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.

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