

**VICTORIANA ESPIRITU, JORGE ROBLES, JOSEFINA DE VERA,
FAUSTINO QINTIVES, LEONOR BRIONES, EVANGELINA PATACSIL,
TEOFILO ANCHETA AND BRIGIDA MANGONON, PETITIONERS AND
APPELLANTS, VS...**

G. R. No. L-11014. January 21, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal from the decision of the Court of First Instance of Pangasinan of April 28, 1956, dismissing the petition for prohibition filed by appellants, lifting the preliminary injunction against the appellees and ordering the removal of appellants' stalls from the public plaza of appellee municipality, within ten days from notice. Pending appeal, counsel for the appellees filed a Manifestation on September 16, 1957, copy of which was duly served on appellants, that several months after the oral argument held before this Tribunal on January 25, 1957, appellants had voluntarily vacated the public plaza of Pozorrubio by transferring and removing their buildings and merchandise therefrom to private lots fronting the plaza; and that the municipality had already begun the construction of concrete fences in the premises, formerly occupied by appellants, without any complaint whatsoever from them or their counsel; and that consequently, the present case has become moot and academic, and asking that the present appeal be dismissed. By resolution of this Court of October 21, 1957, appellants were required to comment on this Manifestation and petition for dismissal, within ten days from notice. Despite notice of this resolution, appellants failed to file the required comment. For this reason, we could well summarily dismiss this appeal by resolution. However, for the satisfaction of the parties and for possible guidance of town officials and residents, we have deemed it convenient and necessary to decide the case by formal decision.

The facts are not disputed. In fact, no evidence was submitted at the hearing before the trial court, the parties having petitioned that the case be decided on the pleadings. During the last world war, the market building of the town of Pozorrubio was destroyed, and after Liberation, the market vendors began constructing temporary and make-shift stalls, even small residences, on a portion of the town plaza. The Municipal Treasurer collected from these stall owners fees at the rate of P.25 per square meter a month. In time, the whole municipal market was rehabilitated, but the owners of the structures on the plaza failed and refused to transfer to said market place.

The Municipal Council of Pozorrubio received petitions from civic organizations like the Woman's Club and the Puericulture Center, for the removal of the market stalls on the plaza, which were being used not only as stalls, but also for residence purposes, said organizations desiring to convert said portion of the plaza into a children's park. The Provincial Board of Pangasinan had also presented to the Council the petition of another civic organization of Pozorrubio, asking for the removal of the stalls from the plaza, and the attention of the Council was also called to the letter-circular of the Secretary of the Interior about the existence of these stalls on the public plaza, said to be illegal.

As a result, the Municipal Council of Pozorrubio passed Resolution No. 209, Series of 1951, stating that the

public market had already been rehabilitated, and ordering the occupants and owners of the structures on the plaza to remove their buildings within sixty days from receipt of the resolution. In answer to this resolution, eight of the market stall building owners filed a petition for prohibition in the Court of First Instance of Pangasinan against the Municipal Council, the Municipal Mayor, and the Chief of Police of Pozorrubio. Pending hearing, the trial court issued a writ of preliminary injunction.

The trial court found that the fee of P.25 per square meter collected by the Municipal Treasurer, was not for the rent of the portion of the public plaza occupied by the market stalls, as claimed by appellants, but rather the market stall fees charges on all market vendors in a public market; and that there was absolutely no contract or agreement between the appellants on one side and the municipality on the other, about renting of the Plaza to the former. There is reason to believe that the occupation of the plaza and the construction of temporary buildings thereon by appellants mostly for market, even residence purposes, was merely tolerated by the municipality, because of the destruction of the public market during the war, but the trouble is that appellants, even after the rehabilitation of the old market, refused to transfer to said market place, perhaps to save the trouble and expense of transferring their buildings, or possibly to continue enjoying the benefits from the strategic position of their stalls at the plaza. There is absolutely no question that the town plaza cannot be used for the construction of market stalls, specially of residences, and that such structures constitute a nuisance subject to abatement according to law. Town plazas are properties of public dominion, to be devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased by the municipality to private parties.[1] While in case of war or during an emergency, town plazas may be occupied temporarily by private individuals, as was done and as was tolerated by the Municipality of Pozorrubio, when the emergency has ceased, said temporary occupation or use must also cease, and the town officials should see to it that the town plazas should ever be kept open to the public and free from encumbrances or illegal private constructions.

Appellants must have realized the absolute lack of merit in their stand and the futility of their appeal because they voluntarily removed their buildings on the plaza. As a matter of fact, after the filing of the prohibition with the trial court, two out of the eight petitioners informed the trial court that they were included as petitioners without their consent, and so asked that they be excluded from the case. In view of the foregoing, the decision appealed from is hereby affirmed. With costs against appellants.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[1] Municipality of Cavite vs. Hilaria Rojas, et al., 30 Phil. 602

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