

VICTORIANO MANZANO, PETITIONER AND APPELLEE, VS. HON. ARSENIO H. LACSON, AS MAYOR OF THE CITY OF MANILA AND ALEJO AQUINO, AS CITY ENGINEER OF THE CITY OF MANILA, RESPONDENTS AND...

G. R. No. L-11051. June 30, 1958

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Sometime in August, 1948, the former Rural Progress Administration acquired a big parcel of land known as Tuason Estate No. 2 situated in Sampaloc, Manila, for resale to occupants thereof. Subsequently, the possession and administration thereof were transferred to "Ang Buhay, Inc.," a non-stock corporation, which undertook the survey and subdivision thereof into home lots. The corresponding survey plan of the subdivision, to wit: Psd-24819, was duly approved by the Bureau of Lands after it had been submitted to, and approved as to layout by, the Adviser to the President on Planning (par. V of the petition and Exhibit 1). By virtue of the provisions of Executive Order No. 376, dated November 28, 1950, the Rural Progress Administration was abolished and all its properties, assets, rights, etc. were transferred to, and its obligation assumed by the Landed Estates Division of the Bureau of Lands.

Petitioner and appellee, who purchased lot 3, Block 3, of the said subdivision on installment basis, filed on May 13, 1953 an application with respondent and appellant City Engineer for a temporary building permit to construct a strong material house thereon (paragraph 2, Partial Stipulation of Facts). The lot in question does not abut on any street, public or private, but only on a proposed street shown on the plan (Exhibit 1). Petitioner and appellee's application, however, bears the conformity of the chief of the Landed Estates Division of the Bureau of Lands who placed thereon a note reading: "The street along this lot will be constructed as soon as funds for the purpose is made available." (Exhibit 2.)

Previous to the application of petitioner and appellee, the city authorities had issued several temporary building permits for the construction of houses on other lots of the subdivision abutting only on proposed roads with assurance of the Director of Lands that the proposed roads would be constructed as soon as funds were available. Up to the present, said roads has not been constructed as promised, (paragraphs 3 and 6, Partial Stipulation of Facts).

Respondent and appellant City Engineer forwarded petitioner and appellee's application to respondent and appellant City Mayor, stating among others, that "in view of the herein compromise of the Chief, Landed Estates Division, in behalf of the Bureau of Lands, to the effect that the streets, curves, gutters, drainage, etc. in this subdivision will be constructed as soon as funds for the purpose is available * * *, this office would interpose no objection to the granting of a temporary building permit in favor of Mr. Manzano." And under date of October 31, 1955 respondent and appellant City Engineer accordingly notified petitioner and appellee stating, among others, the following: "With reference to your application for building permit for the construction of a strong material

building on lot 3, Block 3, Ang Buhay Suddivision, Sampaloc, I regret to inform you that his Honor, the Mayor, has disapproved the same in view of the provisions of paragraph (d), Section 8, of Executive Order No. 98, series of 1946 * * *." Consequently, petitioner and appellee filed this petition for mandamus.

In answer to the petition, it was also alleged as additional affirmative defense that section 103 of the Revised Ordinances of the City of Manila requires as a prerequisite to the issuance of a building permit "that the building shall abut or face upon a public street or alley or on a private street or alley which has been officially approved." The lower court ruled that both, the ground for the disapproval of petitioner and appellee's application for building permit based upon the provisions of paragraph (d), section 8 of Executive Order No. 98, series of 1946, and the additional special defense set up in behalf of respondents and appellants based on section 103 of Ordinance 1600, otherwise known as the Revised Ordinances of the City of Manila, are not well taken and commanded respondents and appellants forthwith to issue the building permit applied for by the petitioner and appellee.

From the decision the respondent has appealed, assigning the following errors:

"The lower court erred in holding that respondents and appellants' ground for the disapproval of petitioner and appellee's application for building permit based on the provisions of paragraph (d), Section 8 of Executive Order No. 98, series of 1946, is not well taken.

The lower court erred in holding that the additional defense set up in behalf of respondents and appellants based on the provisions of Section 103 of Ordinance No. 1600, known as the Revised Ordinance of the City of Manila is likewise not well taken.

The lower court erred in commanding respondents and appellants forthwith to issue the building permit applied for by petitioner and appellee."

As we see it, the only issue is whether or not the appellee Manzano (petitioner below) has complied with the requisites of paragraph (d), section 8 of Executive Order No. 98, series of 1946 (42 Off. Gaz., 425), and section 103 of the Revised Ordinances of the City of Manila. Said legal provisions read as follows:

"(d) From and after the time when any such subdivision regulations are in effect no building permit shall be issued for or no building shall be erected on any lot within the land area affected by such subdivision regulations unless the street giving access to the lot upon which said building is proposed to be placed (1) shall have been accepted or opened as, or shall have otherwise received the legal status of, a public street prior to that time or (2) corresponds in its location and lines with a street shown on a subdivision plan approved by the said Administrative Agency or (3) corresponds with a street duly located or accepted by the legislative body having jurisdiction over the area affected by such division regulations. Any building erected or to be erected in violation of this section shall be deemed an unlawful structure and an ejection, removal or injunction proceeding may be brought by the said Administrative Agency to enjoin such erection or cause it to be vacated or removed." (Sec. 8, Executive Order No. 98, series 1946)

"Sec. 103. Issuance.—When the application, plans, and specifications conform to the requirements of this title and of title thirteen hereof, the city engineer shall issue a permit for the erection of the building and shall approve in writing such plans and specifications, one copy of which shall be returned to the owner or his agent and one copy shall be retained by the city engineer: Provided, That the building shall abut or face upon a public street or alley or on a private street or alley which has been officially approved; And provided, further, That any private street or alley opened in an interior lot for the purposes of this section, once officially approved, shall be open to the general public, and with its approved width preserved shall be maintained and kept in good repair by the grantee of the permit, his heirs, executors, and assigns, and shall never be closed by any person so long as there is a building or other structure abutting or facing upon such private street or alley." (Sec. 103, Revised Ordinances)

Regarding the first provision (Exec. Order No. 98), the court below sustained appellee Manzano's argument that the approval of the plan Exhibit 1 by Mr. Louis Croft, Presidential Adviser on Planning, sufficed to place his case within subdivision (2) of paragraph (d) of section 8, since "the street giving access to the lot upon which said building is proposed to be placed—(2) corresponds in its location and lines with a street shown on a subdivision plan approved by the said administrative agency." We believe the claim to be untenable. The "administrative agency" referred to can be no other than that referred to in the preceding paragraph (b) of section 8 of the same Executive Order, reading:

"(b) From and after the time when any such subdivision regulations are in effect, then no plat or subdivision shall be filed for record or recorded, no buildings shall be erected, no land sold, leased or contracted to be sold or leased, and no permit issued until such plat or subdivision shall have been approved by the Administrative Agency designated by the Commission to administer the same and such approval endorsed in writing on the plate or subdivision." (42 Off. Gaz., 431) (Emphasis supplied)

It has not been proved that Mr. Croft was "the Administrative Agency" designated by the (Urban Planning) Commission to administer its subdivision regulations; and as it is not asserted that the petitioner's case falls within any of the other cases envisaged in section 8 of the Executive Order No. 98, respondent Manzano has not legally complied with its conditions so as to entitle him to the issuance of the building permit.

More important is the objection raised by appellant City Mayor, based on section 103 of the Manila Revised Ordinances. The trial court again upheld the respondent Manzano on this point, saying—

"On the other hand, it is admitted that the proposed building abuts or faces upon a street, as this term is commonly understood to mean an area set apart and designated as public way from side to side and from end to end, which the general public has the right to use as such, although said street, which has been officially approved as to lay out is not yet constructed." (Appellant's Brief, p. 18)

But, as argued for appellant City Mayor, section 103 could only apply to streets and alleys duly constructed, and it is not enough that an area be set aside for them. It will be noticed that the last proviso requires that any such private alley "be maintained and kept in good repair by the grantee", a requirement that would have no reason to exist if the alley were merely an open transitable area, without paving, drains or gutters; the obvious purpose of the requirements being to ensure the safety and health of the residents within the area.

If the Mayor is compelled to grant a building permit in the present case, he may not thereafter refuse it to other applicants similarly situated. Houses would then multiply in the area, without any drainage or sanitary facilities, and constitute a source of infection that would menace the rest of the city dwellers. As the appellant puts it: "If houses in a subdivision like the one in question, with only proposed streets, proposed drains, and proposed gutters, are allowed to be constructed, dirty stagnant water would easily accumulate therein and the place would soon become filthy, obnoxious and dangerous to public health." This consideration is decisive. It is well known that slum districts are the bane of modern cities, and we are not disposed to sanction any action that would, in the long run, add to the sores that already plague the City of Manila, and increase the danger to the health of its inhabitants.

The petitioner and appellee stresses the fact that the respondent Mayor has issued temporary permits to build in the same subdivision. That is not sufficient ground to compel him to issue another. The Mayor could have been willing to issue the previous permits relying upon the promise that the streets would be constructed by the Government as subdivision owner, until the continual delay in their construction posed the probability of a slum area coming into existence if such permits were continued. The lower court' itself noted in its decision that—

"experience teaches us that promises of well-intentional officials who are ready and willing to perform the

same cannot be compelled due to circumstances beyond their control, such as unavailability of funds."

Surely in view of such experience the Mayor can not be blamed for refusing to trust any further mere promises of street construction by the Bureau of Lands authorities, and insisting instead upon actual performance of such promises before issuing further permits. At any rate, the previous illegal issuance of permits would not in any way justify compelling the Mayor to embark in further illegality.

We understand of course that the strict application of sec. 103 of the Ordinances imposes hardship upon the appellee, and limits to some extent his proprietary rights over the lot in question. It has always been understood, however, that every piece of property and every property right is held subject to reasonable state regulation, to the end that its use shall not be injurious to the health and welfare of the community. The appellee must have so understood when, in his contract of purchase, he agreed to abide by any rules and regulations "regarding the opening of widening of streets, sanitation and so forth."

Not having established an undoubted and clear legal right, petitioner Manzano has failed to make a case for the issuance of a writ of mandamus.

Wherefore, the order appealed from is reversed and the petition ordered dismissed, with costs against petitioner. So ordered.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Endencia, JJ., concur.

DISSENTING

FELIX, J.,

The use of the consecrated formula of I DISSENT, even in bold capital letters for emphasis, may perhaps indicate the calmness, equanimity and countenance that a magistrate must show in passing judgment; so I declare that I dissent from the majority decision rendered in this case. This cool expression, however, does not by any means reflect the profound abhorrence and detestation I feel for the effects thereof, for they shock every fibre of my conscience and impishly hurt my sense of justice.

In every case that is submitted to Our consideration and determination, We have the sacred duty of construing the law applicable to the controversy, and in doing so, We must have in mind the very words of our Civil Code which says, that:

"Art. 10. In case of doubt in the interpretation or application of laws, it is presumed that the law-making body intended right and justice to prevail".

and it could not be otherwise because laws are enacted to protect rights and to do justice. Under the influence of this provision, let us now examine whether in the case at bar the majority of this Court had in mind this salutary principle of statutory construction.

The facts of the case had been stipulated by the parties and are properly narrated in the majority decision. They may be given in a nutshell as follows: Victoriano Manzano must have been an occupant of the lot involved herein, located in the parcel of land known as Tuason Estate No. 2 in Sampaloc, Manila. This parcel of land was acquired by the former Rural Progress Administration for resale to the occupants thereof. Subsequently, the possession and administration of said estate was transferred to "Ang Buhay, Inc.", a non-stock corporation which undertook the survey and subdivision thereof into home-lots (See subdivision plan Psd-24819 duly approved by the Bureau of Lands after it had been submitted to and approved as to lay-out by the Adviser to the President on planning—

Exhibit 1).

The Rural Progress Administration was abolished by Executive Order No. 376 dated November 28, 1950, and all its properties, rights, etc., were transferred to and its obligations assumed by the Landed Estates Division of the Bureau of Lands. Victoriano Manzano who had purchased Lot 3, Block III of the said subdivision, on installment basis, filed on May 13, 1953, an application with the City Engineer of Manila, Alejo Aquino, for a temporary permit to construct a house of strong materials thereon and although the lot in question does not abut on any street, public or private, but only on a proposed street appearing in the subdivision plan Exhibit 1, said application bears the conformity of the Chief of the Landed Estates Division of the Bureau of Lands (the vendor) who certified that: "a street along this lot will be constructed as soon as funds for the purpose is made available" (Exhibit 2).

It is to be recalled at this juncture that up to about a month previous to the aforementioned application of Manzano, the City authorities had issued several temporary building permits for the construction of houses on other lots of the same subdivision abutting only on proposed roads with the same assurance of the Director of Lands that the proposed road would be constructed as soon as the funds were made available, though that promise apparently failed to materialize up to the present.

On the strength of these precedents City Engineer Aquino endorsed Manzano's application for a building permit stating that "in view of the herein compromise of the Chief, Landed Estates Division, in behalf of the Bureau of Lands, to the effect that the streets, curbs, gutters, drainage, etc., in this subdivision will be constructed as soon as funds for the purpose is available, * * * this office would interpose no objection to the granting of the temporary building permit in favor of Mr. Manzano". But the Mayor of the City of Manila saw it fit to disregard the recommendation of the City Engineer and the assurance given by the Chief of the Landed Estates Division and on October 31, 1955, the City Engineer notified the petitioner that "with reference to the application for building permit for the construction of a strong material building on Lot 3, Block 3, Ang Buhay subdivision, Sampaloc, Manila, I regret to inform you that his Honor, the Mayor, has disapproved the same in view of the provisions of paragraph (d), Section 8, of Executive Order No. 98, series of 1947 * * *".

Making the picture of Manzano's plight more pointedly, I may say, in synthesis, that the petitioner

(who is undoubtedly living in a sort of a hut or barong-barong on the lot which he had purchased on installments from the Government and has complied with all his obligations in connection with the said purchase of the lot he is occupying, and who had every reason to rely on the sale made by the Government which, incidentally, acquired said parcel of land precisely for the purpose of subdividing and reselling the same to the occupants thereof in order to allow the latter to improve their place of abode by making it more decent and fit for human habitation)

could not attain this goal simply because the vendor, the National Government, has failed to fulfill its promise to construct and provide the streets, mentioned in the subdivision plan and because the City of Manila, a political subdivision of the National Government, has deemed it wise to pick on the petitioner and use him as the Archimedes' lever to impel the Bureau of Lands to construct the proposed roads indicated in said estate subdivision plan. It will not be amiss to advert in this connection that the construction of Manzano's building, as proposed in his application for temporary building permit, would not add an iota of risk or danger to public health or safety (which Sec. 8, paragraph (d) of Executive Order No. 98, s. 1947—and the Ordinances of the City of Manila invoked by the City authorities were undoubtedly intended to prevent), because Manzano must actually have a hut on said lot, as otherwise he could not have bought such property. It seems, therefore, obvious that what he wants is merely to improve his living conditions by erecting a more suitable home. Unluckily, however, that is not the way the respondent Mayor looks at Manzano's petition who can see to his great discontent and

discomfiture that his neighbors have been granted a permit that was denied to him.

As a consequence of the Mayor's refusal to grant said temporary building permit, the matter was taken to the Court of First Instance of Manila where, after proper proceedings, decision was rendered for the petitioner.

In this instance, the whole issue revolves upon the question of whether or not the aforementioned provisions of Executive Order No. 98 and of Section 103 of Ordinance No. 1600 (Revised Ordinances of the City of Manila), sustain the attitude of the City Mayor in denying the application for the issuance of the temporary building permit sought for by petitioner Victoriano Manzano.

There is no controversy that at the time the instant action was commenced, the construction of the streets, gutters, drainage, etc., of the subdivision involved herein were not yet undertaken by the vendor, the Government, although, as above stated, it was certified by the Chief, Landed Estates Division of the Bureau of Lands, the agency in charge of the sale and distribution of the lots therein, that said works will be started as soon as the funds therefore were made available. The majority Opinion, in ruling that Manzano failed to comply with the requisites of paragraph (d), Section 8 of Executive Order No. 98, declares that while the subdivision plan, Exhibit 1, was approved by Mr. Louis Croft, Presidential Adviser on Planning on September 16, 1948, it was not proved that the said Mr. Croft is the "administrative agency" designated by the (Urban Planning) Commission to administer its subdivision regulations, which can be no other than that referred to in paragraph (b) of the same section. The aforesaid paragraph (b), Section 8, of Executive Order No. 98, reads as follows:

"(b) From and after the time when any such subdivision regulations are in effect, then no plat or subdivision shall be filed for record or recorded, no buildings shall be erected, no land sold, leased or contracted to be sold or leased, and no permit issued until such plat or subdivision shall have been approved by the Administrative Agency designated by the Commission to administer the same and approval endorsed in writing on the plat or subdivision."

while the pertinent portion, of the oft-cited paragraph (d), Section 8 of the same executive order, prescribes the following:

"(d) From and after the time when any such subdivision regulations are in effect no building permit shall be issued for or no building shall be erected on any lot within the land area affected by such subdivision regulations unless the street giving access to the lot upon which said building is proposed to be placed (1) shall have been accepted or opened as, or shall have otherwise received the legal status of, a public street prior to that time or (2) corresponds in its location and lines with a street shown on a subdivision plan approved by the said Administrative Agency or (3) corresponds with a street duly located or accepted by the legislative body having jurisdiction over the area affected by such division regulations. * * *" (Exec. Order No. 98, series of 1946).

I emphasize the opening sentences of the aforequoted provisions relied upon by the Majority Opinion because, it may be noted, they are both contingent upon one condition, i.e., "from and after the time when any such subdivision regulations are in effect".

In virtue of Executive Order No. 98, series of 1946, which authorized and empowered the National Urban Planning Commission to make and adopt or cause to be made and adopted "regulations which shall govern the subdivision of land in urban area or part thereof" (Section 3-b (3), Exec. Order No. 98), the said Commission issued its Subdivision Regulations which was published in the June, 1949 issue of the Official Gazette (45 Off. Gaz. No. 6, 2417) and contain the following provision:

"SECTION 1. From and after the date of adoption, these regulations shall govern all subdivisions of land in the Philippines intended for residential, commercial and industrial purposes in any urban area or part thereof".

And in providing for the date of its effectivity, the same body of regulations prescribes:

"SEC. 21. These regulations shall take effect sixty (60) days after their publication in the Official Gazette. Their application, however, to specific urban areas shall take effect thirty (30) days after they have been filed with the corresponding city or municipal board, unless modified or disapproved by the three-fourths (3/4) vote of said board or council within that period".

Accordingly, on July 21, 1950, the Municipal Board of the City of Manila passed and approved the aforesaid subdivision regulations as recommended by the City Mayor. through the City Engineer (Appendix B, appellants' brief). Thus, pursuant to Section 21 thereof, the said subdivision regulations took effect in the City of Manila 30 days after July 21, 1950, or on August 20, 1950, and it must be pointed out in this connection that as early as September 16, 1948, the subdivision plan involved herein was already approved by the Presidential Adviser on Planning. The question now is what was the effect or weight of such approval ?

Prior to the issuance of the subdivision regulations providing for those requirements before a building could be issued, Executive Order No. 98 created the National Urban Planning Commission intended, as previously stated, to prepare general plans, zoning ordinances and subdivision regulations, to guide and accomplish a coordinated, adjusted, harmonious reconstruction and future development of urban areas, and bestowed all such powers as may be necessary to enable it to perform its purposes and promote urban planning. The Commission is composed of a Director of Planning as chairman and 5 members to be appointed by the President with the consent of the Commission on Appointments, who shall be under the direct control and supervision of the President. And for this purpose, the President may designate any of his technical advisers or officials of the executive department to act as adviser of the Commission. (Sec. 2 Ex. Ord. No. 98). Even a detailed examination of Executive Order No. 98 would not yield any provision that would show on whom the duty to approve plans submitted to said Commission falls, and considering that the authority of Louis P. Croft, as the Presidential Adviser on Planning to approve said plans before the effectivity of the subdivision regulations was not assailed, and taking into account that such official act was valid at the time of its execution, same must be respected and those who have complied with the requirements under the law then in force should not be prejudiced by the subsequent enactment of another regulations, and much less under the circumstances obtaining in the case at bar wherein, I repeat lest it be forgotten, the Government purchased the Tuason Estate No. 2 for resale to the occupants thereof.

Furthermore, it appears that the subdivision regulations issued thereafter do not contain any provision nullifying or subjecting thereunder those plans that have already been previously approved; on the contrary paragraph b, Section 8 of Executive Order No. 98, goes as far as authorizing the issuance of building permits on lots within the land area subject to such subdivision regulations when the lot affected "(2) corresponds in its location and lines with a street shown on a subdivision plan approved by the said administrative agency". I, therefore, conclude that the set of rules issued after the plan in question had been approved and presumably after complying with the requirements of the law then, obtaining, cannot be given any interpretation and effect that may prejudice herein petitioner.

The majority opinion also lays much stress in the provision of Section 103 of the Revised Ordinances of the City of Manila, which reads:

"SEC. 103. Issuance.—When the application, plans, and specifications conform to the requirements of this title and of title thirteen hereof, the city engineer shall issue a permit for the erection of the building and shall approve in writing such plans and specifications, one copy of which shall be returned to the owner or his agent and one copy shall be retained by the city engineer: Provided, That the building shall abut or face upon a public street or alley or on a private street or alley which has been OFFICIALLY APPROVED: And provided, further, That any private street or alley opened in an interior lot for the purposes of this section, once officially

approved, shall be open to the general public, and with its approved width preserved shall be maintained and kept in good repair by the grantee of the permit, his heirs, executors and assigns, and shall never be closed by any person so long as there is a building or other structure abutting or facing upon such private street or alley."

It may be thus seen that under the aforementioned provision of the Revised Ordinances, a license may be issued as long as the lot on which the building is sought to be erected abuts or faces a public street or alley or on a private street or alley which has been officially approved. The subdivision plan containing the lay-out of the streets and lots found in the area of the Tuason Estate No. 2 has been approved by the Presidential Adviser on Planning and as the Executive Order does not specify who has to approve the same, it necessarily follows, in view of the presumption that official duty has been regularly performed (Section 69-n, Rule 123 of the Rules of Court), that the lot on which the proposed building is to be constructed is a lot that abuts or faces on a private street or alley which has been officially approved. The majority of the Court, however, quotes with approval the contention of the City Mayor that said Section 103 of the Revised Ordinances can only apply to streets and alleys duly constructed, and not to an area set aside for this purpose, and to strengthen its argument, the majority of the Court calls attention to the last proviso requiring that any such private alley should be "maintained and kept in good repair by the grantee", a requirement that would have no reason to exist if the alley were merely an open transitable area, without paving, drains or gutters, for the obvious purpose of the requirement was to insure the safety and health of the residents within the area.

I have already stated that by the construction of the house for which the building permit is sought, will not endanger in any way the safety and health of the residents within said area. And in turn I have also to call the attention of the majority that the second proviso of said section 103 mentioned by it, has nothing to do with the first proviso thereof, because the second proviso refers only to cases of "private street or alley (already) opened in an interior lot", and, naturally, in that event the owner of these private alleys or grantee should maintain and keep them in good repair. Evidently such requirement has nothing to do with respect to public or private streets or alleys which had been officially approved. What is more, the fact that the second proviso had to be specifically incorporated in said Section 103, making special reference to streets or alleys opened in an interior lot, inevitably would lead anyone to the conclusion that what was intended thereby was to distinguish its scope from the requirement of the first proviso which merely refers to streets or alleys which have been officially approved.

On the strength of the foregoing considerations, I most emphatically dissent from the decision of the majority and I am of the firm belief and conviction that the decision appealed from should be affirmed in toto.

Paras, C. J., concurs.

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