

MARIA CASUPANAN, PETITIONER, VS. VALERIANO FUGOSO, MAYOR OF MANILA, ET AL., RESPONDENTS.

G.R. No. L-1251. August 30, 1947

Ponente: HILADO, J.

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HILADO, J.:

In civil case No. 1181 of the Manila Court of First Instance the instant petitioner, as plaintiff, claiming to be at the time the occupant of stalls Nos. 280-283 of the Quinta Market, City of Manila, and upon the other facts alleged in her complaint, prayed for judgment declaring her as the true and lawful occupant of said stalls, and that pending the action, the therein defendants, among whom were the present respondent Manila Mayor Valeriano Fugoso, Judge of First Instance Honorable Emilio Peña, the City Health Officer, the market administrator, and the market master of Quinta Market, be enjoined from ejecting her from said stalls and from committing further "acts of disturbance upon the peaceful use and possession" of the stalls aforesaid that she there alleged to have enjoyed, and that after trial, the injunction be made permanent. That action was in due time tried and decided by the respondent Judge Honorable Emilio Peña. The decision (annex 3 of answer) was rendered on January 28, 1947, and adjudged that the therein defendant Albina Elizaga was the former lawful occupant of said stalls Nos. 280-283 of the Quinta Market, based upon the facts found in the same decision and upon resolution No. 50 of the Municipal Board of Manila approved on December 12, 1945, and set out in paragraph 7 of the petition herein thus:

"RESOLUTION AUTHORIZING THE ADJUDICATION OF STALLS IN THE CITY PUBLIC MARKETS TO ACTUAL OCCUPANTS WHOSE OCCUPATION WAS NOT OBTAINED THROUGH FRAUD, FORCE OR MISREPRESENTATION AND WHEN APPLIED FOR NOT LATER THAN OCTOBER 31, 1945, UNDER CERTAIN CONDITIONS.

"WHEREAS, as a result of three years of the Japanese Regime, there had been many conflicts in the occupation of stalls in the public markets;

"WHEREAS, in the Divisoria Market alone, out of the 2,000 stalls therein, about 600 are actual (ly) contested; Now, THEREFORE, be it

"RESOLVED, That with a view to asking a solution to these conflicts, the adjudication of stalls in the City Markets (public be given to actual occupants whose occupation was not obtained through fraud, force or misrepresentation and when applied for not later than October 31, 1945; PROVIDED, That when a stall is claimed by one who can satisfactorily prove that he or she was the adjudicated occupants of said stalls on December 8, 1941, and had not abandoned the same prior to that date, or if he or she had abandoned it for justifiable reason after that date, he or she has registered with the City Health Officer on or before October 19, 1945, a written claim for is (its) re-occupation his or her claim or right shall be preferred it satisfactory proof is presented that the abandonment was for really justifiable reasons.

"Adopted, December 6, 1945.

"Approved, December 12, 1945.

"Approved:

(Sgd.) "JUAN NOLASCO (Sgd.) "SEGUNDO AGUSTIN

"Mayor, City of Manila "President, Municipal Board

"Attested:

(Sgd.) "GAUDENCIO GARCIA (Sgd.) "EDUARDO CARDENAS

"Secretary to the Mayor "Secretary, Municipal Board"

In this proceeding petitioner asks of this Court that the respondents Manila Mayor Valeriano Fugoso, Honorable Judge Emilio Peña, the City Health Officer, the market administrator, and the market master of Quinta Market "be inhibited from the enforcement of the petitioner (possibly petitioner means to say "from ejecting the petitioner") from the above-mentioned stalls, and from further proceeding in the main case, and in the meantime to issue a preliminary writ of injunction against the said respondents. Petitioner complains that the respondent Judge acted with grave and gross abuse of discretion in not deciding in civil case No. 1181 whether or not the injunction therein prayed for shall issue, but instead in setting the hearing of the case on the merits "after a passive inaction for more than two weeks from the date of the complaint" (petition, par. 9).

The respondents counter (answer, par. 3) that when said court refused to issue the preliminary injunction it was because it was not convinced that there was sufficient ground for the issuance thereof, "considering the circumstances of the case as well as the opposition filed by the defendants therein." It should be remembered that one of the instant respondents thus answering the petition was the respondent judge himself. The facts found in the decision which was later rendered by said court in the main case fully justify the attitude taken by it in regard to the plaintiff's petition for a writ of preliminary injunction: those facts were, that the defendant Albina Elizaga in the main case was the legal occupant of the controverted stalls Nos. 280-283 since the month of October, 1941, up to February, 1945; that as a consequence of the battle for the liberation of Manila the said stalls became out of order and unsuitable for business; and that on October 4, 1945, said Albina Elizaga filed an application for the stalls, which were adjudicated to her on May 7, 1946. (See also Exhibit 3 of Annex 1.)

Considering the other averments of the petition, commencing with paragraph 10 to the end thereof, and the answer thereto by the respondents commencing with paragraph 4 to the end of the same, we utterly fail to see any showing of an abuse of discretion on the part of the respondent judge in refusing to issue the writ of preliminary injunction sought by the plaintiff in the main case. As early as November 22, 1946, counsel for the therein defendant Albina Elizaga filed with the Court of First Instance her petition (Annex 1 of the answer), the affidavit of Bienvenido Letrero, and a certified copy of the memorandum of the acting administrator of city markets dated June 25, 1946, marked Exhibits 1 and 2 of the said petition showing that the therein plaintiff, herein petitioner, did not present any application for the lease of the stalls in question during the period prescribed in resolution No. 50, series of 1945, of the Municipal Board. With that petition there was also accompanied a copy of the communication of the City Health Officer dated May 7, 1946, whereby the said stalls were "regularly assigned" to the said Albina Elizaga subject to the conditions specified in her application dated October 4, 1945 (Exhibit 3 of Annex 1).

On top of all this, the main case having in the meantime been decided on the merits, and the remedy of appeal having thereby become available to petitioner, the present petition has become unnecessary. On the appeal, if taken, petitioner as appellant, if she so desires, can file a petition with the appellate court asking for the issuance of a preliminary injunction or any other available ancillary process.

Wherefore, it is adjudged and decreed that the petition be, as it is hereby, dismissed, with costs against petitioner.

So ordered.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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