

FELIZA CAPISTRANO ET AL., PETITIONERS, VS. EMILIO PEÑA, JUDGE OF FIRST INSTANCE OF MANILA, VALERIANO FUGOSO, MAYOR OF CITY OF MANILA, LAMBERTO JAVALERA, CHIEF OF POLICE OF CITY ...

G.R. No. L-1354. July 28, 1947

Ponente: TUASON, J.

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TUASON, J.:

The petitioners herein severally own and conduct eating places housed in a temporary structure erected on Plaza Miranda, City of Manila, in the immediate vicinity of the Quiapo Church and the site of the burned parish house or convent. The place as part of a public plaza is admittedly city property dedicated to public use.

Under date of June 29, 1946, the petitioners brought an action for injunction in the Court of First Instance of Manila complaining that the City Mayor had ordered the Chief of Police "to remove the shacks and stalls around the Quiapo Church including the restaurants in question and that the respondents, through their agents and laborers, are now removing or trying to remove the said restaurants." The plaintiffs were granted a writ of preliminary injunction.

The defendants for answer alleged, among other things, that the plaintiffs had violated existing ordinances and sanitary rules and regulations; that said plaintiffs had not secured building permits pursuant to existing city ordinances to construct the above-mentioned structure; that the plaintiffs' restaurants had been found unsanitary by officers of the city health service.

Upon the issues thus joined, the parties went to trial, after which the court rendered judgment "declaring that the restaurants in question constitute a nuisance and that the Mayor of the City of Manila is empowered to revoke the licenses of the plaintiffs, order the closure of the said restaurants and require the plaintiffs to remove the same or cause them to be removed at the plaintiffs' expense, with costs against the plaintiffs." In the same judgment the preliminary injunction was dissolved.

Following the rendition of the aforesaid judgment the plaintiffs filed with this court a petition for certiorari (G. R. No. L-1314) against the Honorable Emilio Pena, trial Judge; the Mayor, and the Chief of Police. That petition was dismissed on the ground that certiorari was not the appropriate remedy. Meanwhile execution of the judgment had been issued by the respondent Judge, whereupon the plaintiffs came back with the instant petition for prohibition, making the sheriff respondent besides the above-named city officials and the trial judge.

The issuance of execution is out of step with the judgment. The judgment does not call for execution in favor of the defendants as it amounts to a dismissal of the case. The defendants have not been granted or asked for any affirmative relief, nor are the plaintiffs required to do anything. There is nothing to execute. For this reason, the respondent Judge in issuing execution went beyond the bounds of his jurisdiction. To this extent, prohibition is in order.

Nevertheless, the setting aside of the order of execution will not materially help the petitioners. The City Mayor and the Chief of Police or their agents may, in consequence of the judgment, proceed to remove the plaintiffs' building on their own account, unaided by the court or the sheriff. Section 4 of Rule 39 provides that "unless otherwise ordered by the court, a judgment in an action for injunction * * * shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal. The trial court, however, in its discretion, when an appeal is taken from a judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party." This rule pictures in bold outline the effect of the judgment in an injunction case and the course open to the plaintiff if the case is dismissed. The judgment in this case imports that the defendants are at liberty to do what the plaintiffs seek to prevent. It denotes that the court will not interfere with the defendants' authority to tear down the plaintiffs' shacks if the plaintiffs themselves do not do so. To stop them from removing the structure during the pendency of the appeal, the plaintiffs' remedy is to obtain a new writ of temporary injunction. Such temporary injunction has to be secured from the Court that rendered the judgment if it still has jurisdiction over the case, otherwise from the higher court to which the appeal has been elevated, on motion to be filed in the principal case. Prohibition in a separate proceeding is not a substitute for this temporary relief.

Prohibition lies where the proceedings of any tribunal, person, etc., are without or in excess of its or his jurisdiction, or with grave abuse of discretion. (Section 2, Rule 67.) With the elimination of the order of execution, there remains only the legality of the judgment to consider. The legality of the judgment is unquestioned. It was absolutely within the competence of the court a quo to render this judgment, and unless and until said judgment is reversed or a restraining order is issued, the city authorities may proceed to close the plaintiffs' business. While execution is unnecessary to aid the defendant Mayor and Chief of Police, their power is untrammelled, even more now than before the case against them was dismissed, to exercise what they claim is their authority and duty to abate public nuisance and protect public health. The lawfulness and reasonableness of their proposed action is yet to be finally decided by a superior court, but for the time being they have in their favor the presumption that the action which they contemplate is in accordance with law.

For another thing, prohibition does not lie since there is plain and adequate remedy at law available to the plaintiffs, namely, the review of the main case on appeal, and pending final determination of the appeal, the remedy by motion for preliminary injunction, as above indicated.

The petition is granted so far as it attacks the legality of the execution, and the respondent Judge and the Sheriff are commanded to desist from carrying out said execution. The petition is denied in so far as it seeks to prohibit the Mayor and the Chief of Police of the City of Manila from closing the petitioners' business and removing their building. There will be no special pronouncement as to costs.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Hontiveros, and Padilla, JJ., concur.

CONCURRING AND DISSENTING

PERFECTO, J.:

Petitioners pray that respondents be restrained from enforcing the writ of execution issued by respondent judge in civil case No. 73245 of the Court of First Instance of Manila, after petitioners had filed their notice of appeal against the decision in said case.

Upon the facts in this case, we are of opinion that respondent judge acted with excess of jurisdiction, as is mildly

stated in the majority opinion as follows:

"The issuance of execution is out of step with the judgment. The judgment does not call for execution in favor of the defendants as it amounts to a dismissal of the case. The defendants have not been granted or asked for any affirmative relief, nor are the plaintiffs required to do anything. There is nothing to execute. For this reason, the respondent judge in issuing execution went beyond the bounds of his jurisdiction. To this extent, prohibition is in order."

In the dispositive portion of the majority opinion it is decided:

"The petition is granted so far as it attacks the legality of the execution, and the respondent Judge and the Sheriff are commanded to desist from carrying out said execution."

With this judgment we are in full agreement. As to the other provisions in the majority judgment we disagree, as they are not justified either by the pleadings of the petition or by the relief sought in the answer of respondents, who only pray for the denial of the petition. By said additional provisions in the majority decision, the majority appears to have fallen into the same mistaken officiousness of respondent judge, by granting what is not sought for by respondents.

HILADO, J.:

I concur in the foregoing opinion of Mr. Justice Perfecto.

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