

JOSE DE PERALTA, PETITIONER, VS. HONORABLE JOSE C. CAMPOS, JR., PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-37983. November 27, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

The legal question raised in this special civil action for certiorari is whether the Court of First Instance of Rizal, Quezon City Branch IV, erred and acted in excess of jurisdiction or gravely abused its discretion in ordering Jose de Peralta "to remove and dismantle and transfer" his house within thirty days after the judgment, acquitting him of the crime of illegal construction, has become final (*People vs. De Peralta*, Criminal Case No. Q-3296).

In a decision dated September 20, 1973 respondent Judge Jose C. Campos, Jr. reversed the judgment of the City Court of Quezon City and absolved Jose de Peralta from the charge of illegal construction of his house. The dispositive part of the decision reads:

"Wherefore, in view of the foregoing, this Court finds the evidence not sufficient to find the accused guilty beyond reasonable doubt of the crime as charged, and, therefore, declares the accused not guilty thereof. The judgment of the trial court is hereby reversed, and the accused is declared acquitted, with costs de oficio.

"However, it appearing from the records that the house was constructed (in 1972) by the previous owner, Guillermo Rezo, without a building permit, which is therefore an illegal construction, that part of the decision requiring the demolition of the subject house is hereby modified as follows:

"The accused is hereby ordered to remove and dismantle and transfer said house within 30 days after this judgment has become final, otherwise, the said house will be ordered demolished by the City Engineer's Office at his expense."

De Peralta contends that the dispositive part of the decision, ordering him to demolish his house, is inconsistent with the judgment of acquittal and is not warranted. He invokes the rulings in *Gomez vs. Concepcion*, 47 Phil. 717, *People vs. Abellera*, 69 Phil. 623 and *Arenajo vs. Lustre*, 63 O.G. 10371.

De Peralta was prosecuted under a 1952 Quezon City ordinance whose pertinent provisions read as follows:

"Ordinance Numbered 1530

"An Ordinance Regulating the Construction, Alteration, Repair and Demolition, and Removal of Building and Structures in Quezon City and the Installation, Alteration, Repair, Use, Operation, and Maintenance of Appliances, and Equipment Therein and Providing for the Issuance of Permits Therefor and Prescribing Penalties for Violation Thereof.

"Be it ordained by the Council of Quezon City, that:

"SECTION 1. It shall be unlawful for any person, firm, or corporation to commence or proceed with, or to cause or permit to be commenced or proceeded with, the erection, construction, building construction,

enlarging, alteration, changing, adding to, raising, or building upon, within Quezon City, unless a permit in writing to do so has first been obtained for each and every separate building or structure, x x x

xxx xxx xxx

"SECTION 9. Any violation of the provisions of this ordinance shall be punished by a fine of not more than two hundred (P200.00) pesos or by imprisonment in the discretion of the Court.

xxx xxx xxx"*

Judge Campos, in his comment on the petition, justified the order of demolition on the ground that it was intended to implement the policy of clearing Quezon City of squatters. He further contended that his order was part of De Peralta's civil liability which constituted an exception to the rule that a person not criminally liable is generally not civilly liable. Respondent Judge cited instances whereon person not criminally liable was nevertheless held to have incurred civil liability (Arts. 29, 33, 34, and 2177 of the Civil Code and arts. 11[4] and 12, Revised Penal Code).

The Office of the City Fiscal of Quezon City argued that De Peralta's house may be demolished because it was an illegal construction and that the latter's remedy is to sue the vendor for damages.

It is evident that the respondents missed De Peralta's point that the demolition of his house cannot be ordered in the judgment acquitting him of illegal construction.

On September 13, 1974, this Court directed De Peralta to take steps to validate his illegal construction. He was not able to secure a construction permit because it turned out that Lot 8, Block 3, located at 126 Kalayaan Avenue, Diliman, Quezon City, where De Peralta's house was constructed, is registered in the name of Augusto Z. Garcia as shown in Transfer Certificate of Title No. 116971 issued on April 6, 1967.[**]

We are of the opinion that the trial judge acted in excess of jurisdiction in ordering De Peralta to demolish his house after acquitting him of illegal construction. In a sense, demolition is a form of punishment. One cannot be punished in a case where he has been acquitted (State vs. Glenon, 164 La. 163, 113 So. 803).

In the Gomez case, *supra*, Judge Pedro Concepcion acquitted, on the ground of reasonable doubt, Doctor Dominador Gomez of having violated the Opium Law. At the same time, Judge Concepcion ordered that Gomez's clinic be closed. It was held that the closing of the clinic was in the nature of a penalty and that Judge Concepcion acted "in excess of jurisdiction" in imposing that penalty after acquitting Doctor Gomez.

"In a criminal case there is in reality only one issue, viz: whether the defendant is guilty or not guilty. If he is found guilty, the court acquires jurisdiction to impose a penalty; if he is found not guilty, no court has the power to mete out punishment; a finding of guilty must precede the punishment." (Gomez vs. Concepcion, *supra*, at page 723).

In the Abellera case, *supra*, it was held that "habiendo sido dicho acusado absuelto del delito que se le imputaba, de infidelidad en la custodia de documentos publicos, el Juzgado no tenia autoridad para reprenderle, puesto que una repension en causa criminal, por leve que sea, no deja de ser un castigo, y cualquier castigo repugna y es esencialment contrario a una absolucion." (Cf. Carroll and Ballesteros vs. Paredes, 17 Phil. 94, 105, where it was held that the accused who was convicted of having created a nuisance by closing a public street and who was fined could not be required to remove the obstruction. A person convicted of obstructing an irrigation canal cannot be ordered to restore the canal to its prior condition. Perlas vs. Concepcion, 34 Phil. 559).

Whether the proper remedy to remove De Peralta's house is through an ejectment suit, or under Letter of Instruction No. 19 dated October 2, 1972, which orders city and district engineers "to remove all illegal

constructions, including buildings, x x x and those built without permits on public or private property" (68 O.G. 7962), or through any other appropriate civil or administrative proceeding is a point which we do not decide in this case.

WHEREFORE, that portion of the decision of respondent Judge in Criminal Case No. Q-3296, People vs. Jose de Peralta, requiring the accused to remove, dismantle and transfer his house, is set aside. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.

[*] Ordinance No. 8179, series of 1970, amending Ordinance 8030, Series of 1970, provides for immediate demolition by the owner of construction works completed before or during 1968 "which are not covered by the necessary building permit and/or which do not conform" to existing building ordinances and zoning regulations.

Ordinance No. 8215, Series of 1970, refers to the demolition, upon the recommendation by the City Engineer in consultation with the police and health departments, of buildings constructed on front yards.

Said ordinances apparently do not apply to the instant case of petitioner De Peralta.

[**] According to Garcia, Patrolman Isidro Balanay, Jr. of Quezon City and his relatives, one of whom is De Peralta, squatted on his lot. He filed against them criminal charges for illegal construction (five cases). Balanay sued Garcia and the People's Homesite and Housing Corporation to annul the award of Lot 8 to Garcia. Balanay lost the case in the lower court. He appealed to the Court of Appeals, where the case is pending as CA-G.R. No. 55837-R. Garcia refused to consent to the issuance of a building permit to De Peralta.

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