

TAN SI KIOK, ANG KIM AND ALEJANDRO SINTERO, PETITIONERS, VS. MACARIO TIACHO, RESPONDENT.

G.R. No. L-1395. December 10, 1947

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal by certiorari from the decision of the Court of Appeals, which rendered judgment modifying that of the Court of First Instance of Manila, and ordering the defendants-appellants to vacate immediately the premises in litigation, and to pay the plaintiff-appellee the sum of P140 a month, from May, 1945 up to the time the actual surrender to the plaintiff of the possession of the premises.

The appellants or petitioners, in their petition for certiorari and brief submitted to this Court, contend that, taking as a basis the finding of facts of the decision of the Court of Appeals to the effect that "in 1941 * * * Alejandro Sintero, [one of the appellants] occupied the house in question at a monthly rental of P63," the lower court erred in concluding that the sum of P140 is a reasonable monthly rent to be paid by the appellants to the appellee, from May, 1945 up to the time the appellants actually surrender the possession of the premises to the appellee, because it is contrary to the Emergency Civilian Administrative Order No. 12, which provides that "the charge and increase of rental of houses and buildings in the City of Greater Manila to more than 25 per cent of the rental prevailing as of the last semester of the year 1941 is prohibited."

Assuming, without deciding, that said Emergency Civilian Administrator's order had the effect and force of a law, the Court of Appeals did not err in not taking into consideration said order in deciding the present case. That order does not fix and impose such rentals irrespective of the will of the parties. It only limits the amount of the rental which the tenant may be required to pay, or gives the tenant the right not to pay a rental in excess of the limitation provided for in that order. But the tenant may waive that right by paying a rental in excess thereof, or by failing to set it up as a defense or to raise that question in his appeal from the Court of First Instance to the Court of Appeals.

In the present case the Court of Appeals did not pass upon the question now raised by the appellants in this Court, because in the assignment of errors of the appellants filed with the Court of Appeals appellants did not raise that question or rely on said Order. The only assignment made by the appellant relating to rentals is that "the trial court erred in finding that the reasonable rent of 611 Asuncion should be P140 a month." Therefore this Supreme Court cannot now pass upon that question.

As to reasonableness of the rent of P140 adjudged by the appellate court, the attorneys for the appellants contend that the reasonableness of the rental found by the Court of Appeals, which is based on the fact that the same amount of rent was paid by tenants of contiguous apartments of the same building, is erroneous, because "neither decision nor record yields the finding or claim that the house herein involved and the houses contiguous to it are equal or even nearly equal in size and such a fact cannot be left to assumption." This contention raises question of fact which this Court can not pass upon in this appeal.

In view of the foregoing, the decision of the Court of Appeals appealed from is affirmed.

Moran, C.J., Paras, Pablo, Hilado, Bengzon, Briones, and Tuason, JJ., concur.

CONCURRING

PERFECTO, J.:

We agree that the decision of the Court of Appeals as to the reasonableness of the rents adjudged should not be disturbed, but we deem it necessary to write this opinion because of our stand that it is necessary that the question as to the validity or invalidity of the undated Order No. 12, issued by the Emergency Control Administrator Tomas Confesor and published in May, 1945, Vol. 41, No. 42, of the Official Gazette, be decided once and for all.

In our opinion all doubts on the question must be dispelled, as said order has been and is being invoked in several cases. In our opinion the order is null and void. Being in the nature of a legislative enactment, the officer who issued it had absolutely no power or authority to issue it. The Constitution has vested in Congress the exclusive power to enact laws, with limited participation granted to the President. The order, being violative of the Constitution, is null and void ab initio.

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