

ANGEL MASCUÑANA AND ANGELES M. VERDEFLO, PETITIONERS-APPELLANTS, VS. THE PROVINCIAL BOARD OF NEGROS OCCIDENTAL, MUNI-CIPAL COUNCIL OF TALISAY, NEGROS OCCIDENTAL, LEON T. TREYES...

G.R. No. L-27013. October 18, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This appeal is about the legality of Resolution No. 59, dated September 8, 1962, of the municipal council of Talisay, Negros Occidental, declaring, as municipal property closed to vehicular traffic, a piece of land situated near the intersection of Burgos and Rizal Streets and adjacent to the bank of the Minuluan River and to some lots of the Talisay cadastre.

According to the petition, among those adjacent lots are Lot No. 80 owned by Angel Mascuñana and Lots 81-A, 81-B and 81-C registered in the names of his children, Angeles M. Verdeflor, Angel, Jr. and Manuel.

Angel Mascuñana alleged that the piece of land in question is the terminus or extension of Burgos Street. It is occupied by Councilor Leon T. Treyes, Ulpiana Inson, Gonzalo Ordaniel and Florentino Gargallano who had constructed houses thereon.

Mascuñana and his daughter, Angeles, in a letter dated March 20, 1962 informed the mayor of Talisay that that portion of Burgos Street was occupied by squatters. Mascuñana said that the constructions of the squatters were prejudicial to the public particularly to the owner of Lot No. 81-A, his daughter Angeles, who wanted to build a residential house on her lot. Mascuñana asked the mayor to take the necessary steps to clear the area of squatters so that the public could use that part of Burgos Street.

The mayor took up Mascuñana's request with the municipal council. The council indorsed Mascuñana's letter to the municipal treasurer for verification, opinion and comment.

The treasurer found that the alleged portion or extension of Burgos Street mentioned in Mascuñana's letter is the property of the municipality of Talisay. The treasurer was not certain as to whether the said land had been used as a street, or had been withdrawn from that use or had been abandoned or had never been designated for public use. To determine the "character" of the said land, he suggested that the matter be referred to the municipal attorney for further study.

On July 30, 1962 the acting provincial fiscal, to whom the matter was referred by the municipal attorney of Talisay, rendered the opinion that "Burgos Street is a municipal street and under the law is a property devoted for public use" and is outside the commerce of man; that there was no record to show that that portion of Burgos Street in question had been withdrawn from public use by the municipal council, and that nonuser alone would not destroy its public nature.

The members of the municipal council of Talisay made an ocular inspection of the questioned area. They concluded that there was no valid reason for opening it to vehicular traffic. The council passed the aforementioned Resolution No. 59 which reads in part as follows:

"x x x, THE COUNCIL RESOLVED, that considering the above-mentioned portion of land being a municipal property, therefore, to declare the same as closed or not necessary for vehicular traffic.

"FURTHER RESOLVED, that this Body will take up on their next coming session the question of the resident presently having their houses located on the portion of land referred to in this resolution."

A month later, or on October 20, 1962, the municipal council passed Resolution No. 82 wherein it referred once more to the provincial fiscal the question of whether the municipality has legal authority "to dispose of, lease, transfer, sale (sell), mortgage and subdivide to the present occupants" the land in question.

In a letter dated November 2, 1962 the acting provincial fiscal informed the municipal council of Talisay that the closure of a municipal street is governed by section 2246 of the Revised Administrative Code which authorizes a municipal council to close a municipal road, street, alley, park or square, after indemnifying any person prejudiced thereby, and to use or con-vey for any lawful purpose such property withdrawn from public servitude.

The fiscal advised that any resolution approving the closure of the street should be accompanied with the following data required in a circular of the Executive Bureau: (1) the re-commendation of the district engineer; (2) certified copies of documents executed by owners of lots adjacent to the street to be closed waiving all claims for damages to their respective properties, and (3) a statement of the provincial fiscal as to the sufficiency of the documents submitted.

The matter did not end there. The controversy was elevated to the provincial board of Negros Occidental. That board resolved on June 26, 1964 to make an ocular inspection of Burgos Street together with the municipal council of Talisay, the parties concerned and the provincial fiscal.

After that ocular inspection, or on June 30, 1965, the provincial fiscal rendered an opinion upholding the validity of the municipal council's Resolution No. 59 and stating that the council may dispose of the land in question, as its patrimonial property, in any manner which it may deem proper. The opinion contains the following findings:

"The immediate conclusion reached after the investigation is that the parcel of land claimed to be an extension of Burgos Street of the Municipality of Talisay does not practically exist as a street; there is a small alley between houses from a meeting of two streets leading towards a creek passable by one person at a time or with one following another with a length of about twenty meters. Even without those houses, the width of the alley could not be widened to conform with Burgos Street as it is on the brink of a creek which in turn connects to the open sea. That portion of land cannot be even considered as part of Burgos Street nor (may) it be properly called a thoroughfare. Such being the case, the requirement of Section 2246 of the Revised Administrative Code need not be complied with."

In view of those findings, the provincial board passed on July 30, 1965 Resolution No. 1035 approving the municipal council's Resolution No. 59.

More than seven months later, or on March 15, 1966, Mascuñana and his daughter Angeles filed in the Court of First Instance of Negros Occidental against the provincial board, the municipal council and the four occupants of the area in question, namely, Councilor Leon T. Treyes, Ulpiana Inson, Gonzalo Ordaniel and Florentino Gargallano, a petition wherein they prayed that Resolution No. 59 of the municipal council and Resolution No. 1035 of the provincial board be declared void. They also prayed for other equitable relief.

Annexed to the said petition is a cadastral map showing the lots and streets in the Talisay poblacion. That map of

the Talisay cadastre, which was traced by Adolfo T. Treyes on July 25 and 26, 1960 under the supervision of Rafael Guerrero, Jr., a private land surveyor, is known as Index Sheet No. 102, approved by the Director of Lands on February 25, 1916. It shows that while Burgos Street ends at the bank of the river (its mouth apparently), Zamora, Capitan Saba, Libertad and Bonifacio Streets end at the shores of Guimaras Strait.

The petitioners alleged that a verification of the cadastral map would show that the disputed area which is between Lots 82 and 81, was originally a part of Burgos Street. They further alleged that Resolution No. 59 is void because there was no compliance with the three requisites, prescribed in section 161 of the Compilation of Provincial Circulars of the Executive Bureau, for the closure of municipal streets as authorized in section 2246 of the Revised Administrative Code.

The petitioners insinuated that the municipal council was influenced by Councilor Treyes, one of the occupants of the disputed area. They alleged that the provincial board made itself a party to an illegal act in order to justify the stay of Councilor Treyes in that area.

The provincial board in its answer alleged that section 2246 cannot be invoked because the disputed portion is not a part of Burgos Street. The municipal council did not file any answer. The four private respondents filed motions to dismiss.

In his motion respondent Treyes alleged that he had occupied a part of the disputed area since 1942 and that he had constructed thereon a house worth not less than P47,000 while his three co-respondents had occupied the area for more than twenty years. For that reason, according to Treyes, the remedy of declaratory relief is not proper in this case since it would not terminate the uncertainty or controversy. Treyes further alleged that if, as shown in Mascuñana's letter to the mayor, he had subdivided his lot and transferred it to his three children, he is not a real party in interest. The other three private respondents adopted the arguments of Treyes in their motion to dismiss.

The petitioners in their opposition contended that their action might be treated as an action for prohibition wherein they seek to enjoin the enforcement of Resolution No. 59.

The lower court issued a minute or laconic order dated August 8, 1966 which reads: "Finding the argument in support of the motion to dismiss to be well-founded, the petition dated March 7, 1966 is hereby dismissed". It denied petitioners' motion for reconsideration in the same curt manner: "Finding the Motion for Reconsideration to be without merit, the same is hereby denied".

Mascuñana and Angeles M. Verdeflor appealed. The four private respondents did not file any appellees' brief. The fiscal filed an appellees' brief for the provincial board and the municipal council. (The council, being in default for not having answered the petition had no right to file an appellees' brief).

The issue is whether the petition states a cause of action which the trial court should have tried on the merits instead of having summarily dismissed it in a minute order on the basis of the private respondents' motions to dismiss and without having discussed petitioners' contentions.

As Angel Mascuñana had transferred his Lot 81 to his children, he might have ceased to have a direct interest in the opening to vehicular traffic of the disputed area. But his co-petitioner, Angeles M. Verdeflor, as the owner of Lot 81-A, has such an interest because that lot is adjacent to the said area. (Note that the cadastral map shows that Lot 80, belonging to Angel Mascuñana, as a lot distinct and separate from Lot 81, has some proximity to the disputed area).

The petitioners labor under the impression that their action is for declaratory relief. On the other hand, the fiscal, as counsel for the provincial board, contends that an action to declare void Resolution No. 59 of the municipal

council is not an action for declaratory relief because section 1, Rule 64 of the Rules of Court refers to an ordinance and not to a resolution.

A municipal ordinance is not the same as a resolution of the municipal council. Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated ordinances (Sec. 2227, Revised Administrative Code).

A resolution is less solemn and formal than an ordinance. It "is an act of a special or temporary character, not prescribing a permanent rule of government, but is merely declaratory of the will or opinion of a municipal corporation in a given matter, and in the nature of a ministerial or administrative act, and is not a law" (62 C.J.S. 786-7).

In reality, petitioners' action is not for declaratory relief but is an ordinary action for the enforcement of section 2246 of the Revised Administrative Code and for the opening to vehicular traffic of the disputed area. That section reads as follows:

"SEC. 2246. Authority to close thoroughfare. With the prior authorization of the Department Head, a municipal council may close any municipal road, street, alley, park, or square; but no such way or place aforesaid, or any part thereof, shall be closed without indemnifying any person prejudiced thereby.

"Property thus withdrawn from public servitude may be used or conveyed for any purpose for which other real property belonging to the municipality might be lawfully used or conveyed."

As stated on pages 9 to 11 of their brief, petitioners' contention is that Resolution No. 59 is void because the municipal council did not observe the requisites delineated in section 161 of the Compilation of Provincial Circulars which requisites were prescribed by the Executive Bureau for the implementation of section 2246.

If the disputed area is proven to have been a part of Burgos Street, as the cadastral map seems to indicate, and if its closure to vehicular traffic, as effectuated under Resolution No. 59, is held to be illegal, petitioner Verdeflor might claim damages.

Thus, in *Abella vs. Municipality of Naga*, 90 Phil. 385, it was held that where the municipality closed that part of a municipal street, which ran between the public market and the plaintiff's property, and the said adjoining property owner was admittedly damaged by such action, he was entitled to receive the amount of the damage by virtue of section 2246. The municipality's contention that it was not liable for damages because it acted in the exercise of its police power and for the public welfare was not sustained. (Compare with *Unson vs. Lacson and Genato Commercial Corp.*, 100 Phil. 695 and 112 Phil. 752, regarding the lease of a part of a Manila street to a private firm which was declared void).

Masculana's letter to the mayor shows petitioners' cause of action. In that letter, he requested the mayor to clear the disputed area of squatters because their constructions are prejudicial to the public in general and, in particular, to petitioner Verdeflor as owner of Lot 81-A.

From petitioners' viewpoint, they have reason to complain of a delict or wrong caused by the closure of the disputed area to vehicular traffic due to the acts of the private respondents in occupying that area and to the act of the public respondents in giving to that closure a semblance of legality by means of their resolutions which have been questioned by the petitioners in this case.

The finding of the fiscal and other provincial officials during their ocular inspection that the disputed area is not a part of Burgos Street because it is not passable at all strengthens petitioners' cause of action that the resolution declaring it closed to vehicular traffic should be voided and that the area should be cleared of squatters so that it

could be used by the public.

If, as revealed in the cadastral map, the disputed area was originally a part of Burgos Street, then the constructions of the four private respondents on said area, which obstruct and interfere with the free passage of the street, may possibly be characterized as a nuisance which can be abated summarily (Arts. 694 and 695, Civil Code; Letter of Instruction No. 19, dated October 2, 1972, 68 O. G. 7962; *Sitchon vs. Aquino*, 98 Phil. 458).

The trial court in disposing of the case in a minute order gave the impression that it had ignored or cavalierly treated petitioners' contentions.

It is true that there is no rule requiring a trial court to make findings of fact and law in an order of dismissal. The constitutional requirement of making findings of fact and law applies only to decisions. Nevertheless, it should be borne in mind that a trial court's order dismissing a complaint or petition is appealable like a final judgment. Therefore, for the satisfaction of the losing party and to assist the appellate court in resolving the appeal, the trial court should take some pains to reason out its order of dismissal and should not merely incorporate therein, by reference, the motion to dismiss.

We should not be understood as having prejudged this case in favor of the petitioners-appellants. What is being underscored is that the ends of justice would be better served by holding in this case a trial on the merits if no amicable settlement is arrived at during the pre-trial or if there is no agreed statement of facts. The legal points raised by the petitioners should be resolved in a decision on the merits of the case.

WHEREFORE, the trial court's minute order of dismissal is reversed and set aside with costs against the private respondents-appellees.

SO ORDERED.

Concepcion, Jr., and Santos, JJ., concur.

Antonio, J., in the result.

Barredo, J., (Acting Chairman), concur with the observation that an order of dismissal under Rule 16 is comparable to a judgment contemplated in Sec. 1 of Rule 36.

Fernando, J., no part.

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