

**SPOUSES ANTONIO AND LOLITA DAZA, PETITIONERS-APPELLANTS,
VS. RICARDO PAPA, JR., IN HIS CAPACITY AS MUNICIPAL MAYOR OF
TAGUIG, ENGR. GODOFREDO QUILATAN, LT. COL. EDILBERTO
PANCIP...**

Ponente: BARRIOS, J.

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BARRIOS, J.:

Branch 15 of the Regional Trial Court of Pasig City dismissed with prejudice (p. 274, record) the Petition for Preliminary Injunction Prohibition and Damages filed by the petitioners and now appellants spouses Antonio and Lolita Daza (or the Dazas). From this dismissal the Dazas brought this appeal assigning the lone error that:

THE COURT A QUO ERRED IN DISMISSING THE CASE WITH PREJUDICE TO THE DAMAGE AND PREJUDICE OF THE PETITIONER-APPELLANTS. (p. 18, rollo)

The Dazas reside at Maharlika Road, Purok 6, Barangay Upper Bicutan, Taguig, Metro Manila, which is inside the Fort Bonifacio military reservation. For allegedly failing to comply with Section 302, Chapter 3 of P.D. 1096 and Section 444 (3) (VI) of the Local Government Code, notwithstanding receipt of notice to temporarily stop the construction in their two floor structure, the Office of the Municipal Engineer of the Municipality of Taguig issued a Notice of Demolition against the Dazas.

The Dazas then sought recourse in court by filing on February 11, 1994 the instant suit against the respondents and now appellees Hon. Ricardo Papa, Jr., in his capacity as the then Municipal Mayor of Taguig, Engineer Godofredo Quilatan, Lt. Col. Edilberto Pancipane and Chairman Venancio Osano (or appellees unless referred to by their respective surnames) to enjoin them from implementing the demolition.

In their petition the Dazas alleged that they are the absolute owners of a residential structure erected on the aforesaid property which costed P200,000.00. The house was constructed with the knowledge and approval of the government officers and agencies concerned. They were issued on September 26, 1981 a Revocable Permit to Construct a House in the lot, and also Revocable Permit to Reside (Houseowner) on August 25, 1983 (p. 12, record). They have a Sertipikasyon (p. 13, record) attested to by the officials of the Pinag-isang Damdamin ng Sitio Imelda showing proof that they are the owners of the house erected on the lot.

The Dazas claimed that although the land on which their house is constructed is a military reservation, this was reserved by the government for the actual occupants thereof. The Dazas requested the municipal authorities of Taguig that they be allowed to undertake a renovation on their house and were surprised to receive instead a notice of demolition from Mayor Papa, Jr. and Quilatan ordering them to remove the very house which they have built. Tracing the reason for this, the Dazas came to know that Pancipane filed an unverified complaint before Osano presenting himself as the claimant of the lot. Pancipane is a former official of the military headquarters / reservation-in-charge hence he is disqualified to be awarded a lot. But acting on his unverified complaint, Osano threatened to demolish the residential structure of Dazas and in fact he has initiated moves to demolish this. The Dazas tried to negotiate with the municipal officials but these were futile.

Pancipane filed his own Answer to the petition averring that the document Revocable Permit to Construct a House (p. 11, record) is not authentic. As a matter of policy in the Philippine Army, these kind of documents are issued only to military personnel in the active service but not civilians. Pancipane denied the authenticity not only of the aforesaid document but also the Revocable Permit to Reside (p. 12, record) and the Sertipikasyon (p. 13, record) as well. Refuting the allegations of the Dazas, Pancipane alleged that the house built on the lot belongs to him and that the Dazas were his mere caretakers who took advantage of his absence and paid the assessment taxes thereon and otherwise made it appear that the improvement in the lot belongs to them. Giving the details on how the lot came to his possession, Pancipane alleged that this was awarded to him when he was still a Major and the custodian of Funds, Non-appropriated Funds, HHSG, Philippine Army stationed at Fort Bonifacio. As a matter of policy, only members in the Active Service and those who are retired can apply for and be issued Revocable Permits. To comply with the conditions of the permit, Pancipane constructed a house and resided there until after the February 1996 revolution when he was ordered transferred to Camp Capinpin, Tanay, Rizal. It was at this point that he decided to designate the Dazas, who were recommended by his friend, as caretakers of the property.

The rest of the appellees also filed their Answer and likewise denied the allegations of the Dazas. In their own affirmative allegations, they stated that it was only sometime in September 1992 when the Dazas declared in their names the existing structure consisting of a one-storey house with a 105 square meters floor area and commercial building with a 75 square meters floor area. It was on October 11, 1993 when the Dazas applied for a permit to repair the roofing of the said structure. Shortly Pancipane filed a complaint claiming that he is the owner of the property and not the Dazas who are his mere caretakers. Upon inspection it was found out that the Dazas were not only making a repair of roof but were actually making a gradual demolition of the existing structure and already constructing a new two-storey building. Because of this, the Dazas were required to comply with the requirements on new constructions and in the meantime to stop the on-going work pending the submission of the required documents and payments. Because of their failure to comply with the requirements, a notice of demolition was consequently issued against the Dazas.

After pre-trial was terminated, the initial trial was scheduled on November 14, 1994. However from that day on, the trial had been set and re-set either at the instance of the Dazas or the appellees.

In view of the election and assumption of a new mayor for Taguig, in the Order dated July 18, 1996 Mayor Papa was substituted by the newly elected Mayor Isidro Garcia (p. 166, record).

On August 26, 1996, Antonio Daza took the witness stand, but his testimony was not completed and the cross-examination was postponed. However the next scheduled hearings continued to be postponed at the instance of the parties until cross-examination upon Antonio Daza could no longer be conducted because of his demise on September 17, 1997. He was then substituted by his heirs in the order of the court a quo dated May 22, 1998 (p. 204, record).

Continuation of trial was set on August 21, 1998 but this was cancelled. In the hearing of November 16, 1998, the parties manifested that there was an effort to work out a compromise agreement. Because of the supposed pending amicable settlement, hearing on this case was set and reset for 7 times between January 18, 1999 (p. 213, record) and April 17, 2000 when the court a quo was notified that there was already a draft of the amicable settlement. However in the hearing set on February 27, 2001, the court a quo was told that the contemplated amicable settlement did not push through (p. 237, record). Trial was continued to be set, but as usual the hearings were postponed.

On July 3, 2001 it was the turn of Pancipane to depart from this world and the court a quo issued an order (p. 250, record) for his proper substitution. On December 10, 2001, the court a quo continued to set the case for trial. From

February 8, 2002 to June 27, 2003, there were nine (9) scheduled hearings, all of which were postponed on the alternative instance of the parties. Finally on September 8, 2003, the court a quo issued an Order stating in part thus:

None of the parties appeared, despite proper notice when this case was called for trial. The records shows that this case has been pending for a long time. The court hereby warns the parties that it will not hesitate to dismiss this case in the event that plaintiff fail again to present evidence in the next scheduled hearing which is set on October 27, 2003 x x x (p. 272, record)

Came said date and despite the warning, counsel for the Dazas failed to appear. Thus the case was dismissed with prejudice.

From the said order, the Dazas filed what was denominated as Urgent Motion for Reconsideration to Submit Corresponding Evidence (p. 275, record). However, finding that this was not set for hearing nor accompanied by an affidavit of merit as required by the rules, the court a quo denied this for lack of merit (p.278, record).

Assailing the said orders, the Dazas are now before Us on this appeal.

We do not find this meritorious.

The order of the court a quo dated October 27, 2003 contains that:

Only Atty. Francisco Borja, counsel for the defendants was present when this case was called for hearing.

The records shows that this case has been pending for the last number of years because of the inability of plaintiffs to present evidence in support of their complaint. Last September 8, 2003, during the hearing of this case, the Court issued an Order warning the plaintiffs that the Court will not hesitate to dismiss this case in the event the plaintiffs fail again to present evidence.

Finding the motion of the defendants thru counsel, Atty. Borja, to be meritorious, this case is ordered dismissed with prejudice. (p. 274, record emphasis supplied)

The court a quo did not unreasonably dismiss the case. There was already a stern warning given to the Dazas that they should present evidence in support of their cause of action but they failed to do so. The case was filed way back in February 1994 and except for the direct examination conducted upon Antonio Daza, the case no longer progressed until its dismissal on October 2003. The dismissal of the case therefore is only deserved for the failure of the Dazas to prosecute their case and heed the warnings of the court a quo.

There is no merit to the claim of the Dazas that they have submitted enough evidence for a ruling on their petition. Constantly, it has been held that the issuance of a writ of preliminary injunction rests upon the sound discretion of the trial court (*Land Bank of the Philippines vs. Continental Watchman Agency, Inc.*, 420 SCRA 624), and the court a quo cannot be faulted for finding the extant evidence inadequate.

So as not to leave a stone unturned, this Court scrutinized the evidence presented by the Dazas and We are convinced too that injunction should not be issued because they failed to show their clear and unmistakable right which ought to be protected. Where the complainant's right or title is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction (*Medina vs. Greenfield Development Corporation*, 443 SCRA 150).

WHEREFORE, the appeal is DENIED and the Orders dated October 27, 2003 and November 25, 2003 are AFFIRMED.

SO ORDERED.

Guariña III and Romilla-Lontok, JJ., concur.

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