

**CRESENCIO, MAGIN, JUANITO, SOCRATES, AND IMELDA, ALL
SURNAMED VELEZ, PETITIONERS, VS. HON. CELSO AVELINO,
PRESIDING JUDGE, CFI CEBU BRANCH XIII, ALDING ACEDERA,
FABIANA ALLISON,...**

G.R. No. L-48448. February 20, 1984

Ponente: GUERRERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/89bdeea04576/>

GUERRERO, J.:

This is a petition for certiorari filed by Cresencio, Magin, Juanito, Socrates and Imelda, all surnamed Velez, seeking the reversal, for grave abuse of discretion, the decision dated May 22, 1978 of the Court of First Instance of Cebu, Branch XIII dismissing their complaint for recovery of possession of five parcels of land pursuant to Presidential Decree No. 20.

The evidence shows that the five parcels of land all located at Katipunan Street, Cebu City, then assessed at P17,000.00 and known as Lots 5311-A-2-A, 5311-A-2-B, 5311-A-2-C, 5311-A-2-D and 5311-A-2-F, were formerly owned by Rodrigo Velez, the father of petitioners. In an extrajudicial partition, the said lots were adjudicated to petitioners herein on June 16, 1970. As early as 1970, petitioners made a demand to vacate upon respondents who asked an extension of one year but thereafter, respondents changed their minds and refused to vacate. Around the end of 1973, petitioners again advised respondents that they needed the premises for their own use and ordered them to vacate the premises by removing their dwelling units from the lots. Upon their refusal, petitioners filed an ejectment case before the City Court of Cebu, which case was docketed as Civil Case No. R-17011. On motion of respondents, the City Court dismissed the case without prejudice in an Order dated August 3, 1974 on the ground that there exists no cause of action, following the suspension of judicial ejectment by Presidential Decree No. 20. On July 3, 1976, petitioners made again an extrajudicial demand in a letter which required respondents to vacate the premises within 15 days at the same time threatening them with prosecution under Presidential Decree No. 772 for the crime of squatting. On August 5, 1976, petitioners filed the complaint for recovery of possession of the aforesaid five parcels of land alleging that except for Magin Velez, they have no other lot of their own and are living on other persons' premises; that respondents are not only occupying the premises but also accepting boarders and/or using the same for commercial purposes and that several demands have been made to give way to the needs of petitioners and their respective families but respondents maliciously, abusively and defiantly refused to accede to petitioners' lawful demands.

In their answer, respondents admitted the ownership of the land by petitioners. But in their special and affirmative defenses, they alleged that they have been occupying portions of the lots by virtue of oral agreements of lease for an indefinite period, paying monthly rentals for their respective portions ranging from P4.00 to P12.00; that the present action is barred by *res judicata* and/or prior judgment and that the present action, if at all there is any cause of action, is essentially one for unlawful detainer since the last demand to vacate was made less than a year ago.

Eight of the twenty respondents testified that they are the original occupants of the lots while two of them,

Segundo Macatol and Hilario Gaviola, claimed to have bought their houses from third persons with the understanding that they should pay rentals to the landowner, Rodrigo Velez. They also testified that they have been paying rentals for their respective portions ranging from P4.00 to P12.00. In support of their claim of payment of rentals, at least six of them presented one or two receipts dated 1973 or earlier (Exhibits 2, 2-A to 2-I) and claimed that other receipts were lost. But all respondents admitted not having paid rentals since 1973, some reasoning out that nobody collected and others claiming that Fabiola Velez Garganera, Rodrigo Velez' daughter, refused to accept their rentals. At least one of them, Hilario Gaviola, produced what he claimed as a building permit but the same turned out to be a mere application.

After the case was submitted for decision, the trial court ruled:

"It appearing that the defendants are lessees of the portions of the land in question wherein their respective dwelling units are erected, personal use by the plaintiffs and/or their families of the said land, cannot be a valid ground for judicial ejectment of the former, pursuant to Presidential Decree No. 20, issued by the President on March 15, 1977." (sic, should be October 12, 1972). (Decision of the CFI, p. 5; Rollo, p. 30)

On the ground that respondent Judge of the Court of First Instance of Cebu acted with grave abuse of discretion in the exercise of his judicial functions by holding that private respondents are lessees and, therefore, privileged to continue staying on the lots in question pursuant to Presidential Decree No. 20, the plaintiffs below brought this instant petition for certiorari.

Petitioners contend that the preponderance of evidence shows that the occupancy of private respondents on the lots in question is due to the tolerance of the owners thereof and against the latter's will.

Conceding that respondents are lessees, petitioners claim that Presidential Decree No. 20 does not mean that (1) they are freed from paying rentals for the lots in question; (2) they can use the lots for commercial purposes; and (3) they can refuse to adduce evidence - specifically referring to the twelve respondents who did not testify on their behalf.

In answer to the argument of respondents that they are willing to pay rentals if petitioners send collectors, petitioners cite Article 1256 of the Civil Code where mere willingness to pay is not payment, thus:

"Art. 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignment of the thing or sum due."

Petitioners also claim that they had presented evidence that some respondents, particularly Natividad Bajarias, Maura Belarma and Placida Tezano, are using the premises not only as residences but also stores while Alding Acedera is using her residence as a boarding house, thereby removing said respondents from the protective mantle of Presidential Decree No. 20.

Finally, petitioners invoke the equal protection rights guaranteed by the Constitution contending that respondent Judge's undue application of Presidential Decree No. 20 in spite of the undisputed fact that petitioners have no other lot of their own and are renting other people's properties, except Magin Velez (who nevertheless wants to recover his property for the use of one of his children who is married), constitutes a denial of said constitutional provision.

Whether or not respondent Judge acted with grave abuse of discretion must be resolved in the affirmative. It should be recalled that this is a case of accion publiciana, the purpose of which is being to establish who have a better right to possess. (Bernabe, et al. vs. Judge Dayrit, et al., G.R. No. 58399, Oct. 27, 1983). There is no allegation of forcible entry in the complaint. Neither is it a case of unlawful detainer because the preponderance of evidence shows that the occupancy of private respondents on the lot in question is due to the tolerance of the

owners thereof and against the latter's will. Private respondents admit that they have no written contract of lease with the petitioners not with petitioners' predecessor in interest. Only Marcial Burgos alleged that he had an oral agreement with Rodrigo Velez, all others surprisingly failed to testify that they had such an oral agreement of lease. They likewise admit that their houses were constructed without building permits. In the true sense of the word, respondents are squatters. As such, their possession is by tolerance. (*Pangilinan vs. Aguilar*, 43 SCRA 136). Although respondents had been paying nominal rentals, ranging from P4.00 to P12.00 per month for some time, they did not thereby acquire the legal status of tenants. Squatting is unlawful and no amount of acquiescence converts it into a lawful act. Illegal constructions constitute public nuisance per se. They pose problems of health and sanitation. (Cf. *City of Manila vs. Garcia, et al.*, 19 SCRA 413).

Even if the case were to be decided as an ejectment case, the insistence of respondents that they are lessees and, therefore, under the protective mantle of Presidential Decree No. 20 loses ground when we consider the finding of fact that respondents had not been paying any consideration for the occupancy of their respective premises. Said Presidential Decree No. 20 suspended ejectment when the lease is for an indefinite period. It did not suspend ejectment on other grounds like lack of payment of the rental stipulated.

The failure of the owners to collect, or their refusal to accept the rentals are not valid defenses. Article 1256 of the Civil Code provides that "if the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be re-leased from responsibility by the consignation of the thing or sum due."

Independently of the foregoing, the petitioners' need of the premises for their own use or for the use of any member of his family as a residential unit entitles them to the possession of the lots in question. *Batas Pambansa Blg. 25*, which took effect on April 10, 1979, provides as additional ground for judicial ejectment the need of the owner/lessor to repossess his property for his own use or for the use of any member of his family as a residential unit, such owner or immediate member not being the owner of any other available residential unit.

Even before the effectivity of *Batas Pambansa Blg. 25*, Presidential Decree No. 20 had been held to be not without exception. In *Ongchengco vs. City Court of Zamboanga*, 95 SCRA 313, this Court ruled that "extreme necessity for personal use of the property entitles the owner to exemption from the operation of PD 20 which suspends the provision of Article 1673 of the Civil Code on judicial ejectment." The case of *Betts vs. Matias*, 97 SCRA 439, reaffirmed that "Presidential Decree No. 20 does not sanction the deprivation of a lessor of residential property in extreme need of the leased premises for his own use of his right to terminate the lease and recover possession of his property." Then, in *Sinclair vs. Court of Appeals*, 115 SCRA 318, this Court held that "a strict and rigid compliance with Presidential Decree No. 20 is not in order, for an exemption from its provisions is warranted for humanitarian reasons." Again, in *Tan Tok Lee vs. CFI of Kalookan City*, 121 SCRA 438, this Court said that "petitioners' reliance on the provision of Presidential Decree No. 20 is not well taken. It could not have been the intention of the said decree to deprive the owner of the rightful use of her home, more so, when petitioners reneged on their promise to look for another house in the mistaken belief that PD 20 gave them a preferential right over that of the owner. To deny the owner of the use and possession of her property would be tantamount to depriving her of her constitutional right to abode." In *Rantael vs. Court of Appeals, et al.*, 97 SCRA 453, this Court upheld the right of the lessor to judicially eject the lessee on the ground not only that "expiration of period of written lease contract is manifestly present" but also because *Batas Pambansa Blg. 25* which superseded P.D. 20 "buttresses the right of respondent Llave to judicially eject petitioner Rantael from the leased premises." In *Santos vs. Court of Appeals and Paraguas*, G.R. No. L-45071, May 30, 1983, this Court held that "the retroactive application of *Batas Pambansa Blg. 25* to pending ejectment cases is already a settled matter and may no longer be questioned. (*Alejandro Melchor, Jr., etc. vs. Hon. Jose L. Moya, etc., et al.*, G.R. No. L-35256, March 17, 1983; *Gutierrez vs. Cantada*, 90 SCRA 1; *Ongchengco vs. City Court of Zamboanga*, 95

SCRA 313; Betts vs. Matias, 97 SCRA 439). It was also held therein that "the right of the private respondents over the property which they own in order to use the same as their residence, not being owners of any other dwelling place, may not be denied. Such right is expressly recognized by Batas Pambansa Blg. 25. Elemental sense of justice and fairness dictates that it must be so."

WHEREFORE, the petition for certiorari is granted. The decision of the defunct Court of First Instance of Cebu, Branch XIII, dismissing the complaint of petitioners, is hereby REVERSED and SET ASIDE. A new judgment is hereby entered in favor of petitioners, ordering respondents to vacate the premises in question and to remove their respective constructions and/or improvements therefrom within sixty (60) days from notice.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.