

THE DIRECTOR OF LANDS, PETITIONER, VS. THE COURT OF APPEALS, ANITA U. LORENZANA, ET AL., RESPONDENTS.

G.R. No. L-21059. July 29, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Respondent Anita U. Lorenzana was the successful bidder in 1953 in the public sale of a quonset hut situated on a lot on Quezon Boulevard; Manila, which was part of the San Lazaro Estate administered by the Director of Lands. Before the sale she had a contract for the lease of the site, entered into with the Manila Railroad Company, which was then in occupancy thereof. The lease was impliedly recognized by the Bureau of Lands, to which the rents were being paid. The quonset hut was destroyed by accidental fire in 1958, and Lorenzana thereupon filed a lease application with the Bureau of Lands, which was approved in principle^[1] for an area of 700 square meters. It seems, however, that a question subsequently developed because a number of former tenants of respondent Lorenzana also filed a lease application for an area of 360 square meters of the same property.

On August 25, 1959 Lorenzana obtained a building permit from the City Engineer of Manila for the construction of a three-storey building on the aforesaid lot. The construction was already well-advanced when the City Engineer, upon repeated representations of the Bureau of Lands, sent Lorenzana a letter dated October 5, 1959, suspending the construction work, with a threat to revoke the permit altogether if she refused to comply. The order of suspension triggered the original proceeding in the Court of First Instance of Manila, which was a petition filed by Lorenzana against the City Engineer to enjoin him "from going through with his threatened act to revoke petitioner's building permit or to suspend the force and effect of respondent's letter of suspension (sic)." As prayed for in the petition a writ of preliminary injunction was issued by the Court. The Director of Lands intervened and asked that the order granting the writ be reconsidered and that the suspension order be maintained "until the suit (between the petitioner and the intervenor) involving the rights of petitioner to lease and occupy portion of the San Lazaro Estate is finally decided by the Court of First Instance of Manila in Civil Case No. 41295 pending in Branch 2 of this Court."

After trial judgment was rendered for petitioner Lorenzana, respondent here, maintaining the injunction previously issued. The Director of Lands appealed, but the City Engineer did not. On January 31, 1963 the Court of Appeals affirmed on four grounds, to wit:

"(1) The judgment below making permanent the writ of preliminary injunction against respondent City Engineer of Manila has become final with respect to said respondent who, did not appeal.

(2) The case has become moot. The construction of Lorenzana's three-story building under the building permit has been finished. And according to appellee, after the perfection of this present appeal, the Director of Lands had already openly agreed and acceded to petitioner's making an additional fourth floor to her present three-story building. Hence, the issue in this appeal had already been rendered moot and abrogated by the subsequent acts of the intervenor-appellant Director of Lands.

(3) Lorenzana was at least in material possession with the per-mission of the Bureau of Lands. The conflict of rights between Lorenzana and the Bureau of lands with respect to her alleged right to build and to the improvements, which conflict is Governed by stipulation and by the Civil Code, should be threshed out in an ordinary civil action. It was no concern of the City Engineer of Manila who has already issued the building permit.

(4) Respondent City Engineer of Manila had earlier rendered a determination, which in our opinion is correct, that, "it is the ministerial duty of the City Engineer to issue a building permit when the application and the plans are in conformity with the requirements of building laws and ordinances;" that, "As long as there is no violation of building ordinances in the pro-cess of construction, this Office has no ground for suspending the building permit issued," and that, "suspension or revocation of per-mit without cause would be an ar-bitrary act and abuse of discre-tion."

The case is now before us on a petition for review by certiorari. We see no sufficient reason to reverse the decision of the Court of Appeals. Whether or not the suspension of the building permit issued by the City En-gineer of Manila should be insisted upon is a matter that is primarily addressed to the discretion of that official. And his failure to appeal shows that he was agreeable to the maintenance of said permit. The judgment of the trial court has become final as to him, and the effect is as if he himself had set aside the order of suspension.

From petitioner's motion for intervention presented below it appears that his interest was to have the said order maintained. If, as he now avers in the instant petition before us, he is opposed to the prosecution of the construction work on the building of respondent, the Court of Appeals is correct in holding that the case has become moot in view of its finding that the construction of the three-storey building under the building permit has been finished.

Whether or not the construction should be demolished, as prayed for by petitioner, is a question that cannot and should not be litigated in this case, which concerns only the building permit issued and then suspended by the City Engineer, but rather, as correctly held by the Court of Appeals, in a separate action where the right of respondent Lorenzana to lease and occupy the lot on which the building stands may be threshed out.

The judgment appealed from is affirmed, without pronouncement as to costs.

Concepcion, C.J, Reyes, JBL, Dizon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] As found in the decision of respondent Court of Appeals, p. 5.

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