

LEONOR FARRALES, ASSISTED BY HER HUSBAND, EMILIO FARRALES, PLAINTIFFS-APPELLANTS, VS. THE CITY MAYOR OF BAGUIO, THE CHIEF OF POLICE, THE MARKET SUPERINTENDENT AND THE CITY TREAS...

G.R. No. L-24245. April 11, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This appeal by the plaintiffs from the decision of the Court of First Instance of Baguio in its Civil Case No. 622 was taken to the Court of Appeals and subsequently certified by the latter to this Court for the reason that only questions of law are involved.

The decision appealed from states the facts and conclusions arrived at by the court a quo, as follows:

"This is an action for damages. Plaintiff was the holder of a municipal license to sell liquor and sari-sari goods. When the temporary building where she had her stall was demolished in order that the city might construct a permanent building, Plaintiff was ordered to move her goods to another temporary place until the permanent building was completed. She did not like the location pointed out by city officials where she could install her temporary stall. Instead, taking the law into her own hands, Plaintiff built a temporary shack at one end of the Rice Section, Baguio City Market (see Exhibits 3, 4, and 6), without seeking prior permit or permission from any city official. When the police threatened to demolish this shack, which was built on the cement passageway at the end of the Rice Section building, Plaintiff came to this Court seeking an injunction. Before this Court would issue an injunction a hearing was held where this Court refused to issue the same unless Plaintiff could show proper permit. Plaintiff could not do so, so the police demolished the shack, brought the materials and goods to the City Hall and subsequently delivered both materials and goods to Plaintiff. Plaintiff cited the police for contempt but this Court, in an order dated September 19, 1956, denied Plaintiff's petition. That order was final in character - not interlocutory - and no appeal having been made would operate as res judicata to his present suit which is based on the same act of demolition. To evade the effects of res judicata, Plaintiff amended her complaint so as to include as Defendants the policemen whom she claims did the demolishing. The only question to be determined by this Court is whether the demolition of the shack was in order or not. There is no doubt Plaintiff had no permit to build the shack and this shack was built in the passageway where people pass when going to the hangar market building. Plaintiff insists that the proper procedure should have been for either the City Engineer or the City Health Officer to commence legal proceedings for the abatement of this "nuisance." This Court believes that the police officers properly demolished the shack for it had been built in defiance of orders from City Hall officials. Plaintiff had been assigned a place where to install her shack – she did not like this and, following her own desires, built the shack in the middle of a passage. Should the police wait for the City Engineer or City Health Officer to act in order to clear the passageway of this illegal construction? This Court believes that they could clear the passageway on their own responsibility, just like they can push a car that is parked in the wrong place without waiting for court proceedings. In fact in the case of *Verzosa vs. City of Baguio*, G.R. No. L-13546, Sept. 30, 1960, our Supreme Court permitted the removal of a building built under temporary permit on Session Road

without court proceedings simply because the temporary permit had expired. In this present case, with greater reason - the removal of Plaintiff's building is justified.

The complaint of Plaintiff is, therefore, dismissed with costs against Plaintiff."

The first error assigned by the appellant refers to the order of the trial court refusing to declare the defendants in default and allowing them to file their answer to the complaint after the expiration of the reglementary period for that purpose. Such action of the court was justified and indeed explained by it in an order dated September 29, 1956, denying the plaintiff's motion for reconsideration of the permission granted on August 24, 1956 to the defendants to file their answer. The Court said:

"The stenographic notes of that day show that Atty. Bacalit appeared in this case on behalf of the Plaintiffs and when the issue of the sufficiency of Plaintiffs' complaint was raised by the City Attorney, and Atty. Bacalit said he had no knowledge of the same, this Court suspended hearing to wait for Atty. Benjamin Rillera, attorney of record of Plaintiffs and who was the one who filed the Motion to Declare Defendant in Default. Subsequently that morning, Atty. Rillera came and manifested to this Court his willingness to withdraw his motion and to allow Defendants to file their answer. This was the reason for the order of this Court dated August 24, 1956. Plaintiffs are bound by the actuations of their Counsel. The fact that he refused to file a motion for reconsideration and instead insisted in withdrawing as counsel for Plaintiffs would be no justification for revoking the order of August 24, 1956. The motion for reconsideration filed by Plaintiffs personally is, therefore, denied for lack of merit."

The other errors assigned by the appellant have to do with the merits of the case. The appellant's contention is that the shack or temporary stall put up by her inside the premises of the Baguio City Market was not a nuisance, or if it was a nuisance at all it was one per accidens and not per se and therefore could be abated only after the corresponding judicial proceeding. The uncontradicted evidence does not support the appellant's contention. In the first place she had no permit to put up the temporary stall in question in the precise place where she did so. In the second place, its location on the cement passageway at the end of the Rice Section building was such that it constituted an obstruction to the free movement of people. As the court a quo correctly observed, this fact is shown clearly on the photographs marked Exhibits 3, 4, and 6. Judging by these photographs it cannot even be said that what the appellant constructed was a temporary stall. It was nothing more than a lean-to, improvised with pieces of used scrap iron roofing sheets. It was obviously not a "building" within the meaning of the Charter of the City of Baguio (Art. V, Section 2557 [d] Adm. Code) relied upon by the appellant and under which the power "to cause buildings, dangerous to the public, to be made secure or torn down," is vested in the City Engineer, subject to the approval of the City Mayor.

It is true that under Article 702 of the Civil Code "the District Officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance;" but in this case the failure to observe this provision is not in itself a ground for the award of damages in favor of the appellant and against the appellees. According to Article 707 of the same Code, a public official extrajudicially abating a nuisance shall be liable for damages in only two cases: (1) if he causes unnecessary injury, or (2) if an alleged nuisance is later declared by the courts to be not a real nuisance.

Here no unnecessary injury was caused to the appellant, and not only was there no judicial declaration that the alleged nuisance was not really so but the trial court found that it was in fact a nuisance. Indeed it may be said that the abatement thereof was not summary, but through a judicial proceeding. The appellant, after having been warned by the city police of Baguio that the lean-to she had put up without a permit would be demolished, went to court and asked for an injunction. A hearing was then held and the court refused to issue the writ unless she showed the proper permit. The denial of her petition for injunction upon her failure to produce such a permit was

in effect an authority for the police to carry out the act which was sought to be enjoined. And it was an authority which was later confirmed by the same court in its decision. Under the circumstances there is absolutely no ground to award damages in favor of the appellant.

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

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Fernando, Teehankee, Barredo, and Antonio, JJ., concur.

Makasiar, J., concurs in the result.

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