

CIPRIANO E. UNSON, PETITIONER AND APPELLEE, VS. HON. ARSENIO H. LACSON, ET AL., RESPONDENTS. GENATO COMMERCIAL CORPORATION, RESPONDENT AND APPELLANT.

G.R. No. 13798. July 31, 1961

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This appeal involves the legal effect or the scope of the judgment of this Court in G. R. No. L-7909 entitled *Unson vs. Lacson*, promulgated January 8, 1957. (100 Phil., 695; 55 Off. Gaz., [8] 1374)

In April, 1953, Cipriano E. Unson sued Mayor Lacson of Manila and the Genato Commercial Corporation to annul Ordinance No. 3470 of the City whereby the Corporation had obtained, by lease, a certain lot plus a permit to build thereon. The lot was a part of Callejon del Carmen which the ordinance withdrew from public use and converted into patrimonial property, available for lease to private parties. Unson objected to the lease, and therefore to the ordinance, because he was the owner of a lot and building that abutted the Callejon, and the construction by Genato Commercial shut off the exit from his building, to the great prejudice and danger of the students of the Mapa High School that occupied it. In his complaint, Unson asserted that the ordinance was null and void, and that Genato's construction impaired the general welfare because it deprived the public of the use of the callejon. He asked for injunction against the construction and annulment of the ordinance, the lease and the building permit.

Having lost in the court of first instance of Manila, Unson appealed to this Court. Here judgment was rendered sustaining his contention of nullity (G. R. No. L-7909). Our decision concluded as follows:

"* * * the ordinance and the contract of lease under consideration are inconsistent with Article 638 of the Civil Code of the Philippines, the first paragraph of which reads:

'The banks of rivers and streams, even in case they are of private ownership are subject throughout their entire length and within a zone of three meters along their margins, to the easement of public use in the general interest of navigation, floatage, fishing and salvage.'

"Obviously, the building constructed by Genato Commercial Corporation on the portion of Callejon del Carmen in dispute renders it impossible for the public to use the zone of three meters along the Northern margin of the Estero de San Sebastian for the purpose set forth in said Article 638." * * *

"Wherefore, the decision appealed from is hereby reversed and another one shall be entered declaring Ordinance No. 3470, as well as the contract of lease in dispute, null and void, with costs against the respondents." (Record on Appeal, pp. 29-42)."

After such decision had become final, Unson asked the court below to issue a writ of execution "directing respondent Genato Commercial to remove * * any construction it had made on the land leased from the City."

The Genato Corporation objected, because "there is nothing contained therein (in the decision) that requires it to

remove any building erected in that (leased) property." The Manila court issued execution as prayed for.

Wherefore the Corporation appealed, insisting here on the same line of argument.

The controlling precedent is *Perez vs. Evite* 111 Phil., 547. In a final decision of the Court of Appeals the defendants were declared the owners of a parcel of land. In execution of the decision the sheriff placed defendants in possession. Thereafter the latter prayed for the Court's help in view of plaintiffs' acts of resistance; whereupon the court issued an order allowing defendants "to surround the property with a fence and any act by other persons (including plaintiffs) to intervene may be considered an act of contempt." On appeal, this order was upheld here, despite plaintiffs' contention that the decision did not direct the land's delivery to the defendants. We said, thru Mr. Justice Barrera, "a judgment is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto." We cited *Marcelo vs. Mencias*, 107 Phil., 1071 holding that the successful litigant in a land registration case is entitled to an order of demolition of the house of the defeated parties erected on such registered land.

Our decision in the *Unson* case did not contain any order for demolition because as the debate was presented, the only necessary issue referred to the validity of the ordinance and consequently of the lease. The parties practically conceded that if the ordinance was valid, Genato's construction stayed; but if invalid, the contract was void, the building had no reason to continue, for it prevented the public to use the *callejon*. In fact the only desire of *Unson* was to remove the obstruction; but he could fulfill it only thru the annulment of the lease and the ordinance. So the ordinance became the central point.

It will be noted further that, to plaintiff's complaint Genato Corporation had submitted no defense except the validity of the ordinance. It asserted nothing about its right to keep the building even if the ordinance be found invalid. It reserved no privilege to make claim as a builder in good faith—the very claim it now makes in opposition to the execution.

Now it cites Articles 448, 546 and 548 of the New Civil Code,[1] none of which is applicable. The first refers to the "owner of land on which anything has been built." *Unson* is not the owner. The City of Manila has not appealed. The second and third articles would be applicable if *Unson* had been awarded possession of the *callejon*. He was not.

As we held in the *Marcelo-Mencias*[2] case, to require *Unson* to institute another action for the purpose of obtaining the demolition of the obstruction he had fought, and defeated, in G. R. No. L-7909 would be a cumbersome process.

The appealed order is affirmed. No costs.

Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

[1] Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works * * *. Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expense shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option * * *.

Art. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended * * *.

[2] Supra

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