

BENITO SYMACO, PETITIONER AND APPELLEE, VS. HON. PATERIO AQUINO, ETC., RESPONDENT AND APPELLANT.*G.R. No. 14535. January 30, 1960*

Ponente: BARRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-14535/>**BARRERA, J.:**

Paterio Aquino, Municipal Mayor of Malabon, Rizal, has interposed this appeal from the decision of the Court of First Instance of Rizal (in Civil Case No. 4746), commanding him to issue immediately a building permit to petitioner Benito Symaco.

On November 4, 1957, petitioner filed with the above-mentioned court a petition praying, inter alia, for a writ of mandamus to compel respondent Mayor to issue to him (petitioner) a building permit. To this petition, respondent[1] filed his answer on December 3, 1957. The issues having been joined, the parties submitted a "Stipulation of Facts" which, in so far as pertinent, reads as follows:

"STIPULATION OF FACTS

* * * * *

"4. That petitioner was on May 22, 1957, and is still up to the present, the registered owner of a certain lot at Calle Gen. Luna, Malabon, Rizal, said lot more technically designated as 'Lot 20 parcel 2 of plan Pse-10928, G.L.R.O. Record No. 9268, situated in the Barrio of Tulay, Municipality of Malabon, Province of Rizal, under petitioner's Transfer Certificate of Title No. 35160, Rizal Registry of Deeds * * *.

"5. That on May 22, 1957, petitioner filed an application for building permit with the Office of the Mayor of Malabon, particularly seeking authority to repair the eaves and partitions of petitioner's house of strong materials located at Gen. Luna Street, Malabon, Rizal; * * *.

"6. That on May 23, 1957, the Municipal Mayor granted or issued a permit to the petitioner herein pursuant to the application filed above-mentioned, * * *.

"7. That on July 2, 1957, Mr. Carlos R. Mendoza, a duly appointed building inspector of the Municipality of Malabon, and acting under the orders and direction of respondent, wrote a letter to herein petitioner informing the latter that he should file the necessary building permit for the construction of a new building, because as per ocular inspection conducted by the said building inspector, it had been noted and found out that instead of mere repairs of the eaves and partitions of the old building of herein petitioner, as stated in the application and the permit thus granted, the old building was demolished and a new one was then being constructed, * * *.

* * * * *

"10. That pursuant to the said letters dated July 2, 1957 (Annex 'F') and July 8, 1957 (Annex 'H'), herein petitioner applied or filed a written application on July 29, 1957 with the District Engineer of Rizal for the necessary permit to construct a new building, * * *.

* * * * *

"12. That acting on petitioner's application (Annex T), Mr. Diego An, Chief of Miscellaneous Survey and Investigation, Highway District Engineer's Office, investigated petitioner's application and, on July 30, 1957, said Mr. An submitted his findings and recommendation to the Highway District Engineer, * * *.

"13. That on August 1, 1957, the Highway District Engineer endorsed Mr. Diego An's report (Annex 'J') to the office of the Mayor of Malabon, * * *.

"14. That on July 1, 1957, there was filed a civil action for forcible entry, with prayer for preliminary injunction, against herein petitioner by A. M. Raymundo and Company before the Justice of the Peace Court of Malabon, docketed as Civil Case No. 1390, the subject matter of which covered or concerned a portion of the parcel of land on which the petitioner was constructing his building, and for which the latter had originally filed or applied for a building permit on May 22, 1957 (Annex 'D') and again, upon order by respondent's Office, on July 29, 1957 (Annex T), * * *.

* * * * *

"18. That on August 6, 1957, Atty. Alberto de Joya, as counsel of the A. M. Raymundo & Company, sent a letter to respondent asking the latter to withhold issuance of the building permit to petitioner, * * *.

* * * * *

"21. That on September 23, 1957, respondent wrote a reply to the letters of counsel of herein petitioner (Annexes 'N' and 'O'), advising therein that the issuance of the building permit sought was being held in abeyance pending final determination of the ownership of a portion of the lot wherein the building is being constructed; * * *."

Thereafter, the case was heard with respect to other matters not covered by said "Stipulation of Facts" and, on July 11, 1958, the court rendered a decision which, in part, states:

"It is the opinion of the Court that the ground upon which the respondent Mayor refused to give the building permit was without any basis in law, because once the applicant has fulfilled all the requirements necessary before a building permit could be issued, his duty becomes ministerial and it is incumbent upon him to issue the same.

"The stipulation of facts states that the applicant is the owner of the property in question. The A. M. Raymundo & Company questions the ownership of a portion of the land on which the building was being constructed for which the building permit had been applied for by petitioner. This Court believes that this should not be a ground on the part of the respondent to refuse the issuance of the building permit. It is very reasonable to believe that the petitioner is the owner of the property because he has a torrens title over the same. What will happen if the Court should finally decide in favor of the petitioner to the effect that he is the exclusive owner of the property in question? The petitioner would suffer damages, knowing as we do that it takes time to finish litigations of this nature. On the other hand, if the petitioner is allowed to build, no damages against the third-party (A. M. Raymundo & Company) will result, and the only one who will suffer damages in case of adverse decision will be the petitioner himself who has to remove the building should the Court find that the land upon which it stands does not belong to him.

* * * * *

"IN VIEW OF THE FOREGOING, let the writ of mandamus issue, directing, ordering and commanding the respondent Mayor to issue immediately the building permit to the petitioner. The claim for damages is hereby dismissed. No pronouncement as to costs."

The only question to be determined in this appeal is whether the court a quo committed an error in granting the

writ of mandamus to herein petitioner.

Section 3, Rule 67, of the Rules of Court, provides:

"SEC. 3. Petition for mandamus.—When any tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant, immediately or at some other specified time, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant, with costs." (Emphasis supplied.)

Under this provision of the Rules of Court, to be entitled to a writ of mandamus, petitioner must show (1) that a tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes petitioner from the use and enjoyment of a right or office to which he is entitled, and (2) that there is no other plain, speedy, and adequate remedy in the ordinary course of law.

Article I of Ordinance No. 20, series of 1941, of the Municipal Council of Malabon, Rizal, states:

"ARTICLE I.—Every owner, tenant, manager or contractor, shall, before beginning the construction or repair of any edifice, obtain the necessary permit from the Municipal Mayor, stating in the application the name of the owner, location of the building, kind of materials to be used, and the floor area." (italics supplied)

The above-quoted provision of the ordinance requires the applicant for a building permit to state in his application the name of the owner, the location of the building, the kind of materials to be used, and the floor area thereof. Said requirement, it appears, was complied with by petitioner. Having thus complied with said requirement, was it a discretionary or ministerial duty on the part of respondent to issue the permit in question?

A purely ministerial act or duty, in contradistinction to a discretionary act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. (*Lamb vs. Phipps*, 22 Phil., 456.[2])

We agree with the lower court that the moment petitioner complied with the requirements under said ordinance for the issuance of a building permit, the petitioner became entitled to it and the respondent's duty became ministerial and it was, thereupon, incumbent upon him to issue the same. There is nothing in the ordinance which grants respondent the discretion to refuse the issuance of a building permit to an applicant owner, tenant, manager, or contractor. All that the ordinance requires is that said applicant must state the data mentioned therein. Respondent's failure, therefore, to perform an act which the ordinance enjoins him to do, upon compliance with the conditions therein provided, entitled petitioner to the writ of mandamus prayed for. (*Hoey vs. Baldwin*, 1 Phil., 551; *Lamb vs. Phipps*, 22 Phil., 456; *Zobel vs. City of Manila*, 47 Phil., 169; *Compania Gral. de Tabacos vs. French, et al.*, 39 Phil., 34; *Ynchausti & Co. vs. Wright*, 47 Phil. 866.) [3]

Moreover, respondent's refusal to issue a building permit to petitioner was premised on the fact that a portion of petitioner's lot was still the subject of a forcible entry case filed by A. M. Raymundo & Co. against petitioner, which is still pending in the Court of First Instance. This, in our opinion, was not sufficient reason for the denial of the building permit to petitioner. The matter, to say the least, was a purely private affair or dispute between

petitioner and said company, which did not, in any way, concern respondent. As the lower court stated, "if the petitioner is allowed to build, no damages against the third-party (A. M. Raymundo & Company) will result, and the only one who will suffer damages in case of adverse decision will be the petitioner himself who has to remove the building should the court find that the land upon which it stands does not belong to him."

Respondent claims that petitioner was not entitled to the writ of mandamus, because he had other plain, speedy, and adequate remedy in the ordinary course of law, namely, that provided in Section 2188 of the Revised Administrative Code, which reads as follows:

"SEC. 2188. Supervisory authority of provincial governor over municipal officers.—The provincial governor shall receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption, or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude. For minor delinquency, he may reprimand the offender and if more severe punishment seems to be desirable, he shall submit written charges touching the matter to the provincial board, furnishing a copy of such charges to the accused either personally or by registered mail, and he may in such case suspend the officer (not being the municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question. Where suspension is thus effected the written charges against the officer shall be filed with the board within five days."

But the remedy which the above-quoted provision gives is neither plain, speedy, nor adequate. Its primary object, it will be noted, is the removal, suspension, or other disciplinary action of the erring municipal officer, rather than to compel the performance of a legal duty.

It has been held that the other remedy that would bar mandamus, must not only be adequate in the general sense of the term, but also specific and appropriate to the circumstances of the particular case. (34 Am. Jur. 838, and cases cited.) It must be a remedy that will be efficacious to afford relief upon the very subject matter involved, and to enforce the right or performance of the duty in question. (Fremont vs. Crippen, 10 Cal. 211, 70 Am. Dec. 711; State ex rel. Pierce vs. Slusher, 117 Or. 498, 244 P. 540, 58 ALR 114.) [4] It cannot be said to be fully adequate, unless it is commensurate with the necessities and rights of the complaining party under all the circumstances of the case, reaches the end intended, and actually compels performance of a duty. (Commercial Nat. Bank vs. Robinson, 66 Okla. 235, 168 P. 810, LRA 1918C 410; Eureka Pipe Line Co. vs. Riggs, 75 W. Va. 353, 83SSE 1020, Ann. Cas. 1918 A 995.) In fine, the remedy which will preclude mandamus must be equally as convenient, complete, beneficial, and effective as would be mandamus, and be sufficiently speedy to prevent material injury. (34 Am. Jur. 839.)

For all the foregoing, we are of the opinion and so hold, that the court a quo did not err in granting the writ of mandamus in question to petitioner herein.

Wherefore, the decision appealed from is affirmed, with costs. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia and Gutierrez David, JJ., concur.

[1] Represented by the Assistant Provincial Fiscal of Rizal.

[2] See also 27 Words and Phrases (Perm. Ed.) 253-256, and cases therein cited.

[3] See also Tan C. Tee & Co. vs. Wright, 53 Phil., 194; Batung-bakal vs. NDC, 93 Phil., 182; 49 Off. Gaz., 2290; Bernardo vs. Pascual, 93 Phil., 345, 49 Off. Gaz., 2261.

[4] See also Com. ex trel. Schaffer vs. Wilkins, 271 Pa. 523, 115 A. 887, 19 ALR 1379.

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.