

BENITO R. GUINTO, OFELIA LIM, MARIA BANSIL, ISABEL VDA. DE BATAAC, PABLO VIRAY, PATRICIA MACALINAO AND FELIPE LEGASPI, PETITIONERS AND APPELLANTS, VS. ARSENIO H. LACSON, AS CITY ...

G.R. No. 14700, May 30, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

The petitioners have appealed from the denial of their petition for prohibition in the Manila court of first instance.

They attempted by this special civil action to stop the impending demolition as public nuisances, of their houses erected on the Estero de Tutuban by orders of the Mayor and City Engineer of Manila. On motion of the respondents, the petition was quashed, because way back in 1956 these very petitioners had filed against herein respondents, a petition for prohibition for the same purpose and on the same grounds (Civil Case No. 23857) which petition through the non-appearance of themselves and their counsel, had been finally dismissed on October 5, 1956.

Petitioners admit the dismissal, but allege that their houses could not be public nuisances, because the authorities did not, for two years (since 1956) enforce the demolition order. This is no argument; they should be grateful they had been given time, for one reason or another, to look for a place to transfer their dwellings. The law permits execution of a judgment within five years.

They also allege that the estero has outlived its use as drainage by reason of the construction of some streets. Yet, this does not alter the fact of their having been ordered to get out of government property and that such order has become final through court proceedings. The change, if any, does not ipso facto give them any valid excuse to occupy the Estero.

They also invoke Sec. 13 of Rule 39, stating that the "officer (sheriff) shall not destroy, demolish or remove the improvements made by the defendant * * * on the property except by special order of the court." However, this argument was advanced and overruled in the previous civil case No. 28857. Besides, it applies to judgments for delivery of real property. The situation here concerns a public nuisance, which may be summarily abated upon orders of such officers as may be specifically authorized by law or ordinance, such as the mayor and city engineer of Manila. Identical demolition orders issued upon similar circumstances, particularly in the City of Manila, have been upheld by the courts. See *Sitchon et al. vs. Aquino*, 98 Phil., 458; 52 Off. Gaz., 1399 wherein this Court quoted with approval the American doctrines on the matter:

"Again houses constructed, without governmental authority, on public streets, and waterways obstruct at all times the free use by the public of said streets and waterways, and, accordingly, constitute nuisance per se, aside from public nuisances. As such, the summary removal thereof, without judicial process or proceedings may be authorized by the statute or municipal ordinance, despite the due process clause. (66 C. J. S., 733-735)."

Judgment affirmed, with costs against appellants.

Paras, C. J., Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.
Padilla and Endencia, JJ., took no part.

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