

**O’RACCA BUILDING TENANTS ASSOCIATION INC.,
PETITIONER AND APPELLANT, VS. FILOMENO C. KINTANAR, ET AL.,
RESPONDENTS AND APPELLEES.**

G.R. No. 16826. November 30, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from the orders of the Court of First Instance of Manila dated December 19, 1959 and January 28, 1960, dismissing appellant's petition for declaratory relief with prohibition and preliminary injunction, and denying the motion for reconsideration, respectively.

A non-stock corporation organized and existing under the laws of the Republic, the O'Racca Building Tenants Association (Association for short) is composed of tenants of the O'Racca Building, one of the enemy alien properties turned over to the National Government and placed under the administration of the Board of Liquidators (herein referred to simply as the Board) pursuant to Executive Order No. 372 (Nov. 24, 1950) in connection with Republic Act 477.

In accordance with Republic Act 997, Reorganization Plan 7-A was approved, providing in Section 5 thereof, for the transfer to the Department of General Services (Department for short), of all functions of the Board pertaining to residential, commercial, and urban properties of the National Government. To implement the plan, the President of the Philippines, on March 14, 1958, promulgated Executive Order No. 290, vesting the Bureau of Building and Real Property Management under the Department with the power to "transfer, rent, lease or sell commercial, industrial and urban properties owned by the government."

By a series of directives (dated December 17, 1958, January 16, 1959, and October 6, 1959), the office of the President ordered the Board to relinquish to the Department the administration of all formerly enemy alien-owned properties which may be classified as residential, commercial or urban. A conflict as to the interpretation of certain provisions in the law and executive order involved explains why no immediate transfer materialized. In the meantime, and in connection with the written offers to lease the O'Racca Building, the directive of October 20, 1959 was issued, authorizing the Board to accept the offer of Catalina de la Cruz Rodil "without prejudice to the future implementation of our directive of October 6, 1959 for the turn-over of all residential, commercial and industrial properties of the National Government to the Department of General Services". On October 26, 1959, the Board served the members of the Association with notice that the building had been leased to Rodil effective November 1, 1959; that arrangements for occupancy of the building should thenceforth be made with the new lessee; and directing the tenants to pay their accrued rentals to the Board.

In its petition of October 31, 1959, the Association prayed—

- (1) That a judgment for declaratory relief be granted as to who is the entity or person authorized by law to have the custody, control and administration of the O'Racca Building;

(2) That pending resolution of the above legal question, a writ of preliminary injunction be issued to all the respondents restraining them from the commission of any act or acts which may adversely affect and disturb the status a quo of the herein petitioners with respect to their respective leasehold rights in the O'Racca Building;

(3) That pending resolution of the above legal question, a writ of preliminary injunction and/or prohibition be issued against the respondent Chairman and members of the Board of Liquidators from enforcing their order to the herein petitioners to pay to the Board of Liquidators their rentals up to October 31, 1959, and rentals for the subsequent months;

(4) That the herein petitioner be directed to deposit their rentals with the Clerk of Court of the Court of First Instance of Manila pending the resolution of the question as to who is the entity or person authorized by law to have the custody, control and administration of the O'Racca Building;

(5) That this Honorable Court grant such further and other relief as this Honorable Court may deem just and equitable in the premises.

Without going to the merits, we note that actually, these proceedings are not for declaratory relief but for prohibition. A petition for declaratory judgment coupled with a prayer for the issuance of injunction is equivalent to an action for prohibition against public officers (*Feliciano, et al., vs. Alipio, et al.*, 94 Phil., 621; 50 Off. Gaz., [4] 1548). Beneath the legal phraseology, the essence of the action seeks to prevent the enforcement of the lease executed in favor of Rodil. In other words, the controversy has ceased to be merely one of uncertainty or challenge, but has ripened into a conflict between concrete acts directly contravening certain alleged leasehold rights. Indeed, what use would there be for a declaratory judgment as to which entity is authorized to administer the O'Racca Building, unless it would prohibit the enforcement of the lease executed?

Appeal in prohibition should be taken 15 days from notice or receipt of the decision (Sec. 17, Rule 41; *Portugalete vs. Azcona*, L-14666, May 25, 1960). The appealed order was received by appellant on December 24, 1959. Counting fifteen days, appellant had up to January 8, 1960 within which to file either a motion for reconsideration or his notice of appeal. His motion for reconsideration was filed only on January 13, 1960; his notice of appeal, only on January 23, 1960. By then, the order dismissing the case had become final. If only for this reason, this instant appeal should be dismissed.

But the action must also fail on other grounds. Either as one for declaratory relief or for prohibition, the crucial issue centers on the authority of the Board to continue administering the O'Racca Building in the light of Reorganization Plan 7-A, Executive Order 290, in relation to the directive dated October 20, 1959. Whether the notice of October 26, 1959 and the lease effective November 1, 1959 in favor of Rodil validly terminated the month-to-month lease of the members of the Association are but incidents ultimately dependent upon the question of the Board's authority. Appellant contends that the directive of October 20, 1959 authorizing the Board to enter into a lease agreement with Rodil was illegal, being allegedly violative of Reorganization Plan 7-A, Executive Order 290, and the previous directive issued. We do not think so. The transfer of functions from the Board to the Department is not ordained by any self-executing statute. Quite the contrary, it was precisely necessary for the President to issue Executive Order 290 on March 14, 1958, setting up in detail the organizational structure of the Department, delineating its functions as well as those of the divisions under it. To complement the authority given to the Chief Executive to implement the reorganization, and because there was assurance as to when that reorganization could finally be completed, the agencies or offices affected were authorized to continue discharging their functions in the interim period.

Section 6 (c), Republic Act 997, as amended by Republic 1241, provides:

"After any reorganization plan or plans or modifications thereof, shall have been approved as provided under subsection (a) hereof, the Commission shall prepare the implementing details thereof, should such details be necessary and the same shall be submitted to the President, who, if he approves them, shall promulgate an executive order or orders for their immediate execution; Provided, however. That if any such reorganization plan or plans or modifications thereof is not implemented as above provided, the particular department, office, bureau, agency or instrumentality of the Executive Branch of the National Government affected shall continue to exist and function." (Italics supplied)

Section 43, Executive Order No. 290, Series of 1958, states—

"The Secretary shall direct the orderly scheduling of transfers, changes and other transitional actions required by the Plan and by these Implementing Details within 60 days from the effective date of the Implementing Details. In the interim, each entity affected shall continue to perform its existing functions until such time as the Secretary orders change or cessation, and each officer and employee shall continue to perform his duties and to exercise his authority until such time as the Secretary orders otherwise." (Italics supplied)

What the above provisions make clear is that pending implementation of the transfer, the office or agency affected (in this case, the Board) shall continue to discharge those functions of which it is being divested under the reorganization. Accordingly, the Board still had administration of the O'Racca Building when it gave the notice of October 26, 1959 informing the tenants that said building had been leased to Rodil. The Department, thru the Bureau of Building and Real Property Management, recognized this when on October 15, 1959, it indorsed to the Board, for action, the written offers of lease submitted separately by Rodil and the appellant Association. Instead of violating the laws and executive orders on the subject, the directive of October 20, 1959 was a reaffirmation of the intent to give continuity to governmental functions pending actual implementation of the reorganization. Assuming that the above directive contravenes other directives previously issued, suffice it to say that as Head of the Executive Branch, the President may at any time modify or revoke his own directives so long as no law is infringed (see *Ollada vs. Sec. of Finance*, 109 Phil., 1072).

Wherefore, the appeal is hereby dismissed, with costs against petitioner-appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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