

EDAURO SANCHEZ ET. AL. PETITIONERS AND APPELLANTS, VS. MUNICIPALITY OF ASINGAN, PROVINCE OF PANGASINAN, RESPONDENT AND APPELLEE.*G.R. No. 17635. March 30, 1963*

Ponente: MAKALINTAL, J.

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This case is before us on appeal by the plaintiffs from the decision of the Court of First Instance of Pangasinan. The facts as found by the trial court are as follows: The defendant municipality, appellee herein, is the owner of a triangular strip of land situated between the site of the municipal school building and the provincial road, measuring 42 x 26% x 46 meters. On that land appellants, with the knowledge and implied consent of the municipality, constructed temporary stores and buildings of light materials shortly after the end of the last war. Between 1952 and 1959 they paid rents to appellee. When a new local administration took over after the elections of November 1959 the municipal council passed a resolution notifying the occupants of the land that the same was needed for certain public purposes, such as parking space, expansion of school grounds, widening of the road and Waiting area for pedestrians. Appellants were therefore advised to vacate on or before May 15, 1960, some five (5) months after the date of notice. Instead of moving, however, appellants filed a petition for prohibition with the court a quo on May 10, 1960 to prevent the municipality from ejecting them from the land, with the alternative prayer that should they be ejected, appellee be ordered to reimburse to them the rents which they had paid, in the total sum of P1,178.20. There was also a demand for damages and attorney's fees. After trial, the court dismissed the petition and ordered appellants to vacate the land, with costs.

Appellants, first contention here is that the land in question belongs to the Province of Pangasinan and therefore appellee has no right to order their ejectment. The premise of the contention is incorrect, or the clear and specific finding of the court a quo is that the said land is owned by the Municipality of Asingan. This is a factual conclusion that is no longer open to review in the present appeal. The additional statement by the court "that it is part of the broad shoulder of the provincial road" does not make the land provincial property, such statement being merely descriptive of its location and not indicative of its ownership.

The next issue raised by appellants is with reference to the sum of P1,178.20 paid by them as rents from 1952 to 1959. They claim the right to be reimbursed in case they should be ejected; and cite the case of *Rooas vs. Municipality of Cavite*, 30 Phil. 607, where this Court, after declaring null and void the lease of a public plaza belonging to the said municipality and ordering the lessee to vacate the same, ordered the municipality reimburse the rentals collected. It should be noted that while the property involved in that case was clearly devoted to public use, and therefore outside the commerce of man, and could not under any circumstance have been the object of a valid contract of lease, appellee's position herein is that the land in question is patrimonial in character, not being included in any of the categories of municipal properties for public use enumerated in Article 424 of the Civil Code, namely: "municipal streets, squares, fountains, public waters, promenades and public works for public service in said municipality." There is indeed nothing in the decision appealed from or in the briefs of the parties

to show that the land was devoted to any of those purposes when appellants began their occupancy. Consequently, the implied agreement of lease with them was not null and void, although terminable upon the notice, as appellee herein elected to terminate it. That being so, there is no ground on which reimbursement of the rents may be ordered.

In any event, even granting that the land in question is for public use and therefore the municipality of Asingaii could not legally lease it to private parties, we see no justification for the stand maintained by appellants that after having occupied said land and derived benefits therefrom they should still be entitled to recover what they have paid as a condition for their ejectment. That would be to enrich them unduly to the prejudice of appellee. Besides, it may be said that when they built their temporary structures on the land with the latter's knowledge and implied consent they both treated it as municipal patrimonial property. Insofar as the rents already paid by them are concerned appellants are estopped from claiming otherwise in order to obtain a recovery.

The judgment appealed from is affirmed, with costs against appellants.

Bengzon, C. J., Padilla, Bautista Angela, Labrador, Coneepci&n, Reyes, J. B. L., Barrera, Paredes, Dizon and Regala, JJ., concur.

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