

**CITY OF LEGASPI, PETITIONER, VS. THE HON. MATEO L. ALCASID, ETC., ET AL., RESPONDENTS.***G.R. No. 17936. January 30, 1962*

Ponente: BAUTISTA ANGELO, J.

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On April 13, 1960, the City of Legaspi filed a complaint for illegal detainer before the Municipal Court of Legaspi City against Osmundo Dizon in his capacity as Superintendent of the Bicol Regional School of Arts and Trades alleging that said school thru said superintendent had been occupying since 1953 Lot 102 of the Albay cadastre and the buildings existing thereon depriving the City of Legaspi of its right to possess the same and praying for the issuance of a writ of preliminary mandatory injunction pending the outcome of the case.

On April 25, 1960, the Republic of the Philippines appeared as defendant in behalf of Osmundo Dizon with an answer and counterclaim stating that the Republic of the Philippines is the owner of Lot 132 as well as all the improvements existing thereon having been in possession thereof thru the Bureau of Public Schools long prior to World War II and until March 26, 1960 when plaintiff, thru its officials and agents, illegally deprived said Republic of the possession of said lot and improvements by means of force, violence, stealth, strategy and intimidation. The Republic prayed that a writ of preliminary mandatory injunction be issued against plaintiff in order that the Republic may be able to recover the possession of said lot and the improvements existing thereon for the purposes for which they were devoted.

On May 16, 1960, plaintiff orally moved to dismiss the answer with counterclaim filed by the Republic of the Philippines on the ground of lack of personality the same not having impleaded in the case nor filed any motion to intervene as party defendant as required by the Rules of Court. The municipal court rendered decision on June 15, 1960 dismissing the complaint as well as the counterclaim of the Republic of the Philippines, whereupon both plaintiff and the Republic took steps to appeal the case to the court of first instance (Civil Case No. 2279). And the appeal having been given due course, original defendant Osmundo Dizon as well as the Republic of the Philippines, both represented by the Solicitor General, reproduced the answer with counterclaim that was filed before the municipal court reiterating therein substantially the same grounds they alleged in their original answer.

Conformably with the stand taken by plaintiff before the municipal court, plaintiff filed on September 17, 1960 a motion to strike out the answer with counterclaim filed by the Republic of the Philippines alleging that the court had acquired no jurisdiction over it inasmuch as it has never been impleaded nor has it intervened therein as required by the rules. On September 22, 1960, plaintiff filed an answer to the petition for a writ of preliminary mandatory injunction set up by the Republic on the grounds (1) the Republic is not a proper party to the case; (2) the taking over of Lot 132 and its improvements was in the exercise of a public function; and (3) granting arguendo that the Republic is a proper party, it already lost its right to ask for relief by way of injunction by reason of laches.

On November 2, 1960, the court issued an order granting the writ of preliminary mandatory injunction prayed for

by defendant Osmundo Dizon and by the Republic of the Philippines ordering plaintiff to vacate Lot 132 and the improvements existing thereon and surrender their possession to the Bicol Regional School of Arts and Trades thru its superintendent thereby indirectly dismissing the complaint of plaintiff for illegal detainer. Its motion for reconsideration having been denied, the City of Legaspi filed the present petition for certiorari alleging that respondent court committed a grave abuse of discretion.

It appears that Lot 132 of the Albay cadastre, including all the improvements existing thereon, were the property of the Republic of the Philippines. The improvements consists of one main two-story building and four auxiliary one-story buildings which long prior to World War II had been in the continuous and uninterrupted possession of the Bureau of Public Schools having been devoted exclusively to the use of the Albay Trade School which was later converted into the Bicol Regional School of Arts and Trade upon the enactment of Republic Act No. 1129 on June 16, 1954. During the last world war these buildings were destroyed but were reconstructed by the Republic of the Philippines with war damage funds amounting to P100,000.00.

By virtue of Republic Act No. 306 approved on June 18, 1948, the City of Legaspi was created to comprise the municipalities of Legaspi and Daraga; and having expressed its desire to acquire Lot 132 and the improvements existing thereon by virtue of resolutions passed by its municipal board, as well as by the provincial board of Albay, the President of the Philippines issued Proclamation No. 404 dated June 27, 1953 reserving said lot and improvements for city hall purposes under the administration of the City of Legaspi subject to certain conditions relative to the reconstruction and financing of the project on the part of said city. On June 8, 1954, however, Republic Act No. 993 was approved recreating the municipalities of Legaspi and Daraga as a consequence of which the City of Legaspi was dissolved and abolished. On June 16, 1954, after the City of Legaspi had already been dissolved, Republic Act No. 1129 was approved converting the Albay Trade School into a Regional School of Arts and Trades of secondary and collegiate level to be known as the Bicol Regional School of Arts and Trades. At this time, the Republic of the Philippines was the owner and actual possessor of the properties in question which were then occupied by the Albay Trade School.

On June 12, 1959, Republic Act No. 2234 was approved recreating the City of Legaspi whereupon its municipal board passed a resolution stating that it is its opinion that the City of Legaspi has a right to the use of Lot 132 and its improvements by virtue of Proclamation No. 404 and that, therefore, the city mayor should be authorized to inform the superintendent of the Bicol Regional School of Arts and Trades that it is its desire to occupy said premises and that he should vacate the same as soon as possible. When the superintendent of said school was informed of the contents of this resolution and was notified to vacate the lot and improvements above-mentioned, he expressed his opposition thereto and referred the matter to the Bureau of Public Schools and the Solicitor General. Notwithstanding said opposition, however, on March 26, 1960, the City of Legaspi, thru its agents, with force, stealth, violence and strategy, took possession of Lot 132 and the improvements existing thereon.

Considering the foregoing facts, which were brought out and discussed at the hearing called by the trial court at which counsel of both parties were present, said court granted the writ of preliminary mandatory injunction prayed for by the Republic of the Philippines making on this point the following comment:

"Upon consideration of the Urgent Petition for a Writ of Preliminary Mandatory Injunction filed by the defendants in the light of all the foregoing, it appears clear and indisputable that defendant petitioners have neither lost nor waived their legal right to the issuance of the writ prayed for, in accordance with, and pursuant to, the provisions of Article 539 of the Civil Code of the Philippines. Moreover, it is significant and decisive that plaintiff itself admits in paragraphs 4 and 5 of its complaint defendant BRSAT'S prior physical possession of the premises in question even before its alleged notice to vacate which it claims to have served upon said defendant in January, 1960.

"The dismissal of Civil Case No. 353 for Forcible Entry with a Petition for a writ of Preliminary Mandatory Injunction by the court a quo did not operate to adversely affect the original right of plaintiff is that case (defendant in the case at bar) nor bar said party from reiterating its petition, as it did in the instant case, for the remedy prayed for. This opinion gains moment from the fact that plaintiff itself admits defendant's actual prior physical possession of the premises in question. (Par. 4-5, Complaint).

"Finding the Petition to be proper and in accordance with law, it is ordered that the same be, as it is hereby GRANTED."

The plaintiff interposed the present petition for certiorari.

It should be noted that the petition for mandatory preliminary injunction set up by respondent Republic as contained in its counterclaim is based on the provisions of Article 539 of the new Civil Code which read:

"Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

"A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof."

Since the trial court found that petitioner admitted in paragraphs 4 and 5 of its complaint that respondent was in the physical possession of the premises in question even prior to the notice to vacate them was served upon respondent sometime in January, 1960, and this finding finds support in the answer of respondent wherein it is alleged that "on March 26, 1960 and thereafter plaintiff, its officials and/or agents have with force, stealth, violence and strategy, unlawfully and illegally taken, possession of Lot 132 and the improvements existing thereon", which was verified by Osmundo Dizon, superintendent of the Bicol Regional School of Arts and Trades, it follows that the trial court was justified in granting the relief prayed for in keeping with the letter and spirit of said Article 539 of the new Civil Code.

Moreover, the record shows that the premises in question belonged to the Republic of the Philippines and had been long prior to World War II in the continuous and uninterrupted possession of the Bureau of Public Schools having been devoted solely to the use of the Albay Trade School which was later converted into the Bicol Regional School of Arts and Trades until March 26, 1960 when their possession was taken by force by the agents of the City of Legaspi. It is true that on June 27, 1953 the President of the Philippines issued Proclamation No. 404 reserving the properties in question for the use of the City of Legaspi as its city hall, but that was when the City of Legaspi has not yet been reconverted into a mere municipality. When on June 8, 1954 Republic Act No. 993 was approved recreating the municipality of Legaspi and abolishing the City of Legaspi, Proclamation No. 404 became inoperative and ineffective, even if afterwards the city of Legaspi was created on June 12, 1959 by Republic Act No. 2234. Hence, even if this case be considered in the light of the title and right of both parties to the properties in question, the claim of petitioner cannot be entertained.

The three cases previously filed by the Republic of the Philippines against the City of Legaspi wherein the former asked for the issuance of a writ of preliminary mandatory injunction cannot be considered as a bar to the setting up of the special defense herein involved on the part of the Republic it appearing that they were either dismissed or withdrawn upon the request of its counsel. The different incidents and pertinent legal provisions that have a bearing thereon are well explained by the Solicitor General in his answer dated March 6, 1961.

With regard to the claim that the trial court erred in considering the Republic of the Philippines as a party to the

case not having been impleaded therein nor filed any petition for intervention as required by the rules, suffice it to state that the Republic has every reason to intervene as party defendant because it is the real party in interest. It is undisputed that the lot and improvements in question belong to said Republic although they were placed in the possession of the Bureau of Public Schools for the use of the Albay Trade School, and that Osmundo Dizon is impleaded as party defendant in his capacity as superintendent of said school. In effect, therefore, the party sued is the Republic of the Philippines.

Wherefore, petition is denied. The order appealed from is affirmed, without costs.

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

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