

PETRA DE LA CRUZ, PLAINTIFF AND APPELLANT, VS. LUCIO M. TIANCO, AS JUDGE OF THE MUNICIPAL COURT OF PASAY CITY, RESTITUTO N. ASCAÑO, AS CITY ENGINEER OF PASAY AND THE SHERIFF OF ...

G.R. No. 19326. July 31, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

On April 14, 1958, Petra de la Cruz was prosecuted in the Municipal Court of Pasay City, for violation of Section 30, Article X of Republic Act No. D17, upon complaint of appellee City Engineer (Crim. Case No. 7866); and sentenced to pay a fine of ₱ 10.00 and the costs, with subsidiary imprisonment in case of insolvency, and to remove her house from Highway 54, with instruction that upon her failure to do so, the City Engineer of Pasay could remove said house, at such time his sound judgment and discretion dictate. The accused did not appeal; the judgment became final and executory and she paid the fine. Thereafter, upon petition of the City Fiscal, the municipal Court issued the following Order—

"WHEREFORE, the motion of the Office of the City Attorney for the demolition of the house of the accused Petra de la Cruz from that portion of the government's right-of-way on Highway 54 is hereby granted. However, this order of demolition should not be carried into effect if on or before October 11, 1960, the accused is able to obtain the permission of the Highway Commissioner, by means of a lease or otherwise, to have her house remain on the premises in question."

On October 5, 1960, appellant de la Cruz informed the court that as of August 14, 1959, the Commissioner of the Bureau of Highways had already requested the City Engineer of Pasay, thru a personal letter, deferment of the demolition of the houses on the Highway 54 right of way, including that of Petra de la Cruz. The above manifestation was opposed by the City Fiscal, claiming that the personal letter of the Commissioner had been counter-manded by the following official communication sent by Public Highway Commissioner Nicolas L. Cuenca:

"Respectfully returned to the Engineer, Pasay City, requesting that the ejection of all squatters within the road right-of-way be given due course."

On November 9, 1960, defendant-appellee Judge ordered the demolition of the house in question. Claiming that the appellee Judge exceeded his jurisdiction in imposing on appellant de la Cruz, as part of her criminal liability in Criminal Case No. 7866, the affirmative act of removing her house on the portion of Highway 54, a petition for certiorari with Writ of Injunction was presented before the CFI of Rizal, Pasay City Branch. During the hearing of the petition for preliminary injunction, none of the appellees appeared and the trial court issued an Order, the dispositive portion of which reads—

"AS PRAYED FOR, the defendants, Restituto N. Ascaño, as City Engineer of Pasay City and the Sheriff of Pasay City or their agents are hereby restrained from demolishing plaintiff's house situated at No. 751

Highway 54 (now Epifanio de los Santos Avenue) Pasay City; and likewise, the defendant Judge, Lucio M. Tianco of the Municipal Court of Pasay City, is hereby ordered to desist from proceeding further with Criminal Case No. 7366, until further orders of this Court."

As required by Ac Court, defendants presented a joint answer and after the usual admission and denials, stated, among others—

"That moreover, the city government is authorized to remove the aforesaid illegal construction on the highway considering that the same is a nuisance and may be removed any time even without judicial sanction, that therefore, the issue raised by plaintiff is purely academic;

As affirmative defenses, defendants alleged:

- "1. That the complaint does not state a cause of action in that plaintiff does not have any legal right which has been violated by the defendants;
2. That the decision rendered in Criminal Case No. 7866, finding appellant guilty and ordering her to remove her house on the, public highway has already become final and executory and can no longer be subject to question, directly or indirectly;
3. Appellant is guilty of laches and therefore the extraordinary remedy of certiorari is no longer availing;
4. That the decision of the municipal court (ordering the removal of the house) is based on the express, inherent, and implied powers vested on it by law."

At the hearing, counsel of the parties manifested that only questions of law were involved and that they were submitting a Stipulation of Facts and memoranda to support their respective contentions. Under date of October 21, 1960, the CFI of Rizal rendered judgment, the pertinent portions of which read—

"The only issue posed in this case is as to whether the Municipal Court has exceeded its jurisdiction in condemning the plaintiff to remove her home in question on a portion of Epifanio de los Santos Avenue. Plaintiff contends that nothing is said in Section 30, Article X of Republic Act No. 917, nor anywhere else in said act, about the removal of the obstruction, and that part of the sentence which ordered the removal of her house from the portion of the highway on which it is now built is null and void, in line with the decision of the Supreme Court in the case of *Carol and Ballestros vs. Paredes*, 17 Phil. 94. The prosecution, on the other hand, anchors its case on the provisions of Articles 45, 100, and 104 of the Revised Penal Code and Sec. 1, Rule 197 (it should be 109), and Sec. 6, Rule 24 (it should be 124), of the Rules of Court.

* * * * *

This Court fully subscribes to the doctrine enunciated in the *Carol* case above adverted to, because it is founded on sound principles of law and logic, and it would not hesitate to apply the ruling of the Supreme Court in said case to the case at bar, if it is still controlling. It is, however, doubted if it could yet be applied here in view of the subsequent rulings of our Supreme Court and existing laws governing the matter. We observe that because Art. 10 of the Revised Penal Code, said tribunal has applied certain general provisions of said code to the special laws. Thus, in the case of *People vs. Moreno*, 60 Phil. 712, although there is no express provision in the Revised Motor Vehicle Law, Act No. 3992 providing for indemnity and subsidiary imprisonment, our Supreme Court had deemed it fit and proper to apply the provisions of Article 100 and Article 39 of the Revised Penal Code, because of the provision of Article 10 of the Revised Penal Code that the code shall be supplementary to penal laws, unless the latter shall specially provide the contrary. In the case of *People vs. Parel*, 44 Phil. 437, although the accused there was tried and convicted under the special law, he was given the benefit of Article 22 * * *. Article 45 of the Penal Code with reference to the confiscation of the instruments used in the commission of a crime was applied in the case of *U.S. vs. Bruhez*, 28 Phil. 305, where the defendant was charged with violation of a special law. * * *".

Now, because of the provisions of Article 10 of the Revised Penal Code that the code shall be supplementary to special laws unless the latter shall specially provide the contrary (and there is none to the contrary in Republic Act No 917), Art. 45 of said Code, and Sec. 6, Rule 124 of the Rules of Court and the judicial pronouncement made by our Supreme Court in the case of *Siojo vs. Harvey*, 43 Phil. 333, that 'independent of any statutory provision, every court had inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction,' it is in the sense of this Court that the lower court acted properly in ordering the removal of the house of the plaintiff, who has no vested right or title over the portion of the highway illegally occupied by her. After all, plaintiff is but an intruder or usurper and the legal technicalities which she invoked should deserve scant consideration of the court for the same would only tend to defeat the speedy administration of justice.

WHEREFORE, the petition for certiorari with injunction is hereby dismissed, without costs."

The above judgment is now before Us on direct appeal, plaintiff-appellant assigning five (5) errors allegedly committed by the lower court, all of which pose the singular issue of whether or not the municipal court could legally order the removal of the house illegally constructed on a portion of Highway 54, in addition to the penalty of fine.

Appellant seems to labor under the impression that after the declaration of her construction as illegal, pursuant to Republic Act No. 917, the government will have to institute a civil case to eject her from the premises. This contention is preposterous, to say the least. We should not confound an ordinary civil action of ejectment, from the removal of obstructions illegally constructed by squatters, as a result of a criminal offense. In the first, the law specially provides the procedure to be followed in case of demolition; in the second, there is none stated, although this Court has had occasion to rule that houses erected without governmental authority on public streets, river bed, and water ways are nuisance per se (*Sitchon, et al. vs. Aquino*, 98 Phil., 458; 42 Off. Gaz., No. 3, p. 1399; *Quinto, et al. vs. Lacson, et al.*, 108 Phil. 460) and could be removed by the government, under the procedure outlined in the law governing the case. The appellee can not be accused of having violated due process, for the accused had been given her day in court, paid her fine, and her house was not forfeited or confiscated by the government as alleged, but removed merely from the government property where it had no right to stay. The appellant's building was a veritable nuisance. Squatters should not be permitted to obstruct the wheels of progress, such as the construction of good roads, by invoking trifling technicalities, which will only delay, as it did delay for a considerable period of time, the disposal of this case.

With respect to the other minor issues raised, the trial court had answered them in the decision, portions of which had been heretofore reproduced, and which We consider to be well taken.

Conformably with the foregoing, the decision appealed from should be, as it is hereby affirmed, with costs against appellant, in both instances.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Regala and Makalintal, JJ., concur.

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