

**BENITA QUIOGUE DE V. DEL ROSARIO, WITH HER HUSBAND,
SALVADOR V. DEL ROSARIO, PETITIONER, VS. HONORABLE MIGUEL
ROMUALDEZ, AS MAYOR OF THE CITY OF MANILA, RESPONDENT.**

G.R. No. 22545. October 01, 1924

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-22545/>

STREET, J.:

This is an original petition for a writ of mandamus, whereby the petitioner, Benita Quiogue de V: del Rosario, with her husband, Salvador V. del Rosario, seeks to compel the Honorable Miguel Romualdez, as Mayor of the City of Manila, to accept a deed of conveyance executed by the petitioner, conveying to the City of Manila certain lands with the buildings thereon at the price of P346,683.62; to pay to the petitioner the sum of P173,341.80, as part payment for said property, and to deliver to the petitioner obligations of the city for the balance of the purchase price in three equal annual instalments, with interest at the rate of nine per centum per annum,—all in conformity with the alleged terms of a contract of sale between petitioner and the city. To this petition, as amended, the respondent has demurred, and the cause is now before us for resolution of the questions presented by the demurrer.

It is alleged in the complaint, among other things, that the petitioner is the owner of five school buildings in the City of Manila, with the lots on which the same are located, and that, at the time of the occurrences with which this petition is conversant, the city was using said properties for school purposes under a rental contract with the petitioner. It is further alleged that in the latter part of the year 1923 the city authorities became desirous of purchasing said five properties, and negotiations to this end were accordingly begun, with the result that the petitioner agreed to sell, and the city agreed to buy, the said five properties for their assessed value, namely, the sum of P346,683.62. In order to carry this agreement into effect Ordinance No. 1169 was passed, and on February 7, 1924, the same was approved, whereby the acquisition of the properties at the price stated was authorized and sufficient money appropriated to make the initial payment thereon in the amount of one-half the purchase price, it having been agreed that the balance should be paid in deferred instalments. The terms of this ordinance, after passing the first reading, were duly accepted by the petitioner in a written communication addressed by her to the Municipal Board.

The petition further alleges that, notwithstanding the perfecting of the contract in the manner above stated, and notwithstanding the circumstance that the city has ample means in its treasury available for the initial payment upon the purchase, the respondent Mayor refuses to accept the deeds submitted by the petitioner, conveying the properties to the city, and likewise refuses to pay to the petitioner the amount due her upon said initial payment. This refusal on the part of the Mayor is alleged to be based upon the pretexts that the city has no money with which to meet the obligation and that the properties involved are not fit for school purposes. We may add that since the original petition in this case was filed the situation has become further complicated by the fact that the Ordinance No. 1169 has been repealed by a later Ordinance No. 1196, approved June 2, 1924; and the validity of the repealing ordinance has in consequence been assailed by the petitioner in her amended complaint.

Upon the facts above stated we are of the opinion that the writ of mandamus is not the appropriate, or even an admissible remedy. It is manifest that whatever rights the petitioner may have, upon the facts stated, are derived from her contract with the city; and no rule of law is better settled than that mandamus never lies to enforce the performance of private contracts. (Florida Central & Peninsular R. Co. vs. State ex rel Tavares, 20 L. R. A., 419.) The petitioner's remedy, if any she has, is by an original action in the Court of First Instance to compel the city to pay the agreed price or to pay damages for the breach of contract.

In *Montenegro-Riehm Music Co. vs. Board of Education of Louisville* (147 Ky., 720), the Supreme Court of Kentucky, discussing the writ of mandamus under a statute not unlike our own, said:

"The Code provision confines the exercise of this remedy to cases in which an executive or ministerial officer declines or omits to perform an act, the performance or omission of which is enjoined by law. It is a special remedy, although perhaps not an extraordinary one, provided for the purpose of furnishing a speedy method of obtaining relief against an officer who fails or refuses to perform some duty imposed upon him by law. It was not contemplated that in cases of this character disputed issues of fact should be settled, but that the rights of the parties should be determined by such issues of law as might be presented by the pleadings, or an agreed state of facts, or a state of facts about which there could be little dispute. As said in *Lowe vs. Phelps* (14 Bush, 642):

"It must, therefore, appear upon every application for a mandamus that it is the legal duty of the respondent to do that which it is sought to compel him to do, and that he has upon proper application refused to perform that duty (Citing numerous authorities).

"It was not intended to aid a plaintiff in the enforcement of a mere contract right, or to take the place of the other remedies provided by law for the adjudication of disputed claims. Looking at the case from the standpoint of appellant, it involves nothing more than an ordinary breach of contract. If, as contended, the appellant had a valid contract with the school board, it also had had an adequate remedy at law to recover damages for its breach; and to permit the writ of mandamus to be used for the purpose of enforcing a mere contract right would be a wide departure from the settled practice in respect to the character of cases in which relief by mandamus may be obtained."

In *Parrott vs. City of Bridgeport* (44 Conn., 180), the writ was refused where the petitioner sought to compel a city to construct a public street in a certain manner agreeably to the terms of a special agreement between the petitioner and the city. In the course of the opinion the court said:

"* * * The duty, therefore, if any, which rests upon the city in this regard, is one which it owes to the petitioner as an individual, not to the public, and the special contract is the foundation upon which it rests. But the writ of mandamus has never been considered as an appropriate remedy for the enforcement of contract rights of a private and personal nature and obligations which rest wholly upon contract and which involve no questions of public trust or official duty. Indeed, strictly speaking, it never lies where the party aggrieved has adequate remedy at law, and its aid is only to be invoked to prevent an absolute failure of justice in cases where ordinary legal processes furnish no relief. In *County Commissioners vs. Zanesville Turnpike Co.* (16 Ohio State R., 308), the relators prayed for a writ compelling the respondents to contribute three-fourths of the expense of repairing a bridge, upon the ground that they had contracted so to do. The court -denied the writ for the reason that it is not its office to enforce obligations arising upon contracts. In *State ex rel. Bohannon vs. Howard County* (39 Misso., 375), the relator prayed for the writ to compel the respondents to pay him a portion of his bounty as a volunteer. The petition was denied, the court saying that it would not 'undertake by writ of mandamus to enforce simple common law rights between individuals, such as payment of money, or where there is another adequate legal remedy.' * * *

The authorities, almost without exception, support the doctrine stated in the foregoing cases, as will be seen by reference to *Chicago vs. Chicago Telephone Co.* (230 111., 157; 13 L. R. A. [N. S.], 1084); *State ex rel. Burg vs. Milwaukee Medical College* (3 L. R. A. [N. S.], 1115) ; *State ex rel. Burg vs. Milwaukee Medical College* (128 Wis., 7; 116 A. S. R., 21); *Booker vs. Grand Rapids Medical College* (156 Mich., 95; 24 L. R. A. [N. S.], 447; 18 R. C. L., 129, 130).

It is true that there are cases in which the writ of mandamus has been used to compel proper officers to sign or issue warrants, but it will be generally found that in such cases the contracts had been completely performed on the part of the petitioner, and nothing remained to be done except for the city to make compensation. In the case before us the alleged contract has not been fully performed on the part of the petitioner; and though she avers readiness to perform, grave questions are raised by the respondent as to the validity of the contract. From a perusal of the petition and consideration of the points presented by the demurrer, it is evident that ground is laid out for a complicated and hotly contested controversy over specific performance. The writ of mandamus is not an appropriate proceeding in which to try matters of this character; and the existence of the adequate remedy by original action in the Court of First Instance must be considered fatal to the right of this court to entertain the proceeding.

For the reasons stated, the demurrer will be sustained, and unless within five days after notification hereof the petitioner shall so amend her petition as to show a sufficient cause of action, an order absolute will be entered dismissing the same, with costs. So ordered.

Malcolm, Avanceña, Villamor, and Ostrand, JJ., concur.

Johnson, Acting C. J., and Romualdez, J., took no part in the decision of this case.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.