

INSULAR MOTORS INCORPORATED, PETITIONER, VS. CITY OF MANILA AND JOSE GARRIDO, CITY ENGINEER, RESPONDENTS.

G.R. No. 46409. April 05, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

This is an original proceeding for a writ of mandamus filed by the Insular Motors Inc. against the respondents, the City of Manila and the city engineer, for the purpose of compelling the latter official to grant a permit for the construction of its proposed buildings on a parcel of land indicated in the stipulation of facts.

As stipulated, it appears that the Dominican fathers granted a lease option of a parcel of land, lot No. 1-B-2, in Intramuros, Manila, to the petitioner which thereupon submitted the plans of buildings which it proposed to erect on said realty, to the city mayor and the city engineer with the request that the same be approved and the corresponding permit issued. After some correspondence, the application was denied due to the refusal of the petitioner to make a written promise that it would comply with the provisions of the zonification ordinance upon its final approval by the President of the Philippines.

Mandamus issues only in cases where the petitioner has a clear legal right to the thing demanded and where the law imposes the imperative duty upon the defendant to perform the act desired. (*Tabigue vs. Duvall*, 16 Phil., 324; and *Ynchausti Steamship Co. vs. Dexter and Unson*, 41 Phil., 289.) In the instant case, the petitioner has not clearly established his right to the building permit, nor has he shown that the issuance of the same is an imperative duty imposed by law upon the respondents or any one of them. On the contrary, we find that the function of the city engineer of the City of Manila, so far as it relates to the granting of permits, is discretionary which may not be controlled by mandamus except in clear cases of grave abuse. (*Felismino vs. Gloria*, 47 Phil., 967, and *Guanio vs. Fernandez*, 55 Phil., 814; *Mechem*, *Law of Public Officers* [1890], pp. 631, 632.) The fact that the proposed zonification ordinance is pending approval by the President of the Philippines, does not alter the situation.

The petition is hereby denied, with costs against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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