

**DANIEL ABUSO, EUTROPIO AGRAVA, ALEJANDRA CINCO, WIDOW;  
ARSENIO ARGANION, TIMOTEO BELDAD, HILARIO BELDAD,  
JUANITO BACTOL, JAIME BAGTOSOS, EPIFANIO COYOGA, ET AL.,  
PETITIONERS, VS...**

*G.R. No. 54343. September 25, 1980*

Ponente: MELENCIO-HERRERA, J.

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**MELENCIO-HERRERA, J.:**

Petitioners have resorted to this special civil action for "Certiorari/Mandamus with Mandatory Injunction" to seek a reversal of the Orders of respondent Judge of the Court of First Instance of Rizal, Branch X, dated May 26, 1980 and June 24, 1980, and to compel him to allow the correction of their Record on Appeal in Civil Case No. 34028. They also pray that respondents Mayor Renato R. Lopez and Gen. G. V. Tobias be enjoined from demolishing and/or dismantling their houses.

As disclosed by the records, a verified Complaint for Injunction was instituted on July 30, 1979 by petitioners, numbering 84 in all, against respondents Renato R. Lopez, in his capacity as Municipal Mayor of Mandaluyong, Rizal, and Gen. G. V. Tobias, in his capacity as General Manager of the National Housing Authority, praying, among others, that judgment be rendered perpetually restraining and enjoining said officials and/or their agents from interfering with petitioners' occupancy of the property on which their residential houses stand, and which respondents Mayor and General Manager had ordered demolished. They contended that Barrio Captain Aurelio Gonzales Ruiz, who had jurisdiction over the area, had allowed them to occupy and build their houses on the vacant land located at the corner of E. Rodriguez and E. de la Paz Streets, Mandaluyong, Rizal, free, and that they had been in continued occupancy thereof since 1962.

Respondent officials filed separate Answers averring, in essence, that inasmuch as petitioners were merely possessors by tolerance they were devoid of any legal right to usurp and unjustly deprive the lawful and registered owners of their private property; and that the eviction of petitioners from said property is pursuant to LOI Nos. 19 and 19-A under which the National Housing Authority is empowered, in the interest of peace and order, to remove illegal constructions and constructions without permits on public or private property.

On October 31, 1979, acting on a Motion to Dismiss filed by respondent General Manager, respondent Judge issued an Order dismissing the Complaint for failure of petitioners to show a clear and valid right to possess the disputed property.

Petitioners' efforts at seeking reconsideration of said Order failed.

Petitioners gave notice of appeal and tendered a Record on Appeal which, however, respondent Judge disapproved in his Order of May 26, 1980 for lack of a subject index although it contained 29 pages, and for failure of the caption to state the full names of the parties, in violation of section 6, Rule 41, Rules of Court. Petitioners sought reconsideration and prayed that, in the interest of justice, they be allowed to make the necessary

correction or amendment, which respondent Judge, however, denied in his Order issued on June 24, 1980.

Hence, this Petition, with petitioners charging respondent Judge with grave abuse of discretion amounting to lack of jurisdiction in disapproving their Record on Appeal on minor and trivial grounds.

We find merit in the foregoing contention. The deficiencies in the Record on Appeal referred purely to matters of form. To cure them, all that respondent Judge was called upon to do was to order the amendment of the Record on Appeal to cover the omissions.[1] In not doing so, he had committed grave abuse of discretion correctible by Certiorari. He had deprived petitioners, on unsubstantial grounds, of their right to appeal.

WHEREFORE, we hereby set aside the Orders of respondent Judge dated May 26, 1980 and June 24, 1980, respectively, and require him to allow petitioners to amend their Record on Appeal.

The Injunctive Writ prayed for is denied.

**SO ORDERED.**

Fernando, C.J., Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.

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[1] Section 7, Rule 41, Rules of Court; see *Vda. de Marcelo, et al. vs. Hon. Rafael S. Sison*, 12 SCRA 32 (1964).

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