

SPOUSES ARCANGEL GENOBLAZO AND ELISA NANTES AND ARELI DE FIESTA, PETITIONERS, VS. HONORABLE COURT OF APPEALS, JUDGE NATIVIDAD G. ADURRU-SANTILLAN, AS THE PRESIDING JUDGE OF BRAN...

G.R. No. 79303. June 20, 1989

Ponente: CORTES, J.

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CORTES, J.:

Petitioners assail the decision of the Court of Appeals (1) dismissing their petition for, certiorari and prohibition with preliminary injunction and (2) upholding the order of the respondent Judge Natividad G. Adurru-Santillan of the Regional Trial Court denying petitioners' motion for a writ of preliminary injunction.

The antecedent facts, as found by the respondent court, are as follows:

* * *

Civil Case No. 84-26196 was filed by plaintiffs (petitioners herein) on a claim of ownership by extraordinary acquisitive prescription of lots no. 2520 and 2512 located at Felix Huertas St., Sta Cruz, Manila, and the improvements thereon. The plaintiffs also sought to enjoin the defendants (private respondents herein) from further demolishing or destroying the remnants of the structures built on the land, and sought recovery of actual, moral and exemplary damages, and determination of the issue of ownership over the land. The defendants claimed absolute ownership of the lots in question as evidenced by Transfer Certificate of Title No. 160694 of the Register of Deeds of Manila, and relied on the regularity and lawful issuance of the Demolition Order No. 014 S-1984 dated June 11, 1984 issued by the City Engineers' Office, Lands and Building Official. Defendants made a counter-claim for moral damages and attorney's fees.

Upon motion of the plaintiffs, the respondent Judge issued on December 1, 1984 a restraining order to prevent defendants from the commission of acts that will dispossess plaintiffs of their temporary shelter, and enjoining plaintiffs from introducing additional improvements on the land and/or expanding the facilities existing thereon.

On January 2, 1985, defendant Reyeses, manifesting that the aforesaid Order has been violated by plaintiffs through expansion of the makeshift "barong-barong" by about two (2) meters of its frontage, moved to cite plaintiffs in contempt of court. Plaintiffs' did not challenge the merit of the motion, but instead filed an urgent motion on January 10, 1985 for immediate issuance of a writ of preliminary injunction in reiteration of their prayer in the complaint. A hearing was conducted, at which the parties orally argued their respective positions and sought for the filing of respective memoranda after which the case shall be deemed submitted for resolution. The respondent Judge in an Order dated July 1, 1985, found that the evidence submitted by plaintiffs to support the claim of continuous and uninterrupted residence in the premises since 1947 could not be given probative value, and upheld the claim of defendant on the basis of a Torrens Certificate of Title in its favor.

On the issue of physical possession, the Court held that defendant City Engineer and Building Official of the

City of Manila had acted within the scope of his authority under the National Building Code and the applicable. Ordinances of the City of Manila ordering the demolition of structures found to be dangerous or ruinous and detrimental to the life, health and safety of the community and its members.

The respondent Judge ruled that the ownership of the defendants over the lots in question as proven by the Transfer Certificate of Title No. 160964 of the Registry of Deeds for Manila "is hereby confirmed", the issuance of the writ of preliminary injunction is denied, and the case set for pre-trial on the unresolved issues on the physical possession of the questioned lots, and the claim for damages and attorney's fees.

Plaintiffs did not file any motion for reconsideration of the said order, but instead filed on August 16, 1985 an urgent ex-parte motion for disqualification on the ground of partiality, bias and prejudice, preference and pre-judgment against plaintiffs. On September 15, 1985, plaintiffs filed a manifestation that until after the question of disqualification shall have been finally determined, petitioners shall not attend any hearing or trial.

On November 11, 1985, petitioners filed the instant petition, claiming that respondent court acted arbitrarily and capriciously and with grave abuse of discretion amounting to want or excess of jurisdiction when it (1) issued the Order of July 1, 1985 "without any evidence, documentary or testimonial, formally offered, had virtually decided the case leaving only the question of damages and attorney's fees unresolved"; and (2) issued its subsequent orders setting the case. For pre-trial despite two motions for disqualification filed against her; and (3) ignored the two motions for inhibition.

* * *

[CA Decision, pp. 1-3; Rollo, pp. 11-12-A.]

As earlier stated, the respondent Court of Appeals dismissed the special civil action filed by petitioners and held that (1) any error committed by the trial court in its factual or legal findings is correctible by appeal and not by certiorari; (2) the trial court committed no whimsical or capricious error in arriving at the legal conclusion that the city engineer acted within the scope of his authority in issuing the demolition order; and (3) the failure of the judge of the trial court to resolve the motion for her disqualification did not deprive the trial court of jurisdiction to continue hearing the case.

As petitioner's motion for reconsideration was denied, recourse was sought in this Court. The instant petition for review specifically points out the following as errors allegedly committed by the respondent court:

I

THE COURT OF APPEALS ERRED IN FAILING TO TAKE INTO ACCOUNT THE CONSPIRACY BETWEEN THE MANILA CITY ENGINEER AND PRIVATE RESPONDENTS TO DESTROY AND DEMOLISH PETITIONERS' HOUSES, CARRIED OUT IN BAD FAITH, DECEIT, AND IN UTTER DEPRIVATION OF DUE PROCESS-- ALL THESE BY DOCUMENTARY EVIDENCE.

II

THE COURT OF APPEALS ERRED IN FINDING THAT THE ORDER OF DEMOLITION AND ITS IMPLEMENTATION WERE LEGAL AND PROPER.

III

THE COURT OF APPEALS ERRED IN DETERMINING THAT CERTIORARI IS NOT THE PROPER REMEDY IN THIS CASE.

IV

THE COURT OF APPEALS ERRED IN HOLDING THAT THE INHIBITION OF RESPONDENT JUDGE WAS NOT CALLED FOR UNDER THE CIRCUMSTANCES OF THIS CASE. [Rollo, pp. 87-88.]

I. On the first assigned error, petitioners contend that there was a conspiracy between the public respondents City Engineer and Building Official of Manila and the private respondents Carmen Vda. de Reyes and Jaime de los Reyes, who are mother and son, as shown by the alleged deceptions committed by the latter in: 1) making it appear that private respondents Carmen Vda. de Reyes and Jaime de los Reyes were the owners not only of the lots but also of the houses; 2) sending the order of demolition not to the petitioners who claim to be the owners of the houses but to "Jaime de los Reyes, et al." [Rollo, p. 4.]; and, 3) alleging in their answer to the complaint for recovery of ownership and possession of the disputed properties that Petitioners were legally and validly given notices to vacate the premises in view of the demolition order. Petitioners insist that because of the failure of private respondents to notify them of the order of demolition, they were rendered "helpless and unknowing of what was going on about them" and they were not able to resort to the remedies accorded to them by the National Building Code Rules and Regulations [Rollo, p. 5.]

Petitioners' contention of a conspiracy between the private respondents and the Manila City Engineer to demolish their houses involves a factual matter. The well-established rule is that findings of facts of the trial court are entitled to great respect and will not be disturbed except for strong and cogent reasons [Mendoza v. Court of Appeals, G.R. No. L-45898, December 18, 1987, 156 SCRA 597; Vda. de Roxas v. Intermediate Appellate Court, G.R. No. 64728, July 22, 1986, 143 SCRA 77; Republic v. Intermediate Appellate Court, G.R. No. 70594, October 10, 1986, 144 SCRA 705.] Here, the petitioners' claim that private respondents committed deception in failing to notify them of the order of demolition was not given any credence by the trial court which found that "what happened was their houses had been demolished' through their inaction" (Rollo, p. 47.) This is borne out by the evidence on record. Hence, although the demolition order was addressed to "Mr. Jaime de los Reyes, et al." as owner of the property, the affected tenants including, the petitioners were duly furnished with a copy of said order (See Original Records, p. 77.) Since the demolition order which was dated June 11, 1984 was carried out only on July 9, 1984, petitioners therefore had ample time to contest the said order and resort to the remedies available to them under the National Building Code (Presidential Decree No. 1096) but this they failed to do. The Court therefore finds no compelling reason to warrant setting aside the trial court's findings, which were affirmed by the appellate court.

II. The next issue revolves around the order of demolition dated June 11, 1984 issued by the respondent City Engineer and Building Official of Manila on the subject buildings or structures standing on the lots now in dispute, which were condemned as not fit for human habitation. According to petitioners, the demolition order was illegal since the Building Official was not authorized to issue the same. Petitioners' position is that since the houses were also considered as nuisances, it is the district health officer, not the Building Official who decides on the propriety of abatement or demolition in view of the provision of Article 702 of the Civil Code which states:

Article 702. The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance.

This contention is untenable. The issue presented before the court, a quo is not really whether the structures can be considered a nuisance under the Civil Code but whether there has been a violation of the National Building Code so as to warrant an order for the demolition of said structure. Here, the Building Official was authorized to issue the questioned demolition order in view of his finding that the disputed structures are dangerous buildings and structures within the meaning of the National Building Code (See Rule VII, Section 3, Implementing Rules and Regulations of the National Building Code.) This factual finding will not be disturbed by the court absent a

showing of a clear, manifest and grave abuse of discretion amounting to want of jurisdiction [Sagun et al. v. People's Homesite and Housing Corporation, G.R. No. 44738, June 22, 1988.]

Contrary to petitioners' position, the fact that the buildings in question could also constitute nuisances under the Civil Code does not preclude the Building Official from issuing the assailed demolition order. Indeed, the National Building Code itself provides that:

When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 484 to 707 of the Civil Code of the Philippines [Second paragraph of Section 214.]

III. The third issue deals with the propriety of certiorari as the remedy resorted to by the petitioners from the questioned order of the trial judge. Petitioners brought a special civil action for certiorari to the appellate court on the ground that the respondent trial judge committed grave abuse of discretion in issuing the order denying the writ of preliminary injunction prayed for.

It must be borne in mind that the action of the court a quo in denying the writ was premised on the failure of the petitioners to show that they have a right to be protected and preserved during the pendency of the case. The trial court found without any probative value the evidence adduced by petitioners to support their claim of ownership by acquisitive prescription through continuous and uninterrupted residence in the premises. On the other hand, the trial court found private respondents' claim of ownership based on a deed of sale executed in their favor on February 22, 1984 by Pilipinas Bank tenable [See Rollo, p. 15 et seq.] In the aforesaid contract of sale, Pilipinas Bank conveyed to private respondents the ownership of the disputed lots, Lot Nos. 2520 and 2512, among other lots, and "all the buildings and improvements existing thereon and belonging to the VENDOR" [Id. at p. 17.] Accordingly, the trial court held that:

Rather, it is defendants (private respondents herein) who have demonstrated the attribute of ownership through the registration of the deed of conveyance over the lots and subsequent issuance of transfer certificate of title in favor of defendants which could not have been made without first paying the real estate taxes by them. The *jus disponendi* as an element of ownership was never questioned by the plaintiffs. These negate the claim of plaintiffs that their possession of the lots would ripen into ownership by prescription. The title of defendants obtained under the Torrens System is indefeasible and no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.

* * *

[Order of the RTC; Rollo, p. 46.]

Petitioners however insist that the following allegations in the answer (to the complaint) dated September 26, 1984, prepared and filed by the same counsel for the private respondents, Atty. Manuel M. Maramba, constitute "judicial admissions" [Section 2, Rule 129 of the Revised Rules of Court] and therefore do not require proof:

* * *

2. That defendants hereby specifically deny the allegations in paragraph III of the complaint, the truth of the matter is that plaintiffs' structures are not of strong materials as alleged x x x. (page 1, lines 31-34; underscoring supplied).

* * *

[Brief for the Petitioners, p. 8; Rollo, p. 94.]

Petitioners' contention is untenable. The phraseology used by the respondents does not at all connote that they are acknowledging the petitioners as owners of the demolished structures. On the other hand, petitioners, as tenants of the former owner of the property which was Pilipinas Bank, cannot deny the title of the private respondents which passed to the latter by virtue of the deed of absolute sale dated February 22, 1984 [Rule 131, Section 3 (b), Revised Rules of Court.] Contrary to petitioners' stand, the negation and avoidance of warranty contained in said deed does not refer to ownership but only to physical possession as can be gleaned from its clear terms:

The VENDOR does not warrant absolute and complete physical possession of the premises. It is understood and agreed that the VENDEES accept the premises subject to any and all lease contracts, verbal and otherwise, which may be outstanding. . . . A list of tenants or persons staying on the premises is hereto attached and marked Annex "A" and made part hereof;

* * *

[Rollo, p. 17; Underscoring supplied.]

Among the tenants listed in said annex to the deed are petitioners Elisa Nantes, wife of Arcangel Genoblazo and Areli de Fiesta. A review of the records shows that petitioners were formally notified by Pilipinas Bank of the change of ownership of the subject premises in a letter which states:

* * *

We wish to inform you that the property which you are presently occupying is now owned by Mr. Jaime de los Reyes and Carmen Vda. de Reyes in view of the Deed of Absolute Sale which the Bank executed in favor of the new owners.

Your rentals on the premises due and/or to become due beginning February 1984 shall therefore now be paid directly to the new owners. . .

* * *

[Record, p. 157.]

Clearly, petitioners' claim of ownership over the subject premises was totally unfounded.

It is a settled rule that the issuance of the writ of preliminary injunction as an ancillary or preventive remedy to secure the rights of a party in a pending case rests upon the sound discretion of the court taking cognizance of the case. The exercise of sound judicial discretion by the lower court in injunctive matters should not be interfered with except in case of manifest abuse [Yapinchay v. Torres, G.R. No. L-26462, June 9, 1969, 28 SCRA 489.] Consequently, since the petitioners failed to make a clear showing that the trial judge gravely abused that discretion in denying the writ on the basis of her findings, the appellate court correctly denied the petition for certiorari before it [Rule 65, Section 1 of the Revised Rules of Court; Tabil v. Ong, G.R. No. L-46773, July 16, 1979, 91 SCRA 451.]

IV. Finally, petitioners' contention that the respondent trial judge was disqualified from proceeding with the trial of case is not well taken. The sole ground for disqualification of the respondent trial judge invoked by petitioners, i.e., the alleged partiality and prejudgment of the merits of the complaint is not among the legal grounds for disqualification enumerated under Section 1 of Rule 137 of the Revised Rules of Court which provides:

Section 1. Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been an executor, administrator, guardian, trustee or counsel, or

in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

While it is true that partiality and prejudgment may constitute a just or valid reason for the trial judge to voluntarily inhibit himself from hearing the case, it is not enough that the same be merely alleged. It is now settled that mere suspicion that a judge is partial to one of the parties to the case is not enough; there should be evidence to prove the charge [Beltran V. Garcia, G.R. No. L-30868, September 31, 1971, 41 SCRA 158.] In this case, no such proof of partiality and prejudgment has been adduced.

Moreover, the trial judge acted correctly in proceeding with the case by setting it for pre-trial since it is within her sound discretion, after her decision in favor of her own competency, to either proceed with the trial or refrain from acting on the case until determination of the issue of her disqualification by the appellate court [Section 2 of Rule 137 of the Revised Rules of Court; De la Paz v. Intermediate Appellate Court, supra, at 76.]

WHEREFORE, the assailed decision of the respondent Court of Appeals being in conformity with settled law and jurisprudence, is **AFFIRMED** and the instant petition for certiorari is **DISMISSED** for lack of merit.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

Fernan, C.J., no part, respondent Del Rosario is related to me.

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