

**SPOUSES FELICIANO BEJER AND GLORIA BEJER, PETITIONERS, VS.
THE HONORABLE COURT OF APPEALS AND SPOUSES SOLANO
SAMAR AND “JOHN DOE/S”; RESPONDENTS.**

G.R. No. 79404. January 27, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

Considering the identity of petitioner lessors, the subject matter and the issues in these two cases, and that the respondents therein are tenants in the same property involved, a joint decision is indicated.

An identical pivotal issue, which would be determinative of the present recourses in both cases, presents itself for resolution by the Court: Does P.D. 1508 (Katarungang Pambarangay Law), which requires the compulsory process of conciliation as a pre-condition for filing a case in court, apply where the plaintiffs are permanent residents of another province but, at the time of the institution of the action, are temporarily residing for a transient purpose in the same city where the defendants reside?

The petitioners in these cases are the owners of a parcel of land and the building erected thereon located at and known as No. 1162-B San Andres St., Malate, Manila. In 1984, the petitioners entered into a verbal contract of lease with the Samar spouses, respondents in G.R. 79404, on a month-to-month basis over a portion of the said premises at a monthly rental of P75.00. In September, 1985, petitioners notified said respondents of their need to repossess the leased premises for their own use and due to the immediate need therefor by their family, and granted the respondents up to December 31, 1985 to vacate the premises. Respondents stayed on and despite another 3-month notice to pay and vacate they not only failed to do so but refused to pay their monthly rentals from December, 1985, hence the petitioners filed a complaint against them on April 21, 1986 in the Metropolitan Trial Court of Manila.[1]

The same antecedent facts obtain with respect to the respondent Esplano spouses, involved in G.R. No. 80045, against whom a separate complaint was filed and raffled to the same trial court. The aforesaid two cases, together with that against a third tenant-defendant but which is not involved in these appellate proceedings, were the subjects of a consolidated decision of the lower court[2] rendered on November 7, 1986 ordering therein defendants and all persons claiming rights under them to vacate their respective leased premises; to pay the rentals from December, 1985 until they shall have vacated the premises, with legal interest thereon; and to individually pay P1,000.00 as attorney's fees, plus costs of suit.

In said cases, the defendants, respondents herein, duly raised in their respective answers the defenses of lack of cause of action of the plaintiffs and/or that the lower court had no jurisdiction for non-compliance with the conciliation requirement of P.D. 1508; and further that they could not be ejected by reason of the applicability and proscription in their favor of P.D. 1517 (Urban Land Reform Law) in relation to P.D. 1520.

However, the lower court held that P.D. 1508 was not applicable in both cases since the plaintiffs were actual residents of Orense, Bauan, Batangas and, at the time of filing the individual suits against the respective

defendants therein, the former were merely transient residents of 1284 Burgos Street, Pandacan, Manila. Defendants' invocation of P.D. 1517 was given short shrift in view of the doctrine laid down by this Court in Santos, et al. vs. Court of Appeals, et al.,[3] holding that -

"xxx P.D. No. 1517, in referring to the preemptive or redemptive right of a lessee speaks only of urban land under lease on which a tenant has built his home and in which he has resided for ten years or more. If both land and the building belong to the lessor, the right referred to the hereinabove does not apply."

Therein defendant Samar spouses appealed to the Regional Trial Court which affirmed[4] the judgment of the lower court, further pointing out that therein plaintiffs' "occasional visits to the Pandacan apartment of their children do not make plaintiffs 'ACTUAL RESIDENTS' of that place. In short, plaintiffs are as strangers to the community at Burgos Street, Pandacan, Manila as they can be". With respect to defendants' reliance on P.D. 1517 and P.D. 2016, it was additionally noted that said decrees require that the area must be defined and proclaimed to be within a specified Urban Land Reform Zone[5], that is, the 245 depressed areas covered by Proclamation No. 1967 and within the Area of Priority Development and the ZIP Program of the Government. The premises in controversy were within an area not yet proclaimed but only being recommended for feasibility study for the Zonal Improvement Program.[6]

Therein defendants elevated the case on a petition for review to the Court of Appeals,[7] which, in its decision on July 23, 1987 sustained the ruling on the inapplicability of P.D. 1517.[8] However, it held that P.D. 1508 was applicable to the case although the therein private respondents were only "temporarily residing at 1284 Burgos Street, Pandacan, Manila" since P.D. 1508 merely requires that the parties are "actually residing" in the place involved. The decisions of the two lower courts were consequently set aside and the ejectment case was dismissed on the ground of lack of cause of action or prematurity.[9]

Herein petitioners fared no better in their case against the Esplano spouses who likewise appealed from the aforesaid consolidated decision of the Metropolitan Trial Court to the Regional Trial Court of Manila[10] which affirmed in toto the decision of the lower court. However, on a petition for review in the Court of Appeals, the decision of the trial court was set aside and the complaint for ejectment was dismissed likewise for lack of cause of action or prematurity. Said decision[11] of the Sixth Division of respondent Court of Appeals specifically adverted to and noted with approval the aforesaid decision of the Fourteenth Division in CA-G.R. SP. No. 11697.

Both decisions of the respondent court are now before Us presenting the same determinant issue stated at the outset of this decision.

Prefatorily, this Court has heretofore repeatedly held that non-compliance with P.D. 1508 does not warrant jurisdictional objections; non-availing of the conciliation process required therein only renders the complaint vulnerable to a timely motion to dismiss for lack of cause of action or prematurity[12]. The private respondents in the two cases at bar seasonably raised that affirmative defense in their respective answers filed in the court a quo, hence waiver of such objection or estoppel by laches are not in issue in the present controversy.

Instead, the contending parties have locked their argumentative horns on the nature or concept of the "residence" requirement in P.D. 1508, the petitioners contending that permanent residence is required for the application thereof, while the private respondents insist that all that is required is actual residence, whether temporary or permanent, at the time the dispute arose. In procedural law, however, specifically for purposes of venue it has been held that the residence of a person is his personal, actual or physical habitation or his actual residence or place of abode,[13] which may not necessarily be his legal residence or domicile provided he resides therein with continuity and consistency,[14] thus:

"x x x We lay down the doctrinal rule that the term 'resides' connotes ex vi termini 'actual residence' as

distinguished from 'legal residence or domicile'. The term 'resides', like the term 'residing' or 'residence' is elastic and should be interpreted in the light of the object or purpose of the statute or rule in which it is employed. x x x In other words, 'resides' should be viewed or understood in its popular sense, meaning, the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. x x x No particular length of time of residence is required though; however, the residence must be more than temporary" (Underscoring supplied).

Parenthetically, the lower courts held that herein petitioners are permanent residents of Orense, Bauan, Batangas, although they periodically come to visit and stay for a few days at the aforesaid place in Pandacan where their children live while attending classes. Both complaints filed by them in the Metropolitan Trial Court also state that they are "residents of Orense, Bauan, Batangas, and temporarily residing at 1284 Burgos Street, Pandacan, Manila". Tested by the rules on sufficiency of pleadings, it is readily apparent that the allegation regarding their temporary residence should be treated as an inconsequential surplusage. However, as already stated, respondents' reliance is placed squarely and literally on the reference of P.D. 1508 to persons "actually residing" in the barangays as the rationale for its applicability. We feel, however, that for an adequate denouement, the inquiry should go farther than such statutory provisions.

It will be noted that the first preambular paragraph of P.D. 1508[15] provides:

"Whereas, the perpetuation and official recognition of the time-honored tradition of amicably settling disputes among family and barangay members at the barangay level without judicial recourse would promote the speedy administration of justice and implement the constitutional mandate to preserve and develop Filipino culture and to strengthen the family as a basic social institution;" (Emphasis supplied).

Evidently, therefore, the primary purpose of P.D. 1508 is to provide the conciliation mechanism, as an alternative to litigations in dispute settlement, to members of the corresponding barangays who are actually residing therein. Residence alone, without membership, in said barangays would not be an accurate and reliable criterion, considering that such residence may be actual but be merely temporary, transient or categorized into other permutations as in the case of a house guest or a sojourner on a visit of a day or two. On the other hand, mere membership in a barangay, without actual residence therein, should not suffice since absentee membership would not subserve the avowed purpose of P.D. 1508 for lack of the common bond and sense of belonging generally fostered in members of an identified aggroupment.

Hence, the Local Government Code[16] thereafter specifically provided[17] for the appointment of a barangay secretary with the duties, inter alia, to:

xxx xxx xxx

"(c) Prepare separate lists of the members of the barangay and the registered voters of the barangay assembly, and have the same posted on conspicuous places within the barangay;

(d) Register all new members of the barangay;"

xxx xxx xxx

That such regulatory provisions in B.P. 337 on barangays should be read conjointly with and applies to P.D. 1508 is shown by the provision in the former as follows:

"Sec. 114. Amicable Settlement of Disputes on the Barangay Level. There shall be a system of amicable settlement of disputes on the barangay level which shall be governed by law."

Incidentally, the importance of membership, and not mere actual residence, in the barangay is underscored by the requirement that it must have an actual population of at least one thousand inhabitants,[18] which cannot but

mean barangay members actually residing therein. Membership in the barangay is also required for candidacy to an office therein,[19] to be considered as persons in authority[20] and for membership in the kabataang barangay assembly.[21]

Turning now to the cases at bar, there is no dispute that the petitioners are not members of the barangay in question. There is no evidence of that fact nor was there a certification that they are residents of 1284 Burgos Street, Pandacan, Manila, in contrast to the respondents in both cases whose residence at 1162-B San Andres Street, Malate, Manila was certified to by the barangay chairman thereof.[22] Petitioners cannot even be accurately categorized as temporary residents but as mere periodic and brief sojourners who only used to come to visit and attend to their children's needs while in school. From all the foregoing disquisitions, therefore, we cannot confirm the existence of the requisite residential or, for purposes of the issue involved, the legal nexus between the petitioners and the Pandacan barangay involved.

The literalism in respondents' suggested construction of the pertinent provisions of P.D. 1508 may even result in unwanted, if not absurd, results not contemplated in and contrary to its purpose. For instance, if a transient visitor, like the herein petitioners, obtains a loan of P15,000.00 on a verbal agreement from a barangay member during the former's brief stay in that barangay in Manila and fails to pay the same but, like the petitioners herein, he is a resident of Batangas, following respondents' theory prior conciliation proceedings must first be conducted in said Manila barangay before suit may be brought in the municipal trial court in Batangas as the court of proper venue. This situation could not have been within the intendment of P.D. 1508.

On the equities of these cases, it bears mention that petitioners and their family have been prevented up to now from repossessing their own house and lot for their use despite their demonstrated compliance with the legal requirements therefor as found by the two courts below, and that the respondents have deliberately refused to pay the respective stipulated rentals for their occupancy of said premises.

WHEREFORE, judgment is hereby rendered SETTING ASIDE the assailed decisions of the Fourteenth and Sixth Divisions of the respondent Court of Appeals in CA-G.R. SP No. 11697 and CA-G.R. No. SP-11893, respectively; REINSTATING the decisions of the Regional Trial Court of Manila in Civil Cases Nos. 87-39033 and 87-39032 thereof; and ORDERING the respondents to vacate the premises in question and surrender possession thereof to the petitioners. This decision is immediately EXECUTORY.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Decision, CA-G.R. SP No. 11697, 1; Rollo, 22, G.R. No. 79404.

[2] Annex C; Rollo, 33-36, G.R. No. 79404.

[3] 128 SCRA 428 (1984).

[4] Decision, February 27, 1987, Branch 2, Civil Case No. 87-39033, penned by Judge Rosalio A. de Leon; Rollo, 28-31, G.R. No. 79404.

[5] Citing *Valdellon vs. Tengco, et al.*, 141 SCRA 321 (1986).

[6] Rollo, 30-31, G.R. No. 79404.

[7] CA-G.R. SP. No. 11697, Fourteenth Division.

- [8] Penned by F.P. Purisima, J., with the concurrence of E.C. Cui and J.M. Elbinias, JJ.
- [9] Rollo, 23-26, G.R. No. 79404.
- [10] Branch I, Civil Case No. 87-39032, presided over by Judge Rebecca C. Salvador.
- [11] CA-G.R. SP. No. 11893, A. Marigomen, J., ponente, and S.M. Kapunan and R.S. Puno, JJ., concurring.
- [12] Morata vs. Go, 125 SCRA 444 (1983); Vda. de Borromeo vs. Pogoy, 126 SCRA 217 (1983); Peregrina, et al., vs. Panis, et al., 133 SCRA 72 (1984); Ebol vs. Amin, 135 SCRA 438 (1985); Gonzales vs. Court of Appeals, et al., 151 SCRA 289 (1987).
- [13] Fule, et al., vs. Court of Appeals, et al., 74 SCRA 189 (1976).
- [14] Dangwa Transportation Co., Inc., et al. vs. Sarmiento et al., 75 SCRA 124 (1977).
- [15] June 11, 1978, 74 O.G. 11199.
- [16] B.P. 337, February 10, 1983, 79 O.G. 897.
- [17] Ibid., Sec. 95.
- [18] Ibid., Sec. 83.
- [19] Ibid., Sec. 42.
- [20] Ibid., Sec. 87.
- [21] Ibid., Sec. 117.
- [22] G.R. No. 79404, Rollo, 48; Annex C.

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