

FRANCISCO U. DACANAY, PETITIONER, VS. MAYOR MACARIO ASISTIO, JR., CITY ENGR. LUCIANO SARNE, JR. OF KALOOKAN CITY, METRO MANILA, MILA PASTRANA AND/OR RODOLFO TEOFE, STALLHOLDERS ...

G.R. No. 93654. May 06, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

May public streets or thoroughfares be leased or licensed to market stallholders by virtue of a city ordinance or resolution of the Metro Manila Commission? This issue is posed by the petitioner, an aggrieved Caloocan City resident who filed a special civil action of mandamus against the incumbent city mayor and city engineer, to compel these city officials to remove the market stalls from certain city streets which the aforementioned city officials have designated as flea markets, and the private respondents (stallholders) to vacate the streets.

On January 5, 1979, MMC Ordinance No. 79-02 was enacted by the Metropolitan Manila Commission, designating certain city and municipal streets, roads and open spaces as sites for flea markets. Pursuant thereto, the Caloocan City mayor opened up seven (7) flea markets in that city. One of those streets was the "Heroes del '96" where the petitioner lives. Upon application of vendors Rodolfo Teope, Mila Pastrana, Carmen Barbosa, Merle Castillo, Bienvenido Menes, Nancy Bugarin, Jose Manuel, Crisaldo Paguirigan, Alejandro Castron, Ruben Araneta, Juanita and Rafael Malibaran, and others, the respondents city mayor and city engineer, issued them licenses to conduct vending activities on said street.

In 1987, Antonio Martinez, as OIC city mayor of Caloocan City, caused the demolition of the market stalls on Heroes del '96, V. Gozon and Gonzales streets. To stop Mayor Martinez' efforts to clear the city streets, Rodolfo Teope, Mila Pastrana and other stallowners filed an action for prohibition against the City of Caloocan, the OIC City Mayor and the City Engineer and/or their deputies (Civil Case No. C-12921) in the Regional Trial Court of Caloocan City, Branch 122, praying the court to issue a writ of preliminary injunction ordering these city officials to discontinue the demolition of their stalls during the pendency of the action.

The court issued the writ prayed for. However, on December 20, 1987, it dismissed the petition and lifted the writ of preliminary injunction which it had earlier issued. The trial court observed that:

"A perusal of Ordinance 2, series of 1979 of the Metropolitan Manila Commission will show on the title itself that it is an ordinance –

""Authorizing and regulating the use of certain city and/or municipal streets, roads and open spaces within Metropolitan Manila as sites for flea market and/or vending areas, under certain terms and conditions, subject to the approval of the Metropolitan Manila Commission, and for other purposes'

which is further amplified in Section 2 of the said ordinance, quoted hereunder:

“SEC. 2. The streets, roads and open spaces to be used as sites for flea markets (tiangge) or vending areas; the design, measurement or specification of the structures, equipment and apparatuses to be used or put up; the allowable distances; the days and time allowed for the conduct of the businesses and/or activities herein authorized; the rates or fees or charges to be imposed, levied and collected; the kinds of merchandise, goods and commodities sold and services rendered; and other matters and activities related to the establishment, maintenance and management and operation of flea markets and vending areas, shall be determined and prescribed by the mayors of the cities and municipalities in the Metropolitan Manila where the same are located, subject to the approval of the Metropolitan Manila Commission and consistent with the guidelines hereby prescribed.’

“Further, it is so provided in the guidelines under the said Ordinance No. 2 of the MMC that -

“SEC. 6. In the establishment, operation, maintenance and management of flea markets and vending areas, the following guidelines, among others, shall be observed:

‘xxx xxx xxx

‘(m) That the permittee shall remove the equipment, facilities and other appurtenances used by him in the conduct of his business after the close or termination of business hours.’” (Underscoring ours; pp. 15-16, Rollo.)

The trial court found that Heroes del '96, Gozon and Gonzales streets are of public dominion, hence, outside the commerce of man:

“The Heroes del '96 street, V. Gozon street and Gonzales street, being of public dominion must, therefore, be outside of the commerce of man. Considering the nature of the subject premises, the following jurisprudence co/principles are applicable on the matter:

“1) They cannot be alienated or leased or otherwise be the subject matter of contracts. (Municipality of Cavite vs. Rojas, 30 Phil. 602);

“2) They cannot be acquired by prescription against the state (Insular Government vs. Aldecoa, 19 Phil. 505). Even municipalities can not acquire them for use as communal lands against the state (City of Manila vs. Insular Government, 10 Phil. 327);

“3) They are not subject to attachment and execution (Tan Toco vs. Municipal Council of Iloilo, 49 Phil. 52);

“4) They cannot be burdened by any voluntary easement (2-II Colin & Capitant 520) (Tolentino, Civil Code of the Phil., Vol II, 1983 Ed. pp. 29-30).

“In the aforecited case of Municipality of Cavite vs. Rojas, it was held that properties for public use may not be leased to private individuals. Such a lease is null and void for the reason that a municipal council cannot withdraw part of the plaza from public use. If possession has already been given, the lessee must restore possession by vacating it and the municipality must thereupon restore to him any sums it may have collected as rent.

“In the case of City of Manila vs. Gerardo Garcia, 19 SCRA 413, the Supreme Court held:

“‘The property being a public one, the Manila Mayors did not have the authority to give permits, written or oral, to the squatters, and that the permits granted are therefore considered null and void.

‘This doctrine was reiterated in the case of Baguio Citizens Action Inc. vs. The City Council, 121 SCRA 368, where it was held that:

‘An ordinance legalizing the occupancy by squatters of public land is null and void.’

“The authority of respondent Municipality of Makati to demolish the shanties of the petitioner's members is

mandated by P.D. 772, and Sec. 1 of Letter of Instruction No. 19 orders certain public officials, one of whom is the Municipal Mayor to remove all illegal constructions including buildings on and along esteros and river banks, those along railroad tracks and those built without permits on public or private property (*Zansibarian Residents Association vs. Mun. of Makati*, 135 SCRA 235). The City Engineer is also among those required to comply with said Letter of Instruction.

"The occupation and use of private individuals of sidewalks and other public places devoted for public use constitute both public and private nuisances and per se, and this applies to even case involving the use or lease of public places under permits and licenses issued by competent authority, upon the theory that such holders could not take advantage of their unlawful permits and license and claim that the land in question is a part of a public street or a public place devoted to public use, hence, beyond the commerce of man. (*Padilla*, Civil Code Annotated, Vol. II, p. 59, 6th Ed., citing *Umali vs. Aquino*, IC. A. Rep. 339.)

"From that aforequoted jurisprudence/principles, the Court opines that defendants have the right to demolish the subject stalls of the plaintiffs, more so when Section 185, par. 4 of *Batas Pambansa Blg. 337*, otherwise known as the Local Government Code provides that the City Engineer shall:

""(4) xxx xxx xxx

'(c) Prevent the encroachment of private buildings and fences on the streets and public places;

'xxx xxx xxx

'(j) Inspect and supervise the construction, repair, removal and safety of private buildings;

'xxx xxx xxx

'(k) With the previous approval of the City Mayor in each case, order the removal of materials employed in the construction or repair of any building or structures made in violation of law or ordinance, and cause buildings and structures dangerous to the public to made secure or torn down;

'xxx xxx xxx'

"Further, the Charter of the City of Caloocan, Republic Act No. 5502, Art. VII, Sec. 27, par. g, 1 and m, grants the City Engineer similar powers." (Emphasis supplied; pp. 17-20, Rollo.)

However, shortly after the decision came out, the city administration in Caloocan City changed hands. City Mayor Macario Asistio, Jr., as successor of Mayor Martinez, did not pursue the latter's policy of clearing and cleaning up the city streets.

Invoking the trial court's decision in Civil Case No. C-12921, Francisco U. Dacanay, a concerned citizen, taxpayer and registered voter of Barangay 74, Zone 7, District II of Caloocan City, who resides on Heroes del '96 Street, one of the affected streets, wrote a letter dated March 7, 1988 to Mayor Asistio, Jr., calling his attention to the illegally-constructed stalls on Heroes del '96 Street and asked for their demolition.

Dacanay followed up that letter with another one dated April 7, 1988 addressed to the mayor and the city engineer, Luciano Sarne, Jr. (who replaced Engineer Arturo Samonte), inviting their attention to the Regional Trial Court's decision in Civil Case No. 12921. There was still no response.

Dacanay sought President Corazon C. Aquino's intervention by writing her a letter on the matter. His letter was referred to the city mayor for appropriate action. The acting Caloocan City secretary, Asuncion Manalo, in a letter dated August 1, 1988, informed the Presidential Staff Director that the city officials were still studying the issue of whether or not to proceed with the demolition of the market stalls. Dacanay filed a complaint against Mayor

Asistio and Engineer Sarne (OMB-0-89-0146) in the Office of the OMBUDSMAN. In their letter-comment dated April 3, 1989, said city officials explained that in view of the huge number of stallholders involved, not to mention their dependents, it would be harsh and inhuman to eject them from the area in question, for their relocation would not be an easy task.

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In reply, Dacanay maintained that respondents have been derelict in the performance of their duties and through manifest partiality constituting a violation of Section 3(e) of R.A. 3019, have caused undue injury to the Government and given unwarranted benefits to the stallholders.

After conducting a preliminary investigation, the OMBUDSMAN rendered a final evaluation and report on August 28, 1989, finding that the respondents' inaction is purely motivated by their perceived moral and social responsibility toward their constituents, but "the fact remains that there is an omission of an act which ought to be performed, in clear violation of Sections 3(e) and (f) of Republic Act 3019." (pp. 83-84, Rollo.) The OMBUDSMAN recommended the filing of the corresponding information in court.

As the stallholders continued to occupy Heroes del '96 Street, through the tolerance of the public respondents, and in clear violation of the decision in Civil Case No. C-12921, Dacanay filed the present petition for mandamus on June 19, 1990, praying that the public respondents be ordered to enforce the final decision in Civil Case No. C-12921 which upheld the city mayor's authority to order the demolition of market stalls on V. Gozon, Gonzales and Heroes del '96 Streets and to enforce P.D. No. 772 and other pertinent laws.

On August 16, 1990, the public respondents, through the City Legal Officer, filed their Comment on the petition. The Office of the Solicitor General asked to be excused from filing a separate Comment in behalf of the public respondents. The City Legal Officer alleged that the vending area was transferred to Heroes del '96 Street to decongest Malonzo Street, which is comparatively a busier thoroughfare; that the transfer was made by virtue of Barangay Resolution No. 30 s'78 dated January 15, 1978; that while the resolution was awaiting approval by the Metropolitan Manila Commission, the latter passed Ordinance No. 79-2, authorizing the use of certain streets and open spaces as sites for flea markets and/or vending areas; that pursuant thereto, Acting MMC Mayor Virgilio P. Robles issued Executive Order No. 135 dated January 10, 1979, ordering the establishment and operation of flea markets in specified areas and created the Caloocan City Flea Market Authority as a regulatory body; and that among the sites chosen and approved by the Metro Manila Commission, Heroes del '96 Street was considered "most viable and progressive, lessening unemployment in the city and servicing the residents with affordable basic necessities."

The petition for mandamus is meritorious.

There is no doubt that the disputed areas from which the private respondents' market stalls are sought to be evicted are public streets, as found by the trial court in Civil Case No. C-12921. A public street is property for public use hence outside the commerce of man (Arts. 420, 424, Civil Code). Being outside the commerce of man, it may not be the subject of lease or other contract (*Villanueva et al. vs. Castañeda and Macalino*, 15 SCRA 142, citing the *Municipality of Cavite vs. Rojas*, 30 SCRA 602; *Espiritu vs. Municipal Council of Pozorrubio*, 102 Phil. 869; and *Muyot vs. De la Fuente*, 48 O.G. 4860).

As the stallholders pay fees to the City Government for the right to occupy portions of the public street, the City

Government, contrary to law, has been leasing portions of the streets to them. Such leases or licenses are null and void for being contrary to law. The right of the public to use the city streets may not be bargained away through contract. The interests of a few should not prevail over the good of the greater number in the community whose health, peace, safety, good order and general welfare, the respondent city officials are under legal obligation to protect.

The Executive Order issued by Acting Mayor Robles authorizing the use of Heroes del '96 Street as a vending area for stallholders who were granted licenses by the city government contravenes the general law that reserves city streets and roads for public use. Mayor Robles' Executive Order may not infringe upon the vested right of the public to use city streets for the purpose they were intended to serve: i.e., as arteries of travel for vehicles and pedestrians. As early as 1989, the public respondents had started to look for feasible alternative sites for flea markets. They have had more than ample time to relocate the street vendors.

WHEREFORE, it having been established that the petitioner and the general public have a legal right to the relief demanded and that the public respondents have the corresponding duty, arising from public office, to clear the city streets and restore them to their specific public purpose (*Enriquez vs. Bidin*, 47 SCRA 183; *City of Manila vs. Garcia et al.*, 19 SCRA 413 citing *Prison vs. Lacson*, 100 Phil. 695), the respondents City Mayor and City Engineer of Caloocan City or their successors in office are hereby ordered to immediately enforce and implement the decision in Civil Case No. C--1292 declaring that Heroes del '96, V. Gozon, and Gonzales Streets are public streets for public use, and they are ordered to remove or demolish, or cause to be removed or demolished, the market stalls occupying said city streets with utmost dispatch within thirty (30) days from notice of this decision. This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Medialdea, Regalado, Davide, Jr., Romero, and Nocon, JJ., concur.
Bellosillo, J., no part.

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