

**ESTATE OF GREGORIA FRANCISCO, HEREIN REPRESENTED BY
SILVESTRE F. TAN, ADMINISTRATOR, PETITIONER, VS. HON. COURT
OF APPEALS, HON. SALVADOR A. MEMORACION, IN HIS CAPACITY
AS PRESI...**

G.R. No. 95279. July 25, 1991

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Litigated herein is a quonset building situated in Port Area, Strong Boulevard, Isabela, Basilan, which was ordered demolished by respondent Municipal Mayor, Benjamin Valencia. Respondent municipal employees implemented the demolition, for which reason they are also impleaded.

The quonset was constructed by the American Liberation Forces in 1944. It was purchased in 1946 by Gregoria Francisco, who died in 1976. It stands on a lot owned by the Philippine Ports Authority and faces the municipal wharf. By virtue of Proclamation No. 83 issued by President Elpidio Quirino, said land was declared for the exclusive use of port facilities.

On 10 January 1989, the Philippine Ports Authority (Port of Zamboanga) issued to Tan Gin San, surviving, spouse of Gregoria Francisco, a permit to occupy the lot where the building stands for a period of one (1) year, to expire on 31 December 1989. The permittee was using the quonset for the storage of copra.

On 8 May 1989, Respondent Mayor, through respondent Municipal Action Officer, notified Tan Gin San by mail to remove or relocate its quonset building, citing Zoning Ordinance No. 147 of the municipality; noting its antiquated and dilapidated structure; and stressing the "clean-up campaign on illegal squatters and unsanitary surroundings along Strong Boulevard." This was followed by another letter of 19 May 1989 of the same tenor.

Since the notifications remained unheeded by petitioner, Respondent Mayor ordered the demolition on 24 May 1989.

Aggrieved, petitioner sought a Writ of Prohibition with Injunction and Damages before the Regional Trial Court of Basilan, Branch 2 (docketed as S.P. No. 4).

On 7 August 1989, the Trial Court[1] denied the Writ of Prohibition and upheld the power of respondent Mayor to order the demolition without judicial authority, advertent to Zoning Ordinance No. 147 of the Municipality of Isabela, Basilan. Petitioner duly interposed an appeal.

On 6 September 1989, petitioner's quonset building was completely demolished (Rollo, p. 49). In its place sprang shanties and nipa huts, photographs of which have been attached to petitioner's Memorandum.

On 25 January 1990, the Court of Appeals (in CA-G.R. SP No. 18822)[2] initially reversed the Trial Court and issued a Writ of Prohibition. It ruled that Respondent Mayor was not vested with power to order summarily, and without any judicial proceeding, the demolition of the quonset building, which was not a nuisance per se, and that

petitioner is in legal possession of the land on which the building stands by virtue of the permit issued by the Philippine Ports Authority (Zamboanga Province). The restoration to petitioner of the building materials removed upon demolition, and the payment to it of attorney's fees, of P10,000.00, were also ordered.

However, upon reconsideration sought by respondent officials, Respondent Court[3] reversed itself on 13 June 1990 stating that "although Municipal Mayor Valencia initially issued an order of demolition without judicial process, the deficiency was remedied when appellant (petitioner herein) filed a petition for prohibition and injunction and was heard on oral argument after appellees (respondent officials) filed their answer." Respondent Court then quashed the Writ of Prohibition and set aside the order of restitution and payment of attorney's fees.

Petitioner's plea for reconsideration having been denied, it is now before us seeking a reversal.

The focal issue for determination is whether or not Respondent Mayor could summarily, without judicial process, order the demolition of petitioner's quonset building.

Respondents justify the demolition in the exercise of police power and for reasons of health, safety and general welfare. It also relies on Ordinance No. 147 (CA Records, pp. 85-104) of the Municipality of Isabela. For its part petitioner consistently denies to the Mayor such power, invoking provisions of the Local Government Code.

Ordinance No. 147, enacted on 27 December 1977, and relied upon by respondents, is entitled "An Ordinance Establishing Comprehensive Zoning Regulations for the Municipality of Isabela x x x." It is not disputed that the quonset building, which is being used for the storage of copra, is located outside the zone for warehouses. It is referred to in the Ordinance as a non-conforming structure, which should be relocated. And in the event that an immediate relocation of the building can not be accomplished, Section 16 of the Ordinance provides:

"A certificate of non-conformance for all non-conforming uses shall be applied for by the owner or agent of the property involved within twelve (12) months from the approval of this Ordinance, otherwise the non-conforming use may be condemned or removed at the owner's expense."

Even granting that petitioner failed to apply for a Certificate of Non-conformance, the foregoing provision should not be interpreted as authorizing the summary removal of a non-conforming building by the municipal government. For if it does, it must be struck down for being in contravention of the requirements of due process, as originally held by the respondent Court.

Moreover, the enforcement and administration of the provisions of the Ordinance resides with the Zoning Administrator (Article VII, Secs. 1 and 2, Ordinance No. 147). It is said official who may call upon the City Fiscal to institute the necessary legal proceedings to enforce the provisions of the Ordinance (id., Sec. 2, *ibid.*). And any person aggrieved by the decision of the Zoning Administrator regarding the enforcement of the Ordinance may appeal to the Board of Zoning Appeals (id., Sec. 7, *ibid.*).

That a summary remedy can not be resorted to is further evident from the penal provisions of said Ordinance, reading:

"Any person who violates any of the provisions of this ordinance shall, upon conviction, be punished by a fine of not less than fifty pesos (P50.00) but not more than two hundred pesos (P200.00) or by imprisonment of not less than one (1) month but not exceeding six (6) months, or both, at the discretion of the Court xxx." (*ibid.*, Sec. 11). [Emphasis ours].

Violation of a municipal ordinance neither empowers the Municipal Mayor to avail of extra-judicial remedies. On the contrary, the Local Government Code imposes upon him the duty "to cause to be instituted judicial proceedings in connection with the violation of ordinances" (Local Government Code, Sec. 141 [2] [t]).

Respondents can not seek cover under the general welfare clause authorizing the abatement of nuisances without judicial proceedings. That tenet applies to a nuisance per se, or one which affects the immediate safety of persons and property and may be summarily abated under the undefined law of necessity (*Monteverde v. Generoso*, 52 Phil. 123 [1928]). The storage of copra in the quonset building is a legitimate business. By its nature, it can not be said to be injurious to rights of property, of health or of comfort of the community. If it be a nuisance per accidens it may be so proven in a hearing conducted for that purpose. It is not per se a nuisance warranting its summary abatement without judicial intervention.

"The provincial governor, district engineer or district health officer is not authorized to destroy private property consisting of dams and fishponds summarily and without any judicial proceedings whatever under the pretense that such private property constitutes a nuisance. A dam or a fishery constructed in navigable rivers is not a nuisance per se. A dam or fishpond may be a nuisance per accidens where it endangers or impairs the health or depreciates property by causing water to become stagnant." (*Monteverde v. Generoso*, supra).

While the Sangguniang Bayan may provide for the abatement of a nuisance (Local Government Code, Sec. 149 [ee]), it can not declare a particular thing as a nuisance per se and order its condemnation. The nuisance can only be so adjudged by judicial determination.

"[Municipal councils] do not have the power to find as a fact that a particular thing is a nuisance when such thing is not a nuisance per se; nor can they authorize the extra judicial condemnation and destruction of that as a nuisance which, in its nature, situation or use is not such. These things must be determined in the ordinary courts of law. In the present case, ... the ice factory of the plaintiff is not a nuisance per se. It is a legitimate industry If it be in fact a nuisance due to the manner of its operation, that question cannot be determined by a mere resolution of the board. The petitioner is entitled to a fair and impartial hearing before a judicial tribunal." (*Iloilo Cold Storage v. Municipal Council*, 24 Phil. 471 [1913]).

Petitioner was in lawful possession of the lot and quonset building by virtue of a permit from the Philippine Ports Authority (Port of Zamboanga) when demolition was effected. It was not squatting on public land. Its property was not of trifling value. It was entitled to an impartial hearing before a tribunal authorized to decide whether the quonset building did constitute a nuisance in law. There was no compelling necessity for precipitate action. It follows then that respondent public officials of the Municipality of Isabela, Basilan, transcended their authority in abating summarily petitioner's quonset building. They had deprived petitioner of its property without due process of law. The fact that petitioner filed a suit for prohibition and was subsequently heard thereon will not cure the defect, as opined by the Court of Appeals, the demolition having been a fait accompli prior to hearing and the authority to demolish without a judicial order being a prejudicial issue.

For the precipitate demolition, therefore, petitioner should be entitled to just compensation, the amount of which is for the Trial Court to determine. We are not inclined to grant petitioner damages, however, as it simply ignored the demand to remove or relocate its quonset building.

WHEREFORE, the judgment under review of respondent Court of Appeals, dated 13 June 1990, is SET ASIDE; its original Decision, promulgated on 25 January 1990, is REINSTATED; and this case is ordered REMANDED to the Regional Trial Court of Basilan, Branch 2, for the determination of the just compensation due petitioner for the demolition of its quonset building.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Judge Salvador A. Memoracion, presiding.

[2] Penned by Justice Conrado T. Limcaoco and concurred in by Justices Arturo B. Buena and Jainal D. Rasul, of the Fourteenth Division.

[3] *ibid.*

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