

**MAXIMO ROXAS, ANGEL MANTES AND ARTURO DEL PRADO,
PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, CELESTINO
PERNES, PAULINO TALLE (DECEASED) REPRESENTED BY ROSANNA
TALLE, SPOUSES ...**

G.R. Nos. 74279 & 74801-03. January 20, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

This is a petition for review of the decision of the then Intermediate Appellate Court (I AC) dated March 31, 1986 and its order of April 24, 1986, denying the motion for reconsideration filed by petitioners in A.C. G.R. No. Sp-07690-93.

In three separate complaints for ejectment filed by petitioners in the then municipal court of San Juan, Rizal against private respondents in August, 1980, they alleged, among others, that since February, 1975, private respondents have been occupying and withholding possession of certain properties of petitioners and they refused, to vacate the same despite the notice to vacate within a period of ninety (90) days as petitioners need the premises for their own use and/or of the immediate members of their family, and thus they ask that said respondents vacate the premises, pay for attorney's fees and reasonable rentals of P300.00 monthly.

In turn private respondents filed a complaint for consignment and/or specific performance with the same court offering to tender rentals of the respective premises occupied by them at the rate of P5.00 per month.

Private respondents filed a motion to dismiss the ejectment cases for lack of jurisdiction but this was denied in an order of May 4, 1981. Then they filed a petition for certiorari with writ of preliminary injunction in the then Court of First Instance of Rizal but this was dismissed in an order of October 1, 1981. Said order was elevated by way of a petition for review on certiorari with this Court by private respondents. The petition was dismissed in a resolution of January 6, 1982.

After a joint trial, a decision was rendered by the metropolitan trial court of same town on July 3, 1984, the dispositive part of which reads as follows:

“WHEREFORE, premises considered, judgment is hereby rendered as follows:

(a)

Ordering the defendant and all other persons claiming right under them to vacate the lots in question which they are respectively occupying and surrender possession of the same to the respective owner thereof (herein plaintiffs);

(b)

Ordering every defendant to pay plaintiffs (respective owner of the lot) the reasonable value of the use of the

subject lot at the rate of FIFTY PESOS (P50.00) a month, beginning from August 22, 1980, the date of the filing of the instant complaints until they actually vacate the premises in question;

(c)

Ordering the defendants in every above-entitled case to pay, jointly and severally, the respective plaintiff thereof the sum of ONE THOUSAND FIVE HUNDRED PESOS (P1,500.00) as attorneys fee, plus costs of suit.

The instant Complaint for Consignation is hereby DISMISSED for insufficiency of evidence and the respondents' counterclaim interposed therefor is hereby DENIED for lack of merit."

Private respondents interposed an appeal therefrom to the Regional Trial Court (RTC) of Rizal wherein in due course a decision was rendered on June 10, 1985 affirming in toto the appealed judgment with costs against private respondents.

A petition for review of said decision was filed by private respondents with the IAC wherein after the issues were joined a decision was rendered on March 31, 1986 reversing the appealed judgment and dismissing the complaints with costs against petitioners. A motion for reconsideration thereof filed by petitioners was denied on April 24, 1986.

Hence this petition wherein the following issues are raised:

"1.

IT MADE APPLICABLE THE PROVISIONS OF BATAS PAMBANSA BLG. 25 EXPRESSLY EXCLUDING THE SALE OF PROPERTY AS GROUND FOR EJECTMENT EVEN WHEN THE SALE WAS EXECUTED 7 YEARS BEFORE THE PROMULGATION THEREOF;

2.

IT DID NOT RULE PRIVATE RESPONDENTS' POSSESSION OF THE PROPERTY AS ONE BY TOLERANCE TERMINABLE ANYTIME BY THE OWNER AND INSTEAD RULED ON CONTINUITY OF THE LEASE FROM THE OLD OWNERS TO THE NEW OWNERS AFTER A SUCCESSION OF 3 SUBSEQUENT OWNERS;

3.

IT IMPLIEDLY RULED THAT TO INVOKE PERSONAL USE BY THE OWNER OR IMMEDIATE MEMBER OF THE FAMILY, BOTH THE GRANTOR OR AND THE RECIPIENT MUST NOT OWN PROPERTY SUITABLE FOR DWELLING PURPOSES; AND

4.

IT DID NOT TAKE INTO CONSIDERATION THE VARIOUS DILATORY TACTICS EMPLOYED BY PRIVATE RESPONDENTS TO PREVENT PETITIONERS FROM ENJOYING THE FRUITS OF THEIR LABORS AND THE FULFILLMENT OF THEIR LIFELONG DREAM TO HAVE HOMES OF THEIR OWN."

The facts of the case are narrated by the respondent court, reproducing the findings of the RTC as follows:

"The lots involved in this case were all part of a big parcel of land situated in San Juan, Metro Manila. It was formerly owned by Saint Rita's College to whom the defendants and plaintiff Maximo Roxas paid rentals as lessees. In 1972, St. Rita's College sold the land to B.F. Goodrich, Inc. which held the property for about three years. During this period, B.F. Goodrich, Inc. did not collect rent and the defendants as occupants of the lots

did not pay rent. Because B.F. Goodrich, Inc. was a foreign company, it was forced by the Parity Act to sell the same on February 5, 1975, to Roxanne Salem. Negotiations were at first conducted with the new owner but for failure of several occupants to raise the necessary amount for the purchase of the property, the land was eventually sold by Salem to the plaintiffs.

Only plaintiff Maximo Roxas, of all the occupants, was able to buy 200 square meters of the land, which was a portion of lot 49-B, LRC No. Psd 21608, with TCT No. 476441. When Roxas purchased the property, he did not verify the boundaries because the houses of the other occupants were close to each other. After the lot was subdivided, as a consequence of the sale, he discovered, that the other half of his lot, measuring 14 square meters, was occupied by the house of defendants Talle and Pernes. As early as 1972, Roxas asked defendants Talle and Pernes to vacate his lot because he needed it for his own use. On April 25, 1980, he sent a letter to said defendants giving them 90 days within which to vacate the premises. In 1975, said defendants agreed to vacate but in 1979, they changed their minds and informed Roxas that they would fight it out.

On the other hand, plaintiff Angel Mantes bought 108 square meters of the land covered by TCT No. 476440. But he could not occupy the property because defendants Antonio and Hermelina Guevarra were occupying a portion thereof. In 1977, he requested the Guevarras to vacate the land because his family needed it. On April 25, 1980, he sent a demand letter which the said defendants ignored.

In the meantime, the Guevarras and the other occupants of the land filed a petition with the Human Settlement Regulatory Commission, praying that they be allowed to exercise the right of first refusal or preemption to buy the premises, pursuant to Section 6 of PD 1517, otherwise known as the Urban Land Reform Decree. In an order dated September 18, 1980, the petition was not given due course, however, because the subject property was located outside the priority areas for development and urban land reform.

On August 29, 1980, the defendants filed their action for consignment and specific performance to compel the plaintiffs to accept their rent. As aforesaid, this case was consolidated with the ejectment cases filed by the plaintiffs.

x x x x x x x x

There is no question that while the disputed property was still owned by St. Rita's College, the defendants and other occupants of the land who were paying rent were considered lessees, even in the absence of a written contract. But after the property was sold in 1972, to B.F. Goodrich, Inc. it cannot be denied that no lease agreement of whatever kind was entered into between the company and the defendants. Indeed, no negotiations to establish that relationship were ever attempted by any of the parties. There is no evidence that B.F. Goodrich, Inc. talked with any of the defendants in order to assert its right as new owner of the property. Neither is there any evidence showing that the defendants and the other occupants of the land approached B.F. Goodrich, Inc. so that their right to continue staying on the land could be recognized and/or legalized. And more specifically, no attempt was made by B.F. Goodrich, Inc. to collect from the defendants who also made no attempt to pay reasonable compensation for their continued use of the premises."

Under the first issue, petitioners assail the applicability of Batas Pambansa Blg. 25, particularly its provision excluding the sale of property as a ground for ejectment, since they acquired the questioned properties seven (7) years before the passage of said law.

The issue had already been resolved by this Court in Santos vs. Court of Appeals[1] wherein We held:

"The retroactive application of Batas Pambansa Blg. 25 to pending ejectment cases is already a settled matter and may no longer be questioned (Alejandro Melchor, Jr. etc. vs. Hon. Jose L. Moya, etc. et al. G.R. No. L-35256, March 17, 1983; Gutierrez vs. Cantada, 90 SCRA 1; Onchengco vs. City Court of Zamboanga, 95 SCRA 313; Beits vs. Matias, 97 SCRA 439)."

Under the second issue, petitioners contend that private respondents having ceased to pay rentals to the then new owner B.F. Goodrich and subsequently to herein petitioners, their possession was by mere tolerance which became illegal when upon demand to vacate by the petitioners they refused to comply with the demand.² They assail the ruling of the respondent court as to the continuity of the lease from the old owners to the present owners.

The court sustains the finding of the respondent court that although private respondents failed to pay rentals to the subsequent owners of the properties, they remained tenants thereof and their possession was not thereby converted into one by mere tolerance of the owners. Thus they may be ejected therefrom only on the grounds provided for under Batas Pambansa Blg. 25 as the rate of rentals of subject properties do not exceed P300.00 monthly.[3]

Under the third issue, petitioners assail the holding of respondent court that in order to eject a tenant on the ground that the property is needed for the personal use of the owner or his immediate members of his family, both the owner and the said member of the family must not own property suitable for dwelling purposes.

The corresponding provision of Batas Pambansa Blg. 25 is as follows:

"Sec. 5. Grounds for Judicial Ejectment. — Ejectment shall be allowed on the following grounds:

x x x x x x x x

c. Need of owner/lessor to repossess his property for his own use or for the use of any immediate member of his family as a residential unit, such owner or immediate member not being the owner of any other available residential unit: Provided, however, that the period of lease has expired; Provided, further, that the lessor has given the lessee notice three months in advance of lessor's intention to repossess the property; and Provided, finally, that the owner/lessor or immediate members stays in the residential unit for at least one year, except for justifiable cause.

x x x x x x x x"

From the foregoing the requisites to warrant ejectment of a tenant on the ground of need for personal use of the owner or the immediate member of his family are:

- The owner or lessor needs the property for his own use or for the use of any immediate member of the family;
- that such owner or immediate member of the family is not the owner of any available residential unit;
- that the period of lease has expired; and
- that the lessor has given the lessee notice three months in advance of lessor's intention to repossess the property.

There is no question in this case that petitioners need their properties for their own use and/or of the immediate members of their family, that the period of the lease had expired being one from month to month,[4] and that the petitioners had given written notice to private respondents three months in advance of their intention to repossess the properties.

However, relevant to the second requisite the respondent court made the following observations:

"Now, it is claimed that the private respondents, need the lots in question for use of immediate members of their families. However, Sec. 5(c) requires, among other things, that the 'owner or immediate member is not the owner of any other available residential unit in order that the owner may seek the ejectment of a tenant. Here, the private respondents contend that the immediate members of their families, to whom they intend to let the lots in question, do not own residential units. In other words, the private respondents, who now own the lots in question, do not deny that they own other residential units but only that the members of their families, to whom

they want to give the lots, do not. If the lessor is the owner of another residential lot, it will not matter that a member of his family, to whom he wants to give a lot, is not already an owner himself, because in such a case, the lessor can very well accommodate his relative without having to eject the lessee. (See *Liwanag vs. Court of Appeals*, 121 SCRA 354 (1983).

Moreover, as the petitioners point out in their reply to the answer of the respondents:

d. As already fully demonstrated in the petition for review, the evidence on record shows that private respondent Arturo del Prado has other available residential lots and even dwelling units for the use of any immediate member of his family; private respondent Maximo Roxas, who declared on the witness stand that he himself needs the lot purchased by him (and not an immediate member of his family), has been already occupying said lot since the time he was one of the tenants of Sta. Rita College, except for such portion of his 220-square meters, which has been occupied by the houses of petitioners Celestino Pernes and Paulino Talle (TSN, May 12, 1982, pp. 11-13); and private respondent Angel Mantes testified that petitioners-spouses Guevarra were occupying only one (1) meter of his lot, contrary to his allegation in his complaint to the effect that the Guevarras were occupying the entire lot in question (TSN, October 6, 1983, p. 10;)"

We disagree. The contention of petitioners that the immediate members of their family do not own other residential units cannot be interpreted to mean that petitioners thereof own other residential units. Indeed what the records show is that petitioner Roxas is the occupant of his present lot even during the time the same belonged to Sta. Rita's College of which he was a tenant then. Out of its area of 220 square meters about 50 square meters is occupied by the houses of private respondents Celestino Pernes and Paulino Talle. There is no evidence, said petitioner owns any other property. He wants to repossess the said portion of the property for his own use.

Petitioner Mantes needs his property for the use of the immediate member of his family. It consists of 108 square meters. Respondents Antonio and Hermelina Guevarra are occupying a portion of one (1) meter thereof. Again there is no evidence said petitioner owns any other residential unit.

The situation is the same as to petitioner del Prado whose property is 239 square meters being presently occupied by respondents Alpuerto, Francisco, Talle and Pialan.

It is important to stress that even assuming any of petitioners own other residential units, what the law requires is that the same is an available residential unit, for the use of such owner/ lessor or the immediate member of his family.⁵ Thus even if an owner/lessor owns another residential unit, if the same is not available as for example the same is occupied or it is not suitable for dwelling purposes, it is no obstacle to the ejectment of a tenant on the ground that the premises is needed for use of the owner or immediate member of his family.

On the other hand, petitioners contend that respondents Pernes, Guevarra and Alpuerto have already transferred to other places owned by them and they are sub-leasing the petitioner's properties to others.⁶ Private respondents do not deny this assertion but they lamely argue that such sub-leasing as a ground of ejectment is being raised for the first time before this Court.^[7]

Without doubt petitioners have demonstrated that they are entitled to repossess their properties for their own use and/or of the immediate members of their families.

This is among the many ejectment cases that clogged the dockets of the courts for many years from the inferior court, to the trial court, the appellate court and ultimately this Court. While pending in court, the tenants or lessees stopped paying rentals. Of course in this case, private respondents belatedly attempted to tender by way of consignment the rentals due at the rate of P5.00 a month after they were sued for ejectment by petitioners and after they had been in arrears for several years. The action was aptly dismissed by the inferior court. The glaring situation is that private respondents have not paid rentals for the properties they occupied since the same was

acquired by B.F. Goodrich in 1972 up to the present. Again, they have the temerity to argue that they cannot be ejected on this ground as it is not one of the grounds raised before the inferior court.[8]

Certainly, the owners/lessors are not thereby rendered helpless and without any remedy if in the course of the ejectment proceedings, the tenant fails to pay the rentals for no reason at all except that the case is still pending in court. To say the least, this is most inequitable and unlawful. The observation of respondent court that for sometime said respondents were negotiating to purchase the property from B.F. Goodrich was no excuse for them to stop paying rentals either. When as in this case the tenants have admittedly not paid the rentals due beyond the three (3) months grace as provided for in the law then existing⁹ or beyond the stipulated period of payment thereof, or as is otherwise provided or required by law,¹⁰ the Court should not hesitate to suspend the rules by ordering the ejectment of such tenant or tenants although such non-payment of rentals is not one of the stated grounds for the litigation. By the same token when it is clearly shown that pending litigation the tenant/ lessee was subleasing the property without the knowledge or consent of the owners/lessors, as in this case, the Court should in the interest of justice suspend the rules and order the ejectment of the tenant/lessee although this is not the ground for ejectment originally invoked in the suit. It is another ground for ejectment under the law,[11]

While it is the benign policy of the state to give all possible assistance to the tenants particularly those coming from the low income group and to help the landless acquire their own homes, this should not be applied to the extent of oppressing the landowners/lessors, by enabling such tenants to continue to occupy the premises when the landowner or the immediate member of his family needs the premises for his own use, or when the tenants have not paid the rentals due pending the litigation or otherwise sub-leased the premises without the knowledge nor consent of the owner/lessor. Under such circumstances, the Courts should step in to see that the scales of justice are equitably tipped to relieve the owner/lessor from his unfortunate plight.

The plea of petitioners under the fourth issue that private respondents had employed various dilatory tactics to prevent petitioners from enjoying the fruits of their labor and the fulfillment of their lifelong dream to have homes of their own is well-taken.[12]

WHEREFORE, the petition is GRANTED, the decision of respondent Intermediate Appellate Court of March 31, 1986 and its order of April 24, 1986 are hereby REVERSED and set aside, and consequently the decision of the Regional Trial Court of Rizal of June 10, 1985 is affirmed in toto with costs against private respondents. This judgment is immediately executory and no extension of time to file motion for reconsideration shall be allowed.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Paras, JJ., concur.

[1]122 SCRA 531 (1983).

[2] Citing *Peran vs. Hon. Presiding Judge*, 125 SCRA 78 (1983).

[3] *Batas Pambansa Blg. 25*.

[4] Article 1687, Civil Code, *Rivera vs. Florendo*, 143 SCRA 278 (1986).

[5] Section 5(c), *Batas Pambansa Blg.. 25*; *Liwanag vs. Court of Appeals*, 121 SCRA 354, 356(1983).

[6] Memorandum for petitioners, p. 380, Rollo.

[7] Memorandum for respondents, pp. 299-300. Rollo.

[8] Memorandum for respondents, Supra.

[9] Section 5(b) Batas Pambansa Blg. 25. Section 5(b) Batas Pambansa Big. 877.

[10] Batas Pambansa Blg. 877 with some amendments was extended to another two (2) years by a law passed by Congress and approved by the President.

[11] Section 5(a), Batas Pambansa Blg. 25; Section 5(a), Batas Pambansa Blg. 877.

[12] Barasi vs. Court of Appeals, 125 SCRA 79S (1983); Mayores vs. IAC, G.R. No. 73425. 145 SCRA 80. Oct. 14, 1986; Rivera vs. Florendo, supra.

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