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IN VIEW OF ALL THE FOREGOING, the petition is granted. All proceedings held in respondent court in its Civil Case No. 12328 subsequent to the order of dismissal of October 21, 1974 are hereby annulled and set aside, particularly the *ex-parte* proceedings against petitioners and the decision of December 20, 1974. Respondent court is hereby ordered to enter an order extending the effects of its order of dismissal of the action dated October 21, 1974 to herein petitioners Antonio Lim Tanhu, Dy Ochay, Alfonso Leonardo Ng Sua and Co Oyo. And respondent court is hereby permanently enjoined from taking any further action in said civil case save and except as herein indicated. Costs against private respondent.

Fernando and *Concepcion, Jr., JJ.*, concur.

Makalintal, C.J. and *Aquino, J.*, In the result.

SECOND DIVISION

[G.R. No. L-40474. August 29, 1975]

CEBU OXYGEN & ACETYLENE CO., INC., *petitioner, vs.* **HON. PASCUAL A. BERCILLES, Presiding Judge, Branch XV, 14th Judicial District, and JOSE L. ESPELETA, Assistant Provincial Fiscal, Province of Cebu, representing the Solicitor General's Office and the Bureau of Lands,** *respondents.*

SYLLABUS

CIVIL LAW; PROPERTY; PATRIMONIAL PROPERTY; PROPERTY OF PUBLIC DOMINION WHEN NO LONGER INTENDED FOR PUBLIC USE OR FOR PUBLIC PURPOSE SHALL FORM PART OF THE PATRIMONIAL PROPERTY OF THE STATE; CASE AT BAR.— Since that portion of the city street subject

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of petitioner's application for registration of title was withdrawn from public use, it follows that such withdrawn portion becomes patrimonial property which can be the object of an ordinary contract. Article 422 of the Civil Code expressly provides that "Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." Besides, the Revised Charter of the City of Cebu heretofore quoted, in very clear and unequivocal terms, states that: "Property thus withdrawn from public servitude may be used or conveyed for any purpose for which other real property belonging to the City may be lawfully used or conveyed." Accordingly, withdrawal of the property in question from public use and its subsequent sale to the petitioner is valid. Hence, the petitioner has a registerable title over the lot in question.

APPEARANCES OF COUNSEL

Jose Antonio B. Conde for petitioner.

Acting Solicitor General Hugo E. Gutierrez, Jr., Assistant Solicitor General Octavio R. Ramirez and *Trial Attorney David R. Hilario* for respondents.

D E C I S I O N

CONCEPCION, JR., *J.*:

This is a petition for the review of the order of the Court of First Instance of Cebu dismissing petitioner's application for registration of title over a parcel of land situated in the City of Cebu.

The parcel of land sought to be registered was originally a portion of M. Borces Street, Mabolo, Cebu City. On September 23, 1968, the City Council of Cebu, through Resolution No. 2193, approved on October 3, 1968, declared the terminal portion of M. Borces Street, Mabolo, Cebu City, as an abandoned road, the same not being included in the City Development Plan.[1]

[1] Annex A, p. 11, *rollo*.

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Subsequently, on December 19, 1968, the City Council of Cebu passed Resolution No. 2755, authorizing the Acting City Mayor to sell the land through a public bidding.[2] Pursuant thereto, the lot was awarded to the herein petitioner being the highest bidder and on March 3, 1969, the City of Cebu, through the Acting City Mayor, executed a deed of absolute sale to the herein petitioner for a total consideration of ₱10,800.00.[3] By virtue of the aforesaid deed of absolute sale, the petitioner filed an application with the Court of First Instance of Cebu to have its title to the land registered.[4]

On June 26, 1974, the Assistant Provincial Fiscal of Cebu filed a motion to dismiss the application on the ground that the property sought to be registered being a public road intended for public use is considered part of the public domain and therefore outside the commerce of man, Consequently, it cannot be subject to registration by any private individual.[5]

After hearing the parties, on October 11, 1974 the trial court issued an order dismissing the petitioner's application for registration of title.[6] Hence, the instant petition for review.

For the resolution of this case, the petitioner poses the following questions:

(1) Does the City Charter of Cebu City (Republic Act No. 3857) under Section 31, paragraph 34, give the City of Cebu the valid right to declare a road as abandoned? and

(2) Does the declaration of the road, as abandoned, make it the patrimonial property of the City of Cebu which may be the object of a common contract?

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[2] Annex B, p. 12, *rollo*.

[3] Annex C, p. 13, *rollo*.

[4] Annex D, p. 15, *rollo*.

[5] Annex E, p. 18, *rollo*.

[6] Annex F, p. 20, *rollo*.

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(1) The pertinent portions of the Revised Charter of Cebu City provides:

"Section 31. *Legislative Powers.* Any provision of law and executive order to the contrary notwithstanding, the City Council shall have the following legislative powers:

xxx xxx xxx

(34) x x x; to close any city road, street or alley, boulevard, avenue, park or square. Property thus withdrawn from public servitude may be used or conveyed for any purpose for which other real property belonging to the City may be lawfully used or conveyed."

From the foregoing, it is undoubtedly clear that the City of Cebu is empowered to close a city road or street. In the case of *Favis vs. City of Baguio*,[7] where the power of the city Council of Baguio City to close city streets and to vacate or withdraw the same from public use was similarly assailed, this court said:

"5. So it is, that appellant may not challenge the city council's act of withdrawing a strip of Lapu-Lapu Street at its dead end from public use and converting the remainder thereof into an alley. These are acts well within the ambit of the power to close a city street. The city council, it would seem to us, is the authority competent to determine whether or not a certain property is still necessary for public use.

"Such power to vacate a street or alley is discretionary, And the discretion will not ordinarily be controlled or interfered with by the courts, absent a plain case of abuse or fraud or collusion. Faithfulness to the public trust will he presumed. So the fact that some private interests may he served incidentally will not invalidate the vacation ordinance."

(2) Since that portion of the city street subject of petitioner's application for registration of title was withdrawn from public use, it follows that such withdrawn portion becomes patrimonial property which can be the object of an ordinary contract.

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[7] G.R. No. L-29910, April 25, 1969; SCRA 1060.

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Article 422 of the Civil Code expressly provides that "Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State."

Besides, the Revised Charter of the City of Cebu heretofore quoted, in very clear and unequivocal terms, states that: "Property thus withdrawn from public servitude may be used or conveyed for any purpose for which other real property belonging to the City may be lawfully used or conveyed."

Accordingly, withdrawal of the property in question from public use and its subsequent sale to the petitioner is valid. Hence, the petitioner has a registerable title over the lot in question.

WHEREFORE, the order dated October 11, 1974, rendered by the respondent court in Land Reg. Case No. N-948, LRC Rec. No. N-44531 is hereby set aside, and the respondent court is hereby ordered to proceed with the hearing of the petitioner's application for registration of title.

SO ORDERED.

Makalintal, C.J., Fernando (Chairman), Barredo, and *Aquino, JJ.,* concur.

EN BANC

[G.R. No. L-40486. August 29, 1975]

PAULINO PADUA and LUCENA BEBIN PADUA, *plaintiffs-appellants, vs.* **GREGORIO N. ROBLES and BAY TAXI CAB,** *defendants-appellees.*