Supreme Court E-Library

only when the lease contract is for a fixed period and it has expired. It does not apply to their month-to-month lease. (p. 12, Brief).

That contention is fallacious. Recaredo Coronel, the landlord, terminated the month-to-month lease of the Cortez spouses in his demand to vacate dated June 4, 1979 (Exh. A). The ejectment suit was filed in September, 1979.

The ground was not the expiration of the month-to-month lease. That cannot be a ground under Presidential Decree No. 20 and Batas Pambansa Blg. 25. The ground was the landlord's need of the apartment for his daughter's use. It is a legitimate ground.

WHEREFORE, the lower court's judgment is affirmed. No costs.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos and *Escolin, JJ.*, concur.

De Castro, J., is on sick leave.

SECOND DIVISION

[G.R. No. 60898. September 29, 1983]

GAUDENCIO R. MABUTOL and ERLINDA R. MABUTOL, plaintiffs-appellants, *vs.* ARTURO B. PASCUAL, MANUEL R. MAZA, TEOTIMO TANGONAN, RODOLFO JARDIEL, RENATO COLOBONG, SALVADOR CAPISTRANO and APOLINARIA CUETO, defendants-appellees.

SYLLABUS

1. CIVIL LAW; DAMAGES; PERFORMANCE OF DUTY ENJOINED BY LAW ABSENT BAD FAITH, A PUBLIC OFFICIAL NOT LIABLE FOR DAMAGES.— The rule is well-settled that a public official(s) is not liable for damages for performing a duty required by law and absent bad faith. (San Miguel Brewery, Inc. *vs.* Magno,

Supreme Court E-Library

L-21879, Sept. 29, 1967; 21 SCRA 292. See also Cabungcal *vs.* Cordova, L-16934, July 31, 1964; 11 SCRA 584.)

2. ID.; ID.; ID.; CASE AT BAR.— In this particular case, the plaintiffs themselves in their complaint stated that the defendants are all public officials and that they ordered the demolition of the apartment building in the discharge of their official function. There remains only the question as to whether or not they acted in bad faith and the answer is in the negative.

APPEARANCES OF COUNSEL

Pascua, Soriano, Esguerra & Associates for plaintiffs-appellants.

City Fiscal for defendants-appellees.

RESOLUTION

ABAD SANTOS, *J.:*

In Civil Case No. SD-623 of the defunct Court of First Instance of Nueva Ecija, the spouses Gaudencio and Erlinda Mabutol sued Arturo B. Pascual, Mayor of San Jose City, Lt. Col. Teotimo Tangonan, PC Provincial Commander of Nueva Ecija, Manuel R. Maza, City Fiscal of San Jose, Rodolfo Jardiel, City Engineer of San Jose, Salvador Capistrano, a representative of the Presidential Assistant on Housing and Resettlement Agency (PAHRA), Renato Colobong, an official of the Department of Local Governments and Community Development, and Apolinaria Cueto, a representative of the Social Welfare Administration, for damages. They claimed that the defendants who were then members of the *Ad Hoc* Committee implementing Presidential Decree No. 296 and Letter of Instructions No. 19 for the City of San Jose passed an illegal resolution for the demolition of their 3-door apartment which was in fact demolished on September 20, 1975. They asked for a monetary award totalling ₱1,210,000.00.

In a Motion dated October 16, 1975, the defendants asked that the complaint be dismissed. They invoked, among other grounds, "that the complaint states no cause of action." The motion, which was opposed, was denied by the trial court on February 18, 1976,

Supreme Court E-Library

"in view of the allegations of bad faith and abuse of authority on the part of the defendants in the commission of the acts complained of."

The defendants filed a Motion for Reconsideration on March 15, 1976, and this time the motion was granted in an Order dated April 26, 1976, and which reads as follows:

"For resolution is defendants' motion for reconsideration dated March 12, 1976 which seeks to set aside the order to this Court, dated February 18, 1976, denying their motion to dismiss.

. . . . . .

"The plaintiffs, husband and wife, were the owners of a three (3) door commercial building measuring 12 meters wide by 12.80 meters long constructed in 1968, along the National Highway, San Jose City, valued at ₱113,000.00 and a monthly rental value of ₱1,085.00. The defendants are admittedly public officials, being the City Mayor, City Fiscal, City Engineers, an official of the Department of Local Government and Community Development, and the representative of the Department of Social Welfare, all of San Jose City, and the Provincial Commander of the Philippine Constabulary, Nueva Ecija Command, all constituting the Ad Hoc Committee, 'duly organized as an implementing agency of Presidential Decree No. 296 . . . and Letter of Instruction No. 19, in the City of San Jose.' (par. 4, Complaint). On September 4, 1975, defendant City Mayor Arturo B. Pascual, Chairman of the Ad Hoc Committee, sent notice to plaintiffs for the demolition of their building fifteen (15) days after receipt thereof. On September 17, plaintiffs, were informed that their building will be demolished on September 18, 1975. For lack of material time to secure an injunction from the courts, they immediately went to see the Provincial Commander where plaintiffs and their lawyers made vigorous representation that their building cannot be legally demolished for want of a clearance from the PAHRA, and because the 'creek abutting their building' is not a natural creek but a man-made creek. The Provincial Commander however, made it clear to the plaintiffs that the building will be demolished, but later reconsidered to delay the demolition and called instead, another meeting of the Ad Hoc Committee, which met on September 18, but postponed to September 20, 1975, when the plaintiffs, through their counsel, presented their evidence before the committee and argued that plaintiffs' building could not be legally demolished for lack of clearance from the PAHRA, and that clearance could not be validly issued because the body of water abutting

Supreme Court E-Library

the building is man-made creek not a creek within the meaning of Presidential Decree 296, and Instruction No. 19. To bolster their claim, plaintiffs filed a complaint against defendant City Engineer for falsification of public document for making it appear that the creek is Sapang Cumabol when it was only a man-made creek, Annex "A", (Opposition to the Motion to Dismiss). The committee, however, over-ruled plaintiffs' objection and reiterated its order of demolition (Annex "B," Complaint). And so plaintiffs' building was demolished. Plaintiffs complain that they were deprived of the right to avail of judicial remedies, and that the demolition was done in bad faith, with abuse of authority and without giving them the opportunity to remove personal belongings.

"On the other hand, defendants contend that in issuing the order of demolition, the Ad Hoc Committee took into consideration the revocation on June 15, 1968, of the building permit granted the plaintiff on May 24, 1968, on the ground that a portion of the building then under construction occupied the creek bed, and that it exceeded the area granted in the permit which was 8 meters by 10 meters (Annexes 2 and 1). On October 10, 1972, defendant City Mayor promulgated his Executive Order No. 16, (Annex 3), and on October 26, 1972, defendant City Fiscal upon instruction of said City Mayor, sent notices to all persons concerned, among them the plaintiff Gaudencio Mabutol, to demolish their buildings. Furthermore, in a relocation made by defendant City Engineer, on instruction of the City Mayor (Annex 6) and it was found that the building occupied a ninety-six (96) square meters area of the creek-bed. Defendants, likewise, took into consideration the petition of Adolfo Enrile together with others, with the military authorities (Annex 7), which prompted the holding of an ocular inspection and the submission of the report by the Provincial Commander with the Secretary of National Defense (Annex 7), and on the basis of which the Secretary rendered a decision, the last paragraph of which reads:

> 'After a study of the report of the Provincial Commander, this Office sees the need for sacrifice of a few for the good of the greatest number. The Mayor should be given a chance to exercise his sound and judicious discretion in the interest of his constituents.' (Annex 9)

On March 23, 1973, plaintiff Gaudencio Mabutol wrote the City Mayor to allow him to excavate the property on the other side of the creek and have it deposited on the bank adjacent to his building, (Annex 10), but the same was objected to by the defendant City Engineer, (Annex 12). Failing in these administrative remedies to prevent demolition, Gaudencio Mabutol, on April 2, 1973, filed with this Court a petition for prohibition with preliminary

Supreme Court E-Library

injunction against the City, docketed as Civil Case No. SD-489, (Annex 13), and on May 19, 1973, this Court dismissed the complaint. (Annex 14).

. . . . . .

"The Court of Appeals in denying the petition for a writ of Preliminary Injunction against defendant City Mayor, ruled:

> 'It is significant to note that the appealed judgment rendered by the trial court in the present action for prohibition with preliminary injunction, lifting the writ of preliminary injunction previously issued and dismissing the case for prohibition with writ of preliminary injunction is immediately executory and cannot be stayed even if an appeal has been taken therefrom . . .. Evidently, the right of petitioner sought to be protected did not exist as his permit to construct said building has been revoked. And more the acts against which the injunction is to be directed cannot be considered in relation to any right. On the other hand, when the respondent City Mayor issued the order decreeing the removal of construction, buildings, structures over public properties, or along streams etc., he was merely implementing the Letter of Instructions No. 19 of the President enjoining the public officials concerned to remove all illegal constructions or buildings on or along esteros and river banks for the protection of public health, safety and peace and order. Considering the very aim and purpose of Letter of Instruction No. 19 of the President, we are prepared not to put up a barrier in form of restraining order to the implementation of the aforesaid Letter of Instruction' (pp. 3, 4, and 5, Annex 15).

"The facts further show that defendant City Mayor, upon being officially informed of the resolution of the Court of Appeals on September 28, 1973 sought the City Fiscal's legal opinion on his next course of action, and on the basis of said opinion, (Annex 17), defendant Mayor wrote a demand letter to plaintiff Gaudencio Mabutol, (Annex 16), to remove his building within thirty (30) days from receipt thereof. Plaintiff Mabutol, instead of objecting to the demand, or availing of any judicial remedies with the courts or other administrative or executive authorities to enjoin the Mayor from carrying out his order to demolish, wrote in reply that he be given a period of fifteen (15) days extension within which to undertake personally the demolition (Annex 20). He further wrote that -

> 'My inability to demolish the building within the period granted me was not a sign of defiance to your orders or the lawful order of the Court but because of lack of funds to finance the demolition.' (Annex 20).

Supreme Court E-Library

The extension sought for was promptly granted (Annex 21), but plaintiffs' offer to undertake the demolition was not complied with by plaintiffs' claim that they were without funds to undertake the demolition (Annex 22).

"The facts as alleged in the complaint, and which the defendants are deemed to have admitted for purposes of the motion to dismiss and motion for reconsideration (Lim *vs.* delos Santos, 8 SCRA 798), pose the issues as to whether (a) defendants ordered the demolition in their official capacities as members of the Ad Hoc Committee, (b) acted in bad faith and abuse of authority, (c) as to whether they are possessed with a corporate power to sue or be sued, (d) whether defendants acted without authority when it caused the demolition of the building without prior clearance from the PAHRA.

"There can be no dispute that the defendants are members of the Ad Hoc Committee, duly appointed to implement the provisions of Presidential Decree No. 296 and Letter of Instruction No. 19, (Annex 25). In fact, this is admitted by the plaintiffs, (par. 4, Complaint) being the public officials called upon by the Presidential Decree and Instruction 'to implement the policy embodied in the said decree in the manner prescribed therein,' (par 4, Complaint). The complaint further alleged, (par. 6), that defendant Mayor, as Chairman of the Ad Hoc Committee, notified the plaintiffs of the intended demolition fifteen (15) days after notice thereof which falls on September 18, 1975, (par. 7; Complaint). The authority and power of the Ad Hoc Committee to implement the law, that is, to order the demolition was indeed acknowledged and recognized by the plaintiffs when they appeared, by themselves and counsel, first, before the Provincial Commander as Co-Chairman, (par. 7, Complaint) and later, before the committee itself, (par. 10 to 19, Complaint).

"This Court, out of plaintiffs' own admission in their complaint, therefore, finds that the order of demolition was issued by the defendants in their official capacities as members of the Ad Hoc Committee. This is supported by the Committee's resolutions of September 2, 1975 (Annex 28), and its resolution of September 20, 1975 (Annex 20).

"Now, as to whether defendants acted in bad faith and abuse of authority. Among the facts forming the basis of defendants' good faith are documentary evidence, most of which are public documents, and not denied by plaintiffs in their opposition, enumerated chronologically in the report of the chairman, dated October 3, 1975 (Annex 33, pp. 3-5, Motion for Reconsideration), the decision of the Court of First Instance of Nueva Ecija, Branch VI, in Civil Case No. SD-48 (Annex 14) the resolution of the Court

Supreme Court E-Library

of Appeals in CA-G.R. No. 52911-R, (Annex 15), the Legal Opinion No. 98 of the City Fiscal (Annex 17), the certification of the City Engineer that plaintiffs' building occupied a 96 square meters area of the creek bed (Annex 18), the letters of Gaudencio Mabutol requesting for an extension of time to demolish the building by himself (Annexes 20 and 22), and the fact that plaintiffs are affluent, (Annex 30).

"For the same set of facts for which plaintiffs' building was demolished, he (Gaudencio Mabutol) was charged before and convicted by Military Commission No. 6, as a result of which plaintiff already deposited P9,000.00 with the City Treasurer's Office in compliance with the order of the military commission (Annexes 34, 35 and 36). The Secretary of National Defense, the Court of First Instance, the Court of Appeals and the Military Commission, in separate and independent proceedings, uniformly sustained the defendants in their conclusion that plaintiffs' building was constructed in violation of Presidential Decree No. 296.

"The Court, after a very careful and painstaking review of the attendant facts and circumstances, is persuaded that indeed the defendants acted and performed their official duties in consonance with law, with caution, fairness and due process. They acted strictly in furtherance of the policies enunciated by His Excellency, President Ferdinand E. Marcos under Pres. Decree No. 296, and in accordance with Letter of Instruction No. 19, fully bearing in mind the sad and unfortunate experience of our people as a consequence of floods, the evil intended to be remedied, and the object sought to be accomplished. It also took into consideration the judicial and administrative precedents on the matter.

. . . . . .

"Plaintiffs contend that no clearance having been issued by the Presidential Assistance on Housing and Rehabilitation Agency (PAHRA) which is a legal requirement under Letter of Instruction No. 19, the Committee's order of demolition itself was illegal thus giving rise to a cause of action for damages. Plaintiffs' contention is based on the letter opinion of Assistant Executive Secretary Ronaldo B. Zamora, dated May 8, 1974 (Annex C, Opposition to Motion to Dismiss), wherein the Assistant Executive Secretary held the opinion that —

> 'In fine, it is believed that prior PAHRA Clearance is required for the demolition of illegal constructions contemplated by both Presidential Decree No. 296 and LOI No. 19.'

"In answer to this, defendants rely on the memorandum of Executive Secretary Alejandro Melchor dated November 13, 1972 (Annex 5), the pertinent portion of which reads:

Supreme Court E-Library

> '1. Not all squatters shall be classified as eligible to the concern and help of the government. There should be no mercy for which rich and/or professional squatters and they should be removed bodily and left to their own devices, if they refuse to remove their illegal constructions voluntarily within the period prescribed or allotted to them.'

Defendants, likewise, rely on the opinion of the Secretary of Justice of October 9, 1974 (Annex 33, of the Reply to the Opposition to the Motion to Dismiss), wherein the Secretary wrote:

> 'As I see it, this Letter of Instruction cannot be any more explicit in authorizing the officials to whom it is directed to remove summarily encroachments or illegal constructions on and along esteros, and river banks, such as those in question, and as to the need for judicial proceedings before such removal be made, this has been answered in the negative by the court in the case of Guinto *vs.* Lacson.' (108 Phil. 460).

The PAHRA, by its name and function, is to assist and rehabilitate those who could be classified as eligible to the concern and help of the government. As embodied in the memorandum of the Executive Secretary, 'there should be no mercy for the rich and professional squatters, and they should be removed bodily and left to their own devices . . . Measured in terms of the value of their properties declared for taxation purposes (Annex 30), the plaintiffs are relatively rich, and certainly not poor or indigent to be classified as eligible to the concern and help of the government. And even on the assumption that defendants committed error in ordering the demolition of plaintiffs' building as they did so, without first securing the clearance from the PAHRA, a legal requirement as plaintiffs would want it to appear, yet, under the circumstances they could not be held liable for damages. In the case of Cabungcal, et. al., *vs.* City Mayor of Bacolod City, 11 SCRA 584, the Supreme Court ruled:

> 'An erroneous interpretation of the meaning of the provisions of an ordinance by a City Mayor does not amount to bad faith that would entitle an aggrieved party to an award for damages against an official.'

A city official who performed a duty required by law, there being no showing that he acted in bad faith, is not liable for damages. Thus in the case of San Miguel Brewery, Inc. *vs.* Magno, 21 SCRA 292, the Supreme Court held:

> 'In the case at bar, since there is no dispute that appellee issued the warrant of distraint and levy against the delivery truck of the appellant on January 9, 1961, in his capacity as City Treasurer of Butuan and

Supreme Court E-Library

> as there is no disagreement that defendant appellee issued warrant by virtue of Ordinance No. 26, of the City of Butuan, and not having been shown that defendant either as a private citizen or as City Treasurer of Butuan, had acted in bad faith there can be no question that appellee, who was merely performing a duty enjoined by law to be performed when he issued the warrant of distraint and levy, cannot be made to answer personally for damages to appellant.'

It was likewise held in the case of Laurel Manila, et al. *vs.* Galvan, et al., 20 SCRA 198 that a person cannot be held liable for damages if an act is 'apparently based on an honest mistake in the appreciation or interpretation of the applicable law or jurisprudence.'

"WHEREFORE, in view of all the foregoing and for want of cause of action and/or jurisdiction; this Court is constrained to set aside its order dated February 18, 1976, and hereby orders the dismissal of this case without pronouncement as to costs."

The plaintiffs appealed the order of dismissal to the defunct Court of Appeals as being contrary to law and facts. The Court of Appeals in a resolution dated May 20, 1982, found that the appeal involved no question of fact but only one of law. Pursuant to the relevant provisions of the Judiciary Act of 1948, the case was certified to this Court for final adjudication. None of the parties litigants took exception to the certification of the Court of Appeals. On June 21, 1982, We accepted and docketed the case.

Although the parties filed a Record on Appeal and submitted their respective briefs, this case which involves only a question of law shall be considered as if it has come before Us on a petition for review under R.A. No. 5440.

In their briefs the appellants make two assignments of errors but they can be stated in one simple proposition: Did the trial court err in dismissing the complaint?

The rule is well-settled that a public official(s) is not liable for damages for performing a duty required by law and absent bad faith. (San Miguel Brewery, Inc. *vs.* Magno, L-21879, Sept. 29, 1967; 21 SCRA 292. See also Cabungcal *vs.* Cordova, L-16934, July 31, 1964, 11 SCRA 584.)

Supreme Court E-Library

In this particular case, the plaintiffs themselves stated in their complaint that the defendants are all public officials and that they ordered the demolition of the apartment building in the discharge of their official function. There remains only the question as to whether or not they acted in bad faith and the answer is in the negative. For as the trial court said in its Order of dismissal:

"Now, as to whether defendants acted in bad faith and abuse of authority. Among the facts forming the basis of defendants' good faith are documentary evidence, most of which are public documents, and not denied by plaintiffs in their opposition, enumerated chronologically in the report of the chairman, dated October 3, 1975 (Annex 33, pp. 3-5, Motion for Reconsideration), the decision of the Court of First Instance of Nueva Ecija, Branch VI, in Civil Case No. SD-48 (Annex 14), the resolution of the Court of Appeals in CA-G.R. No. 52911-R, (Annex 15), the Legal Opinion No. 98 of the City Fiscal (Annex 17), the certification of the City Engineer that plaintiffs' building occupied a 96 square meters area of the creek bed (Annex 18), the letters of Gaudencio Mabutol requesting for an extension of time to demolish the building by himself (Annexes 20 and 22), and the fact that plaintiffs are affluent, (Annex 30)." (RA, pp. 329-330.)

In view of this, the appeal is hereby dismissed for lack of merit. Costs against the plaintiffs-appellants.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero and *Escolin, JJ.*, concur.

De Castro, J., on sick leave.

SECOND DIVISION

[G.R. No. 61643. September 29, 1983]

LUZVIMINDA V. LIPATA, petitioner, *vs.* JUDGE EDUARDO C. TUTAAN, Court of First Instance of Rizal, Quezon City Branch V (Regional Trial Court at Quezon City, Branch 84), JOCELYN O. AGCAOILI and JOSE J. AGCAOILI, respondents.