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EN BANC

[G.R. No. 97477. May 8, 1992]

RTC JUDGE CAMILO E. TAMIN, Presiding Judge, Regional Trial Court, Branch 23, Molave, Zamboanga del Sur and the MUNICIPALITY OF DUMINGAG, ZAMBOANGA DEL SUR, represented by MAYOR DOMICIANO E. REAL, *petitioners, vs.* **COURT OF APPEALS, VICENTE MEDINA and FORTUNATA ROSELLON,** *respondents.*

SYLLABUS

1. CIVIL LAW; NUISANCE; COMPLAINT IN CASE AT BAR ALLEGES FACTUAL CIRCUMSTANCES OF A COMPLAINT FOR ABATEMENT OF PUBLIC NUISANCE.— The complaint states: that petitioner municipality is the owner of a parcel of land covered by Presidential Proclamation No. 365 which is reserved for a public plaza; that the private respondents by virtue of a contract of lease entered into by the former mayor occupied a portion of the parcel of land constructing buildings thereon; that the private respondents refused to vacate the premises despite demands; that the municipality is constructing a municipal gymnasium in the area financed by appropriations provided by the national government; and that the appropriations are in danger of being reverted to the national treasury because the construction had to be stopped in view of the refusal of the private respondents to vacate the area. Applying the criteria, provided by Arts. 694 and 695 of the Civil Code, we agree with the petitioners that the complaint alleges factual circumstances of a complaint for abatement of public nuisance.

2. ID.; ID.; PUBLIC PLAZA IS OUTSIDE COMMERCE OF MAN; CONSTRUCTIONS CAN BE ABATED SUMMARILY.— A public plaza is outside the commerce of man and constructions thereon can be abated summarily by the municipality.

3. ID.; ID.; WRIT OF POSSESSION NOT NEEDED, WRIT OF DEMOLITION BEING SUFFICIENT.— The petitioner

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municipality had three remedies from which to select its course of action. It chose to file a civil action for the recovery of possession of the parcel of land occupied by the private respondents. If, therefore, the allegations in the complaint are true and that the parcel of land being occupied by the private respondents is indeed a public plaza, then the writ of possession and writ of demolition would have been justified. In fact, under such circumstances, there would have been no need for a writ of possession in favor of the petitioner municipality since the private respondents' occupation over the subject parcel of land can not be recognized by any law. A writ of demolition would have been sufficient to eject the private respondents.

4. ID.; LAND REGISTRATION CADASTRAL SYSTEM; A PROCEEDING IN REM AKIN TO A JUDICIAL INQUIRY AND INVESTIGATION.— Under the cadastral system, the government through the Director of Lands initiates the proceedings by filing a petition in court after which all owners or claimants are compelled to act and present their answers otherwise they lose their right to their own property. The purpose is to serve the public interests by requiring that the titles to any lands "be settled and adjudicated." (Section 1 Cadastral Act [No. 2259] *Government of the Philippine Islands v. Abural*, 39 Phil. 996 [1919]. It is a proceeding *in rem* somewhat akin to a judicial inquiry and investigation leading to a judicial decree.

5. ID.; ID.; ID.; ID.; OUTCOME OF PROCEEDINGS IS A PREJUDICIAL QUESTION; CASE AT BAR.— Considering therefore, the nature and purpose of the cadastral proceedings, the outcome of said proceedings becomes a prejudicial question which must be addressed in the resolution of the instant case. Technically, a prejudicial question shall not rise in the instant case since the two actions involved are both civil in nature. However, we have to consider the fact that the cadastral proceedings will ultimately settle the real owner/s of the disputed parcel of land. In case respondent Vicente Medina is adjudged the real owner of the parcel of land, then the writ of possession and writ of demolition would necessarily be null and void. Not only that. The demolition of the constructions in the parcel of land would prove truly unjust to the private respondents. Parenthetically, the issuance of the writ of possession and writ

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of demolition by the petitioner Judge in the ejectment proceedings was premature. What the petitioner should have done was to stop the proceedings in the instant case and wait for the final outcome of the cadastral proceedings.

6. ID.; ID.; ID.; ID.; WHEN DEMOLITION OF BUILDING IS *FAIT ACCOMPLI*; PETITIONER MUST PUT UP A BOND TO ANSWER FOR JUST COMPENSATION. — At any rate, affirmative relief based on the above discussions is no longer possible. The demolition of the buildings owned by the private respondents is now a *fait accompli*. We cannot, however, apply the ruling in Estate of *Gregoria Francisco v. Court of Appeals* (199 SCRA 595 [1991] to the present case. The legality of the occupation by the private respondents of the subject parcel of land is still to be resolved in the cadastral proceedings. In the interest of justice, we rule that the petitioner municipality must put up a bond to be determined by the trial court to answer for just compensation to which the private respondents may be entitled in case the demolition of their buildings is adjudged to be illegal.

7. REMEDIAL LAW; EMINENT DOMAIN; CANNOT BE MADE A SUBTERFUGE TO JUSTIFY ISSUANCE OF WRIT OF POSSESSION; CASE AT BAR. — The appellate court correctly ruled that Rule 67 of the Revised Rules of Court on eminent domain can not be made a subterfuge to justify the petitioner Judge's issuance of a writ of possession in favor of petitioner municipality. Even if we concede that Rule 67 is applicable to the instant case and that petitioner municipality had the lawful right to eject the private respondents from the subject parcel of land the issuance of a writ of possession in favor of petitioner municipality would still not be legal if the petitioner municipality really owns the land. The Judge did not require petitioner municipality to deposit an amount equivalent to the just compensation due the private respondents as provided for under Presidential Decree 42. It is only after the deposit of the just compensation that petitioner municipality would be entitled to a writ of possession.

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D E C I S I O N

GUTIERREZ, JR., *J.*:

The present petition seeks to annul and set aside the decision and resolution dated January 21, 1991 and February 20, 1991, respectively of the Court of Appeals which declared as null and void the October 10, 1991 order of the petitioner Judge in a civil case "for ejectment with preliminary injunction and damages" filed by petitioner municipality against the private respondents granting the petitioner municipality's motion for a writ of possession and the writ issued pursuant to it.

On September 24, 1990, petitioner municipality represented by its mayor Domiciano E. Real filed with the Regional Trial Court of Zamboanga del Sur, Branch 23, Molave, presided by the petitioner Judge, a complaint denominated as "Ejectment with Preliminary Injunction and Damages" against respondents Vicente Medina and Fortunata Rosellon.

The complaint alleged that the plaintiff (petitioner municipality herein) is the owner of a parcel of residential land located at Poblacion, Dumingag, Zamboanga del Sur with an area of 5,894 square meters more or less; that the parcel of land was reserved for public plaza under Presidential Proclamation No. 365 dated March 15, 1968; that during the incumbency of the late Mayor Isidoro E. Real, Sr. or in 1958, the municipality leased an area of 1,350 square meters to the defendants (respondents herein) subject to the condition that they should vacate the place in case it is needed for public purposes; that the defendants religiously paid the rentals until 1967; that thereafter, the defendants refused to pay the rentals; that the incumbent mayor discovered that the defendants filed a "Cadastral Answer" over said lot; that the defendants refused to vacate the place despite efforts of the municipality; that the national government had alloted an appropriation for the construction of a municipal gymnasium within the public plaza but the said construction which was already started could not continue because of the

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presence of the buildings constructed by the defendants; that the appropriation for the construction of the gymnasium might be reverted back to the national government which would result to "irreparable damage, injury and prejudice" to the municipality and its people who are expected to derive benefit from the accomplishment of the project.

The complaint prayed:

"1. That a restraining order shall be issued immediately after the filing of this case;

2. That after due notice and hearing, a writ of preliminary mandatory injunction shall be issued against the herein defendants for them (*sic*) from further occupying the leased portion to them (*sic*), and/or that a Writ of Possession be immediately issued to preserve the rights of the herein plaintiff;

3. That judgment should be entered against the herein defendants to vacate the premises of the leased portion given to them." (CA *Rollo*, pp. 11-12).

On the same day, September 24, 1990, the petitioner Judge issued an order setting the preliminary hearing for the issuance of a writ of preliminary mandatory injunction and/or writ of possession on October 10, 1990.

Instead of filing an answer, the respondents filed a motion to dismiss alleging the lack of jurisdiction of the trial court, since the complaint is for illegal detainer which is within the original jurisdiction of the municipal court and the pendency of a cadastral case (Cadastral Case No. N-10, LRC Cad. Rec. No. N-108, Lot 9481 [Pls-61] TS-218) between the parties over the ownership of the same parcel of land.

On October 10, 1990, the petitioner Judge issued two (2) orders. The first order denied the motion to dismiss. The second order granted the petitioner municipality's motion for a writ of possession "with the ancillary writ of demolition to place in possession the plaintiff on the land subject of this case, to the

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end that the public construction thereon will not be jeopardized." (CA *Rollo*, p. 22).

In denying the motion to dismiss, the petitioner Judge said:

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"2. In the complaint, the plaintiff alleges that the defendant is claiming ownership over the land which was previously rented to defendant by the plaintiff municipality. This action is, therefore, clearly an *accion de reivindicacion*, a real action within the jurisdiction of this court.

3. As the complaint is for recovery of ownership of the land not to enforce the contract, the Statute of Fraud does not apply.

4. The land subject of this case is covered by P. D. No. 365, withdrawing this land from sale of settlement and reserving the same for school site purposes under the administration of the Director of Public School and public plaza under the administration of the Municipality of Dumingag, therefore the cadastral court has no jurisdiction over the land involved in this case." (CA *Rollo*, p. 20).

The petitioner Judge justified his granting the motion for a writ of possession with the ancillary writ of demolition by applying the rule on eminent domain (Rule 67 of the Revised Rules of Court, erroneously referred to as Rule 68) in analogy in that under this Rule the complainant is given the right to the writ of possession in order that public construction and projects will not be delayed. According to the petitioner Judge, the necessity of a writ of possession is greater in the instant case considering that the parcel of land is covered by a Presidential Proclamation and the on-going construction thereon is being endangered to be left unfinished on account of the buildings standing on the parcel of land because the appropriation for the construction might be reverted back to the national treasury.

The private respondents filed an omnibus motion for reconsideration with motion to set aside order and to quash writ of possession and demolition but this was denied in an order dated October 19, 1990.

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On October 19, 1990, the petitioner municipality implemented the writ of possession and ancillary writ of demolition issued by the petitioner Judge resulting in the dispossession of the private respondents from the parcel of land and the demolition of structures and buildings thereon owned by the respondents.

On October 23, 1990, the private respondents filed their answer to the complaint alleging therein that the subject parcel of land has been owned, occupied and possessed by respondent Vicente Medina since 1947 when he bought the subject parcel from a Subanan native; that the other respondent Fortunata Rosellon leased from Medina a portion of the parcel of land; that the respondents were never lessees of the petitioner municipality; that Proclamation No. 365 issued on March 15, 1968 recognized "private rights"; and, that a case is pending before the cadastral court between respondent Medina and petitioner municipality as regards the ownership of the subject parcel of land.

Before the petitioner Judge could further act on the case, the private respondents filed a petition for *certiorari* with the Court of Appeals questioning the October 10 and October 19, 1990 orders of the petitioner Judge.

In a resolution dated November 14, 1990, the petition was given due course and a temporary restraining order was issued enjoining the petitioner Judge from proceeding with the hearing of the case and from enforcing the October 10, and 19, 1990 orders.

On January 21, 1990, the appellate court rendered the questioned decision. A motion for reconsideration was denied in a resolution dated February 20, 1991.

Hence, this petition.

In a resolution dated November 26, 1991, we gave due course to the petition.

The appellate court rightfully upheld the jurisdiction of the Regional Trial Court over the case based on the allegations in the complaint. The allegations and not the title control the cause of action of the complaint. (*Andamo v. Intermediate Appellate Court*, 191 SCRA 195 [1990]).

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The Court said:

"First, Does the Regional Trial Court have jurisdiction over the case brought by the Municipality of Dimangag? As already noted, the gist of the complaint below is that the land in question is part of the public domain which the President of the Philippines, under Proclamation No. 365, dated March 25, (should be 15) 1968, reserved for school site and public plaza in the Municipality of Dumingag and that the petitioners, to whom the former town mayor had leased a part of the land, refused to vacate and to pay rents. If this is the theory on which the complaint is based, then the action may really be considered one for recovery of possession. For though a lease is alleged, the lease would be void and the municipality could recover the possession of the land. This is the teaching of the leading case of *Municipality of Cavite v. Rojas*, 30 Phil. 602 [1915] in which it was held that the lease by a municipal corporation of a public plaza is null and void because land for public use is outside the commerce of man and, therefore, the lessee must restore possession of the land by vacating it. As in this case, in the Rojas case the action was for recovery of possession instituted in the Court of First Instance, the counterpart of which at present is the Regional Trial Court. We, therefore, hold that the respondent judge has jurisdiction of the case brought against petitioners for recovery of possession of what is alleged to be land for public use of the respondent municipality." (CA *Rollo*, pp. 53-54)

Prescinding from the finding that the complaint is f*or recovery of possession* the appellate court concluded that the trial court did not have authority to issue a writ of possession and a writ of demolition citing the case of *Mabale v. Apalisok* (88 SCRA 234 [1979], to wit:

"In that connection, it should be borne in mind that the law specifies when a writ of possession may be issued. That writ is available (1) in a land registration proceeding, which is a proceeding *in rem* (Sec. 17, Act No. 496; *Estipona v. Navarro*, 69 SCRA 285, 291); (2) in an extra-judicial foreclosure of a realty mortgage (Sec. 7, Act No. 3135); (3) in a judicial foreclosure of mortgage, a *quasi in rem* proceeding, provided that the mortgagor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened (*Rivera v. Court of First Instance of Nueva Ecija and Rupac*, 61 Phil. 201; *Ramos v. Mañalac and Lopez*,

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89 Phil. 270, 275) and (4) in execution sales (last par. of sec. 35, Rule 39, Rules of Court)."

The appellate court also ruled that the trial court committed an error when it applied by analogy the rule on eminent domain (Rule 67, Revised Rules of Court) to justify the issuance of the writ of possession and writ of demolition. The appellate court pointed out that under this rule:

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"xxx (i) There is clear statutory authority for the taking of possession by the government and (ii) The authority is premised on the government depositing the value of the land to be taken. For unless the taking of the land is done under these conditions, the taking would constitute deprivation of property without due process of law which the Constitution prohibits. (See *Manila Railroad Co. v. Paredes*, 31 Phil. 118 [1915])" (CA *Rollo*, p. 55)

The appellate court then stated:

In the case at bar, there is neither statutory authority for the trial court's action nor bond given to compensate the petitioners for the deprivation of their possession and the destruction of their houses if it turns out that the land belongs to them. For this reason, we think the trial court's order is arbitrary and void. For the fact is that petitioners claim ownership of the land in question and until that question is resolved either in the case pending before the respondent judge or in the cadastral proceeding, it would be unjust to deprive petitioners of its possession. (CA *Rollo*, pp. 55-56)

The petitioners now contend that the allegations in the complaint constitute a cause of action for abatement of public nuisance under Article 694 of the Civil Code. On the basis of this proposition, the petitioners assert that petitioner municipality is entitled to the writ of possession and writ of demolition.

Article 694 of the Civil Code defines nuisance as follows:

"ARTICLE 694. A nuisance is any act, omission, establishment, business, condition of property or anything else which:

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(5) Hinders or impairs the use of property.

while Article 695 provides:

ARTICLE 695. Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. xxx."

Applying these criteria, we agree with the petitioners that the complaint alleges factual circumstances of a complaint for abatement of public nuisance. Thus, the complaint states: that petitioner municipality is the owner of a parcel of land covered by Presidential Proclamation No. 365 which is reserved for a public plaza; that the private respondents by virtue of a contract of lease entered into by the former mayor occupied a portion of the parcel of land constructing buildings thereon; that the private respondents refused to vacate the premises despite demands; that the municipality is constructing a municipal gymnasium in the area financed by appropriations provided by the national government; and that the appropriations are in danger of being reverted to the national treasury because the construction had to be stopped in view of the refusal of the private respondents to vacate the area.

The issue, however, is not the nature of the cause of action alleged in the complaint. The more important question is whether or not the petitioner municipality is entitled to a writ of possession and a writ of demolition even before the trial of the case starts.

Article 699 of the Civil Code provides for the following remedies against a public nuisance:

"(1) A prosecution under the Penal Code or any local ordinance; or

(2) A civil action; or

(3) Abatement, without judicial proceedings."

The petitioner municipality had three remedies from which to select its course of action. It chose to file a civil action for the recovery of possession of the parcel of land occupied by

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the private respondents. Obviously, petitioner municipality was aware that under the then Local Government Code (B.P. Blg. 337) the Sangguniang Bayan has to first pass an ordinance before the municipality may summarily abate a public nuisance. (Sec. 149(z) (ee).

On the premise that the parcel of land forms part of a public plaza, the petitioners now contend that the Judge was justified in issuing the writ of possession and writ of demolition.

A public plaza is outside the commerce of man and constructions thereon can be abated summarily by the municipality. We ruled in the case of *Villanueva v. Castañeda, Jr.* (154 SCRA 142 [1987]):

"Exactly in point is *Espiritu v. Municipal Council of Pozorrubio*, (102 Phil. 869-870) where the Supreme Court declared:

> 'There is absolutely no question that the town plaza cannot be used for the construction of market stalls, specially of residences, and that such structures constitute a nuisance subject to abatement according to law. Town plazas are properties of public dominion, to be devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased by the municipality to private parties.'

Applying this well-settled doctrine, we rule that petitioners had no right in the first place to occupy the disputed premises and cannot insist in remaining there now on the strength of their alleged lease contracts. They should have realized and accepted this earlier, considering that even before Civil Case No. 2040 was decided, the municipal council of San Fernando had already adopted Resolution No. 29, series of 1964, declaring the area as the parking place and public plaza of the municipality.

It is the decision in Civil Case No. 2040 and the said resolution of the municipal council of San Fernando that respondent Macalino was seeking to enforce when he ordered the demolition of the stalls constructed in the disputed area. As officer-in-charge of the office of the mayor, he had the duty to clear the area and restore it to its intended use as a parking place and public plaza of the municipality of San Fernando, conformably to the aforementioned orders from

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the court and the council. It is, therefore, not correct to say that he had acted without authority or taken the law into his hands in issuing his order.

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The Court observes that even without such investigation and recommendation, the respondent mayor was justified in ordering the area cleared on the strength alone of its status as a public plaza as declared by the judicial and legislative authorities. xxx."

If, therefore, the allegations in the complaint are true and that the parcel of land being occupied by the private respondents is indeed a public plaza, then the writ of possession and writ of demolition would have been justified. In fact, under such circumstances, there would have been no need for a writ of possession in favor of the petitioner municipality since the private respondents' occupation over the subject parcel of land can not be recognized by any law. A writ of demolition would have been sufficient to eject the private respondents.

However, not only did the municipality avoid the use of abatement without judicial proceedings, but the status of the subject parcel of land has yet to be decided.

We have to consider the fact that Proclamation No. 365 dated March 15, 1968 recognizes private rights which may have been vested on other persons, to wit:

"BY THE PRESIDENT OF THE PHILIPPINES
PROCLAMATION NO. 365

RESERVING FOR SCHOOL SITE, PUBLIC PLAZA AND PLAYGROUND PURPOSES CERTAIN PARCELS OF LAND OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF DUMINGAG, PROVINCE OF ZAMBOANGA DEL SUR, ISLAND OF MINDANAO.

Upon recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the authority vested in me by law, I FERDINAND E. MARCOS, PRESIDENT OF THE PHILIPPINES, do hereby withdraw from sale or settlement and under the administration of the Director of Public Schools administration of the Municipal Government of Dumingag, *subject to private rights,*

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if any there be, certain parcels of land of the public domain situated in the Municipality of Dumingag, Province of Zamboanga del Sur, Island of Mindanao, xxx." (CA *Rollo*, pp. 41-A - 42) Italics supplied).

It is to be noted that even before the Proclamation, the parcel of land was the subject of cadastral proceedings before another branch of the Regional Trial Court of Zamboanga del Sur. At the time of the filing of the instant case, the cadastral proceedings intended to settle the ownership over the questioned portion of the parcel of land under Proclamation No. 365 were still pending. One of the claimants in the cadastral proceedings is private respondent Vicente Medina who traced his ownership over the subject parcel of land as far back as 1947 when he allegedly bought the same from a Subanan native.

Under the cadastral system, the government through the Director of Lands initiates the proceedings by filing a petition in court after which all owners or claimants are compelled to act and present their answers otherwise they lose their right to their own property. The purpose is to serve the public interests by requiring that the titles to any lands "be settled and adjudicated." (Section 1 Cadastral Act [No. 2259] *Government of the Philippine Islands v. Abural*, 39 Phil. 996 [1919]. It is a proceeding *in rem* somewhat akin to a judicial inquiry and investigation leading to a judicial decree. (*Director of Lands v. Roman Archbishop of Manila*, 41 Phil. 120 [1920]).

Considering therefore, the nature and purpose of the cadastral proceedings, the outcome of said proceedings becomes a prejudicial question which must be addressed in the resolution of the instant case. We apply by analogy the ruling in the case of *Quiambao v. Osorio* (158 SCRA 674 [1988], to wit:

"The instant controversy boils down to the sole question of whether or not the administrative case between the private parties involving the lot subject matter of the ejectment case constitutes a prejudicial question which would operate as a bar to said ejectment case.

A prejudicial question is understood in law to be that which arises in a case the resolution of which is a logical antecedent of the issue involved in said case and the cognizance of which pertains to another tribunal. (*Zapanta v. Montesa*, 4 SCRA 510 [1962]; *People v. Aragon*,

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50 O. G. No. 10, 4863) The doctrine of prejudicial question comes in to play generally in a situation where civil and criminal actions are pending and the issues involved in both cases are similar or so closely-related that an issue must be pre-emptively resolved in the civil case before the criminal action can proceed. Thus, the existence of a prejudicial question in a civil case is alleged in the criminal case to cause the suspension of the latter pending final determination of the former.

The essential elements of a prejudicial question as provided under Section 5, Rule 111 of the Revised Rules of Court are: [a] the civil action involves an issue similar or intimately related to the issue in the criminal action; and [b] the resolution of such issue determines whether or not the criminal action may proceed.

The actions involved in the case at bar being respectively civil and administrative in character, it is obvious that technically, there is no prejudicial question to speak of. Equally apparent, however, is the intimate correlation between said two [2] proceedings, stemming from the fact that the right of private respondents to eject petitioner from the disputed portion depends primarily on the resolution of the pending administrative case. For while it may be true that private respondents had prior possession of the lot in question, at the time of the institution of the ejectment case, such right of possession had been terminated, or at the very least, suspended by the cancellation by the Land Authority of the Agreement to Sell executed in their favor. Whether or not private respondents can continue to exercise their right of possession is but a necessary, logical consequence of the issue involved in the pending administrative case assailing the validity of the cancellation of the Agreement to Sell and the subsequent award of the disputed portion to petitioner. If the cancellation of the agreement to Sell and the subsequent award to petitioner are voided, then private respondent's right of possession is lost and so would their right to eject petitioner from said portion.

Faced with these distinct possibilities, the more prudent course for the trial court to have taken is to hold the ejectment proceedings in abeyance until after a determination of the administrative case. Indeed, logic and pragmatism, if not jurisprudence, dictate such move. To allow the parties to undergo trial notwithstanding the possibility of petitioner's right of possession being upheld in the pending administrative case is to needlessly require not only the parties but the court as well to expend time, effort in what may turn out to be a sheer exercise in futility. Thus, 1 Am Jr 2d tells us:

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> 'The court in which an action is pending may, in the exercise of a sound discretion, upon proper application for a stay of that action, hold the action in abeyance to abide the outcome of another pending in another court, especially where the parties and the issues are the same, for there is power inherent in every court to control the disposition of causes on its dockets with economy of time and effort for itself, for counsel, and for litigants. Where the rights of parties to the second action cannot be properly determined until the questions raised in the first action are settled the second action should be stayed.'

While this rule is properly applicable to instances involving the two [2] court actions, the existence in the instant case of the same considerations of identity of parties and issues, economy of time and effort for the court, the counsels and the parties as well as the need to resolve the parties' right of possession before the ejectment case may be properly determined, justifies the rule's analogous application to the case at bar."

Technically, a prejudicial question shall not rise in the instant case since the two actions involved are both civil in nature. However, we have to consider the fact that the cadastral proceedings will ultimately settle the real owner/s of the disputed parcel of land. In case respondent Vicente Medina is adjudged the real owner of the parcel of land, then the writ of possession and writ of demolition would necessarily be null and void. Not only that. The demolition of the constructions in the parcel of land would prove truly unjust to the private respondents.

Parenthetically, the issuance of the writ of possession and writ of demolition by the petitioner Judge in the ejectment proceedings was premature. What the petitioner should have done was to stop the proceedings in the instant case and wait for the final outcome of the cadastral proceedings.

At any rate, affirmative relief based on the above discussions is no longer possible. The demolition of the buildings owned by the private respondents is now a *fait accompli*.

In the case of *Estate of Gregoria Francisco v. Court of Appeals* (199 SCRA 595 [1991] we awarded just compensation the amount of which was for the trial court to determine in favor of the

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petitioner whose building was demolished by the municipality even before a proper tribunal could decide whether or not the building constituted a nuisance in law. Our ruling was premised on the ground that the owner of the building was in lawful possession of the lot and the building by virtue of the permit from the authorized government agency when the demolition was affected.

We cannot, however, apply this ruling to the present case. The legality of the occupation by the private respondents of the subject parcel of land is still to be resolved in the cadastral proceedings. In the event that respondent Vicente Medina is declared owner of the subject parcel of land, necessarily, the private respondents would be entitled to just compensation for the precipitate demolition of their buildings. On the other hand, if private respondent Medina is declared to have no rights over the subject parcel of land then, the private respondents would not be entitled to any compensation for the demolition of their buildings. In such a case the private respondents are considered squatters and therefore, the demolition of their buildings would turn out to have been justified.

Faced with these alternative possibilities, and in the interest of justice, we rule that the petitioner municipality must put up a bond to be determined by the trial court to answer for *just compensation* to which the private respondents may be entitled in case the demolition of their buildings is adjudged to be illegal.

Moreover, the appellate court correctly ruled that Rule 67 of the Revised Rules of Court on eminent domain can not be made a subterfuge to justify the petitioner Judge's issuance of a writ of possession in favor of petitioner municipality. In the recent case of *National Power Corporation v. Hon. Enrique T. Jocson, et al*. (G. R. Nos. 94193-99, February 25, 1992) we said:

"In *Municipality of Biñan v. Hon. Jose Mar Garcia, et al*. (180 SCRA 576 [1989] this Court ruled that there are two (2) stages in every action of expropriation;

> 'The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and

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the propriety of its exercise in the context of the facts involved in the suit. (Citing Sections 1, 2 and 3, Rule 67 of the Rules of Court.) It ends with an order, if not of dismissal of the action, 'of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as the date of the filing of the complaint.' (Citing Section 4, Rule 67; *Nieto v. Isip*, 97 Phil. 31; *Benguet Consolidated v. Republic*, 143 SCRA 466). An order of dismissal, if this be ordained, would be a final one, of course, since it finally disposes of the action and leaves nothing more to be done by the Court on the merits. (Citing *Investments, Inc. v. Court of Appeals, et al*., 147 SCRA 334) So, too, would an order of condemnation be a final one, for thereafter as the rules expressly state, in the proceedings before the Trial Court, 'no objection to the exercise of the right of condemnation (or the propriety thereof) shall be filed or heard.'

The second phase of the eminent domain action is concerned with the determination by the Court of 'the just compensation for the property sought to be taken.' This is done by the Court with the assistance of not more than three (3) commissioners. (Citing Sections 5 to 8, Rule 67 of the Rules of Court) The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final, too. It would finally dispose of the second stage of the suit, and leave nothing more to be done by the Court regarding the issue. xxx'.

However, upon the filing of the complaint or at any time thereafter, the petitioner has the right to take or enter upon the possession of the property involved upon compliance with P. D. No. 42 which requires the petitioner, after due notice to the defendant, to deposit with the Philippine National Bank in its main office or any of its branches or agencies, 'an amount equivalent to the assessed value of the property for purposes of taxation.' This assessed value is that indicated in the tax declaration."

Hence, even if we concede that Rule 67 is applicable to the instant case and that petitioner municipality had the lawful right to eject the private respondents from the subject parcel of land

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the issuance of a writ of possession in favor of petitioner municipality would still not be legal if the petitioner municipality really owns the land. The Judge did not require petitioner municipality to deposit an amount equivalent to the just compensation due the private respondents as provided for under Presidential Decree 42. It is only after the deposit of the just compensation that petitioner municipality would be entitled to a writ of possession.

Another point raised by the petitioners questions the alleged ruling of the appellate court "that the petitioners are personally liable for damages to the private respondents for the abatement of public nuisance." (*Rollo*, p. 50).

The petitioners misread the appellate court's decision. The records show that the private respondents prayed for, in their petition for *certiorari* filed with the appellate court, among others:

"It is likewise prayed that respondents be ordered to pay jointly and severally the value of the house illegally demolished in the amount of ₱1,000,000.00, attorney's fees in the amount of ₱50,000.00, moral damages in the amount of ₱100,000.00 and exemplary damages in the amount of ₱50,000.00, to pay the costs, xxx."

xxx xxx xxx

(CA *Rollo*, p. 6).

In response to this prayer, however, the appellate court stated:

"We do not, however, have jurisdiction over petitioners' claim for damages. This must be pursued in an appropriate action instituted in the Regional Trial Court." (*Rollo*, p. 26).

Moreover, the dispositive portion of the decision does not mention any personal liability for damages against the petitioners. The apprehension of the petitioners lacks factual basis.

WHEREFORE, the instant petition is *DISMISSED*. The questioned decision and resolution of the Court of Appeals are *AFFIRMED*. The trial court is ordered to require the petitioner municipality to put up a bond to be determined by the court after hearing to answer, for just compensation due the private respondents in case the demolition of their buildings is adjudged

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to be illegal. The "Motion to Declare in Contempt" filed by petitioner Judge is referred to the Regional Trial Court of Pagadian City, Branch 18 in Civil Case No. 3156 for appropriate action.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, and *Nocon, JJ.*, concur.

Bellosillo, J., on leave.

FIRST DIVISION

[G.R. No. 98258. May 8, 1992]

TIRSO OPORTO and LYDIA OPORTO, and Hon. Fausto H. Imbing, Judge, Regional Trial Court, Pagadian City, *petitioners, vs.* **HON. COURT OF APPEALS, LEOPOLDO CLARITO and FILOMENA CLARITO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL CONCLUSIONS OF THE COURT OF APPEALS ARE BINDING ON THE SUPREME COURT; EXCEPTION.—** There is, no question that ordinarily the factual conclusions of the Court of Appeals are binding on, and not reviewable by, this Court. The rule admits of exceptions, however, one of which is when facts of substance were overlooked which, if correctly considered, might have changed the outcome of the case.

2. **ID.; ID.; ID.; ID.; CASE AT BAR.—** Overlooked by the Court of Appeals is evidence on record, including Clarito's own admissions, persuasively establishing that Leopoldo Clarito