IN THE COURT OF APPEALS OF IOWA

No. 2-290 / 91-1173

CITY OF CEDAR RAPIDS, IOWA,

Appellee,

vs.

ALI HABHAB,

Appellant.

FILED
NOV 30 1992
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, William L. Thomas and L. Vern Robinson, Judges.

Defendant appeals from the district court's ruling that his residence constitutes a nuisance which should be demolished. **AFFIRMED.**

Ali Habhab, Cedar Rapids, pro se, for appellant.

James H. Flitz, City Attorney, Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ. Habhab, J., takes no part.

OXBERGER, C.J.

Ali Habhab owns 329 F Avenue N.W., Cedar Rapids, Iowa. The property is in a commercial zoning district which allows office and retail use. Residential use is permitted only on the second floor of buildings in this district. Habhab purchased the property in November 1985 for $3,000.

In March 1989 the City of Cedar Rapids held a public hearing to determine whether certain buildings were in such disrepair as to constitute a nuisance pursuant to Iowa Code section 657.1. After the hearing, the city passed a resolution declaring the building at 329 F Avenue a public nuisance.

The city filed a petition with the district court in November 1989 seeking an order allowing it to abate the nuisance by demolition or destruction of the building owned by Habhab. The city presented evidence to show the unsafe condition of the building.

In its ruling on January 14, 1991, the court concluded the building constituted a nuisance due to its deplorable condition. The court found the electrical wiring, plumbing, and heating did not meet city code requirements. The foundation of the building was in disrepair, several windows were broken, and many of the walls lacked plaster. The court gave Habhab until June 1, 1991, to bring the building into full compliance with all applicable codes and ordinances.

On June 10, 1991, the city filed a statement of its intent to abate the nuisance by demolishing the building. The city stated Habhab had not applied for any building, electrical, mechanical, or plumbing permits. Additionally, the city stated Habhab had not made any improvements to the building. On July 12, 1991, the district court found the building remained a public nuisance. The court granted the city authorization to abate the nuisance by demolishing the building.

Habhab then filed his pro se appeal. He also filed a motion for stay of judgment in the district court. The city estimated the cost of demolition would be $6,000. The 1991 assessment of the property by the city assessor valued the land at $4,141 and the building at $1,553. The court set the appeal bond in the amount of $2,000.

I. This case was filed in equity and our review is de novo. Iowa R. App. P. 4. It is our responsibility to review the facts as well as the law and determine from the credible evidence rights anew on those propositions properly presented, provided issue has been raised and error, if any, preserved in the trial proceedings. City of Central City v. Knowlton, 265 N.W.2d 749, 752 (Iowa 1978).

II. Habhab first contends that he has lived in the building at 329 F Avenue since 1985 and the court should have recognized his residency as a nonconforming use.

As the district court noted in its ruling of January 1991, the question of whether the building is being used

for residential purposes, or has in fact been abandoned, is not pertinent to the question of whether it constitutes a nuisance. The city's action is not based on a claim that Habhab violated any zoning ordinances.

III. Habhab contends he should have been given more time to repair the building. He also claims the building should not be considered a nuisance. He states that at the time of the hearing on July 12, 1991, he had repaired the doors and windows and fixed cracks in the basement. He also claimed he had contacted an electrician and plumber to make repairs.

The statutory power of a municipality to adopt ordinances, to promote the public welfare, to provide for the safety and comfort of its inhabitants and to declare and prevent nuisances reflects its police power. Town of Grundy Center v. Marion, 231 Iowa 425, 433, 1 N.W.2d 677, 681 (1942). A city may exercise its police power to prevent public nuisances in the interest of the public welfare. Id. A public nuisance is the doing, or the failure to do, something that injuriously affects the safety, health or morals of the public, or that works some substantial annoyance, inconvenience or injury thereto. Abbott v. City of Des Moines, 230 Iowa 494, 503, 298 N.W. 649, 653 (1941).

We find there is sufficient evidence in the record to show the building at 329 F Avenue is a public nuisance. Because of the dilapidated condition of the building it

creates a safety hazard. Although Habhab was given six months to bring the building up to city code requirements, he failed to substantially abate the conditions that created the nuisance. The evidence shows that in fact he did not even apply for any permits to repair the building. Furthermore, the evidence shows substantial renovation would be needed to allow the building to be usable for any purpose. We affirm the district court's decision that the city should be allowed to proceed with demolition of the building.

IV. Finally, Habhab contends the district court erred in setting the amount of the appeal bond at $2,000. He claims the building is actually worth between $12,000 to $14,000. He also claimed he knew of a contractor who could demolish the building for about $4,000.

An appeal bond is necessary in order to stay proceedings under a judgment. Iowa R. App. P. 7. An appeal bond should be set in an amount sufficient to hold an appellee harmless from the appeal. In re Estate of Clark, 447 N.W.2d 549, 553 (Iowa App. 1989). After considering the facts of this case, we find the appeal bond of $2,000 was not excessive.

V. After considering all of the arguments raised by the appellant, Ali Habhab, we affirm the decision of the district court. Costs of this appeal are assessed to appellant.

AFFIRMED.