453 and 454, or to compel the person who has built or planted to pay him the value of the land, and the person who sowed thereon to pay the proper rent therefor." But the article invoked does not give plaintiffs, as owners of the improvements, the right to compel defendant, as registered owner of the land, to cede to them, by sale or otherwise, the land in question. Under the article, it is the owner of the land that has the right to choose between acquiring the improvements and selling the land. An action predicated on the assumption that the option may be exercised by the owner of the improvements is clearly without legal basis.

On the assumption that plaintiffs are the owners of the improvements on the land occupied by them and that defendant's men or those acting under its authority are committing depredations thereon, there can be no question that plaintiffs should be entitled to the remedy sought in their third cause of action, that is, to have the depredations stopped and indemnity paid for damages suffered. We note, however, that the complaint does not identify and delimit the land on which plaintiffs' improvements stand, the complaint being for that reason defective.

To summarize, it is our conclusion that (1) plaintiffs may not in the present case ask for the remedy sought in their first cause of action, for the reason that an amendment to a Torrens certificate of title may be had only in the original case where the decree of registration was entered; (2) plaintiffs' second cause of action is untenable; and (3) plaintiffs' complaint is defective with respect to the property sought to be protected by a writ of injunction.

Wherefore, the order of dismissal is affirmed with respect to the first and second causes of action, and modified as to the third in the sense that this cause of action shall be deemed definitely dismissed if the complaint is not properly amended within ten days from the time this decision becomes final. Without costs.

Paras, Bengzon, Tuazon, Jugo, Pablo, Padilla; Montemayor; Labrador and Bautista Angelo, concur.

XIV

Cebu Portland Cement Company, petitioner, vs. Hon. Vicente Varela et al., respondents, G. R. No. L-5438, September 29, 1953.

CIVIL PROCEDURE; UNLAWFUL DETAINER; EXECUTION OF JUDGMENT PENDING APPEAL FOR FAILURE TO DEPOSIT THE MONTHLY RENTS DUE TO FRAUD, ERROR OR EXCUSABLE NEGLIGENCE. — On November 16, 1950, V, General superintendent of C Co., was dismissed and retired with gratuity by the company's board of directors. The labor union to which he belonged took the case to the CIR which rendered a resolution finding his dismissal unjustifiable and ordering his reinstatement in office with full back pay. The resolution was brought before the Supreme Court for review. Because V refused to leave the company house which as the general superintendent he was entitled to occupy free of charge, the company brought a suit against him for illegal detainer in the JP court which rendered judgment ordering him to vacate the premises and pay a monthly rental of ₱100.00 from November 16 of that year. B appealed to the CFI. In the CFI the company had an order issued for a writ of execution but the order was lifted on October 8, 1951 following the filing of the supersedeas bond for ₱1,500.00 which answered not only the rents already due (₱1,000.00) but also those that were still to become due (*los alquileres devengados y los por devengar*")

On December 7, 1951, the company was again able to secure a writ of execution because of V's failure to make a cash deposit for the rents corresponding to September and October of that year. V moved for a reconsideration, deposited ₱400 to cover four months rental and called attention to the fact that the question of his separation from the company was still pending with the CIR on December 29, 1951. The court issued an order suspending the writ of execution on the grounds that V's right to continue occupying the premises depended upon the result of the case in the CIR which had not yet been decided, that his bond for ₱1,500 was answerable for the rents up to the final determination of the case, and that the deposit of ₱400 to cover rents up to and including December 1951 negatived any intention on his part to enjoy the occupancy of that house without any rent. A motion to lift the order of suspension having been denied, the company petitioned for certiorari and mandamus asking that the said order be annulled as having been issued without jurisdiction and that a writ issue commanding the judge below to lift the stay of execution. HELD: Courts of the first instance in detainer cases are authorized to grant execution upon appellant's failure to deposit the monthly rents on time during the pendency of the appeal. But this Court has already ruled that execution may be denied where the delay in making the deposit was due to fraud, error or excusable negligence. (Bantug vs. Roxas, 73 Phil. 13; Gunaan vs. Rodas, 44 Off. Gaz., 4927; Yu Phi Khim vs. Amparo, 47 Off. Gaz., Supp. 12, 98). In the present case, the deposit was late, but the lower court has excused the delay as being due to an honest belief that the supersedeas bond covered both past and future rents — as therein expressly stipulated — and that, after all, appellant's right to remain in office and enjoy its emoluments, including free quarters, was still pending determination in the Court of Industrial Relations. The lower court, in our opinion, acted with justice and equity and only followed the precedent established in the cases above-cited when it rendered the resolution herein complained of.

Fortunato V. Borromeo and *Jesus N. Borromeo* for petitioner.
Alonso & Alonso and *Emilio Lumontad* for respondents.

D E C I S I O N

REYES, J.:

On November 16, 1950, Felix V. Valencia, general superintendent of the Cebu Portland Cement Company, was dismissed and retired with gratuity by the company's board of directors. Contesting his dismissal, the labor union to which he belonged took the case to the Court of Industrial Relations, and that court, under date of July 8, 1952, rendered its resolution, finding Valencia's dismissal unjustified and ordering his reinstatement in office with full backpay and "with all the privileges and emoluments thereunto attached x x x." That resolution is now before this Court for review, but it is not the subject of the present petition for certiorari and mandamus, and is here mentioned only because of its bearing on the case.

The present case arose as a consequence of the company's attempt to oust Valencia from the company house which as general superintendent he was entitled to occupy free of charge. Because Valencia refused to leave the house despite his removal from office, the company brought suit against him for illegal detainer in the Justice of the Peace Court of Naga, Cebu, and that court, on August 20, 1951, rendered judgment ordering him to vacate the premises and pay a monthly rental of ₱100.00 from November 16 of that year. Valencia appealed to the Court of First Instance, the appeal being perfected on September 12, 1951 with the filing of the appeal bond on that date.

Once the case was in the Court of First Instance, the company had an order issued for a writ of execution, but the order was lifted on October 8, 1951, following the filing of a supersedeas bond for ₱1,500.00. Ordinarily such bond answers only for rents due at the time of the perfection of the appeal. But in the present case the bond, in express terms, guarantees not only the rents already due (₱1,000.00), but also those that were still to become due ("*los alquileres devengados y los por devengar*").

On December 7, 1951, the company was again able to secure a writ of execution because of Valencia's failure to make a cash deposit for the rents corresponding to September and October of that year. Valencia moved for a reconsideration, deposited ₱400.00 to cover four months' rent and called attention to the fact that the question of his separation from the company was still pending in the Court of Industrial Relations. Acting on this motion, the court issued its order of December 29, 1951, suspending the writ of execution on the grounds that Valencia's right to continue occupying the premises depended upon the result of the case in the Industrial Court, which had not yet been decided, that his supersedeas bond for ₱1,500.00 was answerable for the rents up to the final determination of the case, and that the deposit of ₱400.00 to cover rents up to and including December, 1951, negatived any intention on his part to enjoy the occupancy of the house without paying any rent. A motion to lift this order of suspension having been denied, the company brought

the present petition for certiorari and mandamus, asking that the said order be annulled as having been issued without jurisdiction, and that a writ issue commanding the judge below to lift the stay of execution.

Courts of first instance in detainer cases are authorized to grant execution upon appellant's failure to deposit the monthly rents on time during the pendency of the appeal. But this Court has already ruled that execution may be denied where the delay in making the deposit was due to fraud, error or excusable negligence. (Bantug vs. Roxas, 73 Phil. 13; Gunaan vs. Rodas, 44 Off. Gaz., 4927; Yu Phi Khim vs. Amparo, 47 Off. Gaz., Supp. 12, 98). In the present case, the deposit was late, but the lower court had excused the delay as being due to an honest belief that the supersedeas bond covered both past and future rents — as therein expressly stipulated — and that, after all, appellant's right to remain in office and enjoy its emoluments, including free quarters, was still pending determination in the Court of Industrial Relations. The lower court, in our opinion, acted with justice and equity and only followed the precedent established in the cases above cited when it rendered the resolution herein complained of.

Pending decision on this petition for certiorari and mandamus, counsel for the company, on March 18, 1952, filed a supplemental pleading, complaining that on the 3rd of that month the lower court had denied another motion for execution based on Valencia's failure to deposit the rental for January of that year. It appears from the order of denial that the lower court considered the new motion for execution as involving the same question as those which gave rise to the present case and which were denied because of "unique or exceptional circumstances" that, in its opinion, made suspension of execution "more in consonance with justice and equity," for which reason the court again had to deny immediate execution" at least, until Supreme Court has passed upon the questioned orders." Now that a decision has come down from the Court of Industrial Relations ordering Valencia's reinstatement, and with the certiorari case (G. R. No. L-6158) for the review of that decision already heard, we are not disposed to interfere with the exercise of discretion which the lower court has made in the last order complained of for the maintenance of a *status quo*.

Wherefore, the petition for certiorari and mandamus is denied, with costs against the petitioner.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor; Jugo; Bautista Angelo and Labrador, J.J., concur.

XV

Angeles S. Santos, petitioner-appellant vs. Paterio Aquino et al., respondents-appellees, G. R. No. L-5101, November 28, 1953.

1. CIVIL PROCEDURE; DECLARATORY RELIEF; ORDINANCE NOT AMBIGUOUS OR DOUBTFUL.—There can be no action for declaratory relief, where the terms of the ordinances assailed are not ambiguous or of doubtful meaning which require a construction thereof by the Court.
2. IDEM; IDEM; RELIEF MUST BE ASKED BEFORE VIOLATION OF THE ORDINANCE.—Granting that the validity or legality of the ordinance may be drawn in question in action for declaratory relief, such relief must be asked before a violation of the ordinance be committed (Section 2, Rule 66, Rues of Court). When this action was brought on 12 May 1949, payment of the municipal license taxes imposed by both ordinances, the tax rate of the last having been reduced by the Department of Finance, was already due, and the prayer of the petition shows that the petitioner had not paid them. In those circumstances the petitioner cannot bring an action for declaratory relief.
3. IDEM; IDEM; REAL PARTY IN INTEREST.—The petitioner, does not aver nor does he testify that he is the owner or part owner of "Cine Concepcion." He alleges that he is only the manager thereof. For that reason he is not an interested party. He has no interest in the theater known as "Cine Concepcion" which may be affected by the municipal ordinances in question and for that reason he is not entitled to bring this action either for declaratory relief or for prohibition, which apparently is the purpose of the action as may be gleaned from the prayer of the petition. The rule that actions must be brought in the name of the real party in interest (Section 2, Rule 3, Rules of Court) applies to actions brought under Rule 66 for declaratory relief. (1 C.J.S. 1074-1049.) The fact that he is the manager of the theater does not make him a real party in interest.
4. PUBLIC CORPORATIONS; MUNICIPAL COUNCIL EMPOWERED TO ADOPT ORDINANCES IMPOSING TAXES WHICH ARE NOT EXCESSIVE, UNJUST, OPPRESSIVE OR CONFISCATORY.—Under Com. Act No. 472 the Municipal Council of Malabon is authorized and empowered to adopt the ordinances in question, and there being no showing, as the evidence does not show, that the rate of the municipal taxes therein provided is excessive, unjust, oppressive and confiscatory, their validity and legality must be upheld. The rate of the taxes in both ordinances, to wit: ₱1,000 a year for "Class A cinematographs having orchestra, balcony and lodge seats" in Ordinance No. 61, series, of 1946, (Approved by the Department of Finance on 11 June 1947. So the tax for 1947 to be collected was ₱180 plus 50% of the original tax, or ₱90, or a total of ₱270), and ₱2,000 for each theater or cinematograph with gross annual receipts amounting to ₱130,000 or more in Ordinance 10, series of 1947, (Approved by the Department of Finance at a reduced rate on 3 November 1948. So the tax for 1948 was that imposed by Ordinance No. 61, series of 1946, approved on 11 June 1947, as reduced and approved by the Department of Finance on 3 November 1948.) under which the "Cine Concepcion" falls, is not excessive but fair and just.
5. IDEM; IDEM; MUNICIPAL COUNCILS NOT CONSTITUTIONAL BODIES.—Municipal councils are not constitutional bodies but creatures of the Congress. The latter may even abolish or replace them with other government instrumentalities. *Arsenio Paez* for appellant.

Acting Provincial Fiscal of Pasig, Riz[a]l Irineo V. Bernardo for appellees.

DECISION

PADILLA, J.:

This action purports to obtain a declaratory relief but the prayer of the petition seeks to have Ordinance No. 61, series of 1946, and Ordinance No. 10, series of 1947, of the Municipality of Malabon, Province of Rizal, declared null and void; to prevent the collection of surcharges and penalties for failure to pay the taxes imposed by the ordinances referred to, except for such failure from and after the taxpayer shall have been served with the notice of the effectivity of the ordinances; and to enjoin the respondents, their agents and all other persons acting for and in their behalf from enforcing the ordinances referred to and from making any collection thereunder. Further, petitioner prays for such other remedy and relief as may be deemed just and equitable and asks that costs be taxed against the respondents.

The petitioner is the manager of a theater known as "Cine Concepcion," located and operated in the Municipality of Malabon, Province of Rizal, and the respondents are the Municipal Mayor, the Municipal Council and the Municipal Treasurer, of Malabon. The petitioner avers that Ordinance No. 61, series of 1946, adopted by the Municipal Council of Malabon on 8 December 1946, imposes a license tax of ₱1,000 per annum on the said theater in addition to a license tax on all tickets sold in theaters and cinemas in Malabon, pursuant to Ordinance No. 61, the same series; that prior to 8 December 1946 the municipal license tax paid by the petitioner on "Cine Concepcion" was ₱180, pursuant to Ordinance No. 9, series of 1945; that on 6 December 1947, the Municipal Council of Malabon adopted Ordinance No. 10, series of 1947, imposing a graduated municipal license tax on theaters and cinematographs from ₱200 to ₱9,000 per annum; that the ordinance was submitted for approval to the Department of Finance, which reduced the rate of taxes provided therein, and the ordinance with the reduced rate of taxes was approved on 3 November 1948; that notice of reduction of the tax rate and approval by the Department of Finance of said graduated municipal license