

95 Phil. 447

[G.R. L-7043. July 27, 1954]

LORENZO SIA, PLAINTIFF AND APPELLEE, VS. THE PROVINCIAL BOARD OF RIZAL AND PROVINCIAL COMMANDER, P. C., RIZAL PROVINCE, DEFENDANTS AND APPELLANTS.

D E C I S I O N

LABRADOR, J.:

This is an appeal from a judgment rendered by the Court of First Instance of Rizal declaring Commonwealth Act No. 601, approved on August 19, 1940, as an undue delegation of legislative power, and, therefore, null and void; that the act of defendant provincial board in proceeding to the closing of the Sea Breeze Dancing and Bowling Alleys, Navotas, Rizal, in compliance with the provisions of Section 2 of Executive Order No. 319, promulgated by the President of the Commonwealth under the authority of said Commonwealth Act No. 601, is illegal; that the plaintiff's right to operate the said dancing hall is authorized by municipal ordinance No. 2 of Navotas, Rizal dated June 9, 1937, and the closing thereof is oppressive, confiscatory, violative of property rights, and is not conducive to public interest, and, therefore, enjoining the defendant provincial board from enforcing the said order of closure promulgated by it.

Commonwealth Act No. 601 provides as follows:

SECTION 1. Any provision of existing laws to the contrary notwithstanding, no license shall hereafter be issued for the establishment, maintenance and operation of cabarets, dancing schools, dance halls, cockpits, night clubs, race tracks, gaming centers, and other similar places of amusement, except in accordance with rules and

regulations to be promulgated by the President of the Philippines for the purpose, and upon payment of fees provided therein. The license fees which shall be collected under the provisions hereof shall accrue to the treasury of the city, municipality, or municipal district where the business is operated.

SEC. 2. This Act shall take effect on the first day of January, 1941, or at an earlier date upon the promulgation of the rules and regulations herein provided. By virtue of the authority granted in the said Act to the President of the Philippines, the latter promulgated Executive Order No. 319, paragraph 2 of which provides as follows:

2. *Location.*—No night club, cabaret, dancing school or dance hall shall be established within a distance of one thousand lineal meters from any city hall or municipal building, provincial building, public plaza, public school, church, hospital, athletic stadium, public park, or any institution of learning or of charity.

Application for permit to operate said dance hall was¹ filed with the office of the provincial treasurer of Rizal pursuant to the said Executive Order No. 319. Thereupon, the district engineer of Rizal made an inspection, upon request of the provincial treasurer, and reported that the building intended for the dancing hall is 456 lineal meters distant from the Bagong Bayan Elementary School and 550 lineal meters from a protestant church, all in the municipality of Navotas, Rizal. Because of this, no permit was issued; but plaintiff secured a license under a municipal ordinance of Navotas, the mayor thereof granting him permit to operate the dancing hall in accordance with said ordinance. Upon learning of the opening of the dance hall, the provincial board took steps to have it closed, so plaintiff herein started these proceedings in the Court of First Instance of Rizal to enjoin the defendant provincial board from carrying out its intention of closing the dance hall. The court issued a writ of preliminary injunction against the defendant, and after due trial, made the findings set forth

above and made the preliminary injunction permanent. Against this decision the provincial board of Rizal has prosecuted this appeal, which was certified to this Court by the Court of Appeals on the ground that the question involved is the constitutionality of Commonwealth Act No. 601 and Executive Order No. 319.

During the pendency of this case, however, and on May 21, 1954, a new law was passed, Republic Act No. 979, entitled "An Act Amending Republic Act Numbered Nine Hundred and Thirty-Eight Entitled 'An Act granting Municipal or City Board and Councils the Power to Regulate the Establishment, Maintenance and Operation of Certain Places of Amusement Within Their Respective Territorial Jurisdictions.'" This law expressly repeals "any law, executive order or parts thereof, inconsistent" therewith (Section 2). Commonwealth Act No. 601 and Executive Order No. 319, Section 2, under which the appellant provincial board of Rizal ordered the closing of the Sea Breeze Dancing and Bowling Alleys, have, therefore, been repealed and are no longer in force. The issue involved in this case has consequently become moot.

Wherefore, the case should be, as it is hereby, dismissed, without costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion and Reyes, J. B. L, JJ., concur.