

G. R. No. L-7282

[G. R. No. L-7282. October 29, 1954]

THE PROVINCIAL GOVERNOR OF RIZAL; THE PROVINCIAL COMMANDER, P.C. OF RIZAL; THE MUNICIPAL MAYOR OF MAKATI, RIZAL; AND THE CHIEF OF POLICE OF, MAKATI, RIZAL, PETITIONERS, VS. THE HONORABLE DEMETRIO B. ENCARNACION, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL; ANGELA SONGCO AND GUADALUPE BERNARDINO, RESPONDENTS.

D E C I S I O N

BENGZON, J.:

The facts of this litigation-incident matter omitted-may be outlined as follows:

On November 5, 1953 Angela Songco and Guadalupe Bernardino, owners of the Tropical Night Spot Cabaret in Makati, Rizal, filed an amended complaint in the court of first instance (Civil Case No. 2501) praying that the Mayor and the Chief of Police of Makati, and the Provincial Commander and the Provincial Governor of Rizal ordered to allow them to operate their dancing pavilion. They asserted that aforesaid defendants had closed the cabaret allegedly on the ground that it was located within the prohibited area fixed in Executive Order No. 319, albeit same officers permitted the operation of other cabarets similarly situated. They asserted, furthermore, that said Executive Order was null and void, unjust and discriminatory. Plaintiffs likewise prayed for a preliminary writ of mandatory injunction.

Pursuant to their request, the respondent judge issued on November 16, 1953 a preliminary writ ordering the Mayor of Makati to issue the corresponding license for the operation of the pavilion. Defendants' subsequent motion to dissolve the mandatory injunction was denied by his order of November 25, 1953 the judge apparently believing that the operation of other cabarets in the Locality constituted unjust

discrimination, as a result, the defendant officials submitted to this Court the instant petition for certiorari wherein these propositions, among others, were made: (a) The Municipal Mayor has no power to issue the permit under Executive Order No. 319 which is the regulation on the subject, (b) The Executive Secretary by authority of the President, acting under said Executive Order directed the closing of the cabaret because, after investigation, it was found to have been established in violation; thereof; (c) This officer was not a party defendant in Case No. 2501; (d) The operation of a cabaret is a business subject to regulation or suppression under the police power of the State and (e) Courts should not interfere with the resolution of the administrative officers and (f) The judge's order should be revoked, because it enabled the plaintiffs to operate their establishment *during the pendency* of the litigation, despite the pernicious influence exerted by such places of amusement in the restricted locality.

After carefully perusing the petition with the annexes, this Court was convinced there was no unfair discrimination in the closure of plaintiffs' establishment^[1]; and realizing that the respondent's order was in effect a permit to continue operating, with detrimental consequences upon morals and public order, we restrained the enforcement of said judge's order by our resolution of December 3, 1953 issued *ex-parte* under Rule 60 sec. 5.

Attached to the expediente are: the respondents' "urgent opposition to the issuance of a writ of preliminary injunction and motion to dismiss" filed December 3, 1953, plus their "supplementary motion to dismiss and urgent motion to dissolve writ of preliminary injunction" filed December 4, 1953- In addition thereto an "urgent motion to dissolve writ of preliminary injunction" was submitted on December 16, 1953.

Regarding these pleadings as respondents' answer to the petition for certiorari, we set the controversy for oral argument on January 20, 1954. After hearing the parties, thru their counsel we felt no Inclination to lift our injunction for several reasons, some of them being: (a) The Executive Secretary who had padlocked the amusement place had not been impleaded in the court below; (b) The presumptive validity of Executive Order No. 319 was not

sufficiently overcome. In fact the three motions before us do not elaborate on the alleged nullity thereof, respondents having concentrated their efforts on the procedural aspects of the injunctive process. And (c) the dancing-hall in question appeared to be situated within the off-limits zone.

Now upon taking up the matter for a final award we find it unnecessary to explain our views at length, because with the passage of Republic Act No. 979 effective May 21, 1954, the respondent owners of the cabaret may not be allowed to continue operating their establishment. That law reads partly:

“SECTION 1. The municipal or city board or council of each chartered city and the municipal council of each municipality S municipal district shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of night clubs, cabarets, dancing schools, pavillions, cockpits, bars, saloons, bowling alleys, billiard pools, and other similar places of amusement within its territorial jurisdiction. Provided however, That *no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of five hundred lineal meters from any public buildings, schools, hospitals’ and churches.*” *** (Italics ours.)

As the records show beyond doubt that the building of the Tropical Night Spot stands less than five hundred meters from three public schools (Annex 2 p. 68 Record) it may not be reopened for business, without violating the above statutory enactment.

The lower court’s orders of November 16, 1953 and November 25, 1953 should be, and are hereby revoked. No costs.

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

^[1] The two cabarets

allegedly operating were not affected by Ex. Order No, 319. They were operating long before its promulgation. (Annex 1 p. 66 Record)

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