100 Phil. 695

[G.R. No. L-7909. January 18, 1957]

CIPRIANO E UNSON, PETITIONER AND APPELLANT, VS. HON, ARSENIO H. LACSON, AS MAYOR OF THE CITY OF MANILA, AND GENATO COMMERCIAL CORPORATION, RESPONDENTS AND APPELLEES.

CONCEPCION, J.:

This is an action to annul a municipal ordinance and cancel a contract of lease of part of "Callejon del Carmen," in the City of Manila. Its Mayor and the Genato Commercial Corporation—hereinafter referred to as Genato, for the sake of brevity—lessor and lessee, respectively, under said contract, are the respondents herein. After due trial, the Court of First Instance of Manila rendered a decision dismissing the petition, with costs against the petitioner, who has appealed from said decision. The case is before us because the validity of a municipal, ordinance is involved therein.

Petitioner, Cipriano E. Unson, is the owner of Lot No. 10, Block 2537, of the Cadastral Survey of the City of Manila, with an area of 1,537.20 square meters, more or less. It is bounded, on the North, by R. Hidalgo Street; on the East or Norteast, by Lot No. 12, belonging to Genato, and, also, by a narrow strip of land running eastward (from 1.68 to 2.87 meters in width and from 29.90 to 28.4 meters in length), known as Lot No. 11 (of about 123.7 square meters), which the City of Manila regards as its patrimonial properly; on the West, by private property whose owner is not named in the record; and on the South or Southeast, by a strip of land, narrower than Lot 11, running from East to West (about 1.68 meters in width and 26.14 meters in length, or an area of about 45 square meters, more or less), known as Lot No. 9, which is also claimed by said City as its patrimonial property. Immediately South of this Lot No. 9 is the Northern half of Callejon del Carmen, which is separated from its Southern half by the Estero de San Sebastian. Several structures exist on the lot of petitioner Unson. There is a sizeable building on the Northern part, adjoining- R. Hidalgo Street, and a small building—known as "Commerce Building"—on the Southern portion, which adjoins the aforesaid Lot No. 9. Unson's lot is, and for several years has been leased to the National Government, for use by the "Mapa High School", as "Rizal Annex" thereof, which has an enrollment of over 1,500 students.

On or about September 28, 1951, the Municipal Board of Manlia passed Ordinance No. 3470 withdrawing said Northern portion of Callejon del Carmen from public use, declaring it patrimonial property of the City and authorizing its lease to Genato. The ordinance provides:

> "SECTION 1. Those portions of Callejon del Carmen, Quiapo, having an aggregate area of 709.27 square meters and adjacent to the premises of the Genato Commercial Corporation, are hereby withdrawn from public use.
>
> "SEC. 2. The above piece of land described in Section 1 "hereof is hereby declared as patrimonial property of the government of the City of Manila.
>
> "SEC. 3. The lease of the aforesaid city property with an aggregate area of 709.27 square meters to Genato Commercial Corporation at a monthly rental of P0.20 per square meters is hereby authorized.
>
> "SEC. 4. This Ordinance shall take effect upon its approval." (Exhibit 2-A, p. 10, Folder of Exhs.)

Upon approval of this ordinance by the City Mayor, the lease contract therein mentioned (pp. 13-21, Record on Appeal) was entered into and Genato constructed a building on said portion of Callejon del Carmen, at a distance of about 0.765 meter from the Southern boundary of said Lot No. 9. This strip of Callejon del Carmen and said Lot No. 9 thus form an open space of about 2.445 meters in width, more or less, separating said building constructed by Genato and the "Commerce Building" on Unson's lot. Prior thereto, the latter had, on its Southern boundary, two (2) exits on Callejon del Carmen, which exits had to be closed upon the construction of said building by Genato. Hence, alleging that Ordinance No. 3470 and the aforementioned contract of lease with Genato are illegal, petitioner instituted this action, with the prayer

> "(*a*) That respondent Genato Commercial Corporation be immediately , enjoined from doing further work in the construction of a wall/or building on that portion of Callejon del Carmen leased to them immediately upon the petitioner's filing a nominal bond of P500.00, or in such other amount as the court may fix;
>
> "(*b*) That, after trial, the injunction above-mentioned be made permanent, and

ordering the respondent Genato Commercial Corporation to remove whatever construction has been done, by them on said property;

(*c*) That, also after trial, the Hon. Arsenio H. Lacson, Mayor of the City of Manila, be ordered to cancel and revoke the building permit and the lease granted to him over the Callejon del Carmen to the Genato Commercial Corporation;

"(*d*) That respondents be ordered to pay the costs of this suit: and for whatever equitable relief this Honorable Court may deem just and proper, under the premises." (Record on Appeal, p. 5)

The respondents filed their respective answers maintaining the legality of the municipal ordinance and the contract of lease in question, and, after due trial, the lower court rendered its aforementioned decision dismissing the case, upon the ground that as owner of Callejon del Carmen, the City of Manila "has full authority to withdraw such alley from public use and to convert it into patrimonial property" and that

"* * * The City of Manila as owner has the right to use and to dispose of such alley without other limitations that those established by law (Article 428, New Civil Code), so that when the City of Manila withdrew it from public use and converted it into patrimonial property, it simply exercised its right of ownership. The fact that in the Manila Charter there is no exact provision authorizing the Municipal Board to withdraw from public use a street and to convert it into patrimonial properly,, can not be construed to mean that the Municipal Board has no right at all to do so. That would be a negation of its right of ownership. Section 18, letter (x), of the. Manila Charter gives the Municipal Board power and authority to lay out, construct and improve streets, avenues, alleys, sidewalks, etc. and as corollory to that right is the right to close a street and to convert it into patrimonial property.

"Furthermore, Ordinance No. 3470 of the Municipal Board was submitted to and approved by the National Planning Commission. This body was created by an executive order of the President of the Republic , and vested with the power and authority to lay out, construct, vacate, and close streets, avenues, sidewalks, etc. Assuming that the power and authority to vacate or close a street rest with the State, this power as delegated to the National Planning Commission by the

> President in the exercise of his emergency power, and when this body approved said ordinance, it did so in the exercise of the power delegated to it by the State. Hence the validity of the ordinance is unquestionable." (Record on Appeal, pp. 27-29.)

Hence, this appeal taken by petitioner Unson, who insists that said Municipal Ordinance No. 3470 is illegal and, accordingly, that the aforementioned contract of lease between Genato and the City of Manila is null and void.

In this connection, respondents have been unable to cite any legal provision specifically vesting in the City of Manila the power to close Callejon del Carmen. Indeed, section 18 (x) of Republic Act No. 409—upon which appellees rely—authorizes the Municipal Board of Manila, "subject to the provisions of existing laws, to provide for the laying out, *construction* and improvement * * * of streets, avenues, alleys * * * and other public places," but it says *nothing* about the *closing* of any such places. The significance of this silence becomes apparent when contrasted with section 2246 of the Revised Administrative Code, explicitly vesting in municipal councils of regularly organized municipalities the power to close *any municipal* road, street, alley, park or square, provided that persons prejudiced thereby are duly indemnified, and that the previous approval of the Department head shall have been secured. The express grant of such power to the aforementioned municipalities and the absence of said grant to the City of Manila lead to no other conclusion than that the power was intended to be *withheld* from the latter.

Incidentally, said section 2246 refutes the view, set forth in the decision appealed from, to the effect that the power to withdraw a public street from public use is incidental to the alleged right of ownership of the City of Manila, and that the authority to close a thoroughfare is a corollary to the right to open the same. If the ownership of a public road carried with it necessarily the unqualified right of a municipal corporation to close it, by withdrawing the same from public use, then Congress would have no power to require, as a condition *sine qua non*, to the exercise of such right, either the prior approval of the Department Head or the payment of indemnity to the persons injured thereby. Again, pursuant to section 2243 of the Revised Administrative Code, the municipal council of regular municipalities shall have authority, among others:

> "(*a*) To establish and maintain municipal roads, streets, alleys, sidewalks, plazas, parks, playgrounds, levees, and canals."

If, as the lower court held, the power to "construct" an alley entailed the authority, to "close" it, then section 2246, above referred to, would have been unnecessary. To our mind, the mainflaw in appellees' pretense and in the position taken by his Honor, the trial Judge, is one of perspective. They failed to note that municipal corporations in the Philippines, are mere creatures of Congress; that, as such, said corporations possess, and may exercise, only such power as Congress may deem fit to grant thereto ; that charters of municipal corporations should not be construed in the same manner as constitutions;[1] and that doubts, on the powers of such corporations, must be resolved in favor of the State, and against the grantee.[2]

Lastly, the authority of local governments to enact municipal ordinances is subject to the general limitation that the same shall not be "repugnant to law". This is so by specific provision of section 2238 of the Revised Administrative Code, as well as because Congress must be presumed to have withheld from municipal corporations, as its agents or delegates, the authority to defeat, set at naught or nullify its own acts (of Congress) unless the contrary appears in the most explicit, indubitable, and unequivocal manner—and it does no so appear in the case at bar. What is more, section 18(x) of Republic Act No. 409, positively declares that the power of the City of Manila to provide for the construction of streets and alleys shall be "subject to the provisions of existing law. * * *."

However, the ordinance and the contract of lease under consideration are inconsistent with Article 633 of the Civil Code of the Philippines, the first paragraph of which reads:

> "The banks of rivers and streams, even in case they are of private ownership, are subject throughout their entire length and within a zone of three meters along their margins, to the easement of public use in the general interest of navigation, floatage, fishing and salvage."

Obviously, the building constructed by Genato on the portion of Callejon del Carmen in dispute renders it impossible for the public to use the zone of three meters along the Northern margin of the Estero de San Sebastian for the purposes set forth in said Article 638. We are not unmindful of the cases of Ayala de Roxas *vs.* City of Manila (6 Phil., 251) and Chang Hang Ling *vs.* City of Manila (9 Phil., 215), in which this Court refused to enforce a similar easement—provided for in Article 553 of the Civil Code of Spain—upon private property adjoining the Estero de Sibacong and the Estero de la Quinta, respectively. The decisions in said cases were predicated, however, upon the fact that, under the Spanish Law

of Waters, "the powers of the administration do not extend to the establishment of *new* easements upon *private* property but simply to preserve old ones," and that, pursuant to the Philippine Bill (Act of Congress of July 1, 1902) and Article 349 of the Civil Code of Spain, no one shall be deprived of his property, except by competent authority and with sufficient cause of public utility, always after proper indemnity. These considerations are inapplicable to the case at bar, for, as regards Callejon del Carmen, the aforementioned easement of public use is not *new*. Besides, said alley is not private property. It belongs to the State.[3] And, even if it were—for it is not—patrimonial property of the City of Manila, the same—as a creature of Congress, which may abolish said municipal corporation and assume the power to administer directly the patrimony of the City, *for the benefit of its inhabitants*—cannot so use or dispose of said alley as to defeat the policy set forth in said Article 638 by the very legal creator of said political unit; (III Dillon on Municipal Corporations, pp. 1769-1771, 1781-1783, 1803-1804.)

It is urged, however, that the absence of authority of the Municipal Board of Manila has been cured by the fact that Ordinance No. 3470 had been approved by the National Urban Planning Commission. This pretense is untenable for:

1. In the case of University of the East vs. The City of Manila (96 Phil., 316), decided on December 23, 1954, we held, in effect, that the grant of powers to the National Urban Planning Commission, under Executive Orders Nos. 98 and 367, amounted to an undue delegation of legislative powers, for lack of "specific standards and limitations to guide the commission in the, exercise of the wide discretion granted to it."

2. Said Commission created by Executive Order No. 98, dated March 11, 1946, pursuant to the emergency powers of the President under Commonwealth Act No. 671, could not possibly confer upon the City of Manila any power denied thereto by its New Charter—Republic Act No. 409—not only because said emergency powers became inoperative as soon as Congress met in regular sessions after the liberation of the Philippines (Araneta *vs.* Dinglasan, Rodriguez *vs.* Treasurer of the Philippines, Guerrero *vs.* Com. of Customs, and Barredo *vs.* Commission on Elections, 45 Off. Gaz., 4411,4419; Rodriguez *vs.* Gella, 49 Off. Gaz., 465), but, also, because in case of conflict between said executive order, dated March 11, 1946, and the aforementioned Republic Act No. 409, which was approved, and became effective, on June 18, 1949, the latter must prevail, being posterior in point of time, as well as an act of the principal (in relation to the emergency powers delegated to the President, by Commonwealth Act No. 671), which must prevail over that of the agent.

3. Pursuant to said executive order, the acts of municipal corporations, relative to the reconstruction and development of urban areas—even if within the scope of the general authority vested in said local governments by the charters thereof—shall be ineffective unless approved by the National Urban Planning Commission, or in accordance with the plans adopted or regulations issued by the same. In other words, the purpose of said executive order was *not* to enlarge the powers of local governments, but to *qualify and limit* the same, with a view to accomplishing a coordinated, adjusted, harmonious reconstruction and development of said urban areas.

4. Properties devoted to public use, such as public streets, alleys and parks are presumed to belong to the State. Municipal corporations may not acquire the same, as patrimonial property, without a grant from the National Government, the title of which may not be divested by prescription (Municipality of Tigbauan *vs.* Director of Lands, 35 Phil., 584). Hence, such corporations may not register a public *plaza* (Nicolas *vs.* Jose, 6 Phil., 598). A local government may not even lease the same (Municipality of Cavite *vs.* Rojas, 30 Phil., 602). Obviously, it may not establish title thereto, adverse to the State, by withdrawing the plaza—and, hence, an alley—from public use and declaring the same to be patrimonial property of the municipality or city concerned, without express, or, at least, clear grant of authority therefor by Congress.

5. In fact, the Department of Engineering and Public Works of the City of Manila had objected to the lease in question, upon the ground that Callejon del Carmen is communal property. In its 1st indorsement of June 4, 1953, to the City Mayor, said department used the following language:

> "1. Records in the present lease of Genato Commercial Corporation of a portion of City property measuring 709.27 square meters, more or less, show that *this Office had consistently been strongly against the lease of this City property*. Even before the passage of Ordinance No. 3470 (withdrawing from public use those portions of Callejon del Carmen, Quiapo, adjacent to the premises of Genato Commercial Corporations; declaring the same as patrimonial property of the government of the City of Manila, and authorizing the lease of said City property with an aggregate area of 709.27 square meters to Genato Commercial Corporation at a monthly rental of P0.20 per square meter), *this office had voiced its vigorous protest to the lease of this City property to Genato Commercial Corporation several times, in view of the fact that the lots applied for are*

> *communal property which can not be leased or otherwise disposed of* (Cavite *vs.* Roxas, 30 Phil., 602.) *This Office had registered its strong objection to the lease of this property as per our 2nd Indorsement dated* Aug. 2, 1951, 4th Indorsement dated August 7, 1951 and 3rd Indorsement dated August 27, 1951, *all of which were submitted by this Office prior to the enactment of Ordinance 3470 on September 28, 1951 and its subsequent approval on October 3, 1951*. * * * It can, therefore, clearly be seen from the foregoing, that *this Office had been strongly against the lease of this City property in view of the fact that this is a communal property*. The property herein applied by Mr. Francisco G. Genato is also communal property of the City of Manila and *disapproval of the same is strongly recommended*." (Exhibit C, pp. 4-5, par. 1, Folder of Exhibits; italics supplied.)

Wherefore, the decision appealed from is hereby reversed and another one shall be entered declaring Ordinance No. 3470, as well as the contract of lease in dispute, null and void, with costs against the respondents. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angela, Labrador, Reyes, J. B. L., and *Endencia, JJ.,* concur.

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[1] "* * * But the distinction between construing a municipal charter or a legislative act granting power to a municipal corporation should be observed. 'To construe a constitution for the purpose of ascertaining whether under it a power can be granted is not the same thing as construing a charter when it is conceded a power can be constitutionally conferred, and the only inquiry is whether it has in fact been granted.' The charter or statute by virtue of which a municipal corporation is organized and created is its organic law and the coropration can do no act nor make any contract not authorized thereby. All acts beyond the scope of the power granted are void. In brief, a municipal charter is generally construed as a grant and, not a limitation of power, and therefore, power to pass an ordinance must be found in the charter in *express* language or.arise by *necessary* implication. If the charter 'does not *explicitly* or inferentially contain such grant', the ordinance *is not authorized*." (I The Law of Municipal Corporations by McQuillin, 2d. ed., 967.)

[2] "The extent of the powers of municipalities, whether express, implied, or indispensable, is one of construction. And here the *fundamental* and *universal* rule, which is as reasonable as it is necessary, is, that while the construction is to be just, seeking first of all for the

legislative intent in order to give it fair effect, yet *any ambiguity or fair, reasonable, substantial doubt* as to the extent of the power is to be determined *in favor of the State* or general public, and *against the State's grantee*." (I Dillon on Municipal Corporations, 5th ed., 462; italics supplied.)

"The judicial decisions recognize certain general rules of construction. One is that the charter of a corporation is the measure of its powers, and the *enumeration of those powers implies the exclusion of all others*. Another is, if there is a fair, reasonable doubt concerning the existence of the power in the charter, it will be resolved *against the* corporation, and the exercise of the power will be *denied*. Thus power conferred by charter to enact ordinances on specified subjects is to be construed *strictly*, and the exercise of such power must be confined within the general principles of the law applicable to such subjects." (The Law of Municipal Corporations by McQuillin [2nd ed.], Vol. I, pp. 968-969; italics supplied.)

"The policy of the law is to require of municipal corporations a reasonably strict *observance* of their powers. Therefore, the courts incline to adopt a *strict* rather than a liberal construction.

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"* * * As a general proposition, only such powers and rights can be exercised under grants of the legislature to corporations, whether public or private, as are *clearly* comprehended within the terms of the act or derived therefrom by *necessary* implication, regard being had to the objects of the grants.

"Since municipal powers are required to be conferred in plain, unambiguous terms, the general well-settled rule of construction is that a *doubtful power is a power denied*. That is any ambiguity or doubt arising out of the terms employed in the grant of power must be resolved against the *corporation* and in favor of the public." (Do., Do., pp. 1017, 1018-1021; italics supplied.)

"The rule is generally stated, that the scope of sovereignty delegated to municipal corporations should not be enlarged by liberal construction. The powers conferred are stritcly construed, and any fair, substantial, and reasonable doubt concerning the existence of any power, or any ambiguity in the statute upon which the assertion of such power rests, is to be resolved *against the corporation*, and the power denied." (37 Am. Jur. 725; italics

supplied.)

"As a general rule, the powers of a municipal corporation are to be *strictly* construed, and any ambiguity or reasonable doubt is to be resolved *against the grant*.

"The powers of municipal corporations are *not* to be enlarged, as a general rule, by liberal construction. * * * generally it is held that the powers of municipal corporations are to be *strictly* construed." (62 C. J. S. 263; italics supplied.)

[3] Whether the fee of the street be in the municipality in trust of the public use, or in the adjoining proprietor it is, in either case, of *the essence of the street that it is public*, and hence, as we have already shown, *under the paramount control of the legislature as the representative of the public. Streets do not belong to the city or town within which they are situated, although acquired, by the exercise of the right of eminent domain and the damages paid out of the corporation treasury. The authority of municipalities over streets they derive, as they derive all their other powers, from the legislature—from charter or statute.* The fundamental idea of a street is net only that it is public, but *public for all purposes of free and unobstructed passage, which is its chief and .primary, but no means sole, use*." (III Dillon on Municipal Corporations, p. 1849; italics supplied.)

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