

104 Phil. 28

[G. R. No. L-10470. June 26, 1958]

**SERAFIN SALDAÑA, PLAINTIFF AND APPELLANT, VS. CITY OF ILOILO,
DEFENDANT AND APPELLEE.**

D E C I S I O N

MONTEMAYOR, J.:

Serafin Saldaña is appealing the decision of the Court of First Instance of Iloilo in Civil Case No. 2236, dismissing his complaint against the City of Iloilo, for the refund of taxes paid by him under protest, and upholding the legality of Ordinance No. 28, Series of 1946, as amended by Ordinance No. 30, same series of the defendant City.

On May 25, 1946, the defendant City of Iloilo promulgated Ordinance No. 28, series of 1946, which for purposes of reference we reproduce below:

“ORDINANCE No. 28 “

“AN ORDINANCE REGULATING THE EXIT OF FOOD SUPPLY AND LABOR ANIMALS AND IMPOSING PERMIT FEE THEREFOR.

“Be it ordained by the Municipal Board of the City of Iloilo, that:

“ARTICLE 1.—For the purpose of regulating, during this state of emergency, the exit of food supply and labor animals in order to avert shortage of the same in the City of Iloilo, it is strictly prohibited to send outside of the City of Iloilo, without first obtaining the necessary license permit from the Mayor, the following:

Large cattle, pigs, goats, sheep or the like;
Domestic fowls, eggs;
Fish, whether fresh, salted or dried;
Milkfish (semilla), bagoon (guinamos, crabs, prawn or the like);

Fruits, such as bananas, melon, papayas or the like.

“ART. 2.—The City Treasurer shall, for issuance of license permit required in article one hereof, collect a fee as follows:

Large cattle, whether alive or slaughtered, P10 per head.

Pigs, goats, and sheep, whether alive or slaughtered, P5 each.

Chicken and other domestic fowls, whether alive or dressed—; P0.50 each.

Eggs, P2.00 per hundred or P0.02 each. Fish, whether fresh, dried or salted, P0.20 per kilo.

Bagoon (guinamos) P0.10 per kilo. Crabs, prawn or the like, P0.20 per kilo.

Milkfish (semilla), P2 per pot.

Banana, P2, per hundred bunches or P0.02 per bunch.

Other fruits not mentioned herein—P0.02 per kilo.

“Art. 3.—It shall be unlawful for any carrier whether land, water, or air, to load any of the articles mentioned herein which is not provided with the corresponding permit as required by this ordinance.

“Art. 4.—Violation of this ordinance shall be punished with a fine of not less than One Hundred (P100) Pesos, or more than Two Hundred (P200) Pesos, imprisonment of not less than ten (10) days but not exceeding; six (6) months and to suffer subsidiary imprisonment in case of insolvency to pay the fine.” * * *

Ordinance No. 30, passed on June 4, 1946, amended Ordinance No. 28 by reducing the fees for each chicken from P.50 to P.20, eggs from P2 to P1 per hundred, and for fish from P.20 to P.10 per kilo, bananas from P2 to P1 per hundred bunches etc. Under said ordinances, Saldaña had been paying, though under protest, so-called fees on fish bought in the City of Iloilo and sent by him to Manila by plane, during the period from September 16, 1946 to December 6, 1946, totalling P1,359.80.

On September 17, 1951, plaintiff commenced the present proceedings by complaint for the reimbursement to him of the said amount with interest, on the ground that the ordinances in question were illegal, null and void, having been enacted beyond the powers of the Municipal Board of the City. In its answer, the defendant contended that the imposition and collection of the municipal licenses were within the power and duties of the Municipal Board in the exercise of its police power. The parties submitted an agreed statement of facts to the

effect that during the period above-mentioned, Saldaña had sent fish out of Iloilo City to Manila, for the sending of which, the City collected P1,359.80 under the two ordinances in question, and that the payment of said amount was made under protest. On the basis of the agreed statement of facts, the lower court rendered the decision now appealed to us, holding that Ordinance No. 28 as amended was valid that the purpose of the said ordinances was to regulate the exit of food supply and labor animals from the city of Iloilo and their sale beyond city limits, and falls squarely within the provisions of paragraph (aa), Section 21 of the Charter of the City, namely, Commonwealth Act No. 158; that the ordinance does not restrict trade but only regulates the business of purchase of foodstuffs for the purpose of taking them outside, with the purpose of averting the scarcity of foodstuffs; that the imposition and collection of the license fees provided in the said ordinance was included within the police power and that said fees were reasonable amounts, necessary to cover the expenses in the issuance of the licenses and the cost of the necessary inspection or police surveillance.

One question involved in the appeal is whether the license fees imposed and collected were in reality taxes. The following authorities are illuminating:

“* * *. The differences between the license and the property tax are well established. The license represents the permission conceded to do an act, is not supposed to be imposed for revenue, and is in the main for police purposes. A property tax, on the other hand, is a tax in the ordinary sense, assessed according to the value of property.” (City of Manila vs. Tanquintic, 58 Phil. 297, 300).

“* * *. Estos dos ternrinos ‘derechos’ e ‘impuesto’ no entrañan el mismo concepto, porque Impuestos o Taxes son, segun todas las autoridades conocidas, ‘an enforced contribution of money or other property assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state, on persons or property within its jurisdiction, for the purpose of defraying the public expenses’ (26 R. C. L. par. 2, page 13); or ‘a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or state; burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes’ (61 C. J., 65); y Derechos o Fees, son por otra parte, ‘a reward or compensation allowed by law to an officer for specific services performed by him in the discharge of his official duties; a sum

certain given for a particular service; the sum prescribed by law as charge for services rendered by public officers' (25 C. J., 1009)." (Manila Electric Co. vs. Auditor General, et al., 73 Phil. 128, 133).

"* * *. So-called license taxes are of two kinds. The one is a tax for the purpose of revenue. The other, which is, strictly speaking, not a tax at all but merely an exercise of the police power, is a fee imposed for the purpose of regulation. * * * But a charge of a fixed sum which bears no relation to the cost of inspection and which is payable into the general revenue of the state is a tax rather than an exercise of the police power." (Cooley, Taxation, 4th ed., Vol. I, pp. 97-98).

Judging from the amount of the fees fixed in the ordinances in question, we do not hesitate to find and to hold that the so-called fees were in reality taxes for city revenue. For instance, the P10.00 fee for every head of large cattle, whether alive or slaughtered, and the P5.00 fee for every pig, goat, or sheep, whether alive or slaughtered, cannot possibly be considered as mere expense incurred for, or the cost of the inspection of each animal and the issuance of the corresponding permit. If a pig, goat, or sheep costs, say, P15 or even P20, then the P5.00 fee would constitute quite a considerable slice or portion of said cost; and if the animals and articles listed in the ordinances were sent out from the City of Iloilo in large quantities and numbers, there would be no doubt that the fees collected would amount to a sizable sum and augment greatly the revenues of the municipal corporation, way in excess of the cost of inspections and the issuance of the permits.

Another important question is that Article 1 of the ordinance also strictly prohibits the sending out of the City of Iloilo, of the animals and articles enumerated therein, like large cattle, pigs, fowl, fish, eggs, fruits, etc., without first obtaining the necessary license permit from the mayor; and Article 3 declares it unlawful for any carrier whether land, water or air, to load any of said animals or articles without the corresponding permit. The ordinance fails to provide for any regulations or conditions under which the permit can be granted or denied. In other words, the mayor has absolute power to refuse to issue any permit, practically making him absolute dictator over the subject matter. With merely telling the applicant and prospective licensee that said animals and articles are needed in the City of Iloilo, the mayor could refuse to grant the permit

To realize the danger of the grant of said absolute power is not difficult.

As to the reasonableness of the prohibition of selling and taking out of the City of Iloilo of

any of the animals and articles enumerated in the ordinance, appellant asks us to consider or take judicial notice of the fact that those animals and articles are not all produced in the City of Iloilo, but come from other towns of the province, even from other provinces adjacent, and are taken to the City of Iloilo only for the purpose of transportation to other places, like Manila. In other words, they are not brought into the City of Iloilo for the consumption of the residents thereof, but for export to other places. But once inside the city limits, under the ordinance, the mayor takes absolute control and has jurisdiction to allow or disallow their being taken out of the city, and in case he issues the permit for their being taken away, taxes are imposed thereon under the guise of license fees.

As correctly argued by the appellant, nowhere in the charter of the defendant City is it authorized to regulate and collect fees or taxes for, the taking out of the city, of animals and articles listed in the ordinance. On the other hand, a municipal corporation like the defendant City has no inherent power of taxation. To enact a valid ordinance, the City must find in its charter the power to do so, for said power cannot be assumed.

“A municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. Its charter must plainly show an intent to confer that power or the corporation cannot assume it. And the power when granted is to be construed *strictissimi juris*. Any doubt or ambiguity arising out of the term used must be resolved against the corporation.” (Santos Lumber Co. vs. City of Cebu, et al., 102 Phil., 870; See also Arong vs. Raffiñan, 98 Phil., 422).

Aside from this lack of inherent power of taxation by a municipal corporation, Section 2287 of the Revised Administrative Code provides that municipal revenue obtainable by taxation shall be derived from such sources only as are expressly authorized by law; and it further provides, and this is very important, that:

“It shall not be in the power of the municipal council to impose a tax in any form whatever upon goods and merchandise carried into the municipality, or out of the same, and any attempt to impose an import or export tax upon such goods in the guise of an unreasonable charge for wharfage, use of bridges or otherwise, shall be void.” (Italics supplied).

This last provision is reproduced in Section 2629, of the same Revised Administrative Code,

entitled "General Rules for Municipal Taxation and Licenses."

In conclusion, we find that the ordinance in question as amended, is ultra vires, enacted beyond the general powers of a municipal corporation and not authorized by the defendant-appellee's charter, and consequently null and void; that the prohibition against taking animals and articles out of the City of Iloilo without permit of the mayor is in restraint of trade and a curtailment of the rights of the owners of the said animals and articles to freely sell and of prospective purchasers to buy and dispose of them without the city limits in the ordinary course of commerce and trade; that the fees imposed in the said ordinances are in fact taxes not only unauthorized by the law or the charter of defendant City, but also in contravention of the provisions of Sections 2287 and 2629 of the Revised Administrative Code, which prohibit municipal corporations from imposing any tax in any form upon goods and merchandise carried into or out of the town or City.

In view of the foregoing, the appealed decision is hereby reversed and the City of Iloilo is hereby ordered to reimburse plaintiff the amount of P1,359.80, with legal interest and costs.

Paras, C. J., Bengzon, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.