

104 Phil. 302

[G. R. No. L-12662. August 18, 1958]

CHUA LAO, ETC., ET AL., PETITIONERS AND APPELLANTS, VS. HON. CIPRIANO A. RAYMUNDO, AS MAYOR OF THE MUNICIPALITY OF PASIG, RIZAL, ET AL., RESPONDENTS AND APPELLEES.

D E C I S I O N

FELIX, J.:

Chua Lao, Cheng Kee Tek, Go Keng Bon, Hai Hing, Chua Kee, Chua Gui, Lim Chuan, Lee Tiong, Chua Kee Kim and Teng Guan, all Chinese citizens, are the holders of stalls, Nos. 69, 66, 67, 68, 59, 70, 71, 75, 80 and 83, respectively, in the meat section of the public market of Pasig, Rizal, allegedly even before the outbreak of the Second World War, and were duly licensed to engage in the retail business. The meat section of the aforesaid public market has 54 stalls; as of 1955, 33 of them were actually occupied—23 by Filipinos and 10 by Chinese—and 21 were vacant.

On January 8, 1955, prompted by a letter sent by Filipino meat vendors calling attention to the fact that there were alien stallholders in the public market, the Municipal Council of Pasig, Rizal, passed and approved Resolution No. 5, series of 1955, declaring all the stalls in the meat section of the public market of said municipality vacant starting February 1, 1955 (Exhibit A). But 15 stallholders (Filipinos) in the same section took exception to the measure for the reason that if the stalls that they were occupying would be subjected to applications and be disposed of by lot, they may not be able to get the same places. Being apprised of this situation, the Municipal Council, pursuant to Republic Act 37 as implemented by Department Orders Nos. 32 and 42, enacted Resolution No. 10 dated January 22, 1955, amending Resolution No. 5, declaring as vacant the stalls in the meat section of the public market of Pasig, Rizal held by aliens, effective February 10, 1955, for distribution among

Filipino applicants. It was also provided that only if there would be stalls unapplied for by Filipinos or in the absence of any Filipino applicant would aliens be allowed to lease any of them (Exhibit A—1).

As the Municipal Mayor and the Municipal Treasurer of Pasig, Rizal, were set to enforce the said resolution, the Chinese stallholders filed a petition for prohibition with the Court of First Instance of Rizal, Pasig branch, naming said officials as respondents (Civil Case No. 3437), alleging that the aforesaid resolution was unduly discriminatory, oppressive and prejudicial to their interest, and prayed that respondents be definitely enjoined from enforcing resolutions Nos. 5 and 10, series of 1955, on the ground that they were unconstitutional. And upon petitioners' filing of bond for P5,000, a writ of preliminary injunction was issued by the Court enjoining respondents from enforcing the disputed resolutions.

On March 30, 1955, after the respondents had filed their answer, the parties submitted a stipulation of facts providing, among others:

* * * * *

4. That the stalls occupied by the petitioners were declared vacant by the municipal council, pursuant to Resolution No. 5, as amended by No. 10, Series of 1955, of the municipal council of Pasig, Rizal.

And pursuant to that resolution, the Municipal Treasurer declared the said 10 stalls occupied by the petitioners, vacant, and set a date for the reception of applications for leases up to February 20," 1955. As a consequence of that call of the Municipal Treasurer, twelve (12) applications were filed by Filipino citizens for the ten (10) stalls occupied by the petitioners.

5. That out of the 21 vacant stalls, five (5) are already leased to Filipino citizens permanently, who have paid the corresponding fees. The lease have been executed after the issuance of the writ of preliminary injunction.

The remaining sixteen (16) vacant stalls in the meat section of the said public market of Pasig, Rizal, have been applied for by 16 Filipino applicants, in

accordance with the standing rules and regulations or ordinances of the Municipal Council on March 4, 1955.

6. That the twelve (12) Filipino applicants for the stalls occupied by the petitioners are different persons from those who applied for the sixteen (16) vacant stalls, except one, Benjamin Alberto, who applied also for one of the sixteen (16) stalls.
7. That the twelve (12) applicants for the stalls occupied by the herein petitioners filed their applications for the said stalls prior to the institutions of this case. However, no leases for the same were awarded in view of the writ of preliminary injunction.
8. That the stalls occupied by the herein petitioners are equally as good as the other forty-four (44) market stalls in the same meat section of the said public market of Pasig, in the sense that they are made of the same materials, cement, and the same size and the same charges are collected by the Municipal Treasurer of the said municipality of Pasig, Rizal.

Based on the aforesaid agreement, the lower Court rendered judgment dated May 21, 1955, holding that the enactment of the ordinances in question was a valid exercise of the power of the Municipal Council pursuant to Administrative Order No. 32 of the Department of Finance, as amended, after finding that the 10 stalls occupied by Chinese were applied for by Filipinos, and that of the 21 originally existing vacant stalls, 5 had already been leased to Filipinos and the remaining 16 also duly applied for.

On June 15, 1955, petitioners filed a motion for new trial on the strength of a written statement by the respondent Municipal Treasurer dated June 14, 1955, to the effect that of the 5 Filipinos who were awarded lease of stalls after the institution of that action, 1 paid the fee only up to March 31, 1955, and the remaining 4, while paying the corresponding fees, did not regularly occupy or utilize the same. It was further declared that as of March 31, 1955, 17 stalls in the same section remained vacant. As said motion was denied, petitioners appealed to the Court of Appeals. The case, however, was certified to this Court for the reason that the main question refers to the constitutionality of

Resolutions 5 and 10, series of 1955, of the Municipal Council of Pasig, Rizal, and therefore falls within the jurisdiction of the Supreme Court (Section 17—1, Republic Act 296).

The questions presented by the instant action are: (1) whether or not the aforementioned Resolutions of the Municipal Council of Pasig are discriminatory and oppressive to be violative of the Constitution; and (2) whether or not the lower Court erred in denying petitioners' motion for new trial.

It is clear that while it is true that there were 21 vacant stalls in the meat section of the public market of Pasig, Rizal, equally as good as any other stall in the same market, the 10 stalls occupied by aliens were applied for by Filipinos, in view of which, the Municipal Council had to enact the disputed Resolutions. In assailing the constitutionality of said measures, petitioners-appellants contend that the purpose of the aforesaid enactments apparently was to eject them from their place of business and deprive them of their means of livelihood.

The Municipal Council of Pasig, Rizal, is under the law empowered "to establish or authorize the establishment of * * * markets, and inspect and regulate thfr use of the same" (Section 2442-[q], Revised Administrative Code). Section 2238 of the same legal body, which prescribes the general powers of municipal councils, also vests them with authority to "enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the municipality and the inhabitants thereof." But for a municipal ordinance to be valid and have force and effect, it must not only be within the powers of the council to enact but same must not be in conflict with or repugnant to the general law. In the case at bar, the Council invoked the provisions of Republic Act 37 as basis of the resolutions in question, and considering that appellants did not contest, much less prove, that the said resolutions were not in conformity with said law or that they were not within the power of the council to enact, the question that necessarily comes up is whether Republic Act 37, nationalizing the occupancy and use of stalls in public markets by giving preference to citizens of this Republic in matters of lease

thereof (Section 1, Republic Act 37) is constitutional or not. This question has already been settled and determined in a previous case when several Chinese stallholders, claiming that the enforcement of Republic Act 37 would infringe their right to due process and equal protection clause of the Constitution, filed an action for prohibition against the Secretary of Finance seeking to restrain and prohibit the latter from implementing said law. In upholding the validity of the aforesaid Act and the administrative order of the Secretary of Finance, this Court pronounced:

“Public markets are public services or utilities as much as the public supply and sale of gas, gasoline, electricity, water and public transportation are. Under the Constitution, the operation of all public service are reserved to Filipino citizens and to corporations and associations sixty *per centum* of the capital of which belongs to Filipino citizens.

In impugning the validity of Republic Act No. 37, appellees invoke general guarantees in the Bill of Rights, such as the due process of law and the equal protection of the laws. Even if their position could be supported under said general guarantees, * * * said guarantees have to give way to the specific provision above quoted, which reserves to Filipino citizens the operation of public services or utilities.

Furthermore, the establishment, maintenance, and operation of public markets, as much as public works, are part of the functions of government. The privilege of participating in said functions, such as that of occupying public market stalls, is not among the fundamental rights or even among the general civil rights protected by the guarantees of the Bill of Rights. The exercise or enjoyment of public functions are reserved to a class of persons possessing the specific qualifications required by law. Such is the case of the privilege to vote, to occupy a government position, or to participate in public works. They are reserved exclusively to citizens. Public functions are powers of national sovereignty and it is elementary that such sovereignty be exercised exclusively by nationals”. (Co Chiong vs. Cuaderno, 83 Phil., 242; 46 Off. Gaz. 4833).

Petitioners-appellants, however, maintain that this right to preference could

only be availed of where there are both Filipino and alien applicants to the same stall or stalls, but in cases where there are other vacant stalls, equally as good as those already occupied by aliens which could be applied for and awarded to Filipino applicants, the latter cannot single out those held by aliens and have them declared vacant on the theory that they are entitled to preference under the law. To do so, appellants argue, would be highly discriminatory and oppressive.

In enacting Republic Act No. 37, the Legislature, obviously prompted by a desire to rid or relieve this country of the shackles of foreign economic control and domination, intended to give to its citizenry monopoly of the retail business in the public markets—an aspiration which this Court declared to be within the limits of legislative authority (*Ichong vs. Hernandez*, 101 Phil., 1155). For this reason, said law specifically provides:

“SECTION 1.—All citizens of the Philippines shall have preference in the lease of public market stalls”. Rep. Act No. 37).

It may be noted that the aforesaid Act does not specify when the privilege allowed by Republic Act No. 37 accrues. The law, apparently, is applicable whenever there is a conflict of interest between Filipino applicants and aliens for lease of stalls in public markets, in which situation the right to preference immediately arises. Accordingly where the law does not distinguish, we should not make any distinction. In the case at bar, it does not appear how the market fees for the stalls in question are collected, and considering that the lease therefor terminates everyday, if the fee is paid daily, or every month or every the state, through the municipal council, upon the expiration of such lease, and considering further that the resolutions terminating the lease granted to appellants herein, by declaring the stalls occupied by them as vacant, are not repugnant or contradictory to any general law, there is no plausible reason why the decision of the lower court and the order denying appellants’ motion for new trial should not be affirmed.

Wherefore, the decision appealed from is hereby affirmed, with costs against appellants. It is so ordered.

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

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