104 Phil. 443

[G. R. No. L-12172. August 29, 1958]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JUAN F. FAJARDO, ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

REYES, J.B.L., J.:
Appeal from the decision of the Court of First Instance of Camarines Sur convicting defendants-appellants Juan F. Fajardo and Pedro Babilonia of a violation of Ordinance No. 7, Series of 1950, of the Municipality of Baao, Camarines Sur, for having constructed without a permit from the municipal mayor a building that destroys the view of the public plaza.

It appears that on August 15, 1950, during the incumbency of defendant-appellant Juan F. Fajardo as mayor of the municipality of Baao, Camarines Sur, the municipal council passed the ordinance in question providing as follows:

> "SECTION 1. Any person or persons who will construct or repair a building should, before constructing or repairing, obtain a written permit from the Municipal Mayor.
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> SEC. 2. A fee of not less than P2.00 should be charged for each building permit and P1.00 for each repair permit issued.
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> SEC. 3. PENALTY—Any violation of the provisions of the above, this ordinance, shall make the violation liable to pay a fine of not less than P25 nor more than P50 or imprisonment of not less than 12 days nor more than 24 days or both, at the discretion of the court. If said building destroys the view of the Public Plaza or occupies any public property, it shall be removed at the expense of the owner of the building or house.
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> SEC. 4. EFFECTIVITY—This ordinance shall take effect on its approval." (Orig.

Recs., P. 3)

Four years later, after the term of appellant Fajardo as mayor had expired, he and his son-in-law, appellant Babilonia, filed a written request with the incumbent municipal mayor for a permit to construct a building adjacent to their gasoline station on a parcel of land registered in Fajardo's name, located along the national highway and separated from the public plaza by a creek (Exh. D). On January 16, 1954, the request was denied, for the reason among others that the proposed building would destroy the view or beauty of the public plaza (Exh. E). On January 18, 1954, defendants reiterated their request for a building permit (Exh. 3), but again the request was turned down by the mayor. Whereupon, appellants proceeded with the construction of the building without a permit, because they needed a place of residence very badly, their former house having been destroyed by a typhoon and hitherto they had been living on leased property.

On February 26, 1954, appellants were charged before and convicted by the justice of the peace court of Baao, Camarines Sur, for violation of the ordinance in question. Defendants appealed to the Court of First Instance, which affirmed the conviction, and sentenced appellants to pay a fine of P35 each and the costs, as well as to demolish the building in question because it destroys the view of the public plaza of Baao, in that "it hinders the view of travelers from the National Highway to the said public plaza." From this decision, the accused appealed to the Court of Appeals, but the latter forwarded the records to us because the appeal attacks the constitutionality of the ordinance in question.

We find that the appealed conviction can not stand.

A first objection to the validity of the ordinance in question is that under it the mayor has absolute discretion to issue or deny a permit. The ordinance fails to state any policy, or to set up any standard to guide or limit the mayor's action. No purpose to be attained by requiring the permit is expressed; no conditions for its grant or refusal are enumerated. It is not merely a case of deficient standards; standards are entirely lacking. The ordinance thus confers upon the mayor arbitrary and unrestricted power to grant or deny the issuance of building permits, and it is a settled rule that such an undefined and unlimited delegation of power to allow or prevent an activity, per se lawful, is invalid (People vs. Vera, 65 Phil., 56; Primicias vs. Fugoso, 80 Phil., 71; Schloss Poster Adv. Co.vs. Rock Hill, 2 SE (2d) 392).

The ordinance in question in no way controls or guides the discretion vested

> thereby in the respondents. It prescribes no uniform rule upon which the special permission of the city is to be granted. Thus the city is clothed with the uncontrolled" power to capriciously grant the privilege to some and deny it to others; to refuse the application of one landowner or lessee and to grant that of another, when for all material purposes, the two are applying for precisely the same privileges under the same circumstances. The danger of such an ordinance is that it makes possible arbitrary discriminations and abuses in its execution, depending upon no conditions or qualifications whatever, other than the unregulated arbitrary will of the city authorities as the touchstone by which its validity is to be tested. Fundamental rights under our government do not depend for their existence upon such a slender and uncertain thread. Ordinances which thus invest a city council with a discretion which is purely arbitrary; and which may be exercised in the interest of a favored few, are unreasonable and invalid. The ordinance should have established a rule by which its impartial enforcement could be secured. All of the authorities cited above sustain this conclusion."
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> "As was said in City of Richmond vs. Dudley, 129 Ind. 112, 28 N. E. 312, 314 13 L. R. A. 587, 28 Am. St. Rep. 180: 'It seems from the foregoing authorities to be well established that municipal ordinances placing restrictions upon lawful conduct or the lawful use of property must, in order to be valid, specify the rules and conditions to be observed in such conduct or business; and must admit of the exercise of the privilege of all citizens alike who will comply with such rules and conditions; and must not admit of the exercise, or of an opportunity for the exercise, of any arbitrary discrimination by the municipal authorities between citizens who will so comply." (Schloss Poster Adv. Co., Inc. vs. City of Rock Hill, et al, 2 SE (2d), pp. 394-395).

It is contended, on the other hand, that the mayor can refuse a permit solely in case that the proposed building "destroys the view of the public plaza or occupies any public property" (as stated in its section 3) ; and in fact, the refusal of the Mayor of Baao to issue a building permit to the appellant was predicated on the ground that the proposed building would "destroy the view of the public plaza" by preventing its being seen from the public highway. Even thus interpreted, the ordinance is unreasonable and oppressive, in that it operates to permanently deprive appellants of the right to use their own property; hence, it oversteps

the bounds of police power, and amounts to a taking of appellants property without just compensation. We do not overlook that the modern tendency is to regard the beautification of neighborhoods as conducive to the comfort and happiness of residents. But while property may be regulated in the interest of the general welfare, and in its pursuit, the State may prohibit structures offensive to the sight (Churchill and Tait vs. Rafferty, 32 Phil. 580), the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property and practically confiscate them solely to preserve or assure the aesthetic appearance of the community. As the case now stands, every structure that may be erected on appellants' land, regardless of its own beauty, stands condemned under the ordinance in question, because it would interfere with the view of the public plaza from the highway. The appellants would, in effect, be constrained to let their land remain idle and unused for the obvious purpose for which it is best suited, being urban in character. To legally achieve that result, the municipality must give appellants just compensation and an opportunity to be heard.

> "An ordinance which *permanently* so restricts the use of property that it can not be used for any reasonable purpose goes, it is plain, beyond regulation and must be recognized as a taking of the property. The only substantial difference, in such case, between restriction and actual taking, is that the restriction leaves the owner subject to the burden of payment of taxation, while outright confiscation would relieve him of that burden." (Arverne Bay Constr. Co. vs. Thatcher (N.Y.) 117 ALR. 1110, 1116).
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> 'A regulation which substantially deprives an owner of all beneficial use of his property is confiscation and is a deprivation within the meaning of the 14th Amendment." (Sundlum vs. Zoning Bd., 145 Atl. 451; also Eaton vs. Sweeny, 177 NE 412; Taylor vs. Jacksonville, 133 So. 114).
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> "Zoning which admittedly limits property to a use which can not reasonably be made of it cannot be said to set aside such property to a use but constitutes the taking of such property without just compensation. Use of property is an element of ownership therein. Regardless of the opinion of zealots that property may properly, by zoning, be utterly destroyed without compensation, such principle finds no support in the genius of our government nor in the principles of justice as we known them. Such a doctrine shocks the sense of justice. *If it be of public benefit that property remain open and unused, then certainly the public, and not*

> *the private individuals, should bear the cost of reasonable compensation for such property under the rules of law governing the condemnation of private property for public use.* (Tews vs. Woolhiser (1933) 352 111. 212, 185 N.E. 827) (Italics supplied.)

The validity of the ordinance in question was justified by the court below under section 2243, par. (c), of the Revised Administrative Code, as amended. This section provides:

> "SEC. 2243. *Certain legislative powers of discretionary character.*—The municipal council shall have authority to exercise the following discretionary powers:
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> (c) To establish fire limits in populous centers, prescribe the kinds of buildings that may be constructed or repaired within them, and issue permits for the creation or repair thereof, charging a fee which shall be determined by the municipal council and which shall not be less than two pesos for each building permit and one peso for each repair permit issued. The fees collected under the provisions of this subsection shall accrue to the municipal school fund."

Under the provisions of the section above quoted, howeverv the power of the municipal council to require the issuance of building permits rests upon its first establishing fire limits in populous parts of the town and prescribing the kinds of buildings that may be constructed or repaired within them. As there is absolutely no showing in this case that the municipal council had either established fire limits within the municipality or set standards for the kind or kinds of buildings to be constructed or repaired within them before it passed the ordinance in question, it is clear that said ordinance was not conceived and promulgated under the express authority of sec. 2243 (c) aforequoted.

We rule that the regulation in question, Municipal Ordinance No. 7, Series of 1950, of the Municipality of Baao, Camarines Sur, was beyond the authority of said municipality to enact, and is therefore null and void. Hence, the conviction of herein appellants is reversed, and said accused are acquitted, with costs de oficio. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion,

Endencia, and *Felix, JJ.,* concur.

Accused acquitted.

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