

THE CITY OF MANILA, PLAINTIFF AND APPELLANT, VS ARCADIO PALLUGNA, DEFENDANT AND APPELLEE.

G.R. No. L-15305. September 30, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

The City of Manila brought this action before the court of first instance of said city against Arcadio Pallugna to recover the amount of ₱2,923.75 being the difference between what the latter should pay for the operation of seven (7) pinball machines under Ordinance No. 3628 and what he actually paid under Ordinance No. 3347.

Defendant interposed the defense that Ordinance No. 3628 on which plaintiff bases its claim is invalid for having been enacted in excess of the power conferred by law upon it and, as a counterclaim, he claims the amount of ₱735.75 as attorney's fees and expenses of litigation.

The parties submitted a stipulation of facts from which the following may be deduced: that defendant was granted license to operate seven pinball machines during the effectivity of Ordinance No. 3628; that said pinball machines are of the flipper type and defendant had operated them from 1956 to April 24, 1957, having paid for their operation a license fee of ₱12.50 a quarter for each machine, or a total of ₱437.50; that on April 24, 1957, when defendant was notified of the increase in the license fees under Ordinance No. 3628 he retired from business and ceased operating his pinball machines; that on September 6, 1957, defendant was formally advised by the city treasurer to pay a deficiency tax, including surcharge under said ordinance, in the amount of ₱1,983.75 for the operation of said seven pinball machines; and that on September 12, 1957, defendant requested the city treasurer to desist from collecting the aforesaid deficiency tax due to the pendency of a civil case pending in the same court, but the request was unheeded and the present action was brought.

The trial court, on February 23, 1959, rendered decision holding Ordinance No. 3628 null and void following its ruling in some previous cases wherein it held that said ordinance being a tax measure adopted for the purpose of raising revenue is beyond the power of the City of Manila to enact. Accordingly, it dismissed the complaint without costs.

The City of Manila is now appealing from said decision assigning as main error the finding of the trial court that Ordinance No. 3628 is invalid for being a tax measure which cannot be enacted by said city.

In *Uy Ha vs. The City Mayor, et al.*, 108 Phil., 400; 58 Off. Gaz., (37) 5997, this Court held:

"Since Ordinance No. 3628 seeks to regulate and license the operation of 'pinball machines' within the City of Manila upon payment of an annual license of ₱300.00 for each 'pinball machine' the same is ultra vires, it being an exercise of power not granted by law to the intervenor. As already stated, those devices are prohibited by law and as such are not subject to regulation. The attempt, therefore, on the part of the intervenor to collect the sum of ₱4,620.00 as unpaid license fees under said ordinance cannot be entertained."

It, therefore, appears that Ordinance No. 3628 is ultra vires, not because it is a tax measure, but because it was

enacted beyond the power granted by law to the City of Manila. Hence, any attempt to collect any license fee under said ordinance is illegal.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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