

**AGUSTIN PANALIGAN, CASIMIRO SEBOLINO, EPIFANIA UDTUJAN,
VALENTIN CAMPOSANO, ANGELES GUANTERO, ESTEBAN JUNTILLA.
CIRIACA DE GALAGAR, MARCOS SAMSON, RAMON HERNANDEZ OR
ARANDES, EP...**

G.R. No. L-9319. September 27, 1957

Ponente: FELIX, J.

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FELIX, J.:

The City of Tacloban and the Treasurer thereof appeal from a decision of the Court of First Instance of Leyte rendered in Civil Case No. 1767 declaring Ordinances Nos. 13 and 18, series of 1949, and Nos. 34 and 42, series of 1952, null and void. The facts of the case are as follows:

On March 26, 1954, AgustIn Panaligan, Casimiro Sebolino, Epifania Udtujan, Valentin Camposano, Angeles Guantero, Esteban Juntilla, Ciriaca de Galagar, Marcos Samson, Ramon Hernandez or Arandes, Epifanio Pabilona and Pedro Rodriguez, all residents; of the City of Tacloban, filed a petition for mandamus With the Court of First Instance of Leyte. The petition alleged that pursuant to Ordinance No. 13, as amended by Ordinance No. 18, series of 1999, and further amended by Ordinances Nos. 34 and 42, series of 1952, imposing inspection fees for every head of hog, cattle and carabao that was shipped or transported between the months of April and December, 1952, from Tacloban to other places, respondents City of Tacloban and the Treasurer thereof collected from petitioners, duly receipted, the following amounts, to wit:

1. AGUSTIN PANALIGAN:

Date

Amount

March 20, 1952

P143.00

April 21 1952

90.00

April 21, 1952

116.00

April 21, 1952

44.00

May 3 1952

110.00

May 10, 1952

102.00

May 12, 1952

86.00

May 17, 1952

92.00

May 24, 1952

122.00

May 31, 1952

122.00

June 7, 1952

120.00

Oct. 1952

60.00

Nov. 18 1952

35.00

Dec. 2, 1952

30.00

P1,418.00

2. CASIMIRO SEBOLINO:

Date

Amount

May 7, 1952

P140.00

June 30 1952

38.00

Aug. 18 1952

280.00

Sept. 10, 1952

20.00

Sept. 27 1952

140.00

Oct. 10, 1952

160.00

Nov. 29, 1952

80.00

P1,200.00

1. EPIFANIA UDTUJAN:

Date

Amount

July 26, 1952

P120.00

Aug. 16, 1952

800.00

Sept. 5, 1952 .

300.00

Sept. 11, 1952

220.00

Sept. 22 1952

100.00

Oct. 13 1952

160.00

Oct. 22 1952

100.00

P1,800.00

4. VALENTIN CAMPOSANO:

Date

Amount

May 5, 1952

P240.00

5. ANGELES GUANTERO:

Date

Amount

Oct. 7, 1952

P200.00

Nov.. 18, 1952

100.00

P300.00

6. ESTEBAN JUNTILLA: .

Date

Amount

5 May 19, 1952

P200.00

7. CIRIACA DE GALAGAR:

Date

Amount

May 8, 1952

P100.00

8. MARCOS SAMSON:

Date

Amount

Apr. 21, 1952

P180.00

June 2, 1952

180.00

P360.00

9. RAMON HERNANDEZ OR ARANDES:

Date

Amount

Apr. 8, 1952

P240.00

June 25, 1952

300.00

P540

10. EPIFANIO PABILONA:

Date

Amount

April 3, 1952

P100.00

11. PEDRO RODRIGUEZ:

Date

Amount

July 23, 1952

P168.00

July 23, 1952

140.00

July 29, 1952

134.00

GRAND TOTAL

P6,700.00;

that the so-called "inspection fee" imposed by said ordinances in reality partook of the nature of an export tax which under Section 2287 of the Administrative Code a municipal council it cannot impose; that for this reason and in virtue of the Department of Finance provincial circular dated April 17, 1947, implementing the aforesaid section of the Administrative Code, the Undersecretary of Finance, in answer to a query by one of the petitioners, rendered an opinion holding that the fees thus collected were illegal and same must be refunded to the taxpayers; "that notwithstanding the fact that this view was subscribed to by the City Treasurer and City Attorney of Tacloban, respondents failed to refund the same to petitioners. Petitioners, therefore, prayed that the ordinances in question be declared null and void; that respondents be ordered to refund to petitioners the respective amounts due them; that every petitioner be awarded moral damages in the amount of P5,000.00 and attorney's fees in the sum of P3,000.00; for costs and for such other relief as may be deemed just and equitable in the premises.

On April 6, 1954, respondents filed a motion to dismiss contending that an action for mandamus was not proper in the case at bar for although administrative officials as the Secretary of Finance, the City Treasurer and the City Attorney formed opinions that the collections made in accordance with the ordinances were null and void, still unless the same were declared illegal by the courts, petitioners acquired no specific, clear and certain legal rights which could be enforced by a special civil action, and that petitioners could have prosecuted the same by means of an ordinary civil case.

This motion was denied by the lower Court on the ground that the Supreme Court had ruled that the question of the constitutionality of a law or order could be entertained in a mandamus proceedings and respondents were thus required to answer the petition in five days from receipt of the order of denial.

Within the prescribed period, respondents filed their answer contending, among other things, that petitioners had not exhausted all the administrative and judicial remedies in the ordinary course of law before resorting to a special civil action; that respondents were willing to make a refund of the amounts collected from petitioners when ordered by the Court to do so, and that the Municipal Board of the City of Tacloban was an indispensable party to the action which should be made a party respondent.

The records show that the parties entered into a stipulation of facts which reads as follows:

- That the parties-petitioners are all of age and residents of the City of Tacloban, represented by Atty. Antonio C. Veloso, and the respondents are the City of Tacloban, represented by the City Mayor, and the City Treasurer, both represented by the City Attorney;
- That the collection of the alleged illegal taxes has been collected and effected by the defunct municipality of Tacloban through the Municipal Treasurer of said municipality, which amounted to P6,700.00, all, supported, by official receipts and (showing) the respective dates of issuance thereof;

- That a demand has been made by the petitioners in person and through their counsel asking for the refund of the alleged illegal taxes, but which the City Treasurer could not properly effect such refund for lack of appropriation;
- That the City Treasurer and the City Mayor, in line with their respective duties enjoined upon them by law which is to approve and effect the refund up to the present the Municipal Board of the City of Tacloban has not appropriated an amount to cover up the refund of the claim of the petitioners and for which reason no refund up to the present has been made;
- That the parties through their respective counsel are willing to submit to the court the determination of the legality of municipal ordinances Nos. 18 and 135 both series of 1952, municipal ordinance No.34, series of 1949, and municipal ordinance No. 42 series of 1949, and the latest ordinance on the matter Which is ordinance No. 18, series of 1952, approved on March 25, 1952, on the basis of the pleadings and the supporting papers thereto, copies of which are hereto attached as Annexes "A", "B", "C", and "D".
- That the parties-petitioners are willing to forego all claims for damages and attorney's fees as contained in paragraph 8 of the petition."

Based on the foregoing stipulation the trial Court rendered decision dated May 27, 1954, declaring the ordinances in question, as last amended by Ordinance No. 18, series of 1952, illegal because they contravened the provisions of Section 2287 of the Revised Administrative Code and, consequently, ordered respondents to provide for the necessary funds with which to reimburse petitioners of the amounts collected from them.

After their motion for reconsideration was denied, respondents brought the matter on appeal to the Court of Appeals but the latter certified the case to Us on the ground that as it involves the validity of Ordinances Nos. 34, 42, 13 and 18 of the City of Tacloban, the appeal should properly be taken to this Court pursuant to Section 14(1) of the Judiciary Act of 1948.

Ordinance No. 18, the latest amendment to Ordinance No. 34 (s-1949) of the City of Tacloban which was approved on March 25, 1952, reads as follows:

MUNICIPAL ORDINANCE NO. 18

AN ORDINANCE AMENDING MUNICIPAL ORDINANCES NOS. 34 and 42, SERIES OF 1949, AND MUNICIPAL ORDINANCE NO. 13, SERIES OF 1952, IMPOSING INSPECTION FEES OF TWO PESOS FOR EACH HOG, TEN PESOS FOR EACH CATTLE AND TWENTY PESOS FOR EACH CARABAO TRANSPORTED TO OTHER PLACES AND PENALTIES FOR THE VIOLATION THEREFOR.

Be it ordained by authority of the Municipal Council of Tacloban, that:

Section 1. No person, commercial firm or corporation shall transport, ship, carry or transfer cattle, carabao, or carabaos, and hog or hogs to any other places from the Port of Tacloban or from any place "within the jurisdiction of the municipality of Tacloban, without first submitting said animals for inspection by the Municipal Mayor or his authorized representative of Tacloban and the Veterinary Officer or Inspector, showing the number of cattle, carabaos or hogs, males or females, their corresponding weights, age and condition and the place where same are to be transported.

Section 2. There will be collected an "inspection fee" of ten pesos for each head of cattle, twenty pesos for each head of carabao and two pesos for each head of hog by the Municipal Treasurer of Tacloban, or his legal representative to be transported, shipped, carried or transferred to other places for which the inspection certificate is issued.

Section 3. Any person, firm or corporation who violates any of the provisions hereof, shall be punished upon, conviction by a fine of not exceeding two hundred pesos., or imprisonment of not exceeding three months, or

both, at the discretion of the Court. In the case of a firm or corporation, the President or Manager, or the person in charge shall be held personally liable and criminally responsible for the violation of this ordinance.

Section 4. This ordinance shall take effect immediately upon its approval.

APPROVED, March 25, 1952.

Section 2287 of the Revised Administrative Code prescribes:

SEC. 2287. FUNDAMENTAL PRINCIPLES GOVERNING MUNICIPAL TAXATION. - x x x.

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. x x.

Considering the provisions of this section, the issue in the instant case is whether the municipal council of Tacloban, which became a city in June, 1952, can impose an "inspection fee" on certain animals shipped or transported from said place to another, and consequently whether or not * the ordinances imposing such "inspection fee" are valid.

Respondents-appellants, treating the amounts collected in the case at bar as license fees, assert that in the determination of the reasonableness, of a license fee, it must be remembered that there are 3 classes of licenses, each with distinct characteristics: (1) licenses for the regulation of useful occupations or enterprises; (2) licenses for the regulation or restriction of non-useful occupations or enterprises; and (3) licenses for revenue (purposes) only. The first 2 classes are based on the exercise of police power and although there are conflict of authority on this point, the better rule on the matter seems to be that the conferred power to regulate and to issue such licenses carries with it the right to fix a license fee (*Cu Unjieng vs. Patstone*, 42 Phil. 818). Respondents maintain that the fees in question fall under the first class of licenses they being required purely as a regulatory measure enacted in the exercise of the police power of the municipal corporation, and the most that the courts can do is merely to reduce the amount of fees if they are deemed excessive, but not to declare the same as illegal.

Granting *arguendo* that the respondent City enacted the questioned ordinances in virtue of its police power and that in the exercise of the same a municipal corporation has the right to grant licenses and impose license fees (*City of Birmingham vs. Hood-McPherson Realty Co.*, 172 So. 114 108 ALR 1140), yet such power may be restricted by statutory provisions, and nowhere in the Charter of the City of Tacloban (Republic Act No. 760, enacted long after the effectivity of the Revised Administrative Code), can be found; any specific provision bestowing on the Municipal Board the power to impose tax or fees of any kind on goods, merchandise or commodities destined to be exported from that City to other parts of the country. Therefore, Section 2287 of the Revised Administrative Code aforequoted, which takes away from the municipal council (or board) the power to impose export taxes, remains to be the rule on the matter. While it is true that Section 14 (e) of Republic Act No. 760 confers on the Municipal Board the power

(e) To fix the tariff of fees and charges for all services rendered by the city, or any of its department, branches or officials,

a close scrutiny of the ordinances complained of reveals that the fees therein imposed are not by reason of the services performed by the Mayor or the Veterinary Officer, but as an imposition on every head of the specified animals to be transported. The fact that the ordinances in question make no reference to the purpose for which they were enacted, and that such purpose was to preserve the public health or welfare of the residents and people of the City of Tacloban is a clear indication that leads Us to believe that the fees exacted were not as "a regulatory measure in the exercise of its police power, but for the purpose of raising revenue under the guise of license or

inspection fees.

In order that an act or ordinance imposing an excise or license tax may be sustained as a valid exercise of the police power, it must be intended to promote or be sufficiently related to the public health, morals, safety or welfare. An act or ordinance imposing a license or license tax under the police power as a means of regulation is valid only when it is within the limits of such power and is intended for regulation, otherwise, it is invalid as where the license or tax is unnecessarily imposed on an occupation or business not inherently subject to police regulation (*Southwest Utility Ice Co. vs. Liebmann*, 52 P. 2d 349), for an act or ordinance imposing a license or license tax for revenue purposes, under the guise of a police or regulatory measure, is invalid (*Southern Fruit Co. vs. Porter*, 199 S.E. 537).

WHEREFORE and on the strength of the foregoing considerations, the decision appealed from is hereby affirmed, without pronouncement as to costs.

IT IS SO ORDERED.

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

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