

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LORETA GOZO, DEFENDANT-APPELLANT.***G.R. No. L-36409. October 26, 1973*

Ponente: FERNANDO, J.

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Appellant seeks to set aside a judgment of the Court of First Instance of Zambales, convicting her of a violation of an ordinance of Olongapo, Zambales, requiring a permit from the municipal mayor for the construction or erection of a building, as well as any modification, alteration, repair or demolition thereof. She questions its validity, or at the very least, its applicability to her, by invoking due process,[1] a contention she would premise on what for her is the teaching of *People v. Fajardo*. [2] If such a ground were far from being impressed with solidity, she stands on quicksand when she would deny the applicability of the ordinance to her, on the pretext that her house was constructed within the naval base leased to the American armed forces. While yielding to the well-settled doctrine that it does not thereby cease to be Philippine territory, she would, in effect, seek to emasculate our sovereign rights by the assertion that we cannot exercise therein administrative jurisdiction. To state the proposition is to make patent how much it is tinged with unorthodoxy. Clearly then, the lower court decision must be affirmed with the sole modification that she is given thirty days from the finality of a judgment to obtain a permit, failing which, she is required to demolish the same.

The facts are undisputed. As set forth in the decision of the lower court: "The accused bought a house and lot located inside the United States Naval Reservation within the territorial jurisdiction of Olongapo City. She demolished the house and built another one in its place, without a building permit from the City Mayor of Olongapo City, because she was told by one Ernesto Evalle, an assistant in the City Mayor's office, as well as by her neighbors in the area, that such building permit was not necessary for the construction of the house. On December 29, 1966, Juan Malones, a building and lot inspector of the City Engineer's Office, Olongapo City, together with Patrolman Ramon Macahilas of the Olongapo City police force apprehended four carpenters working on the house of the accused and they brought the carpenters to the Olongapo City police headquarters for interrogation. * * * After due investigation, Loreta Gozo was charged with violation of Municipal Ordinance No. 14, S. of 1964 with the City Fiscal's Office." [3] The City Court of Olongapo City found her guilty of violating Municipal Ordinance No. 14, Series of 1964 and sentenced her to an imprisonment of one month as well as to pay the costs. The Court of First Instance of Zambales, on appeal, found her guilty on the above facts of violating such municipal ordinance but would sentence her merely to pay a fine of P200.00 and to demolish the house thus erected. She elevated the case to the Court of Appeals but in her brief, she would put in issue the validity of such an ordinance on constitutional ground or at the very least its applicability to her in view of the location of her dwelling within the naval base. Accordingly, the Court of Appeals, in a resolution of January 29, 1973, noting the constitutional questions raised, certified the case to this Court.

There is, as mentioned in the opening paragraph of this petition, no support in law for the stand taken by appellant.

- It would be fruitless for her to assert that local government units are devoid of authority to require building permits. This Court, from *Switzer v. Municipality of Cebu*,^[4] decided in 1911, has sanctioned the validity of such measures. It is much too late in the day to contend that such a requirement cannot be validly imposed. Even appellant, justifiably concerned about the unfavorable impression that could be created if she were to deny that such competence is vested in municipal corporations and chartered cities, had to concede in her brief: "If, at all, the questioned ordinance may be predicated under the general welfare clause * * *."^[5] Its scope is wide, well-nigh all embracing, covering every aspect of public health, public morals, public safety, and the well-being and good order of the community.^[6]

It goes without saying that such a power is subject to limitations. Certainly, if its exercise is violative of any constitutional right, then its validity could be impugned, or at the very least, its applicability to the person adversely affected could be questioned. So much is settled law. Apparently, appellant has adopted the view that a due process question may indeed be raised in view of what for her is its oppressive character. She is led to such a conclusion, relying on *People v. Fajardo*.^[7] A more careful scrutiny of such a decision would not have led her astray, for that case is easily distinguishable. The facts as set forth in the opinion follow: "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: '* * * 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. * * * 2. A fee of not less than P2.00 should be charged for each building permit and P1.00 for each repair permit issued. * * * 3. [Penalty] - Any violation of the provisions of the above, this ordinance, shall make the violator 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. * * *.' 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 * * *. 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 * * *. On January 18, 1954, defendants reiterated their request for a building permit * * *, 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."^[8]

Clearly then, the application of such an ordinance to Fajardo was oppressive. A conviction therefore for a violation thereof both in the justice of the peace court of Baao, Camarines Sur as well as in the Court of First Instance could not be sustained. In this case, on the contrary, appellant never bothered to comply with the ordinance. Perhaps aware of such a crucial distinction, she would assert in her brief: "The evidence showed that even if the accused were to secure a permit from the Mayor, the same would not have been granted. To require the accused to obtain a permit before constructing her house would be an exercise in futility. The law will not require anyone to perform an impossibility, neither in law or in fact: * * *."^[9] It would be from her own version, at the very least then, premature to anticipate such an adverse result, and thus to condemn an ordinance which certainly lends itself to an interpretation that is neither oppressive, unfair, or unreasonable. That kind of interpretation suffices to remove any possible question of its validity, as was expressly announced in *Primicias v. Fugoso*.^[10] So it appears from this portion of the opinion of Justice Feria, speaking for the Court: "Said provision is susceptible of two constructions: one is that the Mayor of the City of Manila is vested with unregulated discretion to grant or refuse to grant permit for the holding of a lawful assembly or meeting, parade, or procession in the streets and other public places of the City of Manila; and the other is that the applicant has the right to a permit

which shall be granted by the Mayor, subject only to the latter's reasonable discretion to determine or specify the streets or public places to be used for the purpose, with a view to prevent confusion by overlapping, to secure convenient use of the streets and public places by others, and to provide adequate and proper policing to minimize the risk of disorder. After a mature deliberation, we have arrived at the conclusion that we must adopt the second construction, that is, construe the provisions of the said ordinance to mean that it does not confer upon the Mayor the power to refuse to grant the permit, but only the discretion, in issuing the permit, to determine or specify the streets or public places where the parade or procession may pass or the meeting may be held." [11] If, in a case affecting such a preferred freedom as the right to assembly, this Court could construe an ordinance of the City of Manila so as to avoid offending against a constitutional provision, there is nothing to preclude it from a similar mode of approach in order to show the lack of merit of an attack against an ordinance requiring a permit. Appellant cannot therefore take comfort from any broad statement in the Fajardo opinion, which incidentally is taken out of context, considering the admitted oppressive application of the challenged measure in that litigation. So much then for the contention that she could not have been validly convicted for a violation of such ordinance. Nor should it be forgotten that she did suffer the same fate twice, once from the City Court and thereafter from the Court of First Instance. The reason is obvious. Such ordinance applies to her.

- Much less is a reversal indicated because of the alleged absence of the rather novel concept of administrative jurisdiction on the part of Olongapo City. Nor is novelty the only thing that may be said against it. Far worse is the assumption at war with controlling and authoritative doctrines that the mere existence of military or naval bases of a foreign country cuts deeply into the power to govern. Two leading cases may be cited to show how offensive is such thinking to the juristic concept of sovereignty, *People v. Acierto*, [12] and *Reagan v. Commissioner of Internal Revenue*. [13] As was so emphatically set forth by Justice Tuason in *Acierto*: "By the Agreement, it should be noted, the Philippine Government merely consents that the United States exercise jurisdiction in certain cases. The consent was given purely as a matter of comity, courtesy, or expediency. The Philippine Government has not abdicated its sovereignty over the bases as part of the Philippine territory or divested itself completely of jurisdiction over offenses committed therein. Under the terms of the treaty, the United States Government has prior or preferential but not exclusive jurisdiction of such offenses. The Philippine Government retains not only jurisdictional rights not granted, but also all such ceded rights as the United States Military authorities for reasons of their own decline to make use of. The first proposition is implied from the fact of Philippine sovereignty over the bases; the second from the express provisions of the treaty." [14] There was a reiteration of such a view in *Reagan*. Thus: "Nothing is better settled than that the Philippines being independent and sovereign, its authority may be exercised over its entire domain. There is no portion thereof that is beyond its power. Within its limits, its decrees are supreme, its commands paramount. Its laws govern therein, and everyone to whom it applies must submit to its terms. That is the extent of its jurisdiction, both territorial and personal. Necessarily, likewise, it has to be exclusive. If it were not thus, there is a diminution of its sovereignty." [15] Then came this paragraph dealing with the principle of auto-limitation: "It is to be admitted that any state may, by its consent, express or implied, submit to a restriction of its sovereign rights. There may thus be a curtailment of what otherwise is a power plenary in character. That is the concept of sovereignty as auto-limitation, which, in the succinct language of Jellinek, 'is the property of a state-force due to which it has the exclusive capacity of legal self-determination and self-restriction.' A state then, if it chooses to, may refrain from the exercise of what otherwise is illimitable competence." [16] The opinion was at pains to point out though that even then, there is at the most diminution of jurisdictional rights, not its disappearance. The words employed follow: "Its laws may as to some persons found within its territory no longer control. Nor does the matter end there. It is not precluded from allowing another power to participate in the exercise of jurisdictional right over certain portions of its territory. If it does so, it by no means follows that such areas become impressed with an alien character. They retain their status as native soil. They are still subject to its authority. Its jurisdiction may be diminished, but it does not disappear. So it is with the bases under lease to the American armed forces by virtue of the military bases agreement of 1947. They are not and cannot be foreign territory." [17]

Can there be anything clearer, therefore, than that only a turnabout, unwarranted and unjustified, from what is settled and orthodox law can lend the slightest degree of plausibility to the contention of absence of administrative jurisdiction. If it were otherwise, what was aptly referred to by Justice Tuason "as a matter of comity, courtesy, or expediency" becomes one of obeisance and submission. If on a concern purely domestic in its implications, devoid of any connection with national security, the Military-Bases Agreement could be thus interpreted, then sovereignty indeed becomes a mockery and an illusion. Nor does appellant's thesis rest on less shaky foundation by the mere fact that Acierto and Reagan dealt with the competence of the national government, while what is sought to be emasculated in this case is the so-called administrative jurisdiction of a municipal corporation. Within the limits of its territory, whatever statutory powers are vested upon it may be validly exercised. Any residual authority not therein conferred, whether expressly or impliedly, belongs to the national government, not to an alien country. What is even more to be deplored in this stand of appellant is that no such claim is made by the American naval authorities, not that it would do them any good if it were so asserted. To quote from Acierto anew: "The carrying out of the provisions of the Bases Agreement is the concern of the contracting parties alone. Whether, therefore, a given case which by the treaty comes within the United States jurisdiction should be transferred to the Philippine authorities is a matter about which the accused has nothing to do or say. In other words, the rights granted to the United States by the treaty insure solely to that country and can not be raised by the offender." [18] If an accused would suffer from such disability, even if the American armed forces were the beneficiary of a treaty privilege, what is there for appellant to take hold of when there is absolutely no showing of any alleged grant of what is quaintly referred to as administrative jurisdiction? That is all, and it is more than enough, to make manifest the futility of seeking a reversal.

WHEREFORE, the appealed decision of November 11, 1969 is affirmed insofar as it found the accused, Loreta Gozo, guilty beyond reasonable doubt of a violation of Municipal Ordinance No. 14, series of 1964 and sentencing her to pay a fine of P200.00 with subsidiary imprisonment in case of insolvency, and modified insofar as she is required to demolish the house that is the subject matter of the case, she being given a period of thirty days from the finality of this decision within which to obtain the required permit. Only upon her failure to do so will that portion of the appealed decision requiring demolition be enforced. Costs against the accused.

Makalintal, C.J., Zaldivar, Ruiz Castro, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] According to Article III, Section 1, paragraph 1 of the Constitution: "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

[2] 104 Phil. 443 (1958).

[3] Decision, Appendix A to the Brief for the Defendant-Appellant, 1A-1B.

[4] 20 Phil. 111. Cf. *People v. Cruz*, 54 Phil. 25 (1929); *Tan Chat v. Municipality of Iloilo*, 60 Phil. 465 (1934); *Hipolito v. City of Manila*, 87 Phil. 180 (1950); *Uy Matiao and Co. v. The City of Cebu*, 93 Phil. 300 (1953); *University of the East v. City of Manila*, 96 Phil. 316 (1954); *Verzosa v. City of Baguio*, 109 Phil. 571 (1960); *Lopera v. Vicente*, L-18102, June 30, 1962, 5 SCRA 549; *People v. Soria*, L-18982, January 31, 1963, 7 SCRA 242.

[5] Brief for the Defendant-Appellant, 10. She would cite Sec. 2238 of the Revised Administrative Code, but strict accuracy would demand that she should refer to the specific provision in the Olongapo city charter.

[6] Cf. *United States v. Alexander*, 8 Phil. 29 (1907); *Punzalan v. Ferriols*, 19 Phil. 214 (1911); *United States v. Espiritusanto*, 23 Phil. 610 (1912); *United States v. Ten Yu*, 24 Phil. 1 (1912); *United States v. Abundan*, 24 Phil.

165 (1913); *Case v. Board of Health*, 24 Phil. 250 (1913); *United States v. Hilario*, 24 Phil. 392 (1913); *United States v. Chan Tienco*, 25 Phil. 89 (1913); *United States v. Joson*, 26 Phil. 1 (1913); *Rivera v. Campbell*, 34 Phil. 348 (1916); *United States v. Salaveria*, 39 Phil. 103 (1918); *Kwong Sing v. City of Manila*, 41 Phil. 103 (1920); *Vinco v. Municipality of Hinigaran*, 41 Phil. 790 (1917); *People v. Cruz*, 54 Phil. 24 (1929); *Tan Chat v. Municipality of Iloilo*, 60 Phil. 465 (1934); *People v. Lardizabal*, 61 Phil. 360 (1935); *Malabon Sugar Co. v. Municipality of Malabon*, 61 Phil. 717 (1935); *People v. Chan*, 65 Phil. 611 (1938); *People v. Sabarre*, 65 Phil. 684 (1938); *People v. Esguerra*, 81 Phil. 33 (1948); *Eboña v. Municipality of Daet*, 85 Phil. 369 (1950); *Manila Race Horse Trainers Asso. v. De la Fuente*, 88 Phil. 60 (1951); *Vega v. Municipal Board of the City of Iloilo*, 94 Phil. 949 (1954); *Co Kiam v. City of Manila*, 96 Phil. 649 (1955); *Physical Therapy Org. of the Phil. v. Municipal Board of Manila*, 101 Phil. 1142 (1957); *Uy Ha v. City Mayor*, 108 Phil. 400 (1960); *Gaerlan v. Baguio City Council*, 109 Phil. 1100 (1960); *Gerena v. City of Manila*, 110 Phil. 958 (1961).

[7] 104 Phil. 443 (1958).

[8] *Ibid*, 444-445.

[9] Brief for the Defendant-Appellant, 11.

[10] 80 Phil. 71 (1948).

[11] *Ibid*, 77.

[12] 92 Phil. 534 (1953).

[13] L-26379, Dec. 27, 1969, 30 SCRA 968.

[14] 92 Phil. 534, 542.

[15] 30 SCRA 968, 973.

[16] *Ibid*.

[17] *Ibid*, 973-974.

[18] 92 Phil. 534, 542.

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