

**C. N. HODGES AND JOSE CUSTODIO, PETITIONERS AND APPELLANTS,
VS. THE HONORABLE RODOLFO GANZON, AS CITY MAYOR OF THE
CITY OF ILOILO, RESPONDENT AND APPELLEE.***G. R. No. L-18086. August 31, 1964*

Ponente: MAKALINTAL,,J.

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C. N. Hodges and Jose Custodio filed a petition for mandamus in the Court of First Instance of Iloilo to compel respondent Rodolfo Ganzon, as Mayor of the City of Iloilo, to issue a license in favor of Custodio to engage in the funeral parlor business at Ledesma street of said city and to allow petitioners to continue the work started on the building intended for that purpose. The petition includes a prayer that resolution No. 545 of the city municipal board be declared null and void. The trial court sustained the validity of the resolution and on this and other grounds stated in its decision dismissed the petition. The case is now before us on appeal by petitioners.

The building in question was formerly owned by Hodge, which he sold to Custodio on instalment. It was then used as a refreshment parlor and intending to convert it into a funeral establishment Custodio applied to the office of the City Mayor for a permit for the repair and alteration of the building. A permit was issued, but later on the Mayor, finding that the work that was actually being undertaken consisted not only of repair but of outright alteration, he stopped the work on the ground that the permit that had been issued did not include alteration. Custodio also filed an application for a license to operate a funeral parlor, but it was turned down in view of resolution No. 545 of the municipal board, whereupon appellants commenced the present suit.

The first issue of fact raised before the trial court was whether the permit given to Custodio was one for repair only or one for both repair and alteration. There is no dispute that there is a difference between the two. The trial court found from the evidence that the permit actually given was only for repair and not for alteration. This is a finding which we are not called upon to review, and even if we were, would declare to be supported by a preponderance of evidence. One piece of such evidence is Exhibit E of petitioners, which according to them is a copy of the original permit issued and according to respondent is the original itself. On the face of this document appears the following: ". . . in accordance with the recommendations of the City Health and City Engineer... permit is hereby granted M. C. N, Hodges to "construct," "reconstruct", repair a house of strong materials , , ." The words "construct" and "reconstruct" are crossed out, leaving the word "repair" intact.

Petitioners, alleging that Exhibit E was not the original of the permit given them but only a duplicate copy and that in the original itself which remained in the Mayor's office the words "construct" and "reconstruct" had not been crossed out, asked that said original be produced. The court, however, on the strength of the Mayor's testimony that Exhibit "E" was itself the original, turned down the request for production and refused to hear evidence from petitioners in explanation of the elimination of those words in the exhibit on the ground that it was the best evidence and no explanation was admissible to vary its contents. Such refusal of the trial court is now assigned as error.

There being a finding of fact that Exhibit "E" is itself the original permit issued to petitioners, we believe that the ruling of the trial court against any oral evidence tending to vary its contents is correct. And even assuming it to be erroneous, we believe the error did not materially affect the result in view of certain other circumstances considered by the Court. Thus, for instance, in the proper blank spaces in the recommendation of the City Engineer, upon which the permit was based, the typewritten words "repair and alteration of a house. ..." appear, but the words "and alteration" are also crossed out in ink (Exh. E-1) ; and in the space for computation of fees for the issuance of the permit the same words also appear, with the words "or alteration" eliminated in the same manner. According to respondent's evidence the fee paid by petitioners was only P25.00, which was the amount required for repair, while if a permit for alteration had been issued the fee would have been more than P50.00, considering the area of the building involved.

As to why only a permit for repair was issued when one for both repair and alteration had been applied for, the trial court found as follows:

"We have the testimony of Jovito Badayos who testified that in presenting the application for repair or alteration, Jose Custodio was required by Radayos to present a plan duly signed by a private civil engineer or a private architect which was not complied with by Jose Custodio. Instead he presented a sketch prepared by a certain lumber company. Because of the failure of the petitioner Jose Custodio to file with his application a plan as required by the rules and regulations, Badayos recommended only the issuance of a permit to repair but without the permit to alter and that Custodio has consented to erasing the word "alteration" so that the permit for repairs could be issued in his favor".

Considering the foregoing circumstances, the trial court did not err in denying the writ prayed for to compel respondent Mayor to allow petitioners to continue the work on the building in question.

The next issue refers to the validity of resolution No. 545 of the municipal board, which prohibits expressly the establishment of funeral parlors along Ledesma street of Iloilo City, the same being reserved for commercial purposes. There is no question that the said resolution is in the nature of a zoning regulation which is within the power of the municipal board of the City of Iloilo to enact, both under its charter (Sec. 21) and under the Local Autonomy Act (R. A. 2264, Sec. 3). The objection of petitioners is that such a measure must be in the form of an ordinance and not of a mere resolution, the latter not having the signature of approval by the Mayor. There are indeed authorities in support of the argument, but we do not deem it necessary here to rule on the question one way or the other. The invalidity of the resolution would not make it a mandatory or ministerial duty on the part of respondent Mayor, enforceable by mandamus, to issue a permit for petitioners to establish and operate a funeral parlor on Ledesma street, in view of the fact that they had been justifiably stopped from making the necessary alterations to convert the building to suit the purpose. Be it said, when the law requires such a permit, it means that a certain degree of discretion is lodged in the Mayor to grant it or not, in which case the net desired may not be enforced by mandamus. The duty to be performed, to be so enforceable, must be so clear and specific as to leave no room for the exercise of discretion. In acting as he did, respondent Mayor not only used his discretion but did so in conformity with the will of the municipal board unequivocally expressed in its resolution No. 555.

Wherefore, the judgment appealed from is affirmed, with costs.

Bengzon, C. J., Bautista Amjelo. Concepcion, Reyes, J. B. L., Paredes and Regala, JJ., concur.

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