

**PAMPANGA BUS COMPANY, INC. AND LA MALLORCA, PLAINTIFFS  
AND APPELLEES, VS. MUNICIPALITY OF TARLAC, PROVINCE OF  
TARLAC, DEFENDANT AND APPELLANT.***G.R. No. L-15759. December 30, 1961*

Ponente: PADILLA, J.

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On 6 May 1952 Pampanga Bus Company, Inc., a private corporation, and LaMallorca, a partnership, brought an action in the Court of First Instance of Tarlac against the Municipality of Tarlac, Province of Tarlac, to have Ordinance No. 1 and Resolution No. 323 passed and adopted by the Municipal Council of the defendant municipality on 21 January and 27 October 1952 declared null and void (Exhibits A, B, 5 & 9). Upon the filing of their complaint the plaintiffs applied for a writ of preliminary injunction to enjoin the defendant municipality, Its officers, employees, agents, attorneys and any and all persons acting for and in its behalf from enforcing the said ordinance and. resolution. In support of their complaint the plaintiffs alleged that they are public utility operators duly authorized by the Public Service Commission to operate their busses in the defendant municipality and along F. Tañedo street thereof; that the plaintiffs jointly own and operate a bus terminal in a building of strong materials situate on F. Tanedo street; that on 21 January 1952 the Municipal Council of the defendant municipality adopted Ordinance No. 1 prohibiting the establishment of bus or freight terminals from the intersection of F. Tañedo and Zamora streets to the intersection of F. Tanedo street and the national highway, allowing the owners or operators of bus or freight terminals already existing and operating in the said area ja period of thirty days from the date of the adoption of the ordinance within which to remove and transfer the terminals to other places, and providing for the penalty upon conviction of a fine of not more than P200 or imprisonment of not more than six months or both, for violation of the ordinance (Exhibits A & 5); that the Provincial Board of Tarlac disapproved the said ordinance; that on 27 October 1952 the Municipal Council of the defendant municipality passed Resolution No. 323 ordering the plaintiffs to remove their bus station on F. Tañedo street and transfer it "to another place subject to the approval of this Body," within ten days from receipt thereof, "otherwise appropriate action will be taken accordingly pursuant to the provisions of law;" that Ordinance No. 1 does not have any force and effect because it was disapproved by the Provincial Fiscal of Tarlac and is null and void because it was enacted beyond the powers granted by law to the Municipal Council of the defendant municipality; that the said ordinance is unreasonable, discriminatory, oppressive and unjust and was enacted to harass the plaintiffs who are engaged in the operation of a legitimate business; and that the plaintiffs' bus terminal is not a nuisance and cannot be summarily abated (civil Mo. 745). On 9 November 1952 the defendant objected to the plaintiffs' application for a writ of preliminary injunction contending that the enforcement of the ordinance in question would not cause great or irreparable injury to the plaintiffs because there were many vacant spaces outside the town where they could transfer their bus terminal. After hearing, on 10 November 1952 the Court granted the writ applied for by the plaintiffs upon the filing of a bond in the sum of P10,000.

On 3 December 1952 the defendant filed its answer specifically denying the material averments of the plaintiffs'

complaint and setting up the following special defenses: that Ordinance No. 1 is a valid exercise of the powers granted it by section 2283 of the Revised Administrative Code, section 17(j) of the Public Service Act, Commonwealth Act No. 146, as amended by Commonwealth Act No. 454 and Republic Act No. 178, and section 71 of the Revised Motor Vehicle Law, Act No. 3992; and that the plaintiffs' bus terminal is a public nuisance that may be abated even without the enactment of Ordinance No. 1, because it is situated on a busy street and the plaintiffs' busses going in and out of the said bus terminal block the street and cause inconvenience to the travelling public and endanger the life and safety of the pedestrians, and a counterclaim of P10,000 for actual and moral damages resulting from the malicious institution of a clearly unfounded suit motivated by a desire to delay and resist the enforcement of an ordinance validly and legal enacted. The defendant prayed that the plaintiffs' complaint be dismissed; that the writ of preliminary injunction issued by the Court be dissolved; and that the plaintiffs be ordered to pay it actual and moral damages in the sum of P10,000.

On 5 December 1952 the plaintiffs answered the defendant's counterclaim asserting that it is the latter's unreasonable, unlawful, oppressive, arbitrary and capricious acts which have caused them incalculable damage, and praying that the defendant's counterclaim be dismissed.

After trial and the parties had filed their respective memoranda, on 17 March 1958 the Court rendered judgment holding that the plaintiffs' bus terminal on F. Tañedo street is not a nuisance per se or per accidens because it is made, of strong materials and equipped with modern toilet facilities; that the ordinance in question was enacted to prevent the plaintiffs' busses going in and out of the bus terminal from disturbing the smooth flow of traffic and to avoid traffic congestion; that it is the carromatas, other buses, midget buses and jeeps making U-turns and loading and unloading passengers on F. Tanedo street and not the plaintiffs' buses going in and out of the bus terminal that obstruct the smooth flow of traffic and produce traffic congestion; that to solve the traffic problem sought to be remedied by the ordinance in question, an ordinance prohibiting the parking and U-turns of vehicles on F. Tanedo street should be enacted; that the ordinance in question has no bearing whatsoever on the health, safety or general welfare of the inhabitants of the defendant municipality "nor does it tend to accomplish anything for the benefit of the public in this respect;" that the said ordinance is not a zoning ordinance for it does not establish a residential or industrial zone or any other zone; and that the ordinance in question is discriminatory, unreasonable and oppressive and enacted not to protect or promote the welfare of the inhabitants of the defendant municipality, and declaring Ordinance No. 1, dated 21 January 1952 and Resolution No. 323, dated 27 October 1952 of the Municipal Council of the defendant municipality null and void and the writ of preliminary injunction it had issued final.

On 19 April 1958 the defendant filed a motion for reconsideration. On 17 June 1958 the Court denied the defendant's motion for reconsideration. The defendant has appealed to this Court assigning the following errors allegedly committed by the trial Court:

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That the lower court erred in finding Ordinance No. 1, Appendix A and/or Resolution No. 3/23, which had been marked as Exhibits "A" and "B" for the plaintiff-appellee and Exhibits "5" and "9" for the defendant-appellant as discriminatory, unreasonable and oppressive and is therefore null and void.

- That the lower court erred in issuing a writ of preliminary injunction against the defendant-appellant and making the said injunction permanent in its decision dated March 17, 1958.

The facts as found and summarized by the trial Court, are:

On January 21, 1952, the defendant municipality passed Resolution No. 45 and approved the same as Municipal Ordinance No. 1. Said Ordinance reads as follows:

**RESOLUTION NO. 45**

"\* \* \* \* \*

**"MUNICIPAL ORDINANCE NO. 1**

"AN ORDINANCE PROHIBITING THE ESTABLISHMENT OR OPERATION OF BUS OR FREIGHT TRUCK TERMINALS WITHIN CERTAIN AREA OF THIS TOWN AND PROVIDING PENALTIES FOR VIOLATIONS HEREOF.

"Be it ordained by authority of the Mun. Council of Tarlac that:

"SECTION 1. No bus or freight shall be allowed on any place along that portion F. Tañedo Street in this town from of the intersection of F. Tañedo and Zamora Streets to the intersection of F. Tañedo and the National Highway;

"SEC. 2. All bus or freight truck terminals existing and operating at the time of the promulgation of this ordinance and located within the area mentioned in Section 1 hereof are hereby given a period of thirty (30) days from the date this Ordinance is promulgated within which the said bus or freight truck terminals may be removed and transferred to other places;

"SEC. 3. Violation of this Ordinance or any of its provisions shall be penalised upon conviction with a fine of not more than P200.00, or an imprisonment of not more than six (6) months, or both fine and imprisonment, as the court may decide;

"SEC. 4. All previous existing ordinances which are in conflict with the provisions of this Ordinance are hereby repealed;

"SEC. 5. This Ordinance shall take effect upon its approval."

On March 26, 1952, the Provincial Board of Tarlac, in its Resolution No. 262, approved the said Ordinance, with some modifications. Said Resolution provides, in part, as follows:

**"RESOLUTION NO. 262**

"\* \* \* \* \*

"RESOLVED, That the said Ordinance No. 1, current series, of Tarlac, being valid and legal, the same is, hereby approved. Provided, however, that the removal or transfer of existing bus or freight terminals within the area specified in said Ordinance be as is hereby extended to six (6) months instead of thirty (30) days as provided for under Section 2 of same Ordinance."

"\* \* \* \* \*

Pursuant to the said Resolution No. 262 of the Provincial Board of Tarlac, the defendant municipality passed and approved on October 27, 1952, Resolution No. 323, which provides that:

**"RESOLUTION NO. 323**

"Whereas, Ordinance Number 1, series 1952, of the Municipal Council of this town, prohibiting bus terminals or freight truck terminals along certain portions of F. Tañedo Street of this municipality, was approved by the Provincial Board of Tarlac on March 26, 1952, extending the period from 30 days to 6 months within which existing affected bus terminals or freight truck terminals may be removed and transferred;

"WHEREAS, The Honorable Acting Executive Secretary, Office of the President of thie Philippines, on

October 20, 1952, endorsed and upheld the approval of the Provincial Board of Tarlac of the said municipal ordinance; and

"WHEREAS, The period of six months has already elapsed and still the La Mallorca-Pambusco Joint, Transportation Management, which owns a bus terminal now existing within the area covered by the said municipal ordinance, has not yet removed nor transferred the said bus terminal;

"NOW, THEREFORE, On motion by Councilor Union C. Kayanan, duly seconded,

"RESOLVED, That the La Mallorca-Pambusco Joint Transportation Management be, as is hereby, given ten (10) days from receipt of this resolution within Which to remove its present bus terminal along F, Tañedo Street in this town and transfer the same to another place subject to the approval of this Body, otherwise appropriate action will be taken accordingly pursuant to the provisions of law; and

"RESOLVED FURTHER, That copies of this resolution be sent to the La Mallorca-Pambusco Joint Transportation Management.

### **"CARRIED UNANIMOUSLY.**

\* \* \* Before the war, the plaintiff Pampanga Bus Company leased a lot on F. Tañedo Street, adjacent to the right side of the place now occupied by the Peoples Bank & Trust Company, and constructed thereon a building with roof to protect its busses. It used the same as its terminal. After liberation, the said lease having expired, the plaintiff Pampanga Bus Company, in the early part of 1946, leased a lot owned by one Mr. Ricardo Roa located on the left side of F. Tañedo towards the direction of the Manila Railroad Company and between the national Highway and Zamora Street, and constructed thereon a low-roofed building of light materials, without any quarters for its employees. In the meantime, the plaintiff Pampanga Bus Company and plaintiff La Mallorca joined management and, subsequently, the said building was reconstructed along modern styles of strong materials and with quarters for its employees. There was likewise constructed inside the said premises a store, owned by Mr. Roa, which sells soft drinks, bread, cookies, candies; and also modern toilets, with "inodoros" and "pozo negro." There is likewise evidence to the effect that an employee has been assigned by the plaintiffs, whose work is solely to clean the premises and even the sidewalk in front of the station.

During that time (1946) the buses of the plaintiffs used to enter and go out of the said terminal through a common alley about 16 meters wide, more or less. A bus going inside the terminal had to maneuver first on the street in order to enter the terminal with its hind part in backward motion. However, on April 24, 1952, the plaintiffs acquired by way of lease the adjacent lot owned by one Mr. Paguia and from then on this lot is used exclusively for entrance while the lot of Mr. Roa is used only for exit. Now, a bus enters the terminal by going straight into the lot leased from Mr. Paguia, without the necessity, as before, of maneuvering first on the street. Here it unloads passengers and cargoes and then it proceeds up to the back of the lot where it turns to the right to the lot leased from Mr. Roa, placing itself towards Tañedo Street. Here it loads passengers and cargoes and after that, goes out of the terminal by merely turning right and going directly to its southern destination. Plaintiffs load and unload passengers and cargoes and park its buses, when not in operation, inside the terminal.

It also appears from the evidence that throughout the day several buses owned, by other operators, jeepneys, midget buses/and calesas coming from the north, are permitted to load and unload passengers and cargoes in front of the public market, after which they park on either side of F. Tañedo Street. The same is true with buses, jeepneys, midget buses and calesas coming from the south which after unloading park on both sides of said street.

Judicial notice is taken of 10 streets intersecting F. Tañedo Street between the national highway and Zamora Street. Evidence has been presented to the effect that all these streets are open to traffic; that buses travelling on F. Tanedo Street are allowed any time to turn and enter any of these streets and vice-versa; and that parking

is allowed on any of these streets.

It is stipulated by the parties that the plaintiffs as public utility operators, are authorized by the Public Service Commission to operate their buses not only on F. Tañedo Street of the defendant municipality but also on all public streets within the municipality, and that at the time of the passage of the ordinance in question up to the present there is no other bus terminal on F. Tañedo Street, except the terminal of the plaintiffs.

"\* \* \* \* \*

The record discloses without dispute that the bus terminal of the plaintiffs has been constructed and is existing in the place where it is now for quite a length of time; that the said bus terminal is of strong materials and was constructed along modern style, with modern toilets and a store to serve the needs, convenience and comfort of its passengers and employees; and with an employee assigned whose sole work is to keep the premises and the sidewalk in front of the said terminal as sanitary as possible. In fact the very principal witness of the defendant municipality, the Chief of Police, joined the plaintiffs in saying that the said bus terminal far from being a nuisance, helps the municipality in that it relieves pedestrian congestion on the sidewalks of F. Tanedo Street, because the said terminal being big and roofed, passengers wait inside where they could sit instead of crowding the public sidewalks.

The Court also takes it as an established and admitted fact that the mere circumstance that the bus terminal of the plaintiffs is where it is now does not do any injury to the defendant municipality; that at the time of the passage and, approval of the ordinance in question there was no necessity to justify the same because the location of the said terminal and the manner of maneuvering the buses of plaintiffs in going in and out of the said terminal did not obstruct traffic and did not constitute a nuisance.

"\* \* \* \* \*

From the evidence presented by the defendant municipality, the Court gathers that the only and real objection, and what the defendant really intends to prohibit in passing the ordinance in question, is only the turning of the buses of the plaintiffs in going in and out of the said terminal. However, the Court finds that evidence of the defendant municipality falls short of proving that the cause of obstruction or interference of traffic on F. Tañedo Street is the turning of plaintiffs' buses in going in and out of its terminal. The Court finds that the cause of obstruction is not the act of turning of the buses of the plaintiffs in going inside or outside their terminal, but the U-turns being made, by carromatas, buses, midget buses and jeepneys on F. Tanedo Street, and the loading and unloading of passengers and cargoes by carromatas, buses, midget buses and jeepneys on both sides of F. Tañedo Street. This is due to the admitted fact that the defendant municipality itself, up to the present, has not approved any resolution or ordinance prohibiting transit and parking of buses along F. Tañedo Street, or U-turns thereon (pp. 101-117, rec. on app.)

Before proceeding farther, it should be borne in mind that this is an appeal on questions of law only and for that reason the findings of the trial Court are binding upon this Court.

The appellant's contention in support of the validity of Ordinance No. 1 is that it is a valid exercise of the broad powers granted to it under the general welfare clause, section 2238 of the Revised Administrative Code, "to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of property therein;" section 17 (j) of the Public Service Act, Commonwealth Act No. 146, as amended, ordaining that all public utility operators should comply with the provisions of any provincial resolution or municipal ordinance which may be enacted to regulate their business; and section 71 of the Revised Motor Vehicle Law, Act No. 3992, granting Municipal Councils specific authority to regulate and control the operation of garages and to determine where and how vehicles of all kinds may, while not in use, park. For ready reference, we quote the provisions of the law cited and relied upon by the appellant, as follows:

SEC. 2238. General power of council to enact ordinances and make regulations.—The municipal council shall enact such ordinances and make such regulations , not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals , peace, good order, comfort, and convenience of the municipality and the inhabitants thereof and for the protection of property therein. ("Revised Administrative Code. Italics supplied.)

SEC. 17. The Commission shall have power, without previous hearing, subject to established limitations and exceptions and saving provisions to the contrary:

"\* \* \* \* \*

(j) To require any public service to comply with the laws of the Philippines and with any provincial resolution or municipal ordinance relating thereto and to conform to the duties imposed upon it thereby or by the provisions of its own charter, whether obtained under any general or special law of the Philippines. (Public Service Act, Commonwealth Act No. 146.)

SEC. 71. Municipal Councils are authorized and empowered to prescribe reasonable regulations and fees not inconsistent with this. Act for the conduct, control, and operation of garages, and to determine where and how vehicles of all kinds may, while not in use, park upon or occupy the public streets or places: \* \* \*. (Revised Motor Vehicle Law, Act No. 3992.)

Tested by the provisions of section 2238 of the Revised Administrative Code, the ordinance in question (No. 1, dated 21 January 1952, Exhibits A & 5) falls short of the standard required of ordinances adopted pursuant thereto. As found by the trial Court, the appellees bus terminal building is built of strong materials and equipped with modern toilet facilities; that the appellees employ a janitor who cleans the premises and the sidewalk in front of the building; that the bus terminal building is built on and occupies an area big enough to allow the ingress and egress of the appellees buses without maneuvering outside of the premises, and obstructing traffic on F. Tañedo street; that passengers get on and off and cargoes are loaded and unloaded, and buses not in operation are parked, inside the premises; that at the time of the enactment of the ordinance there is no other bus terminal on F. Tañedo street except the appellees' that the appellees'; bus terminal building is not a nuisance and causes no injury to the appellant municipality but instead helps relieve pedestrian congestion on the sidewalks along F. Tañedo street because passengers waiting for their buses stay inside the terminal building; and that Ordinance No. 1 was enacted mainly to relieve traffic congestion on F. Tañedo street. For the foregoing reasons the requirement that an ordinance enacted by a Municipal Council under the general welfare clause should be to "provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of property therein," has not been satisfied in the adoption of Ordinance No. 1. Its validity cannot be sustained and upheld.

The appellant argues that Ordinance No. 1 is a zoning ordinance which the Municipal Council is authorized to adopt. McQuillin in his treatise on Municipal Corporations (Volume 8, 3rd ed.) says:

Zoning is governmental regulation of the uses of land and buildings according to districts or zones. It is comprehensive where it is governed by a single plan for the entire municipality and prevails throughout the municipality in accordance with that plan. It is partial or limited where it is applicable only to a certain part of the municipality or to certain uses. Fire limits, height districts and building regulations are forms of partial or limited zoning or use regulation that are antecedents of modern comprehensive zoning. (pp. 11-12.)

The term "zoning," ordinarily used with the connotation of comprehensive or general zoning, refers to governmental regulation of the uses of land and buildings according to districts or zones. This regulation must and does utilize classification of uses within districts as well as classification of districts, inasmuch as it

manifestly is impossible to deal specifically with each of the innumerable uses made of land and buildings. Accordingly, zoning has been defined as the confining of certain classes of buildings and uses to certain localities, areas, districts or zones. It has been stated that zoning is the regulation by districts of building development and uses of property, and that the term "zoning" is not only capable of this definition but has acquired a technical and artificial meaning in accordance therewith. Zoning is the separation of the municipality into districts and the regulation of buildings and structures within the districts so created, in accordance with their construction, and nature and extent of their use. It is a dedication of districts delimited to particular uses designed to subserve the general welfare. Numerous other definitions of zoning more or less in accordance with these have been given in the cases. (pp. 27-28.)

As the trial Court aptly observed and held—

\* \* \* Examining the ordinance, the Court is at once confronted with the deficiencies of the ordinance itself. Nowhere in the ordinance is any reference made to zoning. It does not appear whether it creates a residential zone, an industrial zone, a fire district, or another kind of zone. The ordinance simply recites that all bus or freight truck terminals existing and operating at the time of the promulgation of the ordinance should be removed and transferred to another place within 30 days (6 months, as amended by the Provincial Board). There is, therefore, no rational basis for the said ordinance as a zoning ordinance.

The appellant intimates that the appellees' bus terminal is a nuisance that may be abated by the Municipal Council under the provisions of section 2242 (h) of the Revised Administrative Code. Suffice it to say that in the abatement of nuisances the provisions of the Civil Code<sup>[1]</sup> must be observed and followed. This appellant failed to do.

The appellant points to section 17 (j) of the Public Service Act, Commonwealth Act No. 146, as amended, as additional authority to support the validity and legality of the adoption of Ordinance No. 1. It goes without saying that the provincial resolution or municipal ordinance that the appellees may be required to comply with should be valid and legal. As the ordinance in question is invalid, and illegal, the appellees cannot be compelled to comply with it.

Finally, the appellant relies on the provisions of section 71 of the Revised Motor Vehicle Law, Act No. 3992. Needless to say the regulations for the conduct, control and operation of garages that a Municipal Council may promulgate should not encroach upon the legitimate and lawful exercise if by the citizens of their property rights. Ordinance No. 1 constitutes an unwarranted and unlawful curtailment of the exercise of that right.

The judgment appealed from is affirmed, with costs against the appellant.

Bengzon, C. J., Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, and De Leon, JJ., concur.

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[1] Article 694-707.

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