

HASSARAM DIALDAS AND LACHMI HASSARAM, PETITIONERS AND APPELLANTS, VS. MARIANO PERDICES, AS CITY MAYOR OF DUMAGUETE CITY, RESPONDENT AND APPELLEE.

G. R. No. L-8467. June 28, 1957

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

On June 11, 1954, the petitioners paid the required municipal license to the City Treasurer of Dumaguete and have since engaged in the retail business in Dumaguete City. However, on June 12, 1954, the respondent City Mayor addressed to the herein petitioners the following letter:

"This is in connection with the permit dated June 5, 1954 issued by this Office in your favor for the purpose of opening a business as General Merchant and peddler of watches and jewelries in the City.

In relation thereto, I am quoting hereunder a telegram dated June 10, 1954, received by the undersigned from the Honorable, the Executive Secretary, viz:

'Reurs third instance do not issue new permits as under approved nationalization bill pending consideration by the President only those licensed to engage in the retail business on or before May fifteen nineteen fifty-four will be allowed to continue stop opening branches or transfer of business from the municipality to another should not be allowed if such opening or transfer requires new license'

By virtue of this directive, I regret to advise you that, unless the President vetoes the Nationalization Bill on or before June 20, 1954, which is the deadline for; him to act on measures passed by Congress, your permit shall automatically be ineffective, hence, revoked, and your business considered closed."

On July 20, 1954, which was the deadline for the payment of all taxes and licenses, the petitioners wanted to pay all of them to the City Treasurer of Dumaguete, but the latter refused to receive such payment unless a written statement in writing could be had from the respondent Mayor allowing them to make such payment. The petitioners then requested the Mayor to issue such a statement, but the latter refused to do so on the ground that the petitioners could no longer operate in view of the order of the Executive Secretary mentioned in the aforequoted communication of the Mayor to the petitioners.

Because of the refusal of the City Treasurer of Dumaguete to let the petitioners pay the necessary taxes for their business and because the Mayor was about to order the closing of their store located at W. A. Jones St.. Dumaguete City, the petitioners initiated the present petition in the Court of First Instance of Negros Oriental, wherein they prayed for a clear declaration of their rights, if any, under the provisions of Republic Act No. 1180 otherwise known as the Retail Business Act, and for the issuance of a writ of preliminary injunction against the respondent City Mayor of Dumaguete to prohibit him from issuing an order for the closing of their store mentioned above.

After the parties had joined issues and the case duly, heard, the court rendered its decision, the dispositive part of which is as follows;

"Premises considered, the Court is of the opinion and so holds that: (1) The "Cebu Department Store*" owned and operated by Petitioners and opened to the public on June 11, 1951, is a new retail business in Dumaguete City and as such was not in existence in this City on May 15, 1954; (2) Petitioners do not fall within the exception provided for in paragraph 1 of Section 1 of Republic Act No. 1180, in so far as the Government of Dumaguete City is concerned; (3) There is no necessity for construing the provisions of the last paragraph of the same Section 1, as prayed for, the reason being that said provisions are not pertinent and relevant to the situation covered by their Petition; and (4) In the event that respondent Mayor shall order the closure of the business of Petitioners, such action shall be valid and legal, being in accordance with the provisions of the "Retail Business Act".

Not satisfied with the decision, the petitioners perfected their appeal and now seeks its reversal on the ground that the trial court erred:

- In holding that petitioners-appellants are not entitled to continue "with their retail business in Dumaguete City, as such transfer made by them from Cebu City to Dumaguete City if allowed would defeat the very purpose for which Republic 1180 was granted;
- In holding that the transfer' of petitioners-appellants' retail business from Cebu City to Dumaguete City was done at their risk since by virtue of the nationwide publicity of the law given by leading newspapers they should have been aware of the same;
- In holding that the "Cehu Department Store" of petitioners-appellants in Dumaguete City is a new business; and
- In holding that should respondent-appellee order the closing of the store of petitioners-appellants, the same would be valid and legal, being in accordance with Republic Act 1180."

The question raised in the case at bar calls for the construction and application of Section 1 of Republic Act 1180 and Section 199 of the Internal Revenue Code which reads as follows:

"Section 1. (Republic Act 1180.) No person who is not a citizen of the Philippines, and no association, partnership, or corporation, the capital of which is not wholly owned by citizens of the Philippines, shall engage directly or indirectly in the retail business: Provided, That a person who is not a citizen of the Philippines, or an association, partnership, or corporation, not wholly owned by citizens of the Philippines, which is actually engaged in the said business on May 15, 1954, shall be entitled to continue to engage therein, unless its license is forfeited in accordance herewith, until his death or voluntary retirement from said business, in the case of a natural person, and for a period of ten years from the date of the approval of this Act or until the expiration of the term of the association or partnership, or of the corporate existence of the corporation, whichever event comes first in the case of juridical persons. Failure to renew a license to engage retail business shall be considered voluntary retirement.

"The license of any person who is not a citizen of the Philippines and of any association, partnership or corporation not wholly owned by citizens of the Philippines to engage in retail business, shall be forfeited for any violation of any provision of laws on nationalization, economic control, weights and measures, and labor and other laws relating to trade, commerce, and industry.

"No license shall be issued to any person who is not a citizen of the Philippines and to any association, partnership or corporation not wholly owned by citizens of the Philippines, actually engaged in the retail business, to establish or open additional stores or branches for retail business."

"Sec. 199. (Internal Revenue Code.) Removal of business to other location.—Any business for which the privilege tax has been paid may, subject to the regulations of the Department of Finance, be removed and continued in any other place without payment of additional tax during the term for which the payment was

made."

It is an undisputed fact that prior to the approval of Republic Act 1180, the petitioners were alien merchants actually engaged in the retail business and, under the provisions of said act, those actually engaged in the retail business at the time it was approved shall be entitled to continue to engage in the business unless their license is forfeited in accordance with law, or until the death of the retail merchant or his voluntary retirement from business, in the case of natural persons, and for a period of ten years from the date of the approval of said act or until the expiration of the association or partnership, or of the corporate existence of the corporation, whichever event comes first, in the case of juridical persons." There can be no doubt, therefore, that under the provisions of the aforequoted law, the herein petitioners have right to continue their business and to secure the corresponding licenses therefor. There arises, however, the question whether under the provisions of Republic Act 1180 the petitioners could be considered as having retired voluntarily from business because they closed their store in Cebu City and transferred it to Dumaguete City. But the evidence on record shows that when the petitioners closed their business in Cebu City, their intention was not to retire voluntarily from business, but only, to transfer it to Dumaguete City in view of the failing condition of their business in Cebu City.

The trial court dismissed the petition on two principal grounds: (1) That the petitioners cannot validly transfer their business from Cebu to Dumaguete; and (2) That the "Cebu Department Store" of petitioners in Dumaguete City is "a new business, a new enterprise in the City of Dumaguete and one that was not existing therein on May 15, 1954." It overlooked entirely, however, the clear provision of Section 199 of the Internal Revenue Code, quoted above, which has not been repealed either expressly or impliedly by Republic Act 1180, and the fact that the petitioners, before transferring their business from Cebu to Dumaguete, secured the annotation of such transfer on the reverse side of the privilege tax, Exhibit "A". The legality of such transfer, therefore, can in no wise be questioned and consequently petitioners' business in Dumaguete should not be considered as a new one in the contemplation of the aforementioned Republic Act 1180. We do not lose sight of the fact that, under the last paragraph of Section 1 of Republic Act 1180, the establishment or opening of additional stores or branches for retail business is prohibited, and that no license therefor shall be issued to any person who is not a citizen of the Philippines, or to any association, partnership or corporation not wholly owned by citizens of the Philippines. But, in this particular case, we find that the "Cebu Department Store" of the petitioners in Dumaguete is not an additional store or branch of their Department Store in Cebu City, which was closed, so the provisions of the last paragraph of section 1 of Republic Act 1180 is not applicable to the case.

Accordingly, we hold that, under the law governing the case, the petitioners are entitled to engage in the retail business in Dumaguete City and to secure the corresponding license therefor and to pay the taxes due thereon.

Wherefore, the decision appealed from is hereby reversed and the preliminary injunction issued in this case made permanent, enjoining the respondent Mayor not to close the petitioner's store and ordering him to issue the corresponding license for their store, without costs.

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

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