

VICENTE TAN, PETITIONER AND APPELLANT, VS. MARCELINO SARMIENTO, IN HIS CAPACITY AS CITY TREASURER OF MANILA, RESPONDENT AND APPELLEE.

G.R. No. L-13407. May 24, 1961

Ponente: DIZON, J.

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DIZON, J.:

On December 29, 1955 appellant Vicente Tan filed in the lower court a petition for mandamus against appellee Marcelino Sarmiento, in his capacity as City Treasurer of Manila, to compel the latter to issue to him a license under which he could continue engaging in the retail business. Appellee's answer alleged, in synthesis, that appellant was not entitled to the license applied for by him because he was not qualified to engage in the retail trade due to the provisions of Republic Act No. 1180. When the case was called for hearing both parties submitted it for decision on the pleadings and the following stipulation of facts:

"1. That Vicente Tan, petitioner herein, is of legal age, single, a citizen of the Nationalist Republic of China, and a resident of 1125 O'Donnell Street, Manila.

"2. That Mr. Marcelino Sarmiento, respondent herein, is the City Treasurer of the City of Manila and that his duties as such official include among many others, that of issuing or renewing business licenses to persons desiring to engage in retail trade, upon payment of the corresponding fees therefor, and, after the issuance of the corresponding Mayor's permit.

"3. That on or about May 22, 1954, the petitioner, then being a Chinese citizen procured and did obtain, in his own name, from the respondent, a license to operate a retail store at 480 Quezon Boulevard, Manila, and which said business license was continuously renewed by respondent, upon due application by petitioner, every quarter thereafter until the last quarter of 1955.

"4. That on or about December 15, 1955, petitioner requested respondent for a renewal of his license to engage in retail business, corresponding to the first quarter of 1956, and simultaneously tendering actually upon respondent the full amount of the license fee.

"5. That respondent refused to renew said license on the ground that petitioner is not a citizen of the Republic of the Philippines, and further, he was not actually then engaged in the retail business on May 15, 1954 in accordance with the provisions of Republic Act No. 1180; however, by virtue of the issuance of a preliminary writ of injunction herein, the respondent was constrained to renew the petitioner's license on January 13, 1956, corresponding to the first quarter of 1956.

"6. That said Republic Act No. 1180 took effect, upon its approval by the President, on June 19, 1954.

"7. That the petitioner has invested a capital of about P6,000.00 in his retail business situated at Quezon Boulevard #480, Manila.

"8. That petitioner and respondent hereby waive the presentation of further evidence, both oral and documentary.

"9. That petitioner and respondent reserve the right to file simultaneously their respective memoranda within twenty (20) days reckoned from March 27, 1956."

On November 11, 1957 the lower court rendered the appealed decision, dismissing the case, with costs.

The issue before us, therefore, is whether upon the facts stipulated by the parties and the provisions of Republic Act 1180, appellant is entitled to continue engaging in the retail trade in the City of Manila.

While section 1 of the Act already referred to provides that only citizens of the Philippines may engage in the retail business, it makes an exception in favor of "persons who are not citizens of the Philippines, or association, partnership or corporation not wholly owned by citizens of the Philippines but actually engaged in the retail business on May 15, 1954" (*Italics supplied*). Persons and entities, in order to be covered by the exception, must have been actually engaged in the retail business on May 15, 1954.

It is not denied that appellant is a Chinese citizen. On the other hand, the lower court found—construing paragraph 5 of the stipulation of facts—that he was not actually engaged in the retail business on May 15, 1954. It is, therefore, clear that he does not fall under the exception provided in the law.

But appellant argues that on or about May 22, 1954 he obtained from appellee a license to operate a retail store at 480 Quezon Boulevard., Manila; that said license was renewed by appellee every quarter thereafter until the last of 1955, and that it was only on December 15, 1955 when appellee refused to allow its renewal for the first quarter of the year 1956. He further claims that as the first license in his name was issued on May 22, 1954, the case of *Kwan Kwai vs. Perdices* becomes applicable to the present. In said case (G. R. No. L-8918, May 21, 1957) this Court said:

"* * * Even while the building was unfinished, the appellant paid his municipal tax which was accepted by the City Treasurer without requiring him to secure a permit from the respondent Mayor, and it is important to note that, according to the City Treasurer, the tax paid on May 21, 1954 was for April, May and June, thereby embracing the deadline specified in Republic Act No. 1180, namely, May 15, 1954. We cannot believe that R. A. 1180, passed on June 19, 1954 or much later than December 23, 1953, when appellant's store was burned, could have contemplated to apply the deadline to the situation forced upon the appellant, * * *" (*Italics supplied*)

Appellant's contention is untenable. In the case relied upon, *Kwan Kwai* was actually engaged in the retail business on and prior to May 15, 1954; in fact, he paid the corresponding taxes for April to June, 1954, although his store was burned in December, 1953. On the other hand, appellant,—so the lower court found—was not, actually engaged in the retail business on May 15, 1954, and must have started his retail business only after the issuance of a license to him on May 22, 1954—which was a mistake. This mistake the respondent refused to perpetuate when he did not allow the renewal of appellant's license for the year 1956.

In view of the conclusion we have reached on this matter, we deem it unnecessary to decide appellant's other contention that Republic Act No. 1180 can not be given retroactive effect.

Wherefore, the decision appealed from is hereby affirmed, with costs.

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

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