

WONG SIU TONG, PLAINTIFF AND APPELLEE, VS. ALEJO AQUINO, DEFENDANT AND APPELLANT.

G.R. No. L-3602. January 30, 1953

Ponente: REYES, J.

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REYES, J.:

The Revised Ordinances of the City of Manila forbid the construction of any building without the required permit and provides that—

"When the work for which any building permit was issued is not being performed in accordance with the plans and specifications on file, it shall be the duty of the engineer to notify the owner or his agent that the work is being carried on in violation of the permit, and that such work must be suspended until a permit for such deviation from the plans or specifications be obtained, or that such work shall be made to conform to the plans and specifications as filed. If the owner or his agent fail to comply with said notice on the service thereof, it shall be the duty of the engineer to revoke the permit. Written notice of such revocation signed by the engineer shall be immediately served upon the owner or his agent and shall be posted on the premises, and it shall be unlawful for any person to perform any work in or about such structure thereafter" (Section 104.)

Plaintiff had been given a permit to erect a building at the corner of Echague street on Plaza Goiti, but the permit was revoked when it was found that the building was not being constructed according to the plans and specifications approved by the city engineer. Given a second permit upon promise that he would remove the portion of the structure encroaching on the new building line on Echague street and follow the new set of plans and specifications submitted by him and approved by the city engineer, plaintiff did not live up to his promise so that the second permit was likewise revoked. Evidently determined to construct the building the way he wanted, plaintiff applied for a third permit, submitting plans and specifications different from those previously approved by the city engineer, proceeded with the construction without any permit, and, when the construction brought the of Manila to was ordered stopped by the present action in the Court of First Instance enjoin that officer from carrying out his order. The lower court granted the writ applied for, and the city engineer has appealed.

In our opinion the writ should not have been granted. It is evident that plaintiff has flouted the law, and to issue the writ applied for is to give sanction to an act of lawlessness.

The above-copied section of the Revised Ordinances makes it the duty of the city engineer to suspend construction and revoke the permit when, as in the present case, the owner of the structure persists in violating it. And the section further declares that "it shall be unlawful for any person to perform any work in or about such structure thereafter." We do not conceive it to be the proper function of the writ of injunction to restrain a public officer from performing a duty specifically imposed by law or to permit the doing of that which is declared unlawful.

It is argued, however, that the city can not insist on plaintiff's following the new building line on Echague street without firsts expropriating the land that will be affected thereby, and that in any event the Municipal Board has

already passed a resolution permitting plaintiff under certain conditions to follow the old building line on this street. But even if the old building line were followed, plaintiff would still have to comply with the city ordinance on arcades, the construction of which, according to plaintiff's own witness, assistant city engineer Augusto Santamaria, is compulsory in that section of the city. More over, if plaintiff believes that the latest set of plans and specifications submitted by him to the city engineer should be approved, his remedy is to apply for a writ of mandamus to compel that officer to give his approval. Without such plans and specifications being first approved and the corresponding permit issued, the construction of plaintiff's building in accordance therewith would be illegal and should therefore be stopped.

In view of the foregoing, the judgment appealed from is reversed and the petition for injunction is denied.

Padilla, Montemayor and Jugo, JJ., concur.

CONCURRENTE

PABLO, M.,

Actuando como todo residente de Manila, el recurrente pidio la aprobacion del piano de un edificio que habia de edificar; pero al construirlo no siguio el piano aprobado por el Ingeniero de la Ciudad, por lo cual este suspendio la construccion. El recurrente sometio otro piano, pero tampoco siguio las especificaciones del segundo piano aprobado; al contrario, construyo el edificio corao le convenia. Porque el Ingeniero impidio que el prosiguiese la construccion del edificio, el recurrente Wong Siu Tong, por artes de birlibirloque, consiguio de la Junta Municipal de Manila la aprobacion de una resolucion del tenor siguiente:

"RESOLUTION GIVING THE OLD LINE FOR CALLE ECHAGUE, IN CONNECTION WITH THE CONSTRUCTION OF THE BUILDING OWNED BY MR. WONG SIU TONG LOCATED ON PLAZA GOITI CORNER ECHAGUE, UNDER CERTAIN CONDITIONS.

"Whereas, the City of Manila has at present no funds to pay for the expropriation of the properties needed for the widening of Calle Echague: Now, therefore, be it

"Resolved, That the old line for Calle Echague prior to the enactment of Ordinance 3204, be, and the same hereby is, given, in connection with the construction of the building owned by Mr. Wong Siu Tong located on Plaza Goiti corner Echague, subject to the following conditions:

"1.

That the building permit to be issued to Mr. Wong Siu Tong shall be temporary;

"2.

That when the widening of Calle Echague shall be undertaken, said Mr. Wong Siu Tong shall ask no indemnity from the City for the removal of the portion of his building affected by this project; and that the expenses of such removal shall be borne by him; and

"3.

That said Mr. Wong Siu Tong shall post a surety bond in the amount of P10,000.00 as security for the faithful compliance of the obligation specified in item 2 hereof. "Adopted, July 6, 1949.

"APPROVED:

"(Sgd.)

SEGUNDO AGUSTIN

President
Municipal Board

"ATTESTED:

"(Sgd.)

RODOLFO S. ROBLES

Secretary
Municipal Board"

Respaldao por esta resolucion, el recurrente acudio al Juzgado de Primera Instancia de Manila pidiendo una orden de interdicto prohibitorio contra el Ingeniero de la Ciudad para que no le impidiera seguir construyendo su edificio hasta su terminacion. Se dicto sentencia a su favor, y el Ingeniero de la Ciudad apelo ante este Tribunal.

Estudiaremos por partes dicha resolucion. Porque la ciudad no tiene fondos, la suspension del ensanche de la calle Echague probablemente esta justificada. Puede considerarse temporalmente suspendida la ejecucion de la ordenanza No. 3204, que dispone el ensanche de la calle Echague hasta 26 metros para estar en consonancia con el plan general preparado por la National Urban Planning Commission.

En cuanto autoriza a Wong Siu Tong a continuar la construccion del edificio bajo las condiciones especificadas, dicha resolucion es nula y de ningun valor. Nula porque es discriminatoria y arbitraria; discriminatoria porque favorece a un solo individuo en perjuicio del bienestar del publico en general; y arbitraria porque no esta guiada por la razon sino por el capricho. La conveniencia publica aconseja que los edificios en la calle Echague sean contruidos siguiendo el mismo plan trazado por la ordenanza No. 301 y no segun el capricho del recurrente. En los edificios contruidos despues de la aprobacion de dicha ordenanza se adoptaron arcadas, y solamente este recurrente, en virtud de dicha resolucion, es el que tiene el privilegio de construir sin arcadas un edificio en dicha calle. Una simple hipotesis para poner de relieve el caso presente: si un guatemalteco que goza de generales simpatias por su hombria de bien cometiese una falta y, estando pendiente de vista la causa, consiguiese una resolucion concurrente del Congreso de Filipinas, eximiendole de la responsabilidad criminal, ¿le salva esa resolucion? Es evidente que no: tal resolucion no enmienda el Codigo Penal.

Las leyes, las ordenanzas o las resoluciones deben aprobarse en beneficio del publico en general y no en el de un solo individuo. "It is fundamental that City Council cannot enact laws for the benefit of an individual as such." (Ex parte Hunter, [1945] 188 S.W. [2d] 162). "An ordinance that grants rights-the enjoyment must be to all, upon the same terms and conditions." (Clinton vs. Standard Oil Co., 137 S. E., 183). "The public interest to be served

by the ordinance means the interest of all of that part of the public to whom it is intended to apply, without discrimination, and not limited to those viewed as 'proper persons' to whom the privilege is restricted." (McQuillin, Municipal Corporations, 2.^a ed., Tomo 2, pp 683, 684). "So an ordinance directing a named person to do specified acts, for example, to abate an alleged nuisance caused by a building, and prescribing a penalty on failure to comply, is void." (Ud, m, pp. 905-910).

En el caso presente, la Junta Municipal de Manila aprobo la resolucion, no para la conveniencia del publico que transita por la calle Echague, sino para el beneficio exclusivo de un solo individuo y en contravencion de las ordenanzas en vigor.

Segun una ordenanza, todos los que construyan edificios en Manila deben presentar un plano para su aprobacion, y la construccion debe hacerse de acuerdo con el plano aprobado; pero el recurrente, desafiando la autoridad del Ingeniero de la Ciudad, construyo el edificio sin arcadas--contrario al plano aprobado--y la Junta Municipal, por medio de esta resolucion, sanciono la construccion ilegal del edificio de Wong Siu Tong en contravencion de la ordenanza No. 301.

Se impugno la legalidad de esta ordenanza que dispone la construccion de soportales o arcadas; pero este Tribunal la declaro valida en Cu Unjieng contra Patstone, diciendo:

"Tratase de un recurso de mandamus para obligar al Ingeniero de la Ciudad de Manila que expida un permiso para la construccion de un edificio. No hay cuestion alguna acerca de los hechos. El demandante desea edificar una bodega en la Calle Azcarraga, pero se le niega el permiso para hacerlo a menos que cumpla el requisito de construir un soportal sobre la acera del frente de la casa, y hasta que haya cumplido con el articulo 1 de la Ordenanza No. 301 de la Ciudad de Manila que dice asi:

"Siempre que el dueño, encargado o cualquier otra persona o entidad que tenga algun derecho en alguna propiedad situada en las principales calles y avenidas de la Ciudad de Manila, como las de Legarda, R. Hidalgo, Carriedo, Echague, Moriones, Azcarraga, Rizal, Taft, San Miguel y otras mas que en adelante mediante ordenanza ira designando la Junta Municipal, desee levantar o reconstruir un edificio o cualquier otra construccion en dicha propiedad pagara de una vez, despues de aprobado el plano de la obra por el Ingeniero de la Ciudad, la mitad del valor amillarado del terreno de la ciudad comprendido dentro de dichos soportales o arcadas de que estara provisto dicho edificio o construccion, en concepto de derecho de licencia por el uso y ocupacion de dicho terreno: Entendiedose, Que la construccion de arcadas o soportales en las calles de veinte o mas metros de' anchura que no sean las anteriormente mencionadas en este mismo articulo, no se llevara a cabo sino despues de aprobado por el ingeniero de la Ciudad el plano de la obra, y pagado por el dueño, encargado o cualquiera otra persona o entidad que tenga algun derecho en la finca que se trate de levantar o construir, la mitad del valor amillarado del terreno de; la ciudad comprendido dentro de dichos soportales o arcadas, en concepto de derecho de licencia por el uso y ocupacion de dicho terreno."

"El demandante se niega a construir el soportal y a cumplir con la ordenanza en cuestion, fundandose en que es innecesario e inconveniente para su bodega, y en que la ciudad no tiene facultades para obligarle a que lo construya; * * * * * parece que se concede que, dadas las condiciones climatologicas aqui dominantes, los soportales son a la vez utiles y deseables desde el punto de vista de la conveniencia publica, y que la Junta Municipal, en virtud de sus facultades generales para regular la construccion de edificios y la alineacion que deben guardar en las calles, y tambien en virtud de las disposiciones sobre bienestar publico contenidas en la Carta de Manila, tiene atribuciones para disponer que se construyan soportales en ciertas calles.

"Se confirma, por tanto, la sentencia del Juzgado de Primera Instancia en que se declara que la Ciudad de Manila tiene facultades para exigir que se construyan soportales en ciertas circunstancias," (42 Jur. Fil., 864).

Y aun suponiendo que la resolucion fuese valida, lo que debio haber hecho el recurrente fue pedir que el Ingeniero de la Ciudad expidiese a su favor una licencia provisional, de acuerdo con el parrafo 1 de dicha resolucion y, de

acuerdo con dicha licencia, continuar la construccion.

La orden.de interdicto expedido para que el Ingeniero se abstenga "from interfering with the construction and completion of the building in question" no esta en consonancia con la resolucio. Esta no concede autorizacio al recurrente para construir y completar el edificio sin licencia. Es clara la primera condicio: "That the building permit to be issued to Mr. Wong Siu Tong shall be temporary." Al expedir esa licencia provisional, el Ingeniero tiene que atenerse a lo que ordena la ordenanza No. 301 porque se trata de un edificio que se construye en la calle de Echague.

En mi opinion, debe revocarse la decisio del Juez de Primera Instancia de Manila y dejar que el Ingeniero de la Ciudad actue segun su sana discrecion y que los funcionarios que fueron ungidos por el sufragio popular para gobernar la ciudad velen por que la construccion de edificios en la calle de Echague—no ensanchada—sea regida por la ordenanza No. 301, y no por la voluntad de un individuo.

Feria, J., concurs in the result on this concurring opinion.

DISSENTING

PARAS, C.J.,

The facts have been substantially stated in appellant's brief as follows: "The plaintiff in this case filed an application with the City Engineer of Manila for a building permit for the construction of a commercial building at the corner of Echague and Plaza Goiti on the land leased by him from Zacarias Gutierrez Lora, administrator of the same, and submitted in connection therewith plans and specifications which were duly approved by the City Engineer and the corresponding building permit was issued to him. Later, defendant herein discovered that plaintiff did not follow the plans as submitted and approved (see No. 3 of the Stipulation of Facts, p. 42 Record on Appeal). Accordingly, the City Engineer gave notice to the plaintiff to comply with and follow the plans and specifications he submitted for the issuance of the building permit, advising him that failure to do so would mean the revocation of the building permit granted him. Plaintiff, however, did not follow the plans and specifications approved by the City Engineer in spite of the notice to him to do so and the permit was accordingly revoked.

"Plaintiff again submitted a new application for a building permit promising to comply with the new plans and specifications he submitted to the City Engineer and to remove the portion of the building already constructed in violation of the first plans within thirty days from April 20, 1949 by virtue of which a second building permit was issued to him. It was again discovered, however, that not only did the plaintiff fail to comply with his above promise but made other deviations from the new plans, as a consequence of which the City Engineer again revoked the second permit granted to the plaintiff (see stipulation of facts, No. 4, pp. 42, 43, Record on Appeal). The building as constructed does not have the required arcade.

"Consequently, plaintiff again applied for a building permit submitting to the City Engineer plans and specifications in accordance with the construction made by him in violation of the first two plans and specifications submitted by him and approved by the City Engineer. The City Engineer refused to issue a third building permit for the building which was being erected in violation of the oft-cited plans and specifications first submitted and approved (see stipulation of facts, No. 5, pp. 43-44).

"In order to go about the obligation of constructing the building in accordance with the two plans he first submitted, and after the respondent City Engineer, appellant herein, refused to issue the third permit applied for, the plaintiff secured from the Municipal Board a resolution granting him the building line already occupied by the

building he constructed not in accordance with the approved plans, subject to the conditions that he would undertake the removal of those portions of the building constructed not in accordance with the said approved plans at his own expense and that he would post a bond of ten thousand pesos for the faithful performance of said obligation (see stipulation of facts, No. 7, pp. 44, 45, Record on Appeal). When the defendant City Engineer refused to issue a third permit and to approve the new plans submitted, this action was ventilated in court as stated above on August 2, 1949. After submitting the stipulation of facts aforesaid and after trial, the court below rendered its decision issuing the writ of injunction enjoining the respondent City Engineer to abstain from interfering with the construction and erection of the building in question, and from this judgment the present appeal was taken to this Honorable Supreme Court."

The main question raised in the appeal taken by the defendant is whether or not the plaintiff-appellee may be compelled to follow the new building line and to construct an arcade in conformity with Executive Order No. 98, section 6 of which reads as follows: "Wherever the Commission shall have adopted a General Plan, amendment, extension or addition thereto of any urban area or any part thereof, then and thenceforth no street, park or other public way, ground, place, or space; no public building or structure, including residential buildings subsidized in whole part by public funds or assistance; or no public utility whether publicly or privately owned, shall be constructed or authorized in such urban area until and unless the location and extent thereof conform to said general plan or have been submitted and approved by the Commission, except that the Commission may delegate its authority to approve to the District Engineer of the Engineer District in which said urban area or any part thereof is located."

As correctly observed by the trial judge, it is clear that Executive Order No. 98 does not apply to any privately-owned building which is not intended for public utility. In G. R. No. L-3887, Felipe R. Hipolito vs. City of Manila [*] et al., we already had occasion to state that "the section in referring to structures to be constructed in any urban area for which the Commission has adopted a General Plan, applies only to 'residential buildings subsidized in whole or in part by public funds or assistance.'"

While the act and attitude of the plaintiff-appellee in violating the very plans submitted by him and the corresponding permits issued by the defendant-appellant should be strongly condemned, the fact remains that the refusal of the plaintiff-appellee to follow the required building line and arcade has been sanctioned by a resolution of the Municipal Board of Manila, and it is not pretended the said resolution has ever been set aside or annulled by proper authorities. There is no question that the plaintiff-appellee had complied with the conditions imposed by the Municipal Board.

The resolution of the Municipal Board practically approving the erection of petitioner's building is conclusive, and has the effect of amending any other prior ordinance on the matter. Such resolution may not be declared invalid on the ground that it favors an individual exclusively; because it really favors both the City and the petitioner. The conditions imposed by the resolution, which the petitioner fulfilled, may be regarded as beneficial to the City, with the result that the resolution is actually a compromise of conflicting interests.

The appellant insinuated that his refusal to issue a third permit under the new plans submitted by the plaintiff-appellee was due to violations other than noncompliance with the requirements of Executive Order No. 98. This position loses its point in view of the finding in the appealed decision that, according to the representative of the City Engineer's Office, the trial court was made to understand that, save for the regulations imposed by Executive Order No. 98, the plans in question would have been approved. Moreover, it is admitted that petitioner's building does not encroach upon public domain and is not a source of any danger to public safety.

Wherefore, the appealed decision should be affirmed without costs.

Bengzon and Bautista Angelo, JJ., concur.

[*] 87 Phil., 180.

DISSENTING

TUASON, J.,

I concur in the dissenting opinion of Mr. Chief Justice Paras. I will briefly state additional grounds why in my judgment the appealed decision should be affirmed.

One of the reasons for the City Engineer's decision to destroy the plaintiff's building is that it does not have an arcade which is said to be required by Ordinance No. 301.

This ordinance seems to have been misconstrued. What it requires is that when arcades are constructed the property owner must pay for the portion of the city property or public street covered thereby. It seems to me that the construction of arcades is more of a tolerance on permission than an obligation on the part of the builder or owner to make. As I understand it, the ordinance means to say that if the owner wants to construct an arcade he may do so, and that if he does he should pay for the city property used.

The case of *Cu Unjieng vs. Patstone*, 42 Phil., 818, cited by the respondent engineer does not support his position. The question of the construction of an arcade in that case was alien to the issues presented before the court. The Court expressly said that "the question has not been raised by assignment of error and the discussion may, therefore, properly be limited to two points." The court's comment that "It seems, however, to be conceded that under the climatic conditions here existing, arcades are both useful and desirable from the standpoint of public convenience and that the Municipal Board, under its general powers to regulate the construction of buildings and their alignment with the streets, and also under the general welfare clause of the city charter, has power to provide for the construction of arcades on certain streets," was obiter dictum. What is more, the court did not clearly imply that the Municipal Board by Ordinance No. 301 had exercised that power. The statement just quoted is open to the interpretation that the Municipal Board could have required the construction of arcades if it had wanted.

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