

MATILDE GAERLAN, ET AL., PETITIONERS AND APPELLEES, VS. THE CITY COUNCIL OF BAGUIO AND HON. ALFONSO TABORA, AS MAYOR OF THE CITY OF BAGUIO, RESPONDENTS AND APPELLANTS, MAGDALENA...*G.R. No. L-15695. October 31, 1960*

Ponente: BARRERA, J.

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This is an appeal[1] from the decision of the Court of First Instance of Baguio (in Civil Case No. 667) declaring Resolution No. 323 of the City Council, dated November 29, 1956, null and void.

In a petition filed in said court, Matilde Gaerlan and 15 others, allegedly the only persons considered by the Market Committee of Baguio City to participate in the drawing of lots relative to the adjudication of 16 stalls in the City's new market building, sought the nullification of Resolution No. 323 of the City Council awarding, before and without the drawing of lots, Stalls Nos. 16, 20, and 24 in the said new market building to Magdalena Caluza, Manuela Petilla and Magdalena Caccam, respectively, claiming that said resolution was enacted in violation of Republic Act No. 37 and Department of Finance Order No. 32.

After respondents City Council and City Mayor, as well as awardees Caluza, Petilla and Caccam, who were allowed to intervene in the case, had filed their separate answers, denying the allegations of the petition, the case was duly heard.

On April 5, 1957, the court rendered judgment holding that the adjudication of Stalls Nos. 16, 20, and 24 to intervenors, by means of the resolution in question, violated Department Order No. 32, specifically section 10 thereof, which makes mandatory the drawing of lots before market stalls may be adjudicated to applicants. Consequently, Resolution No. 323 was declared null and void and the Market Committee of Baguio ordered to hold a drawing of lots for the said 3 stalls. Hence, the instant appeal by the respondent City Council and the intervenors.

It is not controverted that from 1947 to 1954, inter-venors-appellants were cloth-vendors occupying makeshift stalls in the "two old buildings behind Alpatublan Building (Store Market building)"; and that they had to vacate the premises to give way to the construction of the new market building, upon requirements of the city authorities who, however, assured them that preferential rights would be given to them in the awarding of stalls in the new market building. (Exh. 1-Intervenors, dated May 14, 1954.) More than two years later, or on November 8, 1956, and when the new building was about to be completed, intervenors wrote the City authorities (Exh. 2-Intervenors) reminding them of the assurance that the new stalls occupying the place of their old "puestos" will be given to them (intervenors). And so, upon completion of the new building, but before, the drawing of lots[2] actually took place, the City Council of Baguio passed a resolution which reads:

"RESOLUTION NUMBERED 323

"On motion of Vice-Mayor Bienvenido R. Yandoc, seconded by Mayor Alfonso Tabora, it was

"Resolved: That in pursuance of the commitment of the City Mayor in his letter of May 16, 1954, Mesdames Magdalena Caluza, Manuela Pctilla and Magdalena Caccam be, as they are hereby allocated Stalls Nos. 16, 20 and 24, respectively, in the new market building (Miscellaneous Souvenir Section), behind the Stone Market Bldg., they being the former stall holders in the same area now occupied by the new building.

"Unanimously adopted." (Italics supplied.)

This resolution was declared null and void by the court below as running counter to the rules and regulations governing the lease of public market stalls,[3] specifically Section 10 thereof which provides:

"Sec. 10. Market Committee.-There is hereby created a Committee in each city and municipality, to be designated as Market Committee, whose duty it shall be to conduct the drawing of lots and opening of bids in connection with the adjudication of vacant or newly created stalls or booths in the city or municipal markets as prescribed in this Order, and to certify to the city treasurer or municipal treasurer, as the case may be, the result thereof. * * *."

* * * * *

It is to be noted, however, that the aforementioned procedure, prescribed by Department of Finance Order No 32, is observed only "in connection with the adjudication of vacant or newly created stalls or booths". Stalls Nos. 16, 20, and 24, on the other hand, can not be considered either as newly created or vacant. They are not newly created because they merely replace the old "puestos" as a result of the construction of the new market building in place of the old. They are not vacant because, as stated before, intervenors-appellants had, for several years, conducted their business in the same place, in makeshift stalls in the "old buildings" replaced by the new edifice. The old or makeshift stalls were disoccupied only to give way to the construction of the new building, but not without their occupants first obtaining an assurance from the city authorities that they would have preferential right to occupy the new stalls. Hence, with the enactment of Resolution No. 323 allotting said stalls to intervenors, the City Council did not actually make an award, in the sense that said awardees received something new after losing their former privilege. They were deprived of their old stalls not for any reason attributable to them, but at the instance of the City. And neither could they be considered to have abandoned their privilege because said occupants even made representations with the City Council, before and after the termination of the work, to re-occupy their old places. The resolution involved herein in effect merely allowed intervenors to continue their enjoyment of such privilege which was momentarily interrupted by the construction of the new building. Such action of the City Council, which is not repugnant to any law, not even Department of Finance Order No. 32[4] invoked by appellees, is certainly a valid exercise of its authority to regulate the use of city markets (Sec. 2552-v, Revised Administrative Code).

We note in the Statement of Facts contained in appellants' brief (p. 8), an uncontradicted reference that herein appellees took part in the drawing of lots of the remaining new vacant stalls (excepting those involved in this case) subsequently held on March 11, 1957, and that since then, appellees actually occupied the stalls respectively drawn in their favor. If this is so, then no prejudice has been ! caused appellees by the adoption of the disputed resolution.

In view of the foregoing considerations, the decision appealed from is hereby reversed, without pronouncement as to costs. So ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Gutierrez David, and Paredes, JJ., concur.
Judgment reversed.

[1] Originally filed in the Court of Appeals, the case was elevated to us, the questions raised in the appeal being purely of law.

[2] To determine which of the new stalls would be awarded to each of the various applicants.

[3] Department of Finance Order No. 32, dated November 29, 1946.

[4] This Order is even of doubtful applicability to the facts of the case at bar, there being no alien involved, in view of the specific and sole purpose of Republic Act 37 (under which the Order was issued),-to grant preference of Filipino citizens in the lease of public market stalls.

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