

AUSTIN HARDWARE COMPANY, INC., AND ALL STEEL PRODUCTS, INC., PETITIONERS, VS. THE COURT OF APPEALS, ELENITA H. MANZANO AND FRANCISCO INOCENCIO, RESPONDENTS.

G.R. No. L-41754. February 27, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

The basic issue in this petition for certiorari and prohibition is whether or not the respondent Court of Appeals acted in excess of its jurisdiction in enjoining the respondent judge "from continuing with the proceedings in Civil Case No. 19233", (Austin Hardware Company, Inc., et al. vs. The Mayor of San Juan, defendant, and Elenita H. Manzano, et al., intervenors) and the private respondents (Austin Hardware Company, Inc., et al.) "from continuing the construction of a commercial house and from maintaining a hardware business and a factory for the manufacture of steel products at or in the vicinity of No. 115 L. K. Santos St., San Juan, Rizal" and in declaring them in contempt for disregarding such order.

The instant petition is premised upon the following allegations:

On September 9, 1969, the Mayor of San Juan, Rizal issued a business license and/or permit authorizing petitioner Austin Hardware Company, Inc. to engage in the business of general hardware manufacture at No. 115 Lope K. Santos St., San Juan, Rizal. On July 7, 1970, said Mayor issued a business license and/or permit authorizing All Steel Products, Inc. to engage in the business of manufacturing steel products, also at No. 115 Lope K. Santos St., San Juan, Rizal. In accordance with the licenses thus issued, petitioners Austin Hardware Company, Inc. and All Steel Products, Inc. have been engaged in the business therein described, and to maintain the same they had, as of the year 1974, in good faith invested considerable amounts as capital.

On September 19, 1973, the Parents-Teachers Association of Pedro Cruz Elementary School addressed a letter to the Mayor of San Juan, Rizal, alleging that the operations of the two petitioners produce nuisance, by reason of the facts that (1) Lope K. Santos being a very narrow street, the heavy trucks used by petitioners cause a traffic jam thereon and the blowing of horns disturbs the classes going on in the school; (2) the unloading of steel bars creates much noise detrimental to the pupils' learning; (3) the shop already in operation emits a foul odor, causing air pollution dangerous to the pupils' health; and (4) it is possible that chemicals and other combustible materials are stored inside the factory, which materials constitute fire hazards to the school and other nearby residential houses.

On September 20, 1973, a number of residents of L. K. Santos and Basa Streets and the Fernandez Compound likewise addressed a letter of the same tenor to the Mayor, further stating therein that the drainage system of petitioners' compound is faulty, thus causing seepage of liquid into the neighborhood, and that the warehouse causes so much noise even at nighttime, by reason of the machineries therein installed, that restlessness is caused in the community.

On September 26, 1973, private respondent Elenita H. Manzano wrote a similar letter to the Mayor, also

complaining of the alleged nuisance.

The Mayor of San Juan, Rizal, acting upon the aforementioned complaints, referred the matter to the Municipal Engineer and to the Municipal Health Officer. The matter was likewise referred by the Mayor to the Municipal Council for investigation, on the basis of its power "to declare and abate nuisances" in accordance with Section 2242(h) of the Revised Administrative Code. In turn, the Council, by Resolution No. 228, dated October 25, 1973, referred the same to the National Pollution Control Commission for verification. In their reports dated November 27 and 28, 1973, the senior mechanical engineer and another mechanical engineer of the Commission stated that, with respect to Austin Hardware, the "noise level created by the loading and unloading of steel sheets was 56 db's, which is considered normal in a residential area", and that, with respect to All Steel Products, Inc., "sampling the noise level conducted at the complainants' house and located at the back of the firm's compound is 52 db's, and again normal for daytime in a residential area." They, however, remarked that "although at the time of the inspection, the noise level was normal -- it is apparent that the noise created during actual construction would be above normal. Added to this would be the noise resulting from the operation of the machine shop, mainly coming out from the building openings at the upper walls of the All Steel Products Shop." They recommended that the "municipality should be very careful in issuing building permits specially for structures that will be used for industrial or manufacturing purposes, that will be located in residential areas."

On February 13, 1974, the Municipal Council rendered its decision on the matter, the dispositive portion of which decision reads as follows:

"IN VIEW OF ALL THE FOREGOING, this Council in Session Assembled, holds:

"1. That the license and/or permit to operate the Austin Hardware Co., Inc. should be as it is hereby declared valid, legal and subsisting; and

"2. That the Municipal Mayor should cancel and/or revoke the license and/or permit to operate the manufacturing activities of the Austin Hardware Co., Inc. and the All Steel Products, Inc. as the chief executive officer of the municipal government pursuant to his duties under Section 2194 of the Revised Administrative Code to see to it that the laws are faithfully executed."

Accordingly, the Mayor addressed a letter to the petitioners, advising them that:

"By virtue of the Decision of the Municipal Council, dated February 13, 1974, the licenses-permits issued in your favor to establish and operate manufacturing activities at the premises complained of, to wit:

"(a) Application for Business License of Austin Hardware Co., approved on September 8, 1969, as general hardware manufacturer;

"(b) Application for Business License of All Steel Products, Inc., approved on July 7, 1970, as manufacturer of steel products; and

"(c) Permit to operate (No. JR-73-1145) issued to All Steel Products, Inc., dated January 31, 1973, for steel manufacturing, is/are hereby cancelled and/or revoked and, therefore, without force and effect, after five (5) days from receipt hereof.

"Please be guided accordingly."

Two motions for the reconsideration of the revocation having been denied by the Mayor, petitioners filed an ordinary action for injunction in the Court of First Instance of Rizal (Civil Case No. 19233), alleging, among others, that the revocation of their licenses or permits violated the requirements of procedural due process because the investigation which led to the revocation of their licenses/permits was not to determine the presence of a

ground for revocation, namely, violation of a zonification ordinance of San Juan, but an alleged nuisance produced by their operations.

Upon application of petitioners, the Court of First Instance, presided over by Judge Gregorio G. Pineda, issued a restraining order enjoining the Mayor of San Juan "and all municipal officers, their agents, representatives and/or persons acting upon their orders or in their place and stead from enforcing or implementing the order of defendant Mayor revoking the building permit and stopping the construction of Austin Hardware's warehouse or bodega at No. 115 L.K. Santos Street * * * or in any manner or form interfering with the construction of said hardware or bodega." The writ was subsequently amended to further restrain the officials concerned "from enforcing or implementing the order of defendant Mayor revoking their businesses as hardware and steel products manufacturers."

Private respondents intervened in the above-named case and filed therein a motion to lift the restraining order but the same was denied by the court in an order dated September 5, 1974. A motion for reconsideration of said order was likewise denied. Thereupon, private respondents filed a petition for certiorari and prohibition in the Court of Appeals, docketed as CA-G.R. No. 03932-SP, entitled "Elenita H. Manzano and Francisco Inocencio, etc. vs. Hon. Gregorio G. Pineda, Austin Hardware Company, Inc., and All Steel Products, Inc.", praying for a writ of preliminary injunction restraining respondent judge from continuing with the proceedings in Civil Case No. 19233, and, after due hearing, declaring the writ of injunction permanent, ordering the dismissal of Civil Case No. 19233, setting aside as null and void all the proceedings thereon, and such other relief as may be just and equitable under the premises.

On March 17, 1975, in accordance with its resolution issued on the same day, the Court of Appeals issued the writ of preliminary injunction complained of in this petition, which enjoined "the respondent Judge from continuing with the proceedings in Civil Case No. 19233, and the private respondents from continuing the construction of a commercial house and from maintaining a hardware business and a factory for the manufacture of steel products at or in the vicinity of No. 115 L.K. Santos St., San Juan, Rizal, until further orders."

On March 19, 1975, private respondents filed a petition in the appellate court citing petitioners for contempt. The petition for prohibition and certiorari, as well as the petition to cite petitioners for contempt, was orally argued on April 16, 1975. During the hearing, petitioners raised the issue that the restraining order should not have included the stopping of their hardware business, since Austin Hardware's license to operate a hardware store with storage facilities is not involved in Civil Case No. 19233 because neither the Municipal Council nor the Mayor of San Juan, Rizal, cancelled or revoked it.

The Appellate Court in its resolution of August 19, 1975, found petitioners' contention devoid of merit, declared them guilty of contempt and imposed upon them a fine of P500.00.

I

We find the petition without merit.

The Appellate Court's action is based on the following:

"Careful examination of their pleadings and annexes do not clearly bear private respondents' pretensions. The maintenance of a hardware store is squarely raised by defendants in intervention in the basic case (Par. 6, sub-par. 2, Answer in Intervention, Page 31, Records), while the construction of a bodega or warehouse or storage facilities was raised by no less than private respondents themselves in their 2nd cause of action (page 150, Records) in Civil Case No. 19233, and in their petition for reconsideration of Exhibit '13', to include the construction of a warehouse (p. 154, Records). Similarly, the Annexes '2' to '7' and '9' to their Additional

Comment found on pages 193-194 of Records refer to a Mayor's Permit but say nothing about a permit to operate a hardware store. The Mayor's Permit which the records yield is that found on page 87 of the records introduced as Annex to Intervenor's Motion for Reconsideration which bears Permit No. 309-5-69, dated January 15, 1969, expiring on December 31, 1969.

"On their part, the petitioners opposed any amendment to the preliminary injunction alleging that private respondents' claim of having a license to operate a hardware store with storage facilities comes from their interpretation of the decision of the Municipal Council. The sad fact, however, is that said decision merely mentioned the payment of a business permit from 1966, which was never exhibited to the Municipal Council. Noteworthy also is the fact that license fees for storage facilities began, as stated in same decision, only in 1970, thereby supporting the petitioners' contention that Austin Hardware was using just one permit - that one approved on September 8, 1969 - which was for a general hardware manufacturer.

"As We have stated, the Deputy Clerk of Court of the Division, Atty. Catalina C. Buena, accompanied by the lawyers of both parties, was ordered to repair to the premises to verify whether or not the steel production has been stopped and report her findings to the Court.

Here are the observations of the Deputy Clerk of Court:

'OBSERVATIONS -

1. More than twenty (20) machines still connected and plugged to power source;
2. All fuse boxes of said machines on "ON" position indicating that machines were ready for use;
3. Some machines had steel rods mounted on them indicating that machine work was going on before we arrived;
4. Steel filings and copper filings, new - (evidenced by lack of rust on steel and shiny sheen of both copper and steel filings);
5. One heavy drill had a piece of work mounted and the manager admitted they had worked on that (inside new building);
6. Acetylene and oxygen tanks inside new warehouse and inside the shop were all plugged to electrical connections;
7. The stripper machine inside new warehouse had a steel plate mounted and a stripped plate beside it and metal was still hot;
8. Steel bars on floor just painted, smell of paint very strong.

Questioned by undersigned were several laborers seated and resting outside the new warehouse, namely:

1. Adolfo Ehen, Dionisio Ng, Gomer Abad, who admitted they were welding that morning;
2. Alejandro Cabasa, Crispulo Colomba and Leodegario de los Reyes - helpers and machinists in shop who admitted working on the shop in the morning;
3. Romeo de los Reyes - who claimed he was a 'pahinante' in the delivery truck.

* * * * *

At two (2:00) p.m., after lunch and before returning to the Court, the undersigned requested Mrs. Manzano to bring her back to the premises. Upon arrival at the compound, even while on the street yet, the undersigned heard a loud disturbing noise and she could feel a strong vibration coming from a machine inside the new warehouse.

Upon verification, she saw a forklift in operation, lifting the newly painted metal rods and/or steel bars or metal bars and lowering them at another place. While operating the forklift emanated a loud disturbing noise while the movement of the forklift as well of the falling of the long bars on the place where it was transferred caused strong vibrations.

Inside the machine shop - at the back portion thereof, three (3) laborers were operating a machine attached to a big acetylene tank welding a big metal or steel part; three (3) others were around another machine which was mounted apparently about to start work thereon while a Chinese was tinkering with another machine which was also plugged on.

The laborers in the middle bodega were just moving about ready to start work but undersigned did not see the machine inside there being operated.'

* * * * *

On these findings the representative of the Court made the following remarks in her report:

'REMARKS:

1. Definitely there is evidence that the steel manufacturing operations of private respondents were being continued even up to the morning of the date of said hearing and were resumed in the afternoon of said date;
2. That even the hardware business and bodega of private respondent cannot be carried out without causing too much noise and disturbance as the goods stored therein are so huge that they cannot be moved without the use of big machines like a forklift or enormous lifting chains (like those used by boats for anchorage) which produces disturbing loud noises and strong vibrations while in operation. The undersigned also notes that said parts and metals cannot be taken in and out of the compound except in big trucks - for besides being very heavy, they are either very long or very wide.'

"The foregoing facts prove that notwithstanding the restraining order and the injunction issued by this Court, private respondents did not stop altogether operating their manufacturing business. The observations of Atty. Buena that she found -

1. About twenty (20) big machines were plugged in to electrical connections with their individual switches open;
2. The presence of scrap of iron on the flooring of the cutting machines showing recent use of said machines;
3. The presence of another machine for cutting and/or for boring holes in metals in the middle of the bodega or warehouse and which was plugged into a long extension electrical wire;
4. The presence of steel plates cut into strips with the use of acetylene and oxygen cutters by the side of a stripper machine which was still connected with acetylene and oxygen tanks nearby, and the steel strips still hot, showing that laborers had just worked on them upon their arrival;
5. The fact that upon returning to the premises after lunch the investigator heard a loud disturbing noise and could feel a strong vibration coming from a machine inside the warehouse even while they were yet in the street;
6. The fact that a forklift was in actual operation lifting newly painted rods and/or steel bars and lowering them at another place causing a loud disturbing noise with strong vibration in the premises, and inside the warehouse, a machine attached to the acetylene tank welding a big metal was being operated by 3 laborers while 3 others around another machine were about to start working on it, and a Chinese was tinkering with another machine that was also plugged in;

show beyond doubt that private respondents have not complied with the injunction issued by this Court.

"Moreover, it is admitted that respondents have continued to operate a hardware store with storage facilities. But as found out, machineries were also installed in that store and warehouse which were undoubtedly in operation during the ocular inspection. If in the operation of a hardware store private respondents must also operate these machineries as found out, then with greater reason, the order of injunction should apply to the said business. It must be noted that the writ clearly enjoins the respondents '* * * from continuing the construction of a commercial house and from maintaining a hardware business and a factory for the manufacture of steel products * * *'. This order is so worded specifically mentioning a hardware business to be included in its restriction. The private respondents tried to justify their continuing operation of a hardware store with storage facilities with the excuse that the permit to run store was never nullified by the decision of the Municipal Council of San Juan, Rizal. The petitioners disagree and impute that private respondents were probably misled by the wordings of the decision of the Municipal Council. Considering that no separate permit for the operation of a hardware store was exhibited by private respondents, and that the various receipts of payments presented by private respondents do not show that they were in payment of a license or permit to run a hardware store, we are inclined to agree with the petitioners. Moreover, if private respondents ever had a license to operate a hardware store, the new zonification ordinance of the town of San Juan, Rizal shall have nullified said permit.

"We therefore find that the petition to cite private respondents for contempt is meritorious. They have not stopped running their store in which machines were found in operation. They try to justify their operations by saying that their right to operate a hardware is not covered by the injunction. The injunction order has been received by them. If they failed to get the exact scope of the injunction, they should have addressed themselves to this Court for a clarification of the order, or for an amendment thereof, as they subsequently did. Instead they have willfully disobeyed a legal order of this Court."

The afore-mentioned findings are neither based on speculation nor on a misapprehension of facts, but on substantial evidence. This Court has consistently respected, with some few exceptions, the findings of fact of the Court of Appeals. Such exceptions do not obtain here.[1]

II

The power to license necessarily carries with it the authority to provide reasonable terms and conditions under which the licensed business shall be conducted. The authority which grants the license always retains the power to revoke it, "either for cause of forfeiture or upon a change of policy and legislation touching the subject." [2] In the case at bar, the permit to the Austin Hardware Company, Inc. and the All Steel Products, Inc. was granted subject to the provisions of existing ordinances. Likewise, petitioners' permit to construct a warehouse at 115 L. K. Santos St., San Juan, Rizal was subject to the condition that its construction or use will not conflict with the provisions of the zoning ordinance, otherwise the construction will be removed by the government at the expense of the permittee or licensee.

It is not disputed that the business establishments of petitioners were situated within the residential zone and, therefore, the issuance of a license or permit in favor of the petitioners appears violative of Section 2 of Municipal Ordinance No. 90, Series of 1968, of San Juan, which provides that "No building permit, business license, or any other certificate of approval shall be issued by the municipality for commercial or industrial establishments which shall be erected, operated, and maintained within any residential zone, unless the site has been or so declared as commercial or industrial zone by the municipal council." It is precisely for this reason that the Municipal Mayor of San Juan cancelled or revoked (a) the business license of the Austin Hardware Company, Inc. dated September 8, 1969 as general hardware manufacturer; (b) the business license of the All Steel Products, Inc. dated July 7,

1970 as manufacturer of steel products; and (c) the permit to operate issued to All Steel Products, Inc. dated January 31, 1973 for steel manufacturing. Since the obvious purpose of zoning is the protection of public safety, health, convenience and welfare, it would have been inconsistent with such purpose to have allowed the operation of petitioners' manufacturing business in a residential zone.

It is true that petitioners insist that they have a separate permit to operate the business of hardware store, but as found by the Court of Appeals, no separate permit for the operation of a hardware store was shown by them and that the various receipts of payments presented by petitioners do not show that they were in payment of a license or permit to run a hardware store. On the contrary, as shown by the joint manifestation of the petitioners and the private respondents dated November 27, 1975, said parties admitted that in their conference with the Municipal Mayor of San Juan, in the afternoon of November 22, 1975, "the Mayor informed them that he would maintain his act of revoking the permits and/or licenses of the petitioners as hardware and steel products manufacturers and that he had not issued any permit for the hardware store with storage facilities."

Wherefore, the petition for certiorari and prohibition is hereby dismissed and, accordingly, the writs prayed for denied, with costs against the petitioners.

Fernando, Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] De Gala Sison v. Mercado, 8 SCRA 595; Goduco v. Court of Appeals, 14 SCRA 282; Ramos v. Pepsi Cola Bottling Co., 19 SCRA 289; Tan vs. Court of Appeals, 20 SCRA 54; Lucero v. Loot, 25 SCRA 687; Ramirez Tel. Company v. Bank of America, 29 SCRA 19; Chan v. Court of Appeals, 33 SCRA 737.

[2] 3 McQuilin Municipal Corporation, 2nd Ed., pp. 713-714.

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