

**RAMCAR, INC., PETITIONER, VS. EUSEBIO S. MILLAR, ET AL.,
RESPONDENTS.***G. R. No. L-17760. October 31, 1962*

Ponente: REYES, J.B.L., J.

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Petitioner Ramcar, Inc. operates and maintains an auto repair and body building shop at No. 1241 (formerly No. 1377) General Luna Street, Ermita, Manila, while the seven private respondents reside near or around the shop. Respondents brought an action before the Court of First Instance of Manila to abate the said establishment as a nuisance. That Court, after trial, dismissed the complaint, and not satisfied with the decision, the plaintiffs (respondents now) appealed the case to the Court of Appeals.

The appellate court reversed the trial court's decisions and entered judgment against Ramcar, Inc., as follows:

"WHEREFORE, the decision of the lower court is hereby reversed and another one rendered declaring that the operation and maintenance of the establishment of the defendant corporation at No. 1241 (formerly No. 1377) General Luna St., Ermita, Manila, is a public nuisance and violates the provisions of Zonification Ordinance No. 2830, as amended by Ordinance No. 2906, of the City of Manila; ordering the defendants-appellees to remove the said establishment and all buildings and structures built therein within 30 days from the finality of this judgment; and, condemning defendant-appellee Ramcar Inc., to pay plaintiffs-appellants the sum of P10,000.00 as special damages and P2,000.00 as attorney's fees, without cost in this instance."

Whereupon, Ramcar, Inc., petitioned this Court for a review on certiorari.

Petitioner has been engaged in the auto repair and body building business since 1938 up to the present, except when it was interrupted during the Japanese occupation. It transferred its place of business to its present site from 1049 R. Hidalgo Street, Manila, on December 20, 1951 because the old location was within the 100-meter radius from the Jose Rizal College, in violation of city ordinances. As found by the Appeals Court, the nature of the corporation's activities, actually engaged in, consists in repairing and building bodies of motor vehicles, and involves the use of tools and machinery that give rise to much noise and annoyance during all hours of the day up to nighttime; and its employees oftentimes work on Sundays and holidays. At the time of the transfer, respondent Eusebio S. Millar and his family were already residing on his own land adjacent to that of Ramcar, Inc. He and his co-respondents repeatedly petitioned the city authorities for the closure of the shop to no avail, because city authorities were "at loggerheads as to whether the immediate vicinity where the business of Ramcar, Inc., is located is a residential or a commercial zone". The Court of Appeals, however, found that the place is a commercial zone, as the business would not be permitted in a residential zone.

It further appears that Ramcar Inc., has been granted a license and permit to operate a garage; and it claims that such license entitles it to conduct its body building business, and that Section 5 of Ordinance No. 2830, as amended by Ordinance No. 2906 of the City of Manila, allow it to conduct its business at the present site. The said ordinance restricts the kinds of business, buildings, and establishments that may be built in commercial

zones, and the enumeration of permitted Activities includes "6. Garage and gasoline service stations." A body building shop is riot within the purview of "garage", which designates a shop for storing repairing and servicing motor vehicles, being merely a modern substitute for the ancient livery stable (*Legum vs. Carlin*, 99 ALR, 536). The Court of Appeals correctly held on this point:

"It is clear that the business of Ramcar, Inc., is not a mere garage or automobile repair and painting shop, much less, a gasoline service station, within the contemplation of Section 5 of the City Ordinances. Besides the usual services of vehicle storage, of supplying gas, and of making repairs, the shop also assembles and rebuilds car and truck bodies which require more than ordinary labor and skill and involves the use of tools and machinery with the concomitant noise created by the use of those tools and machines. While repair work may be considered as necessary incident off a garage or a gasoline service station for purposes of goodwill when they involve minor repairs, body assembling or rebuilding certainly make such kind of business more than a more garage and gas service station and, for zonification purposes; should not be confused with and must be separated from a garage or gas service business."

In fact, it has been held in *Uy Chao vs. Aguilar*, 103 Phil., 219; 54 Off. Gaz. (30) 7225, that to repair pre-supposes decay, dilapidation, injury, or partial destruction of the repaired elements; i.e., broken or damaged parts of a structural whole to their original condition. Clearly, the term can not apply to the building or remodeling of bodies or structures.

The second assigned error refers to the appreciation of documentary and testimonial evidence on record, and incorporates certain testimonials of some neighbors of petitioner attesting to their non-molestation by the shop in question; and, proceeding therefrom, petitioner argues that its business is not a nuisance in its present location. Whether a particular thing is or is not a nuisance is a question of fact (*Iloilo Cold Storage Co. vs. Municipal Council*, 24 Phil. 471; 61 C.J.S. 864) and is properly within the jurisdiction of the Court of Appeals, whose findings of fact are conclusive. Under this same assignment of error, petitioner argues that it is only the City, under its Charter, that can determine whether a business, occupation, act, or building is a nuisance or not, and suggests that the remedy is an action against the City of Manila only for a determination of whether or not the subject matter thereof is a nuisance. While Section 18 of Republic Act 409 grants legislative powers to the municipal board to declare, prevent, and provide for the abatement of nuisances, inaction by the board does not preclude the ultimate power of courts to determine the existence of a nuisance in a particular case tried before them (*Rutton vs. City of Camden*, 23 Am. Rep. 203, 209; *Iloilo Cold Storage Co. vs. Municipal Council*, supra).

The decision appealed from condemns the petitioner to pay P10,000.00, as "special damages", and P2,000.00 as attorney's fees to the respondents,

"For the annoyance and discomfort caused by the constant noise emanating from the corporation's shop, as well as to counsel fees where the defendant's (herein petitioner) acts or omissions have compelled them to litigate * * *."

As last assignment of error, petitioner vehemently asserts that the award of damages has no sanction in law, and because its business was covered by a valid license, the decision tends to punish a citizen who acted with diligence and in accordance with law. In disposing of this assigned error, it is enough to point out that the zoning ordinance prohibited the body building operations of petitioner. Contrary to petitioner's pretense that nowhere in the Civil Code is the award of damages arising from a nuisance authorized, said Code provides:

"ART. 697. The abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence."

and, in the general provisions on Damages, the same Code states:

"ART. 2196. The rules under this Title are without prejudice to special provisions on damages formulated elsewhere in this code. * * *"

However, the business of the petitioner is not nuisance per se. It is only on account of its location that it is a public nuisance. To abate it, it is not necessary, as the appealed decision decrees, to remove all buildings and structures built in the place where it is presently located, as these, or parts thereof; may be utilized for pursuits that are not forbidden by law or ordinance.

Wherefore, the decision appealed from is modified by permanently enjoining the petitioner only from operating its body building operations or activities in its present location, without requiring the demolition of the existing buildings. In all other respects, the judgment below is affirmed. Costs in this instance against petitioner, Ramcar, Inc.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Dizon, Regala and Makalintal, JJ., concur.

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