

EUGENIO INTING, PRESIDENT, FERMIN S. TORRALBA, VALERIANO MANUNGOLH, SERVANDO BORJA, TIRO & CALOPE, MARGARITO SALIGUMBA, SERGIO JABINES, LEON OLARIO, ANANIAS BELDORO, LIBERATO VI...

G.R. No. L-25890. January 31, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This appeal from the decision of the Court of First Instance of Bohol in its Civil Case No. 1160 was originally taken to the Court of Appeals but was subsequently certified to this Court, since the issue involves no facts and refers solely to the validity of a municipal ordinance.

On November 25, 1957 Eugenio Inting, in his capacity as president of the Tagbilaran Cockpit, obtained a building permit for the construction of a cockpit of strong materials in the poblacion of Tagbilaran, Bohol. After the building was constructed Inting applied for a permit for the operation of the cockpit beginning January 1, 1958. As said building was found to have met all the legal requirements, Mayor Pedro Belderol of Tagbilaran granted the permit applied for on January 10, 1958, after payment of the sums of P10.00 for the permit fee and P200.00 for the license fee. The permit was valid "as long as the yearly permit fee of P10.00 and the license fee are paid or until revoked." On March 21, 1958 Inting again paid the amount of P600.00 to the Municipal Treasurer of Tagbilaran as license fee for three quarters ending December 31, 1958. Subsequently, on April 1, 1958 the municipal council of Tagbilaran approved Ordinance No. 3, series of 1958, which provided, among other things, that:

"SECTION 1. - It shall be unlawful for any person, corporation, or entity to operate a cockpit in Tagbilaran without having been awarded to do so by the Mayor after such person, corporation or entity has been declared as the highest bidder;

"SECTION 2. - The Municipal Council shall conduct a bid for the right to operate a cockpit in Tagbilaran and shall declare the highest bidder among the bidders. No bid less than P1,000.00 shall be accepted.

* * * * *

"SECTION 4. - The yearly permit and license fee for a cockpit shall be Twenty Pesos (P20.00) and Two Thousand Four Hundred Pesos (P2,400.00), respectively, which shall be paid within five days after the bid is being awarded to the highest bidder and no license shall be issued by the Municipal Treasurer unless the cockpit to be operated is situated in any of the places mentioned in Section five (5) herein below.

"SECTION 5. - Cockpit building shall only be constructed along any of the following streets:

(1) Libertad North, from the Bisaya Land Transportation Co.

(2) C. Gallares St., from J.A. Clarin to Parras St.

(3) Bonifacio St., from Luna to Parras Streets, and

(4) Parras St., from Libertad to C. Gallares Sts.

"All cockpits presently operating and constructed outside of the places mentioned above shall cease to operate immediately after the date fixed for holding the bid.

* * * * *

"SECTION 8. - This Ordinance shall take effect upon approval."

The municipal council of Tagbilaran, in its Resolution No. 17, set the public bidding of the exclusive right to operate a cockpit on April 16, 1958. Consequently, by virtue of Section 5 of the ordinance aforequoted, Tagbilaran Cockpit would have to cease operation after the aforementioned date. To forestall its closure Inting and the members of his association filed a complaint in the court a quo against the Municipal Mayor and the members of the municipal council of Tagbilaran, questioning the validity of Ordinance No. 3, series of 1958. The plaintiffs also sought the issuance of a preliminary injunction to restrain the defendants from closing their cockpit during the pendency of the suit. In the meantime, the municipal council postponed the public bidding until the legality of the ordinance was resolved by the court.

On October 7, 1959 the lower court rendered its decision sustaining the validity of the ordinance in question. However, it held that inasmuch as said ordinance involved an increase of license tax on cockpits by more than fifty percent (50%) of the existing rate it was subject to approval by the Secretary of Finance pursuant to Section 4, No. 3 of Commonwealth Act No. 472, and since it was not yet so approved it was still ineffective. Thus, the dispositive portion of the decision states:

"PREMISES CONSIDERED, the Court renders judgment enjoining defendants to refrain from putting in operation Ordinance No. 3, series of 1958 (Annex F). Be it understood, however, that once it is approved by the Secretary of Finance, the municipality of Tagbilaran, through its municipal council, shall have the right to carry into effect its provisions in the manner provided for by law."

Not being in conformity with the decision, the plaintiffs instituted the instant appeal, alleging that the trial court erred in holding that Municipal Ordinance No. 3, series of 1958, was not yet effective and in not holding that said ordinance was null and void on two grounds, namely, that the municipal council had no power and authority to sell at public auction the privilege to operate a cockpit and that said ordinance was contrary to the provisions of Republic Act No. 1224.

Instead of filing a brief, the appellees, through the Provincial Fiscal of Bohol, submitted a manifestation asking in effect for the dismissal of the instant appeal on the ground that the issues raised by the appellants had been rendered academic by the approval by the municipal council of Tagbilaran of Ordinance No. 15, series of 1960, which provides:

"SECTION 1. It shall be unlawful for any person, partnership, corporation or entity to establish and operate a cockpit within the poblacion proper of Tagbilaran, Bohol; PROVIDED HOWEVER: That cockpits already established within Poblacion proper of Tagbilaran shall be given six (6) months up to June 30, 1961, without grace from the effectivity of this ordinance, within which to cease or transfer operation; PROVIDED FURTHER: That a cockpit may be established and operated in the barrios of Tagbilaran, Bohol, subject to the payment of ONE HUNDRED (P100.00) PESOS license fee per quarter or FOUR HUNDRED (P400.00) PESOS per annum payable to the Municipal Treasurer before operation as long as it is not within a radius of three hundred (300) lineal meters from any public building, public or private school, hospital, church or chapel and public plaza.

"SECTION 2. Any ordinance or part thereof in conflict with this Ordinance is hereby repealed or modified accordingly.

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"SECTION 4 - This Ordinance shall take effect on January 1, 1961."

Since the provisions of Ordinance No. 3, series of 1958, are in conflict with Section 1 of Ordinance No. 15, series of 1960, the former ordinance is deemed repealed by virtue of Section 2 of the latter ordinance. Consequently, it is unnecessary and of no practical value to resolve the issues raised by the appellants regarding the validity of Ordinance No. 3, series of 1958.

WHEREFORE , this appeal is hereby dismissed for being moot and academic. No costs.

Concepcion, C.J., Reyes, J. B. L., Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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