

VIRGILIO S. VELAZCO AND THE PROVINCIAL BOARD OF CAVITE, PETITIONERS, VS. EMILIA S. BLAS, CONRADO SAYAS AND THE COURT OF FIRST INSTANCE OF CAVITE, BRANCH IV, TAGAYTAY CITY, RESPO...

G.R. No. L-30456. July 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review a decision of the Court of First Instance of Cavite, penned by then Judge, now Court of Appeals Justice Jose C. Colayco. The appeal involves purely questions of law and was filed pursuant to the provisions of R.A. No. 5440.

The facts gathered from the decision sought to be reviewed are the following:

Resolution No. 3, series of 1968, of the Municipal Council of Silang, Cavite, authorized Emilia S. Blas to operate a cinema. Because the cinema would be near the medical clinic of Dr. Virgilio S. Velazco, the resolution expressly prohibited the installation and use of any loudspeaker or any similar device that would make the sound audible outside the theater. The resolution also stipulated that violation of the prohibition or other conditions imposed for the operation of the cinema would constitute sufficient ground for the revocation of the permit.

After receiving official advice of the resolution and having paid the building permit, Blas started construction of the cinema on March 3, 1968. However, on March 14, 1968, the Provincial Board of Cavite, upon representations made by Dr. Velazco, approved Resolution No. 68 which declared Resolution No. 3 aforementioned null and void on the ground that it was contrary to the provisions of R.A. No. 1224.

Blas asked the Provincial Board to reconsider Resolution No. 68 but her request was denied. And because Blas continued with the construction of the cinema notwithstanding the action of the Provincial Board, it passed Resolution No. 80 advising the Mayor of Silang to stop the construction. He did not succeed so Dr. Velazco filed an action in the trial court to declare the operation of the cinema illegal and to stop its construction because (1) the noise produced by the construction was harmful to the patients of the clinic and (2) the operation of the cinema contravenes the provisions of R.A. No. 1224.

After holding that the operation of the cinema does not contravene R.A. No. 1224, that the failure of Blas to appeal the action of the Provincial Board to the Office of the President of the Philippines did not make it final and binding upon her, and that the noise from the construction was not a nuisance, the trial court dismissed the complaint. Hence, the present appeal which poses questions of law only.

The appellant claims that the trial court committed the follow-ing errors:

1. In holding that a movie theater is not a place of amusement similar to those enumerated in R.A. No. 1224 and is consequently not a nuisance;

2. In holding that Resolution No. 68 was ultra vires and so it was not necessary for private respondents to exhaust administrative remedies;
3. In declaring Resolution No. 3 valid even after the provincial board had declared it void and despite private respondents' failure to appeal to the Office of the President; and
4. In not ordering private respondents to pay attorney's fees and the costs.

The appeal has no merit and must perforce be dismissed.

The first assignment of error deserves scant consideration. With regard thereto, Section 1 of R.A. No. 1224 provides the following:

"Section 1. The municipal or city board or council of each chartered city and the municipal council of each municipality and municipal district shall have the power to regulate or prohibit by ordinance the establishment, maintenance or operation of night clubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billiard pools, and other similar places of amusement within its territorial jurisdiction; Provided, however, that no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of two hundred lineal meters in the case of night clubs, cabarets, pavilions, or other similar places, and fifty lineal meters in the case of dancing schools, bars, saloons, billiard pools, bowling alleys, or other similar places, x x x from any public building, schools, hospitals and churches x x x."

We agree with the trial court for the reasons it has given that the cinema of the private respondents which is about 40 meters away from the petitioner's clinic, does not fall within the ambit of the above-quoted statute. Thus the trial court said:

"The reason of the law in regulating the establishment of the places enumerated in section 1, above, may be deduced from the nature of the activities taking place therein. Admittedly, they detract from the quiet and sober atmosphere which is expected to prevail around public buildings, schools, hospitals and churches. The night clubs, cabarets, bars and saloons are known sources of boisterous behavior because of the drinks dispensed in such places, while the dancing schools, cockpits and bowling alleys are open places of noisy amusement because of the loud music in the case of dancing halls, the roar and the shouting in the cockpits and the continuous rumble in the bowling alleys. None of these conditions are present in the case of a movie-house. To include this form of entertainment by analogy would constitute an unreasonable extension of the context and intent of the law. Movies have been one of the most, if not the most, popular forms of public entertainment in this country for more than thirty years. It is safe to assume therefore that if the legislators intended to include them among the regulated forms, they would have done so expressly."

The trial court held that Resolution No. 68 of the Provincial Board of Cavite is null and void because it is beyond the powers granted to the board by Sec. 2233 of the Revised Administrative Code which reads:

"Sec. 2233. Provincial board to pass on legality of municipal proceedings. - Upon receiving copies or resolutions and ordinances passed by municipal councils and of executive orders promulgated by mayors, the provincial board shall examine the documents or transmit them to the provincial fiscal, whose duty it shall thereupon become to examine the same promptly and inform the provincial board of any defect or impropriety which he may discover therein, and make such other comment or criticism as shall appear to him proper.

"If the board should in any case find that any resolution, ordinance, or order, as aforesaid, is beyond the powers conferred upon the council or mayor making the same, it shall declare such resolution, ordinance, or order invalid, entering its action upon the minutes and advising the proper municipal authorities thereof. The effect of such action shall be to annul the resolution, ordinance, or order in question, subject to action by the Secretary of the Interior as hereinafter provided."

We agree with the trial court that the resolution of the Provincial Board in question suffers from a fatal legal

infirmity. For it is manifest that the municipal council has the power to authorize and regulate the operation of cinemas, not by virtue of R.A. No. 1224 but pursuant to the powers conferred upon it by Chapter 57, Article IX of the Revised Administrative Code. Upon the other hand, the only power granted to the provincial board by Sec. 2233 of the same Code is to declare a municipal council issuance void on the sole ground that it is beyond the power of the municipal council to issue. Thus this Court has held:

"The only ground upon which a provincial board may declare any municipal resolution, ordinance, or order invalid is when such resolution, ordinance, or order is 'beyond the powers conferred upon the council or president making the same.' Absolutely no other ground is recognized by the law. A strictly legal question is before the provincial board in its consideration of a municipal resolution, ordinance, or order. The provincial disapproval of any resolution, ordinance, or order must be premised specifically upon the fact that such resolution, ordinance, or order is outside the scope of the legal powers conferred by law. If a provincial board passes these limits, it usurps the legislative functions of the municipal council or president. Such has been the consistent course of executive authority (Opinions Attorney-General Wilfley [1905], II Op. Atty. -Gen., 557, 642; Opinion Attorney-General Villamor [1910], V Op. Atty. -Gen., 382; Opinion Attorney-General Villa-Real, November 22, 1922; Opinion Attorney-General Jaranilla, August 9, 1926; Provincial Circular Executive Bureau, September 16, 1918)." (Gabriel vs. Provincial Board of Pampanga, 50 Phil. 686, 692-3 [1927]; see also Cariño vs. Jamoralne, 56 Phil. 188 [1931] and Manantan vs. Municipality of Luna, 82 Phil. 844 [1949].)

Viewed in the light of the foregoing doctrine, Resolution No. 68 is indeed ultra vires.

The petitioner contends that the private respondents should have exhausted administrative remedies by appealing the action of the provincial board to the Office of the President. This argument can be briefly dismissed as follows:

- (1) Sec. 2233 of the Revised Administrative Code which provides for an appeal to the Office of the President from an action of the provincial board is one that is available to the municipal council but not to the private respondents as in the case at bar.
- (2) Exhaustion of administrative remedies as a condition before a litigant may resort to the courts is inapplicable in this case because it is the petitioner and not the private respondents who initiated the litigation.
- (3) The issue before the trial court, as before Us, is a purely legal one in which case there is no need to exhaust administrative remedies. (Tapales vs. President, L-17523, March 30, 1963, 7 SCRA 553; Gonzales vs. Hechanova L-21897, 9 SCRA 230.)
- (4) Resolution No. 68 is patently illegal because it was passed in excess of jurisdiction and in such a case exhaustion of administrative remedies is not necessary. (Gonzales vs. Hechanova, supra.)

In his third assignment of error, the petitioner claims that the trial court erred in declaring Resolution No. 3 valid even after the provincial board had declared it void and despite private respondents' failure to appeal to the Office of the President. The petitioner has not correctly understood the decision under review; the trial court did not declare Resolution No. 3 valid. This is what the trial court said:

"The plaintiff argues however that the court has no power to declare the municipal resolution in question valid, after it has been declared invalid by the Provincial Board, relying on section 2236 of the Rev. Administrative Code. The argument misses the point. The issue in this aspect of the case is not the validity of the resolution of the municipal council of Silang, but the validity of the resolution of the Provincial Board. The Court has already ruled that the Board resolution is null and void because it is ultra vires. The law does not require the approval of the Provincial Board for the validity of municipal ordinances or resolutions. It only authorizes the Board to declare them invalid if in excess of its powers (Mendoza, Santos, & Co. v. Municipality a

Meycawayan, G.R. No. L-6069, April 30, 1954 ; Suarez v. Santos 51 O.G. 132). Having declared the action of the Board null and void, therefore, the Court does not have to declare the municipal council resolution valid. It is valid by operation of law. (Suarez v. Santos , 51 O.G. 132)."

On a purely legal point of view, the courts are vested with the power to determine the validity of municipal proceedings despite a previous determination by the provincial board. Thus Sec. 2236 of the Revised Administrative Code stipulates:

"Sec. 2236. Judicial authority to determine validity of municipal proceedings. - Nothing contained in either of the three last preceding sections hereof shall be construed to deprive any judicial tribunal to hold void for want of statutory authority any act, ordinance, or resolution of a municipal council or executive order of a mayor the validity of which shall be involved in any cause arising before such tribunal, without respect to the decision of the executive authorities."

This Court in the Gabriel and Cariño cases, supra, validated municipal ordinances which had been annulled by the provincial board.

The last assignment of error which is merely resultant of the previous ones has to fail.

WHEREFORE, the petition is dismissed for lack of merit. No special pronouncement as to costs.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Makasiar, J., in the result.

Aquino, J., see concurrence.

CONCURRING OPINION

AQUINO, J.:

I concur. A cine or motion picture theater is not among the places of amusement subject to the distance requirements specified in Republic Act No. 938, as amended by Republic Acts Nos. 979 and 1224. That law mentions nightclubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys and billiard pools as places of amusement which should not be operated in close proximity to any public building, schools, hospitals and churches.

Consequently, the operation of the movie house of Emilia S. Bias near a medical clinic is not covered by Republic Act No. 938.

The provincial board resolution advising the town mayor to stop the construction of the said cine is illegal. The resolution of the municipal council authorizing such construction is lawful although unnecessary.

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