

MANILA RACE HORSE TRAINERS ASSOCIATION, INC., AND JUAN T. SORDAN, PLAINTIFFS AND APPELLANTS, VS. MANUEL DE LA FUENTE, DEFENDANT AND APPELLEE.

G. R. No. L-2947. January 10, 1951

Ponente: TUASON, J.

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TUASON, J.:

This action was instituted for a declaratory relief by the Manila Race Horses Trainers Association, Inc., a nonstock corporation duly organized and existing under and by virtue of the laws of the Philippines, who allege that they are owners of boarding stables for race horses and that their rights as such are affected by Ordinance No. 3065 of the City of Manila approved on July 1, 1947.[1] They made the Mayor of Manila defendant and prayed that said ordinance be declared invalid as violative of the Philippine Constitution.

The case was submitted on the pleadings, and the decision was that the ordinance in question "is constitutional and valid and has been enacted in accordance with the powers of the Municipal Board granted by the Charter of the City of Manila."

On appeal, the plaintiffs as appellants make three assignments of error, the first two of which are discussed jointly in their brief under two separate topics.

First, it is maintained that the ordinance under consideration is a tax on race horses as distinct from boarding stables. It is argued that by section 2 the basis of the license fees "is the number of race horses kept or maintained in the boarding stables to be paid by the maintainers at the rate of P10.00 a year for each race horse;" that "the fee is increased correspondingly P10 for each additional race horse maintained or fed in the stable;" and that "by the same token, an empty stable for race horse pays no license fee at all."

The spirit, rather than the letter, of an ordinance determines the construction thereof, and the court looks less to its words and more to the context, subject matter, consequence and effect. Accordingly, what is within the spirit is within the ordinance although it is not within the letter thereof, while that which is in the letter, although not within the spirit, is not within the ordinance. (62 C. J. S., 845.) From the context of Ordinance No. 3065, the intent to tax or license stables and not horses is clearly manifest. The tax is assessed not on the owners of the horses but on the owners of the stables, as counsel admit in their brief, although there is nothing, of course, to stop stable owners from shifting the tax to the horse owners in the form of increased rents or .fees, which is generally the case.

It is also plain from the text of the whole ordinance that the number of horses is used in the assessment purely as a method of fixing an equitable and practical distribution of the burden imposed by the measure. Far from being obnoxious, the method is fair and just. It is but fair and just that for a boarding stable where only one horse is maintained proportionately less amount should be exacted than for a stable where more horses are kept and from which greater income is derived.

We do not share the plaintiff's opinion, apropos the second proposition, that the ordinance in question is discriminatory and savors of class legislation. In taxing only boarding stables for race horses, we do not believe that the ordinance makes an arbitrary classification. In the case of *Eastern Theatrical Co. Inc., vs. Alfonso*, 46 Off. Gaz. Supp. to No. 11, p. 303,[*] it was said that there is equality and uniformity in taxation if all articles or kinds of property of the same class are taxed at the same rate. Thus, it was held in that case, that "the fact that some places of amusement are not taxed while others, such as cinematographs, theaters, vaudeville companies, theatrical shows, and boxing exhibitions and other kinds of amusements or places of amusement are taxed, is not argument at all against the equality and uniformity of the tax imposition." Applying this criterion to the present case, there would be discrimination if some boarding stables of the same class used for the same number of horses were not taxed or were made to pay less or more than others.

From the viewpoint of economics and public policy the taxing of boarding stables for race horses to the exclusion of boarding stables for horses dedicated to other purposes is not indefensible. The owners of boarding stables for race horses and, for that matter, the race horse owners themselves, who in the scheme of shifting may carry the taxation burden, are a class by themselves and appropriately taxed where owners of other Kinds of horses are taxed less or not at all, considering that equity in taxation is generally conceived in terms of ability to pay in relation to the benefits received by the taxpayer and by the public from the business or property taxed. Race horses are devoted to gambling if legalized, their owners derive fat income and the public hardly any profit from horse racing, and this business demands relatively heavy police supervision. Taking everything into account, the differentiation against which the plaintiffs complain conforms to the practical dictates of justice and equity and is not discriminatory within the meaning of the Constitution.

One ground of attack in the court below on the constitutionality of the ordinance—variance between the title and the subject matter—apparently has been abandoned. In its place a new question is brought up on appeal in the third and last assignment of error. It is now contended, for the first time, that "the Municipal Board of Manila (is) without power to enact ordinance taxing private stables for race horses," and that the lower court erred in not so declaring. This assignment of error has reference to Class B or the second sub-paragraph of section 1 of the ordinance.

Not having been raised in the pleading, this question was properly ignored, not to say that even it had been raised it would not have been available as basis for a declaration of nullity of the ordinance. The clause of the ordinance taxing or licensing boarding stables for race horses does not prejudice the plaintiffs in any material way, and it is well settled that a person who is not adversely affected by a licensing ordinance may not attack its validity. Stated differently, he may not complain that a licensing ordinance is invalid as against a class other than that to which he belongs. (62 C. J. S. 830, 831.) By analogy, where a municipal ordinance is valid in some of its parts and invalid as to others and the valid parts are separable from the invalid ones—in which latter case the valid provisions stand as operative—the plaintiff may contest the validity of the provisions that injure his interest but not those that do not.

We are of the opinion that the trial court committed no error and the judgment is affirmed with costs against the plaintiff-appellants.

Moron, C. J., Paras, Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo and Batitista Angelo, JJ., concur.

[1] AN ORDINANCE PROVIDING FOR LICENSE FEES ON PERSONS MAINTAINING OR CONDUCTING ANY BOARDING STABLE FOR HORSE RACES AND/OR RACE HORSE STABLES, OR PLACES WHERE HORSE ARE KEPT, FED, OR BOARDED FOR OTHERS, FOR COMPENSATION OR HIRE, AND/OR FOR

PRIVATE, AND FOR OTHER PURPOSES.

Be it ordained by the Municipal Board of the City of Manila, that:

Section 1. License.—No person shall own, keep, maintain, or conduct any boarding stable, or place where race horse aze kept, fed, or boarded for others, for compensation or hire, and/or for race horse stable privately owned not for hire, without first having obtained a permit from the Mayor and license therefor from the City Treasurer.

Sec. 2. Fees.—For every license granted under the provisions of this ordinance, there shall be paid an annual license fee, which may be paid either annually, seinestrally or quarterly at the option of the taxpayer, to wit:
Boarding stable for race horses;

Class A— For each race horse, kept, maintained, fed or boarded

in boarding stables
P10.00

Race horse stables (Privately owned)

Class B— For each race horse, kept, maintained, or fed in

private race horse stables P5.00

Sec. 3. Contents of application.—Every application for the license in this ordinance required, shall be accompanied by a sworn statement of the greatest number of animals to be kept by the applicant, which statement shall be the basis for computing the amount of fees to be paid for such license.

Sec. 4. Effectivity.—This Ordinance shall take effect upon its approval.

[*] 83 Phil., 852.

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