

FERNANDO LACSON AND SIMPLICIO A. PALANCA, PLAINTIFFS AND APPELLANTS, VS. BACOLOD CITY, TEOFISTO M. CORDOVA AS CITY MAYOR AND ALFREDO TAMBASEN AS CITY TREASURER OF THE CITY OF BA...

G.R. No. L-15892. April 23, 1962

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This is a suit instituted in Negros Occidental by theater owners of Bacolod City to annul its ordinance imposing license fees and/or taxes on theaters, to wit: (a) Ordinance No. 48, series of 1949 imposing an annual fee of P1,500.00; and (b) Ordinance No. 185 as amended by Ordinance No. 191, series of 1957 imposing a tax of five centavos and ten centavos on each theater ticket.

Plaintiffs asserted both ordinances were ultra vires and void.

Cesar Fegarido and nineteen others, filed a complaint in intervention alleging they were theater-goers who had paid the tax on admission tickets, challenging the legality thereof, and asking for themselves and in behalf of other theater-goers for the return of the amounts so collected.

The defendants, the city with its mayor and treasurer sustained the validity of such ordinances; and the issues having been tried and heard, the court rendered judgment,

(a) upholding Ordinance No. 48, series of 1949; (b) declaring Ordinances Nos. 185 and 191, series of 1957, ultra vires and invalid, and (c) dismissing the complaint in intervention.

The plaintiffs appealed. The intervenors also appealed; but their appeal was dismissed in this Tribunal for failure to submit their brief on time. The defendants also appealed.

Plaintiff-appellants claim that Ordinance No. 48, series of 1949 is invalid. On the other hand, the defendants-appellants insist in the validity of Ordinances Nos. 185 and 191, series of 1957.

I.—It appears that under Sec. 1 of Ordinance No. 48, an annual fee of P30.00 is collected for every permit issued by the Mayor to every theater or cinematograph. However, under section 6 of the same Ordinance, theaters and cinematographs are required to pay a fixed annual fee of P1,500.00 "for the exercise, conduct, establishment and operation of the business of a theater, cinematograph," etc. The second fee is a duplication and is unauthorized, argue the theater-owners. At this point, we may quote from the appealed decision, which correctly states the issues and the solution thereof:

"Admitting that the annual permit fee of P30.00 imposed in article 4 of section 1 of Ordinance No. 48, series of 1949, is already for regulation and/or police surveillance and therefore, valid, the plaintiffs maintain that the fixed annual fee of P1,500.00 required by article 1 of section 6 of said Ordinance can no longer be considered regulatory but is in fact for revenue purposes and accordingly ultra vires, illegal and void. The Court cannot

agree. As correctly explained by the defendants, the fee of P30.00 is charged for the issuance of a permit for the opening of theaters or cinemas; and before such permit is granted by the Mayor pursuant to subsection (k) of section 10 of Commonwealth Act No. 326, as amended, his office has to investigate and be satisfied with the conditions of the theater or cinema concerned. Upon the other hand, as well pointed out by the defendants, the fixed annual fee of P1,500.00 is for supervision of the cinema or theatrical business operated for as many days as there are in a year. There is consequently no repugnance between the annual permit fee of P30.00 (for opening) and the fixed annual fee of P1,500.00 (for continuous regulation and police surveillance).

For one thing, even if the two fees refer to the same objective and hence a duplication, why do the plaintiffs not assail the legality of the annual permit fee of P30.00 and choose to pay the fixed annual fee of P1,500.00? Bona-fide existence of distinct purposes may be gathered from the circumstance that the Ordinance in question did not impose a single permit or fixed annual fee of P1,530.00 which could easily and validly have been done by the City Council if its design was merely to increase collection.

The plaintiffs proceed to argue that the fixed annual fee of P1,500.00 is in any event excessive, unreasonable and arbitrary, because it is imposed regardless of classification, * * *. In answer it would suffice to remark that the matter of classification and of the amount reasonably needed for regulatory purposes, is addressed to the judgment and discretion of a particular City Council which cannot and should not be bound by the opinion of another City Council. And then it must be remembered that the efforts which the authorities are called upon to exert should be about equal or uniform for all classes of theaters or cinemas. What is more, in the City of Iloilo cited by the plaintiffs, an annual fee as high as P3,000.00 is provided for."

Nothing in appellant's brief can impair the soundness of the above considerations. With the trial judge, and for the same reasons, we uphold the legality of the ordinance.

II.—In connection with the ordinance imposing a tax on each theater admission ticket (P0.05 and P0.10), the trial court applied and followed two decisions of this Court[1] to the effect that such exactions are in reality taxes that cannot be collected in the guise of license fees, especially where other substantial license fees are already imposed on theaters. It noted that the statute under which the exactions were collected in our *Rojas* and *Arong* decisions were similar in nature to those under which the City of Bacolod acted in imposing these taxes on theater tickets.

To evade the controlling effect of the two above named decisions, the City of Bacolod urges here that the tax could be upheld as one adopted under the general welfare clause, arguing that the tax was designed to cope with the problem of insufficiency of school buildings, and school funds, the intention of the council being to use the money so collected to further the education of the youth in the city of Bacolod. This same contention was presented in the court below, and the Hon. Jose de la Cruz, aptly overruled it in the following words and phrases:

"There can be no divergence of thought as to the wisdom and desirability of any and all solicitude for education; literacy of the people is indeed one of the primary concern of the Government; but the General Welfare Clause cannot be resorted to as a source of the power to tax. Besides, it is provided that the tax shall go exclusively to the General Fund (section 2, Ordinance No. 185).

The defendants intimate that going to the movies partakes of the nature of a non-useful occupation subject to regulation, and that the amounts of P0.05 and P0.10 collected under Ordinances Nos. 185 and 191 are regulatory fees imposed by the defendant City under the General Welfare Clause of its Charter. This is obviously wanting in plausibility. In the first place, the Ordinances expressly call the payments of P0.05 and P0.10 as a "tax" on every admission ticket. In the second place, while going to the movie may be looked upon as a luxurious (or indispensable) form of recreation, it may hardly be considered as occupation, a term implying business or profession. In the third place, the tax is levied against every admission ticket, not strictly upon the cinema patron, although it may be added by owners or operators of theaters to the admission price and charged to and paid by the movie goers."

III.—The appealed judgment is affirmed. No costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.

[1] Zosimo Rojas & Bros. vs. City of Cavite, L-10730, May 26, 1958; Arong et. al. vs. Raffiñan, 98 Phil., 422. See Icard vs. City Council of Baguio, 83 Phil. 870.

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