

PEDRO P. ARONG, PLAINTIFF AND APPELLANT, VS. MIGUEL RAFFIÑAN AND A. INCLINO, AS CITY MAYOR AND CITY TREASURER OF CEBU CITY, RESPECTIVELY, DEFENDANTS AND APPELLEES.

G.R. No. L-8673. February 18, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This appeal stems from a decision rendered in two cases which were jointly tried by the Court of First Instance of Cebu. In one Pedro P. Arong, as owner of Liberty Theater operated in the City of Cebu, impleaded the mayor and treasurer of said city to recover the sum of P11,021:22 paid under protest as license fee collected under Ordinance No. 43, series of 1947, on the ground that said ordinances are illegal and oppressive and were enacted in violation of the City Charter (Case No. R-728). In the other, John D. Young and six other owners and, operators of theaters in the city likewise impleaded the same city officials to recover the amounts they had paid under protest which were collected as license fees under the same ordinances on the same ground that they are illegal and ultra vires and were enacted in violation of the City Charter (Case No. R-1113).

Defendants alleged as special defense that the amounts collected from the plaintiffs are not taxes but license fees and so the enactment of the aforesaid ordinances comes within the power granted to the City of Cebu by its charter and are not ultra vires. They further averred that the amounts collected were merely for regulation and not for revenue and if the amounts are little excessive the excess was merely incidental which cannot invalidate the ordinances.

Because the issues raised in the two cases are common both to plaintiffs and defendants, it was agreed that after the parties submitted a stipulation of facts without prejudice of presenting additional evidence if they deem it necessary and, on March 6, 1953, the court rendered decision declaring the two ordinances valid and absolving the defendants from the complaint. From this decision the plaintiffs have appealed.

The amounts which plaintiffs seek to recover were collected under the provisions of Ordinance No. 25, approved on February 10, 1947. Section 1 of the latter ordinance provides:

"Section 1.—In addition to the fees paid by cinematographs,

theaters, vaudeville companies, theatrical shows and boxing exhibitions, as provided for in Chapter Fifty-one of Ordinance. Numbered

Seventeen, entitled An Ordinance prescribing rules and regulations and fixing license fees and other revenues; revised, amends and supersedes all previous ordinances on imposition and collection of municipal and other revenues; also rules and regulations governing the same, there shall be collected from the places of amusement, which are specifically mentioned above, the following fees on 1 the price of every admission ticket sold by such enterprises:

(a) For every ticket sold the price of which is up to P0.99

P0.025

(b) For every ticket sold the price of which is from P1.00 to P1.99
0.05

(c) For every ticket sold the price of which is from P2.00 to P2.99
0.075

(d) For every ticket sold, the price of which is from P3.00 to P4.99
0.10

(e) For every ticket sold the price of which is from P5.00 to P9.99
0.125

(f) For every ticket sold the price of which is from P10.00 to 14.99
0.175

(g) For every ticket sold the price of which is from P15 or more.....
0.25"

Has the City of Cebu the power to approve the above ordinances? This would require an inquiry into the legislative power granted to said city by its charter. The pertinent provisions are embodied in section 17 (1) of Commonwealth Act No. 58, which we quote:

"Sec. 17. General powers and duties of the Board.—Except as otherwise provided by law, and subject to the conditions and limitation thereof the Municipal Board shall have the following legislative powers:

(1) To regulate and fix the amount of the license fees for the following: Hawkers, peddlers, hucksters, not including hucksters or peddlers who sell only native vegetables, fruits, or foods, personally carried by the hucksters or peddlers; auctioneers, plumbers, barbers or embalmers, collecting agencies, mercantile agencies, shipping and intelligence offices, private detective agencies, advertising agencies, massagists, tattooers, jugglers, acrobats, hotels, clubs, restaurants, cafes, lodging houses, boarding houses, livery garages, livery stables, boarding stables, dealers in large cattle, public billiard tables, laundries, cleaning and dyeing establishments, public warehouses, dance halls, cabarets, circus, and other similar parades, public vehicles, race tracks, horse races, bowling alley's; shooting galleries, slot machines, merry-go-rounds, pawn-shops, dealers in second-hand merchandise, junk dealers, brewers, distillers, rectifiers, money' changers and brokers, public ferries, theaters, theatrical performances, cinematographs; public exhibitions, circuses, and all other performances and places of amusements, and the keeping, preparation and sale of meat, poultry, fish, game, butter, cheese, lard, vegetable, bread, and other provisions. (Italics supplied).

It should be noted that with regard to the business of theatres, theatrical performances, cinematographs, and other places of amusements, the power that the charter gives to the City of Cebu is merely "to regulate and fix the amount of the license fees." It does not include the power to tax as is the case with regard to other businesses and occupations. This can be clearly seen from a cursory reading of the law. When it desires to grant the power to tax it expressly so provides, otherwise it merely employs the words "to regulate" or "fix the license fees." The question therefore, that now arises is: Do the ordinances in question impose a tax for purposes of revenue or merely fix a license fee for purposes of regulations?

The City of Cebu contends that they merely impose an additional license fee in order to raise funds to cover the expenses that are entailed by the city in carrying out its duty to supervise and protect the theaters and different places of amusements that are operated within its limits against fire hazards and other risk incidental to their business: Plaintiffs, on the other hand, contend that they were enacted to impose a tax to create a source of revenue for the city.

The issue raised is not new as it has already been decided in at least two cases in this jurisdiction. The first is the *Eastern Theatrical Company, Inc., vs. Victor Alfonso, et al.*, 46, Off. Gaz. (supplement) p. 30, wherein a similar ordinance was enacted by the City of Manila which impose a fee on every price of admission tickets sold by cinematographs, theaters, vaudeville companies, theatrical shows and boxing exhibitions, in addition to other license fees paid by the same enterprises under another ordinance of the same city. This Court held that said ordinance imposes a tax on business and is not merely regulatory, although its enactment was within the grant of power vested in the City of Manila by its charter. The other case is *City of Baguio vs. Jose Y. de la Rosa, et al.*, G. R. No. L-8268-70, wherein the City of Baguio enacted an ordinance which required every movie house or theater operated within the city to increase the price of its admission tickets as follows: for every ticket sold for the main floor, there was added an increase of P0.05, for every ticket sold for the balcony P0.10, and for every ticket sold for the lodge P0.20. This Court also held that said ordinance imposes not merely a license fee but a tax for purposes of revenue. Indeed, it cannot be pretended that the fees exacted the ordinance in question are merely for regulation for under Ordinance No. 25, series of 1946, of the City of Cebu, the theaters and other places of entertainment within its limits are already charged the corresponding license fees for their operation depending upon their classification,. Thus, for a first class theater or cinematograph an annual fee of P300 is charged and for those belonging to the second class an annual fee of P300. It is therefore evident that under its charter the City of Cebu does not have the power to enact the ordinances in question and, therefore, are ultra vires.

The next question to be determined is: Are the plaintiffs entitled to recover the fees they had paid Under said ordinances ?

We are constrained to hold that they are prevented from recovering them it appearing that these fees are paid not by the plaintiffs but by the public. If any body has the right to claim them, it is those who paid them. This is what we held in the case of *Esteban Medina, et al., vs. City of Baguio*, (91 Phil., 854). In this, respect the decision of the lower court is correct.

Wherefore, we hereby modify the decision of the lower court in the sense that, while the ordinances in question are ultra vires, plaintiffs cannot collect the fees they had paid thereunder and, therefore, this case should be dismissed, without pronouncement as to costs.

Parás, C. J., Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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