

**GLICERIO JAVELLANA, PETITIONER, VS. HON. CESAR KINTANAR,
JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS
OCCIDENTAL, CITY OF BAGO, CITY COUNCIL, CITY MAYOR, AND
CITY TREASURER, A...**

G.R. No. L-33169. July 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

These are appeals from a decision of the Court of First Instance of Negros Occidental dated January 12, 1971, which dismissed a petition that sought a declaration of nullity of Ordinances Nos. 142, 145 and 150, Series of 1968, of the City of Bago, and to enjoin their enforcement.

Glicerio Javellana is the owner of a market (building and lot) in Crossing Bago, Bago City, which consists of store spaces and of permanent and movable stalls all leased to vendors. Serving the general population of the City of Bago and of the adjoining municipalities, for more than twenty years, said market had been operating under a Mayor's permit of the City of Bago up to the second quarter of 1968 when the Treasurer of that city refused to accept the payment by Javellana for a municipal license for the third quarter on the ground that Ordinance No. 150 had been enacted prohibiting the establishment, maintenance or operation of a public market in the City of Bago by any person, entity, association or corporation other than the city government of Bago. This prompted Javellana, as owner of said market, to file the petition aforementioned.

Juanito Novillas and other store owners, stall holders and fish vendors in Javellana's market joined in the petition by means of a com-plaint in intervention.

The appeal of Javellana is docketed as G.R. No. L-33169 while that of Novillas, et al. is docketed as G.R. No. L-33212.

The ordinances which are the subject of the petition and the present appeal were enacted by the Municipal Board of Bago City in 1968 and insofar as relevant are couched in the following language:

Ordinance No. 142.

"SECTION 1. - Section 1 of Ordinance No. 10, Series of 1954, as amended by Resolution No. 39, Series of 1955, and adopted by Ordinance No. 4, Series of 1966, is hereby amended to read as follows:

"Section 1. - No person or persons, except peddlers thereof who have paid the corresponding inspection and other market fee, shall sell or offer for sale, fish, meat and other foodstuffs which are perishable in nature, outside of the public markets within the City Proper of the City of Bago and its barrios."

"SECTION 2. - This ordinance shall take effect upon its approval."

Ordinance No. 145,

"SECTION 1. - Section 3, Paragraph C of City Ordinance No. 134, Series of 1968, is hereby amended to read as follows:

"Section 3. x x x

"C - Inspection and Inspection Fees:

I - All fish, seafoods and other foodstuffs which are perishable in nature to be sold or offered for sale within the jurisdiction of the City of Bago shall first be submitted for inspection of the City Health Officer of the City and/or his duly authorized representatives before the same shall be sold or offered for sale to the public; and such inspection shall be made in the city-owned public market within the City Proper of the City of Bago and the corresponding inspection fee of P0.20 is hereby imposed on every case of fresh fish thus inspected payable by the fish wholesalers, dealers or 'commissionists' concerned.

"SECTION 2. - This Ordinance shall take effect upon its approval."

Ordinance No. 150.

"Section 1. - It shall be unlawful for any person, entity, association or corporation other than the City Government of Bago to establish, maintain or operate a public market or markets within the city limits or territorial jurisdiction of the City of Bago.

"Section 2. - Any person found guilty of violation of the provisions of this ordinance shall be punished by a fine of not more than Two Hundred Pesos (P200.00) or imprisonment of not more than six (6) months, or both such fine and imprisonment in the discretion of the Court. In case the offender is a juridical person, the president, manager, chief or head of the entity, association or corporation shall be liable.

"Section 3. - This Ordinance shall take effect upon its approval."

The appellants claim that the ordinances are unreasonable and Bago City has no power to enact them.

It is obvious that the key ordinance is No. 150 for if the appellants do not succeed in assailing it, their assault on the other ordinances becomes moot and academic. Stated differently, the principal concern of the appellants is the continued operation of Javellana's market and if it is adjudged that the operation be discontinued they should have no further interest in the other ordinances. However, it would not be amiss for Us to state that We do not hesitate and see no need for an extended discussion in holding that Ordinances Nos. 142 and 145 are manifestly valid; No. 142 because it is a regulatory and revenue ordinance; No. 145 because it is promotive of general welfare and both are authorized by Section 15 of R. A. No. 4382, otherwise known as the Charter of Bago, which spells out in detail the general powers and duties of the Municipal Board of Bago City. And as the lower court said:

"The enactment of these ordinances by the City Council of the City of Bago is clearly authorized under Section 15 of the said City Charter, as follows:

(a) Paragraph (n) which authorizes said Board 'to regulate and fix the amount of the license fees for peddlers, and the keeping, preservation and sale of meat, poultry, fish, game, butter, cheese, lard, vegetables, bread, and other provisions;'

(b) Paragraph (cc) which authorizes said Board 'to provide for the establishment, maintenance and regulation, and to fix the fees for the use of public markets;'

(c) Paragraph (jj) which authorizes said Board 'to regulate any other business or occupation, not specifically mentioned in the preceding paragraphs, and to impose a license fee upon all persons engaged in the same or who enjoy privileges in the city;' and

(d) Paragraph (mm), the general welfare clause, which authorizes said Board 'to enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of the city, and its inhabitants, and such others as may be necessary to carry into effect and discharge the powers and duties conferred by this Charter."

Coming now to Ordinance No. 150, there is no question that it was enacted pursuant to Section 15, paragraph (cc) of the Charter of Bago which empowers the Municipal Board "x x x to prohibit the establishment or operation within the city limits of public markets by any person, entity, association, or corporation other than the city."

The appellants claim that Javellana's market is not covered by the charter provision nor by the ordinance because it is not a public market. They assert that Javellana's market is a private market because Javellana "owns the land and the building on which the market is being maintained and operated." In other words, to the appellants whether or not a market is "public" depends on who owns it. It thus appears that the resolution of the appeals hinges on the meaning of the term "public market." The appellants claim that a public market is one that is not owned privately; whereas the appellees say that it is one that serves the general public. Viewed in this light, the validity of Ordinance No. 150, whether on the basis of its reasonableness or on the power of the City of Bago to enact it, is not in issue; what has to be resolved is only its application to the appellants.

We agree with trial court that the test of a "public market" is its dedication to the service of the general public and not its ownership. Thus this Court has had occasion to state:

"Petitioners allege that the Aranque Market Extension is not a public market within the meaning of all laws, ordinances, orders and regulations governing public markets because said market stands on private property and its building was erected with private funds. This contention is not well taken. A market is a 'public market' when it is dedicated to the service of the general public and is operated under government control and supervision as a public utility, whether it be owned by the government or any instrumentality thereof or by any private individual." (*Vda . de Salgado vs. De la Fuente* , 87 Phil. 343, 345 [1950].)

Also, a scrutiny of the charter provision will readily show that by public market is meant one that is intended to serve the public in general. This is the only conclusion which can be drawn when it used the word "public" to modify the word "market" for if the meaning sought to be conveyed is the ownership thereof then the phrase "by any, person, entity, association, or corporation other than the city" will serve no useful purpose.

That Javellana's market is a public market is indubitable. According to the decision of the lower court, "the petitioner himself so declared when he testified that his market is engaged in servicing the public, not only in Bago City, but also those coming from other municipalities; that he is renting stalls in his market to the public; that there are around 60 permanent stalls and 50 movable stalls being leased by him; and that his market services about 3,000 people."

We hold that Javellana's market falls within the scope of Ordinance No. 150 and the trial court committed no error in so holding and in dismissing the petition as well as the complaint in intervention.

WHEREFORE, the appeals are dismissed for lack of merit. No special pronouncement as to costs.

SO ORDERED.

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

Makasiar, J., reserves his vote.

Barredo and Aquino, JJ., no part.

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