

CO CHIONG, ET AL., PETITIONERS, VS. THE MAYOR OF MANILA, THE CITY TREASURER OF MANILA, THE MEMBERS OF THE MARKET COMMITTEE OF THE CITY OF MANILA, THE MARKET MASTERS OF DIVISORIA...

G.R. No. L-1891. March 31, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

Petitioners allege that they are lessees of public market stalls in the City of Manila by virtue of contracts of lease expressly understood to be of continuous duration until the City Mayor, for any reasonable or just cause or any violation of the provisions of the market code or any ordinance, or any rules relating to the administration of public markets, revokes the same; that on October 1, 1946, Republic Act No. 37 was promulgated and, to carry into effect its purposes, the Secretary of Finance issued Department Order No. 32 on November 29, 1946; that petitioners filed with the Court of First Instance of Manila a petition challenging the constitutionality of Republic Act No. 37 and of Department of Finance Order No. 32 and praying for injunction to restrain their ejection from the leased public market stalls; that on April 19, 1947, the trial court rendered judgment annulling Section 2 of Department of Finance Order No. 32 and commanding respondents to desist from enforcing the provisions thereof, from which decision respondents appealed to the Supreme Court; that on June 26, 1947, Ordinance No. 3051, amending Ordinance No. 2995, was promulgated, providing for the termination of the occupancy of public market stalls by the Chinese petitioners; that petitioners are entitled to a writ of injunction to command respondents to desist from enforcing said Ordinance No. 3051 because it was returned by the mayor with a qualified approval which, therefore, operated as a veto and avoided the promulgation of a valid ordinance, as the mayor has no right to qualify his approval and thereby amend the ordinances adopted by the municipal board; that while Ordinance No. 3051 provided for the termination on June 30, 1947 of any existing permission granted for the occupancy of public market stalls, the mayor approved the same subject to his interpretation that licenses paid, up to December 31, 1947 would not terminate until the latter date; that Ordinance No. 3051 is null and void, being inconsistent with the public policy of the state as declared in Republic Act No. 37; that said ordinance is unconstitutional in that it impairs the obligation of contracts, it nullifies the substantial protection of due process, it denies petitioners and aliens the equal protection of the law, is unreasonable, unfair, oppressive, partial, and discriminatory, and is in conflict with common right, it prohibits trade by Chinese stallholders, is violative of the generally accepted principles of international law and of the treaty obligations of the Philippines with respect to commercial activities by Chinese and other aliens, and of the basic principles laid down in the United Nations Organization Charter; that said ordinance cannot be enforced while the question of the constitutionality of Republic Act No. 37 is pending before the courts; and that the ordinance is obviously an attempt by an inferior legislative body to evade the decision rendered by the trial court in civil case No. 1436.

Petitioners pray for the issuance of a writ of preliminary injunction which was denied on January 8, 1948.

Petitioners filed an urgent petition for preliminary injunction and motion for reconsideration of said resolution of

January 8, but they were also denied by resolution issued on January 21, 1948.

Respondents deny petitioners' allegation with respect to the conditions of the contracts of lease, conceding *arguendo* that petitioners were lessees for the occupancy of the public market stalls in question, and allege that the fees of stallholders were collected either daily, weekly or monthly and, therefore, the contracts of lease which had no definite period had expired on December 31, 1947; that petitioners' claim, that said leases are of continuous and indefinite duration, is contrary to law and would nullify the purpose of Republic Act No. 37, as well as Ordinance No. 3051 independently intended to put into effect the provisions of said act; that Ordinance No. 3051 does not impair the obligation of contracts because the licenses granted to petitioners to occupy public market stalls were not contracts but lease privileges which may be withdrawn at will; that the establishment, maintenance and operation of markets, admittedly governmental in nature, are non-separable from the regulation as regards the leasing thereof, and the occupants have which no such interest in the stall which a lessee of a store or dwelling has, and that the municipal corporation may provide for the revocation of the permit or licenses; that petitioners are mere licensees and their licenses are not contracts which would create in their favor vested rights protected against future and subsequent enactments; that Ordinance No. 3051 does not deprive petitioners of the equal protection of law, which does not limit the police power of the state to legislate for the promotion of the general welfare and prosperity, and the nationalization of retail trade; that the ordinance is not unreasonable, unfair, oppressive, partial and discriminatory and it is not made the subject of civil case No. 1436 of the Court of First Instance of Manila and, by its nature, may be enforced independently of Republic Act No. 37; and that no generally accepted principle in international law is violated by its enactment, while, on the other hand, the right of a state to self-determination is respected by the Charter of the United Nations.

There is no question that the establishment, maintenance and operation of public markets are governmental in nature, being among the public functions of the state and, therefore, the opportunity of occupying stalls in public markets is a privilege that can be granted or withdrawn without impairing any one of the guarantees embodied in the Bill of Rights of the Constitution. In the case of *Co Chiong, et al. vs. Miguel Cuaderno, Sr., et al.*, L-1440, we have already declared:

"Public markets are public services or utilities as much as the public supply and sale of gas, gasoline, electricity, water and public transportation are. Under the Constitution, the operation of all public services are reserved to Filipino citizens and to corporations or associations sixty per centum of the capital of which belongs to Filipino citizens.

" 'No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires.'

"Foodstuffs sold in public markets demand, at least, as much official control and supervision as the commodities sold and distributed in other public utilities. They affect the life and health of the people, the safeguarding of which is one of the basic obligations of a constituted government. Official control and supervision can be exercised more effectively if public market stalls are occupied by citizens rather than by aliens.

"In impugning the validity of Republic Act No. 37, appellees invoke general guarantees in the Bill of Rights, such as the due process of law and the equal protection of the laws. Even if their position could be supported under said general guarantees, a hypothesis the validity of which we consider unnecessary to decide, said guarantees have to give way to the specific provision above quoted, which reserves to Filipino citizens the operation of public

services or utilities.

"Furthermore, the establishment, maintenance, and operation of public markets, as much as public works, are part of the functions of government. The privilege of participating in said functions, such as that of occupying public market stalls, is not among the fundamental rights or even among the general civil rights protected by the guarantees of the Bill of Rights. The exercise or enjoyment of public functions are reserved to a class of persons possessing the specific qualifications required by law. Such is the case of the privilege to vote, to occupy a government position, or to participate in public works. They are reserved exclusively to citizens. Public functions are powers of national sovereignty and it is elementary that such sovereignty be exercised exclusively by nationals.

"Although foreigners are entitled to all the rights and privileges of friendly guests, they can not claim the right to enjoy privileges which by their nature belong exclusively to the hosts."

With the above pronouncements the whole controversy is disposed of against petitioners. Ordinance No. 3051 offends neither, the constitutional clause guaranteeing the obligation of contracts nor the guarantees of due process of law and equal protection of the law. Neither does it violate any principle of international law nor any of the provisions of the Charter of the United Nations Organization. It does not impair any treaty commitment, as the treaties mentioned by petitioners have no binding effect upon the Republic of the Philippines, which is not a party to said treaties. The Philippines is bound only by treaties concluded and ratified in accordance with our Constitution. Ordinance No. 3051 of the City of Manila is valid.

Moran, C.J., Pablo, Bengzon, Briones, and Tuason, JJ., concur.
Paras, and Feria, JJ., concur in the result.

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