

FERNANDO IGNACIO AND SIMEON DE LA CRUZ, PETITIONERS AND, APPELLANTS VS. THE HONORABLE NORBERTO ELA, MAYOR OF STA. CRUZ, ZAMBALES, RESPONDENT AND APPELLEE.

G.R. No. L-6858. May 31, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Petitioners, in their behalf and for the benefit of other Jehovah's Witnesses in the province of Zambales, brought this action to compel respondent to grant them a permit to hold a public meeting at the public plaza of Sta. Cruz, Zambales, together with the kiosk, on such date and time as may be applied for by them.

Respondent, in his answer stated that he had not refused the request of petitioners to hold a religious meeting at the public plaza as in fact he gave them permission to use the northwestern part of the plaza on July 27, 1952, but they declined to avail of it. He prayed that the action be dismissed.

The questions of fact raised in the pleadings being not controverted, and petitioners having submitted a motion for judgment on. the pleading?, which was concurred in by respondent, the court rendered a decision dismissing the case without pronouncement as to costs. Plaintiffs appealed from this decision.

It appears that petitioners are members of the Watch Tower Bible and Tract Society, commonly known as Jehovah's Witnesses, whose tenets and principles are derogatory to those professed by the Catholic organization. In its publication "face the facts", that society branded the latter as a religious organization which is "a part of the monstrosity now appearing in and claiming the right to rule the earth." Desiring to hold a meeting in furtherance of its objectives, petitioners asked respondent to give them permission to use the public plaza together with the kiosk, but, instead of granting the permission, respondent allowed them to hold their meeting on the northwestern part corner of the plaza. He adopted as a policy not to allow the use of the kiosk for any meeting by any religious denomination as it is his belief that said kiosk should only be used "for legal purposes." And when their request for reconsideration was denied, petitioners instituted the present action for mandamus. It is now contended by petitioners that the action taken by respondent is unconstitutional being an abridgment of the freedom of speech, assembly, and worship guaranteed by our Constitution.

The issue raised involves a little digression on the extent to which the right to peacefully assemble guaranteed by the Constitution may be invoked. Fortunately, this issue has already been passed upon by this Court in *Primicias vs. Fugoso*, 45 Official Gazette, 3280, wherein this Court said:

"The right to freedom of speech, and to peacefully assemble and petition the government for redress of grievances, are fundamental personal rights of the people recognized and guaranteed by the constitutions of democratic countries. But it is a settled principle growing out of the nature of well-ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society. The power to regulate the exercise of such and other constitutional rights is termed the sovereign 'police power', which is the

power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people. This sovereign police power is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights, and it may be delegated to political subdivisions, such as towns, municipalities and cities by authorizing their legislative bodies called municipal and city councils to enact ordinances for the purpose."

It therefore appears that the right to freedom of speech and to peacefully assemble, though guaranteed by our Constitution, is not absolute, for it may be regulated in order that it may not be "injurious to the equal, enjoyment of others having equal rights, nor injurious to the rights of the community or society", and this power may be exercised under the "police power" of the state, which is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety, and general welfare of the people. It is true that there is no law nor ordinance which expressly confers upon respondents the power to regulate the use of the public plaza, together with its kiosk, for the purposes for which it was established, but such power may be exercised under his broad powers as chief executive in connection with his specific duty "to issue orders relating to the police or to public safety" within the municipality (section 2194, paragraph c, Revised Administrative Code). And it may even be said that the above regulation has been adopted as an implementation of the constitutional provision which prohibits any public property to be used, directly or indirectly, by any religious denomination (paragraph 3, section 23, Article VI of the Constitution).

The power exercised by respondent cannot be considered as capricious or arbitrary considering the peculiar circumstances of this case. It appears that the public plaza, particularly the kiosk, is located at a short distance from the Roman Catholic Church. The proximity of said church to the kiosk has caused some concern on the part of the authorities that to avoid disturbance of peace and order, or the happening of untoward incidents, they deemed it necessary to prohibit the use of that kiosk by any religious denomination as a place of meeting of its members. This was the policy adopted by respondent for sometime previous to the request made by petitioners. Respondent never denied such request but merely tried to enforce his policy by assigning them the northwestern part of the public plaza. It cannot therefore be said that petitioners were denied their constitutional right to assemble for, as was said, such right is subject to regulation to maintain public order and public safety. This is especially so considering that the tenets of petitioners congregation are derogatory to those of the Roman Catholic Church, a factor which respondent must have considered in denying their request.

It is true that the foregoing conclusion is predicated on facts which do not appear in the pleadings nor are supported by any evidence because none was presented for the reason that the case was submitted on a motion for judgment on the pleadings, but those facts like the situation of the "kiosko" and the occurrence of religious controversies which disturbed the peace and order in the municipality of Sta. Cruz are matters which may be deemed to come within the judicial knowledge of the court as in fact they were so considered by the trial judge in his decision. This is what he said on this point: "The presiding judge, through information, personal experience and through the papers, has known of unfortunate events which caused the disturbance of peace and order in the community. If the petitioners should be allowed to use the 'kiosko' which is within the hearing distance of the catholic church, this may give rise to disturbance of other religious ceremonies performed in the church." (Italics supplied.) This action of the judge may be justified under section 5, Rule 123, of the Rules of Court, which is elaborated by this Court in the following wise:

There are facts, indeed of which courts should take judicial cognizance. These facts refer to a variety of subjects—legislative, political, historical, geographical, commercial scientific, and artificial—in addition, to a wide range of matters, arising in the ordinary course of nature or the general current of human events. The matter of judicial notice is ever expanding and will surely keep pace with the advance! of the sciences and the arts. But, a matter to be judicially cognizable must be well-established or authoritatively settled, or of common

or general knowledge. Obviously, courts should take notice of whatever is or should be generally known because judges should not be more ignorant than the rest of mankind.' (The Municipal Board of the City of Manila, et al. vs. Segundo Agustin, 65 Phil., 144.) (Italics supplied.)

The contention that the northwestern part of the plaza, cannot be considered as part of said plaza but of the road in the northwestern portion beyond the concrete fence is untenable, for it appears that that portion is part of the plaza and has a space capable of accommodating hundreds of people. In fact, during the past celebrations of the traditional town fiesta of the municipality, said portion has been utilized by the authorities as a place for staging dramas, zarzuelas, and cinematograph shows. Verily, the pretense of petitioners cannot be attributed to the unsuitability of that portion as a meeting place but rather to their obstinate desire to use the kiosk knowing it to be contrary to the policy of the municipality.[1]

The decision appealed from is affirmed, with costs
against petitioners.

Bengzon, Padilla, Montemayor, Jugo, Labrador, and Endencia, JJ., concur.

[1] These facts are not disputed by appellant in the memoranda they have submitted after oral argument.

DISSENTING:

CONCEPCION, J.,

With due respect to the majority opinion, I am constrained to dissent for the following reasons:

- It is admitted in respondent's answer that (as stated in paragraph VIII of the petition) counsel for the petitioners had, on August 25, 1952, written to respondent a letter reading in part as follows:

"May I therefore, request your kind office to grant a permit to Messrs. Fernando Ignacio and Simeon de la Cruz to use the public plaza with the 'kiosko' therein located for the purpose of holding a public lecture to be held on such date and time as shall be chosen by them and subject of course to your final approval."

and that (as alleged in paragraph IX of the petition) "respondent mayor has not by any manner answered and responded" to the aforementioned letter. In other words, respondent herein has not granted any permit for the holding, anywhere or under any condition, of the public lecture referred to in said letter, although it is impliedly conceded that petitioners are entitled to hold such public lecture.

- The majority decision, and that of the lower court, invoke the police power of the State as authority for the policy of respondent herein of not permitting the use of the town plaza proper, including the stand or kiosko therein, by petitioners herein. I do not believe that this view is supported by the pleadings, which, in the case at bar, are controlling, the case having been submitted for decision on the pleadings.

In an effort to justify his failure to act on the above quoted letter of the petitioners, respondent (who, seemingly, is a lawyer or has studied law, for he signed his pleadings and appeared, in the lower court, in his own behalf) alleged, in his answer, by way of special defense, that he had

"put up an off-limit to use the 'kiosko' for any religious meeting, conference, or rites by any religious denominations, as it is his belief, in good faith, that said 'kiosko', although a public edifice is intended for use by the general public, only on legal purposes and objectives other than religious one." (Record on Appeal, pp. 12- 13.)

This allegation indicates that respondent's policy was prompted, not by considerations of public order, but by his belief that no public property may be used for religious purposes, even if there were no danger of breach of peace. In other words, what he had in mind was the provision of Article VI, section 23, paragraph 3, of the Constitution; reading:

"No public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium."

Indeed, had his policy been motivated by a concern for the preservation of harmony and good will among the people, respondent would have applied his off-limit policy not merely to religious meetings, but, also, to any activity which might lead to a public disturbance.

There is another clear proof that the protection of peace and order had nothing to do with said policy of respondent herein. In paragraph XII of the petition it is asserted:

"That petitioners desire to hold peaceful meetings, in the town of Sta. Cruz, in the province of Zambales."

Replying thereto, respondent said, in paragraph (6) of his answer:

"That the respondent has no knowledge sufficient to form a belief as to the truth of the statements contained in paragraphs XI and XII of the petition"

Had respondent refrained from acting upon petitioners request for permit, or adopted his aforementioned off-limit policy, for fear that petitioners may provoke a public disorder, said respondent would have so alleged in his answer, instead of stating therein that he had "no knowledge sufficient to form a belief" in connection with the peaceful nature of petitioners' proposed meetings. If he had no such knowledge sufficient to form a belief, then he could not have entertained' the aforesaid fear of breach of the peace.

- The above quoted special defense in respondent's answer advances the proposition that religious assemblies or gatherings may not be held in public property, which is obviously false. Public squares, roads, highways and buildings are devoted to public use, and, as such, are open to all, without distinction. Incidentally to such use, religious acts may be performed in said public property. It is the appropriation thereof mainly for religious purposes that the Constitution does not sanction. Thus, for instance, public lands may not be donated for the construction thereon of churches, convents or seminaries. However, public streets, boulevards and thoroughfares are used, almost daily, for religious processions in the Philippines. Masses and other religious services are often held at the Luneta, the Quirino Grandstand and the Rizal Memorial Stadium, in the City of Manila, as well as in other public property, such as penal institutions, leprosaria and army camps. So long as the use of public property for religious purposes is incidental and temporary, and such as to be reasonably compatible with the use to which other members of the community are similarly entitled, or may be authorized to make, the injunction in section 23(3) of Article VI of the Constitution is not infringed (see *Aglipay vs. Ruiz*, 64 Phil., 201; *People vs. Fernandez*, CA-G. R. No. 1128-R).

- A mere general possibility—which, at any rate, may be remote—that, if petitioners were allowed to use the grandstand in the town square of Sta. Cruz, Zambales, they may say or do something tending to disturb public order, is insufficient to warrant denial of the license prayed for. Otherwise, we would, in effect, nullify the Bill of Rights, for all rights are susceptible of abuse and, hence, the possibility of such abuse, is always present in the exercise of any right. In this connection, it is important to note that petitioner's aforementioned request is covered by the constitutional mandates on due process, freedom of speech, freedom of assembly and freedom of religion. Obviously, a right of such magnitude as to be guaranteed by no less than four (4) provisions of the fundamental law—and these of the most transcendental and vital to the democratic system underlying the structure of our Republic—cannot be curtailed on the basis of an abstract and speculative possibility of a threat to peace or breach of peace, which may or may not result, if and when, in the exercise of their religious profession, petitioners should transcend the proper bounds, for which, at any rate, they could, and would, be punished under existing laws.

- In an effort to bolster up the position therein taken, the decision appealed from says that the permit sought by petitioners, If granted "may give rise to disturbance of other religious ceremonies performed" in the Catholic Church, which is said to be "within hearing distance" from the aforementioned kiosk and would amount to giving petitioners a "license to disturb anytime the religious practices or ceremonies of that rival denomination". The weakness of this view is patent.

To begin with, respondent could—and, perhaps, should— limit the time at which petitioners could give their lectures on religion. Secondly, a license to hold such lectures is not a grant of authority to disturb the religious services held in said Catholic Church. Thirdly, it is a matter of common knowledge that Catholic Churches are not open throughout the day. Masses, if any, are held in the morning. There may be weddings, baptisms and other religious services before noon and often times in the late afternoon, but, generally, such churches are closed in the evening. Masses, and other religious activities are not held daily in some churches, particularly in chapels. Hence, petitioners could be authorized to give their lectures at such times as would avoid any possible interference with the normal activities of said Catholic Church.

- Said decision further states that the stand in the public square is within the hearing distance of said Catholic Church. The majority decision adds that "the proximity of said church to the kiosk has caused some concern on the part of the authorities". There is, however, no allegation in the pleadings, or proof, to this effect. Such is merely the impression that the Judge a quo tended to convey in his decision, without anything in the record to bear it, but predicated, in the language of said decision, upon his avowed knowledge—acquired "through information, personal experience and through the papers"—of "unfortunate events which caused the disturbance of peace and order in community". Regardless of the propriety of considering such knowledge and information of the trial Judge as a factor in deciding the case, it seems evident that the events alluded to did not take place in Sta. Cruz, Zambales, and did not refer to incidents provoked, either by petitioners herein, or by Jehovah's Witnesses, the sect to which they belong. Otherwise, said events would have surely been pleaded specifically in respondent's answer. The same, in fact, indicates that there had been no such "events" in Sta. Cruz, Zambales, as may be deduced from respondent's above quoted allegation to the effect that he has "no knowledge sufficient to form a belief on the peaceful character of the meetings sought to be held by petitioners herein.

- I cannot but take exception to the statement, in the majority opinion, that "the situation of the kiosk and the occurrence of religious controversies which disturbed the peace and order in the municipality of Sta. Cruz, are matters which may be deemed to come within the judicial knowledge of the court, as in fact they were so considered by the trial Judge in his decision". The lower court did not mention—and, I think, it did not have in

mind— any particular breach of peace in the municipality of Sta. Cruz. It did not say so in the decision appealed from. In fact, respondent's brief has not specified, or even hinted, any such incident "in the municipality of Sta. Cruz."

Moreover, such incident, if any, is not one of which courts may take judicial cognizance of. Rule 123, section 5 of the Rules of Court specifies what matters are subject to judicial notice. It provides:

"The existence and territorial extent of states, their forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of, the Philippines, the official acts of the legislative, executive, and judicial departments of the Philippines, the laws of nature, the measure of time, the geographical divisions and political history of the world, and all smaller matters which are of public knowledge, or are capable of unquestionable demonstration, or sought to be known to judges because of their judicial functions, shall be judicially recognized by the court without the introduction of proof; but the court may receive evidence upon any of the subjects in this section stated, when it shall find it necessary for its own information, and may resort for its aid to appropriate books or documents of reference."

Nothing contained in this section has any bearing on the events above referred to, except possibly the clause relative to "all similar matters which are of public knowledge". I believe, however, that there is no public or common knowledge of any religious controversy that has brought about a disturbance of the peace and order in Sta. Cruz, Zambales. What is more, the allegations in respondent's answer, as well as the tenor of his brief, palpably show, to my mind, that there has never been any such breach of peace in said municipality. Hence, independently of the technical aspect of the question, would it not be too hazardous for this Court to take judicial notice of something, the existence of which is, to say the least, so debatable, that it may not be an objective reality?

- Even, however, if the grandstand in the public square of Sta. Cruz, Zambales, were within the hearing distance of the Catholic Church, the decision appealed from must, to my mind, be reversed. Practically, all plazas in the Philippines have a church nearby. Besides, thousands of churches and chapels may be found in the populated portions of our municipalities, barrios, sitios or other smaller communities. Affirmance of the decision appealed from would imply, therefore, that religious sects or denominations, other than those to which said churches or chapels belong, could be barred from engaging in religious activities within the hearing distance thereof. Considering that modern technology, particularly the use of amplifiers, has extended, and is still extending, considerably the range of the hearing distance, it is clear that, in order to be beyond that range, said religious sects or denominations would have to hold their services or gatherings far away from the town or the populated localities—where people are less likely to be. In other words, the late commers would have to preach in the desert or, at least, in deserted places.

- The majority decision, likewise, states:

"It appears that petitioners are members of the Watch Tower Bible and Tract Society, commonly known as Jehovah's Witnesses, whose tenets and principles are derogatory to those professed by the Catholic organization. In its publication 'Face the Facts', that society branded the latter as a religious organization which is a part of the monstrosity now appearing in and claiming the right to rule the earth"

The publication alluded to has not been introduced in evidence. It has not been incorporated in the pleadings. I do not think it belongs to the class which is subject to judicial notice. Said statement in the majority opinion is based only upon a quotation in respondent's brief.

Assuming said publication to be a fact, it is my firm conviction that the writ prayed for must be granted. It is not unreasonable to assume, as I do, that all sects, churches, denominations, sectarian institutions and systems of religion that refuse to recognize the supreme authority of the Holy See, consider the same, or its policies, more or less as a "monstrosity". They may not officially use this word to characterize their opinion about the Roman Catholic Church, but, their disagreement with the latter must be fundamental or serious enough for them to consider the position of the Catholic Church comparable to that of a monster. Otherwise, said religious organizations would have joined hands with Catholic church or would not have seceded therefrom. In any event, everyday experience shows that, in the political field, minority parties generally regard and publicly proclaim that the administration of the Government by the party in power is so clumsy,, corrupt and inimical to the interest of the people as to be tantamount to, if not worst than, a monstrosity. If such criticism sufficed to warrant denial to the critic of a license to speak within the hearing of the "monster", then minority parties could be enjoined from holding public meetings within hearing distance of public buildings, for the same are occupied, used by, or under the care of men chosen by, and generally belonging to, the majority party.

In short, carried to its logical conclusion, the proposition that one may be prevented from speaking within the hearing distance of another, if the former considers the views or policies of the latter as a monstrosity, would lead to consequences which are inconsistent with the fundamental principles upon which our Constitution and Republic are based.

- The case of *Fugoso vs. Primicias* (45 Off. Gaz., 3280), cited in the majority opinion, is authority in favor of petitioners herein, for it applied the clear and present danger rule, and no such clear and present danger exists in the case at bar. It is true that said rule has not been consistently adhered to by this Court, and that the same has, in effect, shown its preference for the dangerous tendency rule. However, in every case in which the latter was applied, there had been a tangible specific act of the party adversely affected thereby, which incited or tended to incite in a substantial manner a breach of the peace. Thus, in *People vs. Evangelista* (51 Phil., 254), *People vs. Nabong* (57 Phil., 455), and *People vs. Feleo* (58 Phil., 573), the defendants were found to have advocated the overthrow of the government by the use of force. The defendant in *People vs. Perez* (45 Phil., 599), had expressed himself publicly in favor of beheading our then Governor-General Wood. In the case of *Espuelas vs. People of the Philippines* (90 Phil., 524, December 17, 1951), this Court held that the acts of Espuelas tended to stir up the people against lawful authorities. In *Evangelista vs. Earnshaw* (57 Phil., 255), we upheld the refusal of the Mayor of Manila to grant permit to the communist party to hold further political meetings in said city, after the members of said party had in public meetings incited the people to rise in arms against the government, for which reason several criminal cases for sedition were filed against the leaders of said party, who, subsequently, were convicted of the crimes charged against them.

In the case at bar, it is not claimed that petitioners themselves, or their immediate associates, had ever performed any illegal or even improper act in preaching the tenets of their faith. Respondent's answer indicates that, prior to the date set forth in petitioners request for license, or July 27, 1952, said petitioners had been allowed to hold a religious meeting, though not in the grandstand in question, and seemingly, had held said meeting. Yet, nothing appears to have been said or done in the course thereof, which could be, or is being, assailed on legal or moral grounds. Hence, the position taken by respondent mayor is to my mind absolutely untenable.

Paras, C. J., Reyes, A., and Reyes, J. B. L., JJ., concur.

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