

**THE CITY OF OZAMIZ, REPRESENTED BY THE CITY MAYOR,
MUNICIPAL BOARD, CITY TREASURER, AND CITY AUDITOR,
PETITIONER AND APPELLANT, VS. SERAPIO S. LUMAPAS AND
HONORABLE GERONIMO R. ...**

G.R. No. L-30727. July 15, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal by certiorari from the decision, dated March 18, 1969, of respondent Judge Geronimo R. Marave, of the Court of First Instance of Misamis Occidental, Branch II, Ozamiz City, declaring Ordinance No. 466, series of 1964, of the Municipal Board of the City of Ozamiz, null and void (Civil Case No. OZ-159), and ordering petitioner to return to respondent Serapio S. Lumapas the sum of P1,243.00, representing the amount collected as parking fees, by virtue of the ordinance, without costs.

The facts of this case, which are not disputed, are as follows:

Respondent Serapio S. Lumapas is an operator of transportation buses for passengers and cargoes, under the name of Romar Line, with Ozamiz City and Pagadian, Zamboanga del Sur, as terminal points, by virtue of a certificate of public convenience issued to him by the Public Service Commission. On September 15, 1964, the Municipal Board of Ozamiz City enacted the following:

"ORDINANCE NO. 466

AN ORDINANCE IMPOSING PARKING FEES FOR EVERY MOTOR VEHICLE PARKED ON ANY PORTION OF THE EXISTING PARKING SPACE IN THE CITY OF OZAMIZ.

Be it ordained by the Municipal Board of the City of Ozamiz, that:

SECTION 1 — There is hereby imposed parking fees for all motor vehicles parked on any portion of the duly designated parking areas in the City of Ozamiz;

SECTION 2. — 'Motor Vehicles' as used in this ordinance shall be construed to mean all vehicles run by engine whether the same is offered for passengers or for cargoes of whatever kind or nature;

SECTION 3. — The word 'Parking' as used in this ordinance shall be construed to mean, when a motor vehicle of whatever kind is stopped on any portion of the existing parking areas for the purpose of loading and unloading passengers or cargoes;

SECTION 4. — For purposes of the fee hereinabove provided, the following schedule of rates collectible daily from the conductor, driver, operator and/or owner must be observed:

For Passenger

(a) Passenger Bus

P1.00

(b)

Weapon Carrier, Baby Bus & others of similar nature

.70

(c) Pick Up, Jeepneys, PU Cars and others of similar nature

.50

For Cargoes

(a) Cargo Trucks

1.00

(b)

Pick Up, Jeeps, Jeepneys, Weapon Carriers & Others of similar nature

.70

SECTION 5. — That the City Treasurer or his authorized representative is hereby empowered to collect the herein parking fees using any form of official receipt he may devise, from the conductor, driver, operator and/or owner of the motor vehicles parked in said designated parking areas;

SECTION 6. — Any person or persons, violating any provision of this ordinance shall, upon conviction thereof, be punished by an imprisonment of not less than two (2) months nor more than six (6) months, or by a fine in the sum of not less than P100.00 but not more than P400.00 or both such fine and imprisonment at the discretion of the Court;

SECTION 7. — This ordinance shall take effect immediately upon its approval.

Enacted, September 15, 1964,

Approved, October 7, 1964."^[1]

After approval of the above-quoted ordinance, the City of Ozamiz began collecting the prescribed parking fees and collected from respondent-appellee Serapio S. Lumapas, who had paid under protest, the parking fees at One Peso (P1.00) for each of his buses, from October 1964 to January 1967, or an aggregate amount of P1,259.00^[2] for which official receipts were issued by petitioner.

About four (4) years later, or on January 11, 1968, respondent Serapio S. Lumapas filed a complaint, dated August 3, 1967^[3] against the City of Ozamiz, represented by the City Mayor, Municipal Board, City Treasurer, and City Auditor, with the Court of First Instance of Misamis Occidental, Branch II (Civil Case No. 0Z-159), for recovery of parking fees, alleging, among others, that said Ordinance No. 466 is ultra vires, and praying that judgment be issued (1) nullifying Ordinance No. 466, series of 1964, and (2) ordering the Municipal Board to appropriate the amount of P1,459.00 for the reimbursement of P1,259.00 he had paid as parking fees, plus

P200.00 as attorney's fees.

On January 25, 1968, petitioner filed its answer, with affirmative defenses^[4] to which respondent-appellee Serapio S. Lumapas filed his reply, dated January 30, 1968.^[5]

On January 3, 1969, the parties, through their respective counsel, filed the following:

"STIPULATION OF FACTS

COME NOW the plaintiff and the defendants, through their respective counsel, and unto this Honorable Court respectfully submit this stipulation of facts, to wit:

(1) That the area enclosed in red pencil in the sketch is a market site of the City of Ozamiz which holds the same in its proprietary character as evidence by Tax Declaration No. 51234. This area is for public use.

(2) That the Zulueta Street is now extended up to the end of the market site passing a row of tiendas up to the end marked 'toilet' in the sketch plan of market site when the market building was constructed in 1969;

(3) That on the right side near the row of tiendas and near the toilet and marked with series of x's and where the buses of plaintiff were parking waiting for passengers going to the south;

(4) That this space marked 'rig parking' in the sketch plan marked 'x' has been designated by City Ordinance No. 233 as a parking place marked Exhibit '2';

(5) That the defendant City Government has been collecting parking fees and issued corresponding official receipts to the plaintiff for each unit belonging to the plaintiff every time it left Ozamiz City from said parking place but once a day at one peso per unit;

(6) That the total amount of parking fees collected from the plaintiff by the defendant is P1,243.00 as per official receipts actually counted in the presence of both parties;

(7) That the plaintiff made a demand for the reimbursement of the total amount collected from 1964 to 1967 and this demand was received on September 1, 1967, by the City Treasurer and that the City Treasurer replied by first indorsement dated September 11, 1967, asking for reference and verification; and

(8) That in reply to said first indorsement, the plaintiff sent a letter to the City Treasurer dated January 18, 1967, citing cases in support of the demand, and in answer to that letter, the City Treasurer in his communication dated January 11, 1968, flatly denied payment of the demand.

(9) That the parties will file their respective memoranda within twenty days from today.

WHEREFORE, it is respectfully prayed of this Honorable Court that judgment be rendered based upon this stipulation of facts after the parties shall have submitted their respective memoranda or after the lapse of twenty days from today.

Ozamiz City, December 27, 1968."^[6]

On the basis of the foregoing Stipulation of Facts, and of the court's finding, after an ocular inspection of the parking area designated by Ordinance No. 286, series of 1956,^[7] superseding Ordinance No. 234, series of 1953, that it is a municipal street, although part of the public market, said court rendered judgment on March 18, 1969 declaring that such parking fee is in the nature of toll fees for the use of public road and made in violation of Section 59[b] of Republic Act No. 4136 (Land Transportation and Traffic Code), there being no prior approval therefor by the President of the Philippines upon recommendation of the Secretary of Public Works and Communications (now Public Works). Hence, the present appeal by certiorari.

Petitioner now contends that the lower court erred: (1) in declaring Ordinance No. 466, series of 1964, of Ozamiz

City, null and void; (2) in considering parking fees as road tolls under Section 59[b] of Republic Act No. 4136; (3) in declaring the parking area as a public street and not the patrimonial property of the city; and (4) in ordering the reimbursement of parking fees by respondent-appellee.

Decisive of this controversy is whether the Municipal Board of the City of Ozamiz, herein petitioner-appellant, had the power to enact said Ordinance No. 466.

Petitioner-appellant, in maintaining the affirmative view, contends: (1) that the ordinance in question is valid for the fees collected thereunder are in the nature of property rentals for the use of parking spaces belonging to the City in its proprietary character, as evidenced, by Tax Declaration No. 51234, and are authorized by Section 2308 (f) of the Revised Administrative Code;^[8] (2) that Section 15[y] of the Charter of Ozamiz City (Republic Act No. 321)^[9] also authorizes the Municipal Board to regulate the use of streets which carries with it the power to impose fees for its implementation; (3) that, pursuant to such power, the Municipal Board passed said Ordinance No. 234, the purpose of which is to minimize accidents, to avoid congestion of traffic, to enable the passengers to know the exact time of the departure of trucks and, for this purpose, the Municipal Board provided for parking areas for which the City has to have funds for the implementation of the purposes above stated; (4) that Section 2 of the Local Autonomy Law (Republic Act No. 2264) likewise empowers the local governments to impose taxes and fees, except those that are enumerated therein, and parking fee is not among the exceptions; and (5) that the word "toll" connotes the act of passing along a road and the collection of toll fees may not be imposed unless approved by the President of the Philippines upon the recommendation of the Secretary of Public Works, pursuant to Section 59[b] of Republic Act No. 4136; whereas the word "parking" implies a stationary condition and the parking fees provided for in Ordinance No. 466 is for the privilege of using the designated parking area, which is owned by the City of Ozamiz, as its patrimonial property.

On the other hand, respondent-appellee insists (1) that Ozamiz City has no power to impose parking fees on motor vehicles parked on Zulueta Street, which is property for public use and, as such, Ordinance No. 466 imposing such fees is null and void; (2) that granting *arguendo* that Zulueta Street is part of the City's public market site, its conversion into a street removes it from its category as patrimonial property to one for public use;^[10] (3) that the use of Zulueta Street as a parking place is only incidental to the free passage of motor vehicles for, as soon as the buses are loaded with passengers, the vehicles start their journey to their respective destinations and pay the toll clerk at a station about one hundred (100) feet ahead along Zulueta Street before they are allowed to get out of the City and, as such, the prohibition to impose taxes or fees embodied in Section 59[b] of Republic Act No. 4136 applies to this case; (4) that Section 2308[f] of the Revised Administrative Code providing that the "proceeds on income from the x x x use or management of property lawfully held by the municipality" accrue to the municipality, does not grant, either expressly or by implication, to the municipality, the power to impose such tax; (5) that Section 15[y] of the Charter of Ozamiz City (Republic Act No. 321) which authorizes the City, among others, "to regulate the use of a street," does not empower the City to impose parking fees; besides, said section contains a proviso, i.e., "except as otherwise provided by law", which, in this case, is Republic Act No. 4136; and (6) that, since the power to impose parking fees is not among those conferred by the Local Autonomy Act on local government, said City cannot, therefore, impose such parking fees.

After the filing of its brief, or on December 10, 1969, the petitioner-appellant, through its counsel, First Assistant City Fiscal Artemio C. Engracia, filed the following Manifestation, dated November 27, 1969, praying that the decision of the lower court be reversed in view of the approval by the President of the Philippines upon the recommendation of the Secretary of Public Works of the ordinance in question that validates the same, to wit:

"1. That the decision of the lower court, marked Annex 'E' of the petition, declaring Ordinance No. 466, series of 1964, of Ozamiz City, marked Annex 'G' of the petition, null and void is based on the non-compliance with

the provisions of Section 59[b] of Republic Act No. 4136, otherwise known as The Land Transportation Law, which requires the approval by the President of the Philippines upon the recommendation of the Secretary of Public Works of such kind of ordinance.

“2. That the President of the Philippines has now approved the Ordinance in question. A certified copy of said approval is hereunder quoted:

xxx xxx xxx

‘4th Indorsement

Manila, September 26, 1969

Respectfully returned to the Mayor, City of Ozamiz, hereby approving, as recommended in the 3rd indorsement hereon of the Secretary of Public Works and Communications, Ordinance No. 466, series of 1964, of that city, entitled: 'AN ORDINANCE IMPOSING PARKING FEES FOR EVERY MOTOR VEHICLE PARKED ON ANY PORTION OF THE EXISTING PARKING SPACE IN THE CITY OF OZAMIZ.'

By Authority of the President

(SGD.) FLORES BAYOT

Assistant Executive Secretary'

“3. That the approval by the President of the Philippines is based upon the recommendation of the Secretary of Public Works. A certified copy of said recommendation is hereunder reproduced:

'3rd Indorsement

June 3, 1969

Respectfully forwarded to His Excellency, the President of the Philippines, Malacanang, recommending favorable action, in view of the representations herein made, on the within letter dated March 21, 1969 of Mayor Hilarion A. Ramiro, Ozamiz City, requesting approval of Ordinance No. 466, series of 1964, passed by the Municipal Board, same City, regarding the collection of fees for the privilege of parking vehicles in the lots privately-owned by said City.

(Sgd.) ANTONIO V. RAQUIZA

Secretary'

“4. That the action of the Secretary of Public Works is based upon the findings of the Commissioner of the Land Transportation Commission. A certified copy of the same is herein reproduced:

xxx xxx xxx

‘2nd Indorsement

May 16, 1969

Respectfully returned to the Honorable Secretary, Department of Public Works and Communications, Manila, with the statement that this Commission interposes no objection on the approval of Ordinance No. 466, series of 1964, of Ozamis City, considering that the schedule of rate collectible from the conductor, driver, operator and/or owner as stated under Section 4 thereof appears to be reasonable.

It may be stated in this connection that on the Decision of the CFI of Misamis Occidental, Branch II, dated March 18, 1969 under Civil Case No. OZ(159), the said Ordinance was declared null and void for failure to comply with the provisions of Section 59[b] of R.A. 4136, regarding the required ‘approval by the President of the Philippines upon recommendation of the Secretary of Public Works and Communications.’

(Sgd.) ROMEO F. EDU

Commissioner"

The rule is well-settled that municipal corporations, being mere creatures of the law, have only such powers as are expressly granted to them and those which are necessarily implied or incidental to the exercise thereof, and the power to tax is inherent upon the State and it can only be exercised by Congress, unless delegated or conferred by it to a municipal corporation. As such, said corporation has only such powers as the legislative department may have deemed fit to grant. By reason of the limited powers of local governments and the nature thereof, said powers are to be construed strictissimi juris and any doubt or ambiguity arising out of the terms used in granting said powers must be construed against the municipality.[11]

The implied powers which a municipal corporation possesses and can exercise are only those necessarily incident to the powers expressly conferred. Inasmuch as a city has no power, except by delegation from Congress in order to enable it to impose a tax or license fee, the power must be expressly granted or be necessarily implied in, or incident to, the powers expressly conferred upon the city.

Under Sec. 15[y] of the Ozamiz City Charter (Rep. Act No. 321), the municipal board has the power "x x x to regulate the use of streets, avenues, alleys, sidewalks, wharves, piers, parks, cemeteries and other public places; x x x", and in subsection [nn] of the same section 15, the authority "To enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of 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 x x x." By this express legislative grant of authority, police power is delegated to the municipal corporation to be exercised as a governmental function for municipal purposes.

It is, therefore, patent that the City of Ozamiz has been clothed with full power to control and regulate its streets for the purpose of promoting the public health, safety and welfare. Indeed, municipal power to regulate the use of streets is a delegation of the police power of the national government, and in the exercise of such power, a municipal corporation can make all necessary and desirable regulations which are reasonable and manifestly in the interest of public safety and convenience.

By virtue of the aforecited statutory grant of authority, the City of Ozamiz can regulate the time, place, manner of parking in the streets and public places. It is, however, insisted that the ordinance did not charge a parking fee but a toll fee for the use of the street. It is true that the term "parking" ordinarily implies "something more than a mere temporary and momentary stoppage at a curb for the purpose of loading or unloading passengers or merchandize; it involves the idea of using a portion of the street as storage space for an automobile." [12]

In the case at bar, the TPU buses of respondent-appellee Sergio S. Lumapas stopped on the extended portion of Zulueta Street beside the public market (Exhibit "X-1" of Exhibit "X", Development Plan for Ozamiz Market Site), and that as soon as the buses were loaded, they proceeded to the station, about one hundred (100) feet away from the parking area, where a toll clerk of the City collected the "parking" fee of P1.00 per bus once a day, before said buses were allowed to proceed to their destination.

Section 3 of the questioned Ordinance No. 466 defines the word "'parking' to mean the stoppage of a motor vehicle of whatever kind on any portion of the existing parking areas for the purpose of loading and unloading passengers or cargoes." [13] (Italics supplied.)

The word "toll" when used in connection with highways has been defined as a duty imposed on goods and passengers travelling public roads.[14] The toll for use of a toll road is for its use in travelling thereon, not for its use as a parking place for vehicles.[15]

It is not pretended, however, that the public utility vehicles are subject to the payment, if they pass without stopping thru the aforesaid sections of Zulueta Street. Considering that the public utility vehicles are only charged the fee when said vehicles stop on "any portion of the existing parking areas for the purpose of loading or unloading passengers or cargoes", the fees collected are actually in the nature of parking fees and not toll fees for the use of Zulueta Street. This is clear from the Stipulation of Facts which shows that fees were not exacted for mere passage thru the street but for stopping in the designated parking areas therein to unload or load passengers or cargoes. It was not, therefore, a toll fee for the use of public roads, within the context of Section 59[b] of Republic Act No. 4136, which requires the authorization of the President of the Philippines.

As adverted to above, the Municipal Board of Ozamiz City is expressly granted by its Charter the power to regulate the use of its streets. The ordinance in question appears to have been enacted in pursuance of this grant. The parking fee imposed minimal in amount, the maximum being only P1.00 a day for each passenger bus and P1.00 for each cargo truck, the rates being lower for smaller types of vehicles. This indicates that its purpose is not for revenue but for regulation. Moreover, it is undeniable that by designating a specific place wherein passenger and freight vehicles may load and unload passengers and cargoes, benefits are accorded to the city's residents in the form of increased safety and convenience arising from the decongestion of traffic.

Undoubtedly the city may impose a fee sufficient in amount to include the expense of issuing the license and the cost of necessary inspection or police surveillance connected with the business or calling licensed.

The fees charged in the case at bar are undeniably to cover the expenses for supervision, inspection and control, to ensure the smooth flow of traffic in the environs of the public market, and for the safety and convenience of the public.

WHEREFORE, the appealed decision is hereby reversed and Ordinance No. 466, series of 1964 declared valid. No pronouncement as to costs.

Fernando, (Chairman), Barredo, Aquino, and Concepcion Jr., JJ., concur.

[1] Annex "G", Petition; Record, pp. 33 & 83.

[2] The amount of P1,259.00 was paid by respondent Serapio S. Lumapas as follows:

1964 - P213.00; 1965 - P588.00; 1966 - P453.00; and 1967 - P5.00.

[3] Annex "A", Petition; Record, pp. 17-19

[4] Annex "B", Petition; Record, pp. 20-22, 70-72.

[5] Annex "E", Petition; Record, pp. 26-29.

[6] Annex "C", Petition; Record, pp. 23-24, 73-74.

[7] Full text of Ordinance No. 286 reads:

"AN ORDINANCE TRANSFERRING THE PARKING SPACE FOR TPU AND AC'S TO THE BACK OF THE PUBLIC MARKET.

Be it ordained by the Municipal Board of the City of Ozamiz, that:

SECTION 1. — The present parking space for TPU and AC's between the public market and Zamora Street is hereby transferred at the back of the public market on such area as may be designated by the Special Committee created by the Municipal Board, to make plans to relocate certain stalls and parking space.

SECTION 2. — That no TPU and AC shall load or unload passengers and /or cargoes in front of the public market, but all such loading and unloading shall be done on their parking area.

SECTION 3. — Any provisions of ordinance or ordinances inconsistent herewith are deemed of repealed.

SECTION 4. — Violation of this ordinance shall be governed by Ordinance No. 62.

Enacted, April 11, 1956." (Folder of Exhibits, p. 4.)

[8] Sec. 2308 [f] of the Revised Administrative Code reads:

"Miscellaneous revenue. — The following species of revenue shall also accrue to the respective municipalities:

xxx xxx xxx

(f) Proceeds on income from the sale, use or management of any property lawfully held by the municipality."

[9] Sec. 15[y] of Republic Act No. 321 reads:

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

xxx xxx xxx

(y) Subject to the provisions of subsection (f) of section 190 of the Administrative Code, to provide for the laying out, construction and improvement, and to regulate the use of streets, avenue alleys, sidewalks, wharves, piers, parks, cemeteries, and other public places." (Italics supplied.)

[10] See Articles 423 and 424 of the Civil Code of the Philippines.

[11] *Heras v. City Treasurer of Quezon City*, 109 Phil. 930; *Santos Lumber Company, et al. v. City of Cebu*, 102 Phil. 870; *Vega, et al. v. Municipal Board of the City of Iloilo*, 94 Phil. 949; *Icard v. City of Baguio, et al.* 83 Phil. 870; *Batangas Transportation Co. v. Provincial Treasurer of Batangas*, 52 Phil. 190; *Pacific Commercial Co. v. Romualdez*, 49 Phil. 917; *Cu Unjieng v. Patstone*, 42 Phil. 818.

[12] *McQuillin, Municipal Corporation*, Vol. 7, p. 689, citing *Williams v. Grier*, 24 S.E. 2d, 509; *Andrews v. City of Marion*, 47 N.E. 2d, 968; *Isermann v. Tester*, 191 N.E. 839 [prohibiting parking on side of street not applicable to stopping for deliveries to abutting owner].

[13] Under the Land Transportation and Traffic Code (Republic Act No. 4136, approved June 20, 1964), motor vehicle is "parked" or "parking" if it has been brought to stop on the shoulder or proper edge of a highway, and remains inactive in that place or close thereto for an appreciable period of time and a motor vehicle which properly stops merely to discharge a passenger or to take in a waiting passenger, or to load or unload a small quantity of freight with reasonable dispatch shall not be considered as "parked", if the motor vehicle again moves away without delay." (Sec. 3[1], Italics supplied.)

[14] 90 C.J.S. 967.

[15] *Glodt v. City of Missoula*, 190 P. 2d, 545, 549, 121 Mont. 178.

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