

## JUAN P. GERENA, ET AL., PLAINTIFFS AND APPELLANTS, VS. CITY OF MANILA, ET AL., DEFENDANTS AND APPELLEES.

*G.R. No. L-16505. January 28, 1961*

Ponente: GUTIERREZ DAVID, J.

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### GUTIERREZ DAVID, J.:

This is an appeal from a decision of the Court of First Instance of Manila, Branch V, upholding the validity of Ordinance No. 3628 of the City of Manila. The appeal was taken to the Court of Appeals, but that court, has certified the case to us on the ground that only questions of law are involved.

The pertinent facts of the case are not disputed, and are stated in the decision of the trial court as follows:

\* \* \* \* \*

"Plaintiffs have been paying for each of their juke boxes the annual license fee of P50.00 under the aforesaid Ordinance No. 3374 (Exhs. B, B-1 to B-9), besides permit fee of P50.00 when a machine was installed and the same amount of permit fee every time a machine was transferred to another place (Exhs. A, A-1 to A-9). Pinball machine operators paid the same amounts of license and permit fees under the same Ordinance.

"In February, 1954, the City Mayor recommended to the Municipal Board the further amendment, of Sections 773 and 774 of the Revised Ordinances of 1927, as amended (by Ordinance No. 3374) so as to include within the scope of its regulations the so-called pinball machines which, according to him, "have conduced to promote idleness among an increasing number of city residents" (Exhs. E and G). On March 19, 1954, the Municipal Board enacted the Ordinance in question (No. 3628) imposing an annual license fee of P300 for every license granted for the installation and use of the public for compensation any mechanical contrivance or automatic apparatus which functions through the introduction of money not otherwise prohibited by the law of Weights and Measures and not a gambling device, for purposes of amusement or of confronting the weights of persons or things, or of printing letters or numbers, or displaying pictures inside the apparatus, or reproducing recorded music, \* \* \*

\* \* \* \* \*

"On April 11, 1957, plaintiff Gerena wrote to defendant City Treasurer requesting that the enforcement of Ordinance No. 3628 which affects juke boxes be held in abeyance pending consideration of his petition with the Municipal Board for the amendment of said Ordinance. The request was denied 'as this Office (City Treasurer's) has no power to suspend the enforcement of any city ordinance', at the same time suggesting that 'all the members of 'APO' be advised to settle their outstanding obligations arising from the provisions of the aforesaid ordinance so as to avoid penalty and unnecessary inconvenience; otherwise, this office will be constrained to take drastic action on the premises (Exh. C)'.

\* \* \* \* \*

"Plaintiffs, who are (said to be) engaged in the business of operating automatic phonograph machines, popularly known as 'juke boxes', and who claim to have been duly authorized by ether juke box operators and

owners, instituted this action on August 12, 1957, to have Ordinance No. 3628 of defendant City declared null and void and ineffective as to automatic phonograph operators' business, praying that, in the meantime, a writ of preliminary injunction be issued commanding defendants to desist from enforcing the provisions of said Ordinance and compelling the defendants Mayor and City Treasurer to issue renewal permits and licenses to plaintiffs and to accept and give due course to plaintiffs' applications for the installation of new units and! for the transfer of others to better locations upon compliance with the Ordinance in force before the enactment of said Ordinance No. 3628, alleging pertinently, in their complaint, that (1) the amount of annual fee of P300.00 is exorbitant, excessive and substantially disproportionate to, the reasonable expenses of licensing and regulating the plaintiffs' legitimate, harmless and useful business \* \* \* and, therefore, beyond the power of the licensing authority of defendant City of Manila to exact in the exercise of its police power; \* \* \*

\* \* \* \* \*

"Defendants filed a motion to dismiss on the alleged ground of lack of cause of action, the constitutionality or validity of the Ordinance in question (No. 3628) having already been upheld by our Supreme Court in the case of "Recreation and Amusement Association of the Philippines, Inc. vs. The City of Manila, et al." 100 Phil. 950, Off. Gaz. [9] 2767. After hearing, the resolution of said motion to dismiss was ordered deferred until after the trial.

"Defendants then filed answer alleging that Ordinance No. 3628 has already been held valid by the Supreme Court, and since the complaint is primarily premised on the alleged invalidity of said Ordinance, it states no cause of action; \* \* \* and that the Municipal Board has the power to impose the amount of P300.00 as license fee for every machine specified in Ordinance No. 3628, pursuant to Ordinance No. 3628, \* \* \*"

After trial, the lower court, on February 4, 1958, rendered judgment upholding the validity of Ordinance No. 3628. Hence, this appeal.

This case is similar to the case of Morcoin Co., Ltd., and Suter, Inc. vs. City of Manila, et al. (supra, p. 920), where the validity of the same Ordinance No. 3628 was contested. Declaring the evidence null and void, the license fee charged being excessive and unreasonable, we made the following observations:

"\* \* \* the amount of P300 imposed by Ordinance No. 3628 as license fee for the installation and use of juke box machines is unreasonable and far exceeds the expenses of issuing the license and of regulating their operation. It will be observed that the ordinance in question does not even provide for inspection and supervision of each machine installed. And the Committees on Laws and Finance of the Municipal Board of the City of Manila themselves—which conducted a public hearing in connection with the petition filed during the pendency of this case by some juke box operators—found that juke box operators would not make any profit by paying the license fee of P300, and that the said amount of P300 is "prohibitory and suppressive." This finding is supported by the record, for it was shown that two of plaintiffs' juke box machines, after deducting depreciation and operating expenses, but before the payment of permit and license fees, had an annual income of only about P211. In view of these circumstances, it is obvious that the amount of P300 charged as license fee is excessive and cannot be justified. In this connection, it should be stated that although the presumption is always in favor of the validity or reasonableness of the ordinance, such presumption must nevertheless be set aside when the invalidity or unreasonableness appears on the face of the ordinance itself or is established by the proper evidence."

Conformably to the above pronouncements, the decision appealed from is reversed. So ordered with costs.

Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Paredes, JJ., concur.

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