

RICARDO CRUZ, PETITIONER, VS. HON. COURT OF APPEALS, LOPE S. OCAMPO, FEDERICO TUAZON, LEON SANTOS, ANGELINA LABRADOR, CIRIACA STO. TOMAS, VICTORIA ANONoy, CIPRIANA GONGON, CARLO...

G.R. No. L-44178. August 21, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the decision of the Court of Appeals declaring that the Padre Rada Market remains a public market under government supervision and control and that the private respondent-vendors be maintained in the premises.

The private respondents instituted a class suit before the then Court of First Instance of Manila, Branch VIII in behalf of the vendors and regular stall holders in Padre Rada Market for annulment with preliminary injunction against the then Manila Mayor Antonio J. Villegas, petitioner Cruz, and other persons whose names were unknown to them.

The complaint prayed, among others, that the defendant City Mayor's decision to withdraw Padre Rada Market as a public market be declared null and void.

Petitioner Ricardo Cruz states that he and his business associates Elpidio Talastas, Feliciano Alcantara and others have been the owners and operators of the Padre Rada Market at Tondo, Manila for more than twenty-five (25) years.

The market was authorized to be operated as a public market of the City of Manila by virtue of Resolution No. 230, as amended by Resolution No. 406, both series of 1949.

On May 26, 1970, the management of said market represented by petitioner Cruz wrote Mayor Villegas that the management was withdrawing three-fourths of the area of the market "from the direct supervision and control of the City Treasurer's Office effective on June 15, 1970, and from said date the withdrawn portion shall cease to function and operate as a public market." The respondent-vendors, who were likewise notified of such withdrawal, protested such move.

After several exchanges of referrals, indorsements, and communications, Mayor Villegas allowed the withdrawal in the light of the Court of Appeals' decision in CA-G. R. Nos. 39999-R, and 40000-R upholding the right of the operators of the Elcano Market to withdraw their property from its use as a public market stating, among others, that approval for the withdrawal by the City of Manila is not even necessary. Motions for reconsiderations were denied. Hence, herein private respondents instituted Civil Case No. 80773.

The lower court rendered a decision, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered as follows:

“(a) declaring as valid the decision of defendant City Mayor A. Villegas withdrawing Padre Rada Market as a public market;

“(b) declaring legal and valid defendant Operator's Notice of Withdrawal of said market as public market;

“(c) vacating and setting aside the writ of preliminary injunction issued by this Court on November 6, 1970;

“(d) dismissing plaintiff's complaint;

“(e) as to defendants' counterclaim, plaintiffs and the Manila Underwriters Insurance Co., Inc. of Manila, are hereby ordered to pay, jointly and severally, defendant Ricardo Cruz and his associates named in paragraph 3 of the partial stipulation of facts, the additional amount of P210.00 daily by way of actual damages for the period from November, 1970 until the 840 stalls are returned to defendants;

“(f) ordering plaintiffs to pay defendant Cruz and his associates the sum of P5,000.00 as attorney's fees, plus the costs.

"And in this connection, the liability of the Surety, Manila Underwriters Insurance Co., Inc. of Manila, shall not exceed P10,000.00, and plaintiffs are ordered to reimburse the Surety whatever the latter may pay to defendants." (Rollo, pp.72-73)

Acting on the private respondents' motion for reconsideration, the trial court later amended its decision as follows:

"IN VIEW OF ALL THE FOREGOING, only number (e) of the dispositive portion of the decision is hereby modified, to read as follows:

"(e) as to defendants' counterclaim, plaintiffs and the Manila Underwriters Insurance Co., Inc. of Manila, are hereby ordered to pay, jointly and severally, defendant Ricardo Cruz and his associates named in paragraph 3 of the partial stipulation of facts, the additional amount of P50.00 daily by way of actual damages for the period from November, 1970, until the 840 stalls are returned to defendants."

The other portions of the dispositive part of the decision remain in full force and effect." (Rollo, pp. 76-77)

On appeal, the respondent Court of Appeals reversed and set aside the lower court's decision and instead denied the withdrawal by the Manila City Mayor of government-control and supervision "until legal conditions and equitable justification for the withdrawal by private parties obtain." A subsequent motion for reconsideration was denied.

Hence, this present petition.

The questions raised by the petitioners are:

"First. -- Is a resolution of the then Municipal Board of Manila necessary and indispensable for the purpose of effecting the withdrawal of the Padre Rada Market as a public market or temporary 'talipapa'? And, if such a resolution is necessary, as held by the Court of Appeals, how has such ruling been affected by the dissolution of the Municipal Board of Manila?

"Second. -- Will the withdrawal of the Padre Rada Market from further use as a public market or a temporary 'talipapa' violate Republic Act No. 6039?

Third. -- Can the Court of Appeals simply ignore the earlier decision it promulgated on May 16, 1970 in CA-G.R. Nos. 39999-R and 40000-R (Pacita Sta. Rosa, et al., v. M. Cudiamat, etc., et al., and Jose San Jose, et al., v. M. Cudiamat, etc., et al., respectively), when the legality and correctness of the doctrine laid down in said decision (penned by then Associate Justice Carmelino G. Alvendia and concurred in by then Associate Justices Cecilia Munoz Palma and Andres Reyes) have been virtually sustained by this Honorable Court when it denied due course to the petition for review by certiorari filed by the losing appellants in G. R. Nos. L-

32187-88 (Pacita Sta. Rosa, et al. v. M. Cudiamat, etc., et al.), per resolution dated August 12, 1970? (Rec, on App., pp. 142-156).

Fourth. Does the Court of Appeals have the power to compel petitioner to continue operating the Padre Rada Market as a public market or temporary 'talipapa' notwithstanding the fact that petitioner and his business associates have been incurring substantial losses as a consequence of such operation under present conditions and circumstances?" (Rollo, 16-17)

The main issue centers on whether or not the City Mayor may validly withdraw Padre Rada Market as a public market.

The answer is in the negative.

The Municipal Board of Manila with the approval of then Mayor Manuel de la Fuente authorized the disputed premises to be operated as a public market under its direct control and supervision as embodied in Resolution No. 230, amended by Resolution No. 406, both series of 1949.

The Municipal Board acted pursuant to its legislative powers vested by Republic Act No. 409 (Revised Charter of the City of Manila), particularly Sec. 18(cc) which provides:

"Legislative powers. - The Municipal Board shall have the following legislative powers:

"(cc) Subject to the provisions of ordinances issued by the Department of Health in accordance with law, to provide for the establishment and maintenance and fix the fees for the use of, and regulate public stables, laundries, and baths, and public markets and slaughterhouses, and prohibit or permit the establishment or operation within the city limits of public markets and slaughterhouses by any person, entity, association, or corporation other than the city." (45 O.G. 4265)

The respondent Court of Appeals held that Mayor Villegas had no authority to allow such withdrawal as "it is axiomatic that only the power that created it can withdraw it."

On the other hand, the petitioner contends that the Padre Rada Market was not created but merely authorized to operate as a public market by the Municipal Board. Accordingly, there is nothing in the said resolutions which obligates or compels petitioner Cruz and his business associates to continue operating the said market for as long as the Municipal Board desires it.

The records show that the petitioner wants to convert the major portion of the Padre Rada Market into a private market to enable him to raise the rentals for the stalls. It is obvious that he wants to remove the market from the control and supervision of city authorities. The private respondents also contend that to remove three-fourths of the market from its status as a public market would practically result in the total withdrawal of the entire market. The remaining one fourth is no longer being used by the owner for its avowed purpose.

By the very nature of a market*, its location, opening, operations, and closure must be regulated by government. It is not a question of the petitioner's right to run his market as he pleases but what agency or office should supervise its operations.

We agree with the Court of Appeals that the Mayor had no legal authority to, by himself, allow the petitioner to withdraw the major portion of Padre Rada Market from its use as a public market, thereby also withdrawing it from the city's constant supervision.

The establishment and maintenance of public markets is by law among the legislative powers of the City of Manila. Since the operation of Padre Rada Market was authorized by a municipal board resolution and approved by the City Mayor, as provided by law, it follows that a withdrawal of the whole or any portion from use as a

public market must be subject to the same joint action of the Board and the Mayor. The Mayor of Manila, by himself, cannot provide for the opening, operations, and closure of a public market.

The withdrawal from the market's public status was in fact objected to by the Manila City Treasurer and the Market Administrator in their memorandums and indorsements to the Mayor. The market administrator opposed the withdrawal as it involved the displacement of numerous vendors (Record on Appeal, p. 35). At least 840 market stalls are involved. The city treasurer pointed out that the withdrawal would result in a diminution of city revenues.

Moreover, the city treasurer brought to the Mayor's attention Sec. 1, III (2) of Republic Act No. 6039, amending the Revised Charter of the City of Manila, which provides:

x x x x x x x x

"2) City-owned and operated public markets shall not be disposed of, closed, destroyed, sold or transferred until all vendors therein shall have been relocated or transferred by the city government at its expense to another temporary or new public market: Provided, however, That notice of the city's such intention or plans shall be made to all concerned vendors at least one hundred twenty days before the actual transfer or relocation to another market site: Provided, further, That all such temporarily relocated vendors shall be given preference and priority to occupy stalls in the new site as provided for under paragraph II (5) and III (1)." (66 O.G. 3694)

The Court of Appeals held that the withdrawal violated the above-mentioned provision.

It stated:

"The lower court held that the following provision of Republic 6039:

" 'City-owned and operated public markets shall not be disposed of, closed x x x or transferred until all vendors therein shall have been relocated or transferred by the city government at its expenses to another temporary or new public market.' "

was not violated because -

" 'x x x That provision applies solely to city-owned and operated public market, but the Padre Rada Market was not city-owned.

"Such construction of the law is too technical. The conjunction 'and' is not used in a restricted sense. It means 'additional'. The City of Manila has two public markets: city owned and city operated. It would be unthinkable that the law would restrict the coverage of its application for protection of public market vendors to only those public markets owned and operated by the City and not those in city-owned but not city-operated or city-operated but not city-owned public markets." (Rollo, pp. 53-54)

The petitioner alleges otherwise, stating that said provision is not applicable to the Padre Rada Market, it being a privately-owned and privately-operated public market under the control and supervision of the City of Manila. The fact that all privately-owned public markets are under government supervision and control do not make them city-operated public markets.

There is no question that the Padre Rada Market is a public market as it was authorized to operate and it operates as such.

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. It is a settled doctrine that a "public market may be the object

of individual ownership or lease, subject to municipal supervision and control." (43 C.J. 394). Thus, if a market has been permitted to operate under government license for service to the general public, it is a "public market" whether the building that houses it or the land upon which it is built is of private or public ownership. (Vda. de Salgado v. De la Fuente, 87 Phil. 343).

The Padre Rada Market is, therefore, a public market which happens to be privately-owned and privately operated.

The petitioner contends that even assuming arguendo that another resolution was necessary for the withdrawal from use as a public market, the same could not be passed due to the dissolution of the Municipal Board of Manila.

The dissolution of the Municipal Board was among the measures which followed the promulgation of martial law. It did not follow, however, that the City Mayor automatically became both executive and legislature of the local government. He was never vested with legislative power. The answer to the petitioner's arguments is found in Presidential Decree No. 824 enacted on November 7, 1975 creating the Metropolitan Manila Commission.

Section 4 (5) of said decree provides:

"The Commission shall have the following powers and functions:

x x x x x x x x

"5) To review, amend, revise or repeal all ordinances, resolutions and acts of cities and municipalities within Metropolitan Manila." (Underscoring supplied). (Vital Legal Documents, Vol 29, pp. 26-27).

Therefore, the Metropolitan Manila Commission took over the legislative functions of the Municipal Board of Manila.

It was not within the mayor's authority to allow the questioned withdrawal.

As earlier stated, the intention of the operators of the Padre Rada market is very clear. The withdrawal from its status as a public market is to operate the market without government control and supervision but not to discontinue operating as a market.

This can be gleaned from the notice sent to the respondent vendors.

It states:

"P A T A L A S T A S

"Sa Mga Manininda Ng Pamilihang Padre Rada:

"Mapitagan naming ipinaaalam sa inyo na mula sa Hunyo 15, 1970, ang Padre Rada Market ay hindi na aandar o magpapatuloy bilang isang pamilihang bayan o public market. Nagpadala na po kami ng kaukulang kalatas sa mabunying Gatpuno ng Lunsod, Kgg. Antonio J. Villegas.

"Dahilan sa hindi na po maniningil sa loob ng palengke ang mga kolektor (ng gobyerno) o kinatawan ng Ingat-Yaman ng Lunsod, ang lahat po ng maninindang may puesto sa loob ay dapat kumuha ng permiso (Mayor's Permit) at lisensya upang makapangalakal kayo nang naaayon sa batas. May nakalaan pong 'porma' sa aming upisina para sa inyong kaluwagan at kami po'y nakahanda tumulong sa pagsasaayos ng inyong pangangailangan tungkol dito.

"Kaya, kung hangad po ninyong magpatuloy sa pagtitinda at pangangalakal sa loob ng pamilihang Padre Rada nang walang balakid ay mangyari lang na kumuha ng kinakailangang permiso at lisensya bago sumapit ang

Hunyo 15, 1970.

"Sumasainyo,

"(SGD.) RICARDO CRUZ"

(Underscoring supplied; pp. 30-31, Record on Appeal).

The Padre Rada Market is a public market and as such should be subject to the local government's supervision and control. Its conversion into a private market or its closure must follow the procedures laid down by law.

WHEREFORE, the petition is hereby DISMISSED for lack of merit. The questioned decision of the Court of Appeals is AFFIRMED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

* We are not concerned here with the type of self-service retail outlets known as supermarkets often belonging to a chain and owned and operated by the retailer itself. We deal with the common open markets or "palengke", known to all Filipinos, with dry and wet sections, foodstalls, fruit and vegetable sections, etc., where the retailers or market stall operators are lessees who pay fixed rents for the use of market space.

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