

ONG LIAN, ET AL., PETITIONERS-APPELLEES, V.S. THE MUNICIPAL BOARD OF MANILA, ET AL., RESPONDENTS-APPELLANTS, JUANITA MIRANDA, ET AL., INTERVENORS-APPELLANTS.*G.R. No. L-7453. May 11, 1956*

Ponente: BAUTISTA ANGELO, J.

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This is an action for declaratory judgment instituted in the Court of First Instance of Manila seeking to compel respondents to renew the licenses and permits heretofore issued to petitioners to enable them to reopen their stores or resume their business of selling fresh meat within a distance of 200 meters from the boundary of the Aranque market upon the theory that Ordinance No. 3555 which was repealed by Ordinance No. 3563, both of the City of Manila, should stand repealed despite the judgment of nullity of the latter ordinance, praying at the same time that a writ of preliminary mandatory injunction be issued pending the complete termination of the proceeding. The writ prayed for was issued ex-parte and, after trial, it was made permanent, the court declaring Ordinance No. 3555 definitely repealed and without force and effect. From the decision, respondents and intervenors interposed the present appeal.

Petitioners were holders of license and permits to engage in the business of selling pork and meat in the City of Manila but outside of a public market whereas the intervenors are stall-holders in the Aranque market who were allowed to intervene because of the interest they have in the merits of the controversy. On February 3, 1953, Ordinance No. 3555 was enacted prohibiting the sale of fresh meat within a radius of 200 meters from the boundary of any public market in answer to the demand of public market stall-holders who complained against other sellers of fresh meat, who were not stall-holders, who used to flock around the premises of the public markets to the prejudice of their business.

After the enactment of said ordinance, petitioners filed in action in the same court assailing its validity which however was declared legal and valid and the decision became final because they did not deem it necessary to appeal therefrom (Civil Case No. 18689). Thereafter, Ordinance No. 3563 was approved, this time prohibiting the sale of fresh meat anywhere in the city except in public markets for reasons of health and safety of the people. Again, the validity of this ordinance was assailed in an action instituted by some interested parties (Civil Case No. 19227), and the same having been declared unconstitutional, the case was elevated to the Supreme Court (G. R. No. L-6762). This appeal was taken pending consideration when the present case was submitted for resolution.

Subsequent to the declaration of nullity of Ordinance No. 3563 by the Court of First Instance of Manila in Civil Case No. 19227, petitioners herein, whose stores were located within the radius of 200 meters from the boundary of Aranque market, commenced the present action in an attempt to secure the renewal of their permits and licenses to enable them to reopen their stores and continue their business of selling fresh meat making as basis of their plea the declaration of Ordinance No. 3555 as without force and effect in view of its express repeal by Ordinance No. 3563.

The main issue submitted by respondents for determination in this appeal is: "Did the Municipal Board absolutely intend by the enactment of Ordinance No. 3563 to repeal Ordinance No. 3555 irrespective of the validity or nullity of Ordinance No. 3563 which was ultimately declared null and void in Case No. 19227?" Stated differently, did Ordinance No. 3563 repeal Ordinance No. 3555 irrespective of the invalidity of the former?

The lower court answered the question in the affirmative predicated on the following comment:

"The argument has been advanced that the failure of the repealing ordinance to meet the test of legality shall perforce revive the repealed one. The Court does not question this premise. However upon a detailed scrutiny of the facts attendant to the passage of the later ordinance, the general rule, as manifested and argued by the intervenors and respondents, will not apply to the instant case for it cannot be denied that the subsequent ordinance was promulgated not in substitution of the prior one but to do away completely with the latter without regard to its validity or invalidity. Tersely, Ordinance No. 3563 was passed by the Municipal Board independently of the status in law of Ordinance No. 3555. So, where an act expressly repealing another act and providing a substitute therefor is found to be invalid, the repealing clause must also be held to be invalid, unless it shall appear that the legislature would have passed the repealing clause even if it had not provided a substitute for the act repealed (*Equitable Guarantee v. Donahue*, 49 Atlantic Reporter 373. 19 Del. 191; *People v. De Blaay*, 100 N.W. 598, 137 Mich. 402; *State v. Groom*, 109 N.E. 477, 91 Ohio St. 1)."

We believe however that the consideration of this issue has now become moot it appearing that this Court has declared the repealing Ordinance No. 3563 valid and constitutional (See *Co Kian, et al. v. The City of Manila, et al.*, G. R. No. L-6762). It should be noted that the present case was instituted because the Court of First Instance of Manila declared said ordinance invalid but without waiting for the final outcome of the appeal which was then pending in the Supreme Court. Indeed, the institution of this case was premature, as the court would not finally determine therein the effect of the repealing ordinance upon the one repealed. Whatever decision may be rendered therein would be indefinite in character for it would depend upon the final decision of the Supreme Court. This is in effect what has happened when this Court held that the repealing ordinance is valid and constitutional; for its natural result is the entire repeal of Ordinance No. 3555. It follows therefore that petitioners, who are not stall-holders, are not entitled to the renewal of their licenses and permits because they are completely barred by Ordinance No. 3563 which was declared by this Court constitutional in G. R. No. L-6762.

Wherefore, the decision appealed from is reversed, with costs against appellees.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

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