

**HOMEOWNERS' ASSOCIATION OF THE PHILIPPINES, INC.,
AND VICENTE A. RUFINO, PETITIONERS-APPELLEES, VS. THE
MUNICIPAL BOARD OF THE CITY OF MANILA, ET AL.,
RESPONDENTS; ANTONIO VILLE...**

G.R. No. L-23979. August 30, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is an action, against the Municipal Board and the Mayor of the City of Manila, for a declaratory relief. It was brought by the Homeowners' Association of the Philippines, Inc. and its President, Vicente A. Rufino, to nullify Municipal Ordinance No. 4841 of the City of Manila, approved on December 31, 1963, to take effect on January 1, 1964. After appropriate proceedings, the Court of First Instance of Manila rendered judgment declaring said ordinance "ultra vires, unconstitutional, illegal and void ab initio," without pronouncement as to costs. Hence, this appeal by the Mayor of Manila. Said Ordinance reads:

"AN ORDINANCE REGULATING RENTALS OF LOTS AND BUILDING FOR RESIDENTIAL PURPOSES

"WHEREAS, in view of the prevailing scarcity of lands and buildings for residential purposes in the City of Manila and the present high cost of living, a state of emergency in the matter of providing housing accommodations especially for the poor at reasonable rates is hereby declared to exist: Now, therefore:

"SECTION 1. Lessors or sublessors of lands, or parts thereof, primarily devoted to residential purposes, and persons claiming title or color of title thereto from such lessors or sublessors, are hereby prohibited from increasing the rental to an amount in excess of the proportion, percentagewise, in the increase of the assessed value of the land leased or subleased. If only a portion of the land is leased or subleased, the proportionate value of the leased premises shall be the basis for determining the maximum rental to which the same may be increased.

"SECTION 2. Lessors or sublessors of buildings, or parts thereof, primarily devoted to residential purposes, and persons claiming title or color of title thereto from such lessors or sublessors, are hereby prohibited from increasing the rentals to an amount in excess of ten (10) percentum per annum of the assessed value of the building leased or subleased and of the land on which the building stands. If only a portion of the building is leased or subleased, the proportionate assessed value of the building and the land on which the building stands shall be the basis for determining the maximum rental to which the same may be increased.

"SECTION 3. This ordinance shall not apply to contracts of lease or sublease existing upon its approval and to lands used by, or to rooms of, boarding houses and lodging houses; PROVIDED, HOWEVER, That renewals or modifications of such contracts made on or after the approval of this Ordinance shall be governed by the provisions hereof.

"SECTION 4. Any person violating the provisions of this Ordinance shall, upon conviction, be punished by a fine of not less than one hundred (P100.00) pesos nor more than two hundred (P200.00) pesos and

imprisonment for not less than one (1) month nor more than six (6) months. In the case of juridical persons, the general manager, director, or any other person in control thereof shall be liable.

"SECTION 5. This ordinance shall take effect on January 1, 1964."

The lower court struck down the questioned ordinance upon the ground that the power to "declare a state of emergency . . . exclusively pertains to Congress"; that "there is no longer any state of emergency" which may justify the regulation of house rentals; that said ordinance "constitutes an unreasonable and unjustified limitation on the use of private properties and arbitrarily encroaches on the constitutional rights of property owners"; that the power of the City of Manila to "regulate the business of ... letting or subletting of lands and buildings" does not include the authority to prohibit what is forbidden in said ordinance; and that the same cannot be deemed sanctioned by the general welfare clause in the City Charter.

Although some members of the Court are not prepared either to concede the alleged power of the City of Manila to declare a state of emergency or to acknowledge the existence thereof, as a fact, we do not deem it necessary to pass upon these questions or upon the soundness of the other points relied upon by His Honor, the trial Judge, on which we express here no opinion whatsoever. Even if the City had said power and a state of emergency really existed, the ordinance under consideration would still be illegal and unconstitutional, for the reasons presently to be stated.

The authority of municipal corporations to regulate is essentially police power. Inasmuch as the same generally entails a curtailment of the liberty, the rights and/or the property of persons, which are protected and even guaranteed by the Constitution, the exercise of police power is necessarily subject to a qualification, limitation or restriction demanded by the regard, the respect and the obedience due to the prescriptions of the fundamental law, particularly those forming part of the Constitution of Liberty, otherwise known as the Bill of Rights—the police power measure must be "reasonable". In other words, individual rights may be adversely affected by the exercise of police power to the extent only—and only to the extent—that may fairly be required by the legitimate demands of public interest or public welfare. If such demands are brought about by a state of emergency, the interference upon individual rights, resulting from the regulations adopted to meet the situation, must be, by and large, coextensive, coeval or coterminous with the existence thereof. And, since an emergency is by nature temporary in character, so must the regulations promulgated therefor be. In the language of Justice Holmes[1] "circumstances may so change in time or differ in space as to clothe with such an interest[2] what at other times or in other places would be a matter of purely private concern." Or, as the American Jurisprudence puts it, "a limit in time to tide over a passing trouble may justify a law that could not be upheld as a permanent change." [3] As a consequence, a law or ordinance affecting the rights of individuals, as a means to tide over a critical condition, to be valid and legal must be for a "definite" period of time, the length of which must be "reasonable", in relation to the nature and duration of the crisis it seeks to overcome or surmount. Hence, in *Rutter v. Esteban*[4] we declared on May 18, 1953, that a moratorium of eight (8) years, given by Republic Act No. 342 to war damage claimants, from and after the settlement of their war damage claims, for the payment of their pre-war obligations[5] is "unreasonable, if not oppressive", in the light of "the conditions" then "prevailing in our country", and that, accordingly, said Act was "null and void and without effect". We further held that "what we say here with respect to said Act holds true as regards Executive Orders Nos. 25[6] and 32[7] perhaps with greater force and reason as to the latter, considering that said Orders contain no limitation whatsoever in point of time as regards the suspension of the enforcement and effectivity of monetary obligations." This ruling, it should be noted, was made deliberately and does not constitute an obiter dictum, for, in the language of the Court, "there is need to make this pronouncement in view of the revival clause embodied in said Act if and when it is declared unconstitutional or invalid." [8]

The practical reason for the requirement that a statute passed to meet a given emergency, should limit the period

of its effectivity, is that, otherwise, a new and different law would be necessary to repeal it, and said period would, accordingly, be "unlimited, indefinite, negative and uncertain", so that "that which was intended to meet a temporary emergency may become a permanent law,"[9] because "Congress might not enact the repeal, and, even if it would, the repeal might not meet with the approval of the President, and the Congress might not be able to override the veto ".In line with the basic philosophy underlying the authority to affect individual rights, this Court felt that Commonwealth Act No. 671, otherwise known as the Emergency Powers Act, was meant to be and "became inoperative when Congress met in regular session on May 25, 1946", and that Executive Orders Nos. 62, 192, 225 and 226—promulgated subsequently thereto—"were issued without authority of law", because, otherwise, said emergency regulations would purport to be in force for an indefinite and unlimited period of time, and, hence, would be unconstitutional.[10]

The same considerations impelled the Court to invalidate Executive Orders Nos. 545 and 546, issued on November 10, 1952. Indeed, otherwise, "the result would be obvious unconstitutionality", by making permanent a law intended to afford a relief for a temporary emergency, the length of which should be "fixed in the law itself and not dependent upon the arbitrary or drastic will of either Congress or the President." [11]

We have not overlooked the fact that the cases adverted to refer particularly to the constitutional provision[12] authorizing Congress, "in times of war or other national emergency", to delegate to the President, "for a limited period", and subject to specified "restrictions", the power "to promulgate rules and regulations to carry out a declared national policy." We are inclined to believe, however, that in providing that the lifetime of the authority given must be "for a limited period", the framers of our Charter were influenced by the fact that powers were being delegated to the Executive, as much as by the circumstances that, since the cause for the grant of power was temporary, so should the grant be, for the effect cannot remain in existence upon the removal of its cause. In fact, Congress has, in actual practice, accepted this limitation upon its exercise of police power to meet a condition of emergency. Thus, Commonwealth Act No. 499[13] regulated the transfer of vessels and of shipping facilities, effective until adjournment of the next regular session of the National Assembly. This was followed by Commonwealth Act No. 689[14] which penalized speculation on rents of buildings destined for dwelling purposes, but only "for a period of two (2) years after its approval." This Act was amended by Republic Act No. 66[15] which, inter alia, extended its period of effectivity to "four (4) years after its approval."

Needless to say, the powers of municipal corporations delegated thereto by the National Government cannot escape the inherent limitations to which the latter—as the source of said powers—is subject. Then, again, since our law on municipal corporations is, in principle, patterned after that of the United States, the rule therein, to the effect that "in a proper case, emergency legislation, limited in time, may be enacted under the police power" of a municipal corporation,[16] should be considered a part of our legal system.

Appellant assails the validity of the proceedings in the lower court upon the ground that although petitioners herein had assailed Municipal Ordinance No. 4841, not merely as ultra vires, but, also, as unconstitutional, the Solicitor General had been neither heard nor notified in connection therewith, in violation of Section 4 Rule 64 of the Rules of Court.[17]

It should be noted, however, that appellant did not raise this question or invoke said Section 4, either in his answer or in a motion to dismiss in the lower court. Upon the other hand, the City Fiscal of Manila was notified therein. In fact, he filed a memorandum apart from the memorandum submitted by counsel for appellant herein. Neither did his motion for reconsideration of the appealed decision touch upon said question, which was raised, for the first time in a "supplement" to said motion for reconsideration.

At any rate, the determination of the question whether or not the Solicitor General should be required to appear

"in any action involving the validity of any treaty, law, ordinance or executive order, rules or regulation" is a matter left to the "discretion" of the Court, pursuant to Section 23 of Rule 3 of the Rules of Court.[18] Inasmuch as said requirement is not mandatory, but discretionary, non-compliance therewith and with Section 4 of Rule 64—the interpretation of which should be harmonized with said Section 23 of Rule 3—affected neither the jurisdiction of the trial court nor the validity of the proceedings therein, in connection with the present case. Thus, in *San Buenaventura vs. Municipality of San Jose*,[19] we held:

"... that the requirement regarding notification to the Provincial Fiscal of the pendency of an action involving the validity of a municipal ordinance, as provided in Sec. 5, Rule 66 of the Rules of Court (now Sec. 4, Rule 64 of the Revised Rules of Court), is not jurisdictional; and failure on the part of petitioner to notify the Provincial Fiscal will not be a sufficient ground to throw the case out of court. We believe the purpose of the above-quoted rule is simply to give the Provincial Fiscal, who is the legal officer of the local governments, a chance to participate in the deliberation to determine the validity of a questioned municipal ordinance before the competent court. If it appears, however, that the ordinance in question is patently illegal, as in the present case, and the matter had already been passed upon by a competent court, the requirements of Sec. 5 of Rule 66 of the Rules of Court (now Sec. 4 of Rule 64 of the Revised Rules of Court) may be dispensed with."

WHEREFORE, the decision appealed from should be as it is hereby affirmed, with costs against the appellant.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Judgment affirmed

[1] *Block v. Hirsh*, 256 U.S. 135, 65 L. ed. 865, 16 A.L.R. 165, 41 Sup. Ct. Rep. 458.

[2] Public Interest.

[3] 11 Am. Jur. 979; *Santos v. Alvarez*, 78 Phil. 503, 510.

[4] 93 Phil. 68, 72, 77.

[5] Section 2 of Republic Act No. 342 provided: "All debts and other monetary obligations payable by private parties within the Philippines originally incurred or contracted before December 8, 1941, and still remaining unpaid, any provision or provisions in the contract creating the same or in any subsequent agreement affecting such obligation to the contrary notwithstanding, shall not be due and demandable for a period of eight (8) years from and after settlement of the war damage claim of the debtor by the United States Philippine War Damage Commission, without prejudice, however, to any voluntary agreement which the interested parties may enter into after the approval of this Act for the settlement of said obligations."

[6] " Promulgated on Nov. 18, 1944, and providing, in Title III thereof, that: "Payment of all debts and other monetary obligations contracted after December 31, 1941, except debts and other monetary obligations entered into in any area after declaration by Executive Order that such area has been freed from enemy occupation and control, is temporarily suspended pending action by the Commonwealth Government."

[7] Promulgated on March 10, 1945, and amending Executive Order No. 25, to read as follows: "Enforcement of payment of all debts and other monetary obligations payable within the Philippines, except debts and other monetary obligations entered into in any area after declaration by Presidential Proclamations that such area has been freed from enemy occupation and control, is temporarily suspended pending action by the Commonwealth Government."

[8] The last sentence of Section 3 of the Act reads: "... Should the provision of Section 2 hereof be in any way declared void and unenforceable, then as regards the obligations affected thereby, the provisions of Title III, Debt Moratorium, Executive Order No. 25 dated November 18, 1944, as amended by Executive Order No. 32 dated March 10, 1945, shall continue to be in force and effect, any contract or agreement affecting the same to the contrary notwithstanding, until subsequently repealed or amended by further legislative enactment".

[9] *Peck v. Fink*, 2 Fed. [24], 912.

[10] *Araneta v. Dinglasan*; *Araneta v. Angeles*; *Rodriguez v. The Treasurer of the Philippines*; *Guerrero v. Commissioner of Customs*; *Barredo v. Commission on Elections*, 84 Phil. 368, 376, 380, 435, 437.

[11] *Rodriguez v. Gella*, 92 Phil. 603, 605, 606-607.

[12] Section 26 of Art. VI of the Constitution.

[13] Approved on September 30, 1939.

[14] Approved on October 15, 1945.

[15] Approved on October 18, 1946.

[16] 6 *McQuillin Municipal Corporations*, 3rd ed. 486. See, also, *Brooklyn City R. Co. v. Wholen*, 182 NYS 283; 62 CJS 312.

[17] "SEC. 4. Municipal or city ordinance.- In any action involving the validity of a municipal or city ordinance the provincial or city fiscal or attorney shall be similarly notified and entitled to be heard; and if the ordinance is alleged to be unconstitutional the Solicitor General shall also be notified and entitled to be heard."

[18] "SEC. 23. Notice to Solicitor General.— In any action involving the validity of any treaty, law, ordinance or executive order, rules or regulations, a superior court, in its discretion, may require the appearance of the Solicitor General who may be heard in person or through a representative duly designated by him."

[19] L-19309, January 30, 1965.

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