

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS.. IRENE DE GUZMAN, TAN BOC SIU, LIM-BENG HOK, AND ALFREDO LIM, DEFENDANTS AND APPELLANTS.

G. R. No. L-2772-5. September 29, 1951

Ponente: PARAS, C.J.

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PARAS, C.J.:

The defendants, Irene de Guzman, Tan Bock Siu, Lim Beng Hok and Alfredo Lim, have appealed from a judgment of the Court of First Instance of Quezon, finding them guilty of a violation of Ordinance No. 1, series of 1946, of the municipal council of Lucena, and sentencing each of them to imprisonment for one month, to pay a fine of P100, with subsidiary imprisonment in case of insolvency at the rate of P1 per day, and to pay the costs.

The appellants were originally charged in the justice of the peace court of Lucena which found them guilty and sentenced each of them to pay a fine of P100, with subsidiary imprisonment in case of insolvency.

The separate informations filed against the appellants were of the following tenor: "That on or about the 30th day of June, 1947, and for sometime subsequent thereto, in the Municipality of Lucena, province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the owner and proprietor of a lumber yard (Tableria) located inside the prohibited zone of said Municipality, with the deliberate intent of disobeying, the permit given her by the Local Authority for a temporary lumber establishment in the restricted area and the provisions prescribed in the Municipal Ordinance, did then and there willfully, unlawfully and feloniously fail to remove and transfer her lumber establishment within the time granted her to do so."

Municipal Ordinance No. 1, series of 1946, of the municipal council of Lucena, provides as follows: :

"SECTION 1. Ordinances Nos. 19 and 32, series of 1938 regarding lumber yards (Tablerias) are hereby revoked and all ordinances or parts thereof inconsistent with the present are hereby repealed.

"SEC. 2. Definition: Lumber yards (Tablerias) are those establishments which are dedicated to the sawing of timber either by hand, or motor and those establishments which although not sawing timber, have lumber for sale.

"SEC. 3. Lumber yards (Tablerias) utilizing motors in the process of their business can be located in any part of the municipality provided that said establishment shall be away, from the nearest house by at least 100 meters from the place of the motor.

"Lumber yards (Tablerias) without motor can be located in any part of the municipality except within the following zone:

"North

—

Burgos Street

"East

—

Gardiner Street

"South

—

Salvador and Perez Streets

"West

—

Abellanos Street

"SEC. 4. Permit: No lumber yard (Tablerias) should be allowed to operate without the written permit of the Mayor and the Municipal Treasurer shall not issue any license unless said permit is secured by the interested parties.

"SEC. 5. Penal Provisions.—Any person, company, corporation or entity who shall violate this ordinance or any portion thereof, shall, upon conviction, be punished by a fine of not more than P200 or imprisonment by not more than two months or both fine and imprisonment at the discretion of the Court. In case of insolvency, subsidiary imprisonment at the rate of P1 per day shall be imposed."

It appears that appellants Irene de Guzman, Tan Bok Siu, Lim Beng Hok and Alfredo Lim were the owners respectively of the Victory Lumber Yard, Pacific Lumber, Capitol Lumber, and International Construction & Supply, located within the area prohibited by the above-quoted ordinance. They had been operating the lumber yards prior to the enactment of the ordinance on February 26, 1946, and continued to do so thereafter. In January, 1947, they were duly notified by the Mayor of Lucena to comply, with said ordinance by moving their lumber yards out of the prohibited zone on or before April 1, 1947. Upon their failure to do so, the Mayor, on May 28, 1947, went to the Office of the Provincial Fiscal of Quezon wherein he met appellant Irene de Guzman and Eleuterio Lim, the latter in representation of the Chinese Chamber of Commerce and the other appellants. Assistant Provincial Fiscal Reyes gave the appellants another thirty days within which to comply with the ordinance. Upon their failure to do so, the present prosecution was instituted.

The principal contention of the appellants is that the ordinance is unconstitutional, in that it is an invasion of the property rights of lumber yard owners without due process of law, denies equal protection of the laws, and discriminates against Chinese. In answer to this contention, it is sufficient to quote hereunder the syllabus of the decision in the case of Benito Tan Chat et al., vs. the Municipality of Iloilo, 60 Phil., 465, in which the constitutionality of a similar zoning ordinance was upheld by this Court:

- Municipalities; power to abate nuisances.—The defendant municipality, in the exercise of the powers delegated to it by the Legislature, and by virtue of the police power conferred upon it by the express provisions of section 2242 (h) of the Revised Administrative Code, has the power to enact ordinances for the purpose of regulating and abating public nuisances particularly when the measure is sound and redounds to the benefit of the inhabitants of the locality and is reasonably exercised.

- Id.; Nuisances "per se" and nuisances "per accidens".—Taking into consideration the nature of the plaintiffs' business which consisted of a saw mill and lumber yards, and the indisputable fact that the conduct thereof necessarily disturbs passers-by and the neighbors, Held: That such business constitutes nuisances per accidens or

per se.

- Id.; Zoning Ordinance.—The power of municipal corporations to divide their territory into industrial, commercial and residential zones is recognized, in almost all jurisdictions inasmuch as it is derived from the police power itself and is exercised for the benefit and protection of their inhabitants.

- Id.; Id.; Constitutionality.—In enacting the ordinance in question, the defendant municipality does not appropriate the properties of the plaintiffs but simply prohibits the conduct of said industry or business within the limits established therein, the provisions of which are in accordance with the old and well-known maxim: *salus populi suprema lex* (the welfare of the people is the supreme law). For this reason, it does not violate the constitutional rule prohibiting confiscation of property without due compensation.

It cannot be seriously contended that there is discrimination in favor of Filipinos, because the prohibition in the ordinance in question, applies to all lumber yards regardless of the race of their owners. As a matter of fact, appellant Irene de Guzman is, by her own admission, a Filipina. Engracio Jalbuena and Nestorio Tolentino, who are alleged to have lumber yards within the prohibited zone, no longer had the same when the trial Judge made an ocular inspection; and Tolentino now runs only a furniture store therein.

There can be no dispute that the passage of the ordinance was prompted by a desire to abate nuisances resulting from the operation of lumber yards within residential zones, and this falls under the legitimate exercise of police power by the municipal council.

The fact that, as contended by appellants, the municipal authorities of Luceha might have been lax in the enforcement or allowed violations of other ordinances, is not a valid defense against the instant prosecution. Proper action, if any, should be taken against the erring officials.

Under section S of the ordinance, lumber yards with motors "can be located in any part of the municipality provided that said establishment shall be away from the nearest house by at least 100 meters from the place of the motor," (first paragraph), and lumber yards without motors can be located in any part of the municipality except within the following zone: North—Burgos Street; East—Gardiner Street; South—Salvador and Perez Streets; West—Abellana Street (second paragraph). It is now insisted for, the appellants that, as the trial court found that their lumber yards are with motors, they should be acquitted, because the prosecution has failed to prove that said yards are not at least 100 meters away from the nearest house. This contention is not tenable. In the first place, the appellants virtually admitted that their yards are within the prohibited area (and this fairly means that they are located within the prohibited 100-meter radius). Indeed, appellants' evidence only emphasizes the allegations (1) that although there are other lumber yards similarly situated, their owners were not prosecuted, (2) that appellants' lumber yards do not create nuisances or fire hazards, and (3) that ordinances against obstruction of sidewalks and traffic were not enforced rigidly, all these to justify the retention of appellants' present locations. In the second place, section 3 of the ordinance must be read and construed in its entirety and in a sense that will prevent absurdity. In other words, it is quite plain that, if lumber yards without motors cannot be located within the area bounded by the streets mentioned in the ordinance, lumber yards utilizing motors cannot, with more reason (having in mind the purpose of the ordinance), be operated therein. The restricted zone is admittedly in the center of the poblacion of Lueena, and it is just to assume that no lumber yard may exist therein without necessarily coming very near residential buildings.

With reference to appellants' argument that the trial court erred in considering marked obstinacy in disobeying the ordinance as a circumstance justifying the imposition of a penalty higher than that imposed by the justice of the peace court, it may be stated that, under section 5 of the ordinance, the court has the discretion to impose a fine of not more than P200 or imprisonment for not more than 2 months, or both fine and imprisonment. The appellants'

sentence is clearly within this range.

Wherefore, the appealed judgment is affirmed, and it is so ordered with costs against the appellants.

Feria, Pablo, Bengzon, Padilla, Tuason, and Reyes, JJ., concur.

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