

POLICARPIO VIRAY, ET AL., PLAINTIFFS-APPELLANTS, VS. CITY OF CALOOCAN, ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-23118. July 26, 1967*

Ponente: REYES, J.B.L., J.

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From the adverse decision of the Court of First Instance of Rizal (in Civ. Case No. 9-C), therein plaintiffs instituted the present ap-peal, questioning the authority of the City of Caloocan to impose a fee of P10.00 or P5.00 as the case may be, for every cadaver coming from other places and buried in private cemeteries within that city.

Policarpio Viray, Antonio Cajote and Leopoldo Prieto, all residents of the City of Manila who were charged by, and actually paid to, the City Treasurer of Caloocan "entrance fees" for the burial of their re-spective relatives in the La Loma cemetery, allegedly pursuant to Or-dinance No. 94, series of 1962, filed the action in the Court of First Instance of Caloocan against the city government, its Mayor and Treasurer (Civ. Case No. 9-C), contesting the legality of the afore-mentioned city ordinance, on the ground that it was a revenue-raising measure which is beyond the taxing authority of the defendant city government to enact, and praying that it be declared ultra vires and void ab initio, and that the fees they paid to defendants be returned to them.

After the defendants had filed their answer, the case was sub-mitted for decision on the following stipulation of facts:

"x x x

"2. The parties agree that, on September 18, 1962, the Municipal Board of the defendant City of Caloocan enacted Ordinance No. 94, series of 1962 which among others imposes an entrance fee on cadavers coming from places outside the territorial jurisdiction of the City of Caloocan, ought to be buried in private cemeteries, in-cluding the La Loma Cemetery, within the City of Caloocan; the parties also agree that the entrance fee imposed by Ordinance No. 94, series of 1962 for each cadaver is P5.00 if the deceased is below fourteen (14) years old and P10.00 if the deceased is fourteen (14) years old or above; xxx xxx xxx;

"3. The parties agree that defendant Macario Asistio, as Mayor of the City of Caloocan, approved Ordinance No. 94, series of 1962 on September 22, 1962;

"4. The parties agree that on March 8, 1963, de-fendant Amado Oliveros, as Treasurer of the City of Ca-loocan, through his deputy and in pursuance of Ordinance No. 94, series of 1962, collected the corresponding en-trance fee from plaintiffs Policarpio Viray and Antonio Cajote in the amount of P5.00 each, and from plaintiff Leopoldo Prieto in the amount of P10.00 for the burial of their respective relatives at the La Loma Cemetery; such collections are evidenced by official receipts which have been attached as Annexes 'B' , 'B-1' and 'B-2' to the com-plaint and are hereby incorporated by way of reference in this stipulation of facts;

"5. The parties agree that, on March 28, 1963, plain-tiffs Policarpio Viray, Antonio Cajote and Leopoldo Prieto, demanded from the defendant City Treasurer Amado Oliveros, the refund of the corresponding entrance

fees paid by them under Ordinance No. 94, series of 1962 by means of a formal letter of demand; copy of said letter has been attached as Annex 'C' to the complaint and is hereby in-corporated by way of reference in this stipulation of facts;

"6. The parties agree that despite such demand, de-fendant City Treasurer Amado Oliveros, has refused to re-fund to the plaintiffs the entrance fees paid by them and has continued to refuse to refund up to the present;

"7. The parties likewise agree that the issue to be resolved in this case is solely a question of law, namely, whether the City of Caloocan is empowered by Rep. Act 3278, otherwise known as the Charter of the City of Caloocan or by such other pertinent laws, to enact that portion of Ordinance No. 94, series of 1962 imposing the entrance fee in question".

Based on those facts, the court dismissed the case, on the ground that the questioned ordinance was authorized under the charter of the City of Caloocan and other pertinent laws.

It appears from the records that in addition to a burial permit costing P0.50, each of herein plaintiffs-appellants was required to pay, and in fact did pay, so-called entrance fee for the burial of his relative at the La Loma cemetery, a burial place not owned by the city government of Caloocan, allegedly pursuant to Ordinance No. 94, series of 1962, which reads:

"ORDINANCE No. 94

"AN ORDINANCE AMENDING ORDINANCE NO. 5 SERIES OF 1961 PROVIDING FOR ADDITIONAL FEES IN PRIVATE CEMETERIES.

xxx xxx xxx

"Section 1 - xxx

"A - 266 CEMETERY - PRIVATE CEMETERY

PROVIDED, that the term 'private cemetery' herein used shall be construed to mean as the cemetery owned and operated by private persons, interest, and associations, no matter how organized, and to include for purposes of this ordinance, the La Loma cemetery located within the jurisdictional boundary of the City of Caloocan.

PROVIDED, that the following fees shall be collected:

FOR EACH PERMIT for the exhumation of

the remains ----- P 1.00

FOR EACH CADAVER sought to be buried in private cemeteries within Caloocan coming from other places, the following fees shall be collected:

FOR EACH TRANSFER PERMIT for Adult, 14

yrs. old and above ----- P 10. 00

FOR EACH TRANSFER PERMIT for Child,

below 14 yrs. old ----- 5.00"

Defendants-appellees, answering plaintiffs-appellants' contention that the collection of the amounts involved in this appeal was unauthorized, claim that it was justified by the general grant of taxation to chartered cities by

Republic Act 2264, otherwise known as the Local Autonomy Act and as a valid exercise of police power.

The issue in this case calls for the determination of the validity of the aforementioned Ordinance No. 94, series of 1962, and of the collection from plaintiffs-appellants of the so-called entrance fees, allegedly made pursuant to said ordinance.

It may be pointed out that the disputed ordinance speaks of two kinds of fees: one, in connection with the exhumation of the remains (of a dead person), for P1.00, and the other, imposed whenever a cadaver is sought to be buried in that city coming from other places, in the sum of P10.00 for an adult's, and P5.00 for a child's. Taken in its entirety, it is clear that what is being regulated through this ordinance is not the burying of the mortal remains of a person, but the exhumation and transfer of a cadaver - activities affecting corpses that had previously been buried. In other words, the term "transfer" used in the ordinance does not refer to the conducting or conveying of an un-buried dead body from one place - let us say, the funeral parlor or site where the vigil was held - to the burial grounds. Rather, the transfer permit mentioned in the ordinance is required whenever a cadaver, previously interred in a burial place, is removed therefrom for transfer to a private cemetery in Caloocan. That the permit called for under the ordinance is not for the burying of the dead may even be deduced from the fact that a "burial permit" is also being admittedly issued by defendant municipal corporation for a fee of P0.50. Furthermore, it is noteworthy that while Ordinance No. 94 refers to a "transfer permit", the amounts collected from plaintiffs-appellees were receipted for as "entrance fees" thereby giving rise to the presumption that the defendants-appellees must have been aware that the imposition of such transfer fees in the cases involved herein was indeed unauthorized.

The inescapable conclusion is that, although the ordinance which regulates the exhumation and/or transfer of corpses from other burial grounds to those located in the City of Caloocan is within the legislative power of the respondent city government to enact,¹ the imposition of the transfer fees under Ordinance No.94, on the interment of the respective dead relatives of herein appellants in the La Loma cemetery, was not justified. Appellants' prayer, therefore, for the return by defendant City Treasurer of the alleged entrance fees, must be granted.

With regard to the defenses interposed on behalf of the respondent City, premised upon the provisions of the Local Autonomy Act, suffice it to observe that, while section 2 (on Taxation) of Republic Act 2264 confers on chartered cities and municipalities -?

"authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities or municipalities x x x by requiring them to secure licenses at rates fixed by the municipal board or city council",

respondents have failed to show that the persons merely burying a cadaver in a private cemetery constitutes either an occupation or business or the exercise of privileges that would justify the imposition of taxes thereon within the terms and intent of the enabling act, the terms employed by the statute in themselves denoting habituality or a repetition of acts, and not a solitary act.

Respondent City also endeavors to justify the fees prescribed by the ordinance in question as a proper exercise of the police power, claiming that it -?

"involves the assignment of police officers to insure that the funeral procession x x x is orderly so as not to cause great and serious inconvenience to the public. During the procession traffic has to be re-routed at times; policemen have to use the city's motorcycles or cars; the streets and other City property have to suffer certain degree of depreciation." (Brief for Appellees, pp. 24-25).

While undeniably the above-described activity of city officers is called for by every funeral procession, yet we are

left without explanation why the Ordinance should collect the prescribed fees solely in the case of cadavers coming from places outside the territory of Caloocan City for burial in private cemeteries within the City. Surely, whether the corpse comes from without or within the City limits, and whether interment is to be made in private or public cemeteries, the City police must regulate traffic, and must use their City cars or motorcycles to maintain order; and the City streets must suffer some degree of erosion. Clearly, then, the ordinance in question does unjustifiably discriminate against private cemeteries, in violation of the equal protection clause of the Constitution, a defect adequate to invalidate the questioned portion of the measure.

WHEREFORE, the decision appealed from is reversed and the questioned portion of Ordinance No. 94, series of 1962 of the City of Caloocan, is declared ultra vires and void. Costs against the respondents.

SO ORDERED.

Bengzon, JP, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, (C.J), Dizon, and Makalintal, JJ., did not take part.

1 "SEC. 15. General powers and duties of the Board.--Except as otherwise provided by law, and subject to the conditions and limitations thereof, the Municipal Board shall have the following legislative powers:

xxx xxx xxx

"(cc) Subject to the provisions of existing law, to provide for the laying out, construction and improvement, and to re-gulate the use of streets, avenues, alleys, sidewalks, wharves, piers, parks, cemeteries, and other public places:"

(Underscoring supplied; Rep. Act 3278).

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