

**ELISA SAMSON AND ANGEL GAVILAN, PLAINTIFFS AND APPELLEES,
VS. THE HONORABLE CITY MAYOR OF BACOLOD CITY AND THE
HONORABLE CITY COUNCIL OF BACOLOD CITY, DEFENDANTS AND
APPELLANTS.***G.R. No. L-28745. October 23, 1974*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/dcb3ee685fff/>**FERNANDO, J.:**

There would have been no necessity for an appeal from a decision of November 22, 1967, nullifying an amendatory ordinance[1] of the City of Bacolod making it unlawful for any proprietor, lessee, or operator of an amusement place to admit two or more persons with only one admission ticket, had the lower court accorded respect to two decisions from this Tribunal promulgated in July of that year, *Ermita-Malate Hotel and Motel Operators Association vs. City Mayor*[2] and *Ormoc Sugar Co. vs. Municipal Board of Ormoc City*. [3] The former made clear that the burden of demonstrating the alleged nullity of an ordinance rests on the party assailing its infirmity, there being a presumption of its validity, and the latter reiterated the well-settled principle that a reliance on the possible adverse effect on property rights of a regulatory measure under the police power does not suffice for a declaration of unconstitutionality under the due process clause. In this case, contrary to the above procedural requisite and the substantive rule of law, the lower court adjudged the amendatory ordinance null and void "for being in contravention" of the Constitution. We have to reverse.

The facts are undisputed. A complaint was filed by the plaintiffs, now appellees, on June 29, 1967, alleging that they were movie operators of the City of Bacolod, to nullify Ordinance No. 1074, for its being ultra vires and its being contrary to the due process provision of the Constitution as they were deprived of their property without due process of law, more specifically in that there was a limitation, on their right "to manage their respective theatres in the manner they wish * * *"[4] They sought an injunction to restrain the enforcement of the Ordinance in the meanwhile, and it was granted by respondent Judge Jose F. Fernandez, now retired.[5] An answer was duly filed on July 10, 1967 by the City Fiscal of Bacolod, which perhaps could have been worded more persuasively and bolstered with the applicable authorities.[6] Nonetheless, the attention of the lower court was duly invited to the previous decisions of this Tribunal manifesting lack of sympathy for the invocation of due process by property owners to set at naught efforts of municipal corporations to exercise their admitted competence under the police power. The decision, as previously noted, was handed down on November 22, 1967. It made clear that no evidence was introduced, for unfortunately, the City Fiscal did not even invoke the *Ermita-Malate Hotel* decision. It was on the basis of the respective memoranda of the parties that the decision appealed from was reached. There was no question as to the amendatory ordinance not being ultra vires. So the lower court held. Nonetheless, it declared it null and void for being in contravention of the due process clause.[7] It went so far as to consider it a direct violation of the Constitution presumably as it "is nothing but an unwarranted interference with one's freedom to manage his own business, in the guise of police power." [8] Hence this appeal.

To narrate the above is to render clear why a reversal is called for.

1. The lower court instead of merely relying on memoranda ought to have required plaintiffs to satisfy the procedural requirement that in view of the presumption of validity, they should have presented evidence to be successful in assailing the constitutionality of an ordinance. Such a doctrine, that goes back to an opinion of Justice Malcolm in *United States vs. Salaveria*,^[9] was reiterated in the aforesaid *Ermita-Malate Hotel* decision. Thus: "Primarily what calls for a reversal of such a decision is the absence of any evidence to offset the presumption of validity that attaches to a challenged statute or ordinance. As was expressed categorically by Justice Malcolm: 'The presumption is all in favor of validity. *** The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well-being of the people.x x x The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation.'"^[10] Further: "It admits of no doubt therefore that there being a presumption of validity, the necessity for evidence to rebut it is unavoidable, unless the statute or ordinance is void on its face, which is not the case here. The principle has been nowhere better expressed than in the leading case of *O'Gorman & Young vs. Hartford Fire Insurance Co.*, where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus: 'The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.' No such factual foundation being laid in the present case, the lower court deciding the matter on the pleadings and stipulation of facts, the presumption of validity must prevail and the judgment against the ordinance set aside."^[11]

2. The procedural objection disregarded, and assuming a decision on the merits is called for, still the appealed decision cannot be said to pass the test of conformity with the controlling principles of law. The lower court ought not to have given credence to the superficial assertion that the amendatory ordinance is violative of the due process guarantee. Such an allegation, premised solely on what plaintiffs did consider undue interference with their right to manage their property, ought not to have merited even serious consideration. The *Ormoc* decision,^[12] cited earlier, merely stressed what has been so consistently held by this Court. While perhaps the verbal formulation relied on in that case is the well-known phrase "restraint of trade," the basic premise on the part of property owners is the innate repugnance to any interference with the management of their business. Thus: "Nor is petitioner-appellant any more successful in its claim in the second assigned error that the ordinance suffers from the taint of illegality, it being in restraint of trade. In the absence of a clear and specific showing that there was a transgression of a constitutional provision or repugnancy to a controlling statute, an objection of such a generalized character deserves but scant sympathy from this Court. Considering the indubitable policy expressly set forth in the Local Autonomy Act, the invocation of such a talismanic formula as 'restraint of trade' without more no longer suffices, assuming it ever did, to nullify a taxing ordinance, otherwise valid."^[13] Such a doctrine goes back to *United States vs. Abendan*,^[14] a 1913 decision. The ordinance challenged in that case dealt with the sanitary measure, passed on the first statutory grant of police power under the then Municipal Code.^[15] As was set forth by Justice Moreland, as ponente: "The Municipality of Cebu, as is seen from the quotation of the general municipal law, has the right to enact ordinances relating to sanitation and the public health. The ordinance as set out above seems to us to be an enactment clearly within the purview of the statute authorizing it, and, while very general in its terms, it contains no provision which of itself is against the fundamental law or act of the Legislature or is oppressive or unreasonable. Unreasonable persons may try to apply it in an unreasonable manner or to an unreasonable degree or under unreasonable conditions, but in and of itself the ordinance discloses none of the

defects which have been alleged against it." [16] The next notable opinion is that of Justice Malcolm, Kwong Sing vs. City of Manila, [17] decided in 1920, where a regulation of the laundry industry in the City of Manila was assailed by Chinese citizens engaged in that trade. According to Justice Malcolm: "The word 'regulate,' as used in subsection (1), section 2444 of the Administrative Code, means and includes the power to control, to govern, and to restrain; but 'regulate' should not be construed as synonymous with 'suppress' or 'prohibit.'" [18] Moreover, he did specify that such a business could be regulated under the general welfare clause "in the interest of the public health, safety, morals, peace, good order, comfort, convenience, prosperity, and the general welfare." [19] A sentence in the next paragraph has even more relevance for the present litigation: "The object of the ordinance was, accordingly, the promotion of peace and good order and the prevention of fraud, deceit, cheating, and imposition." [20] Justice Laurel's words, in the leading case of Calalang vs. Williams, [21] promulgated 1940, ought to have cautioned the lower court Judge in deciding the way he did. "Public welfare, then, lies at the bottom of the enactment of said law, and the state in order to promote the general welfare may interfere with personal liberty, with property, and with business and occupations. Persons and property may be subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the state ***" [22]

When it is further remembered that insofar as movie houses and other places of amusement are concerned, [23] the least doubt cannot be entertained as to the validity of a measure prohibiting a proprietor, lessee or operator of an amusement place to admit two or more persons with only one admission ticket, not only in the interest of preventing fraud insofar as municipal taxes are concerned, but also in accordance with public health, public safety and the general welfare. [24] An American Supreme Court decision, Western Turf Association vs. Greenberg, [25] the opinion being penned by Justice Harlan, is equally illuminating: "The statute is only a regulation of places of public entertainment and amusement upon terms of equal and exact justice to everyone holding a ticket of admission, and who is not, at the time, under the influence of liquor, or boisterous in conduct, or of lewd and immoral character. *** Such a regulation, in itself just, is likewise promotive of peace and good order among those who attend places of public entertainment and amusement. It is neither an arbitrary exertion of the state's inherent or governmental power, nor a violation of any right secured by the Constitution of the United States." [26]

WHEREFORE, the appealed decision of November 22, 1967, declaring null and void Bacolod City Ordinance No. 1074, series of 1967, is hereby reversed and set aside. The writ of preliminary injunction issued by the lower court on June 30, 1967, is likewise set aside and declared to be bereft of any force of effect. Costs against plaintiffs.

Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Ordinance No. 1074 (1967) which amended Ordinance No. 108 enacted in 1960.

[2] L-24693, July 31, 1967, 20 SCRA 849.

[3] L-24322, July 21, 1967, 20 SCRA 739.

[4] Complaint, Record on Appeal, 1-3.

[5] Writ of Preliminary Injunction, Ibid, 7.

[6] Answer, Ibid, 7-14.

[7] Decision, Ibid, 48-51.

[8] Ibid, 50.

[9] 39 Phil. 102 (1918).

[10] 20 SCRA 849, 856-857.

[11] Ibid, 857.

[12] 20 SCRA 739.

[13] Ibid, 741-742.

[14] 24 Phil. 165.

[15] "Section 39, (jj) of the Municipal Code (1901), was even then worded in the traditional language dealing with police power, now Sections 22-38 of the Revised Administrative Code (1917). So it has been similarly set forth in the various city charters including that of the City of Bacolod, Commonwealth Act No. 326 (1938), Section 17, (ee) of which reads thus: "To enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the property, and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants, and such others as may be necessary to carry into effect and discharge the powers and duties conferred by this charter; and to fix penalties for the violation of ordinances which shall not exceed a two-hundred peso fine or six months imprisonment, or both fine and imprisonment, for a single offense."

[16] 24 Phil. 165, 169. Even before *United States vs. Abendan*, the following cases foreshadowed the conclusion reached: *United States vs. Sarmiento*, 11 Phil. 474 (1908); *Bernardino vs. Governor of Cavite*, 17 Phil. 176 (1910); *Switzer vs. Municipality of Cebu*, 20 Phil. 111 (1911); *United States vs. Espiritusanto*, 23 Phil. 620 (1912).

[17] 41 Phil. 103.

[18] Ibid, 108.

[19] Ibid.

[20] Ibid. Cf. *United States vs. Chan Tienco*, 25 Phil. 89 (1913); *United States vs. Joson*, 26 Phil. 1 (1913); *United States vs. Tamparong*, 31 Phil. 321 (1915); *United States vs. Pacis*, 31 Phil. 524 (1915); *United States vs. Gaspay*, 33 Phil. 96 (1915); *United States vs. Salaveria*, 39 Phil. 102 (1918).

[21] 70 Phil. 726. Cf. *People vs. Gabriel*, 43 Phil. 641 (1922); *Bastida vs. City Council of Baguio*, 53 Phil. 553 (1929); *People vs. Cruz*, 54 Phil. 24 (1929); *Tan Chat vs. Municipality of Iloilo*, 60 Phil. 465 (1934); *People vs. Chong Hong*, 65 Phil. 625 (1938); *Salao vs. Santos*, 67 Phil. 547 (1939).

[22] Ibid, 733. Cf. *People vs. Esguerra*, 81 Phil. 33 (1948); *Ebona vs. Municipality of Daet*, 85 Phil. 369 (1950); *Vega vs. Municipal Board of the City of Iloilo*, 94 Phil. 949 (1954); *Unson vs. Lacson*, 100 Phil. 695 (1957); *Chua Lao vs. Raymundo*, 104 Phil. 302 (1958); *Lacson vs. Bacolod City*, L-15892, April 23, 1962, 4 SCRA 1001; *People vs. Felisarta*, L-15348, June 29, 1962, 5 SCRA 389; *Lopera vs. Vicente*, L-18102, June 30, 1962, 5 SCRA 549; *People vs. Soria*, L-18982, Jan. 31, 1963, 7 SCRA 242; *Martelino vs. Estrella*, L-15927, April 29, 1963, 7 SCRA 827; *Ermila-Malate Hotel and Motel Operators Association vs. City Mayor*, L-24693, July 31, 1967, 20 SCRA 849; *People vs. Gozo*, L-36409, Oct. 26, 1973, 53 SCRA 476.

[23] According to Section 17(1) of the City Charter of Bacolod, Commonwealth Act No. 326 (1938): "To regulate and fix the amount of the fees for the following: *** theaters, theatrical performances, cinematographs, public exhibitions, circuses, and all other performances and places of amusements ***"

[24] Cf. *People vs. Chan*, 65 Phil. 611 (1938).

[25] 204 US 359 (1907).

[26] *Ibid*, 363-364.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.