

TEODORA LOPERA, PETITIONER AND APPELLEE VS. SEVERINO E. VICENTE, AS MUNICIPAL MAYOR OF PUERTO PRINCESA, PALAWAN, ET AL., RESPONDENTS. SEVERINO E. VICENTE, RESPONDENT AND APPELLANT.

G. R. No. L-18102. June 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

From the order of the Court of First Instance of Palawan (in Special Civil Action No. 380, for mandamus with preliminary injunction), declaring illegal Ordinance No. 6, series of 1960, of the Municipal Council of Puerto Princesa, Palawan, and ordering them to reopen the cabaret of petitioner Teodora Lopera which they ordered closed, respondents Severino Vicente and Cayetano Valones (municipal Mayor and municipal treasurer, respectively, of Puerto Princesa), interposed this appeal.

The facts of the case, which are uncontroverted, are stated in the order (dated December 13, 1960) of the trial court, to wit:

"The petitioner Teodora Lopera is the operator of the cabaret, located in Calero St., Puerto Princesa. Acting on the provisions of Ordinance No. 6, series 1960, the municipal Mayor ordered said cabaret closed on December 4, 1960. Said Ordinance No. 6, series 1960, requires that no cabaret should be located within a distance of 500 meters from the nearest public building; market or hospital. Upon report by the Engineer's Office, it is alleged that the cabaret is located at a distance of 476 meters from the Provincial Hospital. This action was presented to contest the legality of said Ordinance, as it is claimed to contradict the provision of Republic Act No. 1234, Section 1 thereof, which only requires a radius of 200 meters in case of cabaret, from the nearest public building.

"Ordinance No. 10, series 1958, as amended by Ordinance No. 5, series 1959, was repealed by Ordinance No. 21 and 22, on November 9, 1959, by action of the Municipal Council of Puerto Princesa. The original ordinance allowed the operation of cabarets in Puerto Princesa. The repealing ordinance prohibits their operation. Ordinance No. 6, series 1960, allowed the operation again of cabarets. It was under the provision of this Ordinance No. 6, that the petitioner was operating her cabaret. Her license does not expire until the end of December, 1960. Issuance of said license was made possible, by virtue of a temporary permit given her by the Acting Municipal Mayor."

On the basis of the above-stated facts, the trial court issued the order above adverted to, stating:

"The question now is: Is Ordinance No. 6, series 1960 valid? Republic Act No. 1224 fixed a distance of 200 meters from any public building, inside of which no cabaret may be operated. Ordinance No. 6, extended this distance to 500 meters. There is, therefore, a conflict between the Ordinance and Republic Act No. 1224. Municipal corporations are creations of Legislature. All governmental powers are derived from Congress. Only such powers as are granted (to) the municipal government, can be exercised by the latter. Those not expressly granted can not also be exercised. Municipal governments are allowed, either to prohibit, or regulate the

operation of the cabarets. The law, provides that no such cabaret may operate within the radius of 200 meters from the nearest public building. In implementing this statute, the Municipal Council of Puerto Princesa chose not to abide by this limit fixed by Congress, but decided to extend it to 500 meters, making it, therefore, a violation to establish and operate a cabaret inside the radius of 500 meters.

"This can not be done. Congress has fixed the legal distance of 200 meters. No Municipal Council may, either decrease that distance, or increase it. Only Congress, by a legislative enactment can do that. What the Municipal Council in Puerto Princesa, in effect, was trying to do, was to amend the Act of Congress, by changing the distance of 200 meters to 500 meters. This is beyond the powers of the Municipal Council. The provisions, therefore, of Ordinance No. 6, series 1960, is illegal, and the action of the Municipal Mayor, the Municipal Treasurer, and their Agencies in closing petitioner's cabaret, was unjustified.

"The Court, therefore, renders judgment, declaring Ordinance No. 6, series 1960 illegal, and the preliminary mandatory injunction issued in the interlocutory order, is hereby made permanent. No pronouncement as to cost of damages. "So ordered."

Dissatisfied from said order, respondents appealed to us.

The only issue to be resolved in this case is, whether Ordinance No. 6, series of 1960, of the municipal council of Puerto Princesa, Palawan, which prohibits the establishment, maintenance, and operation of cabarets within a radius of 500 lineal meters from any public building, school, hospital, or church, contravenes Section 1 of Republic Act No. 1224,[1] which insofar as pertinent reads.:

"SECTION 1. * * * the municipal council of each municipality * * * shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of * * * cabarets, * * * and other similar places of amusement within its territorial jurisdiction: Provided, however, That no such places of amusement mentioned herein shall be established, maintained, and/or operated within a radius of two hundred lineal meters in the case of * * *cabarets, * * * from any public building, schools, hospitals and churches: Provided, further, That no municipal* * * ordinance fixing distances at which such places of amusements may be established or operated shall apply to those already licensed and operating at the time of the enactment of such municipal * * * ordinance, nor will the subsequent opening of any public building or other premises from which distances shall be measured prejudice any place of amusement already then licensed and operating, * * *: Provided, furthermore, That no minor shall be admitted to any * * * cabaret * * * employing hostesses: And, provided, finally, That this Act shall not apply to establishments, operating by virtue of Commonwealth Act Numbered Four hundred eighty-five nor to any establishment already in operation when Republic Act Numbered Nine hundred seventy-nine took effect." (Italic supplied.)

This provision empowers the municipal council of a municipality to regulate or prohibit, by ordinance, the establishment, maintenance, and operation, among others, of cabarets within its territorial jurisdiction. Such power to regulate and prohibit includes the power to fix the distance of said cabarets from any public building, schools, hospitals, and churches, provided that the distance so fixed by it, is not less than 200 lineal meters in radius from said public buildings, schools, hospitals, and churches. In fine, the municipal council may, by ordinance, fix a distance over the 200 lineal meter minimum requirement above provided, but it may not do so below said minimum. The statute is not intended to fix a definite distance at which cabarets, if allowed should be established, but leaves to the municipal council the discretion to fix whatever distance (above the required 200 lineal meters) it may deem best for the welfare of its inhabitants. This is because, the matter being peculiarly local in nature, the municipal council alone is in a better position to know the appropriate distance at which said cabarets should be located from any public building, school, hospital, and church. Such delegation to the municipal council of a municipality of the power to fix said distance is in line with the general welfare clause (Section 2238, Rev. Adm. Code) which grants to a municipal council the power to enact such ordinances as it

shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof.

Since the ordinance in question fixes a distance (500 lineal meters) above the 200 lineal-meter minimum required under the above-quoted provision of Republic Act No. 1224, its validity can not be questioned. And, considering that petitioner-appellee's cabaret is located at less than 500 meters from the provincial hospital (see paragraph 5 of the stipulation of facts), respondents-appellants were justified in ordering the closure thereof. Petitioner-appellee claims that the ordinance in question is inapplicable to her cabaret, because the same had been in operation since 1958. While there is an averment in the complaint to this effect, no evidence was presented in the court below to prove such fact. Indeed, the answer of the defendants-appellants specifically denies this allegation, stating that appellee's cabaret was not in operation prior to May 18, 1960. The order of the trial court appealed from contains no finding that said cabaret was in operation since 1958. It did find that the operation was in virtue of a temporary permit which, according to the stipulation of facts submitted by the parties at the hearing of the case, was effective for six months from June 2, 1960. In fact, prior to March 1, 1960 when the questioned ordinance was adopted, operation of cabarets in Puerto Princesa was prohibited under Ordinances 21 and 22, series 1959.

Wherefore, the order appealed from is reversed, and the writ of mandatory preliminary injunction issued by the court a quo set aside, without pronouncement as to costs. So ordered.

Bengzon, CJ., Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, Regala, and Makalintal, JJ. concur.

[1] Amending Sec. 1, Rep. Acts Nos. 938-979.

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