

**CARLOS BALACUIT, LAMBERTO TAN AND SERGIO YU
CARCEL, PETITIONERS-APPELLANTS, VS. COURT OF FIRST
INSTANCE OF AGUSAN DEL NORTE AND BUTUAN CITY, BRANCH II,
AND THE CITY OF BUTUAN, RE...**

G.R. No. L-38429. June 30, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

At issue in the petition for review before Us is the validity and constitutionality of Ordinance No. 640 passed by the Municipal Board of the City of Butuan on April 21, 1969, the title and text of which are reproduced below:

"ORDINANCE - 640

ORDINANCE PENALIZING ANY PERSON, GROUP OF PERSONS, ENTITY OR CORPORATION ENGAGED IN THE BUSINESS OF SELLING ADMISSION TICKETS TO ANY MOVIE OR OTHER PUBLIC EXHIBITIONS, GAMES, CONTESTS OR OTHER PERFORMANCES TO REQUIRE CHILDREN BETWEEN SEVEN (7) AND TWELVE (12) YEARS OF AGE TO PAY FULL PAYMENT FOR TICKETS INTENDED FOR ADULTS BUT SHOULD CHARGE ONLY ONE-HALF OF THE SAID TICKET.

*** **

Be it ordained by the Municipal Board of the City of Butuan in session assembled, that:

SECTION 1 — It shall be unlawful for any person, group of persons, entity, or corporation engaged in the business of selling admission tickets to any movie or other public exhibitions, games, contests, or other performances to require children between seven (7) and twelve (12) years of age to pay full payment for admission tickets intended for adults but should charge only one-half of the value of the said tickets.

SECTION 2 — Any person violating the provisions of this Ordinance shall upon conviction be punished by a fine of not less than TWO HUNDRED PESOS (P200.00) but not more than SIX HUNDRED PESOS (P600.00) or an imprisonment of not less than TWO (2) MONTHS or not more than SIX (6) MONTHS or both such fine and imprisonment in the discretion of the Court.

If the violator be a firm or corporation the penalty shall be imposed upon the Manager, Agent or Representative of such firm or corporation.

SECTION 3 — This ordinance shall take effect upon its approval."

Petitioners are Carlos Balacuit, Lamberto Tan, and Sergio Yu Carcel, managers of the Maya and Dalisay Theaters, the Crown Theater, and the Diamond Theater, respectively. Aggrieved by the effect of Ordinance No. 640, they filed a complaint before the Court of First Instance of Agusan del Norte and Butuan City docketed as Special Civil Case No. 237 on June 30, 1969 praying, inter alia, that the subject ordinance be declared unconstitutional and, therefore, void and unenforceable.[1]

Upon motion of the petitioners,[2] a temporary restraining order was issued on July 14, 1969 by the court a quo enjoining the respondent City of Butuan and its officials from enforcing Ordinance No. 640.[3] On July 29, 1969, respondents filed their answer sustaining the validity of the ordinance.[4]

On January 30, 1973, the litigants filed their stipulation of facts.[5] On June 4, 1973, the respondent court rendered its decision,[6] the dispositive part of which reads:

"IN THE LIGHT OF ALL THE FOREGOING, the Court hereby adjudges in favor of the respondents and against the petitioners, as follows:

- Declaring Ordinance No. 640 of the City of Butuan constitutional and valid: Provided, however, that the fine for a single offense shall not exceed TWO HUNDRED PESOS, as prescribed in the aforequoted Section 15 (nn) of Rep. Act No. 523;
- Dissolving the restraining order issued by this Court; and
- Dismissing the complaint, with costs against the petitioners.

SO ORDERED."[7]

Petitioners filed their motion for reconsideration[8] of the decision of the court a quo which was denied in a resolution of the said court dated November 10, 1973.[9]

Hence, this petition.

Petitioners attack the validity and constitutionality of Ordinance No. 640 on the grounds that it is ultra vires and an invalid exercise of police power.

Petitioners contend that Ordinance No. 640 is not within the power of the Municipal Board to enact as provided for in Section 15(n) of Republic Act No. 523, the Charter of the City of Butuan, which states:

"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

"(n) To regulate and fix the amount of the license fees for the following; xxx theaters, theatrical performances, cinematographs, public exhibitions and all other performances and places of amusements xxx.

"xxx xxx xxx."

Respondent City of Butuan, on the other hand, attempts to justify the enactment of the ordinance by invoking the general welfare clause embodied in Section 15 (nn) of the cited law, which provides:

"(nn) To enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, 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 Act, and to fix the penalties for the violation of the ordinances, which shall not exceed a two hundred peso fine or six months imprisonment, or both such fine and imprisonment, for a single offense."

We can see from the aforecited Section 15(n) that the power to regulate and fix the amount of license fees for theaters, theatrical performances, cinematographs, public exhibitions and other places of amusement has been expressly granted to the City of Butuan under its charter. But the question which needs to be resolved is this: does this power to regulate include the authority to interfere in the fixing of prices of admission to these places of

exhibition and amusement whether under its general grant of power or under the general welfare clause as invoked by the City?

This is the first time this Court is confronted with the question of direct interference by the local government with the operation of theaters, cinematographs and the like to the extent of fixing the prices of admission to these places. Previous decisions of this Court involved the power to impose license fees upon businesses of this nature as a corollary to the power of the local government to regulate them. Ordinances which required movie houses or theaters to increase the price of their admission tickets supposedly to cover the license fees have been held to be invalid for these impositions were considered as not merely license fees but taxes for purposes of revenue and not regulation which the cities have no power to exact,[10] unless expressly granted by its charter.[11]

Applying the ruling in *Kwong Sing v. City of Manila*,^[12] where the word "regulate" was interpreted to include the power to control, to govern and to restrain, it would seem that under its power to regulate places of exhibitions and amusement, the Municipal Board of the City of Butuan could make proper police regulations as to the mode in which the business shall be exercised.

While in a New York case,^[13] an ordinance which regulates the business of selling admission tickets to public exhibitions or performances by virtue of the power of cities under the General City Law "to maintain order, enforce the laws, protect property and preserve and care for the safety, health, comfort and general welfare of the inhabitants of the city and visitors thereto; and for any of said purposes, to regulate and license occupations" was considered not to be within the scope of any duty or power implied in the charter. It was held therein that the power of regulation of public exhibitions and places of amusement within the city granted by the charter does not carry with it any authority to interfere with the price of admission to such places or the resale of tickets or tokens of admission.

In this jurisdiction, it is already settled that the operation of theaters, cinematographs and other places of public exhibition are subject to regulation by the municipal council in the exercise of delegated police power by the local government.^[14] Thus, in *People v. Chan*,^[15] an ordinance of the City of Manila prohibiting first run cinematographs from selling tickets beyond their seating capacity was upheld as constitutional for being a valid exercise of police power. Still in another case,^[16] the validity of an ordinance of the City of Bacolod prohibiting admission of two or more persons in movie houses and other amusement places with the use of only one ticket was sustained as a valid regulatory police measure not only in the interest of preventing fraud in so far as municipal taxes are concerned but also in accordance with public health, public safety, and the general welfare.

The City of Butuan, apparently realizing that it has no authority to enact the ordinance in question under its power to regulate embodied in Section 15(n), now invokes the police power as delegated to it under the general welfare clause to justify the enactment of said ordinance.

To invoke the exercise of police power, not only must it appear that the interest of the public generally requires an interference with private rights, but the means adopted must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.^[17] The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, the determination as to what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the courts.^[18]

Petitioners maintain that Ordinance No. 640 violates the due process clause of the Constitution for being oppressive, unfair, unjust, confiscatory, and an undue restraint of trade, and violative of the right of persons to enter into contracts, considering that the theater owners are bound under a contract with the film owners for just admission prices for general admission, balcony and lodge.

In *Homeowners' Association of the Philippines, Inc. v. Municipal Board of the City of Manila*,^[19] this Court held:

"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 be fairly required by the legitimate demands of public interest or public welfare."

What is the reason behind the enactment of Ordinance No. 640?

A reading of the minutes of the regular session of the Municipal Board when the ordinance in question was passed shows that a certain Councilor Calo, the proponent of the measure, had taken into account the complaints of parents that for them to pay the full price of admission for their children is too financially burdensome.

The trial court advances the view that "even if the subject ordinance does not spell out its *raison d'être*, in all probability the respondents were impelled by the awareness that children are entitled to share in the joys of, their elders, but that considering that, apart from size, children between the ages of seven and twelve cannot fully grasp the nuance of movies or other public exhibitions, games, contests or other performances, the admission prices with respect to them ought to be reduced."^[19-a]

We must bear in mind that there must be public necessity which demands the adoption of proper measures to secure the ends sought to be attained by the enactment of the ordinance, and the large discretion is necessarily vested in the legislative authority to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.^[20] The methods or means used to protect the public health, morals, safety or welfare, must have some relation to the end in view, for under the guise of the police power, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded by the legislative department.^[21]

We agree with petitioners that the ordinance is not justified by any necessity for the public interest. The police power legislation must be firmly grounded on public interest and welfare, and a reasonable relation must exist between purposes and means.^[22] The evident purpose of the ordinance is to help ease the burden of cost on the part of parents who have to shell out the same amount of money for the admission of their children, as they would for themselves. A reduction in the price of admission would mean corresponding savings for the parents; however, the petitioners are the ones made to bear the cost of these savings. The ordinance does not only make the petitioners suffer the loss of earnings but it likewise penalizes them for failure to comply with it. Furthermore, as petitioners point out, there will be difficulty in its implementation because as already experienced by petitioners since the effectivity of the ordinance, children over 12 years of age tried to pass off their age as below 12 years in order to avail of the benefit of the ordinance. The ordinance does not provide a safeguard against this undesirable practice and as such, the respondent City of Butuan now suggests that birth certificates be exhibited by movie house patrons to prove the age of children. This is, however, not at all practicable. We can see that the ordinance is clearly unreasonable if not unduly oppressive upon the business of petitioners. Moreover, there is no discernible relation between the ordinance and the promotion of public health, safety, morals and the general welfare.

Respondent City of Butuan claims that it was impelled to protect the youth from the pernicious practice of movie operators and other public exhibitions promoters or the like of demanding equal price for their admission tickets along with the adults. This practice is allegedly repugnant and unconscionable to the interest of the City in the

furtherance of the prosperity, peace, good order, comfort, convenience and the general well-being of its inhabitants.

There is nothing pernicious in demanding equal price for both children and adults. The petitioners are merely conducting their legitimate businesses. The object of every business entrepreneur is to make a profit out of his venture. There is nothing immoral or injurious in charging the same price for both children and adults. In fact, no person is under compulsion to purchase a ticket. It is a totally voluntary act on the part of the purchaser if he buys a ticket to such performances.

Respondent City of Butuan claims that Ordinance No. 640 is reasonable and necessary to lessen the economic burden of parents whose minor children are lured by the attractive nuisance being maintained by the petitioners. Respondent further alleges that by charging the full price, the children are being exploited by movie house operators. We fail to see how the children are exploited if they pay the full price of admission. They are treated with the same quality of entertainment as the adults. The supposition of the trial court that because of their age children cannot fully grasp the nuances of such entertainment as adults do fails to convince Us that the reduction in admission ticket price is justifiable. In fact, by the very claim of respondent that movies and the like are attractive nuisances, it is difficult to comprehend why the municipal board passed the subject ordinance. How can the municipal authorities consider the movies an attractive nuisance and yet encourage parents and children to patronize them by lowering the price of admission for children? Perhaps, there is some truth to the argument of petitioners that Ordinance No. 640 is detrimental to the public good and the general welfare of society for it encourages children of tender age to frequent the movies, rather than attend to their studies in school or be in their homes.

Moreover, as a logical consequence of the ordinance, movie house and theater operators will be discouraged from exhibiting wholesome movies for general patronage, much less children's pictures if only to avoid compliance with the ordinance and still earn profits for themselves. For after all, these movie house and theater operators cannot be compelled to exhibit any particular kind of film except those films which may be dictated by public demand and those which are restricted by censorship laws. So instead of children being able to share in the joys of their elders as envisioned by the trial court, there will be a dearth of wholesome and educational movies for them to enjoy.

There are a number of cases decided by the Supreme Court and the various state courts of the United States which upheld the right of the proprietor of a theater to fix the price of an admission ticket as against the right of the state to interfere in this regard and which We consider applicable to the case at bar.

A theater ticket has been described to be either a mere license, revocable at the will of the proprietor of the theater or it may be evidence of a contract whereby, for a valuable consideration, the purchaser has acquired the right to enter the theater and observe the performance on condition that he behaves properly.[23] Such ticket, therefore, represents a right, positive or conditional, as the case may be, according to the terms of the original contract of sale. This right is clearly a right of property. The ticket which represents that right is also, necessarily, a species of property. As such, the owner thereof, in the absence of any condition to the contrary in the contract by which he obtained it, has the clear right to dispose of it, to sell it to whom he pleases and at such price as he can obtain.[24] So that an act prohibiting the sale of tickets to theaters or other places of amusement at more than the regular price was held invalid as conflicting with the state constitution securing the right of property.[25]

In *Collister vs. Haytnan*,[26] it was held:

"The defendants were conducting a private business, which, even if clothed with a public interest, was without a franchise to accommodate the public, and they had the right to control it, the same as the proprietors of any

other business, subject to such obligations as were placed upon them by statute. Unlike a carrier of passengers, for instance, with a franchise from the state, and hence under obligation to transport anyone who applies and to continue the business year in and year out, the proprietors of a theater can open and close their place at will, and no one can make a lawful complaint. They can charge what they choose for admission to their theater. They can limit the number admitted. They can refuse to sell tickets and collect the price of admission at the door. They can preserve order and enforce quiet while the performance is going on. They can make it a part of the contract and a condition of admission, by giving due notice and printing the condition in the ticket that no one shall be admitted under 21 years of age, or that men only or women only shall be admitted, or that a woman cannot enter unless she is accompanied by a male escort, and the like. The proprietors, in the control of their business, may regulate the terms of admission in any reasonable way. If those terms are not satisfactory, no one is obliged to buy a ticket or make the contract. If the terms are satisfactory, and the contract is made, the minds of the parties meet upon the condition, and the purchaser impliedly promises to perform it."

In *Tyson and Bro. — United Theater Ticket Officers, Inc. vs. Banton*,^[27] the United States Supreme Court held:

"x x x And certainly a place of entertainment is in no legal sense a public utility; and quite as certainly, its activities are not such that their enjoyment can be regarded under any conditions from the point of view of an emergency.

"The interest of the public in theaters and other places of entertainment may be more nearly, and with better reason, assimilated to the like interest in provision stores and markets and in the rental of houses and apartments for residence purposes; although in importance it falls below such an interest in the proportion that food and shelter are of more moment than amusement or instruction. As we have shown there is no legislative power to fix the prices of provisions or clothing, or the rental charges for houses and apartments, in the absence of some controlling emergency; and we are unable to perceive any dissimilarities of such quality or degree as to justify a different rule in respect of amusements and entertainment x x x."

We are in consonance with the foregoing observations and conclusions of American courts. In this jurisdiction, legislation had been passed controlling the prices of goods commodities and drugs during periods of emergency,^[28] limiting the net profits of public utility^[29] as well as regulating rentals of residential apartments for a limited period,^[30] as a matter of national policy in the interest of public health and safety, economic security and the general welfare of the people. And these laws cannot be impugned as unconstitutional for being violative of the due process clause.

However, the same could not be said of theaters, cinematographs and other exhibitions. In no sense could these businesses be considered public utilities. The State has not found it appropriate as a national policy to interfere with the admission prices to these performances. This does not mean however, that theaters and exhibitions are not affected with public interest even to a certain degree. Motion pictures have been considered important both as a medium for the communication of ideas and expression of the artistic impulse. Their effects on the perceptions by our people of issues and public officials or public figures as well as the prevailing cultural traits are considerable.^[31] People of all ages flock to movie houses, games and other public exhibitions for recreation and relaxation. The government realizing their importance has seen it fit to enact censorship laws to regulate the movie industry.^[32] Their aesthetic entertainment and even educational values cannot be underestimated. Even police measures regulating the operation of these businesses have been upheld in order to safeguard public health and safety.

Nonetheless, as to the question of the subject ordinance being a valid exercise of police power, the same must be resolved in the negative. While it is true that a business may be regulated, it is equally true that such regulation must be within the bounds of reason, that is, the regulatory ordinance must be reasonable, and its provisions cannot be oppressive amounting to an arbitrary interference with the business or calling subject of regulation. A

lawful business or calling may not, under the guise of regulation, be unreasonably interfered with even by the exercise of police power.[33] A police measure for the regulation of the conduct, control and operation of a business should not encroach upon the legitimate and lawful exercise by the citizens of their property rights.[34] The right of the owner to fix a price at which his property shall be sold or used is an inherent attribute of the property itself and, as such, within the protection of the due process clause.[35] Hence, the proprietors of a theater have a right to manage their property in their own way, to fix what prices of admission they think most for their own advantage, and that any person who did not approve could stay away.[36]

Respondent City of Butuan argues that the presumption is always in favor of the validity of the ordinance. This may be the rule but it has already been held that although the presumption is always in favor of the validity or reasonableness of the ordinance, such presumption must nevertheless be set aside when the invalidity or unreasonableness appears on the face of the ordinance itself or is established by proper evidence.[37] The exercise of police power by the local government is valid unless it contravenes the fundamental law of the land, or an act of the legislature, or unless it is against public policy or is unreasonable, oppressive, partial, discriminating or in derogation of a common right.[38]

Ordinance No. 640 clearly invades the personal and property rights of petitioners for even if We could assume that, on its face, the interference was reasonable, from the foregoing considerations, it has been fully shown that it is an unwarranted and unlawful curtailment of the property and personal rights of citizens. For being unreasonable and an undue restraint of trade, it cannot, under the guise of exercising police power, be upheld as valid.

WHEREFORE, the decision of the trial court in Special Civil Case No. 237 is hereby REVERSED and SET ASIDE and a new judgment is hereby rendered declaring Ordinance No. 640 unconstitutional and, therefore, null and void. This decision is immediately executory.

SO ORDERED.

Yap, C. J., Narvasa, Cruz, Paras, Padilla, Bldin, Sarmiento, and Griño-Aquino, JJ., concur.
Fernan, Melencio-Herrera, Feliciano, and Cortes, JJ., in the result.
Medialdea, J., no part.

[1] Pages 1-8, Record on Appeal.

[2] Pages 11-17, *supra*.

[3] Pages 17-18, *supra*.

[4] Pages 21-23, *supra*.

[5] Pages 25-26, *supra*.

[6] Pages 18-28, Rollo.

[7] Penned by Judge Vicente B. Echaves, Jr.

[8] Pages 35-41, Record on Appeal.

[9] Pages 47-49, *supra*.

[10] *Lacson v. Bacolod City*, 4 SCRA 1001; *Arong v. Raffinan*, 98 Phil. 422, citing *City of Banguio v. Jose de la Rosa, et al.*, G.R. No. L-8268-70.

[11] *Eastern Theatrical Company, Inc. v. Victor Antonio, et al.*, 46 O.G. (supp.) 30, cited in *Arong v. Raffinani* *supra*.

[12] 41 Phil. 103. See also *Samson v. Mayor of Bacolod City*, 60 SCRA 267.

[13] *In re Gilchrist*, 181 N.Y.S. 245, 110 Misc. Rep. 362.

[14] Sec. 2238 of the Revised Administrative Code of 1917, as amended, now found in Sec. 149(a) and Sec. 177(a) of the Local Government Code. The general welfare clause has been similarly set forth in various city charters,

[15] 65 Phil. 611.

[16] *Samson v. Mayor of Bacolod City*, *supra*.

[17] *U.S. v. Toribio*, 15 Phil. 85; *Fabie v. City of Manila*, 21 Phil. 486; *Kwong Sing v. City of Manila*, *supra*.

[18] *Fabie v. City of Manila*, *supra*.

[19] 24 SCRA 856.

[19-a] Page 25, Rollo.

[20] *Fabie v. City of Manila*, *supra*.

[21] *Kirtley v. State*, 84 N.E. 2d. 712.

[22] *Ichong v. Hernandez*, 101 Phil. 1151.

[23] *Law of the Stage, Screen and Radio* by Marchetti, 1939 ed., page 268.

[24] *Ibid.*, citing *Ex-parte Quarg*. 84 Pac. 766, 149 Cal. 79 80, 5 L.R.A. (N.S.) 183, 117 Am. St. Rep. 115, 9 Ann. Ca. 747; Also, *People v. Steele*, 231 111. 340, 14 L. R. A. (N.S.) 361, 121 Am. St. Rep. 321, 83 N.E. 236.

[25] *Ex-Parte Quarg*, *supra*.

[26] 76 N.E. 20 183 N.Y. 250, 253, 1 L.R.A. (N.S.) 1188, 11 Am. St. Rep. 74, An. Cas. 344.

[27] 273 U.S. 418-456.

[28] *People v. Chuchi*, 92 Phil. 977; *People v. Dela Cruz*, 92 Phil. 906.

[29] *Alalayan v. National Power Corporation*, 24 SCRA 172.

[30] B.P. Big. 877. See also *Homeowners Association of the Philippines, inc. v. Municipal Board of Manila*, *supra*.

[31] *Gonzales v. Kataw-Katigbak*, 137 SCRA 717.

[32] P.D. No. 1986, amending R.A. 3060.

[33] *Ogden City v. Leo*, 54 Utah 556, 182 p. 530.

[34] *Pampanga Bus Co., Inc. v. Municipality of Tarlac*, 3 SCRA 816.

[35] *Tyson and Bro. — United Theater Ticket Officers Inc. v. Banton*, *supra*.

[36] Ibid., citing *Clifford v. Brandon*, 2 Campb. 358, 368.

[37] *Morcoin Co. Ltd. v. City of Manila*, 1 SCRA 310.

[38] *Dela Cruz v. Paras*, 123 SCRA 569; *U.S. v. Salaveria*, 39 Phil. 102.

CONCURRING

GUTIERREZ, JR., J.:

I concur with the majority opinion insofar as it sets aside and nullifies the questioned ordinance of Butuan City.

The issue before the Court is a simple one. Does Butuan City have the power to compel theatre owners to charge only half fares for children below twelve even as they charge all other moviegoers full prices for admission into moviehouses?

Instead of nullifying the municipal ordinance through a broad and sweeping justification of property rights, I believe, however, that we should do so on a more limited ground directly bearing on the issue.

I find no rational basis for classifying children as a distinct group insofar as paying for admission into a moviehouse is concerned. There is absolutely no pretense that the municipal ordinance is intended to protect children, enhance their morals, promote their health, safeguard their safety, improve their education, or otherwise promote the general welfare. In fact, the effect of the ordinance may be the opposite.

With the price of movie tickets suddenly within the reach of many children, they may neglect their studies or use money intended for food or school supplies to enter moviehouses. Movie owners who are compelled to accept half prices for a newly increased group of young patrons will be tempted to allow them to enter moviehouses indiscriminately, including those where scenes of violence, crime, or even sex are portrayed. Addiction of the young to movie going is definitely injurious to their health.

The avowed purpose of the ordinance — to ease the burden of costs for parents who have to shell out the same amount of money for the admission of their children as they would for themselves — is not covered by police power. If the city cannot compel refreshment parlors to charge half-prices for hamburgers, soft drinks, pizzas, or cakes consumed by children by what authority can it impose the obligation of similarly easing parents' burdens upon the owners of moviehouses?

As discussed by the majority opinion, the legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. The imposition enacted by the municipal board of Butuan City has not been justified by its proponents as a restriction necessary for public health or public welfare. No reasonable relationship has been shown between a valid purpose and the proper means to accomplish it.

I hesitate, however, to make a brief for owners of theaters and expound a laissez faire approach insofar as their businesses are concerned. Moviehouses may not be public utilities but as places of entertainment affected with a certain degree of public interest, they are subject to reasonable regulation. That regulation is stronger and more restrictive than that of regular or ordinary businesses.

The following citation for instance, is pure obiter insofar as half-prices for minors are concerned:

"x x x [T]he proprietors of a theater can open and close their place at will, and no one can make lawful complaint. They can charge what they choose for admission to their theater. They can limit the number

admitted. They can refuse to sell tickets and collect the price of admission at the door. They can preserve order and enforce quiet while the performance is going on. They can make it a part of the contract and a condition of admission, by giving due notice and printing the condition in the ticket that no one shall be admitted under 21 years of age, or that men only or women only shall be admitted, or that a woman cannot enter unless she is accompanied by a male escort, and the like. The proprietors, in the control of their business, may regulate the terms of admission in any reasonable way. If those terms are not satisfactory, no one is obliged to buy a ticket or make the contract. If the terms are satisfactory, and the contract is made, the minds of the parties meet upon the condition, and the purchaser impliedly promises to perform it." (*Collister v. Hayman*, 76 N.E. 20, 183 N.Y. 250, 253, 1 L.R.A. [N.S.] 1188, 11 Am. St. Rep. 740, An. Cas. 344).

I see no reason at this time why we should pass upon situations that are not before us or warn municipal governments beforehand to avoid enacting certain regulations when nobody knows exactly what circumstances may call for those regulations.

For instance,

"A theater ticket has been described to be either a mere license, revocable at the will of the proprietor of the theater or it may be evidence of a contract whereby, for a valuable consideration, the purchaser has acquired the right to enter the theater and observe the performance on condition that he behaves properly (*Law of the State. Screen and Radio by Marchetti*, 1939, ec, page 268). Such ticket, therefore, represents a right, positive or conditional, as the case may be, according to the terms of the original contract of sale. This right is clearly a right of property. The ticket which represents that right is also, necessarily, a species of property. As such, the owner thereof, in the absence of any condition to the contrary in the contract by which he obtained it, has the clear right to dispose of it, to sell it to whom he pleases and at such price as he can obtain (*Ibids.*, citing *Ex-part Quarg*, 84 Pac. 766, 149 Cal. 79, 80, 5 L.R.A. [N.S.], 183, 117 Am. St. Rep. 115, 9 Ann. Ca. 747; Also *People v. Steele*, 231, 111, 340, 344, 14 R.A. [N.S.] 361, 121 Am. St. Rep. 321, 83 N.E. 236). x x x."

xxx xxx xxx

"x x x. A lawful business or calling may not, under the guise of regulation, be unreasonably interfered with even by the exercise of police power. (*Ogden City v. Leo*, 54 Utah 556, 182 P. 530) A police measure for the regulation of the conduct, control and operation of a business should not encroach upon the legitimate and lawful exercise by the citizens of their property rights (*Pampanga Bus Co., Inc. v. Municipality of Tarlac*, 3 SCRA 816). The right of the owner to fix a price at which his property shall be sold or used is an inherent attribute of the property itself and, as such, within the protection of the due process clause (*Tyson and Bro. — United Theater Ticket Officers, Inc. v. Banton*, *supra*). Hence the proprietors of a theater have a right to manage their property in their own way, to fix what prices of admission they think most for their own advantage, and that any person who did not approve could stay away (*Ibid.*, citing *Clifford v. Brandon*, 2 Campb. 358, 368)."

may be interpreted as *carte blanche* for movie owners to practically ignore municipal regulation and do as they please.

More appropriate to my mind is to state that while the Butuan City ordinance is invalid, it does not necessarily follow that all forms of regulation are proscribed.

We have ruled in *People v. Chan* (65 Phil. 612):

"In the first place, it must be noted that there can be no doubt that the City of Manila exercises police power by delegation and that in the exercise of that power, it is authorized to enact ordinances for the regulation of the operation of theaters and cinematographs (Sec. 2444(m) and (ee) of the Revised Administrative Code; *U.S. v. Gomez Jesus*, 31 Phil. 218, *U.S. v. Pompeya*, 31 Phil. 245).

"On April 17, 1935, Ordinance No. 2347 was approved. In section 1 it provides that all first run theaters or cinematographs should register their seating capacity with the City Treasurer, and in section 1 it prohibits the sale of tickets in said theaters or cinematographs in excess of their registered seating capacity.

"Before the approval of Ordinance No. 2347, Ordinance No. 2188, approved on July 22, 1933, was in force, section 1 of which divides cinematographs into three different classes: first, Second and third. The first class includes those located on certain and specified streets like Rosario, Escolta, etc., which exhibit films for the first time; those belonging to the second class are those which, not being located on said streets, also exhibit films for the first time, and those which, being located on said streets, regularly show films for the second time or which have the exclusive right to show secondhand films; and the third class comprehends all those which are not included in the first and second classes.

xxx xxx xxx

"To the foregoing must be added, and this is of common knowledge, that the films which are shown for the first time attract a large attendance, and the theatre or cinematograph, whether it is first or second class, presenting shows for the first time, would be suffocatingly overcrowded if the number of tickets were not limited. This is the reason for the prohibition of the sale of tickets in excess of the seating capacity. The prohibition applies with equal force wherever the same reason exists, that is, to first and second class theatres which show films for the first time." (at pp. 612-613)

There being a rational basis for the restriction of sales of tickets beyond seating capacity, the ordinance is perfectly valid.

The same is true for the situation found in *Samson v. Mayor of Bacolod City* (60 SCR A 274):

"When it is further remembered that insofar as movie houses and other places of amusement are concerned, (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: x x x theatres, theatrical performances, cinematographs, public exhibitions, circuses and all other performances and places of amusements x x x.') 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. (Cf. *People v. Chan*, 65 Phil. 611 [1938]). An American Supreme Court decision, *Western Turf Association v. Greenberg*, (204 US 359 [1907] 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. xxx 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.'" (at pp. 363-364)

The City of Butuan tries to justify the challenged ordinance by invoking police power. The invocation is improper. The definitions of police power, including its exercise based on the general welfare clause, are emphasized to show that the respondents' arguments have no merit —

"Police power is inherent in the State but not in municipal corporations. For a municipal corporation to exercise police power, there must be a legislative grant which necessarily also sets the limits for the exercise of the power.

"In the Philippines, the grant of authority to the municipality to exercise police power is embodied in Section 2238 of the Revised Administrative Code, otherwise known as the General Welfare Clause. Chartered cities are granted similar authority in their respective charters.

"The general welfare clause has two branches. The first authorizes the municipal council to enact such ordinances and make such regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second branch authorizes the municipality to enact such ordinances as may be necessary and proper for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and inhabitants thereof, and for the protection of property therein. (U.S. v. Salaveria, 39 Phil. 103)."

This Court has generally been liberal in sustaining municipal action based on the general welfare clause. In the case before us, however, there appears to be no basis for sustaining the ordinance even on a generous interpretation of the general welfare clause.

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