

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RUPERTO SORIA, DEFENDANT AND APPELLANT.

G. R. No. L-18982. January 31, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Ruperto Soria was charged with a violation of Municipal Ordinance No. 119, series of 1949, of the Municipality of Pagadian, Zamboanga del Sur, for having constructed a house without first securing the necessary permit from the authorities concerned. He was found guilty by the justice of the peace court of said municipality. On appeal the court of first instance sentenced him to pay a fine of P50.00, with subsidiary imprisonment in case of insolvency, as well as to remove at his expense within 30 days from the promulgation of the decision the house he has constructed in violation of the ordinance, failure of which the government may cause the removal thereof also at his expense, with costs. He appealed to the Court of Appeals which later certified the case to this Court on the ground that the questions raised are purely of law.

Ruperto Soria is the owner of a house located at the corner of the national highway and Mabini Street of Pagadian, Zamboanga del Sur. Sometime in June, 1958, he started making repairs on his house, but in doing so he has not secured the necessary permit from the municipal mayor as required by Ordinance No. 119, series of 1949, of said municipality. This ordinance provides that any person who desires to make any construction or repairs on any building must first file an application for a permit which must show a sketch of the proposed construction or repairs and the materials to be used and must be favorably endorsed by the local health officer and the assistant engineer.

It appears that Soria, after he began making the repairs, took steps to secure the necessary permit from the mayor's office but was advised by the latter's secretary to first get the favorable recommendation of the two officials. Soria then went to the local health officer but the latter informed him that he could not act on his application unless he secures the approval of the assistant engineer. And having apparently been irked by this attitude, he abandoned altogether the idea of securing the permit from the mayor's office. Hence, his prosecution.

The authority of the municipal council to prescribe the kind of buildings that may be constructed or repairs that may be made on the construction is expressly provided for in Section 2243(c) of the Revised Administrative Code, and in order that such power may be properly exercised, the council is likewise given the authority to impose fine or imprisonment, or both, within certain limits provided the penalty shall not exceed P200.00 fine or six (6) months imprisonment. This authority is expressly conferred by Section 2239 of the same Code, and it is in pursuance of this authority that the municipal council of Pagadian approved the ordinance in question which requires the issuance of a permit before the construction or repairs of a building may be made and imposes a penalty if such requirement is not complied with. The authority, therefore, of the Municipal Council of Pagadian to approve said ordinance cannot be disputed, nor can it be contended that the same is ultra vires.

It is true that, besides imposing fine and imprisonment, the ordinance likewise requires the removal of the illegal

construction at the expense of the person who constructed it within 30 days from the date of the court's decision and that if he fails to do so the removal may be undertaken by the government also at his expense, but such requirement cannot be considered a penalty in its technical sense that may place it beyond the scope of the power of the municipal council for the same is but a necessary consequence of the infringement of the ordinance. It is an unavoidable measure intended to prevent those who undertake the illegal construction from making a mockery of the ordinance or profiting from the effects of their illegal act. Without such coercive measure any person who may desire to flout the ordinance may easily do so by paying a fine or undergoing a short term of imprisonment thereby flooding the town with many illegal constructions in open, defiance of the local authorities. Such pretense cannot be entertained for it leads to mockery and subversion.

Moreover, the power to require the removal of illegal constructions may also be justified under the general welfare clause applicable to municipalities which, among other things, gives to a municipal council the authority to approve such ordinance and regulation as may be necessary to provide for the health and safety of the municipality and its inhabitants. It is to promote this end that the ordinance in question was approved, including the removal of illegal constructions.

We notice, however, that the accused was prosecuted not because of an illegal construction but merely for having undertaken the repairs of his house without first securing, the required permit and yet the court a quo ordered him to remove the house at his own expense. We believe that this directive is too severe, it being sufficient that he be ordered to remove the illegal repairs he has made. In this sense, the sentence should be modified.

Wherefore, with the modification that the accused should not be required to remove his house but only the illegal repairs he has made, the decision appealed from is affirmed, without pronouncement as to costs.

Bengzon, C.J., Padilla, Labrador , Concepcion , Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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