

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE GASPAY, DEFENDANT AND APPELLANT.*G.R. No. 11092. December 24, 1915*

Ponente: ARAULLO, J.

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In the justice of the peace court of the municipality of Pastrana, Province of Leyte, Jose Gaspay was twice charged with a violation of Municipal Ordinance No. 87 of said municipality. Defendant refused to comply with this ordinance which provided that every owner of a lot situated in Pastrana should periodically clean one-half of the street lying in front of and parallel with his lot.

Defendant was convicted by the justice of the peace court, and, having appealed to the Court of First Instance, the provincial fiscal filed therein two complaints which were subsequently amended on August 21, 1914, and which gave rise to the prosecution of cases Nos. 3784 and 3871 against defendant

In these complaints it was charged that Jose Gaspay, being the owner of a lot situated in the municipality of Pastrana, did, willfully, unlawfully, and criminally, on or about January 2, 1914, and on or about June 5, of the same year, refuse, for more than fifteen days, to clean the half of the street lying in front of and parallel with his lot, which half of the street was then overgrown with weeds and in an insanitary condition; thus violating Municipal Ordinance No. 87.

On arraignment, defendant demurred on the ground that the ordinance alleged to have been violated was unconstitutional, oppressive, and unreasonable and therefore should be held to be null and void. The court overruled this demurrer, the defendant entered an exception and pleaded not guilty, and both cases were tried together. At the trial it was proven that the half of the street which, pursuant to said ordinance, the defendant was required to clean on account of its being in front of his premises, was called Osmena of the aforementioned municipality; that it had been found upon inspection by the sanitary inspector Pastrana, on January 2 and June 5, 1914, to be overgrown with weeds called ticbac and covered with rubbish and that when defendant was notified to clean said half of the street, he refused to do so.

The Court of First Instance, in view of the foregoing facts and in consideration of the demurrer filed by defendant to the two aforesaid complaints, rendered the judgment of December 1, 1914, in which, on the grounds that the ordinance in question was valid and that the fact had been proven that it was duly approved by the provincial board of Leyte and was in force, as well as that it was violated by the defendant, he sentenced the latter to pay a fine of 1M in the first and of 5 in the second case together with the costs in both courts in both cases or, in case of insolvency in regard to the fine, to suffer the corresponding subsidiary imprisonment. Defendant appealed from this judgment and moved that his appeal be admitted on the grounds that it involved the constitutionality, validity, or nullity of said municipal ordinance. In this instance defendant has alleged that the trial court erred in not holding said ordinance to be unconstitutional, oppressive, unreasonable, and unjust, and by not absolving him from the complaints.

The ordinance whose constitutionality and validity is the subject matter of this appeal is as follows:

"ARTICLE. 1. In accordance with this article and after the approval of this ordinance, every owner, tenant or occupant, administrator, or whoever holds possession under any title, whenever good judgment would hold him responsible for compliance with the provisions of this article, shall, at least twice a month, or every fifteen days during the month, clean one-half of the street lying in front of and parallel with his premises.

"ART. 2. The streets that are to be cleaned by the persons or entities mentioned in the preceding article shall include all the streets of this town and those of all the barrios comprised within this municipality of Pastrana, Leyte, Philippine Islands: Provided, That the provisions of this ordinance shall not apply to the provincial highway or highways that pass through this town or through any of the barrios of this municipality.

"ART. 3. For the purpose of enforcing this ordinance, it shall be the duty of all the executive officials to inspect the streets of this town and those of all the barrios of this municipality to see whether the provisions of article 1 hereof are being complied with, and it shall also be their duty to bring charges in a court of competent jurisdiction against all persons who maliciously violate the provisions of this ordinance.

"ART. 4. Every owner, tenant, occupant, administrator, or other person, firm, or company in possession of a lot, under any title, who fails or refuses to clean one-half of the street in front of his premises for a period of more than fifteen days, or who allows said period to pass without complying (with these provisions) or cleaning his half of the street, shall be punished by a fine of not less than P1 nor more than P5 and, in case of insolvency, by subsidiary imprisonment at the rate of one day for each peso of the fine imposed.

"ART. 5. This ordinance shall take effect after the tenth day following its approval. "Approved this 30th day of June, 1913."

The lower court primarily based his action in overruling the demurrer filed by defendant to the complaints and his decision that said ordinance is valid, on the provisions of subsection (j) of section 39 of Act No. 82, the Municipal Code. Pursuant to these provisions the municipal council shall "regulate the construction, care, and use of streets, sidewalks, wharves, and piers in the municipality; prevent and remove obstacles and encroachments on the same; and declare and abate nuisances."

In this subsection there is nothing which authorizes municipal councils to oblige the residents of a municipality to clean any part of a public street in front of their respective properties, which is the point in question in the ordinance of the municipality of Pastrana. To regulate the use of the streets and sidewalks does not mean to oblige the residents to clean them; to prevent and remove (evitar) obstacles and encroachments on the same is to prohibit the placing of obstacles in the public thoroughfares and the obstruction of traffic; and to provide for the removal of any obstacles, nuisances, and encroachments in or on the streets is to order that the same be removed from the public thoroughfares, not by the owners of the houses that may front on such streets or thoroughfares, but either by those persons who have placed such obstructions and have committed such encroachments (who should suffer the corresponding penalty for such violations), or by the municipality's employees assigned to this work.

Subsection (I) of the same section 39, which, indeed, was not quoted by the trial court but which was relied upon by the Attorney-General in his brief, provides that the municipal council shall "prohibit the throwing or depositing of filth, garbage, or other offensive matter in any street, alley, park, or public square; shall provide for the suitable collection and disposition of such matter and for cleaning and keeping clean the streets, alleys, parks, and other public places of the municipality."

From the provisions of this subsection, no one can in any manner deduce that municipal councils are authorized to provide and order that the collection of garbage and other offensive matter which may be in the public streets, and the cleaning and preservation of the streets, should devolve upon the owners of the property fronting on said

streets, for the simple reason that if such garbage and filth is deposited, placed, or allowed to fall on the public streets or squares, or to accumulate there, as a result of public traffic, the cleaning of the streets and their maintenance in a cleanly and sanitary condition is a public service which it is incumbent upon the municipal council to provide for and perform by administration, by lease, or by any other means, a duty and power related to the power and duty of the same municipal council to punish, by means of the proper municipal ordinances, those persons who convert the streets into depositories of garbage, rubbish, or other matter offensive to public health and to decency, and this is really what said subsection (I) of the cited section 39 of the Municipal Code amounts to.

The public streets are for the public use and the duty to see that this public use is properly and fully exercised, that the streets be kept clean and in such condition that they shall present no dangers of any sort to those who travel over them, or endanger the public health on account of their improper maintenance and their want of cleanliness, should devolve upon the municipal council concerned, through the creation and maintenance of the respective public service, as is done in every town whose interests are governed by a municipal council properly organized and cognizant of its powers and duties, because municipalities, as municipal corporations, as corporate bodies, have duties to fulfill toward the residents and inhabitants of the town in which they exercise their functions, in return for the local taxes and burdens which the residents and inhabitants thereof are obliged to pay and support.

What the Municipal Code does require in subsection (n) of section 39 is that "any land or building which is in an unsanitary condition" shall "be cleaned at the expense of the owner or tenant, and, upon failure to comply with such an order," it shall "have the work done and assess the expense upon the land or buildings." This is just and reasonable; it is the sole requirement that can be made upon the owner or tenant of any land or building, whether fronting or not upon a public street, because the dirty or uncleanly condition of the property should be charged solely to such owner or tenant, and upon him rests the duty to maintain the premises in such condition that they do not constitute a danger to his own health or that of the neighborhood.

For this reason, we held in our decision in *United States vs. Abendan* (24 Phil. Rep., 165) that: "An ordinance providing that 'it shall be the duty of the owner, agents or other person in possession and in control of any lot, building, or place, declared to be in bad sanitary condition by the chief sanitary officer, or his representative, to comply with any order duly issued in accordance with the provisions of this ordinance, requiring repairs, improvements, alterations or necessary construction, or to put the place designated in a sanitary condition within the time specified in said order, which time shall not exceed sixty days, except by special permission of the sanitary officer of the district,' is not unconstitutional, and is not of itself unreasonable, oppressive, partial, discriminating, or in derogation of common right; and is within the powers conferred upon municipalities by section 39, paragraph (jj) of the Municipal Code."

And this decision, also quoted by the lower court in the judgment appealed from, in support of his opinion with respect to the validity of the municipal ordinance of Pastrana here in question, is inapplicable to the case at bar, for, as may be seen, it refers to the obligation of the owner or person in charge of any land or building to keep it in a cleanly and sanitary condition, and in the case cited the proceedings were brought because the accused had not installed in his house the ventilators and bell-traps ordered by the health department of that municipality.

Neither is the decision in the case of *Goddard*, petitioner (16 Pickering, 504; 28 Am. Dec, 259), cited by the lower court in the judgment appealed from, applicable to the case at bar, because it relates to the duty of the owners or occupants of the houses of the town referred to in the decision to remove the snow which had fallen on the sidewalks adjacent to their houses—a duty which may rest on the consideration that in some cities of the United States of America the sidewalks are considered as a part of the property belonging to the owners of the houses to which they are adjacent, or that the construction and maintenance of such sidewalks devolve upon the owners of

such houses, besides the fact that the rendering of a specific service by the neighborhood itself in special or extraordinary circumstances due to some natural phenomenon like that of the obstruction of the sidewalks by a fall of snow or by any other cause of a like nature, cannot be considered unreasonable and unjust, and is very different from requiring a person, for the mere reason of his being the owner or tenant of a lot abutting on a public street, to gather up the garbage and rubbish which the other residents and all who travel over the street, might intentionally or carelessly leave there.

This plainly discloses the injustice and unreasonableness of the ordinance of the municipality of Pastrana in question, and that there is no equality nor equity in its provisions, because the cleaning of the streets of said municipality is made obligatory only upon the owners, tenants, or occupants of lots facing on said streets, while an exemption from this obligation is made in favor of other residents of the municipality who are owners, tenants, or occupants of rear lots or of lots that do not front on the street, and of all the persons, whether property owners and residents of said municipality or not, who utilize its streets for transit on foot, in vehicles, or by any other means of locomotion, thereby contributing toward the streets being filled with rubbish and becoming sometimes impassable. Such lack of equity in said ordinance is likewise very noticeable as regards the distribution of the burden upon and among the property owners themselves, because, while they all pay the land tax on their respective properties, some of them, those who own rear lots that do not face on the street, are exempt from rendering that service. This is an irritating discrimination which can find no justification whatever in law and cannot reasonably be explained however ample be the powers vested in municipal councils by subsection (//) of said section 39 of the Municipal Code, quoted by the Attorney-General in his brief, pursuant to which municipal councils shall "make such ordinances and regulations as may be necessary to carry into effect and discharge the powers and duties conferred by said Code and such as shall seem necessary and proper to provide for the health and safety * * * comfort and convenience of the municipality and inhabitants thereof," for the language of paragraph (jj) of said section 39, with regard to those powers and those duties of municipal councils, is, as may be seen, couched in general terms and for this reason was inserted in the last of the paragraphs of said section, and should be construed and understood in connection with the powers and duties especially mentioned in the preceding paragraphs, among which there is not a single one that authorizes municipal councils to impose upon the owners, tenants or occupants of properties, fronting on a public street or not, the obligation to clean the street, a service which is of a public nature and should be rendered by agents or employees of the municipality itself, or performed through some one of the means beforementioned.

On the other hand, the first and principal condition which, according to the same paragraph (jj), the ordinances and regulations enacted by municipal councils should contain, is that they shall not be repugnant to law, or, what amounts to the same thing, while it is endeavored by their measures³ to promote the health, security, comfort and convenience of the municipality and the inhabitants thereof, they shall not prejudice the rights and interests of the inhabitants themselves and shall duly respect such rights and interests; in a word, while ever endeavoring to promote the health, security, comfort and convenience of the municipality and its inhabitants, municipal councils must not pass resolutions that constitute an arbitrary vexation and as such are unjust to the inhabitants themselves.

It might, perhaps, be desirable in some cases that the residents of a town, when the municipality has not sufficient funds to carry on the service of street cleaning, lend some aid to the municipality, because they themselves should be interested in this matter; but in these cases the municipality should request the voluntary cooperation of the people; it cannot compel them to assist by such coercive means as an ordinance in which any kind of penalty is imposed upon whomsoever does not comply therewith.

The municipal council of Pastrana, therefore, having no power to enact said ordinance No. 87, and the same being unreasonable and unjust, the said ordinance is null and void and the accused should not have been tried, nor

sentenced tipr its violation.

For the foregoing reasons, we reverse the two judgments Appealed from and freely acquit the accused, with the costs of both instances de officio. So ordered.

Arellano, C.J., Torres, and Trent, JJ., concur.

Carson, J., reserves his opinion.

CONCURRING

MORELAND, J.,

I do not desire at this time to hold that the Legislature cannot require an abutting owner in a village or city to clean that portion of the street adjoining his premises, or cannot authorize municipal boards to pass an ordinance to that effect. I express no opinion on that question. I concur aolely on the ground that the Acts of the Legislature conferring powers on municipal boards do not confer the power to require abutting owners to clean the streets adjoining their premises, and that, accordingly, they have no authority to pass an ordinance to that effect.

Judgments reversed; defendant acquitted.

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