

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. SEVERO GALAROSA, DEFENDANT AND APPELLEE.*G.R. No. 11525. February 24, 1917*

Ponente: MORELAND, J.

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This is an action to recover a cockpit license tax and a fine imposed by the Collector of Internal Revenue for failure to pay the tax at the time required by law. Judgment was for defendant and an appeal was taken.

It appears that, prior to the 18th of December, 1911, persons operating a cockpit in the municipality of Bulusan, Sorsogon, paid a license tax of P100 quarterly, one-half of which went to the Government and the other half to the municipality. On the date mentioned the municipal council passed an ordinance, No. 125, having as one of its objects the reduction of the license tax in the barrio of San Vicente, Bulusan, from P100 per quarter to P65 per quarter, P50 of which should go to the Government and P15 to the municipality. This ordinance was disapproved by the provincial board (the record does not show when) and no appeal was taken from that action. At the time of the passage of ordinance No. 125, resolution No. 48 of the same council, passed October 26, 1910, was in force which provided for a uniform additional tax of P50 throughout the municipality. About the first of January, 1912, the defendant obtained a license to operate a cockpit in the barrio of San Vicente. He paid for that privilege the regular quarterly license tax of P50 imposed by section 144 of Act No. 1189 and the additional tax provided for in said ordinance No. 125 which additional tax under said ordinance was P15 instead of P50, the amount fixed by ordinance No. 48. This tax of P65 per quarter was paid during the year 1912 and the first quarter of 1913, a total of five quarters.

These facts coming to the knowledge of the Collector of Internal Revenue he demanded of the defendant the payment of P175, the difference between the tax for five quarters paid under ordinance No. 125 and that required to be paid by ordinance No. 48; and, upon the refusal of defendant to pay as requested, issued an order under section 145 of Act No. 1189 imposing upon him a fine of P100, the total license tax for one quarter, and commanding him to pay the additional tax of P175. Notice of this order was given to defendant on the 30th of April, 1914; but he took no action until the 29th of June when he filed an appeal with the Court of First Instance of Sorsogon. On the 20th of October, 1914, this action was brought in the Court of First Instance of Sorsogon to recover of the defendant both the additional tax and the fine imposed. On the same day a motion was made to dismiss the appeal taken by defendant from the order of the Collector of Internal Revenue and to affirm that order on the ground that the appeal had not been taken in time. After the hearing on that motion the court rendered a decision, a part of which is as follows:

"In view of the fact that the court acquired no jurisdiction of the appeal in the present case unless the appeal was taken in the time and manner required by law, it being clear that the parties could not confer such jurisdiction by agreement:

"It is decreed that the appeal taken by Severo Galarosa from the order of the Collector of Internal Revenue dated

April 4, 1914, be and the same is hereby dismissed as to that portion which brings up for review that part of the order of the Collector of Internal Revenue of the 4th of April, 1914, which imposed a fine of P100, and that that part of said order is hereby affirmed.

"Nevertheless, it being the object of the action to obtain judgment not only for the fine imposed but also for the amount of the tax claimed to be due from the defendant as a cockpit license obtained in the municipality of Bulusan, and this action having for its purpose the recovery of said tax in accordance with section 50 of Act 1189, the action will proceed as to that feature and will be tried at the next term of this court."

The present action went to trial; and, on the 29th of March, 1915, the court dismissed the case relieving the defendant of both the fine and the additional tax claimed. In its decision the court, after stating the facts substantially as herein before set out, said:

"It appears that the provincial board disapproved ordinance No. 125 passed by the municipal council of Bulusan, but the reasons therefor do not appear; and the plaintiff contends that, on account of such disapproval, the defendant must pay the additional tax fixed by ordinance No. 48 of the municipality of Bulusan, approved the 26th of October, 1910, which provided that the tax to be paid in said municipality over and above the general tax should be P50 quarterly. The plaintiff claims the sum of the additional tax for the five quarters during which the defendant held his license, and, besides, the sum of P100 fine imposed by reason of the refusal of the defendant to pay the tax when demanded.

"The question presented for determination is whether or not ordinance No. 125 under which Severo Galarosa was granted a license was valid and effective notwithstanding the disapproval of the provincial board. Attention has already been called to the fact that the provincial board gave no reason for its disapproval; but the reason therefor must have been that the municipal council had no authority to pass such an ordinance. Such reason is, however, without foundation as Act No. 1189, as amended by Act No. 1338, expressly confers such authority on the council. Nor is the approval of the provincial board a prerequisite to the validity and efficacy of a municipal ordinance. All that is necessary to its validity and efficacy is that it be within the powers of the council, that it be approved by the council, and that ten days elapse after its approval.

"But even though it be conceded that said ordinance was validly annulled by the provincial board, or was repealed by the municipal board which passed it, that fact would not affect rights acquired under it by persons who were induced to act in the belief that the ordinance was valid and would be a protection to them. The defendant Galarosa was induced to obtain a cockpit license by the reduction of the license tax; he never would have taken out a license if ordinance No. 48 had been in force. Indeed, he refused to take out a license after he had been informed that the tax had been increased. The Government was estopped and could not repudiate its own acts so long as they were within its powers even though it exceeded those powers in the performance of the acts. Moreover, the Government gained by the reduction of the tax because, by reason of the reduction, licenses were taken out which had not been taken out prior to the reduction; and, if the Government were not estopped, the result would be that it would be permitted to defraud taxpayers by inducing them to establish enterprises by offering them favorable conditions in order that, after they were established, it could make the conditions more onerous than when the enterprises were inaugurated."

We are of the opinion that the trial court erred in several particulars. It held, first of all, that the provincial board had no authority to disapprove ordinance No. 125. Even if this were true it would not change the result. The action of the provincial board was filial, it not having been appealed (*Chanco vs. Municipality of Romblon*, 15 Phil. Rep., 101). Therefore, whether its action was correct in law or not is now of no consequence. We might say, however, that we are of the opinion that the action of the provincial board was well founded in law. Section 41 of

Act No. 82 as amended by Acts Nos. 676 and 1791, provides in part as follows:

"The municipal secretary shall, within thirty-six hours after any session of the council or the issuance of an executive order, forward a correct copy of each act, resolution, and ordinance passed thereat, and of every executive order, properly numbered, to the provincial board. The board shall promptly pass upon the legality of the same, entering its action upon the minutes and advising the proper municipal secretary of such action. The secretary shall thereupon notify the council, and that body shall note the receipt of notification upon its minutes. The provincial board shall approve all acts, ordinances, resolutions, and orders which are within the powers conferred upon the council or president making the same and declare null and void such as are not within said powers. If the board shall be in doubt as to the legality of any such act, ordinance, resolution, or order it shall declare the same suspended and refer the question to the fiscal for his opinion. Such opinion shall be given promptly, and upon its receipt the board shall take action thereon in accordance with law and immediately advise the municipal secretary thereof. The municipal secretary shall also, within the thirty-six hours aforesaid, forward to the provincial treasurer a copy of each act, resolution, or ordinance authorizing or necessitating the collection of municipal revenues. After the same have been passed upon by the provincial board, all acts, ordinances, resolutions, and orders shall be filed with the provincial governor, who shall keep a complete file of the same conveniently arranged in consecutive order by municipalities for reference, which shall be open for public inspection, and in case the municipal secretary neglects or omits to forward any such he shall immediately demand a copy. Repeated negligence in forwarding acts, resolutions, or ordinances shall be cause for suspension and removal. Any attempt to enforce such act, ordinance, resolution, or executive order, after the disapproval or suspension thereof shall be brought to the attention of the municipal council, and shall be sufficient ground for the dismissal of the officer or officers attempting to enforce the same. Should the council or the president be dissatisfied with the decision of the provincial board, an appeal may be taken by it or him to the Governor-General, who shall decide the same question which was presented to the provincial board and either affirm or reverse the decision of the provincial board. If the decision of the provincial board is affirmed, the act, ordinance, resolution, or executive order involved shall be null and void. If, however, he shall reverse the decision of the provincial board, then and in that case notice of his decision shall be given to the provincial board and to the council of the municipality appealing, and upon receipt of notice by the appellant, the act, ordinance, resolution, or executive order shall be revived and come into force again. Pending the decision on appeal from a decision of the provincial board annulling any act, ordinance, resolution, or executive order, the same shall have no force and effect. Nothing in this section shall be construed to deprive any judicial tribunal of power to hold void for want of statutory authority any act, ordinance, or resolution of a municipal council or executive order of a municipal president the validity of which shall be involved in any cause arising before such tribunal, without respect to the decision of the executive authorities."

From these provisions it is clear that the provincial board has power to pass upon the legality of a municipal ordinance and to disapprove, that is, annul it, if in its judgment the ordinance is illegal. Certainly if a municipal council passed an ordinance which it had no power to pass the provincial board could disapprove and annul it.

The trial court cites paragraph 5 of section 144 of Act No. 1189, as amended by Act No. 1338, in support of its declaration that ordinance No. 125 was within the power of the municipal board to pass. Let us see. Paragraph 5 of that section reads as amended:

"Every proprietor of a theater, museum, cockpit, or concert hall shall pay two hundred pesos. Every edifice used for the purpose of operatic and dramatic or other representations, plays, or performances, for admission to which entrance money is received, not including halls rented or used occasionally for concerts or theatrical representations, shall be regarded as a theater: Provided, That whenever any such edifice is under lease on the

taking effect of this Act the tax shall be paid by the lessee, unless otherwise stipulated by the parties to said lease: And provided further, That the municipal council of any municipality may by ordinance provide that any cockpit maintained therein shall pay a higher license tax than that in this paragraph provided, and in such cases the additional license tax provided by such ordinance above that herein provided shall be collected in the same manner as herein specifically provided for and disposed of in the manner provided in this Act for the disposal of the receipts from license tax on cockpits."

We note that the only authority conferred by this Act on municipal councils with respect to cockpit licenses fixed by the Act was one permitting it to exact a "higher license tax" than the one prescribed by the Act itself. There was no authority to fix a license fee lower than that provided for by the Act. In spite of this, however, the municipal council of Bulusan attempted, by ordinance No. 125, to reduce the license fee fixed by the statute. This the provincial board held it had no authority to do and, therefore, disapproved the ordinance.

The record is silent as to when and how the provincial board disapproved. In such case we are compelled to assume that it was done within the time and in the manner prescribed by law, as it is a presumption established by statute "that official duty has been regularly performed." (Code Civ. Proa, sec. 334, par. 14.)

From these observations it necessarily follows the ordinance 125 never had a legal existence, and that, therefore, Section 144 of Act No. 1189, as amended, and ordinance No. 48, constituted the law in force at the time the license in question was issued to defendant. Instead of paying P65 quarterly he should have paid P100. The collection of a less sum was an error on the part of the officials collecting the license tax and did not serve to deprive the Government of what was due it under the law.

Secondly, the trial court held that even though ordinance 125 was properly declared invalid and was legally annulled by the provincial board, nevertheless, the Government was estopped to assert its rights under the statute to a larger sum than that fixed by the ordinance for the reason that the officials of the Government, the municipal council, had, by the act of passing the ordinance, induced the defendant to do something which he would not have done if the ordinance had not been passed. We believe this to be error also. Every person of full age is presumed to know the law, and the sums which he should pay for given privileges; and the fact that Government officials, through ignorance or inadvertence, issue licenses for sums less than those prescribed by law does not absolve him from payment of the legal fee when called upon by the Government to do so. Substantially the same may be said to the contention founded on induction. Ordinance No. 125 added nothing to the situation. It was illegal even without the disapproval of the municipal board. It was contrary to paragraph 5 of section 144 of Act No. 1189 as amended. As between an individual and his government, the individual cannot plead the void act of an official to shield him from the demand of the government that he fulfill an obligation which he has contracted with the government and the benefits accruing to him as a result of that obligation have been received. The government can neither be estopped nor prejudiced by the illegal acts of its servants.

There are other questions presented by the record; but as the judgment must be reversed on the grounds already set out it is unnecessary to consider them. It remains only to refer to the fine imposed. That the Collector of Internal Revenue was within his powers in imposing it there can be no question. Section 145 of Act No. 1189 as amended by Act No. 2126 provides:

"Every person subject to the payment of a specific occupation license tax who is delinquent in the payment of such tax for the period of ten days or more shall, in addition to the payment of the tax due, be fined administratively in a sum equal to the amount of his license tax for the period of one quarter; and any such person who for a period of ten days or more refuses or fails to pay such delinquent tax and fine when required to do so, shall be fined in a sum not exceeding one thousand pesos, or be imprisoned for a term not exceeding six months,

in the discretion of the court."

The fine was imposed in strict accordance with the statute and should, accordingly, be paid.

We do not stop to consider the act of the trial court whereby, after dismissing the appeal taken from the imposition of the fine and affirming the order imposing it, it relieved the defendant of its payment. Inasmuch as the question arising from its imposition was litigated in this action and in view of the fact that judgment must be passed ordering its payment, comment on the action of the trial court in reference thereto is unnecessary.

The judgment appealed from is reversed and judgment is hereby decreed and will be entered against the defendant Severo Galarosa for the sum of P275, without costs in this instance. So ordered.

Torres, Carson, and Araullo, JJ., concur.

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