

UNITED BF HOMEOWNERS’ASSOCIATIONS, INC., ROMEO T. VILLAMEJOR, RAUL S. LANUEVO, ROBERTO ARNALDO, FLORENTINO CONCEPCION, BF NORTHWEST HOMEOWNERS’ ASSOCIATION, INC., KK HOMEOWNERS’ ...

G.R. No. 141010. February 07, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the 28 June 1999 Decision[2] and the 16 November 1999 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 46624. The Court of Appeals held that Municipal Ordinance No. 97-08 is a valid exercise of police power by the Municipality of Parañaque.[4]

The Facts

BF Homes Parañaque Subdivision (BF Homes Parañaque), with a land area straddling the cities of Parañaque, Las Piñas, and Muntinlupa, is the largest subdivision in the country.

On 11 November 1997, the Municipal Council of Parañaque enacted Municipal Ordinance No. 97-08[5] entitled, "An Ordinance Prescribing the Comprehensive Land Use Plan & Zoning of the Municipality of Parañaque Pursuant to the Local Government Code of 1991 and Other Pertinent Laws." Sections 11.5 and 11.6 of Municipal Ordinance No. 97-08, reclassifying El Grande and Aguirre Avenues in BF Homes Parañaque from residential to commercial areas, read:

11.5 C-1 LOW INTENSITY COMMERCIAL ZONES

x x x BARANGAY BF HOMES

Lot deep both side[s] along Aguirre Avenue from Governor A. Santos Street eastward to Gng. Elsie Gatches Street

Lot deep both side[s] along El Grande Avenue from Lopez Avenue gate southward to corner Aguirre Avenue

x x x x

11.6 C-2 MAJOR COMMERCIAL ZONES

x x x x

BARANGAY BF HOMES

Lot deep both side[s] along Aguirre Avenue from Dallas to El Grande Avenue

Lot deep both side[s] along Aguirre Avenue from El Grande Avenue to Gov. A. Santos Street

BF Parañaque Commercial Plaza

Area bounded on the

North - Pres. Quezon Street

South - A. Aguirre Avenue

East - President's Avenue

West - MMP, Creek along BF Homeowner's Association clubhouse

Lot deep east side along President's Avenue from Mac Donald southward to M. Rufino Street

Area bounded on the

North - A. Aguirre Avenue

South - A. Soriano Sr. & M. Rufino Street

East - President's Avenue

West - Gng. Elsie Ga[t]ches Street

x x x x[6]

On 27 January 1998, the United BF Homeowners' Associations, Inc. (UBFHAI),[7] several homeowners' associations, and residents of BF Homes Parañaque (collectively petitioners) filed with the Court of Appeals a petition for prohibition with an application for temporary restraining order and preliminary injunction. Petitioners questioned the constitutionality of Sections 11.5, 11.6, 15,[8] 17,[9] and 19.6[10] of Municipal Ordinance No. 97-08.

Petitioners alleged that the reclassification of certain portions of BF Homes Parañaque from residential to commercial zone is unconstitutional because it amounts to impairment of the contracts between the developer of BF Homes Parañaque and the lot buyers. Petitioners cited the annotation on the lot buyers' titles which provides that "the property shall be used for residential purposes only and for no other purpose."

On the other hand, public respondents alleged that the passage of Municipal Ordinance No. 97-08 is a valid exercise of police power by the Municipal Council of Parañaque and that such ordinance can nullify or supersede the contractual obligations entered into by the petitioners and the developer.

Meanwhile, El Grande Aguirre Commerce and Trade Organization (EL ACTO), a non-stock, non-profit corporation, intervened as respondent. EL ACTO claimed that its members are lot owners, residents, and operators of commercial establishments along El Grande and Aguirre Avenues in BF Homes Parañaque, who will be affected if Municipal Ordinance No. 97-08 is declared unconstitutional. EL ACTO asserted that Municipal Ordinance No. 97-08 is a valid exercise of police power and that petitioners are guilty of estoppel since petitioners endorsed the opening of many of these commercial establishments in BF Homes Parañaque. EL ACTO further alleged that the instant petition should have been initially filed with the Regional Trial Court in accordance with the principle of hierarchy of courts.

On 28 June 1999, the Court of Appeals dismissed the petition. Petitioners moved for reconsideration, which the Court of Appeals denied.

Hence, this petition.

The Ruling of the Court of Appeals

Citing the General Welfare Clause[11] of Republic Act No. 7160 (RA 7160), the Court of Appeals held that the enactment of Municipal Ordinance No. 97-08 which, among others, reclassified El Grande and Aguirre Avenues

in BF Homes Parañaque as commercial zones, was a valid exercise of police power by the Municipality of Parañaque.

The Court of Appeals took judicial notice of the fact that El Grande and Aguirre Avenues are main streets of BF Homes Parañaque which have long been commercialized, thus:

The declaration of El Grande and Aguirre Avenues as commercial zones through Municipal Ordinance No. 97-08 is an exercise of police power.

Obviously, because of the rapid and tremendous increase in population, the needs of the homeowners in the BF Parañaque Subdivision grew. The commercial zones in the area proved inadequate to service the needs of its residents. There was therefore a need to open more commercial districts. In fact, records show that several homeowners along El Grande and Aguirre Avenues converted their residences into business establishments. El Acto's members are among them.

Aside from the increasing number of commercial establishments therein, judicial notice may be taken of the fact that El Grande and Aguirre Avenues are main thoroughfares of BF Homes Parañaque which have long been commercialized. The local government therefore responded to these changes in the community by enacting Ordinance No. 97-08 x x x.[12]

The Issues

Petitioners raise the following issues:

- Whether R.A. 7160, the Local Government Code of 1991 has repealed PD 957, the Subdivision and Condominium Buyer's Protective Decree;
- Whether the power of local government units to enact comprehensive zoning ordinances has legal limitations;
- Whether Municipal Ordinance No. 97-08 is a legitimate exercise of police power;
- Whether Municipal Ordinance No. 97-08 is constitutional considering that it impairs a contractual obligation annotated in homeowners' titles and violates the doctrine of separation of powers;
- Whether Municipal Ordinance No. 97-08 is enforceable pending review by the MMDA, the Metro Manila Mayor's Council and the HLURB.[13]

The resolution of these issues turns on the validity of Municipal Ordinance No. 97-08.

The Ruling of the Court

The petition is without merit.

Power to Enact Zoning Ordinances

The Municipal Council of Parañaque enacted Municipal Ordinance No. 97-08 pursuant to the provisions of RA 7160 and Executive Order No. 72.[14]

Under Section 447 of RA 7160, the Sangguniang Bayan or the Municipal Council, as the legislative body of the municipality, has the power to enact ordinances for the general welfare of the municipality and its inhabitants.

Among the functions of the Sangguniang Bayan enumerated under Section 447 of RA 7160 are:

- (2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the municipality as provided for under Section 18 of this Code with particular attention to agro-industrial development and countryside growth and progress, and relative thereto, shall:

x x x x

(vii) Adopt a comprehensive land use plan for the municipality: Provided, That the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;

(viii) Reclassify land within the jurisdiction of the municipality subject to the pertinent provision of this Code;

(ix) Enact integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations; establish fire limits or zones, particularly in populous centers; and regulate the construction, repair or modification of buildings within aid fire limits or zones in accordance with the provisions of the Fire Code; (Emphasis supplied)

On the other hand, Executive Order No. 72 provides:

SECTION 1. Plan formulation or updating. - (a) Cities and municipalities shall continue to formulate or update their respective comprehensive land use plans, in conformity with the land use planning and zoning standards and guidelines prescribed by the HLURB pursuant to national policies.

As a policy recommending body of the LGU, the city or municipal development council (CDC/MDC) shall initiate the formulation or updating of its land use plan, in consultation with the concerned sectors in the community. For this purpose, the CDC/MDC may seek the assistance of any local official or field officer of NGA's operation in the LGU.

The city or municipal planning and development coordinator (CPDC/MPDC) and/or the city or municipal agriculturist, if there is any, shall provide the technical support services and such other assistance as may be required by the CDC/MDC to effectively carry out this function.

The comprehensive land use plan prepared by the CDC/MDC shall be submitted to the sangguniang panglungsod or sangguniang bayan, as the case may be, for enactment into a zoning ordinance. Such ordinance shall be enacted and approved in accordance with Articles 107 and 108 of the Implementing Rules and Regulations (IRR) of the LGC.

(b) The comprehensive land use plans of component cities and municipalities shall be formulated, adopted, or modified in accordance with the approved provincial comprehensive land use plans.

(c) Cities and municipalities of metropolitan Manila shall continue to formulate or update their respective comprehensive land use plans, in accordance with the land use planning and zoning standards and guidelines prescribed by the HLURB pursuant to EO 392, S. of 1990, and other pertinent national policies.

x x x x (Emphasis supplied)

Under Section 3(m), Rule 131 of the Rules of Court, there is a presumption that official duty has been regularly performed. Thus, in the absence of evidence to the contrary, there is a presumption that public officers performed their official duties regularly and legally and in compliance with applicable laws, in good faith, and in the exercise of sound judgment.[15]

We find no sufficient evidence disputing the regularity of the enactment of Municipal Ordinance No. 97-08. Before the Municipal Council of Parañaque passed Municipal Ordinance No. 97-08,[16] it has been the subject of barangay consultations and committee hearings in accordance with Executive Order No. 72.

Reclassification of El Grande and Aguirre Avenues

Contrary to petitioners' allegations, we find Municipal Ordinance No. 97-08 reasonable and not discriminating or oppressive with respect to BF Homes Parañaque. As held by the Court of Appeals, the increasing number of homeowners in BF Homes Parañaque necessitated the addition of commercial areas in the subdivision to service the needs of the homeowners. In fact, several homeowners along El Grande and Aguirre Avenues already

converted their residences into business establishments. Furthermore, as found by the Court of Appeals, El Grande and Aguirre Avenues are main thoroughfares in BF Homes Parañaque which have long been commercialized.

Even petitioner UBFHAI, the recognized umbrella organization of all homeowners' associations in BF Homes Parañaque, acknowledged the need for additional commercial area. Records reveal that as early as 30 July 1989, UBFHAI recommended for approval an "Amended Integrated Zoning Policies and Guidelines for BF Homes Parañaque." [17] UBFHAI proposed another commercial zone in BF Homes Parañaque to accommodate the growing needs of the residents, thus:

Subject to the approval of BF Homes, Inc., the Local Zoning Official/Planning Officer of Parañaque and the Metro Manila Commission and in recognition of the fact that the subdivision has tremendously grown in size and population since 1983 when the above-mentioned guidelines of the MMC [Ordinance 81-01] were promulgated, such that one commercial zone for the entire subdivision is now inadequate vis-a-vis the needs of the residents, the UBFHAI is proposing another commercial zone in Phase III of the Subdivision, in the vicinity of the Parish of the Presentation of the Child Jesus as follows:

One lot deep along Aguirre Avenue from Gov. Santos St., to the end of Aguirre Avenue and two lots deep along El Grande from where it intersects Aguirre Avenue.

Pending approval of the aforesaid proposal, commercial buildings constructed and existing in the aforesaid area will be given temporary-use permits good for five (5) years from December 31, 1986 or until December 31, 1991, after which, the same must revert to residential status, unless, in the meantime the proposal is approved, provided all such buildings must comply with the set-back and parking provision of the Metro Manila Commission Ordinance 81-01; I.M. 09-83.

x x x x

The term for temporary use permits of the designated commercial area shall be considered extended for 8 years from December 31, 1991 to December 31, 1998; without prejudice to the official conversion of the area under existing MMA/LGC guidelines to commercial. [18] (Emphasis supplied)

Thus, UBFHAI's proposed new commercial area, encompassing El Grande and Aguirre Avenues, is substantially the same area, which Municipal Ordinance No. 97-08 later reclassified as a commercial zone.

Furthermore, in the subsequent years, UBFHAI and its member homeowners' associations endorsed the issuance of municipal and barangay permits for commercial establishments along El Grande and Aguirre Avenues. Contrary to petitioners' allegations, the commercial establishments endorsed by UBFHAI were not mere convenience stores, which Metro Manila Commission Ordinance No. 81-01 [19] and Municipal Ordinance No. 97-08 allow in residential areas. Among the commercial establishments which UBFHAI endorsed were a trading business, [20] electronics repair shop, [21] mini-grocery store, [22] beauty salon, [23] school, [24] dress shop, [25] and consultancy or management services business. [26]

Clearly, the reclassification of El Grande and Aguirre Avenues in BF Homes Parañaque as commercial area was reasonable and justified under the circumstances.

Non-Impairment of Contract

Petitioners invoke Presidential Decree No. 957 (PD 957), [27] otherwise known as the Subdivision and Condominium Buyers' Protective Decree. Petitioners maintain that PD 957 is intended primarily to protect the buyers and to ensure that subdivision developers keep their promises and representations. Petitioners allege that one of the promises of the developer of BF Homes Parañaque is that the property shall be used for residential

purposes only. Petitioners assert that the reclassification of certain portions of BF Homes Parañaque from residential to commercial zone is unconstitutional because it impairs the contracts between the developer of BF Homes Parañaque and the lot buyers.

The Court has upheld in several cases the superiority of police power over the non-impairment clause.[28] The constitutional guaranty of non-impairment of contracts is limited by the exercise of the police power of the State, in the interest of public health, safety, morals and general welfare.[29]

In *Ortigas & Co., Limited Partnership v. Feati Bank and Trust Co.*,[30] the Court held that contractual restrictions on the use of property could not prevail over the reasonable exercise of police power through zoning regulations. The Court held:

With regard to the contention that said resolution cannot nullify the contractual obligations assumed by the defendant-appellee-referring to the restrictions incorporated in the deeds of sale and later in the corresponding Transfer Certificates of Title issued to defendant-appellee-it should be stressed, that while non-impairment of contracts is constitutionally guaranteed, the rule is not absolute, since it has to be reconciled with the legitimate exercise of police power, i.e., "the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people." Invariably described as "the most essential, insistent, and illimitable of powers" and "in a sense, the greatest and most powerful attribute of government," the exercise of the power may be judicially inquired into and corrected only if it is capricious, whimsical, unjust or unreasonable, there having been a denial of due process or a violation of any other applicable constitutional guarantee. As this Court held through Justice Jose P. Bengzon in *Philippine Long Distance Company v. City of Davao, et al.*, police power "is elastic and must be responsive to various social conditions; it is not confined within narrow circumscriptions of precedents resting on past conditions; it must follow the legal progress of a democratic way of life." We were even more emphatic in *Vda. De Genuino v. The Court of Agrarian Relations, et al.*, when We declared: "We do not see why the public welfare when clashing with the individual right to property should not be made to prevail through the state's exercise of its police power."

Resolution No. 27. s-1960 declaring the western part of Highway 54, now E. de los Santos Avenue (EDSA, for short) from Shaw Boulevard to the Pasig River as an industrial and commercial zone, was obviously passed by the Municipal Council of Mandaluyong, Rizal in the exercise of police power to safeguard or promote the health, safety, peace, good order and general welfare of the people in the locality. Judicial notice may be taken of the conditions prevailing in the area, especially where Lots Nos. 5 and 6 are located. The lots themselves not only front the highway; industrial and commercial complexes have flourished about the place. EDSA, a main traffic artery which runs through several cities and municipalities in the Metro Manila area, supports an endless stream of traffic and the resulting activity, noise and pollution are hardly conducive to the health, safety or welfare of the residents in its route. Having been expressly granted the power to adopt zoning and subdivision ordinances or regulations, the municipality of Mandaluyong, through its Municipal Council, was reasonably, if not perfectly, justified under the circumstances, in passing the subject resolution.[31] (Emphasis supplied)

Likewise, in *Sangalang v. Intermediate Appellate Court*,[32] the Court upheld Metro Manila Commission Ordinance No. 81-01, which reclassified Jupiter Street in Makati into a high-density commercial zone, as a legitimate exercise of police power. The Court held that the power of the Metro Manila Commission and the Makati Municipal Council to enact zoning ordinances for the general welfare prevails over the deed restrictions on the lot owners in Bel-Air Village which restricted the use of the lots for residential purposes only. The Court held:

It is not that we are saying that restrictive easements, especially the easements herein in question, are invalid or ineffective. As far as the Bel-Air subdivision itself is concerned, certainly, they are valid and enforceable. But they are, like all contracts, subject to the overriding demands, needs, and interests of the greater number as the State may determine in the legitimate exercise of police power. Our jurisdiction guarantees sanctity of contract

and is said to be the "law between the contracting parties," but while it is so, it cannot contravene "law, morals, good customs, public order, or public policy." Above all, it cannot be raised as a deterrent to police power, designed precisely to promote health, safety, peace, and enhance the common good, at the expense of contractual rights, whenever necessary. x x x[33] (Emphasis supplied)

Similarly, in this case, Municipal Ordinance No. 97-08 is a legitimate exercise of police power and the reclassification of El Grande and Aguirre Avenues in BF Homes Parañaque is not arbitrary or unreasonable. WHEREFORE, we AFFIRM the Decision dated 28 June 1999 and the Resolution dated 16 November 1999 of the Court of Appeals in CA-G.R. SP No. 46624.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 66-76. Penned by Associate Justice Angelina Sandoval-Gutierrez (now Supreme Court Justice) with Associate Justices Romeo A. Brawner and Martin S. Villarama, Jr., concurring.

[3] Id. at 85-86.

[4] Now Parañaque City.

[5] Rollo, pp. 166-207. Known as Parañaque Comprehensive Land Use Plan & Zoning.

[6] Id. at 179-180.

[7] The recognized umbrella organization of all homeowners' associations in BF Homes Parañaque.

[8] Section 15. TEMPORARY USE PERMIT

A TEMPORARY USE PERMIT to establish a use or activity not allowed under the list of Permitted Uses in a given area or zone may on application by the interested party with the Municipal Council, be allowed, subject to the following conditions:

- That the zone or area in which the property subject of the application is located, or the area within the immediate vicinity, or a radius of five (5) kilometers from such property, is not yet built up or being developed according to the original ordinance, or no noticeable and desirable dominant trend has been observed in the area for a reasonable period or at least two (2) years; for the purposes of this condition, non-built up area is one where the dominant use is less than 40% of the area;
- That the proposed project shall not in any way pose danger or hazard to the health and safety of its environment and surrounding neighborhood;
- That the return on investment is capable of achievement within the maximum period allowed for temporary uses by its ordinance;
- That the proposed activity shall be subject to the requirements of initial environmental examination and environmental impact assessment;
- That the permit shall be granted on an annual basis, and may be renewed from year to year upon satisfactory showing that compliance with all the conditions imposed by this ordinance and the permit, for a maximum period of five (5) years;

- That the proponent shall submit a monthly report of the progress of its operations; and
- That the proponent shall relocate the project facilities and equipment to another site at his own cost in the event that the Municipal Council finds that its continued existence is undesirable wherein the relocation shall take place upon the expiration of the permit, such other period stated in the notice of the relocation which must be given not earlier than 6 months nor later than 3 months before the expiration of the permit.

[9] Section 17. CERTIFICATE OF NON-CONFORMANCE

A certificate of non-conformance of all non-conforming uses shall be applied for by the owner or the authorized agent of the property involved within three (3) months from the promulgation of this Zoning Ordinance from the Office of the Municipal Council.

Failure to make such application within the aforementioned period shall be presumptive evidence that the property was a conforming use at the time of the promulgation, or amendment of this Zoning Ordinance, and if found otherwise will be considered as a violation thereof.

[10] Section 19. ADMINISTRATION AND ENFORCEMENT

x x x x

19.6 Procedure for Appeals

Any person aggrieved by the decision or action by the Zoning Administrator concerning the interpretation, administration or enforcement of this Ordinance may appeal to the Municipal Council. Such appeal shall be taken within a reasonable time but not to exceed thirty (30) calendar days from the receipt of the notice of the decision or action taken by the Zoning Administrator. The person concerned shall file the appeal with the Office of the Municipal Council and pay the corresponding appeal fee as provided for in this Ordinance. The Zoning Administrator shall transmit all papers constituting the record upon which the action appealed from was taken. The Municipal Council shall fix the date, time and place for the hearing of the appeal, give due notice of appeal. Decision of the Office of the Municipal Council may in turn be appealed to the Housing and Land Use Regulatory Board (HLURB) within the period provided for in the regulations and implementation of Presidential Decree No. 933. A motion for reconsideration may be filed within the period for appeal, in which case such period is suspended, pending determination thereof.

Failure of the aggrieved party to make any appeal within the time specified shall cause the decision to become final and executory. The Municipal Council may be, as well as law enforcement agencies for assistance in the exercise of their functions [sic].

[11] Section 16 of RA 7160, or the Local Government Code of 1991, reads:

Sec. 16. Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[12] Rollo, pp. 71-72.

[13] Id. at 33-34.

[14] Entitled: "Providing for the Preparation and Implementation of the Comprehensive Land Use Plans of Local Government Units Pursuant to the Local Government Code of 1991 and Other Pertinent Laws."

[15] 6 O. Herrera, Remedial Law 76 (1999).

[16] The WHEREAS clauses of Municipal Ordinance No. 97-08 read in part:

WHEREAS, as a policy recommending body of the Local Government Unit, the Municipal Development Council initiated the formulation and updating of the land use plan, in consultation with the concerned sectors in the municipality which was submitted to the Sangguniang Bayan for enactment into a zoning ordinance as provided by Executive Order No. 72, Section 1 (a);

WHEREAS, the proposed Municipal Land Use Plan is formulated based on the approved concept or structure plan which embodies the proposal for designing & classifying broad but identifiable separate areas of the municipality into functional classes for the purpose of development & regulation.

[17] Rollo, pp. 392-400. The proposed "Amended Integrated Zoning Policies and Guidelines for BF Homes Parañaque" was recommended for approval on 30 July 1989 by the UBFHAI Zoning Committee composed of: (1) Dexter G. Heuschkel (member); (2) Antonio U. Virina (member); and Veneranda Acaylar-Cruz (chairperson). UBFHAI Interim President Jocelyn I. Bolante approved the proposal on 1 September 1989.

[18] Id. at 392.

[19] Otherwise known as the Comprehensive Zoning Ordinance for the National Capital Region.

[20] Rollo, p. 401.

[21] Id. at 402.

[22] Id. at 403.

[23] Id. at 404.

[24] Id. at 405.

[25] Id. at 409.

[26] Id. at 410-411.

[27] Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof.

[28] Beltran v. Secretary of Health, G.R. Nos. 133640, 133661 & 139147, 25 November 2005, 476 SCRA 168; Philippine National Bank v. Remigio, G.R. No. 78508, 21 March 1994, 231 SCRA 362; Oposa v. Factoran, Jr., G.R. No. 101083, 30 July 1993, 224 SCRA 792; J. Juarez v. Court of Appeals, G.R. No. 93474, 7 October 1992, 214 SCRA 475; Caleon v. Agus Development Corporation, G.R. No. 77365, 7 April 1992, 207 SCRA 748.

[29] Ortigas & Co. Ltd. v. Court of Appeals, 400 Phil. 615 (2000); Bogo Medellin Sugarcane Planters Asso., Inc. v. NLRC, 357 Phil. 110 (1998).

[30] No. L-24670, 14 December 1979, 94 SCRA 533.

[31] Id. at 545-547.

[32] Nos. L-71169, L-74376, L-76394, L-78182, L-82281, 22 December 1988, 168 SCRA 634.

[33] Id. at 667.

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