

**MARCELO SARMIENTO, ET AL., PLAINTIFFS AND APPELLANTS, VS.
PEDRO BELDEROL, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 15719. May 31, 1961*

Ponente: BARRERA, J.

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From the decision of the Court of First Instance of Bohol (in Civil Case No. 1221) upholding (1) the validity of Ordinance No. 2, series of 1958, enacted by the Municipal Council of Tagbilaran, Bohol, abolishing the 100-meter requirement (from any public building, school, hospital or church) on any cockpit operated in said municipality, as established by Ordinance No. 12, series of 1956, and (2) the legality of the operation of a cockpit, by Eugenio Inting, et al., within 100 meters from the buildings of the Rafael Palma College, plaintiffs Marcelo B. Sarmiento, et al., interpose the instant appeal.

The records show that on September 1, 1956, the Municipal Council of Tagbilaran, Bohol, passed Ordinance No. 12, series of 1956, amending Ordinance No. 2, series of 1954, providing, in its pertinent parts, as follows:

"SECTION 1.—It shall be unlawful for any person, corporation, partnership or entity to establish, maintain and operate nightclubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billiard and pool halls, and other similar places of amusement without first securing a permit from the Office of the Mayor and paying therewith the prescribed permit and license fees to the Municipal Treasurer in accordance with existing ordinances; PROVIDED, HOWEVER, That no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of TWO HUNDRED (200) lineal meters in the case of nightclubs, cabarets, pavilions, or other similar places, and ONE HUNDRED (100) lineal meters in the case of cockpits, and FIFTY (50) lineal meters in the case of dancing schools, etc. * * * from any public building, school, hospital and church * * *.

"SECTION 2.—For any violation of this ordinance where the violator is a corporation, partnership or entity, the manager, director, partner, or any person connected with or in charge of the establishment shall be liable; in other cases the licensee shall be liable." (*Italics supplied*)

On August 1, 1957, Valeriano Manungolh applied to the Municipal Mayor (of Tagbilaran, Bohol) for a permit to construct a cockpit in Remolador street, same municipality. Said application, however, was denied, the proposed construction being within 100 lineal meters from the stage of the Rafael Palma College.

On December 26, 1957, Eugenio Inting applied for a Mayor's permit to operate a cockpit in the same Remolador street. The application was properly transmitted to the Highway District Engineer for certification as to the suitability of the building for the purpose stated therein. On January 8, 1958, Venerando Dumagdag, an employee in the Office of the District Engineer, who was assigned to conduct the proper investigation of the proposed construction, made the following indorsement:

"3rd Indorsement

"January 8, 1958

"Respectfully returned to Mr. Segundo C. Gloria, District Engineer, Tagbilaran, Bohol, with the information that the above mentioned cockpit is suitable for occupancy and is one hundred thirty one meters away from the nearest public building, the Rafael Palma College."

"(Sgd.) Venerando M. Dumagdag

"Architect" (Exh. E-1)

Acting upon this favorable recommendation, which was adopted by the District Engineer, the Municipal Mayor issued the corresponding permit to applicant Inting.

On January 14, and 27, 1953, Marcelo B. Sarmiento, a duly licensed cockpit operator since 1951 (Exh. A), wrote to the District Engineer informing the latter that Inting's cockpit is actually 84.80 meters only from the Music building of the Rafael Palma College, and 93.20 meters from the building of the Elementary Department of the same school and, therefore, not suitable for occupancy as previously certified to by the Engineer's Office. (Exhs. F and F-3).

Sarmiento similarly called the attention of the Municipal Council of Tagbilaran to this defect, and said body, in response thereto, passed a resolution on February 3, 1958, reading as follows:

"RESOLUTION No. 5

"WHEREAS, a letter has been received by this body from Mr. Marcelo B. Sarmiento dated January 27, 1958 requesting that the cockpit of Mr. Eugenio Inting situated along Remolador St. of the Poblacion, Tagbilaran, be immediately closed because according to him it is constructed within the prohibited zone;

"WHEREAS, the power to issue permits for the operation and maintenance of cockpits and other amusement places and the closure of the same is a prerogative of the Mayor;

"NOW THEREFORE, on motion of Councilor Constancio Saligumba, duly seconded by Councilor Fortunato Navea,

"RESOLVED, as it is hereby resolved, that Mr. Marcelo Sarmiento be advised to go to the Court of Justice for all his satisfaction.

"UNANIMOUSLY ADOPTED." (Exh. F-4; italics supplied.)

On Sarmiento's persistent representations, Dumagdag wrote a letter to the District Engineer of Tagbilaran, Bohol, in the following tenor:

"February 4, 1958

"The District Engineer
Tagbilaran, Bohol

"Sir:

"In connection with the letter of Mr. Marcelo B. Sarmiento regarding the matter published in the Bohol Chronicle of February 2, 1958 issue, more particularly about the distance of the cockpit of Mr. Eugenio Inting from the Rafael Palma College, I have the honor to inform that the following data were gathered by Mr. Vidal C. Fabiosa in his investigation:

- "1. The cockpit in question is 76.80 meters from the RPC Music Building;
- "2. The said cockpit is 76.72 meters from the RPC Elementary Department;
- "3. The said cockpit is 131.10 meters from the main building of the Rafael Palma College.

"Very truly yours,

"(Sgd.) Venerando M. Dumagdag

Architect"

(Italics supplied)

(Exh. G-2)

Confronted with the foregoing letter, indorsed by the District Engineer, the Municipal Mayor made the following indorsement:

"3rd Indorsement

"February 7, 1958

"Respectfully returned to Mr. Marcelo Sarmiento, Tagbilaran, Bohol with the request that he bring the case before the Court of Justice.

"(Sgd.) Pedro Belderol

"Mayor"

(Exh. G-4)

Apparently not satisfied with the action taken on his petitions by the municipal officials concerned, Sarmiento brought the matter to the attention of the President of the Philippines who, through the Acting Assistant Executive Secretary, requested the Municipal Council of Tagbilaran to investigate and submit a report on the complaint of Sarmiento. (Exh. H-2). The Mayor's attention was also called by the following communication:

"1st Indorsement

"Manila, February 14, 1958

"Respectfully referred, thru the Provincial Governor, Tagbilaran, Bohol, to the Municipal Mayor of Tagbilaran, in connection with our 1st indorsement of the 17th ultimo, against the cockpit owned by Messrs. Fermin Torralba, Cecilio Menoza, Valeriano Manongoen and Eugenio Inting, and our telegram of even date, copy also enclosed.

"Ordinance No. 12, series of 1956, of that municipality fixes the distance requirement of 100 lineal meters from any public building, school, hospitals and church for the establishment, maintenance and operation of cockpits in said municipality. According to the attached sketch submitted by the Highway District Engineer of that province, the said cockpit is 84.80 meters and 93.20 meters from the Rafael Palma College Music House and Rafael Palma College Elementary Building, respectively, in violation of said ordinance. In view thereof, it is requested that the owners of said cockpit be required to transfer it to a place outside the prohibited zone.

"Sofronio C. Quimson

"Acting Assistant Executive Secretary"

(Exh. H; Italics supplied).

The telegram above referred to reads:

"MANILA FEBRUARY 14, 1958

"MUNICIPAL MAYOR

"TAGBILARAN BOHOL

"PLEASE SUBMIT REPORT FOR ACTION TAKEN ON PROTEST OF MARCELO SARMIENTO AGAINST ESTABLISHMENT COCKPIT OF FERMIN TORRALBA WITHIN PROHIBITED ZONE PRESCRIBED BY ORDINANCE TOGETHER WITH EXPLANATION AS TO WHY PERMIT THEREFOR HAS BEEN ISSUED BY YOUR OFFICE.

"SECRETARY PAJO"

(Exh. H-1; Italics supplied)

On February 17, 1958, or 3 days after the Mayor received the above directives from the Office of the President, the Municipal Council of Tagbilaran, through Ordinance No. 2, series of 1958, amended Ordinance No. 12, series of 1956, to read as follows:

"SECTION 1.—It shall be unlawful for any person, corporation partnership or entity to establish, maintain and operate nightclubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billiard and pool halls and other similar places of amusement without first securing permit from the Office of the Mayor and paying therewith the prescribed permit and license fees to the Municipal Treasurer in accordance with existing ordinances: PROVIDED, HOWEVER, That no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of Two Hundred (200) lineal meters in case of night clubs, cabarets, pavilions, of other similar places, and FIFTY (50) lineal meters in the case of dancing schools, bars, saloons, billiard and pool halls, bowling alleys, or other similar places from any public building, school, hospital and church, except cockpits, the distance requirements from any public building, school, hospital and church of which is hereby abolished under this Ordinance: PROVIDED, FURTHER, That places of amusement already then licensed and operating before the enactment of this ordinance shall not be affected nor will the subsequent opening of any public building or other premises from which distance shall be measured prejudice the same;

* * * * *

"SEC. 4.—This ordinance shall have retro-active effect as of May 17, 1955."

"Approved, February 17, 1958."

(Exh. I-1; Italics supplied).

Marcelo Sarmiento, et al., thereafter filed a complaint in the Court of First Instance of Bohol against the Municipal Mayor, the Council and cockpit operators Inting, et al., claiming damages for losses allegedly sustained by them as a result of the issuance of the questioned permit to the latter. The defendants duly filed their answers thereto, justifying the issuance of the permit and sustaining its validity.

On March 23, 1959, the court rendered judgment dismissing the complaint on the ground that, as the Municipal Council, under Republic Act 1224, has authority to abolish the distance requirements on cockpits and that, at the time the complaint was filed, the operation by Inting, et al., of the cockpit within a distance of less than 100 meters from a school building was no longer prohibited, plaintiffs had no cause of action against the defendants. Hence, this appeal.

As correctly stated by the lower court, the controversy in the instant case hinges on the validity of Ordinance No. 2, series of 1958, of the Municipal Council of Tagbilaran, Bohol, abolishing the distance requirement on cockpits previously imposed by Ordinance No. 12, series of 1956. However, the ordinance in question should have been declared null and void and without effect.

Republic Act No. 1224, amending Republic Acts Nos. 938 and 979, relied upon by the appellee and the trial court, provides:

"SECTION 1. The * * * municipal council of each municipality and municipal district shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of night clubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billiard pools, and other similar places of amusement within its territorial jurisdiction:

Provided, however, That no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of two hundred lineal meters in the case of night clubs, cabarets, pavilions, or other similar places, and fifty lineal meters in the case of dancing schools, bars, saloons, billiard, pools, bowling alleys, or other similar places, except cockpits, the distance of which shall be left to the discretion of the municipal or city board or council, from any public building, schools, hospitals, and churches: Provided, further, That no municipal or city ordinance fixing distances at which such places of amusement may be established or operated shall apply to those already licensed and operating at the time of the enactment of such municipal or city ordinance, nor will the subsequent opening of any public building or other premises from which distances shall be measured prejudice any place of amusement already then licensed and operating, but any such place of amusement established within fifty lineal meters from any school, hospital or church shall be so constructed that the noise coming therefrom shall not disturb those in the school, hospital or church, and, if such noise causes such disturbance then such place of amusement shall not operate during school hours when near a school, or at night when near a hospital, or when there are religious services near a church; * * *

(Italics supplied.)

It is the contention of appellee, upheld by the trial court that since the law expressly left the fixing of the distance of cockpits from any public building, schools, hospitals, and churches to the discretion of the municipal council, the latter could validly do away with any distance at all, as it did in passing the questioned ordinance. This, we believe, is not the intention of the law.

Under the abovequoted provision, a municipal or city council is expressly empowered either to prohibit entirely or merely regulate the operation and maintenance of certain places of amusement by imposing a distance limitation thereon, from any public building, schools, hospitals and churches, specifying a distance of 200 lineal meters in cases of nightclubs and other establishments of similar nature, and 50 lineal meters in cases of bars, saloons, etc. However, with respect to cockpits, the law gave the local law-making body the discretion to determine the appropriate distance to be observed, probably on the theory that cockpit, having its own peculiarities, the municipal council is in a better position to understand the needs of its constituents. From this it cannot be logically inferred that cockpits can be freely established at any place and be exempt from observing certain distance from public building, schools, etc. The authority to determine the distance does not carry with it the authority to exempt cockpits from observing any distance at all. That the Legislature did not intend to give the council such authority to dispense entirely with the distance limitation in case of cockpits, is evident from the fact that even in those cases specifically declared exempted from any ordinance fixing distances,[1] the law requires the observance of certain restrictions designed to promote the peace, health and general welfare of the community. Appellee Municipal Council, therefore, could not, under Republic Act No. 1224, abolish an already existing distance requirement on cockpit and provide no distance limitation at all on the operation of such amusement place.

It also appears, as bared by the recital of facts heretofore made, that when appellant Sarmiento called the attention of the Mayor and Municipal Council on the operation of a cockpit within the prohibited area, instead of doing something on his protest, said local authorities merely directed him to "go to courts"; that three days after the Mayor was required by the Office of the President to explain why permit was issued to appellees Inting, et al., an apparently accommodating Council enacted the ordinance in question, abolishing the distance requirement of 100 meters, and making it retroactive to May 17, 1955. All this, taken with the fact that although a permit to operate a cockpit in Remolador Street was previously denied to Valeriano Manungolh, on the ground that the proposed construction was within 100 lineal meters from the Rafael Palma College's stage, such a permit was subsequently

issued to Eugenio Inting (who turned out to be co-partner of Fermin Torralba, Cecilio Meñoza and the same Valeriano Manungolh) for the operation of a cockpit also in Remolador Street, which is likewise within 100 lineal meters from a building of the Rafael Palma College, clearly indicates, to our mind, that the enactment of Ordinance No. 2, series of 1958, abolishing the distance requirement of 100 lineal meters on cockpit operations as imposed by Ordinance No. 12, series of 1956, and making it retroactive to May 17, 1955, was intended solely to favor a person or group of persons, and therefore, is null and void for being partial. (U.S. vs. Abendan, 24 Phil., 165; see also Pedro vs. Provincial Board of Rizal, 56 Phil., 123).

Wherefore, the decision appealed from is reversed, and we declare null and void Ordinance No. 2, series of 1958, insofar as it abolishes the distance limitation on cockpits, and hold that the cockpit operated by appellees, Inting, et al., violates the provisions of Ordinance No. 12, series of 1956, of the Municipal Council of Tagbilaran. The permit heretofore issued to said appellees is consequently hereby declared null and void. There being no assignment of error regarding the damages allegedly suffered by appellants, and finding no evidence on record regarding such claim for damages, no award therefore can be made. Costs are taxed against appellees Inting, et al. So ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

[1] Those already established at the time the ordinance took effect or where a school, hospital or church was subsequently built within the prohibited distance from an amusement place already existing.

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