

THE OFFICE OF THE SOLICITOR GENERAL, PETITIONER, VS. AYALA LAND INCORPORATED, ROBINSONS LAND CORPORATION, SHANGRI-LA PLAZA CORPORATION AND SM PRIME HOLDINGS, INC., RESPONDENTS.

G.R. No. 177056. September 18, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on Certiorari,[1] under Rule 45 of the Revised Rules of Court, filed by petitioner Office of the Solicitor General (OSG), seeking the reversal and setting aside of the Decision[2] dated 25 January 2007 of the Court of Appeals in CA-G.R. CV No. 76298, which affirmed in toto the Joint Decision[3] dated 29 May 2002 of the Regional Trial Court (RTC) of Makati City, Branch 138, in Civil Cases No. 00-1208 and No. 00-1210; and (2) the Resolution[4] dated 14 March 2007 of the appellate court in the same case which denied the Motion for Reconsideration of the OSG. The RTC adjudged that respondents Ayala Land Incorporated (Ayala Land), Robinsons Land Corporation (Robinsons), Shangri-la Plaza Corporation (Shangri-la), and SM Prime Holdings, Inc. (SM Prime) could not be obliged to provide free parking spaces in their malls to their patrons and the general public.

Respondents Ayala Land, Robinsons, and Shangri-la maintain and operate shopping malls in various locations in Metro Manila. Respondent SM Prime constructs, operates, and leases out commercial buildings and other structures, among which, are SM City, Manila; SM Centerpoint, Sta. Mesa, Manila; SM City, North Avenue, Quezon City; and SM Southmall, Las Piñas.

The shopping malls operated or leased out by respondents have parking facilities for all kinds of motor vehicles, either by way of parking spaces inside the mall buildings or in separate buildings and/or adjacent lots that are solely devoted for use as parking spaces. Respondents Ayala Land, Robinsons, and SM Prime spent for the construction of their own parking facilities. Respondent Shangri-la is renting its parking facilities, consisting of land and building specifically used as parking spaces, which were constructed for the lessor's account.

Respondents expend for the maintenance and administration of their respective parking facilities. They provide security personnel to protect the vehicles parked in their parking facilities and maintain order within the area. In turn, they collect the following parking fees from the persons making use of their parking facilities, regardless of whether said persons are mall patrons or not:

Respondent

Parking Fees

Ayala Land

On weekdays, P25.00 for the first four hours and P10.00 for every succeeding hour; on weekends, flat rate of

P25.00 per day

Robinsons

P20.00 for the first three hours and P10.00 for every succeeding hour

Shangri-la

Flat rate of P30.00 per day

SM Prime

P10.00 to P20.00 (depending on whether the parking space is outdoors or indoors) for the first three hours and 59 minutes, and P10.00 for every succeeding hour or fraction thereof

The parking tickets or cards issued by respondents to vehicle owners contain the stipulation that respondents shall not be responsible for any loss or damage to the vehicles parked in respondents' parking facilities.

In 1999, the Senate Committees on Trade and Commerce and on Justice and Human Rights conducted a joint investigation for the following purposes: (1) to inquire into the legality of the prevalent practice of shopping malls of charging parking fees; (2) assuming *arguendo* that the collection of parking fees was legally authorized, to find out the basis and reasonableness of the parking rates charged by shopping malls; and (3) to determine the legality of the policy of shopping malls of denying liability in cases of theft, robbery, or carnapping, by invoking the waiver clause at the back of the parking tickets. Said Senate Committees invited the top executives of respondents, who operate the major malls in the country; the officials from the Department of Trade and Industry (DTI), Department of Public Works and Highways (DPWH), Metro Manila Development Authority (MMDA), and other local government officials; and the Philippine Motorists Association (PMA) as representative of the consumers' group.

After three public hearings held on 30 September, 3 November, and 1 December 1999, the afore-mentioned Senate Committees jointly issued Senate Committee Report No. 225[5] on 2 May 2000, in which they concluded:

In view of the foregoing, the Committees find that the collection of parking fees by shopping malls is contrary to the National Building Code and is therefor [sic] illegal. While it is true that the Code merely requires malls to provide parking spaces, without specifying whether it is free or not, both Committees believe that the reasonable and logical interpretation of the Code is that the parking spaces are for free. This interpretation is not only reasonable and logical but finds support in the actual practice in other countries like the United States of America where parking spaces owned and operated by mall owners are free of charge.

Figuratively speaking, the Code has "expropriated" the land for parking - something similar to the subdivision law which require developers to devote so much of the land area for parks.

Moreover, Article II of R.A. No. 9734 (Consumer Act of the Philippines) provides that "it is the policy of the State to protect the interest of the consumers, promote the general welfare and establish standards of conduct for business and industry." Obviously, a contrary interpretation (i.e., justifying the collection of parking fees) would be going against the declared policy of R.A. 7394.

Section 201 of the National Building Code gives the responsibility for the administration and enforcement of the provisions of the Code, including the imposition of penalties for administrative violations thereof to the Secretary of Public Works. This set up, however, is not being carried out in reality.

In the position paper submitted by the Metropolitan Manila Development Authority (MMDA), its chairman, Jejomar C. Binay, accurately pointed out that the Secretary of the DPWH is responsible for the implementation/enforcement of the National Building Code. After the enactment of the Local Government

Code of 1991, the local government units (LGU's) were tasked to discharge the regulatory powers of the DPWH. Hence, in the local level, the Building Officials enforce all rules/ regulations formulated by the DPWH relative to all building plans, specifications and designs including parking space requirements. There is, however, no single national department or agency directly tasked to supervise the enforcement of the provisions of the Code on parking, notwithstanding the national character of the law.[6]

Senate Committee Report No. 225, thus, contained the following recommendations:

In light of the foregoing, the Committees on Trade and Commerce and Justice and Human Rights hereby recommend the following:

- The Office of the Solicitor General should institute the necessary action to enjoin the collection of parking fees as well as to enforce the penal sanction provisions of the National Building Code. The Office of the Solicitor General should likewise study how refund can be exacted from mall owners who continue to collect parking fees.
- The Department of Trade and Industry pursuant to the provisions of R.A. No. 7394, otherwise known as the Consumer Act of the Philippines should enforce the provisions of the Code relative to parking. Towards this end, the DTI should formulate the necessary implementing rules and regulations on parking in shopping malls, with prior consultations with the local government units where these are located. Furthermore, the DTI, in coordination with the DPWH, should be empowered to regulate and supervise the construction and maintenance of parking establishments.
- Finally, Congress should amend and update the National Building Code to expressly prohibit shopping malls from collecting parking fees by at the same time, prohibit them from invoking the waiver of liability.[7]

Respondent SM Prime thereafter received information that, pursuant to Senate Committee Report No. 225, the DPWH Secretary and the local building officials of Manila, Quezon City, and Las Piñas intended to institute, through the OSG, an action to enjoin respondent SM Prime and similar establishments from collecting parking fees, and to impose upon said establishments penal sanctions under Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines (National Building Code), and its Implementing Rules and Regulations (IRR). With the threatened action against it, respondent SM Prime filed, on 3 October 2000, a Petition for Declaratory Relief[8] under Rule 63 of the Revised Rules of Court, against the DPWH Secretary and local building officials of Manila, Quezon City, and Las Piñas. Said Petition was docketed as Civil Case No. 00-1208 and assigned to the RTC of Makati City, Branch 138, presided over by Judge Sixto Marella, Jr. (Judge Marella). In its Petition, respondent SM Prime prayed for judgment:

- a) Declaring Rule XIX of the Implementing Rules and Regulations of the National Building Code as ultra vires, hence, unconstitutional and void;
- b) Declaring [herein respondent SM Prime]'s clear legal right to lease parking spaces appurtenant to its department stores, malls, shopping centers and other commercial establishments; and
- c) Declaring the National Building Code of the Philippines Implementing Rules and Regulations as ineffective, not having been published once a week for three (3) consecutive weeks in a newspaper of general circulation, as prescribed by Section 211 of Presidential Decree No. 1096.

[Respondent SM Prime] further prays for such other reliefs as may be deemed just and equitable under the premises.[9]

The very next day, 4 October 2000, the OSG filed a Petition for Declaratory Relief and Injunction (with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction)[10] against respondents. This Petition was docketed as Civil Case No. 00-1210 and raffled to the RTC of Makati, Branch 135, presided over by Judge

Francisco B. Ibay (Judge Ibay). Petitioner prayed that the RTC:

1. After summary hearing, a temporary restraining order and a writ of preliminary injunction be issued restraining respondents from collecting parking fees from their customers; and
2. After hearing, judgment be rendered declaring that the practice of respondents in charging parking fees is violative of the National Building Code and its Implementing Rules and Regulations and is therefore invalid, and making permanent any injunctive writ issued in this case.

Other reliefs just and equitable under the premises are likewise prayed for.[11]

On 23 October 2000, Judge Ibay of the RTC of Makati City, Branch 135, issued an Order consolidating Civil Case No. 00-1210 with Civil Case No. 00-1208 pending before Judge Marella of RTC of Makati, Branch 138.

As a result of the pre-trial conference held on the morning of 8 August 2001, the RTC issued a Pre-Trial Order[12] of even date which limited the issues to be resolved in Civil Cases No. 00-1208 and No. 00-1210 to the following:

1. Capacity of the plaintiff [OSG] in Civil Case No. 00-1210 to institute the present proceedings and relative thereto whether the controversy in the collection of parking fees by mall owners is a matter of public welfare.
2. Whether declaratory relief is proper.
3. Whether respondent Ayala Land, Robinsons, Shangri-La and SM Prime are obligated to provide parking spaces in their malls for the use of their patrons or the public in general, free of charge.
4. Entitlement of the parties of [sic] award of damages.[13]

On 29 May 2002, the RTC rendered its Joint Decision in Civil Cases No. 00-1208 and No. 00-1210.

The RTC resolved the first two issues affirmatively. It ruled that the OSG can initiate Civil Case No. 00-1210 under Presidential Decree No. 478 and the Administrative Code of 1987.[14] It also found that all the requisites for an action for declaratory relief were present, to wit:

The requisites for an action for declaratory relief are: (a) there is a justiciable controversy; (b) the controversy is between persons whose interests are adverse; (c) the party seeking the relief has a legal interest in the controversy; and (d) the issue involved is ripe for judicial determination.

SM, the petitioner in Civil Case No. 001-1208 [sic] is a mall operator who stands to be affected directly by the position taken by the government officials sued namely the Secretary of Public Highways and the Building Officials of the local government units where it operates shopping malls. The OSG on the other hand acts on a matter of public interest and has taken a position adverse to that of the mall owners whom it sued. The construction of new and bigger malls has been announced, a matter which the Court can take judicial notice and the unsettled issue of whether mall operators should provide parking facilities, free of charge needs to be resolved.[15]

As to the third and most contentious issue, the RTC pronounced that:

The Building Code, which is the enabling law and the Implementing Rules and Regulations do not impose that parking spaces shall be provided by the mall owners free of charge. Absent such directive[,] Ayala Land, Robinsons, Shangri-la and SM [Prime] are under no obligation to provide them for free. Article 1158 of the Civil Code is clear:

"Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable and shall be regulated by the precepts of the law which establishes them; and as to what

has not been foreseen, by the provisions of this Book (1090).["]

x x x x

The provision on ratios of parking slots to several variables, like shopping floor area or customer area found in Rule XIX of the Implementing Rules and Regulations cannot be construed as a directive to provide free parking spaces, because the enabling law, the Building Code does not so provide. x x x.

To compel Ayala Land, Robinsons, Shangri-La and SM [Prime] to provide parking spaces for free can be considered as an unlawful taking of property right without just compensation.

Parking spaces in shopping malls are privately owned and for their use, the mall operators collect fees. The legal relationship could be either lease or deposit. In either case[,] the mall owners have the right to collect money which translates into income. Should parking spaces be made free, this right of mall owners shall be gone. This, without just compensation. Further, loss of effective control over their property will ensue which is frowned upon by law.

The presence of parking spaces can be viewed in another light. They can be looked at as necessary facilities to entice the public to increase patronage of their malls because without parking spaces, going to their malls will be inconvenient. These are[,] however[,] business considerations which mall operators will have to decide for themselves. They are not sufficient to justify a legal conclusion, as the OSG would like the Court to adopt that it is the obligation of the mall owners to provide parking spaces for free.[16]

The RTC then held that there was no sufficient evidence to justify any award for damages.

The RTC finally decreed in its 29 May 2002 Joint Decision in Civil Cases No. 00-1208 and No. 00-1210 that:

FOR THE REASONS GIVEN, the Court declares that Ayala Land[,] Inc., Robinsons Land Corporation, Shangri-la Plaza Corporation and SM Prime Holdings[,] Inc. are not obligated to provide parking spaces in their malls for the use of their patrons or public in general, free of charge.

All counterclaims in Civil Case No. 00-1210 are dismissed.

No pronouncement as to costs.[17]

CA-G.R. CV No. 76298 involved the separate appeals of the OSG[18] and respondent SM Prime[19] filed with the Court of Appeals. The sole assignment of error of the OSG in its Appellant's Brief was:

THE TRIAL COURT ERRED IN HOLDING THAT THE NATIONAL BUILDING CODE DID NOT INTEND MALL PARKING SPACES TO BE FREE OF CHARGE;][20]

while the four errors assigned by respondent SM Prime in its Appellant's Brief were:

I

THE TRIAL COURT ERRED IN FAILING TO DECLARE RULE XIX OF THE IMPLEMENTING RULES AS HAVING BEEN ENACTED ULTRA VIRES, HENCE, UNCONSTITUTIONAL AND VOID.

II

THE TRIAL COURT ERRED IN FAILING TO DECLARE THE IMPLEMENTING RULES INEFFECTIVE FOR NOT HAVING BEEN PUBLISHED AS REQUIRED BY LAW.

III

THE TRIAL COURT ERRED IN FAILING TO DISMISS THE OSG'S PETITION FOR DECLARATORY RELIEF AND INJUNCTION FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

IV

THE TRIAL COURT ERRED IN FAILING TO DECLARE THAT THE OSG HAS NO LEGAL CAPACITY TO SUE AND/OR THAT IT IS NOT A REAL PARTY-IN-INTEREST IN THE INSTANT CASE.[21]

Respondent Robinsons filed a Motion to Dismiss Appeal of the OSG on the ground that the lone issue raised therein involved a pure question of law, not reviewable by the Court of Appeals.

The Court of Appeals promulgated its Decision in CA-G.R. CV No. 76298 on 25 January 2007. The appellate court agreed with respondent Robinsons that the appeal of the OSG should suffer the fate of dismissal, since "the issue on whether or not the National Building Code and its implementing rules require shopping mall operators to provide parking facilities to the public for free" was evidently a question of law. Even so, since CA-G.R. CV No. 76298 also included the appeal of respondent SM Prime, which raised issues worthy of consideration, and in order to satisfy the demands of substantial justice, the Court of Appeals proceeded to rule on the merits of the case.

In its Decision, the Court of Appeals affirmed the capacity of the OSG to initiate Civil Case No. 00-1210 before the RTC as the legal representative of the government,[22] and as the one deputized by the Senate of the Republic of the Philippines through Senate Committee Report No. 225.

The Court of Appeals rejected the contention of respondent SM Prime that the OSG failed to exhaust administrative remedies. The appellate court explained that an administrative review is not a condition precedent to judicial relief where the question in dispute is purely a legal one, and nothing of an administrative nature is to be or can be done.

The Court of Appeals likewise refused to rule on the validity of the IRR of the National Building Code, as such issue was not among those the parties had agreed to be resolved by the RTC during the pre-trial conference for Civil Cases No. 00-1208 and No. 00-1210. Issues cannot be raised for the first time on appeal. Furthermore, the appellate court found that the controversy could be settled on other grounds, without touching on the issue of the validity of the IRR. It referred to the settled rule that courts should refrain from passing upon the constitutionality of a law or implementing rules, because of the principle that bars judicial inquiry into a constitutional question, unless the resolution thereof is indispensable to the determination of the case.

Lastly, the Court of Appeals declared that Section 803 of the National Building Code and Rule XIX of the IRR were clear and needed no further construction. Said provisions were only intended to control the occupancy or congestion of areas and structures. In the absence of any express and clear provision of law, respondents could not be obliged and expected to provide parking slots free of charge.

The fallo of the 25 January 2007 Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the instant appeals are DENIED. Accordingly, appealed Decision is hereby AFFIRMED in toto.[23]

In its Resolution issued on 14 March 2007, the Court of Appeals denied the Motion for Reconsideration of the OSG, finding that the grounds relied upon by the latter had already been carefully considered, evaluated, and passed upon by the appellate court, and there was no strong and cogent reason to modify much less reverse the assailed judgment.

The OSG now comes before this Court, via the instant Petition for Review, with a single assignment of error:

THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE RULING OF THE LOWER COURT THAT RESPONDENTS ARE NOT OBLIGED TO PROVIDE FREE PARKING SPACES TO THEIR CUSTOMERS OR THE PUBLIC.[24]

The OSG argues that respondents are mandated to provide free parking by Section 803 of the National Building Code and Rule XIX of the IRR.

According to Section 803 of the National Building Code:

SECTION 803. Percentage of Site Occupancy

(a) Maximum site occupancy shall be governed by the use, type of construction, and height of the building and the use, area, nature, and location of the site; and subject to the provisions of the local zoning requirements and in accordance with the rules and regulations promulgated by the Secretary.

In connection therewith, Rule XIX of the old IRR,[25] provides:

RULE XIX - PARKING AND LOADING SPACE REQUIREMENTS

Pursuant to Section 803 of the National Building Code (PD 1096) providing for maximum site occupancy, the following provisions on parking and loading space requirements shall be observed:

1. The parking space ratings listed below are minimum off-street requirements for specific uses/occupancies for buildings/structures:

1.1 The size of an average automobile parking slot shall be computed as 2.4 meters by 5.00 meters for perpendicular or diagonal parking, 2.00 meters by 6.00 meters for parallel parking. A truck or bus parking/loading slot shall be computed at a minimum of 3.60 meters by 12.00 meters. The parking slot shall be drawn to scale and the total number of which shall be indicated on the plans and specified whether or not parking accommodations, are attendant-managed. (See Section 2 for computation of parking requirements).

x x x x

1.7 Neighborhood shopping center - 1 slot/100 sq. m. of shopping floor area

The OSG avers that the aforequoted provisions should be read together with Section 102 of the National Building Code, which declares:

SECTION 102. Declaration of Policy

It is hereby declared to be the policy of the State to safeguard life, health, property, and public welfare, consistent with the principles of sound environmental management and control; and to this end, make it the purpose of this Code to provide for all buildings and structures, a framework of minimum standards and requirements to regulate and control their location, site, design, quality of materials, construction, use, occupancy, and maintenance.

The requirement of free-of-charge parking, the OSG argues, greatly contributes to the aim of safeguarding "life, health, property, and public welfare, consistent with the principles of sound environmental management and control." Adequate parking spaces would contribute greatly to alleviating traffic congestion when complemented by quick and easy access thereto because of free-charge parking. Moreover, the power to regulate and control the use, occupancy, and maintenance of buildings and structures carries with it the power to impose fees and, conversely, to control -- partially or, as in this case, absolutely -- the imposition of such fees.

The Court finds no merit in the present Petition.

The explicit directive of the afore-quoted statutory and regulatory provisions, garnered from a plain reading thereof, is that respondents, as operators/lessors of neighborhood shopping centers, should provide parking and loading spaces, in accordance with the minimum ratio of one slot per 100 square meters of shopping floor area. There is nothing therein pertaining to the collection (or non-collection) of parking fees by respondents. In fact, the

term "parking fees" cannot even be found at all in the entire National Building Code and its IRR.

Statutory construction has it that if a statute is clear and unequivocal, it must be given its literal meaning and applied without any attempt at interpretation.[26] Since Section 803 of the National Building Code and Rule XIX of its IRR do not mention parking fees, then simply, said provisions do not regulate the collection of the same. The RTC and the Court of Appeals correctly applied Article 1158 of the New Civil Code, which states:

Art. 1158. Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book. (Emphasis ours.)

Hence, in order to bring the matter of parking fees within the ambit of the National Building Code and its IRR, the OSG had to resort to specious and feeble argumentation, in which the Court cannot concur.

The OSG cannot rely on Section 102 of the National Building Code to expand the coverage of Section 803 of the same Code and Rule XIX of the IRR, so as to include the regulation of parking fees. The OSG limits its citation to the first part of Section 102 of the National Building Code declaring the policy of the State "to safeguard life, health, property, and public welfare, consistent with the principles of sound environmental management and control"; but totally ignores the second part of said provision, which reads, "and to this end, make it the purpose of this Code to provide for all buildings and structures, a framework of minimum standards and requirements to regulate and control their location, site, design, quality of materials, construction, use, occupancy, and maintenance." While the first part of Section 102 of the National Building Code lays down the State policy, it is the second part thereof that explains how said policy shall be carried out in the Code. Section 102 of the National Building Code is not an all-encompassing grant of regulatory power to the DPWH Secretary and local building officials in the name of life, health, property, and public welfare. On the contrary, it limits the regulatory power of said officials to ensuring that the minimum standards and requirements for all buildings and structures, as set forth in the National Building Code, are complied with.

Consequently, the OSG cannot claim that in addition to fixing the minimum requirements for parking spaces for buildings, Rule XIX of the IRR also mandates that such parking spaces be provided by building owners free of charge. If Rule XIX is not covered by the enabling law, then it cannot be added to or included in the implementing rules. The rule-making power of administrative agencies must be confined to details for regulating the mode or proceedings to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.[27]

From the RTC all the way to this Court, the OSG repeatedly referred to *Republic v. Gonzales*[28] and *City of Ozamis v. Lumapas*[29] to support its position that the State has the power to regulate parking spaces to promote the health, safety, and welfare of the public; and it is by virtue of said power that respondents may be required to provide free parking facilities. The OSG, though, failed to consider the substantial differences in the factual and legal backgrounds of these two cases from those of the Petition at bar.

In *Republic*, the Municipality of Malabon sought to eject the occupants of two parcels of land of the public domain to give way to a road-widening project. It was in this context that the Court pronounced:

Indiscriminate parking along F. Sevilla Boulevard and other main thoroughfares was prevalent; this, of course, caused the build up of traffic in the surrounding area to the great discomfort and inconvenience of the public who use the streets. Traffic congestion constitutes a threat to the health, welfare, safety and convenience of the people and it can only be substantially relieved by widening streets and providing adequate parking areas.

The Court, in *City of Ozamis*, declared that the City had been clothed with full power to control and regulate its streets for the purpose of promoting public health, safety and welfare. The City can regulate the time, place, and manner of parking in the streets and public places; and charge minimal fees for the street parking to cover the expenses for supervision, inspection and control, to ensure the smooth flow of traffic in the environs of the public market, and for the safety and convenience of the public.

Republic and City of Ozamis involved parking in the local streets; in contrast, the present case deals with privately owned parking facilities available for use by the general public. In *Republic and City of Ozamis*, the concerned local governments regulated parking pursuant to their power to control and regulate their streets; in the instant case, the DPWH Secretary and local building officials regulate parking pursuant to their authority to ensure compliance with the minimum standards and requirements under the National Building Code and its IRR. With the difference in subject matters and the bases for the regulatory powers being invoked, *Republic and City of Ozamis* do not constitute precedents for this case.

Indeed, *Republic and City of Ozamis* both contain pronouncements that weaken the position of the OSG in the case at bar. In *Republic*, the Court, instead of placing the burden on private persons to provide parking facilities to the general public, mentioned the trend in other jurisdictions wherein the municipal governments themselves took the initiative to make more parking spaces available so as to alleviate the traffic problems, thus:

Under the Land Transportation and Traffic Code, parking in designated areas along public streets or highways is allowed which clearly indicates that provision for parking spaces serves a useful purpose. In other jurisdictions where traffic is at least as voluminous as here, the provision by municipal governments of parking space is not limited to parking along public streets or highways. There has been a marked trend to build off-street parking facilities with the view to removing parked cars from the streets. While the provision of off-street parking facilities or carparks has been commonly undertaken by private enterprise, municipal governments have been constrained to put up carparks in response to public necessity where private enterprise had failed to keep up with the growing public demand. American courts have upheld the right of municipal governments to construct off-street parking facilities as clearly redounding to the public benefit.[30]

In *City of Ozamis*, the Court authorized the collection by the City of minimal fees for the parking of vehicles along the streets: so why then should the Court now preclude respondents from collecting from the public a fee for the use of the mall parking facilities? Undoubtedly, respondents also incur expenses in the maintenance and operation of the mall parking facilities, such as electric consumption, compensation for parking attendants and security, and upkeep of the physical structures.

It is not sufficient for the OSG to claim that "the power to regulate and control the use, occupancy, and maintenance of buildings and structures carries with it the power to impose fees and, conversely, to control, partially or, as in this case, absolutely, the imposition of such fees." Firstly, the fees within the power of regulatory agencies to impose are regulatory fees. It has been settled law in this jurisdiction that this broad and all-compassing governmental competence to restrict rights of liberty and property carries with it the undeniable power to collect a regulatory fee. It looks to the enactment of specific measures that govern the relations not only as between individuals but also as between private parties and the political society.[31] True, if the regulatory agencies have the power to impose regulatory fees, then conversely, they also have the power to remove the same. Even so, it is worthy to note that the present case does not involve the imposition by the DPWH Secretary and local building officials of regulatory fees upon respondents; but the collection by respondents of parking fees from persons who use the mall parking facilities. Secondly, assuming *arguendo* that the DPWH Secretary and local building officials do have regulatory powers over the collection of parking fees for the use of privately owned parking facilities, they cannot allow or prohibit such collection arbitrarily or whimsically. Whether allowing or prohibiting the collection of such parking fees, the action of the DPWH Secretary and local building officials must

pass the test of classic reasonableness and propriety of the measures or means in the promotion of the ends sought to be accomplished.[32]

Keeping in mind the aforementioned test of reasonableness and propriety of measures or means, the Court notes that Section 803 of the National Building Code falls under Chapter 8 on Light and Ventilation. Evidently, the Code deems it necessary to regulate site occupancy to ensure that there is proper lighting and ventilation in every building. Pursuant thereto, Rule XIX of the IRR requires that a building, depending on its specific use and/or floor area, should provide a minimum number of parking spaces. The Court, however, fails to see the connection between regulating site occupancy to ensure proper light and ventilation in every building vis-à-vis regulating the collection by building owners of fees for the use of their parking spaces. Contrary to the averment of the OSG, the former does not necessarily include or imply the latter. It totally escapes this Court how lighting and ventilation conditions at the malls could be affected by the fact that parking facilities thereat are free or paid for.

The OSG attempts to provide the missing link by arguing that:

Under Section 803 of the National Building Code, complimentary parking spaces are required to enhance light and ventilation, that is, to avoid traffic congestion in areas surrounding the building, which certainly affects the ventilation within the building itself, which otherwise, the annexed parking spaces would have served. Free-of-charge parking avoids traffic congestion by ensuring quick and easy access of legitimate shoppers to off-street parking spaces annexed to the malls, and thereby removing the vehicles of these legitimate shoppers off the busy streets near the commercial establishments.[33]

The Court is unconvinced. The National Building Code regulates buildings, by setting the minimum specifications and requirements for the same. It does not concern itself with traffic congestion in areas surrounding the building. It is already a stretch to say that the National Building Code and its IRR also intend to solve the problem of traffic congestion around the buildings so as to ensure that the said buildings shall have adequate lighting and ventilation. Moreover, the Court cannot simply assume, as the OSG has apparently done, that the traffic congestion in areas around the malls is due to the fact that respondents charge for their parking facilities, thus, forcing vehicle owners to just park in the streets. The Court notes that despite the fees charged by respondents, vehicle owners still use the mall parking facilities, which are even fully occupied on some days. Vehicle owners may be parking in the streets only because there are not enough parking spaces in the malls, and not because they are deterred by the parking fees charged by respondents. Free parking spaces at the malls may even have the opposite effect from what the OSG envisioned: more people may be encouraged by the free parking to bring their own vehicles, instead of taking public transport, to the malls; as a result, the parking facilities would become full sooner, leaving more vehicles without parking spaces in the malls and parked in the streets instead, causing even more traffic congestion.

Without using the term outright, the OSG is actually invoking police power to justify the regulation by the State, through the DPWH Secretary and local building officials, of privately owned parking facilities, including the collection by the owners/operators of such facilities of parking fees from the public for the use thereof. The Court finds, however, that in totally prohibiting respondents from collecting parking fees from the public for the use of the mall parking facilities, the State would be acting beyond the bounds of police power.

Police power is the power of promoting the public welfare by restraining and regulating the use of liberty and property. It is usually exerted in order to merely regulate the use and enjoyment of the property of the owner. The power to regulate, however, does not include the power to prohibit. A fortiori, the power to regulate does not include the power to confiscate. Police power does not involve the taking or confiscation of property, with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting peace and order and of promoting the general welfare; for instance, the confiscation of an

illegally possessed article, such as opium and firearms. [34]

When there is a taking or confiscation of private property for public use, the State is no longer exercising police power, but another of its inherent powers, namely, eminent domain. Eminent domain enables the State to forcibly acquire private lands intended for public use upon payment of just compensation to the owner.[35]

Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of only to impose a burden upon the owner of condemned property, without loss of title and possession.[36] It is a settled rule that neither acquisition of title nor total destruction of value is essential to taking. It is usually in cases where title remains with the private owner that inquiry should be made to determine whether the impairment of a property is merely regulated or amounts to a compensable taking. A regulation that deprives any person of the profitable use of his property constitutes a taking and entitles him to compensation, unless the invasion of rights is so slight as to permit the regulation to be justified under the police power. Similarly, a police regulation that unreasonably restricts the right to use business property for business purposes amounts to a taking of private property, and the owner may recover therefor.[37]

Although in the present case, title to and/or possession of the parking facilities remain/s with respondents, the prohibition against their collection of parking fees from the public, for the use of said facilities, is already tantamount to a taking or confiscation of their properties. The State is not only requiring that respondents devote a portion of the latter's properties for use as parking spaces, but is also mandating that they give the public access to said parking spaces for free. Such is already an excessive intrusion into the property rights of respondents. Not only are they being deprived of the right to use a portion of their properties as they wish, they are further prohibited from profiting from its use or even just recovering therefrom the expenses for the maintenance and operation of the required parking facilities.

The ruling of this Court in *City Government of Quezon City v. Judge Ericta*[38] is edifying. Therein, the City Government of Quezon City passed an ordinance obliging private cemeteries within its jurisdiction to set aside at least six percent of their total area for charity, that is, for burial grounds of deceased paupers. According to the Court, the ordinance in question was null and void, for it authorized the taking of private property without just compensation:

There is no reasonable relation between the setting aside of at least six (6) percent of the total area of all private cemeteries for charity burial grounds of deceased paupers and the promotion of health, morals, good order, safety, or the general welfare of the people. The ordinance is actually a taking without compensation of a certain area from a private cemetery to benefit paupers who are charges of the municipal corporation. Instead of building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries.

"The expropriation without compensation of a portion of private cemeteries is not covered by Section 12(t) of Republic Act 537, the Revised Charter of Quezon City which empowers the city council to prohibit the burial of the dead within the center of population of the city and to provide for their burial in a proper place subject to the provisions of general law regulating burial grounds and cemeteries. When the Local Government Code, Batas Pambansa Blg. 337 provides in Section 177(q) that a sangguniang panlungsod may "provide for the burial of the dead in such place and in such manner as prescribed by law or ordinance" it simply authorizes the city to provide its own city owned land or to buy or expropriate private properties to construct public cemeteries. This has been the law, and practise in the past. It continues to the present. Expropriation, however, requires payment of just compensation. The questioned ordinance is different from laws and regulations requiring owners of subdivisions to set aside certain areas for streets, parks, playgrounds, and other public facilities from the land they sell to buyers of subdivision lots. The necessities of public safety, health, and convenience are very clear from said requirements which are intended to insure the development of

communities with salubrious and wholesome environments. The beneficiaries of the regulation, in turn, are made to pay by the subdivision developer when individual lots are sold to homeowners.

In conclusion, the total prohibition against the collection by respondents of parking fees from persons who use the mall parking facilities has no basis in the National Building Code or its IRR. The State also cannot impose the same prohibition by generally invoking police power, since said prohibition amounts to a taking of respondents' property without payment of just compensation.

Given the foregoing, the Court finds no more need to address the issue persistently raised by respondent SM Prime concerning the unconstitutionality of Rule XIX of the IRR. In addition, the said issue was not among those that the parties, during the pre-trial conference for Civil Cases No. 12-08 and No. 00-1210, agreed to submit for resolution of the RTC. It is likewise axiomatic that the constitutionality of a law, a regulation, an ordinance or an act will not be resolved by courts if the controversy can be, as in this case it has been, settled on other grounds.[39]

WHEREFORE, the instant Petition for Review on Certiorari is hereby DENIED. The Decision dated 25 January 2007 and Resolution dated 14 March 2007 of the Court of Appeals in CA-G.R. CV No. 76298, affirming in toto the Joint Decision dated 29 May 2002 of the Regional Trial Court of Makati City, Branch 138, in Civil Cases No. 00-1208 and No. 00-1210 are hereby AFFIRMED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 26-43.

[2] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, concurring; rollo, pp. 45-58.

[3] Penned by Judge Sixto Marella, Jr.; rollo, pp. 250-260.

[4] Rollo, pp. 59-60.

[5] Id. at 410-431.

[6] Id. at 420-421.

[7] Id. at 421-422.

[8] Id. at 64-89.

[9] Id. at 86-87.

[10] Id. at 90-95.

[11] Id. at 93-94.

[12] Penned by Judge Sixto Marella, Jr., id., at 61-63.

[13] Id. at 62-63.

[14] Section 1 of Presidential Decree No. 478 and Section 35, Chapter 12, Title III of the Administrative Code of 1987, enumerate the powers and functions of the OSG.

[15] Rollo, p. 252.

[16] Id. at 258-260.

[17] Id. at 260.

[18] Id. at 263-272.

[19] Id. at 461-516.

[20] Id. at 263.

[21] Id. at 462.

[22] Citing Section 35, Chapter XII, Title III, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, which provide:

SECTION 35. Powers and Functions. - The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

x x x x

(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court.

x x x x

(11) Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require; x x x.

[23] Rollo, p. 57.

[24] Id. at 33.

[25] A Revised IRR took effect on 30 April 2005. Rule XIX of the old IRR was reproduced in Table VII.4 (Minimum Required Off-Street (Off-RROW)-cum-On-Site Parking Slot, Parking Area and Loading/Unloading Space Requirements by Allowed Use or Occupancy) of the Revised IRR.

[26] Soria v. Desierto, 490 Phil. 749, 754 (2005).

[27] Land Bank of the Philippines v. Court of Appeals, 327 Phil. 1048, 1052 (1996).

[28] G.R. No. 45338-39, 31 July 1991, 199 SCRA 788, 793.

[29] 160 Phil. 33 (1975).

[30] Republic v. Gonzales, supra note 28 at 793.

[31] Republic v. Philippine Rabbit Bus Lines, 143 Phil. 158, 163 (1970).

[32] Acebedo Optical Company, Inc. v. Court of Appeals, 385 Phil. 956, 969 (2000).

[33] Rollo, pp. 36-37.

[34] See *City Government of Quezon City v. Judge Ericta*, 207 Phil. 648, 654 (1983).

[35] *Acuña v. Arroyo*, G.R. No. 79310, 14 July 1989, 175 SCRA 343, 370.

[36] *Republic of the Philippines v. Philippine Long Distance Telephone Company*, 136 Phil. 20, 29 (1969).

[37] See J. Romero's Dissenting Opinion in *Telecommunications and Broadcast Attorneys of the Philippines v. Commission on Elections*, 352 Phil. 153, 191 (1998). See also *People v. Fajardo*, 104 Phil. 443, 447-448 (1958).

[38] *Supra* note 34 at 656-657.

[39] *Ty v. Trampe*, G.R. No. 117577, 1 December 1995, 250 SCRA 500, 520.

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