

EVERETT STEAMSHIP CORPORATION, PLAINTIFF AND APPELLEE, VS. MUNICIPALITY OF MEDINA, ETC., ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 21191. April 30, 1966

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On June 9, 1958, the Municipal Council of Medina, Misamis Oriental, enacted Ordinance No. 3 imposing a berthing fee to be assessed, among others, against a vessel for mooring or berthing at a wharf of the municipality and making the owner, agent, operator or master of the vessel liable for such charge.

Pursuant to the provisions of said ordinance, the Municipality of Medina assessed against Everett Steamship Corporation the amount of P2,136.45 as berthing fee for having two of its vessels anchored alongside the wharf of said municipality for the discharge of its cargo which was paid under protest by said corporation. Later, the corporation asked for the refund of the berthing fee paid under protest on the ground that the ordinance under which the same was collected was null and void being ultra vires or beyond the power of the municipal council to enact, and when the refund was denied, the corporation commenced the present action against the municipality before the Court of First Instance of Manila to recover the amount paid.

Defendant denied plaintiff's claim that the ordinance in question is ultra vires reasoning that under the principle of ejusdem generis the phrase "all other kinds of customs fees and dues" must be limited to the class of words preceding the same, namely, "customs dues, registration, wharfage, and tonnage" which partake of the nature of import or export taxes and as such they exclude berthing fees which are chargeable against the operators of vessels.

After hearing, the court a quo declared the ordinance null and void sentencing defendant to pay plaintiff the amount of P2,136.45 which it illegally collected, without pronouncement as to costs.

Defendant interposed the present appeal.

It is a well-known principle that the power to tax and license as a means of raising revenue is not inherent in a municipal corporation and so in order that it may be exercised the power must be expressly conferred in plain terms or it must arise by necessary implication from the powers expressly granted. A grant of power of this nature is as a rule strictly construed against its exercise and in favor of the public especially where the purpose is to raise revenue (McQuillin, *Municipal Corporations*, Vol. III, Section 1987, p. 2193). Hence, the power when granted is to be construed in strictissimi juris. And in *Icard vs. City Council of Baguio*, 48 Phil., 870; 48 Off. Gaz., Supp. 11, p. 320, the following was held:

"It is settled that a municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality cannot assume it. And the power when granted is to be construed strictissimi juris. Any doubt or ambiguity arising

must be resolved against the municipality. Inferences, implications, deductions—all these—have no place in the interpretation of the taxing power of a municipal corporation."

The question that now arises is: Is there any legal provision granting the Municipality of Medina a clear power to impose a tax or a license as a means of raising revenue that may be invoked by it as a justification for the enactment of the ordinance under consideration?

The answer must be in the negative not only because there is no such clear grant of power but that the existing laws on the matter apparently deny such power to the Municipality of Medina. We refer to Commonwealth Act No. 472 and to the Local Autonomy Act embodied in Republic Act No. 2264.

Thus, Section 3 of Commonwealth Act No. A-72 provides that "It shall be beyond the power of any municipal council x x x to impose x x x customs duties, registration, wharfage, tonnage, and all other kinds of customs fees, charges and dues." And a similar provision is embodied in the Local Autonomy Act as may be seen from Section 2 thereof which provides that no municipality may levy any of the following: "customs duties, registration, wharfage on wharves owned by the national government, tonnage, and all other kinds of customs fees, charges and dues."

It is true that the legislature has not expressly included berthing fees in either of the legal provisions abovequoted, but under the doctrine of ejusdem generis it may be said to fall under the general terms "all other kinds of customs fees, charges, and dues." Indeed, under the same ordinance in question, berthing fee is defined as "the amount assessed against a vessel for mooring or berthing at a pier or wharf of the municipality." Since this fee is charged precisely for the use that a vessel may make of the wharf of the Municipality of Mvdina, the same may partake of the nature of wharfage fee or tax which is denied to a municipality by both Commonwealth Act 472 and the Local Autonomy Act. As already stated, a municipal corporation does not have any inherent power to impose a tax or license as a means of raising revenue and if such power is granted it should be construed in strictissimi juris. Under such principle there is no doubt that the Municipality of Medina has acted bejond its power in enacting the ordinance in question.

Parenthetically, we may add that this Court has already held in a similar case that it is beyond the power of a municipal council to impose a wharfage or berthing fee unless there is express authority to do so (Raymundo B. Tan, et al. vs. Municipality of Pagbilao, et al., 117 Phil. 895).

Wherefore, the decision appealed from is affirmed. No costs.

Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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