

**THE COMPANY &#8220;BIGHANI,&#8221; EUGENIO TANSIOCO,  
ERIBERTO ESTRELLA, JUAN F. BARTOLOME, NICANOR RAMIREZ,  
CIRIACO DE JESUS, INOCENCIO ESPIRITU, JUAN GOMEZ, FABIAN  
ALONALON, GABRIEL BADAGU...**

*G.R. No. 28457. October 15, 1928*

Ponente: OSTRAND, J.

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**OSTRAND, J.:**

This is in effect a petition for a writ of mandamus to compel the defendants to issue a permit or license for the operation of a cockpit constructed by the plaintiffs in the sitio of Galas, municipality of Caloocan.

The plaintiff company "Bighani" is a civil partnership organized on May 8, 1926, in accordance with the provisions of the Civil Code, with a capital stock of P20,000 divided into 4,000 equal shares. The other plaintiffs are shareholders and members of the board of directors of the partnership, Eugenio Tansioco being the president. The defendants Pablo Pablo and Bias Bernardino are the president and vice-president respectively of the municipality of Caloocan, Province of Rizal, and the other defendants are the municipal council of Caloocan and the municipality of Caloocan.

Previously to the organization of the partnership, the plaintiff Eugenio Tansioco wrote the following letter to the municipal president of Caloocan:

"GALAS, 24 de abril de 1926

"Sr. PABLO PABLO

"Presidente Municipal

"Caloocan, Rizal, I. F.

"SEÑOR: El que suscribe, tiene el honor de informar a Yd. que el tiene la intencidn de abrir una Gallera en el sitio o barrio denominado Galas dentro de la jurisdiccion de este municipio, y con arreglo a dicha intencion solicita a Su Señoria y al Hon. Concejo Municipal de Caloocan el permiso necesario para la construccion de la mencionada gallera bajo las dispoeiciones de las Ordenanzas vigentes sobre la materia.

"Muy respetuosamente,

"(Fdo.) EUGENIO TANSIOCO

"Solicitante

"Galas, Caloocan, Rizal"

The letter was submitted to the municipal council on May 6, 1926, at the first meeting of said council after the receipt of the letter. Upon the reading of the letter the council, by resolution, authorized the municipal president to appoint a special committee of three of its members to ascertain if the place in which Tansioco proposed to erect a building was in conformity with the conditions prescribed by the municipal ordinances. The plaintiff Tansioco and other members of the partnership were present at the session of the municipal council when the matter was

discussed.

The special committee was duly appointed, and at the next meeting of the municipal council, on May 14, 1926, its report, which reads as follows, was submitted:

"That on or about March 10th, 1925, Municipal President Pablo Pablo issued a permit to Mr. Juan Domingo, of San Juan del Monte, Rizal, to establish, maintain, operate and open for public use a cockpit in the sitio of Galas-Santol within the jurisdiction of this municipality near the Tuberculosis Sanatorium. But the Philippine Islands Anti-tuberculosis Society through its Executive Secretary in a letter addressed to Mr. Juan Domingo dated May 6, 1926, and indorsed to this committee for corresponding action has expressed its objection to the establishment of a cockpit near the said sanatorium alleging in support of said objection reasons so strong and so convincing that this committee was constrained to inspect the said barrio of Galas-Santol for the purpose of inspecting the topographic conditions of said locality wherein it is proposed to erect the cockpit of Mr. Juan Domingo and to ascertain for itself whether or not the objection presented by the Philippine Islands Anti-tuberculosis Society is reasonable. As a result of said ocular inspection it was found that as a matter of fact the place where it is sought to establish the cockpit of Mr. Juan Domingo is near the Tuberculosis Sanatorium, being only 200 meters away; so that if this cockpit should be constructed and be opened for the use of the public in general, the noise and shouting which result during the days that said cockpit is in operation will greatly disturb the tranquility of the patients staying in said Tuberculosis Sanatorium.

"It likewise results that on or about May 6th, 1926, a petition was tiled by Mr. Eugenio Tansioco asking permission to establish, maintain, and open to the public in general a cockpit in the same sitio of Galas—Santol of this municipality, which petition was responsible for the creation of this Committee by the Honorable Municipal Council for the purpose of making report and recommendation in relation to said petition.

"From the study and investigation made by this committee it likewise results that the barrio of Galas-Santol of this municipality covers so much area that within it may be established two cockpits in accordance with the provisions of the municipal ordinance now in force. For this reason this committee according to the request contained in the letter forwarded by the Philippine Islands Anti-tuberculosis Society interviewed the authorities of said association for the purpose of learning through first-hand information the inconveniences and disturbances to which the establishment of cockpits near the Tuberculosis Sanatorium might give rise. The Assistant Director of the Philippine Islands Anti-tuberculosis Society speaking on this matter informed the committee that the establishment of the cockpit near the sanatorium would disturb the peace, would be prejudicial to the tranquility and impair the speedy cure of patients in said sanatorium for the reason that the great majority of tuberculosis patients likewise suffer from nervous diseases, neuralgia, or neurasthenia as a result of which they suffer from over-excitement produced by noise or outcry. The moment they suffer an attack of said diseases their condition as consumptives becomes worse for the reason that in the treatment of this disease, complete repose is absolutely necessary.

"Wherefore this special committee considering all the facts and circumstances brought to its attention on time begs to make the following recommendations to the Honorable Municipal Council:

"1. That for the purpose of safeguarding the peace, welfare and the treatment of patients confined in the Philippine Islands Anti-tuberculosis Society established in the barrio of Galas-Santol, of this municipality, there be adopted a municipal ordinance amendatory to article 4 of Ordinance No. 8, series of 1912 and its amendments, prohibiting the establishment of cockpits within a radius of 1,500 meters from the Tuberculosis Sanatorium in Galas-Santol, of this municipality.

"2. That after the enactment of said amendatory ordinance the municipal president issue a permit to all the petitioners seeking authority to construct cockpit; provided, however, that previous to the issuance of said permit, said petition be referred to this committee to the end that the petitioner or petitioners may be notified by this committee and instructed to indicate the place or places where it is proposed to erect such edifice for

use as a cockpit after which this committee shall inform the municipal president as to the propriety of issuing the permit asked for.

"3. That Mr. Juan Domingo, holder of a permit dated March 10th, 1926, to establish a cockpit in the sitio of Galas-Santol, of this municipality be advised that his cockpit should be established and constructed at a distance of 1,500 meters from the Tuberculosis Sanatorium in Galas-Santol.

"4. That Eugenio Tansioco, another petitioner seeking permission to construct a cockpit, be likewise notified that the building which he desires to construct in the barrio of Galas-Santol, of this municipality be erected at a distance of 1,000 meters from the place which Mr. Juan Domingo may designate as the place which he shall use as the site for the erection of his cockpit."

The municipal council approved the foregoing report and resolved to adopt an ordinance in accordance with the recommendations contained in said report. A proyecto for such an ordinance was immediately presented by Patricio Golauran, a member of the council, and upon the recommendation of the committee on ordinances, the proyecto was adopted and passed as Ordinance No. 15, series of 1926. It reads as follows:

"[ORDENANZA No. 15]

"ORDENANZA REFORMANDO EL ARTICULO 3 DE LA ORDENANZA NO. 8, SERIE DE 1912, Y QUE PROVEE A OTROS FINES:

"Ordenase por el Concejo Municipal de Caloocan, Rizal, que:

"ARTICULO 1. Por la presente se reforma el articulo 3 de la Ordenanza No. 8, serie de 1912, de tal modo que el mismo se lea como sigue:

" 'ART. 3. No habra mas que una sola gallera dentro del perimetro que comprende las calles A. Mabini (desde Maypajo pasando por Sañgandaan, hasta los divisorios oeste y norte entre Malabon y Caloocan) Gral. San Miguel, A. Samson y A. Bonifacio, cuyo edificio debera estar levantado a una distancia no menor de mil metros del Gobierno Municipal, en todos sus lados, y tantas cuantas otras galleras fuera de dicho perimetro, sierepre y cuando que las mismas guarden entre si una distancia no menor de mil quinientos metros de otra gallera mas proxima, debidamente explotada, o de cualquier edificio del Gobierno, destinado para Escuelas Publicas, Hospitales u otras Instituciones o Fundaciones creadas y existentes para fines de Beneficencia: Entendiendose, Que nada de lo dispuesto en este articulo debera entenderse como de caracter retroactivo en orden a cualquiera gallera debidamente establecida al tiempo de la vigencia de la presente.'

"ART. 2. Todas las ordenanzas, resoluciones o reglamentos que esten en pugna con esta Ordenanza quedan por la presente derogados.

"ART. 3. Exigiendo el bienestar publico la pronta e inmediata vigencia de esta Ordenanza, la misma entrara en vigor en cuanto sea aprobada.

"Aprobada por unanimidad, hoy mayo 14, 1926."

On May 20, 1926, the municipal president made the following answer to Tansioco's communication of April 24th:

"SEÑOR: Vista su solicitud, de fecha 24 de abril de 1926, pidiendo se le permita construir un edificio destinado para gallera, en el sitio de Galas, de la jurisdiccion de este municipio, y no encontrando esta oficina motivos que se opongan a su pretension, por la presente se le concede el permiso solicitado, y, una vez certificado por las autoridades correspondientes de que vuestro edificio esta construido de acuerdo con las disposiciones de nuestras Ordenanzas y Reglamentos sobre la materia y reune las condiciones exigidas por los mismos, se le expedira el permiso consiguiente para su apertura y explotacion, previo pago de los impuestos municipales.

"Para los efectos de la distancia prescrita por el articulo 3 de la Ordenanza No. 8, serie de 1912, tal como fue

enmendado por el articulo 1 de la Ordenanza No. 15, serie de 1926, se le llama su atencion al hecho de que esta oficina ha expedido otro permiso a favor del Sr. J. Domingo, de San Juan, Rizal, para que pueda levantar un edificio tambien destinado para Gallera en el mismo sitio mencionado en su solicitud.

"Muy respetuosamente,

"(Fdo.) P. PABLO

"Presidente Municipal"

Two days later, Tansioco made a formal application for a building permit for the construction of a cockpit of strong materials and covering an area of 1,500 square meters in the sitio of Galas. The municipal secretary referred the application to the department of police for investigation and recommendation. The chief of police referred the matter to the division of sanitation of Caloocan with the information that he saw no reason to oppose the application. The president of sanitation thereupon returned the application to the municipal president with the recommendation that it be approved. The plaintiffs maintain that the recommendations of the chief of police and the president of sanitation were made upon personal investigation made by them at the place where the cockpit was to be constructed, but we think the weight of the evidence shows that they were based merely upon information furnished by Tansioco.

Tansioco's application having been returned to the municipal president, a building permit was issued to Tansioco in the following terms:

"Por la presente se concede permiso a Eugenio Tansioco para construir o edificar un edificio de materiales fuertes en el lugar arriba indicado, previo pago de la suma de P10 en concepto de imposicion municipal."

On the same day, May 22, 1926, Tansioco paid the sum of P10 to the provincial treasurer of Rizal, the treasurer's receipt therefor stating that the sum was for the construction of "one house of strong mat. 1,500 sq. m."

The plaintiffs thereupon began clearing the site where the cockpit was to be built and a considerable portion of the construction of the building was carried out before the 15th of June. On that date the municipal president wrote the plaintiff a letter in which he stated that he had been informed by the police department that the cockpit in question was not being built in the site indicated by Tansioco before the granting of the building permit, but that it is being constructed within a distance of 1,500 meters from the hospital of the Philippine Islands Antituberculosis Society in Santol in violation of Ordinance No. 8, series of 1912, as amended by Ordinance No. 15, series of 1926, and that, therefore, it would be necessary to erect the building in some other place "if he (Tansioco) still desired to use the building for cock-fighting." There is some dispute as to whether this letter reached Tansioco, but the matter is not of sufficient importance to justify a discussion of the evidence relating thereto.

On June 18, three days later, a complaint was filed in the justice of the peace court by the chief of police against Tansioco and others for the violation of the ordinances above-mentioned by placing the cockpit too close to the Tuberculosis Hospital, and a warrant for Tansioco's arrest was issued, but he was released upon giving a bond of P150. As far as the record shows nothing further was done in that case, and the plaintiffs herein continued the construction of the building. On June 30, 1926, two shareholders in the "Bighani" Company, Bangco and Rivera, brought an action in the Court of First Instance of Manila and, under the pretense of protecting their own interests, prayed for an injunction, a receivership, and a dissolution of the association on the ground that the cockpit was being constructed in violation of the municipal ordinances. A preliminary injunction was issued, but in certiorari proceedings brought by the defendants (G. R. No. 26280),<sup>[1]</sup> the Supreme Court by a four to seven vote set aside the preliminary injunction and prohibited the appointment of a receiver, and the case died a natural death.

Upon the completion of the building and without having obtained a license or permit for carrying on the business

of cock-fighting therein, Tansioco, on July 14, 1926, paid to the Provincial Treasurer of Rizal the sum of P2,050 as privilege tax for operating such cockpit during the quarter comprising the months of July, August, and September, 1926, and on August 5, he filed with the provincial treasurer a bond in the sum of P8,200 as security for whatever amount of money might become due the municipality of Caloocan by reason of the issuance of a license to establish the cockpit in question. In the bond it is recited that on May 22, 1926, "the municipality of Caloocan, Province of Rizal, conceded to Eugenio Tansioco the privileges of establishing and exploiting a cockpit in the sitio of Galas."

On September 2, 1926, the plaintiffs herein, after fruitless efforts to obtain an amendment of Ordinance No. 15, brought an action in the Court of First Instance against the herein defendants alleging that they had the required permission to open and conduct the business of cock-fighting in the building in question; that they had complied with all the provisions of law in regard thereto; that the defendants were acting in connivance with the owners of other cockpits established in Caloocan and had threatened, and were threatening, to prevent said plaintiffs from conducting said business and to close the cockpit and to arrest any person found therein, which would cause the plaintiffs irreparable injury. In conformity with the prayer of the complaint, the Court of First Instance issued a preliminary injunction restraining the defendants from interfering in any way with the opening and operation of the cockpit, but shortly afterwards, on motion of the defendants, another order was issued restraining the plaintiffs from opening and operating the cockpit pending further orders of the court. The plaintiffs thereupon moved to definitely dismiss the case without costs and to discharge the injunction issued in their behalf, and in conformity with their motion, the case was definitely dismissed on September 10, 1926. The case was numbered civil case No. 30377 of the Court of First Instance of Manila.

Four days before case No. 30377 was dismissed, the municipal president of Caloocan received a letter from the attorneys of the plaintiffs, stating that their clients did not believe that they needed any other permission than that which had already been given to them to operate the cockpit in question, but nevertheless requesting that such license or permit as in the opinion of the president might be necessary, be issued. In answer to this letter the president stated that the cockpit was within the prohibition contained in Ordinance No. 15 and that for that reason the permit could not be granted.

The present action was instituted on September 21, 1926, the complaint containing substantially the same allegations as those set forth in the complaint in case No. 30377, and in conformity with the plaintiffs' prayer, Judge George R. Harvey issued a preliminary mandatory injunction ordering the defendants to issue to the plaintiffs such permit as might be required to enable them to operate the cockpit in question, said permit to be held subject to the further orders of the court. His Honor also enjoined the defendants from interfering with the management of the plaintiffs' cockpit, or the operation thereof, pending orders of the court. The defendants thereupon filed a petition for a writ of certiorari in this court (G. R. No. 26641 ) [1] on the ground that Judge Harvey had exceeded his jurisdiction in issuing the mandatory injunction. By resolution dated November 8, 1926, the court denied the petition saying:.

"This court having heard the oral arguments of counsel, and considered their respective briefs, It is ordered that the petition for a writ of certiorari shall be, and is hereby, denied, pending a final decision by the lower court on the merits, but without prejudice to the legal rights of either party, with the suggestion that until such time as such decision is rendered, that the lower court will not issue an order to the municipal council or the president of Caloocan to specifically compel the actual issuance of the license in question."

The case had been bitterly fought, the record is very voluminous, and much has been said which has little or no bearing upon the matters at issue and which need not here be considered. We shall simply confine ourselves to a brief discussion of the, in our opinion, essential and determinant points.

Section 2243 of the Administrative Code provides, among other things, that: "The municipal council shall have authority to exercise the following discretionary powers:

\* \* \* \* \*

"(i) To regulate cockpits, cock-fighting, and the keeping or training of fighting cocks, or prohibit either."

\* \* \* \* \*

It may be noted that the provision quoted was taken from paragraph (j) of section 40 of the Municipal Code of 1901 with slight modifications.

On January 21, 1906, the municipal council of Caloocan passed a "Reglamento de Galleras" of which articles 51 and 52 read as follows:

"ART. 51. Toda persona que solicitare licencia para establecer gallera o galleras dentro de la jurisdiccion de este municipio, estara sujeta en su estricto sentido al articulo anterior y debera acompanar en la solicitud el piano o croquis del edificio que se desee levantar con expresion detallada de sus dimensiones y de los materiales de que se construira el edificio y el sitio donde se ha de levantar.

"ART. 52. Todos los edificios que se construyan con destino a juego de gallos o galleras que quepan mas de mil personas, deberan tener harigues de madera de primer grupo de 10 por 10 pulgadas de grosor una altura bien calculada bajo la aprobacion del Ingeniero del Distrito, quien a solicitud del Presidente Municipal, examinara el piano exhibido por el solicitante de la construccion o por un practico en la materia nombrado por dicho Presidente Municipal, con la aprobacion del Concejo, y la construction sera tambien inspeccionada tal como se dispone en este artfculo por si ofrezca peligro para el publico."

Municipal Ordinance No. 8, series of 1912, contains some additional provisions but did not repeal the articles above quoted. Article 4 of that ordinance reads as follows:

"El Presidente Municipal queda por la presente facultado para expedir permisos para el establecimiento de galleras dentro de la jurisdiccion de este municipio con arreglo a las disposiciones contenidas en esta ordenanza por periodo no mayor de cuatro años."

It will be observed that the article is not mandatory in its terms; the president is merely authorized to issue a permit for cock-fighting, and it would seem that, in the absence of a special order from the municipal council, he is not bound to issue such permit, but may exercise his sound discretion within the limits permitted by the municipal board. It must also be taken into consideration that cock-fighting may often, to a considerable extent, affect public order and the moral health of the community and is, therefore, subject to more than the ordinary police supervision. In these circumstances the courts would hardly be justified in interfering by writs of mandamus with the exercise of the discretion of the municipal councils and the municipal presidents in regard to the operation of cockpits, except perhaps in cases of gross abuse.

In the present case it is obvious that the plaintiffs cannot legally operate their cockpit without the corresponding license or permit; the permit to erect the cockpit is not a license or permit to conduct cock-fights. Under the view most favorable to the plaintiffs, the defendants cannot, as we have seen, be compelled by mandamus to issue the desired license unless it is shown that they are guilty of gross abuse of discretion. Now, what abuse of discretion have we here. The plaintiffs allege that there is a conspiracy among the defendants and certain for other cockpit owners to create a monopoly on cock-fighting in favor of the latter, but that allegation has not been satisfactorily proven. It is quite possible that influence has been brought to bear on members of the municipal council, and there is reason to suspect that there has been some discrimination in favor of the owners of the older cockpits within the limits of the municipality, but that is not sufficient to justify the conclusion that such discrimination was the sole

motive for the refusal of the president to issue a license for the operation of the plaintiffs' cockpit. On the contrary, there are several other and perfectly valid grounds upon which the denial of the application for the license might have been based. It may, for instance, be pointed out that the record shows that the plaintiffs, in constructing the cockpit, did not fully comply with the provisions of articles 51 and 52 of the "Reglamento de Galleras" of 1906.

Another circumstance, in itself sufficient to justify the refusal to issue the license, is the close proximity of the cockpit to the Santol Tuberculosis Sanatorium. At the distance of only 610 meters the noise from the cockpit, when in operation, could hardly fail to annoy and disturb the patients in the sanatorium and to retard their recovery, and it is evident that Ordinance No. 15, *supra*, was adopted with a view to the prevention of such conditions. It is true that the language of the ordinance is somewhat obscure, but ambiguities are not uncommon in municipal ordinances, and it is often necessary to construe them in accordance with their evident intent without regard to lack of nicety of expression and punctuation. The intent of this ordinance is clear, and we do not think that the court below erred in construing it in accordance therewith.

Under their ninth assignment of error the plaintiffs argue that the decision of this court in case G. R. No. 26280 has the value of *stare decisis* in the present controversy. There is no merit in this contention. That case was a petition for a writ of certiorari and the decision therein turned on the point that the action instituted by Bangco and Rivera in the Court of First Instance of Manila was not brought in good faith. It has little or nothing to do with this case.

The appealed judgment is in accordance with the law and the facts and is hereby affirmed with the costs against the appellants. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

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[1] Sociedad "Bighani" vs. Diaz, promulgated August 31, 1926, not reported.

[1] Decided by resolution of November 8, 1926.

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