

F. BASTIDA, PETITIONER, VS. THE CITY COUNCIL OF BAGUIO AND E. J. HALSEMA, MAYOR AND ENGINEER OF THE CITY OF BAGUIO, RESPONDENTS.*G.R. No. 31801. September 19, 1929*

Ponente: STREET, J.

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This is an original application presented in this court by the petitioner F. Bastida against the City Council, Mayor and City Engineer of the City of Baguio, by which the petitioner seeks to compel the respondent, the City Engineer of the City of Baguio, to issue a building permit to the petitioner and to compel the City Council and Mayor of the same city, or either of them, to issue a license to the petitioner to operate a cinematographic, or moving picture, establishment in the City of Baguio. The cause is now before us for resolution upon demurrer submitted in behalf of the respondents.

It appears that the petitioner is the owner of lots 8 and 9, business section A, in the City of Baguio, together with the wooden building erected thereon with a height of one story. About the end of February, 1929, the petitioner became desirous of using said building for a skating rink, and he applied to the respondent E. J. Halsema, Mayor and City Engineer of the City of Baguio, for a permit to this effect. This application was denied on the ground that the location of the building was such that, being in the commercial zone of the city, it should be two stories high, if intended to be used as a skating rink. The petitioner thereupon determined to make alterations in the building by adding, at an estimated cost of P65,000, two new stories, the first to be used for a skating rink and the two others for a cinematograph and a boxing stadium. It is alleged in the petition that, at the time this proceeding was begun, the alterations referred to had been begun, and that the amount of P45,000 had already been expended thereon. While the alterations mentioned were in course of progress the petitioner obtained, so he asserts, from the representative of a cinematographic concern in the City of Manila, an advantageous offer for the use of the second floor of the petitioner's building, for the purpose of the exhibition of cinematographic films, and the petitioner contemplated accepting said offer, as he in fact would have done except for the matters hereinafter mentioned.

The petitioner alleges that shortly after publicity had been given to his design of using the second floor of the altered building for cinematographic representations, the City Council of the City of Baguio adopted an ordinance, No. 332, amending the city ordinances relating to buildings in the City of Baguio to the following effect:

"Provided, further, That hereafter no building intended for theater, cinematograph projections, or circus, either wholly or partially, shall be permitted to be constructed or be occupied within the City of Baguio unless the same is constructed of reinforced concrete and steel throughout, of such height, thickness and reinforcing as the City Engineer or the Director of Public Works, or both, may approve.

"Provided finally, That such building or buildings must be provided with a sufficient number of exit doors but not less than six for the use of the public patronizing same in order to assure safety in case of conflagrations or other accidents, such as fire, panic, earthquake, etc.

"SEC. II. This Ordinance shall not affect permits already granted at the time of its passage."

It further appears that on May 6, 1929, the said City Council passed another ordinance, numbered 334, of which sections 1 and 2 read as follows:

"SECTION I. No building shall be constructed within two meters from the adjacent lot lines, unless a concrete fire wall approved by the City Engineer is constructed between the building and the adjoining property and in which case no window openings in the wall should be provided.

"SEC. II. No building already existing on or before the passage of this Ordinance shall be rebuilt or reconstructed, except in accordance with the provisions hereof."

On June 15, 1929, the petitioner, so it is alleged, made application to the respondent city engineer for a building permit to add two floors to the aforesaid building, in accordance with the plans submitted with said application; and on June 17, 1929, the petitioner further applied to the respondent Mayor for a license to conduct in said building a cinematograph and boxing stadium as soon as the alterations on the building should be finished. In reply to his application for a building permit the respondent City Engineer of Baguio, on June 18, 1929, returned to the petitioner the plans for the additions to his building with the information that the same could not be approved, inasmuch as the plans were not in conformity with the provisions of the aforesaid ordinances Nos. 332 and 334. The petition contains no direct statement to the effect that his application for license to operate a cinematograph and boxing stadium had been denied, but the refusal of the Mayor to issue such license is inferable from other allegations in the petition; and besides, inasmuch as the time for the use of the license had not yet arrived, the point may perhaps be considered academic.

The vital question in this case is whether that portion of Ordinance No. 332 is valid, which requires that buildings designed, either wholly or partially, for theatrical performances, cinematographic projections, or circuses, shall be built of reinforced concrete and steel throughout and of such height, thickness, and reinforcing as the City Engineer or Director of Public Works, or both, may approve. Other questions that might possibly be raised with respect to the proposed alterations intended by the petitioner in the building mentioned, as, for instance, whether the conditions are such as to require a concrete fire wall to separate the building from contiguous structures, and whether his plans provide for the requisite number of exits, are not so presented that they could be decided in this case upon demurrer, for the plans are not before us. But the other point, that is, as to the necessity of the use of reinforced concrete and steel, is presented; and as this point suffices to determine the case, we direct our attention to this point only.

It is alleged in the petition that there is at present but one cinematograph establishment operating in the City of Baguio and that this is conducted by one Murphy in a wooden building located on the Session Road. As Ordinance No. 332 exempts establishments operating under existing permits, it results that, under the ordinance, Murphy's establishment can continue to operate, at least during the life of the existing permit. This circumstance is used by the petitioner as the basis of the allegation that Ordinance No. 332 is partial and discriminatory. The ordinance mentioned (No. 332) is also attacked as unreasonable, oppressive, and violative of private rights and of the freedom of trade.

Upon examining the provisions of law defining the powers of the City Council of Baguio, we find that said council is, among other things, authorized by ordinance to make suitable provision to insure the public safety from conflagrations, storms and other public calamities; and it is further generally authorized to make such ordinances and regulations not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred upon the council. (Adm. Code, sec. 2553, subsecs. k and II.)

The Ordinance No. 334, of the City of Baguio, expressly recites that it is made in the exercise of the power

conferred upon the council to insure the public safety from conflagrations ; and although there is no preamble to Ordinance No. 332 containing a similar recital, it is obvious that said ordinance was enacted with the same purpose in view. The disastrous records of conflagrations, destructive to life on a large scale, that have occurred in populous centers, suggest the wisdom of the requirement that a building intended to house cinematographic performances should be built of fireproof material; and we are of the opinion that, under the power granted to the City Council of Baguio by the provisions above cited, that body had ample power to enact the provision now under consideration.

The following passage taken from a standard encyclopedic treatise correctly reflects, we think, the general doctrine of the American courts on the point now under consideration.

"In the exercise of their police powers municipal corporations may enact such regulations as are necessary for the prevention of, and protection from, fires. And it is the duty of municipal corporations to do so. While some decisions consider or refer to this power as inherent in municipal corporations, it, nevertheless, usually exists by reason of an express grant or a necessarily implied statutory or constitutional delegation. The reasonable view is that, like other municipal powers, it may be implied. But the corporation cannot exceed the authority given or granted by statute or charter. Fire municipal regulations must be reasonable and not arbitrary; but the courts will not declare such regulations unreasonable, unless in clear cases of abuse. The power to prevent fire carries with it the right to employ the most effective means to that end. In the exercise of the power the erection or use of buildings for the purpose of a more or less dangerous character may be prohibited." (43 C. J., pp. 368, 369.)

Again, in another elaborate treatise dealing with the power of the municipal authorities to regulate theaters, it is said:

"A municipal corporation may regulate theaters and places of amusement in regard to the methods of construction, the seating and similar details with respect to the building, but it has been held that under general power it cannot require theaters to pay for services of a city fireman required to be present at each performance." (III McQuillin, Mun. Corp., sec. 950, p. 2082.)

The power conferred in this case by statute upon the City Council of Baguio to make suitable provision to insure the public safety from fires and other public calamities pertains to the authority, called "police power," which contemplates the protection of the safety, health and morals of the community. It is commonplace in the branch of legal science known as constitutional law that police power is of a privileged nature, and even the ordinary constitutional guaranties are not to be interpreted as unduly restrictive of such power. The industry of the attorneys in this case has not brought to our attention any case in which the validity of an ordinance requiring fireproof material to be used in the construction of theaters has been questioned, especially where the power to make adequate provision for the safety of the community has been expressly conferred.

But it is insisted that the Ordinance No. 332 is invalid because of the fact that permits granted prior to the passage of the ordinance should not be affected by it. This contention is untenable, for the reason that the City Council of Baguio may have had very good reasons for exempting the single cinematographic establishment which was running under permit when the ordinance was passed, and we are not informed as to conditions relating to location and construction of this place. Furthermore, it must be remembered that existing permits have to be renewed from time to time, and the fact that a single establishment is now running under license does not mean that it must be permitted to continue forever. The ordinance, it seems to us, would have been still more questionable if it had failed to make exception in favor of the single establishment which is now running under permit, and for which the license fee, if any is exacted, had already been paid for at the time the ordinance was enacted.

Again, it is suggested that the ordinance requiring concrete construction for buildings of the character of that now under consideration is unreasonable and discriminatory, because it is not made applicable to all establishments, including churches, schools and hotels wherein people are accustomed to gather. It takes but little knowledge of modern conditions to recognize, however, that a theater or cinematograph establishment needs to be safeguarded by the use of proper material in construction and the provision of adequate exits much more than other places of assembly, owing to the congestion which often occurs in these places and the inflammable nature of the material used in giving performances. None of the criticisms made upon the validity of the ordinance are in our opinion well founded.

In the demurrer to the complaint a question is made as to whether mandamus will lie in such a case as this; and it is suggested that the power conferred by law upon the respondents in respect to the issuing of building permits and licenses involves the exercise of discretion; from which it is inferable that the plaintiff's remedy should be by writ of injunction and not by mandamus. We prefer to pretermitt this question and decide the case on the more fundamental question of merit, which has relation to the validity of the ordinance, or ordinances, set out in this opinion.

The petition, in our opinion, is not well founded and must be denied. So ordered, with costs against the petitioner.

Avanceña, C. J., Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

Johnson, J., dissents.

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