

## GREGORIO PEDRO, PETITIONER AND APPELLANT, VS. THE PROVINCIAL BOARD OF RIZAL ET AL., RESPONDENTS AND APPELLEES.

*G. R. No. 34163. September 18, 1931*

Ponente: VILLA-REAL, J.

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### VILLA-REAL, J.:

This case is before us by virtue of the appeal taken by the petitioner Gregorio Pedro from the judgment of the Court of First Instance of Rizal dismissing his action for the annulment of an ordinance, with costs against him.

In support of his appeal, the appellant assigns the following alleged errors as committed by the trial court in its judgment, to wit:

- The lower court erred in holding that Ordinance No. 36, series of 1928, approved by the acting councillors, is valid and legal.
- The lower court erred in denying the petitioner an acquired right, notwithstanding Ordinance No. 35 and the permit given him by the president in accordance therewith,
- The lower court erred in holding that the opening, maintenance, and operation of the Galas cockpit is injurious to the consumptive patients of the Santol Sanatorium.
- The lower court erred in abstaining from making any ruling regarding the legality of the action taken by the provincial board, suspending the effects of Ordinance No. 35 of the municipal council of Caloocan, and in finally disapproving it, according to the resolutions enacted by it and numbered 1135, series of 1928, and 154, series of 1929.
- The lower court erred in dismissing this case and in not declaring permanent the injunction sought, and in not sentencing the plaintiffs [respondents] jointly and severally to pay the damages claimed in the complaint.

The following relevant facts are necessary for the decision of the question raised by the instant appeal:

On May 8, 1926, there was organized in the municipality of Caloocan, Province of Rizal, an association for the construction and exploitation of cockpits, called "La Sociedad Bighani."

On May 22, 1926, Eugenio Tansioco, the president of the association, applied to the municipal president of Caloocan and obtain a permit to construct a building of strong materials at Galas, in said municipality, to be used as cockpit, upon payment of the proper fees. (Exhibit 1.)

While the construction was under way, Pablo, then president of Caloocan, addressed a communication to Eugenio Tansioco on June 15, 1926, warning him that the site of the building was not the one designated by the chief of police, and that it was within the radius of 1,500 meters from the hospital of the Philippine Antituberculosis Society in Santol, in direct contravention of Ordinance No. 15, series of 1926, enacted on May 14, 1926.

The permit having been annulled, and the payments theretofore made forfeited, the "Sociedad Bighani" filed civil case No. 30537 in the Court of First Instance of Manila on September 21, 1926, against said Pablo Pablo, as municipal president of Caloocan, et al., for a preliminary injunction requiring them to refrain from impeding or obstructing the operation and exploitation of the Bighani cockpit, which at that time was completed and ready to be thrown open to the public.

On August 26, 1927, the Court of First Instance of Manila rendered judgment absolving the defendants from the complaint, which was affirmed by this court on October 15, 1928. (Company "Bighani" vs. Pablo, 53 Phil., 886.)

On September 18, 1927, the municipal council of Caloocan enacted Ordinance No. 34, providing in the first section, among other things, that outside the barrios of Loma, Talipapa, and Novaliches, where only one cockpit might be established, cockpits might be established at a distance of not less than 1,500 meters from another licensed cockpit, public schoolhouse, or any hospital or charitable institution existing within the municipal radius.

As a result of the general election held on June 5, 1928, in the municipality of Caloocan, Rizal, the municipal council, formerly comprising Pablo Pablo, as president, Bias Bernardino, as vice-president, and Severino Panganiban, Diego Justo, Esteban Sanchez, Patricio Galuran, Raymundo Andres, Emiliano Samson, Vicente Sevilla, Lucas Pascual, Placido C. del Mundo, Delfin Rodriguez, Jorge Nadurata, Anacleto Victoria, Emilio Acab, and Mateo Austria, as councillors, was substituted by another comprising the newly elected Dominador Aquino, as president, Diego Justo, as vice-president, and Bias Bernardino, Flaviano de Jesus, Pedro Galang, Celestino C. Celosa, Nicolas Carpio, Lucas Pascual, Basilio Biglangawa, and Lucas Bustamante, as councillors, who were inducted into office on October 16th of that year.

On December 21, 1928, the plaintiff herein, Gregorio Pedro, acquired by absolute sale all the rights and interests of the "Sociedad Bighani" in the cockpit bearing its name. (Exhibit M.)

On the same date, December 21, 1928, said plaintiff, Gregorio Pedro, addressed a communication to the municipal council of Caloocan soliciting a permit to open, operate, maintain, and exploit said cockpit for a period of four years, binding himself to observe to the letter all municipal ordinances on cockpits. (Exhibit A.)

On December 26, 1928, the municipal council of Caloocan passed resolution No. 202 approving Ordinance No. 35, series of 1928, amending section 1 of Ordinance No. 34, series of 1927, providing, among other things that only one cockpit could be established in each of the barrios of Galas, Loma, Talipapa, and Novaliches, and any other place outside said barrios, provided, in the latter case, said cockpits are at a distance of not less than 1,000 meters from another licensed cockpit, and 500 meters from any hospital or charitable institution within the municipality of Caloocan. (Exhibit C.)

On the same date, December 26, 1928, the municipal councillors of Caloocan, Bias Bernardino, Flaviano de Jesus, and Pedro Galang, signed and forwarded to the provincial governor of Rizal an accusation against Dominador Aquino, the municipal president, and the other councillors who approved Ordinance No. 35, series of 1928, alleging that they had been bribed to vote in favor of that ordinance. (Exhibit 4.)

The provincial governor endorsed the accusation to the provincial board of Rizal, which through resolution No. 1110 dated December 27, 1928, ordered the temporary suspension of the members denounced pending the administrative investigation of the accusation. By virtue of said resolution No. 1110 of the provincial board of Rizal, and using one of the powers conferred upon him by law, the provincial governor of Rizal, Eligio Naval, suspended the municipal president and the denounced members from their respective offices on December 28, 1928. (Exhibits 5 to 5-E.)

On the same date, December 28, 1928, between 9 and 10 o'clock in the morning, the appellant Gregorio Pedro paid into the municipal treasury the sum of P2,050 as a license fee on his cockpit for the first quarter of the

year 1929, and the proper receipt (Exhibit L), and the permit (Exhibit D), were issued to him authorizing him to operate, maintain, exploit, and open to the public a day cockpit in the barrio of Galas, Caloocan, Rizal, for a period of four years.

On December 29, 1928, the municipal council ad interim in Caloocan, passed resolution No. 9, series of 1928, approving Ordinance No. 36, series of 1928, suspending the effects of resolution No. 202 of the suspended council, approving Ordinance No. 35, series of 1928, while a special committee created by the same ordinance investigated the expediency of permitting the exploitation and opening of the Galas cockpit at the site applied for by the proprietor, Gregorio Pedro. (Exhibit 6.)

On the same date, December 29, 1928, the provincial board of Rizal passed resolution No. 1135 suspending the effects of resolution No. 202 of the municipal council of Caloocan approving Ordinance No. 35, series of 1928, pending final decision on the validity of said ordinance by said board. (Exhibit H.)

On January 16, 1929, the Director of the Santol Tuberculosis Sanatorium addressed a communication to the temporary president of the municipal council of Caloocan, Flaviano de Jesus, stating that a cockpit established in the barrio of Galas, owing to the noise and clamor of the crowd, would retard the recovery of the patients in said sanatorium, and would tend to increase the danger of spreading the disease among those visiting the cockpit. (Exhibit 11)

On February 1, 1929, the Chief of the Executive Bureau confirmed the resolution of the provincial board of Rizal holding the respondents in the administrative investigation mentioned above guilty of maladministration, and imposing upon each of them a punishment of thirty days' suspension. (Exhibit 7.)

On the same date, February 1, 1929, following the decision of the Executive Bureau mentioned above, the provincial board of Rizal, through resolution No. 154, disapproved said resolution No. 202 of the municipal council of Caloocan, approving Ordinance No. 35, series of 1928. (Exhibit 1.)

On February 2, 1929, the president of the third sanitary division of Rizal, acting upon the appellant's application filed on January 30, 1929, issued a certificate to the effect that after a proper inspection of the Galas cockpit, he had found it to be in good sanitary condition.

On February 7, 1929, Gregorio Pedro furnished a bond of P10,000 in favor of the municipality of Caloocan to secure the payment of the fees accruing during the years from 1929 to 1932, which is the period included in the license issued to him for the opening and operation of his cockpit in Galas, and this bond was accepted and approved by the respondent municipal president, Dominador Aquino, and certified by the provincial treasurer, Jose Villegas. (Exhibit E.)

On February 13, 1929, councillor Lucas Bustamante submitted a resolution at a special session of the municipal council of Caloocan, whereby said council appealed to the Executive Bureau from the aforementioned resolution No. 154 of the provincial board of Rizal, but the resolution did not pass owing to the lack of two-thirds of the members necessary, with five members voting in favor and three against it.

On February 14, 1929, the appellant Gregorio Pedro sent the municipal president of Caloocan a communication, informing him that having fulfilled all the requirements of the law and the ordinances then in force, he would open his cockpit in Galas to the public in the morning of February 17, 1929. (Exhibit J.)

On February 15, 1929, the respondent municipal president of Caloocan addressed a communication to the appellant Gregorio Pedro informing him that under no circumstance could said president permit the appellant to open his cockpit in Galas, Caloocan, to the public, for Ordinance No. 35, series of 1928, under which a permit had been given him to open and exploit his aforesaid cockpit had been disapproved by the provincial board of Rizal in its resolution No. 154, series of 1928, as a result of which the aforementioned ordinance became null and void.

The first question to decide in this appeal is that raised in the first assignment of error, to wit, whether Ordinance No. 36, series of 1928, approved by the temporary councillors, is valid.

The appellant argues for the nullity of Ordinance No. 36, series of 1928, approved on December 29, 1928, by the temporary councillors appointed by the provincial governor of Rizal, Eligio Naval, on the ground that (1) it impairs the acquired rights of said appellant; (2) it was enacted on account of prejudice, because it was intended for a special and not a general purpose, namely to prevent, at any cost, the opening, maintenance, and exploitation of the cockpit of the said petitioner-appellant; and (3) it provides for special committee composed of persons who are not members of the council, vested them with powers which of their very nature, cannot be delegated by said council to that committee.

The petitioner-appellant contends that, having obtained the proper permit to maintain, exploit, and open to the public the cockpit in question, having paid the license fee and fulfilled all the requirements provided by Ordinance No. 35, series of 1928, he has acquired a right which cannot be taken away from him by Ordinance No. 36, series of 1928, which was subsequently approved. This court has already held that an ordinance regulating the functioning of cockpits does not create irrevocable rights and may be abrogated by another ordinance. (*Vinco vs. Municipality of Hinigaran*, 41 Phil., 790; *Joaquin vs. Herrera*, 37 Phil., 705; 12 *Corpus Juris*, 958, sec. 494; 37 *Corpus Juris*, 168.)

The petitioner-appellant also contends that said Ordinance No. 36 was passed due to prejudice "because it was intended for a special and not a general purpose, namely to prevent, at any cost, the opening, maintenance, and exploitation of the cockpit of the said petitioner." The aforesaid Ordinance No. 36 was not approved for the purpose of injuring the petitioner, but to correct an irregularity consisting in the passage of Ordinance No. 35, which had been enacted to favor the said petitioner-appellant. The "Sociedad Bighani," from which the herein petitioner-appellant acquired the ownership of the cockpit here in question, was denied a license to operate it, because it had been constructed in violation of Ordinance No. 15, series of 1926, later amended by Ordinance No. 34, series of 1927. The "Sociedad Bighani" instituted proceedings against the president and municipal council of Caloocan, Rizal, in civil case No. 30537 of the Court of First Instance of Manila, to prevent said defendants from impeding the operation and exploitation of the Bighani cockpit, and the court decided in favor of said defendants, absolving them from the complaint on the ground among other reasons, that the Bighani cockpit had been constructed within the prohibited distance from the Antitubercular Sanatorium of Santol, and that decision was affirmed by this court on appeal. (*Company "Bighani" vs. Pablo*, *supra*.) The cockpit in question now is the former Bighani cockpit mentioned above; it occupies the same site; and the same hygienic reasons which prompted the enactment of Ordinance No. 15, amended by Ordinance No. 34, cited above, exist now; therefore, when this was amended by Ordinance No. 35, reducing the distance between a cockpit and any hospital, so that the

Bighani cockpit would be beyond said distance, the municipal council which amended it acted with partiality towards a certain person, namely, the petitioner-appellant, to the prejudice of the patients in the aforesaid sanatorium. According to Elliot in his work "Municipal Corporations," cited by said petitioner-appellant himself, said Ordinance No. 35 is void because it is partial. (Elliot, *Municipal Corporations*, sec. 147; Dillon, *Municipal Corporations*, p. 915).

Ordinance No. 36, which seeks to correct said irregularity, suspended the effects of said Ordinance No. 35, impliedly reestablishing Ordinance No. 34, is therefore valid.

The other reason given by the petitioner-appellant to show that Ordinance No. 36, is void is that the municipal council in approving it delegated its legislative powers to a special sanitary committee. Section 2 of Ordinance

No. 36, series of 1928, provides as follows:

"SEC. 2. A committee is hereby provided for, to be composed of the president of the third sanitary division of Caloocan, Rizal, a practising physician residing in this municipality, and a member of the municipal council, whose duty it shall be to make the necessary investigation to determine whether or not the exploitation of the cockpit in the barrio of Galas for which Gregorio Pedro has applied for a permit, would be injurious to any public or private interest. This special committee shall make such investigation and submit a report in due form to this municipal council within the shortest time possible for its definite action." The municipal council of Caloocan pro tempore therefore does not delegate by that ordinance to the special committee thereby created any legislative function, but only entrusts to it the study of the effect of the operation and exploitation of the cockpit under consideration upon public and private interests, in order to determine whether or not the license should issue. Informational work of this nature, owing to its technical character, may be entrusted to technical committees. (12 Corpus Juris, 846.)

Having arrived at the conclusion that Ordinance No. 36 is valid and that the petitioner-appellant has acquired no irrevocable right by virtue of the license granted him under Ordinance No. 35, approved to favor him, which is therefore void, we need not discuss the other assignments of error by the petitioner-appellant.

Wherefore, we are of opinion and so hold: (1) That a license authorizing the operation and exploitation of a cockpit is not property of which the holder may not be deprived without due process of law, but a mere privilege which may be revoked when the public interests so require; (2) that the work entrusted by a municipal council to a special sanitary committee to make a study of the sanitary effects upon the neighborhood of the establishment of a cockpit, is not legislative in character, but only informational, and may be delegated; and (3) that an ordinance, approved by a municipal council duly constituted, which suspends the effects of another which had been enacted to favor the grantee of a cockpit license, is valid and legal.

By virtue whereof, finding no error in the judgment appealed from, it is hereby affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Imperial, JJ., concur.

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