

BASILIO CARIÑO, PLAINTIFF AND APPELLANT, VS. ARSENIO JAMORALNE, MUNICIPAL TREASURER OF DUMAGUETE, ORIENTAL NEGROS, DEFENDANT AND APPELLEE.

G. R. No. 34564. September 29, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On June 18, 1930, the plaintiff applied for a license to open a cockpit in the village of Calindagan within the jurisdiction of the municipality of Dumaguete, Oriental Negros, offering to pay the amount of P450 required by municipal ordinance No. 236, besides P50 for the internal revenue tax; but the defendant, the municipal treasurer of said municipality, refused to accept the sum of P500 tendered by the plaintiff and to issue the license.

The plaintiff alleges that he has no other plain, speedy, and adequate remedy to enforce his right to obtain the license than a writ of mandamus against the defendant. Hence, this action to compel the defendant, as municipal treasurer of Dumaguete, Oriental Negros, to issue to the plaintiff the license for the opening of a cockpit in the aforesaid barrio of Calindagan.

Counsel for the defendant, after entering a general denial of the allegations in the complaint, sets forth by way of defense: (1) That the plaintiff has no right to compel the defendant to issue the cockpit license in the manner applied for, there being no law or ordinance of any kind empowering or requiring him to issue such license; (2) that the defendant did not refuse to issue the license upon payment of the amount fixed by the ordinance in force, and that the ordinance cited by the plaintiff was duly disapproved by a competent authority and never was in force.

The case was heard in the Court of First Instance of Oriental Negros, and after the evidence had been produced, the court found itself without jurisdiction to try the case, and accordingly dismissed the complaint with costs against the plaintiff.

The plaintiff appealed from this decision and now alleges that the trial court erred: (1) In holding that municipal ordinance No. 236 is null; (2) in holding that it has no jurisdiction to try this case; and (3) in holding that the writ applied for does not lie.

The record shows: (a) That on December 13, 1927, the municipal council of Dumaguete enacted municipal ordinance No. 207, authorizing the opening of cockpits in that municipality upon payment of a tax of P2,400 in the town itself, and P1,200 in the barrio which ordinance was approved by the provincial board of that province on February 10, 1928; (6) that on December 3, 1929, while the municipal president Jose Teves and four councillors of the majority were under suspension, the councillors pro tempore approved ordinance No. 226, amending the former and fixing the yearly tax upon cockpits outside the town at P6,200, which ordinance was approved by the provincial board on December 13, 1929; (c) that, upon the reinstatement of municipal president Jose Teves and the four councillors by order of his Excellency, the Governor-General, the municipal council enacted a new ordinance, No. 236, reducing the sum of P6,200 fixed by ordinance No. 226 to P1,800 a year; (d)

that on December 27, 1929, the provincial board disapproved said ordinance on the ground that it "is contrary to the policy of the central government"; (e) that the municipal council appealed from the ruling of the provincial board to the Chief of the Executive Bureau, who dismissed the appeal on April 30, 1930; (f) that in view of this ruling, the plaintiff filed the instant complaint.

The municipal ordinance in question reads as follows:

"[MUNICIPAL ORDINANCE NO. 236]

"SECTION 1. Authority is hereby given for the opening of cockpits within the limits of the jurisdiction of this municipality but outside the town itself upon payment by the owner or grantee of an additional tax of one thousand eight hundred pesos (P1,800) a year.

"SEC. 2. This ordinance shall* take effect on the first day of January, 1930.

"Approved December 14, 1929."

The questions involved in this appeal refer to the power of municipal councils to legislate upon cockpits by means of municipal ordinances, and of the provincial board to pass upon the legality of the ordinances approved by municipal councils. Section 2243 of the Administrative Code provides:

"SEC. 2243. Certain legislative powers of discretionary character.—The municipal council shall have authority to exercise the following discretionary powers:

* * * * *

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

Section 2233 of the same Code provides:

"SEC. 2233. Provincial board to pass on legality of municipal proceedings.—Upon receiving copies of resolutions and ordinances passed by municipal councils and of executive orders promulgated by municipal presidents, the provincial board shall examine the documents or transmit them to the provincial fiscal, whose duty it shall thereupon become to examine the same promptly and inform the provincial board of any defect or impropriety which he may discover therein, and make such other comment or criticism as shall appear to him proper.

"If the board should in any case find that any resolution, ordinance, or order, as aforesaid, is beyond the powers conferred upon the council or president making the same, it shall declare such resolution, ordinance, or order invalid, entering its action upon the minutes and advising the proper municipal authorities thereof. The effect of such action shall be to annul the resolution, ordinance, or order in question, subject to action by the Chief of the Executive Bureau as hereinafter provided."

By virtue of the aforesaid section 2243 of the Administrative Code, the municipal council of Dumaguete, Oriental Negros, enacted the ordinance in question. The provincial board of Oriental Negros, in the exercise of the power granted it by section 2233, quoted above, declared said ordinance invalid as being contrary to the policy of the central government. The municipal council of Dumaguete appealed from this ruling to the Chief of the Executive Bureau, and the latter dismissed the appeal on the ground that the ordinance in question is contrary to the policy of the State. As may be seen, both the provincial board of Oriental Negros and the Chief of the Executive Bureau disapproved the ordinance and declared it invalid as being contrary to the policy of the central government.

The appellant contends that the provincial board of Oriental Negros has no authority to declare an ordinance enacted by the municipal council within the powers vested in it, invalid on the ground that said ordinance is

contrary to the policy of the State. Section 2233 of the Administrative Code only confers upon the provincial board the power to declare invalid an ordinance passed or enacted by the municipal council beyond the powers conferred upon it by law.

This question has been clearly decided in *Gabriel vs. Provincial Board of Pampanga* (50 Phil., 686). In that case the municipal council of Angeles adopted resolution No. 237, introduced with the preamble "The installation of steam engines within the poblacion being opposed to the general interest of the municipality, the council after careful study and deliberation unanimously," and then providing "Resolved: That a district of the municipality is hereby declared within the zone bounded by four streets: Rosario, Lacandola, Jesus and Rizal, which form a square." To clarify the position of the petitioner Gabriel and likewise to decide the protest of certain citizens, on the same date that resolution No. 137 was approved, the municipal council passed resolution No. 136 in which it was declared "that the site selected by the petitioner Andres Gabriel for the installation of his steam engine is outside the radius or square designated by the municipal council of Angeles in its resolution No. 237, series of 1906."

After several incidents which would serve no purpose to relate, the provincial board of Pampanga in its resolution No. 414 of April 6, 1926, resolved that the location of the lot where Andres Gabriel was applying to establish a rice mill was within the territory considered as "radio municipal" or "poblacion" of Angeles in 1906. And it further resolved to disapprove resolutions Nos. 136 and 137, series of 1925, of the municipal council of Angeles.

Gabriel filed a complaint with the Court of First Instance of Pampanga to secure a judicial declaration that resolution No. 414 of the provincial board of Pampanga of April 6, 1926, was null and void, and that resolutions Nos. 136 and 137 of the municipal council of Angeles, series of 1925, were valid.

The court having dismissed the case, Gabriel appealed from that judgment and in his brief directly raised the point that the provincial board of Pampanga had no jurisdiction to annul resolutions Nos. 136 and 137 of the municipal council of Angeles, and that the only proper remedy to correct any illegality committed by the board was an appeal to the Executive Bureau.

The court held:

"The Municipal Law, as revised, grants to the municipal council certain legislative powers of discretionary character

(Administrative Code, sec. 2243).

"The only ground upon which a provincial board may declare any municipal resolution, ordinance, or order invalid is When such resolution, ordinance, or order is 'beyond the powers conferred upon the council or president making the same' (Administrative Code, sec. 2233). Absolutely no other ground is recognized by the law. A strictly legal question is before the provincial board in its consideration of any municipal resolution, ordinance, or order. The provincial disapproval of any resolution, ordinance, or order must be premised specifically upon the fact that such resolution, ordinance, or order is outside the scope of the legal powers conferred by law." We have dwelt somewhat upon this case, because both the court below and counsel for the appellee believe that the legal doctrine therein enunciated is not applicable to the present case. It is true that that case does not deal with an ordinance on cockpits, but with a resolution regulating the installation of steam engines in the town. In that case the municipal council exercised the power granted to it in paragraph (n) of section 2243 of the Administrative Code, while in the present case the municipal council exercised the power conferred upon it in paragraph (i) of the same section. But there can be no doubt that the legal point raised in both cases is the same: Whether a provincial board has the power to annul an ordinance or resolution within the express powers conferred by law upon municipal councils. Therefore, the doctrine laid down by this court in that case is perfectly applicable to the case at bar.

The fact that in that case the municipal council of Angeles did not appeal from the resolution of the provincial board to the Chief of the Executive Bureau, or, in other words, the fact that Gabriel did not exhaust all the administrative remedies provided by law, does not affect the question; for, at all events, according to section 2236 of the Administrative Code, he could take his case to the courts, as in fact he did.

It is contended that the ordinance in question is invalid because it is contrary to the policy of the central government, which, according to counsel for the appellee, is to suppress cockfighting. And in support of this contention, the case of *Government of the Philippine Islands vs. Galarosa* (36 Phil., 338) is cited, wherein the court interpreted sections 144 and 145 of Act No. 1189, as amended by Acts Nos. 1338 and 2126, providing for the payment of P200 yearly for a cockpit license. In that case the court held that the Act conferred no authority to fix a lower license fee than was therein provided for. The tax provided for by the law which was interpreted in the *Galarosa* case, *supra*, is the same as that fixed by section 1464, paragraph (g), of the Administrative Code, or P200 annually to be paid by proprietors of cockpits, besides a tax of 25 centavos for each cockfight. The appellee insists that the municipal council of Dumaguete cannot decrease the amount of the license fee from P6,200 to P1,800 year, for the approval of this ordinance would encourage such gambling instead of suppressing it. The faculty or power of regulating cockpits and cockfights, or of prohibiting them, has been left entirely to the discretion of the municipal council, and this power necessarily involves the determination, with reasonable certainty, of the continuation of the game and the amount of the license fee. We believe that the increase or decrease of the license fee is within the discretion vested in the municipal council, as exercised with a view to the needs and conditions of the municipality, so long as it does not fall below the minimum of P200 fixed by the law. We believe the municipal council is the best judge of these matters, and in the exercise of its discretion it is not subject to the power of the provincial board to revoke its local legislation, because the said board only has jurisdiction to hold an ordinance invalid when it has been enacted beyond the powers expressly conferred by law upon the municipal council.

Granting that the policy of the Government is to do away with gambling little by little, with special reference to cockpits, the Legislature has delegated its power over this matter to the municipal council, conferring upon it ample discretion to legislate upon the same; i. e., to regulate or prohibit cockpits.

That the municipal council has used its sound discretion in enacting ordinance No. 236, may be seen from the testimony of Jose Teves, municipal president of Dumaguete, who declares:

"The object of the municipal council, so far as I know from having been present at the session when said ordinance No. 236 was passed was: First, to avoid the clandestine cockpits which will follow in case of the continuance of ordinance No. 226 enacted by the appointed councilors, because, once the cockpit is eliminated, the gamesters may be able to get into the nooks and corners of the barrios and there hold cockfights clandestinely; second, also to prevent the municipality from losing a source of revenue which it has had for so many years as there have been cockpits in Dumaguete, and it has been seen that with the enactment of ordinance No. 226 the cockpit vice has not been eliminated, as is contended to be the policy of the Executive Bureau or the central government, but continues at its height, because the gamesters being unable to play in Dumaguete, take the trouble of going to the adjoining municipalities where there are cockpits; so that the council believed that the cockpit vice could not be extirpated by merely doing away with the cockpit in Dumaguete alone, but that if the aim of the central government is to do away with cockfighting, it would be necessary to eliminate cockpits in all the municipalities of the province, or in the Philippines, and not to confine itself to the municipality of Dumaguete, for which reason we have permitted the further establishment of cockpits, raising, however, the tax of 71,200 provided by ordinance No. 207 to P1,800 according to ordinance No. 236."

One of the errors assigned by the appellant to the trial court is its dismissal of the case for lack of jurisdiction, on

the ground that the point of the nullity of the ordinance here in question has already been settled administratively by the Chief of the Executive Bureau. We are of opinion that this assignment of error has been well taken. Section 2236 of the Administrative Code provides:

"SEC. 2236. Judicial authority to determine validity of municipal proceedings.—Nothing contained in either of the three last preceding sections hereof shall be construed to deprive any judicial tribunal of power to hold void for want of statutory authority any act, ordinance, or resolution of a municipal council or executive order of a municipal president the validity of which shall be involved in any cause arising before such tribunal, without respect to the decision of the executive authorities."

It is clearly seen, without the necessity of a discussion upon this point, that whatever the ruling of the Chief of the Executive Bureau on the appeal of the municipal council from the ruling of the provincial board disapproving the ordinance, the courts have jurisdiction to decide the point raised before them as to the nullity of the said municipal ordinance in question.

"Wherefore, the judgment appealed from is hereby reversed, and it is held that Ordinance No. 236 here under discussion is valid. And the plaintiff having offered to pay the defendant municipal treasurer of Dumaguete the amount of the license fee provided in said ordinance, the court below may issue the writ prayed for, requiring said defendant to accept the payment of said tax and to issue the proper license in accordance with section 2208 of the Administrative Code. Without special pronouncement of costs. So ordered.

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

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