

PACIFICO ABAD ET AL., PLAINTIFFS AND APPELLEES, VS. JUAN N. EVANGELISTA, DEFENDANT AND APPELLANT.

G.R. No. 38884. September 26, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The defendant, Juan N. Evangelista, appeals to this court from the judgment rendered by the Court of First Instance of Nueva Ecija, the dispositive part of which reads as follows:

"Wherefore, the court is of the opinion and so holds that the preliminary injunction issued in this case should be declared permanent, and furthermore orders the defendant herein to indemnify the plaintiffs in the sum of one hundred pesos (P100) for every day of the ordinary cockpit days, and five hundred pesos (P500) for every day of extraordinary ones permitted by the law, during which the operation of the cockpit in question was suspended by order of the said defendant, with the costs against him. So ordered."

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

"1. The lower court erred in declaring that the plaintiff-appellee Antonio Abad had obtained due permit from the defendant to transfer to, establish and operate his cockpit at the barrio of San Nicolas, municipality of Gapan, Province of Nueva Ecija.

"2. The lower court erred in holding that ordinance No. 8, series of 1932, duly passed and approved by the municipal council of Gapan, Province of Nueva Ecija, is null and void because it is partial.

"3. The lower court erred in sentencing the defendant, a public officer, being the municipal president of Gapan, Nueva Ecija, to indemnify the plaintiffs in the sum of P100 for every day of the ordinary cockpit days and P500 for every day of the extraordinary ones during the days the plaintiffs' cockpit was suspended from operation by the defendant."

The pertinent facts necessary for the resolution of the questions raised in the present appeal are as follows:

Desiring to transfer his cockfighting business together with the cockpit from the barrio of San Lorenzo to that of San Nicolas, both in the municipality of Gapan, Nueva Ecija, Antonio Abad, one of the plaintiff-appellees herein, sought an interview with the president of the aforesaid municipality, the herein defendant-appellant Juan N. Evangelista, regarding the matter. Acting upon the latter's suggestion, Antonio Abad addressed him the following communication (Exhibit A) on February 9, 1932:

"The undersigned hereby applies for a permit to transfer to and to reconstruct his camarin of wood with iron roof, measuring 30 x 15 meters, on the land belonging to Mr. Agustin Garcia in the barrio of San Nicolas in this municipality. This camarin will be used as a cockpit, and is already assessed for tax purposes under Tax Declaration No. 20522 in the name of the herein applicant.

"Trusting that you will give this application prompt attention and due consideration, I remain.

"Very respectfully yours,

"(Sgd.) ANTONIO ABAD"

On the same date, February 9, 1932, the aforesaid defendant-appellant Juan N. Evangelista, in his official capacity as municipal president of Gapan, Nueva Ecija, sent the plaintiff-appellee, Antonio Abad the following reply (Exhibit C):

"In reply to your favor of even date, I have the honor to inform you that the undersigned has no objection to granting the permit which you request for the transfer and reconstruction of your camarin.

"You are, therefore, granted the permit to transfer the camarin in question now located in San Lorenzo and assessed in your name under Tax Declaration No. 20522, to the land of Mr. Agustin Garcia in San Nicolas, subject, however, to the provisions of the ordinances now in force and of those which the municipal council may later enact and approve, regarding the matter.

"Very respectfully,

"(Sgd.) JUAN N. EVANGELISTA

"Municipal President"

Pursuant to the above reply, Antonio Abad transferred his cockpit from the barrio of San Lorenzo to that of San Nicolas at an expense of P1,500. The plaintiffs' cockpit was reconstructed at a distance of 200 meters from that of Tangkeko, situated in the same barrio.

On March 17, 1932, the municipal council of Gapan enacted and approved municipal ordinance No. 6 (Exhibit 1) entitled: "Regulating the establishment of cockpits in the municipality of Gapan, Province of Nueva Ecija."

On April 4, 1932, the provincial board of Nueva Ecija disapproved the aforesaid municipal ordinance No. 6, on the ground that it was ambiguous, inasmuch as it did not state to whom payment of the license should be made.

On the same day, April 4, 1932, the plaintiff Pacifico Abad paid to the municipal treasurer of Gapan, the privilege tax corresponding to the second quarter, that is from April to June, 1932, for which receipt No. 23158 (Exhibit D) was issued, in accordance with the ordinances then in force.

For the purpose of remedying the defects of municipal ordinance No. 6 which was disapproved by the provincial board of Nueva Ecija, the municipal council of Gapan, presided over by the herein defendant-appellant, on April 5, 1932, enacted and approved municipal ordinance No. 8, series of 1932 (Exhibit 2) which reads as follows:

"[MUNICIPAL ORDINANCE NO. 8]

"REGULATING THE ESTABLISHMENT OF COCKPITS IN THE MUNICIPALITY OF GAPAN,
PROVINCE OF NUEVE ECIJA.

"Be it ordained by the Municipal Council of Gapan in session this day assembled:

"ARTICLE 1. Any person desiring to establish or who has already established a cockpit shall secure in advance a permit therefor from the Municipal President, and shall pay, besides, an annual license tax as

provided in Municipal Ordinance No. 19, s. 1980.

"ART. 2. The construction of any building for cockpits within the barrios of San Vicente, San Lorenzo and Poblacion is strictly prohibited.

"ART. 3. The Municipal President, upon application in writing by the interested party, shall issue a permit, renewable annually, for the construction of any building for cockpit purposes and for operating same, upon payment by the applicant to the Municipal Treasurer of Gapan, Nueva Ecija, of the amount of two pesos (P2): Provided, however, That no permit shall be issued for the establishment of more than one cockpit in the same barrio: And provided, further, That no two cockpits shall be less than two kilometers distant from one another.

"ART. 4. The Municipal Treasurer shall not issue a municipal license to any person, corporation or entity unless provided with the permit provided for in the preceding article.

"ART. 5. Any person, entity or corporation violating any of the provisions of this ordinance shall, upon conviction, be punished with imprisonment of not less than ten (10) days nor more than thirty (30) days, or fine of not less than twenty pesos (P20) nor more than two hundred pesos (P200) or both fine and imprisonment, in the discretion of the Court, and subsidiary imprisonment in case of failure to pay a fine at the rate of two pesos (P2) per day.

"ART. 6. Repealing clause.—All municipal ordinances or part of ordinances that may be in conflict with the provisions of this ordinance are hereby repealed.

"SEC. 7. This ordinance shall take effect upon approval.

"On motion by Councilor Dr. Agustin Y. Lotuaco, seconded by Councilor Attorney Lorenzo de Guzman: Approved."

On April 7, 1932, the herein defendant-appellant addressed a communication to the plaintiff-appellee Antonio Abad, inviting his attention to the fact that his cockpit was being operated in violation of municipal ordinance No. 8, copy of which was enclosed therewith.

On April 10, 1932, while the plaintiff-appellees' cockpit was in full swing, the herein defendant-appellant suspended the cockfighting therein through his policemen, whereupon this action was instituted.

In view of the facts stated above, the first question which naturally arises is whether or not the plaintiff-appellee Antonio Abad obtained a permit to operate his cockpit.

In his letter mentioned above, the plaintiff-appellee applied for a permit to transfer his camarin of wood to be used as a cockpit to the barrio of San Nicolas. The defendant-appellant herein granted him the desired permit, that is, to transfer the said camarin, subject to the provisions of the ordinances then in force and of those that may later be enacted, regarding the matter. In his aforesaid letter, the plaintiff-appellee Antonio Abad did not request a permit to conduct cockfights in the camarin in question. Neither could he request such a permit, inasmuch as he did not then intend to use the camarin for cockfights, but in the future, for he stated in his letter: "This camarin will be used for cockfights * * *." The defendant-appellant must have understood it that way when he granted him a permit for the sole purpose of transferring his camarin.

This understanding is corroborated by the testimony of the plaintiff-appellee, Antonio Abad, relative to the conversation regarding the matter in question, which he had with the defendant-appellant before he filed his application. On that occasion no other matter was discussed except the transfer of the camarin.

If the plaintiff-appellee Antonio Abad's intention in addressing the communication, Exhibit A, to the herein defendant-appellant had been to apply for a permit not only to transfer his camarin but also to conduct cockfights

therein, he should have filed a second application for the latter purpose upon receipt of the reply to his application wherein he was granted the permit solely to transfer his camarin but not to conduct cockfights therein.

Therefore, the court a quo committed the error attributed to it in the first assignment of error.

With respect to the second assignment of error, that is, that the court a quo erred in declaring municipal ordinance No. 8 null and void for being partial, it appears that on March 17, 1932, the municipal council of Gapan had already enacted municipal ordinance No. 6 containing the very same provisions regulating the establishment of cockpits in the municipality of Gapan, which was disapproved by the provincial board of Nueva Ecija on April 4, 1932, on the ground that it did not specify to whom payment of the license fee should be made. On the aforesaid date, March 17 1932, the plaintiff-appellees had not yet begun operating their cockpit, as they had only paid their privilege tax corresponding to the second quarter, that is, from April to June, 1932, only on April 4, 1932, the date when municipal ordinance No. 6 was disapproved, as hereinbefore stated, without having applied for nor obtained the necessary permit therefor.

Therefore, it cannot be said that municipal ordinance No. 8, which was enacted and approved the following day, April 5, 1932, is partial and was passed to protect Tangkeko who was already operating a cockpit in the same barrio, and to prejudice the herein plaintiff-appellees, inasmuch as it authorizes the establishment of two cockpits after securing the necessary permit and paying the required license of two pesos, provided the two cockpits are not less than two kilometers apart.

It is true that, with the enactment of municipal ordinance No. 8, the plaintiff-appellees cannot conduct cockfights in their camarin on the ground that it is only 200 meters from Tangkeko's cockpit, but this fact is not by itself alone sufficient to render the ordinance unreasonable inasmuch as the measure is within the scope of the delegated police power of the municipal council of Gapan and it is not incumbent upon the courts of justice to inquire into the reasons or motives which prompted said municipal legislative body to regulate the distance in question. (Secs. 2238 and 2243 [i], Administrative Code; Case vs. "Junta de Sanidad" and Heiser, 24 Phil., 250; U. S. vs. Joson, 26 Phil., 1; Vinco vs. Municipality of Hinigaran, 41 Phil., 790; Cariño vs. Jamoralne, 56 Phil., 188.)

Inasmuch as municipal ordinance No. 8 was enacted pursuant to the police power of the municipality, the fact that it fixes a distance of not less than two kilometers between one cockpit and another is not sufficient to render it partial, and therefore, null and void, even though it is prejudicial to the plaintiff-appellees' cockpit, being the last to be established. Furthermore, the license granted for the establishment and operation of a cockpit is a privilege which can be suspended any time by competent authority. (Pedro vs. Provincial Board of Rizal, 56 Phil., 123.)

With respect to the damages which the trial court has ordered the defendant-appellant to pay, the records show that on April 7, 1932, the defendant-appellant herein notified the plaintiff-appellees that their cockpit was being operated in violation of municipal ordinance No. 8 then in force, copy of which was enclosed therewith. Instead of taking the matter to the courts of justice for the purpose of testing the validity of the ordinance in question, and of preventing the herein defendant-appellant from enforcing it by means of a preliminary injunction, they challenged the authority of the municipal chief executive and persisted in violating municipal ordinance No. 8, thus compelling the said municipal chief executive, the defendant-appellant herein, to make use of the municipal police force for the purpose of enforcing the law. When the defendant-appellant made use of the municipal police force in order to prevent the violation of the law, as he was in duty bound to do, the plaintiff-appellees were operating their cockpit without having first secured the necessary permit or license either before or after municipal ordinance No. 8 went into effect—the receipt of payment of the privilege tax not being the license or permit therefore—and their cockpit was not two kilometers distant, as required, from Tangkeko's cockpit, in violation of the provisions of the ordinance in question, in spite of their having been notified thereof by the herein

defendant-appellant. The permit to transfer a cockpit is not a license or permit to conduct cockfights. (Company "Bighani" vs. Pablo, 53 Phil., 886.)

Therefore, inasmuch as the defendant-appellant herein has acted in compliance with his executive duty, he is neither civilly nor criminally liable for damages resulting from a proper exercise of his executive power.

In view of the foregoing consideration, we are of the opinion and so hold: (1) That a municipal council which enacts and approves an ordinance regulating the distance between one cockpit and another acts within its delegated police power and it is not incumbent upon the courts of justice to inquire into the reasons and motives which prompted the said municipal legislative body to fix the distance in question; (2) that inasmuch as the license granted for the establishment of a cockpit is a mere privilege which can be suspended at any time by competent authority, the fixing in a municipal ordinance of a distance of not less than two kilometers between one cockpit and another is not sufficient to justify the annulment of such ordinance on the ground that it is partial, even though it is prejudicial to an already established cockpit; and (3) that a municipal president who acts in compliance with his duties pursuant to a proper exercise of his executive power, is neither civilly nor criminally liable for damages resulting therefrom.

Wherefore, the judgment appealed from is hereby reversed and the defendant-appellant herein is absolved from the complaint, which is dismissed, with the costs against the appellees. So ordered.

Avanceña, C. J., Malcolm, Hull, and Imperial, JJ., concur.

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