

**CELESTINO TATEL, PETITIONER, VS. MUNICIPALITY OF VIRAC,
SALVADOR A. SURTIDA, IN HIS CAPACITY AS MAYOR OF VIRAC,
CATANDUANES; GAVINO V. GUERRERO, IN HIS CAPACITY AS
VICE-MAYOR OF...**

G.R. No. 40243. March 11, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a Petition for Prohibition with Preliminary Injunction with the Court of First Instance of Catanduanes filed by appellant, Celestino Tatel, a businessman engaged in the import and export of abaca and other products against the Municipal Council of Virac, Catanduanes and its municipal officials enjoining them from enforcing Resolution No. 29[1] of the Council, declaring the warehouse of petitioner in barrio Sta. Elena of the said municipality a public nuisance within the purview of Article 694 of the Civil Code of the Philippines and directing the petitioner to remove and transfer said warehouse to more suitable place within two (2) months from receipt of the said resolution.

It appears from the records that on the basis of complaints received from the residents of barrio Sta. Elena on March 18, 1966 against the disturbance caused by the operation of the abaca bailing machine inside the warehouse of petitioner which affected the peace and tranquility of the neighborhood due to the smoke, obnoxious odor and dust emitted by the machine, a committee was appointed by the municipal council of Virac to investigate the matter. The committee noted the crowded nature of the neighborhood with narrow roads and the surrounding residential houses, so much so that an accidental fire within the warehouse of petitioner occasioned by a continuance of the activity inside the warehouse and the storing of inflammable materials created a danger to the lives and properties of the people within the neighborhood.

Resultantly, Resolution No. 29 was passed by the Municipal Council of Virac on April 22, 1966 declaring the warehouse owned and operated by petitioner a public nuisance within the purview of Article 694 of the New Civil Code.[2]

His motion for reconsideration having been denied by the Municipal Council of Virac, petitioner instituted the present petition for prohibition with preliminary injunction.

Respondent municipal officials contend that petitioner's warehouse was constructed in violation of Ordinance No. 13, series of 1952, prohibiting the construction of warehouses near a block of houses either in the poblacion or barrios without maintaining the necessary distance of 200 meters from said block of houses to avoid loss of lives and properties by accidental fire.

On the other hand, petitioner contends that said ordinance is unconstitutional, contrary to the due process and equal protection clause of the Constitution and null and void for not having been passed in accordance with law.

The issue then boils down on whether petitioner's warehouse is a nuisance within the meaning of Article 694 of

the Civil Code and whether Ordinance No. 13, S. 1952 of the Municipality of Virac is unconstitutional and void.

In a decision dated September 18, 1969, the court a quo ruled as follows:

"1. The warehouse in question was legally constructed under a valid permit issued by the municipality of Virac in accordance with existing regulations and may not be destroyed or removed from its present location;

2. Ordinance No. 13, series of 1952, is a legitimate and valid exercise of police power by the Municipal Council of Virac is not (sic) unconstitutional and void as claimed by the petitioner;

3. The storage by the petitioner of abaca and copra in the warehouse is not only in violation of the provisions of the ordinance but poses a grave danger to the safety of the lives and properties of the residents of the neighborhood due to accidental fire and constitutes a public nuisance under the provisions of Article 694 of the Civil Code of the Philippines and may be abated;

4. Accordingly, the petitioner is hereby directed to remove from the said warehouse all abaca and copra and other inflammable articles stored therein which are prohibited under the provisions of Ordinance No. 13, within a period of two (2) months from the time this decision becomes final and that henceforth, the petitioner is enjoined from storing such prohibited articles in the warehouse. With costs against petitioner".

Seeking appellate review, petitioner raised as errors of the court a quo:

1. In holding that Ordinance No. 13, series of 1952, of the Municipality of Virac, Catanduanes, is a legitimate and valid exercise of police power of the Municipal Council, and therefore, constitutional;

2. In giving the ordinance a meaning other than and different from what it provided by declaring that petitioner violated the same by using the warehouse for storage of abaca and copra when what is prohibited and penalized by the ordinance is the construction of warehouses.

3. In refusing to take judicial notice of the fact that in the municipality, there are numerous establishments similarly situated as appellants' warehouses but which are not prosecuted.

We find no merit in the Petition.

Ordinance No. 13, series of 1952, was passed by the Municipal Council of Virac in the exercise of its police power. It is a settled principle of law that municipal corporations are agencies of the State for the promotion and maintenance of local self-government and as such are endowed with police powers in order to effectively accomplish and carry out the declared objects of their creation.[3] Its authority emanates from the general welfare clause under the Administrative Code, which reads:

"The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the municipality and the inhabitants thereof, and for the protection of property therein."[4]

For an ordinance to be valid, it must not only be within the corporate powers of the municipality to enact but must also be passed according to the procedure prescribed by law, and must be in consonance with certain well established and basic principles of a substantive nature. These principles require that a municipal ordinance (1) must not contravene the Constitution or any statute (2) must not be unfair or oppressive (3) must not be partial or discriminatory (4) must not prohibit but may regulate trade (5) must be general and consistent with public policy, and (6) must not be unreasonable.[5] Ordinance No. 13, Series of 1952, meets these criteria.

As to the petitioner's second assignment of error, the trial court did not give the ordinance in question a meaning

other than what it says. Ordinance No. 13 passed by the Municipal Council of Virac on December 29, 1952,[6] reads:

"AN ORDINANCE STRICTLY PROHIBITING THE CONSTRUCTION OF WAREHOUSE IN ANY FORM NEAR A BLOCK OF HOUSES EITHER IN POBLACION OR BARRIO WITH NECESSARY DISTANCE TO AVOID GREAT LOSSES OF PROPERTY AND LIVES BY FIRE ACCIDENT".

Section 1 provides:

"It is strictly prohibited to construct warehouses in any form to any person, persons, entity, corporation or merchants, wherein to keep or store copra, hemp, gasoline, petroleum, alcohol, crude oil, oil of turpentine and the like products or materials if not within the distance of 200 meters from a block of houses either in the poblacion or barrios to avoid great losses of properties inclusive lives by fire accident."

Section 2 provides:[7]

"Owners of warehouses in any form, are hereby given advice to remove their said warehouses this ordinance by the Municipal Council, provided however, that if those warehouses now in existence should no longer be utilized as such warehouse for the above-described products in Section 1 of this ordinance after a lapse of time given for the removal of the said warehouses now in existence, same warehouse shall be exempted from the spirit of the provision of section 1 of this ordinance, provided further, that these warehouses now in existence, shall in the future be converted into non-inflammable products and materials warehouses."

In spite of its fractured syntax, basically, what is regulated by the ordinance is the construction of warehouses wherein inflammable materials are stored where such warehouses are located at a distance of 200 meters from a block of houses and not the construction per se of a warehouse. The purpose is to avoid the loss of life and property in case of fire which is one of the primordial obligation of government.

This was also the observation of the trial court:

"A casual glance of the ordinance at once reveals a manifest disregard of the elemental rules of syntax. Experience, however, will show that this is not uncommon in law making bodies in small towns where local authorities and in particular the persons charged with the drafting and preparation of municipal resolutions and ordinances lack sufficient education and training and are not well grounded even on the basic and fundamental elements of the English language commonly used throughout the country in such matters. Nevertheless, if one scrutinizes the terms of the ordinance, it is clear that what is prohibited is the construction of warehouses by any person, entity or corporation wherein copra, hemp, gasoline and other inflammable products mentioned in Section 1 may be stored unless at a distance of not less than 200 meters from a block of houses either in the poblacion or barrios in order to avoid loss of property and life due to fire. Under Section 2, existing warehouses for the storage of the prohibited articles were given one year after the approval of the ordinance within which to remove them but were allowed to remain in operation if they had ceased to store such prohibited articles.

The ambiguity therefore is more apparent than real and springs from simple error in grammatical construction but otherwise, the meaning and intent is clear that what is prohibited is the construction or maintenance of warehouses for the storage of inflammable articles at a distance within 200 meters from a block of houses either in the poblacion or in the barrios. And the purpose of the ordinance is to avoid loss of life and property in case of accidental fire which is one of the primordial and basic obligation of any government."[8]

Clearly, the lower court did NOT add meaning other than or different from what was provided in the ordinance in question. It merely stated the purpose of the ordinance and what it intends to prohibit to accomplish its purpose.

As to the third assignment of error, that warehouses similarly situated as that of petitioner were not prosecuted,

suffice it to say that the mere fact that the municipal authorities of Virac have not proceeded against other warehouses in the municipality allegedly violating Ordinance No. 13 is no reason to claim that the ordinance is discriminatory. A distinction must be made between the law itself and the manner in which said law is implemented by the agencies in charge with its administration and enforcement. There is no valid reason for the petitioner to complain, in the absence of proof that the other- bodegas mentioned by him are operating in violation of the ordinance and that complaints have been lodged against the bodegas concerned without the municipal authorities doing anything about it.

The objections interposed by the petitioner to the validity of the ordinance have not been substantiated. Its purpose is well within the objectives of sound government. No undue restraint is placed upon the petitioner or for anybody to engage in trade but merely a prohibition from storing inflammable products in the warehouse because of the danger of fire to the lives and properties of the people residing in the vicinity. As far as public policy is concerned, there can be no better policy than what has been conceived by the municipal government.

As to petitioner's contention of want of jurisdiction by the lower court we find no merit in the same. The case is a simple civil suit for abatement of a nuisance, the original jurisdiction of which falls under the then Court of First Instance.

WHEREFORE, for lack of merit, the petition is hereby DISMISSED. Costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Annex "A", p. 24, Record on Appeal.

[2] Ibid.

[3] Velasco vs. Mayor Villegas, G.R. No. 24153, 120 SCRA 568, (1983).

[4] Section 2238, Administrative Code of 1917. This is in consonance with the general welfare clause as provided in Section 16, Book I of the Local Government Code of 1991.

[5] U.S. vs. Abendan, 24 Phil. 165, (1913).

[6] Exhibit "1", p. 45, Record on Appeal.

[7] p. 46, Ibid.

[8] Annex "F", pp. 85-86, Record on Appeal.

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