

FRANCISCO JAVIER AND ROMAN OZAETA, PLAINTIFFS AND APPELLANTS, VS. TOMAS EARNSHAW, MAYOR OF THE CITY OF MANILA, DEFENDANT AND APPELLEE.*G. R. No. 43634. August 24, 1937*

Ponente: IMPERIAL, J.

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The plaintiffs commenced this action in the Court of First Instance of Manila to restrain the defendant from cancelling the permit or license issued by him for the installation and operation of a gasoline pump and underground tank at the corner of Kansas Avenue and Tennessee Street. They appealed from the judgment dismissing their complaint, without costs.

The plaintiffs, being the owners of a parcel of land situated at the corner of Kansas Avenue and Tennessee Street, Manila, entered into a contract with the Asiatic Petroleum Co. (P. I.), Ltd., whereby the latter would provide them with a pump, underground tank and gasoline on the land in question, for the exclusive use of the motor vehicles of the Makabayan Taxicab Co., Inc., operated by the plaintiffs, and would obtain the necessary license from the defendant mayor. On April 25, 1934, the plaintiffs addressed to the mayor a letter, copy of which is Exhibit A-1, stating the contract entered into between them and the Asiatic Petroleum Co. (P. I.), Ltd., and applying for the granting of a license to said company to install in their lot situated at the corner of Kansas Avenue and Tennessee Street a gasoline pump and an underground tank for the exclusive use of the motor vehicles of the Makabayan Taxicab Co., Inc., owned by them. On the following day, the Asiatic Petroleum Co. (P. I.), Ltd., addressed another communication to the mayor, copy of which is Exhibit A, applying for a permit to install in said premises of the plaintiffs a gasoline pump and an underground tank for the exclusive use of the motor vehicles of the Makabayan Taxicab Co., Inc. The application was endorsed to the chief of police, the chief of the Fire Department and the city engineer, and the mayor, after obtaining favorable endorsements, granted the permit. On May 8, 1934, the mayor and the Asiatic Petroleum Co. (P. I.), Ltd., entered into a contract in writing, copy of which is Exhibit D, by virtue of which the City of Manila granted to said company permission to install a gasoline pump and an underground tank in the premises of the plaintiffs, for the exclusive use of the motor vehicles of the Makabayan Taxicab Co., Inc. One of the conditions imposed in the contract is that the permit was nontransferable and that it was revocable at the expiration of 30 days from notice to the concessionaire. The pump and the tank were installed and the plaintiffs used them for some time to provide gasoline exclusively for the motor vehicles of the Makabayan Taxicab Co., Inc. Sometime later, however, as the plaintiffs had succeeded in having the office of the city treasurer insert the word "sells" (which should read "sales") in the receipt issued by it for payment of the license tax, they began to sell gasoline to the public, thereby giving rise to protests from the operators of the Socony Gasoline Station situated at the corner of Taft Avenue and Herran Street. The complaint was investigated and not only was it proven but the plaintiffs themselves also admitted that they were really selling gasoline to the public. As a consequence of the result of the investigation, the mayor, on June 9, 1934, sent a letter to the Asiatic Petroleum Co. (P. I.), Ltd., copy of which is Exhibit F, requiring it to show cause within five days why the license

issued to it should not be cancelled for violation of the condition not to sell gasoline to the public. The requirement "was endorsed to the plaintiffs who gave their explanations in their letter of June 11, 1934, copy Of which is Exhibit G. The explanations given by the plaintiffs not having been satisfactory, and they having admitted the violation of the condition by acknowledging that they have been selling gasoline to the public, the mayor, on July 16, 1934, sent another letter to the plaintiffs advising them that after 15 days from the receipt of said letter by them, he would order the cancellation of the permit, which he in fact decided to do, and the permit was cancelled. The plaintiffs subsequently filed the petition for a writ of preliminary injunction against the defendant, with the result already stated at the beginning of this decision. The court, upon the bond filed by the plaintiffs, issued the writ of preliminary injunction applied for, which continues to be in force by reason of this appeal.

I. In their first assignment of error, the plaintiffs contend that the court erred in avoiding the main issue raised by them relative to their assertion that ordinance No. 1985 of the City of Manila, and particularly paragraph 3 of section 1 thereof, is invalid. This assignment of error is without merit because it appears from the appealed decision, page 19 of the bill of exceptions, that the court directly resolved the alleged unconstitutionally ..and nullity of the entire ordinance and declared it to be valid, it not being true, as the plaintiffs claim, that the sale of gasoline is prohibited thereby but merely regulated by the imposition of certain conditions. It will likewise be seen from that part of said decision that the court declared the ordinance to be valid because the City of Manila promulgated it in the exercise of its police power and in conformity with the power vested in it by paragraphs (u), (m) and (ee) of section 2444 of the Revised Administrative Code.

II. In their second assignment of error, the plaintiffs contend that paragraph 3 of section 1 of ordinance No. 1985 of the City of Manila is unconstitutional for the following reasons: (a) because in prohibiting the installation of gasoline stations within a distance of 500 meters from another, it violates paragraph (m) of section 2444 of the Revised [Administrative Code, as amended by Act No. 3669, which merely empowers the municipal board of the City of Manila to fix the location of, tax, fix the license fee for and regulate the business of the storage and sale of gasoline; (b) because the purpose and effect of said ordinance is to prevent free competition in the sale of gasoline, and therefore it is detrimental to the public interest and contrary to the policy laid down by the Philippine Legislature in Act No. 3247; (c) because to prohibit the sale of gasoline in a safe and suitable place within the distance of 500 meters from an existing gasoline station constitutes in effect an unreasonable restraint of trade; (d) because said ordinance deprives the people living within the radius of 500 meters from two gasoline stations of equal opportunity and equal right to engage in the legitimate business of the sale of gasoline; (e) because said ordinance deprives the plaintiffs and other persons similarly situated of the full use and enjoyment of their own property, and (f) because said ordinance is arbitrary, unreasonable and discriminatory.

The ordinance in question fully reads as follows:

"[ORDINANCE No. 1985]

"AN ORDINANCE PRESCRIBING THE RULES AND REGULATIONS IN CONNECTION WITH THE GRANTING OF PERMITS FOR THE INSTALLATION OF GASOLINE PUMPS AND GASOLINE STATIONS IN THE CITY OF MANILA, AND FOR OTHER PURPOSES.

"Be it ordained by the Municipal Board of the City of Manila, that:

"SECTION 1. The following rules and regulations are hereby prescribed in connection with the granting of permits for the installation of gasoline pumps and gasoline stations in the City of Manila:

" (1) That all existing curb pumps and gasoline stations will be permitted to stay in their present locations, the city reserving the right to revoke any permit, (a.) when deemed advisable; (b) in case of change of ownership;

and (c) in case of violation of the rules and regulations embodied herein;

"(2) That hereafter no curb pumps will be permitted to be installed at the corner of any street in the city;

"(3) That no gasoline station will be permitted to be installed within a distance of five hundred meters from any existing gasoline station; and

"(4) That no gasoline pump or station will hereafter be permitted to be installed on the following streets: Taft Avenue, Muelle del Banco Nacional, Dasmarinas, Mendiola, A. Mabini, Dewey Boulevard, Herran, Isaac Peral, Canonigo, Tejeron, Juan Luna, Rizal Avenue, Santa Mesa, Espafia, Legarda, G. Tuason, Buenavista and P. Sanchez, but gasoline pumps will be permitted to be installed for private use on such streets, the location of same to be not less than five meters from the curb street line.

"SEC. 2. This Ordinance shall take effect on its approval."

By carefully reading the ordinance, it will be seen that the purpose thereof, as its title indicates, is to prescribe rules for the granting of permits for the installation of gasoline pumps and gasoline stations in the City of Manila. It is not true that the ordinance, as a whole prohibits the sale of gasoline in the city. The ordinance classified gasoline pumps into those installed for private use and those installed for the sale of gasoline to the public, the latter being denominated by it gasoline stations. While paragraph 3 of section 1 employs the verb "permit" which is the opposite of the verb "prohibit", it confines itself to providing a rule for the installation of gasoline stations within the City of Manila and merely prescribes that such stations shall not be installed within the distance of 500 meters from each other. Under this provision any inhabitant of the city may install as many gasoline stations as he wishes provided he keeps the prescribed distance. Paragraph 4 prohibits the installation of gasoline stations on the streets enumerated therein but permits the installation of pumps for private use, not intended for the sale of gasoline to the public.

The power of the municipal board of the City of Manila to enact ordinance No. 1985 is derived from the provision of section 2444, paragraph (m), of the Revised Administrative Code, as amended by Act No. 3669, the pertinent part of which reads as follows:

"SEC. 2444. General powers and duties of the Board.— Except as otherwise provided by law, and subject to the conditions and limitations thereof, the Municipal Board shall have the following legislative powers:

* * * * *

"(m) To tax, fix the license fee and regulate the business of * * * the storage and sale of * * * gasoline;" said power emanates from the police power of the Philippine Legislature delegated to the board.

"The police power extends to the prevention and abatement of nuisances. The legislature, within the limitations hereinafter noted, may prescribe what shall constitute a nuisance. It may change the common law as to nuisances and hence it may make things nuisances which were not so at common law, or nuisances per se, although by so doing it affects the use or value of property; and similarly within its constitutional limitations the legislature may make things lawful which were nuisances at common law, although by so doing it affects the value or use of property. The legislature may declare places, where acts forbidden by law are committed, to be nuisances. It may prescribe the method for the abatement of nuisances, as, for instance, for summary abatement. Also it may confer jurisdiction on courts of equity to abate nuisances." (46 C. J., sec. 14, pp. 651, 652; *Northwestern Laundry vs. Des Moines*, 239 U. S., 486; *U. S. vs. Reisenweber*, 288 Fed., 520; *Pompano Horse Club, Inc. vs. State*, 111 S., 801; *Pittsburg, etc., R. Co. vs. Brown*, 33 Am., Rep., 73, *Fevold vs. Webster County*, 210 N. W., 139.)

"The keeping or storage of gasoline may constitute a nuisance, either private or public. Whether or not it becomes a nuisance depends upon the location, the quantity, and other surrounding circumstances. While it

would not necessarily depend upon the degree of care used in the storage, the manner in which the tanks are constructed and operated may be considered." (46 C. J., p. 710; *Whittemore vs. Baxter Laundry Co.*, 148 N. W., 437; *McGuffey vs. Pierce-Fordyce Oil Assoc.*, 211 S. W., 335.)

"It is a well recognized function of the police power to promote the public safety by regulating dangerous occupations, restraining dangerous practices, and prohibiting dangerous structures." (12 C. J., sec. 426, p. 916; *Lawton vs. Steele*, 152 U. S., 133; *Barbier vs. Connolly*, 113 U. S., 27; *Patterson vs. Kentucky*, 97 U. S., 501; *Boston Beer Co. vs. Massachusetts*, 97 U. S., 25; *Hannibal, etc., R. Co. vs. ffusen*, 96 U. S., 465; *Electric Impr. Co. vs. San Francisco*, 45 Fed., 593; *State vs. Kansas City, etc., R. Co.*, 32 Fed., 722.)

"The storing, handling, and use of inflammable and explosive substances, being attended with danger, may be regulated under the police power. Thus the explosion of fireworks may be prohibited; and it is within the police power of a municipality, when it is deemed necessary for public safety, to prohibit the blasting of rocks with gunpowder within the city limits without the written consent of the board of aldermen." (12 C. J., p. 917; *Union Oil Co. vs. Portland*, 198 Fed., 441; *Tannenbaum vs. Rehn*, 44 S., 532; *Standard Oil Co. vs. Danville*, 64 N. E., 1110; *Standard Oil Co. vs. Com.*, 82 S. W., 1020; *Peo. vs. Lichtman*, 65 N. E., 854; *New York City Fire Dept. vs. Gilmour*, 44 N. E., 177; *Foote vs. New York Fire Dept.*, 5 Hill [N. Y., 99.)

"Cities and towns have power, under the general welfare provisions of statutes and charters, to enact reasonable ordinances relating to the selling and distribution of oil, gasoline, and other petroleum products, within their boundaries, defining where and how filling stations may be constructed and operated, and regulating the use of driveways across sidewalks to such stations; and a vested right cannot be asserted against the proper exercise of such police power." (42 C. J., sec. 1213, p. 1305; *McIntosh vs. Johnson*, 105 N. E., 414; *Gulf Refining Co. vs. McKernan*, 102 S. E., 505; *Herring vs. Stannus*, 275 S. W., 321; *Sander vs. Blytheville*, 262 S. W., 23; *State vs. Fleming*, 225 Pac, 647.)

"An ordinance forbidding the granting of a permit or license for such & station in any location where, by reason of traffic conditions or fire hazards, it would imperil the public safety, or authorizing the denial of the same if such station is found to be against the public interest, is a proper exercise of the police power, and is not invalid as denying the equal protection of the law or leaving the granting or refusal of the permit to the arbitrary will of the municipal officials charged with the issuance thereof." (42 C. J., p. 1306; *State vs. Fleming*, supra.)

According to the above-cited authorities, it is evident that the municipal board of the City of Manila had the power to enact ordinance No. 1985 by virtue of the police power delegated to it by the Legislature, and, consequently, said ordinance is valid and binding.

The plaintiffs claim that the mayor of Manila had no power either to enforce the ordinance in question or to cancel the permit granted by him to the Asiatic Petroleum Co. (P. I.), Ltd. Their contention, however, is in conflict with the provisions of section 2434 (b), paragraphs (a) and (m) of the Revised Administrative Code, as amended, which expressly confer upon him said powers. Said legal provisions read as follows :

"SEC. 2434 (b). General duties and powers of the Mayor.—The general duties and powers of the mayor shall be:

" (a) To comply with and enforce and give the necessary orders for the faithful enforcement and execution of the laws and ordinances in effect within the jurisdiction of the city.

* * * * *

" (m) To grant and refuse municipal licenses or permits of all classes and to revoke the same for violation of the conditions upon which they were granted, or if acts prohibited by law or municipal ordinance are being committed under the protection of such licenses or in the premises in which the business for which the same

have been granted is carried on, or for any other good reason of general interest."

It will be remembered that the permit was granted with the express condition¹ that the gasoline to be facilitated by the pump and the tank would be for the exclusive use of the motor vehicles of Makabayan Taxicab Co., Inc., and that it would not be sold to the public because the place where the pump and the tank were installed was within the prohibited zone of 500 meters from the Shell Gasoline Station, the nearest gasoline station. Inasmuch as said condition was openly violated and the City of Manila having reserved the right to revoke the permit for violation of any of the conditions imposed, it is clear that the mayor, in compliance with his duties, had the power to cancel the permit.

The ordinance in question does not prevent reasonable and free competition in the sale of gasoline and, therefore is not in conflict with the purposes of Act No. 3247. Under it, everybody may engage in the sale of gasoline and may install gasoline stations provided the same are established outside the prohibited distance of 500 meters.

Neither does it constitute an unreasonable and arbitrary restraint of trade because it does not absolutely prohibit the sale of gasoline by means of appropriate pumps and stations within the City of Manila. What it prohibits is the installation of pumps and stations for the sale of gasoline to the public within the distance of 500 meters from each other, and this constitutes a reasonable regulation (U. S. vs. Ling Su Fan, 10 Phil., 104; 278 U. S., 302; 54 Law. ed., 1049). But granting that it has such effect, the measure is valid and legal because it is reasonable, tends to protect the public and is based upon the police power vested in the municipal board of the City of Manila. "On the ground of preventing or abating nuisances, the state or municipality may, in the exercise of the police power, prohibit or regulate the transaction of business in such places or manner as constitutes a nuisance, although it may not by mere fiat make that a nuisance which is not in its real nature a nuisance. The power of the state, however, to regulate occupations and business is not based exclusively on its authority to prevent and abate nuisances. A business or occupation is not exempt from regulation by the mere fact that it is lawful, or that its exercise or conduct does not constitute a nuisance per se. It is within the province of the police power to regulate all professions, trades, occupations, and business enterprises that are of a quasi public nature, or that may, if exercised or conducted without restriction, prove injurious to the public health, safety, or morals, or to the general welfare. The doctrine is well established that to the extent that property or business is devoted to the public use or is affected with a public interest, it is subject to regulation under the police power." (12 C. J., sec. 431, pp. 922, 923; Yick Wo vs. Hopkins, 118 U. S., 356; Stockton Laundry Case, 26 Fed., 611; Ex parte Hadacheck, 165 Cal., 416; Ex parte Lacey, 108 Cal., 326; Houston, etc., R. Co. vs. Dallas, 84 S. W., 648; Terr vs. Denver, etc., R. Co., 203 U. S., 38; Munn vs. Illinois, 94 U. S., 113; Union Oil Co. vs. Portland, 198 Fed., 441; Arkansas vs. Kansas, etc., Coal Co., 96 Fed., 353; Humes vs. Ft. Smith, 93 Fed., 857; Louisville, etc., R. Co. vs. Tennessee R. Commn., 19 Fed., 679; New Orleans Water-Works Co. vs. St. Tammany Water-Works Co., 14 Fed., 194.)

The municipal board of the City of Manila, in the exercise of the police power, may reasonably regulate professions and business enterprises within its territorial limits when the public health, safety and welfare so demand. The ordinance in question is of this nature and, therefore, is not illegal. "The conduct of particular kinds of business which may injuriously affect the health, safety, comfort, or morals of the people of the community may be forbidden within certain territorial limits; and a state may prohibit the sale of any goods near a place in which a religious society is holding an outdoor meeting, or may forbid traffic of a harmful nature near institutions of learnings, asylums, prisons, soldiers' homes, state capitol grounds, and kindred places." (12 C. J., sec. 1076, p. 1275; Hadacheck vs. Sebastian, 239 U. S., 394; Ex parte Quong Wo, 161 Cal., 220.)

Likewise, the municipal board of the City of Manila, by virtue of the police power, may reasonably regulate the use of private property whenever such measure is required by the public health and safety, and the welfare of its inhabitants (Fabie vs. City of Manila, 21 Phil., 486; Kwong Sing vs. City of Manila, 41 Phil., 103; Manigault vs.

Ward, 123 Fed., 707'; Ex parte Yun Quong, 114 Pac, 835; Sierra County vs. Flanigan, 87 Pac, 913; Plumasi County vs. Wheeler, 87 Pac, 909). The ordinance under consideration prohibits the installation of gasoline stations within the distance of 500 meters from each other not only to prevent ruinous competition among merchants engaged in this kind of business but also to protect the public from any harm or danger that may be occasioned by said inflammable substance.

Lastly, the ordinance is not arbitrary, unreasonable or discriminatory because, as already stated, it was enacted by the City of Manila in the exercise of the police power delegated to it by the Legislature, it tends to protect the inhabitants thereof from the dangers and injuries that may arise from the inflammable substance, and the measure is general and applicable to all persons in the same situation as the plaintiffs.

III. After measurements had been made, it was found out that the distance from the station operated by the plaintiffs to the Shell Gasoline Station, on Taft Avenue, is only 440.26 meters, such measurement having been made along the streets and not in a straight line, and that the distance from the same station to the Socony Service Station situated at the corner of Taft Avenue and Herran Street is 501.16 meters, such distance having been measured along the streets and not in a straight line. Upon this result, the plaintiffs maintain in their third assignment of error that, granting paragraph 3 of section 1 of the ordinance in question to be valid, their gasoline station does not violate the provisions thereof. The contention is untenable because it is evident that the Shell Gasoline Station on Taft Avenue is within the prohibited distance. It is of no avail to argue that the latter station also belongs to the Asiatic Petroleum Co. (P. I.), Ltd., because, as already stated, the purpose of the ordinance is not solely to prevent ruinous competition among merchants, but also, and more principally, to protect the public health, safety and welfare. Furthermore, it is not true that there can be no ruinous competition between the two neighboring¹ stations because, although they belong to one and the same owner, the fact is that they are operated and managed by different persons or entities who, independently of the Asiatic Petroleum Co. (P. I.), Ltd., work for the purpose of obtaining profits for themselves.

IV. The plaintiffs allege that Title 10 of the Revised Ordinances, which deals with the sale of gasoline within the City of Manila, does not require the holding of a license for said kind of business. They likewise invoke the testimony of Tomas Corpus, an employee of the office of the city treasurer, who testified that in practice said office requires no license when collecting a privilege tax. The plaintiffs conclude therefrom that in the City of Manila it is not necessary to obtain a license to sell gasoline and on this theory they base their fourth assignment of error. To obtain a permit or license to sell gasoline is one thing, and to pay the fees corresponding to said license is another. According to section 2434 (b), paragraph (w), of the Revised Administrative Code, as amended, the issuance of a permit or license to sell gasoline rests with the mayor while the collection of the fees for the license so issued devolves upon the city treasurer. For this reason, the fact that the plaintiffs, through error, succeeded in having the word "storage" crossed out and the word "sells", which should correctly read "sales", substituted in lieu thereof in the receipt of payment by the employee; Corpus, is of no importance or value. Said employee had no authority to issue a license. His entire duty consisted in collecting the fees fixed by the ordinances. That the plaintiffs themselves recognized the authority of the mayor to issue licenses and to revoke them for just causes is shown by the fact that they applied to him, through the Asiatic Petroleum Co. (P. I.), Ltd., to secure said license and to avoid the revocation thereof.

V. The court held that the plaintiffs were not the ones called upon to bring the action instituted by them because they were not the concessionaires, but the Asiatic Petroleum Co. (P. I.), Ltd., in whose favor the license was issued. The fifth assignment of error of the plaintiffs is directed against this ruling. Without entering upon lengthy considerations, which this court deems unnecessary, it is hereby held that the assignment of error is well taken. This court holds that the plaintiffs may maintain this action because they are a necessary and interested party to

the case, being the direct beneficiaries of the license issued in favor of the Asiatic Petroleum Co. (P. I.), Ltd.

VI. The sixth and last assignment of error requires no further discussion. It is a corollary of the former ones and is decided by inference.

For all the foregoing considerations, and upon the ground above-stated, the appealed judgment is affirmed, and the writ of preliminary injunction issued by the court is set aside, with the costs of this instance to the plaintiffs-appellants. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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