

## **RAFAEL PEREZ SAMANILLO, PLAINTIFF AND APPELLANT, VS. THE CITY OF MANILA, DEFENDANT AND APPELLEE.**

*G. R. No. 44470. September 27, 1937*

Ponente: CONCEPCION, J.

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### **CONCEPCION, J.:**

This is an action to recover from the City of Manila the amount of P291.84 paid under protest as special tax, on the alleged ground that ordinances Nos. 1958 and 2339, by virtue of which the plaintiff had been required to pay said tax, as one of the owners benefited by the widening of Dasmarinas Street from Juan Luna Street to T. Pinpin Street, of the District of Binondo, Manila, are null and void.

The facts are undisputed. The parties have agreed in a stipulation, which was later amplified, that the following facts are true:

The plaintiff is the registered owner of lots Nos. 2, 3 and 5 of block No. 1884 of the District of San Nicolas, City of Manila, on which the property bearing Nos. 995-999 oh Muelle de la Industria, which intersects Dasmarinas Street, is situated; and is also the registered owner of lots Nos. 3-B, 11 and 12 of block No. 2012 of the District of Binondo, City of Manila, on which the property bearing Nos. 116-122 on Juan Luna Street is situated.

The draft of ordinance No. 1958 of the municipal board of the City of Manila, was published in Spanish and in English in the issues of the Official Gazette corresponding to May 13, and June 3, 5 and 7, 1930.

Said proposed ordinance No. 1958 was discussed and approved by the municipal board of the City of Manila and sent by the secretary of the municipal board to the mayor of the City of Manila, for his approval, on June 7, 1930.

On the 26th of said month, the mayor sent to the municipal board an endorsement, inviting attention to the attached letter of L. M. Heras, president of the "Asociacion de Propietarios de Manila", enclosing the protest of several members thereof who own properties representing more than one-half of the assessed value of the properties affected by the proposed ordinance, and recommending that the public hearing requested by them be held so as to give them an opportunity to present their objections.

On the 30th of said month, the secretary of the municipal board sent a circular letter to each and every one of the owners of the properties affected by the widening of Dasmarinas Street, including the plaintiff Rafael Perez, enclosing a copy of the proposed ordinance relative to the widening of said street, and informing them that the municipal board would hold a public hearing oh the matter on Wednesday, July 9, 1930, at 3 o'clock p. m., at its session hall, City Hall.

On said date, time and place, the public hearing referred to was held and was attended by several attorneys representing several companies affected by the proposed ordinance.

On the same day, July 9, 1930, the protests presented were endorsed to the Committee on Engineering and Public Works of the municipal board of the City of Manila for further comment and recommendation, and on October 7,

1930, said committee submitted its report, recommending the return of the proposed ordinance to the mayor for his approval.

On the same day, October 7, 1930, the municipal board approved the report of the committee on engineering and forwarded the ordinance to the mayor of the City of Manila, who finally signed it on October 16, 1930.

For the purpose of carrying out the improvements stated in said ordinance No. 1958, the municipal board of the City of Manila, on December 12, 1930, passed resolution No. 456, authorizing the expropriation of all the properties necessary for the widening of Dasmarinas Street, which included the properties situated between Muelle de Binondo and Juan Luna Street. The expropriation of said properties and the construction of said improvements were accomplished in due time, with the modification stated in the following paragraphs.

On October 29, 1934, the municipal board passed resolution No. 361, which was approved in due time by the mayor, amending said resolution No. 456, so as to exclude from the latter resolution the properties situated on Dasmarinas Street, between Muelle de Binondo and Juan Luna Street, that is, abandoning the expropriation of said properties.

The draft of ordinance No. 2339 was published in Spanish and in English in the issue of the Official Gazette, corresponding to February 2, 1935.

Said draft of ordinance No. 2339 was approved by the municipal board on February 14, 1935, and by the mayor on March 12th of the same year.

Upon approval, the aforesaid ordinance No. 2339 was published in Spanish and in English in the issue of the Official Gazette, corresponding to March 21, 1935.

The draft of said ordinance No. 2339 has not been sent by ordinary mail, or otherwise, to each of the owners affected, they not having so demanded.

The works for the widening of Dasmarinas Street, referred to in ordinances Nos. 1958 and 2339, were begun on December 27, 1930, and were completed on or before June 3, 1934, excluding the portion thereof between Juan Luna Street and Muelle de Binondo.

By virtue of ordinances Nos. 1958 and 2339, the assessor of the City of Manila fixed the special assessment tax on the properties of the plaintiff at the total amount of P1,459.20, payable in five annual installments, and in view of the demands of said assessor, and in order not to incur penalties and fines, the plaintiff was compelled to pay under protest one-fifth of said special assessment tax, that is, the sum of ^291.84. He later brought this action wherein judgment was rendered dismissing his complaint. He excepted thereto and, after filing a motion for new trial, which was denied with his exception, he brought this case before this court, by bill of exceptions duly approved.

The appellant assigns four alleged errors as committed by the court a quo, the first of which, also assigned by the two amici curiæ, Gibbs in his own behalf, and Feria & La O, representing the China Banking Corporation, reads as follows:

"The court erred in holding that ordinance No. 1958 of the City of Manila is valid:

"(a) Because the draft of said ordinance has not been published in two daily newspapers of the city, but only in the Official Gazette.

"(b) Because the draft of said ordinance has not been published (even in the Official Gazette) during the period of one week.

"(c) Because the draft of said ordinance was approved without sending copies thereof to the owners affected.

"(d) Because the draft of said ordinance was approved without waiting for the period of three (3) days from the date of the last publication thereof."

According to the provision of section 2509 of the Administrative Code, the draft of said ordinance No. 1958 had to be published for the period of one week in two daily newspapers published in the city, one in the English and one in the Spanish language, before its adoption. According to the facts stipulated, it was published in the Official Gazette, in English and in Spanish, on May 13, and June 3, 5 and 7, 1930. Now then: it should be taken into consideration that from the promulgation of Act No. 2930, all official notices or advertisements, except those of a judicial character, must be published in the Official Gazette. The municipal board, in compliance with this law, caused the publication of the proposed ordinance No. 1958 in the Official Gazette. If said ordinance was not published every day for a week, it was because the Official Gazette is published only three times a week. Which is the law in force relative to the publication of a proposed ordinance, as No. 1958? This court is of the opinion that it is Act No. 2930, which, containing provisions incompatible with those of section 2509 of the Administrative Code, has implicitly repealed those of said section 2509 as to the provisions in question. It is argued that said Act No. 2930 has repealed section 2509 of the Administrative Code only as to the medium of publication but not as to the period of publication. We fail to see the consistency of this argument. When Act No. 2930 was approved, the Official Gazette was published only once a week. The Legislature knew this very well and yet it provided that the draft of the ordinance in question, as all official notices, be published in the Official Gazette, without providing that the Official Gazette be published with the necessary frequency as the laws may require.

On the other hand, the purpose of the publication being evidently to inform all the interested persons of the ordinance proposed to be enacted, such purpose has been attained and the law has been substantially complied with by the publication of said proposed ordinance for three days a week, that is, on June 3, 5 and 7, 1930, not to mention the publication thereof on May 13th.

As third and fourth grounds of the first assignment of alleged error, it is stated in the appellant's brief that "the draft of said ordinance was approved without sending copies thereof to the owners affected" and "without waiting for the period of three (3) days from the date of the last publication thereof." All of these are not based on the stipulated facts because after the filing of the brief for the appellant and that for the City of Manila, the parties stipulated that after the last publication, said proposed ordinance was sent to the mayor for his approval; that the mayor remanded it to the board so that the latter might hold a public hearing; that notice was sent to all the owners affected to the effect that the hearing would be held, which hearing was in fact held and attended by several attorneys representing various companies; that the protests filed were later endorsed to the Committee on Engineering and Public Works; that said committee afterwards sent the ordinance to the municipal board and the board approved the committee's recommendation to the effect that the ordinance be forwarded to the mayor for approval, and that the mayor finally approved it on October 16, 1930. In view of all these facts, the two alleged grounds of the first error, attributed to the court a quo by the appellant fall flat for being unfounded.

However, the appellant contends in his additional brief that the fact that the mayor returned the proposed ordinance in order that a public hearing might be held, was equivalent to a veto and, such being the case, the municipal board, according to the provision of section 2443 of the Administrative Code, had to reenact the ordinance before the mayor could approve the same, and alleges that in this case, the only thing done by the municipal board was to approve the report of the committee on engineering. In the first place, the contention that the ordinance was vetoed by the mayor is untenable. According to the provision of section 2443 in connection with section 2510 of the Administrative Code, " \* \* \* within ten days after the receipt of the ordinance, resolution or motion, the mayor shall return it with his approval or veto. If he does not return it within that time, it shall be

deemed to be approved" (Underscoring ours.) Now then: according to the stipulated facts, the draft of the ordinance in question was sent by the secretary of the municipal board to the mayor, for approval, on June 7, 1930, and on the 26th of said month, that is, 19 days later, the mayor sent an endorsement to the municipal board so that it might hold a public hearing. Therefore, more than 10 days had already elapsed, and under section 2443 of the Administrative Code, the ordinance should be deemed to be implicitly approved by the mayor. But furthermore, the ordinance was expressly approved by the mayor. The fact that the board approved the report of the committee on engineering recommending the return of the ordinance to the mayor, for approval, cannot be logically understood otherwise than that the board approved the ordinance, this being the reason why it was sent to the mayor so that he would, in turn, approve it, as he in fact approved it on October 16th.

With respect to the approval of the municipal board, the appellant now argues that it does not appear that the ordinance has been approved by an affirmative vote of seven of the members of the board. It should be taken into account, however, that, as already stated, this case does not refer to a vetoed ordinance, which is the premise upon which the appellant argues on this point.

The amici curiæ, Gibbs, argues that the ordinance in question is null and void because the draft thereof, which was published, is different from the one approved, inasmuch as according to the draft, 150 per cent of the cost of the improvement of widening Dasmarinas Street would be levied in the following proportion: 80 per cent on the owners of the real properties included in the first zone and 70 per cent on the owners of the real properties included in the second zone; while the ordinance approved provides that 90 per cent of the cost of the improvement shall be collected as follows: 60 per cent from the owners of the first zone and 25 per cent from those of the second zone. To refute this contention, suffice it to state: (1) that the draft of an ordinance is not a final ordinance, and (2) that in the case under consideration, the ordinance approved, far from prejudicing the owners affected thereby, notably benefits them. No harm is done them by the decrease in the percentage of the special assessment.

The second alleged error reads as follows:

"The court erred in declaring that ordinance No. 2339 of the City of Manila, is valid:

"(a) For the same reasons that ordinance No. 1958 is null and void.

"(b) For the additional reason that said ordinance was approved after the improvements of Dasmarinas Street had been made."

It is true that said ordinance was approved after the improvements of Dasmarinas Street had been made; in other words, that said ordinance was approved after the widening of Dasmarinas Street from T. Pinpin Street to Juan Luna Street had been finished. The works for the widening of Dasmarinas Street up to Juan Luna Street were finished on June 3, 1934, while said ordinance No. 2339 was approved on March 12, 1935. The appellant argues that the law requires the ordinance to be approved before the works or improvements are made. In so arguing, he has lost sight of the fact that ordinance No. 2339 was approved precisely for the purpose of not carrying out the project of street widening from Juan Luna Street to Muelle de Binondo. When the work of widening the street up to Juan Luna Street had been finished, the city deemed it incompatible with its best interests to proceed with the expropriation of the properties on Dasmarinas Street between Juan Luna Street and Muelle de Binondo, and therefore desisted from proceeding with the widening of said street from Juan Luna Street to Muelle de Binondo, by approving ordinance No. 2339. Said ordinance could not be approved before the improvement was begun simply because the original plan, according to ordinance No. 1958, was to widen the street up to Muelle de Binondo, and when the city approved ordinance No. 2339, it no longer had any work to do.

Inasmuch as ordinance No. 2339 is simply an amendment to ordinance No. 1958, it having been intended thereby

to desist from carrying, out part of the work of street widening provided for in said ordinance No. 1958, the same reasons for making so many publications, serving notices and holding public hearing, as in the case of the amended ordinance, did not exist.

For having desisted from the original plan, the expenses for the widening of Dasmarinas Street up to Juan Luna Street have turned out to be much less than what it would have cost if the work had been carried out up to Muelle de Binondo. The estimated cost of the improvement, under the original plan, was P349,291, while the actual cost thereof, reduced by the amendment of said plan, was only P290,379.14. The plaintiff was benefited thereby because the special assessment tax which he had to pay was similarly reduced in proportion.

With the foregoing, this court deems it unnecessary to pass upon the third and fourth alleged errors assigned by the appellant, because they are mere conclusions of his contentions in the first and second assignments, already discussed.

There being none of the errors attributed to the court a quo, the appealed judgment is affirmed, without any pronouncement as to costs. So ordered.

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

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