

THE MUNICIPALITY OF VICTORIAS, PLAINTIFF AND APPELLANT, VS. VICTORIAS MILLING CO., INC., DEFENDANT AND APPELLEE.

G.R. No. 45524. May 04, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal taken by the municipality of Victorias, Occidental Negros, from the decision of the Court of First Instance of said province which held that municipal ordinance No. 4, series of 1930, is not binding upon the private market of the appellee Victorias Milling Co., Inc., and that if the said ordinance is to be applied to the latter, it would be ultra vires and invalid, wherefore, it ordered the dissolution of the writ of preliminary injunction issued by the court at the commencement of the action.

The municipality of Victorias filed a complaint against Victorias Milling Co., Inc., wherein it prayed that a writ of preliminary injunction be issued against the latter corporation enjoining it to desist and abstain from operating, conducting, and maintaining a private market which it had constructed within the jurisdiction of the said municipality, and that judgment be rendered ordering the said defendant to pay the damages suffered by the municipality for continuing to operate, maintain and conduct the said private market without any permit, authority or license from the plaintiff municipality. Victorias Milling Co., Inc., answered the complaint with a general and specific denial and a special defense, concluding with the prayer that the municipal ordinance, upon which the municipality's action is based, be declared null and void. By a separate pleading, it filed a cross-complaint alleging various facts, and asking for judgment declaring that the aforesaid ordinance No. 4 of the municipality of Victorias is not applicable to the case at bar and that it was beyond the power of the municipality to impose taxes, wherefore, it was ultra vires and null and void.

At the trial, the parties have submitted a stipulation of facts of which the following are the principal ones:

- "1. That the plaintiff and cross-defendant is a municipal corporation organized and existing under the laws of the Philippine Islands and constitutes a branch or division of the Government of the Philippine Islands; and the defendant and cross-plaintiff is a private corporation organized under the laws of the Philippine Islands, domiciled in the City of Manila, P. I, and with a place of business in the municipality of Victorias of this province;
- "2. That the defendant and cross-plaintiff is the owner of and operates a sugar central for the manufacture of centrifugal sugar within the jurisdiction of the municipality of Victorias above-mentioned, the said sugar central having started to operate about 15 years ago;
- "3. That the sugar central of the defendant and cross-plaintiff stands upon a land of its own situated about three kilometers from the center of the poblacion of the municipality of Victorias, wherein it has a considerable number of employees and laborers who, including their respective families, number about 1,200 persons, and who also form a part of the population or inhabitants of the municipality of Victorias;
- "4. That on or about July 9, 1930, said plaintiff and cross-defendant, through its municipal council, enacted

municipal ordinance No. 4, series of 1930, copy of which is attached and marked as annex A and made an integral part hereof, which ordinance particularly prohibits the establishment of private markets without prior authority of the municipal president of Victorias and without paying to the plaintiff the amount or amounts fixed therein as 'tax' for the establishment of said markets;

"5. That to safeguard the health and welfare of its employees and laborers and their families and to save them. if they so desire, the trouble of going to the public market of the plaintiff municipality, the defendant and cross-plaintiff has constructed a concrete and steel building on its aforementioned land, a photograph of which is attached hereto and marked as annex B (which concrete and steel building above-described is about three kilometers from the public market situated in the center of the poblacion of the municipality of Victorias); and that from or about August 1, 1930, the defendant and cross-plaintiff, and before the issuance and notice of the writ of preliminary injunction in this case on September 5, 1930, has opened the said building and has permitted the use thereof under certain conditions which the defendant and cross-plaintiff from time to time imposed upon those who sold or desired to sell and purchased therein merchandise or goods, principally foodstuff, and that for said purpose the defendant and cross-plaintiff has not obtained the authority of the municipal president required by section 1 of the ordinance mentioned in the fourth paragraph of this stipulation of facts;

"6. That the defendant and cross-plaintiff has never collected any fee nor required any form of compensation or rent for the use of the said concrete building from those who sold or purchased said goods or merchandise therein, and will never do so in spite of the fact that the defendant and cross-plaintiff has taken the trouble to attend to and keep the said place in a sanitary, clean and orderly condition at its own expense."

Section 1 of the aforesaid municipal ordinance prohibits every person or entity from having or establishing a private market within the limits of the municipality without the prior authority of the municipal president; section 2 thereof requires every person or entity who owns a private market to pay an annual tax which varies from P6,000 to P120 according to the distance of the private market from the public market.

The appellant municipality assigns in its brief five errors allegedly committed by the lower court, all bearing upon the fundamental question of whether or not the municipality has the power to impose a tax upon a private market of the nature of the one in question.

The law is to the effect that the municipality of Victorias, like any other Philippine municipality, may authorize and regulate the establishment and operation of a public or private market within its jurisdiction. The important question to be answered is whether the aforesaid municipal ordinance No. 4 only requires, for the construction and maintenance of a private market, the payment of license fees or the payment of a tax. If it has to do with the payment of license fees, the power of the municipality to impose the same is beyond question (section 2320 of the Revised Administrative Code; 18 R. C. L., 375).

But the questioned ordinance requires the payment of a tax and not that of a license. Section 2 thereof provides "that every person, corporation, association or entity who owns a private market within the jurisdiction of this municipality of Victorias, Province of Occidental Negros, Philippine Islands, shall pay, before opening, establishing or operating a private market, the following tax." (Italics ours.) Then it fixes the amount of P6,000 for the market one kilometer or less from the public market; P1,800 for that two kilometers or less from the public market, etc., etc.

Under Act No. 3422, as amended by Act No. 3790, municipal license taxes are imposable only upon persons engaged in any occupation or business, or exercising privileges in the municipality. Section 1 of said Act No. 3422, amended by Act No. 3790, reads:

"Section 1. A municipal council shall have authority to impose municipal license taxes upon persons engaged

in any occupation or business, or exercising privileges in the municipality, by requiring them to secure licenses at rates fixed by the municipal council, and to collect fees and charges for services rendered by the municipality, and shall otherwise have power to levy for public local purposes and for school purposes, including teachers' salaries, just and uniform taxes other than percentage taxes and taxes on specified articles: * * *." (Italics ours.)

Under the stipulation of the parties, since the construction of the market in question by the defendant corporation, it has never collected any fee nor required any form of compensation or rent for the use of the said market from those who sold or purchased goods or merchandise therein, and will never do so in spite of the fact that the said defendant has taken the trouble to attend to and keep the said place in a sanitary, clean and orderly condition at its own expense, for its only object in constructing and maintaining the said building or market is to safeguard the health and welfare of its employees and laborers and their families so as to spare them, if they so desire, the trouble of going to the public market.

If the defendant corporation, in maintaining its market, is not engaged in any business or does not exercise any privilege, there is no reason to require it to pay any tax. Section 2307 of the Revised Administrative Code specifically enumerates the cases when municipal councils may impose taxes, from which it will be seen, as a condition for the imposition thereof, that the persons bound to pay the tax be engaged in a business or exercise a privilege in the municipality; that is, the taxes are always demandable whenever any business or lucrative enterprise is involved. This is not the case of the defendant corporation.

Applying the provisions of Act No. 3422, as amended by Act No. 3790, this court, in resolving a case similar to that at bar, held in *Hawaiian Philippine Co. vs. Municipality of Silay* (G. R. No. 42715 [62 Phil., 965]), that the appellant municipality therein was without power to demand of the appellee the payment of a tax for its so-called private market.

In view of the foregoing, the judgment of the lower court is affirmed, with the costs to the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concur

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