

## **G. VDA. DE ANGELES ET AL., PLAINTIFFS-APPELLANTS, VS. THE CITY OF DAVAO ET AL., DEFENDANTS-APPELLEES.**

*G.R. No. 49097. March 31, 1944*

Ponente: OZAETA, J.

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### **OZAETA, J.:**

Appeal from a judgment of the Court of First Instance of Davao declaring a city ordinance valid, upon the following facts:

On December 29, 1934, the municipality of Davao passed ordinance No. 381, prescribing, among other things, a slaughter fee of P2 per head of cow or carabao slaughtered.

On March 1, 1937, after the conversion and organization of the municipality of Davao into a city by virtue of Commonwealth Act No. 51, the municipal board of the City of Davao approved resolution No. 2, whereby it re-enacted "into ordinances of the City of Davao all subsisting ordinances of the former Municipality of Davao, insofar as they are not inconsistent with the provisions of the Charter of the City of Davao (Commonwealth Act No. 51) and the Constitution of the Philippines."

At the time municipal ordinance No. 381 was passed the law empowering chartered cities and municipalities to establish slaughterhouses and collect fees therefor was Act No. 4142, which was approved on November 24, 1934, and which provided that the slaughter fee that might be charged by a chartered city or municipality on large cattle and other domestic animals shall not exceed two centavos per kilo of dressed meat.

At the time resolution No. 2 of the municipal board of the City of Davao was passed, said Act No. 4142 had been amended by Commonwealth Act No. 155, which took effect on November 9, 1936, and by which chartered cities, municipalities, and municipal districts were empowered to establish or authorize the establishment of slaughterhouses and "to charge reasonable slaughter fees,"

This action was commenced by the appellants on December 6, 1937, to recover from the City of Davao slaughter fees paid by them under protest and collected by the City under the said municipal ordinance No. 381 before and after its re-enactment by resolution No. 2 of the municipal board of the City of Davao. The plaintiffs contended that said municipal ordinance No. 381 was null and void because it contravened Act No. 4142, and that Commonwealth Act No. 155 did not validate it.

The trial court held that the slaughter fees collected by the City of Davao before March 1, 1937 (i. e., from January 14 to February 28, 1937, inclusive), in excess of two centavos per kilo of meat were unauthorized by Act No. 4142 and should be refunded to the plaintiffs; but that the slaughter fees collected from and after March 1, 1937, when resolution No. 2 was approved, were legal because they were authorized by Commonwealth Act No. 155. From that judgment the plaintiffs appealed.

Appellants' contention is that since ordinance No. 381 was passed upon the authority of Act No. 3422, which had been repealed by Act No. 4142, it was illegal and "could not have been revived by the passage of Commonwealth

Act No. 155." Counsel for the appellants asserts:

" \* \* \* We submit that since the Ordinance in question is illegal, the passage of Commonwealth Act No. 155 could not legalize the said Ordinance. We admit that in this particular case, the City of Davao if it preferred could have passed a new and similar ordinance by virtue of Act No. 155. But that the same had not been done in this particular case. And we repeat that notwithstanding the provision of Act No. 155 and the resolution of the City Council in re-enacting all existing ordinances of the then municipality of Davao, the said Ordinance No. 381 still remained illegal." (Page 9, brief.)

The trial court did not hold that municipal ordinance No. 381 was revived or legalized by the passage of Commonwealth Act No. 155. It held that said ordinance was legally re-enacted by resolution No. 2 of the municipal board of the City of Davao on March 1, 1937, when Commonwealth Act No. 155 was already in force. We find this opinion of the trial court to be correct. Ordinance No. 381 was not completely illegal or nonexistent. It was illegal only insofar as it contravened Act No. 4142, which prescribed a maximum slaughter fee of two centavos per kilo. On March 1, 1937, ordinance No. 381 was one of the "subsisting ordinances of the former Municipality of Davao," it never having been theretofore annulled by a competent court. Therefore, when on said date the municipal board of the City of Davao, by resolution No. 2, "resolved to re-enact into ordinances of the City of Davao all subsisting ordinances of the former Municipality of Davao," ordinance No. 381 was continued in operation as if it had been enacted verbatim by the municipal board of the City of Davao; and since on said date Act No. 4142 had been amended by Commonwealth Act No. 155, the Tatter, and not the former, was the enabling Act by which the legality of said ordinance as re-enacted should be judged. Hence, any defect or illegality ordinance No. 381 might have by reason of the limitation provided by Act No. 4142 was cured or removed by the re-enactment of said ordinance under Commonwealth Act No. 155.

In conclusion, we hold that a municipal ordinance which is invalid because and insofar as it contravenes an Act of the Legislature, may be re-enacted and validated by a resolution approved after the Act which it contravened had been so amended as to make said ordinance lawful.

The judgment is affirmed, with costs.

Yulo, C. J., Moran, Horrilleno, Paras, and Bocobo, JJ., concur.

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