

**ANACLETO BERNARDINO AND BALTASARA ZAPLAN, PLAINTIFFS,
VS. THE PROVINCIAL GOVERNOR OF CAVITE AND THE PROVINCIAL
BOARD OF CAVITE, DEFENDANTS.***G. R. No. 5559. October 07, 1910*

Ponente: MORELAND, J.

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This is an action brought by the plaintiffs to prohibit the governor and provincial board of the Province of Cavite from tearing down and destroying a bamboo fence which the plaintiffs had built across an alleged callejon in the barrio of San Rafael, municipality of Cavite, Province of Cavite. The plaintiffs claimed to be the owners of the land across which the small street in question extended and that the persons living in that vicinity had been permitted to pass over the locality as a means of convenience and not of right. The persons who were permitted thus to pass over said land claimed, on the other hand, and in that claim were supported by the governor and provincial board of the province, that the way in question was a public street owned by the municipality by virtue of its having been used as a public highway for more than fifty years. The plaintiffs, having reached a point where they no longer desired to permit the passage of individuals over the land in question, built a fence across the same, inclosing that portion of it which lay within their property. The governor of the Province of Cavite, under a resolution of the provincial board empowering and directing him to do so, tore down this fence and opened the way for the passage of the public. The plaintiffs built the fence a second time and, in order to prevent the governor from consummating his threat of again tearing it down, commenced this action of prohibition, obtaining a preliminary injunction in aid of the suit. The provincial board seemed to base its claim of right to open the alleged street not only upon the ground that it was a public highway, but also upon the ground that the closing of the same in the manner in which it was done by the plaintiffs stopped or impeded the flow of surface waters to the bay, and retained them within the limits of the village to become stagnant and foul, to the prejudice of the health of the community.

It is immaterial, in the decision of this action, who owns the land in question. The result is the same whether it is a public highway or not. The real question is whether or not the provincial board of the Province of Cavite had any authority or jurisdiction to order torn down the fence erected by the plaintiffs, even conceding the way to be a public highway. A careful examination of the statute which gives functions and powers to the provincial governor and board discloses clearly that such governor and board had no authority to pass the resolution which they did pass or to commit the act which they did commit, even conceding that the way in question was a public highway. Neither did they or either of them have the power or authority to close the alleged street for reasons of public health. The only provisions of law respecting the powers of provincial boards which relate to public highways or public health are the following:

"It shall be the duty of the provincial board -

"To order, in its discretion, the construction, repair, or maintenance of roads, bridges, and ferries within the portions of the province fixed as within its control on the recommendation of the district engineer, and to

approve or reject contracts for such construction and repair, and the construction and repair of provincial buildings.

"To agree upon the recommendation of the district engineer with the provincial board of an adjoining province on the terms within the limitations of law, upon which roads forming the boundary between the two provinces, and bridges and ferries crossing streams forming such boundary shall be constructed, repaired, or maintained under the joint control of the two provincial governments.

"To appropriate, in its discretion, moneys from any of its funds in excess of all just-debts and liabilities falling due within the fiscal year, except those funds the use of which is otherwise specifically fixed by law, for loans to municipalities of the province, under such conditions as to the use of the funds loaned and as to the repayment of the loans with interest at three per centum per annum, as may be fixed by the provincial board: Provided, That the entire indebtedness of any municipality to which a loan is made shall not, inclusive of such loan, exceed five per centum of the assessed valuation of the property in said municipality.

"To provide, in its discretion, for the payment from provincial funds of their regular compensation during the period of their disability, not exceeding ninety days, to unclassified employees of the provincial government, including laborers, when said employees or laborers are injured in the clear line of duty; the necessary expenses of medical attendance, transportation, and hospital fees for such injured employees or laborers, and in case of their death from said injuries, their reasonable burial expenses may likewise, in the discretion of the provincial board, be paid from provincial funds.

"To appropriate moneys accruing to the provincial road and bridge fund for the purpose of providing and maintaining wharves, piers, and docks in accordance with plans and specifications furnished by the Bureau of Navigation, and removing obstructions to navigation within the limits of the province.

"To appropriate moneys from any of its funds, except those the use of which is otherwise specifically fixed by law, for other purposes having in view the general welfare of the province and its inhabitants: Provided, That no appropriation made pursuant to the provisions of this subsection shall be valid pr take effect until it shall have been approved by the Governor-General, or unless and until thirty days after the receipt of due notice thereof by the Governor-General shall have passed without the disapproval of the Governor- General having been given.

"Provincial boards are hereby authorized to appropriate provincial funds for the payment, in whole or in part, for buildings or personal property destroyed by order of the Director of Health, a district health officer, or a municipal health board: Provided, however, That nothing herein contained shall be construed as affecting the right of such health officers or boards to require the owners of buildings to keep the same in sanitary condition, or to abate the same as nuisances if not so kept, without compensation; the purpose of this section being to authorize the payment provided for above in such cases as may seem to the provincial boards equitable and just.

"In case the provincial board shall determine that a road or bridge of general importance to the province within the inhabited portion of a municipality is in need of repair, and shall notify the municipal council of the municipality in which such road or bridge is situated of the necessity of such repairs, and the municipal council shall fail for thirty days to proceed to make the repairs required, the provincial board is hereby authorized to make such repairs out of provincial funds and to assess the whole or any equitable part of the expense thus incurred against the delinquent municipality, taking into consideration in such assessment the ability of the municipality to bear the whole or any portion of the expense, and the utility of the road or bridge for the general interests of the province: Provided, That the authority granted in this and the preceding section shall not apply to purely local roads or bridges. It shall be the duty of the municipal treasurer to pay to the provincial treasurer such sum or sums as may be assessed against the municipality by virtue of the provisions of this section." (Sec. 13, Act No. 83, as amended.)

There appears nothing in these provisions' which confers the powers necessary to warrant the action of the provincial board in the case at bar. On the other hand, it is evident from the statutes that the municipal council has exclusive jurisdiction over streets found within the limits of the municipality which they represent and said council is empowered to regulate the construction, care and use of streets, sidewalks, wharves and piers in the municipality; to prevent and remove obstacles and encroachments upon the same and declare and abate nuisances; and to care for the health of the community.

The following are the provisions of law giving the municipal council authority to act in the case at bar:

"The municipal council shall -

"Regulate the construction, care, and use of streets, sidewalks, wharves and piers in the municipality, subject to the provisions of section nine hundred and sixty-nine hereof; prevent and remove obstacles and encroachments on the same; and declare and abate nuisances.

"Construct and keep in repair bridges and viaducts, and regulate the use of the same.

"Prohibit the throwing or depositing of filth, garbage, or other offensive matter in any street, alley, park, or public square; provide for the suitable collection and disposition of such matter and for cleaning and keeping clean the streets, alleys, parks, and other public places of the municipality.

"Regulate the keeping and use of animals, in so far as the same affect the public health and the health of domestic animals.

"Require any land or building which is in an unsanitary condition to be cleansed at the expense of the owner or tenant, and, upon failure to comply with such an order, have the work done and assess the expense upon the land or buildings.

"Construct and keep in repair public drains, sewers, and cesspools, and regulate the construction and use of private water-closets, privies, sewers, drains, and cesspools.

"Prohibit the burial of the dead within the centers of population of the municipality and provide for their burial in such proper place and in such manner as the council may determine, subject to the provisions of chapter eighty-nine hereof.

"Establish or authorize the establishment of slaughter-houses and markets, and inspect and regulate the use of the same.

"Provide for and regulate the inspection of meat, fruits, poultry, milk, fish, vegetables, and all other articles of food.

"Adopt such other measures to prevent the introduction and spread of disease as may, from time to time, be deemed desirable or necessary.

"Establish, regulate, and maintain a police department: Provided, That the Governor-General is hereby authorized to appoint, with the advice and consent of the Philippine Commission, a chief of police for the municipality of Cavite, whose duty it shall be to take charge and have control of the regularly appointed police force of Cavite, to maintain peace and order within the limits of that municipality, and to enforce the lawful acts and ordinances of the municipal council. He shall receive a salary of not more than four thousand pesos per annum, payable monthly by the provincial treasurer of Cavite out of insular funds. There shall likewise be appointed in a similar manner an assistant chief of police for the municipality of Cavite, whose duties shall be similar to those of the chief of police, and who shall, in the absence or incapacity of the latter, act in his stead. The assistant chief of police shall receive compensation at the rate of not more than three thousand two hundred pesos per annum, payable monthly by the provincial treasurer of Cavite out of insular funds.

"Make such ordinances and regulations not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred by this title 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; and enforce obedience thereto with such lawful fines or penalties as the municipal council may prescribe under the provisions of paragraph (66) of this section." (Sec. 39, Act No. 82, as amended.)

The only provisions of law giving the provincial board control over the municipal council are the following:

"Whenever the council is desirous of securing a legal opinion upon questions arising in relation to the constitution or attributes of the municipal government, it shall frame the questions in writing and submit them to the provincial fiscal for decision. Each act, resolution, and ordinance of the council shall be numbered consecutively throughout the calendar year; each executive order shall also be consecutively numbered. The municipal secretary shall, within thirty-six hours after any session of the council or the issuance of an executive order, forward a correct copy of each act, resolution, and ordinance passed thereat, and of every executive order, properly numbered, to the provincial board. The board shall promptly pass upon the legality of the same, entering its action upon the minutes and advising the proper municipal secretary of such action. The secretary shall thereupon notify the council, and that body shall note the receipt of notification upon its minutes. The provincial board shall approve all acts, ordinances, resolutions, and orders which are within the powers conferred upon the council or president making the same and declare null and void such as are not within said powers. If the board shall be in doubt as to the legality of any such act, ordinance, resolution, or order it shall declare the same suspended and refer the question to the fiscal for his opinion. Such opinion shall be given promptly, and upon its receipt the board shall take action thereon in accordance with law and immediately advise the municipal secretary thereof. The municipal secretary shall also, within the thirty-six hours aforesaid, forward to the provincial treasurer a copy of each act, resolution, or ordinance authorizing or necessitating the collection of municipal revenues. After the same have been passed upon by the provincial board, all acts, ordinances, resolutions, and orders shall be filed with the provincial governor, who shall keep a complete file of the same conveniently arranged in consecutive order by municipalities for reference, which shall be open for public inspection, and in case the municipal secretary neglects or omits to forward any such he shall immediately demand a copy. Repeated negligence in forwarding acts, resolutions, or ordinances shall be cause for suspension and removal. Any attempt to enforce such act, ordinance, resolution, or executive order, after the disapproval or suspension thereof shall be brought to the attention of the municipal council, shall be sufficient ground for the dismissal of the officer or officers attempting to enforce the same. Should the council or the president be dissatisfied with the decision of the provincial board, an appeal may be taken by it or him to the Governor-General, who shall decide the same question which was presented to the provincial board and either affirm or reverse the decision of the provincial board. If the decision of the provincial board is affirmed, the act, ordinance, resolution, or executive order involved shall be null and void. If, however, he shall reverse the decision of the provincial board, then and in that case notice of his decision shall be given to the provincial board and to the council of the municipality appealing, and upon receipt of notice by the appellant, the act, ordinance, resolution, or executive order shall be revived and come into force again. Pending the decision on appeal from a decision of the provincial board annulling any act, ordinance, resolution, or executive order, the same shall have no force and effect. Nothing in this section shall be construed to deprive any judicial tribunal of power to hold void for want of statutory authority any act, ordinance, or resolution of a municipal council or executive order of a municipal president the validity of which shall be involved in any cause arising before such tribunal, without respect to the decision of the executive authorities," (Sec. 41, Act No. 82, as amended; see also Acts Nos. 469, 521, 667, 344, 1511.)

It thus appears that the removal of obstructions and the destruction of nuisances on highways, within the municipality of Cavite, are matters solely for the municipal council of that municipality and not for the provincial governor or provincial board or both.

The question of whether or not the alleged street is a public highway or is owned by the plaintiffs in this case we do not decide. We have no right to decide it in the action at bar.

It is therefore the judgment of this court that the governor and provincial board of the province of Cavite be forever prohibited from tearing down or destroying the fence in question. It is so ordered.

Arellano, C. J., Torres, Johnson, and Trent, JJ., concur.

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