

**FELICIDAD VILLANUEVA, FERNANDO CAISIP, ANTONIO LIANG,
FELINA MIRANDA, RICARDO PUNO, FLORENCIO, LAXA, AND RENE
OCAMPO, PETITIONERS, VS. HON. MARIANO CASTANEDA, JR.,
PRESIDING JUD...**

G.R. No. 61311. September 21, 1987

Ponente: CRUZ, J.

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CRUZ, J.:

There is in the vicinity of the public market of San Fernando, Pampanga, along Mercado street, a strip of land measuring 12 by 77 meters on which stands a conglomeration of vendors stalls together forming what is commonly known as a talipapa. This is the subject of the herein petition. The petitioners claim they have a right to remain in and conduct business in this area by virtue of a previous authorization granted to them by the municipal government. The respondents deny this and justify the demolition of their stalls as illegal constructions on public property. At the petitioners' behest, we have issued a temporary restraining order to preserve the status quo between the parties pending our decision.[1] Now we shall rule on the merits.

This dispute goes back to November 7, 1961, when the municipal council of San Fernando adopted Resolution No. 218 authorizing some 24 members of the Fernandino United Merchants and Traders Association to construct permanent stalls and sell in the above-mentioned place.[2] The action was protested on November 10, 1961, in Civil Case No. 2040, where the Court of First Instance of Pampanga, Branch 2 issued a writ of preliminary injunction that prevented the defendants from constructing the said stalls until final resolution of the controversy.[3] On January 18, 1964, while this case was pending, the municipal council of San Fernando adopted Resolution No. 29, which declared the subject area as "the parking place and as the public plaza of the municipality,"[4] thereby impliedly revoking Resolution No. 218, series of 1961. Four years later, on November 2, 1968, Judge Andres C. Aguilar decided the aforesaid case and held that the land occupied by the petitioners, being public in nature, was beyond the commerce of man and therefore could not be the subject of private occupancy.[5] The writ of preliminary injunction was made permanent.[6]

The decision was apparently not enforced, for the petitioners were not evicted from the place; in fact, according to them, they and the 128 other persons were in 1971 assigned specific areas or space allotments therein for which they paid daily fees to the municipal government.[7] The problem appears to have festered for some more years under a presumably uneasy truce among the protagonists, none of whom made any move, for some reason that does not appear in the record. Then, on January 12, 1982, the Association of Concerned Citizens and Consumers of San Fernando filed a petition for the immediate implementation of Resolution No. 29, to restore the subject property "to its original and customary use as a public plaza." [8]

Acting thereon after an investigation conducted by the municipal attorney,[9] respondent Vicente A. Macalino, as officer-in-charge of the office of the mayor of San Fernando, issued on June 14, 1982, a resolution requiring the municipal treasurer and the municipal engineer to demolish the stalls in the subject place beginning July 1,

1982.[10] The reaction of the petitioners was to file a petition for prohibition with the Court of First Instance of Pampanga, docketed as Civil Case No. 6470, on June 26, 1982. The respondent judge denied the petition on July 19, 1982,[11] and the motion for reconsideration on August 5, 1982,[12] prompting the petitioners to come to this Court on certiorari to challenge his decision.[13]

As required, respondent Macalino filed his comment[14] on the petition, and the petitioners countered with their reply.[15] In compliance with our resolution of February 2, 1983, the petitioners submitted their memorandum[16] and respondent Macalino, for his part, asked that his comment be considered his memorandum.[17] On July 28, 1986, the new officer-in-charge of the office of the mayor of San Fernando, Paterno S. Guevarra, was impleaded in lieu of Virgilio Sanchez, who had himself earlier replaced the original respondent Macalino.[18]

After considering the issues and the arguments raised by the parties in their respective pleadings, we rule for the respondents. The petition must be dismissed.

There is no question that the place occupied by the petitioners and from which they are sought to be evicted is a public plaza, as found by the trial court in Civil Case No. 2040. This finding was made after consideration of the antecedent facts as especially established by the testimony of former San Fernando Mayor Rodolfo Hizon, who later became governor of Pampanga, that the National Planning Commission had reserved the area for a public plaza as early as 1951. This intention was reiterated in 1964 through the adoption of Resolution No. 29.[19]

It does not appear that the decision in this case was appealed or has been reversed. In Civil Case No. 6740, which is the subject of this petition, the respondent judge saw no reason to disturb the finding in Civil Case No. 2040 and indeed used it as a basis for his own decision sustaining the questioned order.[20]

The basic contention of the petitioners is that the disputed area is under lease to them by virtue of contracts they had entered into with the municipal government, first in 1961 insofar as the original occupants were concerned, and later with them and the other petitioners by virtue of the space allocations made in their favor in 1971 for which they say they are paying daily fees.[21] The municipal government has denied making such agreements. In any case, they argue, since the fees were collected daily, the leases, assuming their validity, could be terminated at will, or any day, as the claimed rentals indicated that the period of the leases was from day to day.[22]

The parties be labor this argument needlessly.

A public plaza is beyond the commerce of man and so cannot be the subject of lease or any other contractual undertaking. This is elementary. Indeed, this point was settled as early as in *Municipality of Cavite v. Rojas*,[23] decided in 1915, where the Court declared as null and void the lease of a public plaza of the said municipality in favor of a private person.

Justice Torres said in that case:

"According to article 344 of the Civil Code: 'Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service supported by said towns or provinces.'

"The said Plaza Soledad being a promenade for public use, the municipal council of Cavite could not in 1907 withdraw or exclude from public use a portion thereof in order to lease it for the sole benefit of the defendant Hilaria Rojas. In leasing a portion of said plaza or public place to the defendant for private use the plaintiff municipality exceeded its authority in the exercise of its powers by executing a contract over a thing of which it could not dispose, nor is it empowered so to do.

"The Civil Code, article 1271, prescribes that everything which is not outside the commerce of man may be the

object of a contract, and plazas and streets are outside of this commerce, as was decided by the supreme court of Spain in its decision of February 12, 1895, which says: 'Communal things that cannot be sold because they are by their very nature outside of commerce are those for public use, such as the plazas, streets, common lands, rivers, fountains, etc.'

"Therefore, it must be concluded that the contract, Exhibit C, whereby the municipality of Cavite leased to Hilaria Rojas a portion of the Plaza Soledad is null and void and of no force or effect, because it is contrary to the law and the thing leased cannot be the object of a contract."

In *Muyot v. de la Fuente*,^[24] it was held that the City of Manila could not lease a portion of a public sidewalk on Plaza Sta. Cruz, being likewise beyond the commerce of man.

Echoing Rojas, the decision said:

"Appellants claim that they had obtained permit from the government of the City of Manila, to construct booths Nos. 1 and 2, along the premises in question, and for the use of spaces where the booths were constructed, they had paid and continued paying the corresponding rentals. Granting this claim to be true, one should not entertain any doubt that such permit was not legal, because the City of Manila does not have any power or authority at all to lease a portion of a public sidewalk. The sidewalk in question, forming part of the public plaza of Sta. Cruz, could not be a proper subject matter of the contract, as it was not within the commerce of man (Article 1347, new Civil Code, and article 1271, old Civil Code). Any contract entered into by the City of Manila in connection with the sidewalk, is ipso facto null and ultra vires. (*Municipality of Cavite vs. Roxas, et al.*, 30 Phil. 603.) The sidewalk in question was intended for and was used by the public, in going from one place to another. 'The streets and public places of the city shall be kept free and clear for the use of the public, and the sidewalks and crossings for the pedestrians, and the same shall only be used or occupied for other purposes as provided by ordinance or regulation; x x x.' (Sec. 1119, Revised Ordinances of the City of Manila.) The booths in question served as fruit stands for their owners and often, if not always, blocked the free passage of pedestrians who had to take the plaza itself which used to be clogged with vehicular traffic."

Exactly in point is *Espiritu v. Municipal Council of Pozorrubio*,^[25] where the Supreme Court declared:

"There is absolutely no question that the town plaza cannot be used for the construction of market stalls, specially of residences, and that such structures constitute a nuisance subject to abatement according to law. Town plazas are properties of public dominion, to be devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased by the municipality to private parties."

Applying this well-settled doctrine, we rule that the petitioners had no right in the first place to occupy the disputed premises and cannot insist in remaining there now on the strength of their alleged lease contracts. They should have realized and accepted this earlier, considering that even before Civil Case No. 2040 was decided, the municipal council of San Fernando had already adopted Resolution No. 29, series of 1964, declaring the area as the parking place and public plaza of the municipality.

It is the decision in Civil Case No. 2040 and the said resolution of the municipal council of San Fernando that respondent Macalino was seeking to enforce when he ordered the demolition of the stalls constructed in the disputed area. As officer-in-charge of the office of the mayor, he had the duty to clear the area and restore it to its intended use as a parking place and public plaza of the municipality of San Fernando, conformably to the aforementioned orders from the court and the council. It is, therefore, not correct to say that he had acted without authority or taken the law into his hands in issuing his order.

Neither can it be said that he acted whimsically in exercising his authority for it has been established that he

directed the demolition of the stalls only after, upon his instructions, the municipal attorney had conducted an investigation, to look into the complaint filed by the Association of Concerned Citizens and Consumers of San Fernando.[26] There is evidence that the petitioners were notified of this hearing,[27] which they chose to disregard. Photographs of the disputed area,[28] which does look congested and ugly, show that the complaint was valid and that the area really needed to be cleared, as recommended by the municipal attorney.

The Court observes that even without such investigation and recommendation, the respondent mayor was justified in ordering the area cleared on the strength alone of its status as a public plaza as declared by the judicial and legislative authorities. In calling first for the investigation (which the petitioner saw fit to boycott), he was just scrupulously paying deference to the requirements of due process, to remove all taint of arbitrariness in the action he was called upon to take.

Since the occupation of the place in question in 1961 by the original 24 stallholders (whose number later ballooned to almost 200), it has deteriorated increasingly to the great prejudice of the community in general. The proliferation of stalls therein, most of them makeshift and of flammable materials, has converted it into a veritable fire trap, which, added to the fact that it obstructs access to and from the public market itself, has seriously endangered public safety. The filthy condition of the talipapa, where fish and other wet items are sold, has aggravated health and sanitation problems, besides pervading the place with a foul odor that has spread into the surrounding areas. The entire place is unsightly, to the dismay and embarrassment of the inhabitants, who want it converted into a showcase of the town of which they can all be proud. The vendors in the talipapa have also spilled into the street and obstruct the flow of traffic, thereby impairing the convenience of motorists and pedestrians alike. The regular stallholders in the public market, who pay substantial rentals to the municipality, are deprived of a sizable volume of business from prospective customers who are intercepted by the talipapa vendors before they can reach the market proper. On top of all these, the people are denied the proper use of the place as a public plaza, where they may spend their leisure in a relaxed and even beautiful environment and civic and other communal activities of the town can be held.

The problems caused by the usurpation of the place by the petitioners are covered by the police power as delegated to the municipality under the general welfare clause.[29] This authorizes the municipal council "to enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law 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." This authority was validly exercised in this case through the adoption of Resolution No. 29, series of 1964, by the the municipal council of San Fernando.

Even assuming a valid lease of the property in dispute, the resolution could have effectively terminated the agreement for it is settled that the police power cannot be surrendered or bargained away through the medium of a contract.[30] In fact, every contract affecting the public interest suffers a congenital infirmity in that it contains an implied reservation of the police power as a postulate of the existing legal order.[31] This power can be activated at any time to change the provisions of the contract, or even abrogate it entirely, for the promotion or protection of the general welfare. Such an act will not militate against the impairment clause, which is subject to and limited by the paramount police power.[32]

We hold that the respondent judge did not commit grave abuse of discretion in denying the petition for prohibition. On the contrary, he acted correctly in sustaining the right and responsibility of the mayor to evict the petitioners from the disputed area and clear it of all the structures illegally constructed therein.

The Court feels that it would have been far more amiable if the petitioners themselves, recognizing their own civic duty, had at the outset desisted from their original stance and withdrawn in good grace from the disputed area to permit its peaceful restoration as a public plaza and parking place for the benefit of the whole municipality. They owed this little sacrifice to the community in general, which has suffered all these many years because of their intransigence. Regrettably, they have refused to recognize that in the truly democratic society, the interests of the few should yield to those of the greater number in deference to the principles that the welfare of the people is the supreme law and overriding purpose. We do not see any altruism here. The traditional ties of sharing are absent here. What we find, sad to say, is a cynical disdaining of the spirit of "bayanihan," a selfish rejection of the cordial virtues of "pakikisama" and "pagbibigayan" which are the hallmarks of our people.

WHEREFORE, the petition is DISMISSED. The decision dated July 19, 1982, and the order dated August 5, 1982, are AFFIRMED. The temporary restraining order dated August 9, 1982, is LIFTED. This decision is immediately executory. Costs against the petitioners.

SO ORDERED.

Teehankee, C.J., Narvasa, and Paras, JJ., concur.

Gancayco, J., on leave.

[1] Rollo, pp. 47-48.

[2] Ibid., p. 33.

[3] Id., p. 67.

[4] Id., p. 65.

[5] Id., pp. 68-71

[6] Id., p. 72.

[7] Id., 4.

[8] Id., pp. 75-76.

[9] Id., pp. 10-12.

[10] Id., pp. 10-12.

[11] Id., pp. 30-39.

[12] Id., p. 44.

[13] Id., pp. 3-8.

[14] Id., pp. 55-64.

[15] Id., pp. 98-101.

[16] Id., pp. 126-130.

[17] Id., pp. 120-121.

[18] Id., p. 177.

[19] Id., pp. 69-70.

[20] Id., pp. 30-39.

[21] Id., p. 30.

[22] Id., p. 32.

[23] 30 Phil. 602.

[24] G.R. No. L-6534, 48 O.G. 4860.

[25] 102 Phil. 869-870.

[26] Rollo, pp. 32-34.

[27] Ibid., p. 84.

[28] Id., p. 82.

[29] Section 2238, Revised Administrative Code.

[30] 16 C.S.S. 549; 37 Am. Jur. 901.

[31] *Stone v. Mississippi*, 101 U.S. 814.

[32] *Ortigas & Co. v. Feati Bank*, 94 SCRA 533.

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