

JOHN M. SWITZER, PLAINTIFF AND APPELLEE, VS. THE MUNICIPALITY OF CEBU, DEFENDANT AND APPELLANT.

G.R. No. 6329. September 01, 1911

Ponente: MAPA, J.

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MAPA, J.:

The portion of the judgment rendered in this case in first instance which affects this decision is as follows:

"FINDINGS.

"From the complaint, reply and facts agreed upon, the court finds to be well established:

"(a) That the plaintiff is a resident of the municipality of Cebu;

"(b) That the defendant is a municipal corporation duly organized under the provisions of law in force in these Islands and governed in all its acts by the provisions of the Municipal Code;

"(c) That on or about January 24, 1910, the plaintiff leased from the Insular Government, under the provisions of Act No. 1654 of the Philippine Commission, lots 3 and 4 of block 2 of the official plan of Cebu water front reclamation No. 2; since which date he has held said lots as such lessee;

"(d) That on or about March 26, 1910, the plaintiff secured the approval of the architect of the Insular Government of the plan for a building to be erected on said lots, such proposed building to be of re-enforced concrete with galvanized iron roof, one story, height to the ceiling of 5 meters and 20 centimeters and to the ridge of the roof 8 meters, said building being intended for a storeroom and warehouse;

"(e) That on April 18, 1910, the plaintiff submitted, in writing to the municipality of Cebu an application for a permit to erect said building;

"(f) That said municipality and the officers thereof have refused and still refuse to issue such permit, and have notified the plaintiff that the erection of said building is prohibited, and have threatened the plaintiff with prohibition and perpetual suspension of such construction ;

"(g) That on May 15, 1901, the defendant municipality of Cebu approved and published ordinance No. 3, a copy of which is attached to the defendant's reply as Exhibit 1; and that said ordinance has never been repealed or suspended;

"(h) That on April 23, 1910, said municipality of Cebu approved and published ordinance No. 100, a copy of which is attached to the complaint as Exhibit A; that on April 28, 1910, the provincial board of Cebu suspended the operation of said ordinance No. 100, which suspension is in force on this date;

"(i) That the lots leased by the plaintiff are located on streets of the first class, according to the classification in ordinance No. 3, and are situated on the water front of the municipality of Cebu, where all the steamers in said port load and discharge;

"(j) That the defendant is a municipal corporation of the first class; and

"(k) That the plaintiff has purchased and already has in his possession a large quantity of materials for the construction of the proposed building and has entered into a contract for the construction work and has begun such construction work.

"CONCLUSIONS.

"From the foregoing findings, the court concludes:

"(a) That the building projected by the plaintiff fulfills all the conditions reasonably necessary for safeguarding the public health, as well as for protection against fire and other dangers and calamities, said building to be of fireproof materials with good ventilating facilities;

"(b) That ordinance No. 100, being suspended by the provincial board, is not in force and therefore no legal reason or motive exists for the refusal on the part of the municipality of Cebu to issue the permit requested by the plaintiff, and, moreover, if it were not suspended by said board, said ordinance No. 100 would be invalid; because it would be illegal, unreasonable and beyond the authority of the municipal council to prohibit the construction of buildings less than two stories in height;

"(c) That ordinance No. 3 furnishes no legal reason or motive for the refusal on the part of the municipality to issue the permit requested by the plaintiff or to prohibit the construction of the building projected by the plaintiff, because the provisions of said ordinance, especially paragraph 15, which is violated by the building in question, are unreasonable, illegal and entirely beyond the authority conferred by the Municipal Code upon municipal councils. Since the proposed building, like the rest of the locations included in the classification of streets of the first class, is situated on the water front of the municipality of Cebu, where all the steamers load and discharge and where warehouses and storerooms are very necessary to facilitate Cebu's commerce, the attempted prohibition of this kind of building in said district on the part of the municipal council is not only unreasonable but also indefensible;

"(d) Even though the municipal council of Cebu had authority to regulate the style and exact size of buildings, which authority it does not have, still such authority confers no right to require the ornamentation and decoration of such buildings exactly like others, as is attempted in paragraph 13 of ordinance No. 3, nor to require buildings of two, three or other number of stories, because such regulations constitute an illegal and vexatious interference with property rights, the general rule being that laws and ordinances of municipalities regulating buildings will interfere with property rights and the free exercise thereof only to the extent necessary for guarding the 'public welfare.' If a municipality has the right to require or to exact buildings of three stories, why not of ten or of twenty?

"(e) That the officials of the municipality of Cebu should issue the permit or license requested by the plaintiff for the construction of the building projected in accordance with the plans approved by the Government architect;

"(f) That neither said municipality nor any officer thereof has any right to interfere with or in any manner hinder the construction of said building.

"JUDGMENT.

"In consequence of the findings and conclusions set forth above, the court declares ordinance No. 100, as well as paragraphs 13 and 15 of ordinance No. 3, illegal, null and void; and directs the municipal council of Cebu to immediately issue the permit requested by the plaintiff on April 18, 1910, for the construction of the building projected in the plan approved by the Government architect, oft lots 3 and 4 of block 2 of the Cebu water-front

reclamation No. 2, the temporary injunction issued by this court on April 29, 1910, becoming permanent, that is, perpetually forbidding the municipality of Cebu and all of its officers, representatives, agents, employees, attorneys and other persons in its service to prohibit or attempt to prohibit, to suspend or attempt to suspend, to hinder or to attempt to hinder, directly or indirectly, by means of force or threats, complaint or charge against the plaintiff, his agents, employees, attorneys or contractors, in any manner, the construction work on the building projected upon lots 3 and 4 of block 2 of the official plan of Cebu water-front reclamation No. 2, as long as the plaintiff continues such construction in accordance with the plan approved by the Insular Architect on March 26, 1910, or any other plan that does not violate ordinances or reasonable regulations for the health and public security of the municipality of Cebu; with all the costs of this judgment against said municipality."

Defendant appealed from this judgment, alleging as the ground thereof that the court erred in annulling ordinance No. 100 and sections 13 and 15 of ordinance No. 3 enacted and published by the municipal council of Cebu.

Ordinance No. 100 must be immediately dismissed from consideration, because, as the trial judge well says, since it was suspended by the provincial board and therefore not in force it can not be invoked as the ground for refusing the permit requested by the plaintiff. Aside from this, what is said in the foregoing decision regarding sections 13 and 15 of ordinance No. 3 may be considered applicable. These sections read as follows:

"13. Every building erected in 'McClelland' street and its parallels toward the sea shall be of three stories: the first four meters in height, the second three meters and twenty centimeters, and the last four meters and fifty centimeters. Its front shall be in harmony with the ornamentation adopted by the municipality for this street and no permit shall be issued that does not fulfill the foregoing conditions. In the remaining streets of the same class as the preceding, houses of two stories may be erected, the first five meters in height and the second five, duly ornamented in the style of the government building of this city.

"15. All houses erected on streets of the second class must be of two stories, the first four meters in height, and the second four meters and twenty centimeters. The houses numbered 7 and 12 in 'La Infanta' street are taken as models of the ornamentation for this class. Buildings known as warehouses, stores or shops, even when they have outwardly the appearance of dwelling-houses, are strictly prohibited in streets of the first and second class." It is agreed by the parties that the land whereon the plaintiff desires to build is located in Calle Morga, which is regarded as a street of the first class, according to the classification adopted in ordinance No. 3; and that the building said plaintiff proposes to erect will be of strong materials, that is, of cement walls reenforced with steel rods and will have a galvanized-iron roof; it will be 8 1/2 meters in height to the highest point of the roof and will be of one story with a height of 5 meters and 20 centimeters to the ceiling, and will be a strong, fireproof structure. We have not before us the plan of this building, but it is stated in the judgment appealed from, without any objection on the appellant's part, "that it fulfills all the conditions reasonably necessary for safeguarding the public health, as well as for protection against fire and other dangers and calamities, said building to be of fireproof materials with good ventilating facilities;" and it is also stated in the same judgment that the land whereon the plaintiff proposes to erect it "is situated on the water front of the municipality of Cebu, where all the steamers of said port load and discharge."

Appellant contends that the municipality of Cebu has authority to require that the building in question be of more than one story and fulfill the conditions prescribed in the afore-cited sections of ordinance No. 3, by virtue of section 39 of the Municipal Code, which provides the following :

"The municipal council shall:

* * * * *

"(f) Establish fire limits, prescribe the kind of buildings that may be constructed within said limits and issue permits for the erection of the same, but without charging fees for said permits."

Appellant contends that the expression kind of buildings, employed in the legal provision just quoted, includes not

only the material of which they are to be composed but also the style; that is (so he concludes), that it empowers the municipalities to prescribe by means of an ordinance the material that may be used in a building constructed within the fire limits, and the style, whether it shall be & warehouse or a dwelling house, and if the latter, whether it shall have one, two, or three stories, as all this may enter into the expression kind of buildings, employed in subsection (f) of section 39 of the Municipal Code.

Without trying to settle the question in the concrete manner in which appellant's counsel asserts it, in the belief that it is unnecessary for the purposes of this decision, and admitting for the sake of argument that the legal provision cited really has the scope and meaning said counsel attributes to it, it is certain that such provision does not authorize the municipal council in a special and specific manner to direct that the buildings necessarily have more than one story or a special and prescribed style of architecture or ornamentation. If such authority really exists, it would be merely from the inference that it is included by implication in the general authority granted to the councils by the law for fixing the kind of buildings that should or may be permitted within their respective jurisdictions. Therefore, it is not so clearly and evidently beyond all argument that the law does not confer upon municipal councils the specific and definite power mooted in this case. What does appear to be unquestionable, and this is our point of view, is that the law does not in any way prescribe the form in which such power should be exercised, supposing it to exist, for the terms are so general and abstract that they contain no detailed provision regarding the manner of exercising the alleged power in question. This being so, the exercise of this power must be subjected to the requirements of reason and public expediency, requirements that, in the absence of definite provisions of law, must serve as a guide. It would be absurd to suppose that the municipalities may exercise such power in all ways without any restriction. Without regulations controlling its exercise, the most vexatious arbitrariness would be easily attained. In the absence of definite legal provisions, these regulations can not be other than those dictated by reason and public expediency.

In the present case, which deals with a building intended for warehouses and storerooms in a place especially given over to loading and discharging the steamers that call at the port of Cebu, we do not regard it at all reasonable to require that such building have more than one story or display a special and prescribed style of ornamentation. Moreover, the commercial interests or purposes which should unquestionably prevail in the location mentioned do not, in our opinion, require such a thing, nor would they probably secure greater benefit therefrom. Keeping in mind also that the building mentioned fulfills the conditions reasonably necessary for security, healthfulness, and hygiene, as stated in the judgment appealed from, we believe that the municipal council of Cebu, in the case before us, for it is not our intention to lay down a general rule for all cases, has no right to oppose or to prohibit the construction of said building, and therefore the judgment appealed from must on this definite ground be affirmed in its principal part.

As the defendant must, in accordance with this judgment, issue the permit requested by the plaintiff, the permanent injunction therein ordered ceases thereby to have any justification, and should be eliminated therefrom. The temporary injunction issued by the court on April 30, 1910, is also dissolved.

With this modification the judgment appealed from is affirmed in so far as it orders the municipal council of the municipality of Cebu to issue the permit requested by the plaintiff, which gave rise to this suit; with the costs of this instance against the appellant So ordered.

Arellano, C. J., Johnson, Carson, and Moreland, JJ., concur.

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