

RAMON FABIE ET AL., PLAINTIFFS AND APPELLEES, VS. THE CITY OF MANILA, DEFENDANT AND APPELLANT.

G.R. No. 6583. February 16, 1912

Ponente: CARSON, J.

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CARSON, J.:

Ordinance No. 124 of the city of Manila, enacted September 21, 1909, is an amendment of section 107 of the Revised Ordinances of the city of Manila, enacted June 13, 1908, relating to the issuance of permits for the erection of buildings. Section 107 so amended reads as follows:

"SEC. 107. Issuance of permits.—When the application, plans, and specifications conform to the requirements of this title and of title eleven hereof, the engineer shall issue a permit for the erection of the building and shall approve such plans and specifications in writing: Provided, That the building shall abut or face upon a public street or alley or on a private street or alley which has been officially approved. One copy of all approved plans and specifications shall be returned to the owner or his agent and one copy shall be retained by the engineer."

The appellees are the owners in common of a large tract of land which forms a part of the estate known as the Hacienda de Santa Ana de Sapa and which is inclosed between Calle Herran of the District of Paco and an estero known as Tripa de Gallina, and lying within the corporate limits of the city of Manila.

On the 26th day of November, 1909, the plaintiffs and appellees sought to obtain from the city of Manila a building permit authorizing the construction of a small nipa house upon the property in question. It was claimed that the purpose of the building was to serve as a guard house in which watchmen might be stationed in order to prevent the carrying away of zacate from the premises. The permit was denied by the city authorities on the ground that the site of the proposed building did not conform to the requirements of section 107 of the Revised Ordinances of the city of Manila, as amended by Ordinance No. 124, which provides: "That the building shall abut or face upon a public street or alley or on a private street or alley which has been officially approved." It is the contention of the appellees herein that this provision is unconstitutional and in violation of the fundamental rights of the property owners of the city of Manila as guaranteed by the established laws of these Islands and by the Constitution of the United States, in that it constitutes an invasion of their property rights without due process of law. The lower court found in favor of appellees and declared the ordinance null and void, at least to the extent of the above-cited provision. From this judgment this appeal has been duly perfected. The only question submitted for adjudication on this appeal is the constitutionality of the ordinance, and to this question alone we direct our attention in this opinion.

The appellant, the city of Manila, is a duly organized municipal corporation having full power and authority to enact lawful ordinances for the protection and security of the lives, health and property of its citizens. Counsel for appellant insists that the ordinance in question is a valid exercise of the police power of the city, in that its sole purpose and aim is to effect these ends by affording better sanitary regulations as well as increased facilities for protection to property from loss by fire.

It is undoubtedly one of the fundamental duties of the city of Manila to make all reasonable regulations looking to the preservation and security of the general health of the community, and the protection of life and property from loss or destruction by fire. All such regulations have their sanction in what is termed the police power. Much difficulty has been experienced by the courts and text writers in the attempt to define the police power of the state, and to set forth its precise limitations. In fact it has been said to be, from its very nature incapable of any exact definition or limitation. Mr. Thompson in his exhaustive treatise on Corporations summarizes as follows the conclusions of the leading adjudicated cases and authorities touching this subject. He says:

"Its business is to regulate and protect the security of social order, the life and health of the citizen, the comfort of an existence in thickly populated communities, the enjoyment of private and social life, and the beneficial use of property."

And again the same author says:

"However courts may differ as to the extent and boundaries of this power, and however difficult it may be of precise definition, there is a general agreement that it extends to the protection of the lives, health and property of the citizens, and to the preservation of good order and the public morals. In the absence of any constitutional prohibition a legislature may lawfully prevent all things hurtful to the comfort, safety, and welfare of society though the prohibition invades the right of liberty or property of an individual." (Thompson on Corporations, 2d ed., vol. 1, sec. 421.)

In the case of *U. S. vs. Toribio* (15 Phil. Rep., 92) we had occasion to discuss at length the police powers of the State, and in the opinion in that case will be found a number of quotations from textbook and judicial authority, developing and exemplifying the principles on which the exercise of the police powers of the State have been recognized and applied. But for the purposes of this opinion the foregoing citations from Thompson's treatise on Corporations sets forth the doctrine quite satisfactorily, and relying on the reasoning of the opinion in the case of *U. S. vs. Toribio* (15 Phil. Rep., 92), it is not necessary to enter at this time into an extended discussion of the principles on which the doctrine rests.

In accord with the rule laid down in the case of *Lawton vs. Steele* (152 U. S., 132-134), quoted at some length in the opinion in the case of *U. S. vs. Toribio*, to justify the State in the exercise of its police powers on behalf of the public, it must appear:

"First, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

It is very clear that the ordinance, if it be held to be reasonable, prescribes a rule in the interest of the public of the city of Manila generally, as distinguished from the interests of individuals or of a particular class. In determining its validity, therefore, the only questions which need be considered, are whether its provisions are or are not reasonably necessary for the accomplishment of its purposes, and whether they are or are not unduly oppressive upon individuals.

The purpose and object of the ordinance is avowedly and manifestly to protect and secure the health, lives and property of the citizens of Manila against the ravages of fire and disease. The provision that denies permits for the construction of buildings within the city limits unless they "abut or face upon a public street or alley or on a private street or alley which has been officially approved," is in our opinion reasonably necessary to secure the end in view.

In the first place it prevents the huddling and crowding of buildings in irregular masses on single or adjoining tracts of land, and secures an air space on at least one side of each new residence or other building constructed in the city. The menace to the health and safety of the residents of Manila resulting from the crowding of nipa shacks, and even more substantial buildings upon small tracts of land is a matter of common knowledge; and in a community, exposed as this city is to destructive conflagrations and epidemic diseases, a legislative measure which tends to prevent the repetition of such unfortunate conditions should not be judicially declared to be unreasonable, in the absence of the most compelling reasons.

In the second place, the provisions of the ordinance in question manifestly promote the safety and security of the citizens of Manila and of their property against fire and disease, especially epidemic disease, by securing the easy and unimpeded approach to all new buildings: First, of fire engines, and other apparatus for fighting fire; second, of ambulances, refuse wagons, and apparatus used by the sanitary department in caring for the sanitation of the city; third, of fire and health inspectors generally; of employees of the fire department and others engaged in fighting fire; and of employees of the Bureau of Health engaged in their duty as guardians of the sanitary conditions and general health of the city.

There can be no question as to the intent and purpose of the provision of the ordinance under discussion. It is manifestly intended to subserve the public health and safety of the citizens of Manila generally, and was not conceived in favor of any class or of particular individuals. Those charged with the public welfare and safety of the city deemed the enactment of the ordinance necessary to secure these purposes, and it cannot be doubted that if its enactment was reasonably necessary to that end it was and is a due and proper exercise of the police power. We are of opinion that the enforcement of its provisions cannot fail to redound to the public good, and that it should be sustained on the principle that "the welfare of the people is the highest law" (*salus populi suprema est lex*). Indeed having in mind the controlling public necessity which demands the adoption of proper measures to secure the ends sought to be attained by the enactment of this provision of the ordinance; and the large discretion necessarily vested in the legislative authority to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests; we are satisfied that we would not be justified, in an attempt to restrict or control the exercise of that discretion even if the "reasonable necessity" for its exercise in the particular form actually adopted were much less apparent than it is in this case.

That the ordinance is not "unduly oppressive upon individuals" becomes very clear when the nature and extent of the limitations imposed by its provisions upon the use of private property are considered with relation to the public interests, the public health and safety, which the ordinance seeks to secure. Discussing this question in his opinion to the Municipal Board relative to the validity and constitutionality of this ordinance, the Attorney-General well said: "Under the ordinance before us rights in private property are not arbitrarily regulated. No person desiring to erect a building is prohibited from doing so. He can, if necessary, lay out a private street or the city can extend the public street system. The property may thus be substantially increased in value rather than the reverse. In brief, the owner's right to the enjoyment of his property is only interfered with in so far as it is necessary to protect the rights of others."

To this we may add the following citation from the opinion in the case of *Commonwealth vs. Alger* (7 Cush., 53, 84) which to our minds well states the principle in this regard on which the validity of the ordinance in question must be sustained:

"We think it is a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. * * * Rights of property, like all

other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law, as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient."

We conclude that the proviso of the ordinance in question directing: "That the building shall abut or face upon a public street or alley or on a private street or alley which has been officially approved," is valid, and that the judgment of the lower court should be reversed, without special condemnation of costs. So ordered.

Torres, Johnson, Moreland, and Trent, JJ., concur.

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