

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GREGORIO ABENDAN, DEFENDANT AND APPELLANT.

G.R. No. 7830. January 24, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

An appeal from a judgment convicting the appellant of a violation of Municipal Ordinance No. 105 of the city of Cebu, under a complaint charging, "That on or about the 26th day of October of the present year, the said accused was ordered by the department of sanitation, for the second time, to make certain repairs and perform certain work which was of great necessity for the preservation of the sanitary conditions of said house, but instead of doing as he was ordered, he illegally and criminally refused to comply with the said order, issued for the second time to him by the Department of Sanitation."

The work which the appellant was required to perform in his house in the city of Cebu by the order of the department of sanitation, referred to in the complaint, was the following:

- To put a ventilator in the closet in the upper part of the house and install a closet in the lower part of the house.
- To put a bell-trap in the kitchen in the lower part of the house.
- To put a bell-trap in the kitchen in the upper part of the house.

William Pauly, the chief sanitary inspector of the city of Cebu, testified in substance as follows:

"I remember that on or about the 26th day of October past, I inspected the house of the accused in question, for the purpose of determining its sanitary condition. As a result of such inspection, I found that the house was in an unsanitary condition. As a result, I issued an order requiring the accused to put the house in a sanitary condition. The accused has complied with a part of the order, but has neglected to comply with the other part. He has not put in a bell-trap as required by paragraph 2 of said order, and he has not put in a bell-trap in the kitchen in the upper part of the house, as required by paragraph 3. He has complied with the remainder. He has not complied with any part of the work required to be done under paragraph 1 of said order. That is to say, he has not placed the ventilator in the closet in the upper part of the house, nor has he installed a closet below. There are living in the lower part of the house in question a Chinese tinner with his family and a Filipino silversmith with his family. An American family lives in the upper part of the house. The Chinaman's family consists of three members, but there are some workmen who aid the Chinaman in his work; from two to six of them remain in the tienda all day. I do not know the number of persons in the Filipino family, but the silversmith has three or four workmen. There is no closet in the lower part of the house aside from that which we ordered him to put in. Thus far he has not done the work which we ordered him to do."

This witness testified on cross-examination, in part, that he issued no other or subsequent order to the accused, but he was sure that he had talked with him; that when the house was inspected by him he found therein no dirt or excrement, nor did he find in any of his inspections that the persons who lived in the house were in any way dirtying or committing nuisances on the lower floor. He also stated that some kind of construction for the

discharge of the water was necessary in this house, as it collected on the floor and finally ran out upon the adjoining lots.

The failure to comply with the requirements of the order in question is admitted.

Article 6 of the municipal ordinances of Cebu, as amended by article 3 of Municipal Ordinance No. 111, is as follows:

"ART. 6. It shall be the duty of the owner, agent, or other person-in possession and in control of any lot, building, or place, declared to be in bad sanitary condition by the chief sanitary officer, or his representative, to comply with any order duly issued in accordance with the provisions of this ordinance, requiring repairs, improvements, alterations, or necessary construction, or to put the place designated in sanitary condition within the time specified in said order, which time shall not exceed sixty days, except by special permission of the sanitary officer of the district."

Paragraph (jj) of section 39 of the Municipal Code is as follows:

"(jj) 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 Act, 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 (dd) of this section."

It appearing that the city of Cebu at the time this ordinance was enacted had full authority from the Legislature to enact an ordinance upon the subject embraced within it, such ordinance is valid, unless it contravenes the fundamental law of the Philippine Islands, or an Act of the Philippine Legislature, or unless it is against public policy, or is unreasonable, oppressive, partial, discriminating, or in derogation of common right.

Where the power to legislate upon a given subject, and the mode of its exercise and the details of such legislation are not prescribed, the ordinance passed pursuant thereto must be a reasonable exercise of the power, or it will be pronounced invalid. (*Le Feber vs. West Allis*, 119 Wis., 608, 100 Am. St. Rep., 917; *Coal-Float vs. Jeffersonville*, 112 Ind., 15; *P. C. C. & St. L. Ry. Co. vs. Crown Point*, 146 Ind., 421, 35 L. R. A., 684.)

Although ordinances may not contravene a constitution or statute and may be within the scope of charter powers, yet, if they seem to the court oppressive, unfair, partial, or discriminating, they are declared unreasonable and void, whether this appear from their face or from proof aliunde. (*Elliott, Mun. Corp.*, 198-202; *Lake View vs. Tate*, 130 111., 247; *Kip vs. Paterson*, 26 N. J. L., 298; *Ex parte Frank*, 52 Cal., 606; *Toney vs. Macon*, 119 Ga., 83; *Carrollton vs. Bazzette*, 159 111., 284; *Mt. Veraon Bank vs. Sarlls*, 129 Ind., 201; *State vs. Manner*, 43 La. Ann., 496; *Red Star Steamship Co. vs. Jersey City*, 45 N. J. L., 246.)

The sole question raised on this appeal is that presented by the claim of the appellant that the ordinance in question is unreasonable and oppressive.

The municipality of Cebu, as is seen from the quotation of the general municipal law, has the right to enact ordinances relating to sanitation and the public health. The ordinance as set out above seems to us to be an enactment clearly within the purview of the statute authorizing it, and, while very general in its terms, it contains no provision which of itself is against the fundamental law or act of the Legislature or is oppressive or unreasonable. Unreasonable persons may try to apply it in an unreasonable manner or to an unreasonable degree or under unreasonable conditions, but in and of itself the ordinance discloses none of the defects which have been alleged against it.

The evidence in the case which is undisputed, is sufficient in our judgment, to warrant the order complaint of. It does not appear therefrom, the defendant himself having introduced substantially no proof in the case, that he was treated differently from other persons in that locality, or that he was required to do a thing that the others had not been required to do, or that he had in any way been discriminated against in the application of this ordinance to the facts of his case, or that its application was oppressive or unreasonable in this particular instance.

The judgment appealed from is affirmed, with costs. So ordered.

Arellano, C. J., Torres, and Mapa, JJ., concur,

DISSENTING

TRENT, J.,

The court having found the ordinance in question to be an enactment clearly within the purview of the statute authorizing it, and having found that said ordinance contains no provision against the fundamental law or acts of the legislature, and is neither oppressive, nor unreasonable; or, in other words, the court having found the ordinance valid, I think that the appeal should be dismissed with costs against the appellant, without determining whether or not the appellant has, as a matter of fact, violated the provisions of said ordinance.

JOHNSON, J., dissenting:

I think the appeal should have been dismissed and not affirmed.

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