

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHAN TIENCO, DEFENDANT AND APPELLANT; CRISTOBAL ALMIROL, ALEJANDRO CATBAGAN, PABLO APILADO, SINFOROSO TADIPA, LIBERATO GAUDIA, AND...

G.R. No. 7852. August 18, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 15th of September, 1911, a complaint was presented against the said defendants, charging them with a violation of an ordinance of the municipality of San Fernando, Province of La Union. The complaint alleged:

"That the above-named accused did, on September 14, 1911, in the municipality of San Fernando, Province of La Union, willfully and unlawfully slaughter a bovine animal, without the permission or approval of the president of the municipal board of health, and divide the meat among themselves for their own use; an act committed in violation of the ordinance of said municipality passed and approved on that subject."

Said defendants were arrested, brought before the justice of the peace of said pueblo, and were arraigned and tried. After hearing the evidence, the said justice of the peace found that the evidence was insufficient to support the complaint against all of the said defendants, except Chan Tienco, and dismissed the complaint against them and discharged them from the custody of the law, with costs de oficio. The justice of the peace found that the evidence fully sustained the facts charged in the said complaint against the defendant, Chan Tienco, and in accordance with the provisions of article 41 of Municipal Ordinance No. 12 of the municipality of San Fernando, sentenced him to pay a fine of P40 and one-seventh part of the costs. From that sentence Chan Tienco appealed to the Court of First Instance.

In the Court of First Instance on the 15th day of November, 1911, the prosecuting attorney of the Province of La Union presented the following complaint against the appellant:

"The undersigned charges Chan Tienco with the crime of infraction of a municipal ordinance, committed as follows: That on or about September 14, 1911, in the municipality of San Fernando of the Province of La Union, P. L, and within the jurisdiction of this court, the said accused did willfully, unlawfully, and criminally slaughter a bovine animal belonging to him, without having obtained the permission or approval of the president of the municipal board of health of San Fernando, La Union, or any person authorized therefor; an act executed with infraction of article 41, in relation with article 42 of Municipal Ordinance No. 12 of the municipality of San Fernando, La Union."

Upon this complaint the defendant was duly arraigned. Upon arraignment he pleaded that he was not guilty of the crime charged. The cause was set down for trial on the 23d of February, 1912.

After hearing the evidence the Honorable Richard Campbell, judge, found that the defendant and appellant, Chan Tienco, was guilty of the crime charged in the complaint and sentenced him to pay a fine of P40 and the costs, and to suffer subsidiary imprisonment, in case of insolvency, for the payment of said fine.

From that sentence the defendant appealed to this court and alleged, as his only ground of appeal, and only basis for a reversal of the judgment of the lower court, the fact that said Ordinance No. 12 is illegal and unconstitutional.

The appellant argues that inasmuch as section 33 of Act No. 1147 provides a punishment for slaughtering large cattle without a permit, the municipal ordinance covering the same subject is illegal and unconstitutional. We have just decided in the case of *United States vs. Joson et al.* (R. G. No. 7019)[1] that a municipality, under proper charter authority, may adopt ordinances upon subjects already covered by the general law, so long as the ordinance is not repugnant nor in conflict with such general law. The ordinance and general law are not repugnant simply because they are adopted for the same general purpose. Section 33 of Act No. 1147 prohibits the slaughtering of large cattle at the municipal slaughtering house for human consumption or for food without a permit duly secured from the municipal treasurer. Article 41 of Ordinance No. 12 of the municipality of San Fernando, Province of La Union, prohibits the slaughtering of large cattle within said municipality, even though the object should be for sale, without the permit of the president of the municipal board of health. Both the ordinance and the general law prohibit the slaughtering of large cattle without a permit. Said laws are, to this extent, in harmony. The mere {act that a municipality, for the purpose of protecting the health of its people, requires a permit from the president of the municipal board of health for the slaughtering of large cattle, does not contravene nor is it repugnant to the provisions of the general law of the State requiring, for the purposes mentioned in the general law, a permit from the municipal treasurer for the slaughtering of large cattle. The purposes of the two laws are distinct. Many instances might be given showing that an inhabitant of a municipality, before he can do a particular thing or engage in particular class of business, should secure two permits, one from the municipality and another from the State. For example: Before a citizen of a municipality can engage in the sale of alcoholic liquors he must first secure a license from the State. In order to engage in the sale of intoxicating liquors anywhere in the State he must first obtain a license from the State. In many municipalities, even though he has his license from the State, he cannot engage in the business in the particular municipality without first securing a permit from such municipality. We deem that it requires no citation of authorities to support this doctrine.

It has been stated in many decisions that a municipality may adopt only such ordinances as are expressly authorized in its charter, or such as are necessarily implied from such express powers. In view of this limited power of municipal governments, it becomes necessary to examine what are the charter powers relating to the subject before us of the municipality of San Fernando, Province of La Union. The charter of said municipality is found in the Municipal Code (Act No. 82 and its amendments). Upon an examination of said charter we find in paragraphs (r) and (s) of section 39 that municipal councils, by ordinance, may provide:

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

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

It would seem from a careful reading of Ordinance No. 12, with special reference to article 41, that said ordinance was adopted for the purpose of inspecting the foods to be used in the municipality by its people and to prevent the introduction and spread of disease. The purpose of said ordinance seem to fall directly under the provisions of the charter (Act No. 82, section 39, subsections (r) and (s) and are authorized thereby. Act No. 1147 has for its object a very different purpose from that provided for by said ordinance. In order that we may better understand the questions presented, an examination of the purposes of the two laws may be made. An examination of the ordinance, as above stated, clearly shows that its general purpose was to protect the people of the municipality

against impure and infected foods. With reference to the purpose of Act No. 1147, this court has already, in the case of the United States vs. Toribio (15 Phil. Rep., 85) discussed at length that question. In that case (U. S. vs. Toribio) we reached the conclusion that said Act (No. 1147) was adopted for the express purpose of keeping a complete record of the large cattle of the Philippine Archipelago. Said Act No. 1147 was not adopted for the purpose of protecting the health of the inhabitants of the Philippine Islands. In discussing the purpose of said Act in the case of United States vs. Toribio, we said :

"The act primarily seeks to protect the 'large cattle, of the Philippine Islands against theft and to make easy the recovery and return of such cattle to their proper owners when lost, strayed, or stolen. To this end it provides an elaborate and compulsory system for the separate branding and registry of ownership of all such cattle throughout the Islands whereby owners are enabled readily and easily to establish their title; it prohibits and invalidates all transfers of large cattle unaccompanied by certificates of transfer issued by the proper officer in the municipality where the contract of sale is made; and it provides also for the disposition of estrays and animals recovered from the possession of thieves or persons unlawfully in possession, so as to protect the rights of the true owners. All this, manifestly, in order to make it difficult for anyone but the rightful owner of such cattle to retain them in his possession or to dispose of them to others. But the usefulness of this elaborate and compulsory system of identification, resting as it does on the official registry of the brands and marks on each separate animal throughout the Islands, would be largely impaired, if not totally destroyed, if such animals were permitted to be slaughtered for human consumption without requiring proof of ownership and the production of certificates of registry by the person slaughtering or causing them to be slaughtered, and this especially if the animals were slaughtered privately, or in a clandestine manner, outside of a municipal slaughterhouse. Hence, as it would appear, sections 30 and 33 prohibit and penalize the slaughter for human consumption or killing for food at a municipal slaughterhouse of such animals without a permit issued by the municipal treasurer, and section 32 provides for the keeping of detailed records of all such permits in the office of the municipal and also of the provincial treasurer.

"If, however, the construction be placed on these sections which is contended for by the appellant, it will readily be seen that all these carefully worked out provisions for the registry and record of the brands and marks of identification of all large cattle in the Islands would prove in large part abortive, since thieves and persons unlawfully in possession of such cattle could, and naturally would, evade the provisions of the law by slaughtering them outside of municipal slaughterhouses, and thus enjoy the fruits of their wrongdoing without exposing themselves to the danger of detection incident to the bringing¹ of the animals to the public slaughterhouse, where the brands and other identification marks might be scrutinized and proof of ownership required."

It will be seen, therefore, by the foregoing, that the purposes of the two laws are entirely different. In granting a permit to slaughter, the president of the municipal board of health examines into the question of the effect upon the health of the people of the community. The municipal treasurer, in granting a permit, examines into entirely different questions. He examines into the question of the identity of the animal, its ownership, etc. The president of the municipal board of health, in granting his permit, examines into the question only of the physical condition of the animal—whether it is in a physical condition to be used as food. Both laws are highly important for the welfare of the people of the municipality. One goes to protect the people in their property rights, and the other goes to protect the people in their health and comfort. It will be seen, therefore, that the purposes of the laws are entirely different. The requirement under the general law is for an entirely different purpose. A violation of either law is, therefore, a distinct offense from a violation of the other. It would, seem that the contention that the ordinance in question is in conflict with the general law of the State is no more tenable than to say that an ordinance, for example, within the city of Manila, providing that no person shall engage in the traffic of selling intoxicating liquors without a license, is in conflict with the general law of the State, which provides that no person shall engage in such traffic in the State without a license. Under such conditions, if a person should engage

in the business of selling intoxicating liquors in the city of Manila without first obtaining a license so to do, he has not only violated the ordinance of the city of Manila and may be punished therefor, but he has also violated the State law and is liable to be punished as well under such law. While the sale in a particular case is the same act, the offense is different. The evidence supporting the charge in one case is necessarily different from the evidence supporting the charge in the other case. In one case the prosecution would show that he was selling liquor without a license in accordance with the ordinance of the municipality. In the other case the evidence would show that the defendant was selling liquor without a license under the general law. The above example is clearly distinguishable from the facts in the cases heretofore decided by this court of the United States vs. Jose efral. (R. G., No. 7118)[1] and United States vs. Joson et al. (R. G., No. 7524).[1]

Ordinances such as the one we are discussing are not uncommon in municipalities. In fact they are very common. Practically every well regulated municipality has adopted ordinances to regulate the inspection of weights and measures, markets, etc., as well as for the inspection of foodstuffs sold within its territory. In many instances the authority to adopt such ordinances has been sustained upon the "general welfare clause" of the charter. In other instances, as in the present, they have been sustained upon the express grant of power of the charter.

The appellant raises no question as to the sufficiency of the proof adduced during the trial of the cause in the lower court. Having reached the conclusion that the ordinance is valid, the defendant admitting his guilt under the proof, it is hereby ordered, for the foregoing reasons, that the appeal be dismissed, and that the cause be returned to the court from whence it came with direction that the sentence of the lower court be executed. It is so ordered, with costs.

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

Carson, J., concurs in the result.

[1] 11 Off. Gaz., 1989; reported in 26 Phil. Rep.

[1] Not reported.

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