

**LEVY D. MACASIANO, BRIGADIER GENERAL/PNP SUPERINTENDENT,
METROPOLITAN TRAFFIC COMMAND, PETITIONER, VS.
HONORABLE ROBERTO C. DIOKNO, PRESIDING JUDGE, BRANCH 62,
REGIONAL TRIAL CO...**

G.R. No. 97764. August 10, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking the annulment of the decision of the Regional Trial Court of Makati, Branch 62, which granted the writ of preliminary injunction applied for by respondents Municipality of Parañaque and Palanyag Kilusang Bayan for Service (Palanyag for brevity) against petitioner herein.

The antecedent facts are as follows:

On June 13, 1990, the respondent municipality passed Ordinance No. 86, Series of 1990 which authorized the closure of J. Gabriel, G.G. Cruz, Bayanihan, Lt. Garcia Extension and Opena Streets located at Baclaran, Parañaque, Metro Manila and the establishment of a flea market thereon. The said ordinance was approved by the municipal council pursuant to MMC Ordinance No. 2, Series of 1979, authorizing and regulating the use of certain city and/or municipal streets, roads and open spaces within Metropolitan Manila as sites for flea market and/or vending areas, under certain terms and conditions.

On July 20, 1990, the Metropolitan Manila Authority approved Ordinance No. 86, s. 1990 of the municipal council of respondent municipality subject to the following conditions:

1. That the aforementioned streets are not used for vehicular traffic, and that the majority of the residents do not oppose the establishment of the flea market/vending areas thereon;
2. That the 2-meter middle road to be used as flea market/vending area shall be marked distinctly, and that the 2 meters on both sides of the road shall be used by pedestrians;
3. That the time during which the vending area is to be used shall be clearly designated;
4. That the use of the vending areas shall be temporary and shall be closed once the reclaimed areas are developed and donated by the Public Estate Authority.

On June 20, 1990, the municipal council of Parañaque issued a resolution authorizing Parañaque Mayor Walfrido N. Ferrer to enter into contract with any service cooperative for the establishment, operation, maintenance and management of flea markets and/or vending areas.

On August 8, 1990, respondent municipality and respondent Palanyag, a service cooperative, entered into an agreement whereby the latter shall operate, maintain and manage the flea market in the aforementioned streets

with the obligation to remit dues to the treasury of the municipal government of Parañaque. Consequently, market stalls were put up by respondent Palanyag on the said streets.

On September 13, 1990, petitioner Brig. Gen. Macasiano, PNP Superintendent of the Metropolitan Traffic Command, ordered the destruction and confiscation of stalls along G.G. Cruz and J. Gabriel St. in Baclaran. These stalls were later returned to respondent Palanyag.

On October 16, 1990, petitioner Brig. General Macasiano wrote a letter to respondent Palanyag giving the latter ten (10) days to discontinue the flea market; otherwise, the market stalls shall be dismantled.

Hence, on October 23, 1990, respondents municipality and Palanyag filed with the trial court a joint petition for prohibition and mandamus with damages and prayer for preliminary injunction, to which the petitioner filed his memorandum/opposition to the issuance of the writ of preliminary injunction.

On October 24, 1990, the trial court issued a temporary restraining order to enjoin petitioner from enforcing his letter-order of October 16, 1990 pending the hearing on the motion for writ of preliminary injunction.

On December 17, 1990, the trial court issued an order upholding the validity of Ordinance No. 86 s. 1990 of the Municipality of Parañaque and enjoining petitioner Brig. Gen. Macasiano from enforcing his letter-order against respondent Palanyag.

Hence, this petition was filed by the petitioner thru the Office of the Solicitor General alleging grave abuse of discretion tantamount to lack or excess of jurisdiction on the part of the trial judge in issuing the assailed order.

The sole issue to be resolved in this case is whether or not an ordinance or resolution issued by the municipal council of Parañaque authorizing the lease and use of public streets or thoroughfares as sites for flea markets is valid.

The Solicitor General, in behalf of petitioner, contends that municipal roads are used for public service and are therefore public properties; that as such, they cannot be subject to private appropriation or private contract by any person, even by the respondent Municipality of Parañaque. Petitioner submits that a property already dedicated to public use cannot be used for another public purpose and that absent a clear showing that the Municipality of Parañaque has been granted by the legislature a specific authority to convert a property already in public use to another public use, respondent municipality is, therefore, bereft of any authority to close municipal roads for the establishment of a flea market. Petitioner also submits that assuming that the respondent municipality is authorized to close streets, it failed to comply with the conditions set forth by the Metropolitan Manila Authority for the approval of the ordinance providing for the establishment of flea markets on public streets. Lastly, petitioner contends that by allowing the municipal streets to be used by market vendors, the municipal council of respondent municipality violated its duty under the Local Government Code to promote the general welfare of the residents of the municipality.

In upholding the legality of the disputed ordinance, the trial court ruled:

"x x x that Chapter II Section 10 of the Local Government Code is a statutory grant of power given to local government units, the Municipality of Parañaque as such, is empowered under that law to close its roads, streets or alley subject to limitations stated therein (i.e. that it is in accordance with existing laws and the provisions of this code).

"x x x

"The actuation of the respondent Brig. Gen. Levi Macasiano, though apparently within its power is in fact an encroachment of power legally vested to the municipality, precisely because when the municipality enacted the

ordinance in question -- the authority of the respondent as Police Superintendent ceases to be operative on the ground that the streets covered by the ordinance ceases to be a public thoroughfare." (pp. 33-34, Rollo)

We find the petition meritorious. In resolving the question of whether the disputed municipal ordinance authorizing the flea market on the public streets is valid, it is necessary to examine the laws in force during the time the said ordinance was enacted, namely, Batas Pambansa Blg. 337, otherwise known as Local Government Code, 'in connection with established principles embodied in the Civil Code on property and settled jurisprudence on the matter.

The property of provinces, cities and municipalities is divided into property for public use and patrimonial property (Art. 423, Civil Code). As to what consists of property for public use, Article 424 of Civil Code states:

"ART. 424. Property for public use, in the provinces, cities and municipalities, consists of the provincial roads, city streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities or municipalities.

"All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws."

Based on the foregoing, J. Gabriel G.G. Cruz, Bayanihan, Lt. Gacia Extension and Opena streets are local roads used for public service and are therefore considered public properties of respondent municipality. Properties of the local government which are devoted to public service are deemed public and are under the absolute control of Congress (Province of Zamboanga del Norte v. City of Zamboanga, L-24440, March 28, 1968, 22 SCRA 1334). Hence, local governments have no authority whatsoever to control or regulate the use of public properties unless specific authority is vested upon them by Congress. One such example of this authority given by Congress to the local governments is the power to close roads as provided in Section 10, Chapter II of the Local Government Code, which states:

"SEC. 10. Closure of roads. -- A local government unit may likewise, through its head acting pursuant to a resolution of its sangguniang and in accordance with existing law and the provisions this Code, close any barangay, municipal, city or provincial road, street, alley, park or square. No such way or place or any part thereof shall be closed without indemnifying any person prejudiced thereby. A property thus withdrawn from public use may be used or conveyed for any purpose for which other real property belonging to the local unit concerned might be lawfully used or conveyed." (Emphasis ours).

However, the aforestated legal provision which gives authority to local government units to close roads and other similar public places should be read and interpreted in accordance with basic principles already established by law. These basic principles have the effect of limiting such authority of the province, city or municipality to close a public street or thoroughfare. Article 424 of the Civil Code lays down the basic principle that properties of public dominion devoted to public use and made available to the public in general are outside the commerce of man and cannot be disposed of or leased by the local government unit to private persons. Aside from the requirement of due process which should be complied with before closing a road, street or park, the closure should be for the sole purpose of withdrawing the road or other public property from public use when circumstances show that such property is no longer intended or necessary for public use or public service. When it is already withdrawn from public use, the property then becomes patrimonial property of the local government unit concerned (Article 422, Civil Code; Cebu Oxygen, etc. et al. v. Bercilles, et al., G.R. No. L-40474, August 29, 1975, 66 SCRA 481). It is only then that the respondent municipality can "use or convey them for any purpose for which other real property belonging to the local unit concerned might be lawfully used or conveyed" in accordance with the last sentence of Section 10, Chapter II of Blg. 333, known as Local Government Code. In one case, the City Council of Cebu, through a resolution, declared the terminal road of M. Borces Street, Mabolo,

Cebu City as an abandoned road, the same not being included in the City Development Plan. Thereafter, the City Council passed another resolution authorizing the sale of the said abandoned road through public bidding. We held therein that the City of Cebu is empowered to close a city street and to vacate or withdraw the same from public use. Such withdrawn portion becomes patrimonial property which can be the object of an ordinary contract (Cebu Oxygen and Acetylene Co., Inc. v. Bercilles, et al., G.R. No. L-40474, August 29, 1975, 66 SCRA 481). However, those roads and streets which are available to the public in general and ordinarily used for vehicular traffic are still considered public property devoted to public use. In such case, the local government has no power to use it for another purpose or to dispose of or lease it to private persons. This limitation on the authority of the local government over public properties has been discussed and settled by this Court en banc in "Francisco v. Dacanay, petitioner v. Mayor Macario Asistio, Jr., et al., respondents., G.R. No. 93654, May 6, 1992." This Court ruled:

"There is no doubt that the disputed areas from which the private respondents' market stalls are sought to be evicted are public streets, as found by the trial court in Civil Case no. C-12921. A public street is property for public use hence outside the commerce of man (Arts. 420, 424, Civil Code). Being outside the commerce of man, it may not be the subject of lease or other contract (Villanueva, et al. v. Castañeda and Macalino, 15 SCRA 142 citing the Municipality of Cavite v. Rojas, 30 SCRA 602; Espiritu v. Municipal Council of Pozorrubio, 102 Phil. 869; and Muyot v. De la Fuente, 48 O.G. 4860).

"As the stallholders pay fees to the City Government for the right to occupy portions of the public street, the City Government, contrary to law, has been leasing portions of the streets to them. Such leases or licenses null and void for being contrary to law. The right of the public to use the city streets may not be bargained away through contract. The interests of a few should not prevail over the good of the greater number in the community whose health, peace, safety, good order and general welfare, the respondent city officials are under legal obligation to protect.

"The Executive Order issued by acting Mayor Robles authorizing the use of Heroes del '96 Street as a vending area for stallholders who were granted licenses by the city government contravenes the general law that reserves city streets and roads for public use. Mayor Robles' Executive Order may not infringe upon the vested right of the public to use city streets for the purpose they were intended to serve; i.e., as arteries of travel for vehicles and pedestrians."

Even assuming, in gratia argumenti, that respondent municipality has the authority to pass the disputed ordinance, the same cannot be validly implemented because it cannot be considered approved by the Metropolitan Manila Authority due to non-compliance by respondent municipality of the conditions imposed by the former for the approval of the ordinance, to wit:

1. That the aforementioned streets are not used for vehicular traffic, and that the majority of the residents do(es) not oppose the establishment of the flea market/vending areas thereon;
2. That the 2-meter middle road to be used as flea market/vending area shall be marked distinctly, and that the 2 meters on both sides of the road shall be used by pedestrians;
3. That the time during which the vending area is to be used shall be clearly designated;
4. That the use of the vending areas shall be temporary and shall be closed once the reclaimed areas are developed and donated by the Public Estate Authority. (p. 38, Rollo)

Respondent municipality has not shown any iota of proof that it has complied with the foregoing conditions precedent to the approval of the ordinance. The allegations of respondent municipality that the closed streets were not used for vehicular traffic and that the majority of the residents do not oppose the establishment of a flea

market on said streets are unsupported by any evidence that will show that this first condition has been met. Likewise, the designation by respondents of a time schedule during which the flea market shall operate is absent.

Further, it is of public notice that the streets along Baclaran area are congested with people, houses and traffic brought about by the proliferation of vendors occupying the streets. To license and allow the establishment of a flea market along J. Gabriel, G.G. Cruz, Bayanihan, Lt. Garcia Extension and Opena streets in Baclaran would not help in solving the problem of congestion. We take note of the other observations of the Solicitor General when he said:

"x x x. There have been many instances of emergencies and fires where ambulances and fire engines, instead of using the roads for a more direct access to the fire area, have to maneuver and look for other streets which are not occupied by stalls and vendors thereby losing valuable time which could, otherwise, have been spent in saving properties and lives.

"Along G.G. Cruz Street is a hospital, the St. Rita Hospital. However, its ambulances and the people rushing their patients to the hospital cannot pass through G.G. Cruz because of the stalls and the vendors. One can only imagine the tragedy of losing a life just because of a few seconds delay brought about by the inaccessibility of the streets leading to the hospital.

"The children, too, suffer. In view of the occupancy of the roads by stalls and vendors, normal transportation flow is disrupted and school children have to get off at a distance still far from their schools and walk, rain or shine.

"Indeed one can only imagine the garbage and litter left by vendors on the streets at the end of the day. Needless to say, these cause further, pollution, sickness and deterioration of health of the residents therein." (pp. 21-22, Rollo)

Respondents do not refute the truth of the foregoing findings and observations of petitioners. Instead, respondents want this Court to focus its attention solely on the argument that the use of public spaces for the establishment of a flea market is well within the powers granted by law to a local government which should not be interfered with by the courts.

Verily, the powers of a local government unit are not absolute. They are subject to limitations laid down by the Constitution and the laws such as our Civil Code. Moreover, the exercise of such powers should be subservient to paramount considerations of health and well-being of the members of the community. Every local government unit has the sworn obligation to enact measures that will enhance the public health, safety and convenience, maintain peace and order, and promote the general prosperity of the inhabitants of the local units. Based on this objective, the local government should refrain from acting towards that which might prejudice or adversely affect the general welfare.

As what we have said in the *Dacanay* case, the general public have a legal right to demand the demolition of the illegally constructed stalls in public roads and streets and the officials of respondent municipality have the corresponding duty arising from public office to clear the city streets and restore them to their specific public purpose.

The instant case as well as the *Dacanay* case, involves an ordinance which is void and illegal for lack of basis and authority in laws applicable during its time. However, at this point, We find it worthy to note that *Batas Pambansa Blg. 337*, known as *Local Government Code*, has already been repealed by Republic Act No. 7160 known as *Local Government Code of 1991* which took effect on January 1, 1992. Section 5(d) of the new Code provides that rights and obligations existing on the date of effectivity of the new Code and arising out of contracts or any other source of prestation involving a local government unit shall be governed by the original terms and

conditions of the said contracts or the law in force at the time such rights were vested.

ACCORDINGLY, the petition is GRANTED and the decision of the respondent Regional Trial Court dated December 17, 1990 which granted the writ of preliminary injunction enjoining petitioner as PNP Superintendent, Metropolitan Traffic Command from enforcing the demolition of market stalls along J. Gabriel, G.G. Cruz, Bayanihan, Lt. Garcia Extension and Opena streets is hereby REVERSED and SET ASIDE.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Grino-Aquino, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

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