Republic of the Philippines

SUPREME COURT

Manila

EN BANC

G.R. No. L-34976 October 21, 1931

SENG KEE & CO., plaintiff-appellant,
vs.
TOMAS EARNSHAW, Mayor of the City of the Manila, and C.E. PIATT, Chief of Police of said City,defendants-appellees.

J.W. Ferrier for appellant.
City Fiscal Felix for appellees.

IMPERIAL, *J.:*

The issue in the present case is the validity and constitutionality of sections 120, 121, 122, 1067, and 1068 of the Revised of Ordinances, No. 1600 of the City of Manila, the last two only in so far as it refers to the manufacture of the sauce known as *toyo*.

The plaintiff Seng Kee & Co. appealed from the judgment of the Court of the First Instances of Manila, dated October 31, 1930, which held those provisions of the Revised Ordinances valid, dissolved the preliminary injunction, and dismissed the complaint with costs.

In the year 1920 the appellant, a general commercial partnership, established a *toyo* factory at No. 7, Kipuja Street, Manila. The capital was P6,000 to begin with, but it increased gradually until it reached the sum of P100,000, including the value of the buildings, land, equipment, and other improvements. The industry throve under the license prescribed by the ordinances then in force. Later on sections 120, 121, and 122 of the Revised Ordinances, previously known as Ordinances Nos. 1069 and 1203, divided the city of Manila into zones, residential and industrial; the last section providing that certain trades and industries therein regarded as noxious may be conducted only in the industrial zone. In the year 1924, as a result of certain complaints received, the Bureau of Health suggested the enactment of Ordinances No. 1287, which the municipal board passed on July 15, 1925. The manufacture of *toyo* was included in the classification of noxious industries. Subsequently, the ordinance was amended by No. 1490, and in 1927 both ordinances were embodied in sections 1067 and 1068 of the Revised Ordinances. At the end of the four-year period provided in the last section, the appellant was refused a license and asked to remove elsewhere because he could not be permitted to continue in that zone. Upon its refusal to do so, it was charged with violation of municipal ordinances; in return, it brought this action.

With reference to the hygienic aspect of the trade, the record shows that *toyo* is manufactured by fermenting the salted gram and kidney beans, then mixing the resulting liquid with treacle or coarse brown sugar, and cooking the mixture over a slow fire for several hours; upon cooling off, it is put in bottles for sale to the public. To ferment the gram and the kidney beans, they are laid out for several days in a place set apart for the purpose. The fermentation and the presence of vast quantities of coarse brown sugar draws flies, cockroaches, and other unhealthy insects to the neighborhood. The slow-fire process requires great ovens, and the smoke therefrom is a nuisance and injurious to the lungs. The vicinity where the factory is located is rather thickly populated, and in its surroundings there are other objectionable and noxious trades, such as ironworks due to both noise and smoke. The sanitary condition of the place may be gathered from the testimony of Dr. Eugenio Hernando, chief of the metropolitan division of the Bureau of Health, and from the personal inspection conducted by the trial court.

The appellant assigned fourteen errors of the judgment appealed from, which are as follows:

1. In overruling several objections made by the petitioner to the introduction of evidence and in refusing to strike from the record upon motion of the petitioner several statements made by witnesses for the respondents as well as in admitting Exhibit 1 for the respondents.

2. In failing to find that the municipal board of the City of Manila exceeded its powers when it enacted the ordinances now known as sections 1067 and 1068 of the Revised Ordinances of the City of Manila, and that said municipal board likewise exceeded its powers when it enacted section 120, 121, and 122 of said Revised Ordinances.

3. When it failed to find that the factory in question here had complied with all the necessary conditions prescribed for its conduct by the Bureau of Health

4. When it failed to find that the petitioner would suffer great and irreparable injury by the enforcement of such ordinances and that such ordinances were null and void and unconstitutional by reason of the fact they sought to take private property without due compensation therefor.

5. When it found that the City of Manila had a right to order the removal of the factory in question to some other place designated by said city, and without paying to the owner thereof the damages and injuries which it might suffer by such removal.

6. When it decided the questions raised by authority of the decision in the Village of Euclid *vs*. Ambler Realty Co. (272 U.S., 365).

7. When it found that the manufacture of "*toyo*" is noxious and fall within the classification of noxious industries.

8. When it made findings regarding the ocular inspection of the property without having placed anything in the record as to what occurred at such ocular inspection

9. In finding that the odor of "*toyo*" could be perceived immediately upon entering Calle Kipuja.

10. In finding that the "*toyo*" factory in question produced more smoke than the blacksmith shops with which it is surrounded.

11. In finding that it was the smoke produced by the "*toyo*" factory and the blacksmith shops which had caused the disagreeable appearance of the surrounding buildings.*1awphil.net*

12. In finding that the petitioner had no right of recovery for the damages which it might suffer by the enforcement of the ordinances in question

13. In dismissing petitioner's complaint, dissolving the preliminary writ of injunction and condemning the petitioner to pay the costs of the action.

14. In overruling and denying petitioner's motion for a new trial.

Numbers 3, 7, 9, 10, and 11 deal with matters of fact while the rest deal with points of law. We shall now take up the former. Through the assignment of these five errors, the appellant, in effect, maintains that it has always observed the health regulations; that it was an error to classify the manufacture of *toyo* as a noxious industry, to find that the odor of *toyo* might be perceived from the entrance of Kipuja Street, and that said *toyo*factory gives more smoke than the ironworks surrounding it and that the unpleasant appearance of the buildings in the neighborhood was due to that smoke. The plaintiff factory's faithful observance of the health regulations cannot affect the validity and constitutionality of the provisions questioned; for, what the appellees contend is that the law requires the removal of the factory to some other place because its present site is inappropriate. This assignment of error is therefore without merits. The finding that the appellant's factory falls within the classification of unwholesome and noxious industries, is borne out be a preponderance of the evidence. The testimony of Doctor Hernando and the personal inspection of the premises by trial judge show that the fermenting beans and the treacle or coarse brown sugar attract flies, cockroaches, and other unhealthy insects, whose contact with human food in that neighborhood is dangerous, for they are carries of disease germs. The evidence supports the finding that the *toyo* may be smelled as soon as one gets into Kipuja Street. This has been ascertained in the personal inspection. That the factory throws out more smoke than the adjacent iron-works, and that this smoke has brought about the present deplorable state of the nearby houses, is also shown by the evidence; and indeed the various ovens of the factory kept burning constantly with a peculiar fuel, could not help doing so.

We will now take up the rest of the errors assigned. The first alleges that the trial court erred in admitting Exhibit 1, in sustaining certain objections made by counsel for

the appellees, and in not striking out certain statements from the record. Exhibit 1 is a complaint in writing against the appellant's factory drawn up by some of the residents of the place, and delivered by one of them to Doctor Hernando. It was exhibited in evidence to explain or justify the administrative investigation made by this official for the purpose of determining whether the factory was indeed one of the noxious industries prohibited. Without that exhibit the Bureau of Health would seem to have conducted that investigation at its own initiative. Therefore it was not an error to submit such a document, or to deny the petition to have it stricken from the record. Counsel for the appellant attempted to show by the testimony of Ang Yerk Coe that it did not engage in the production of treacle either by natural process or by distillation; counsel for the appellees objected to the questions thus put, and the court sustained the objection. The appellant contends that this ruling was erroneous. It will be seen that no such error was incurred, if one would consider that the issue was not the extraction of treacle, but whether or not the manufacture of *toyo* is a noxious trade within the contemplation of the revised ordinances. The appellant was not accused of extracting treacle in any form whatsoever, but of manufacturing *toyo*, the process of which is a nuisance and a menace to the public health. As for striking out Doctor Hernando's testimony, the court rightly denied it. He was an expert witness and his conclusions were based upon what he saw when he inspected the appellant's factory. We see no reason why his testimony should be stricken out.

The appellant, in second, fourth, fifth, sixth, and twelfth assignments of error contends that the City of Manila has exceeded its power in passing the ordinances attacked, that the latter are void and unconstitutional, and that the court should have allowed the plaintiff damages for their enforcement. The provisions in question as they were compiled and inserted in the Revised Ordinances, No. 1600, are sections 120, 121, 122, 1067, 1068, and 1069. The first two divide the City of Manila into two zones called residential and industrial; the third provides that offensive, noxious, and unwholesome industries and any trades that may be permitted by the Director of Health may be conducted in the industrial zone exclusively. Sections 1067 and 1068 read as follows:

> SEC. 1067. *Storage of unrefined sugar as offensive and unwholesome trade, business, or occupation*. — The storage of unrefined or raw sugar in pot jars or other containers, the extraction of molasses by the process of natural distillation therefrom, and the manufacture and preparation of the Chinese product known as "*toyo*" are declared to be within the classification of offensive and unwholesome trades, businesses, or occupations. (1287-1.)
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> SEC. 1068. *Storage of unrefined sugar, where permitted*. — The industries, trades businesses, or occupations named in the last preceding section shall be established or engaged in exclusively in the zone created by and specified in section one hundred and twenty-one hereof: Provided, That those trades, businesses, or occupations already established on September ten, nineteen hundred and twenty-six, are excepted from the provisions of this chapter for a period of not less than four years, beginning from September ten, nineteen hundred and twenty-six. (1287-2; 1490-1.)

And section 1069 prescribes that the Director of Health shall promulgate from time to time regulations for the sanitary maintenance and management of the businesses, trades, and occupations affected by the last two preceding sections thereof.

Thus section 122 provides that noisome and noxious industries shall be conducted and situated only within the industrial zone and in no other, and section 1067 explicity provides that the manufacture of *toyo* and the extraction of coarse sugar or treacle shall be deemed noxious and unwholesome industries. And section 1068 provides that these industries may be established only in the industrial zone, except that such provisions should not apply to trades and industries already established on September 10, 1926, for a period of four years from said date. Section 1069 merely empowers the Director of Health to promulgate health regulations, and has been copied from section 3 of Ordinance No. 1287, under which the Bureau of Health issued administrative order No. 16 on September 5, 1925, laying down rules for the operation of treacle and *toyo* factories, and other offensive and noxious industries.

The appellant vigorously contends that the City of Manila has exceeded its legislative powers in passing the sections mentioned above, which are void and unconstitutional because they deprive owners of their property without just compensation. The power of the City of Manila to adopt ordinances of this kind is derived from sections 1019 and 1020 (*g*) of the Administrative Code, the pertinent portions of which read as follows:

> SEC. 1019. *Health ordinances for Manila — How drafted and made effective*. — Subject to the approval of the Department Head, the Director of Health, in the exercise of the function of local board of health for the City of Manila, shall draft and forward, through the Department Head, to the Municipal Board of the City of Manila for enactment, health ordinances for that city. It shall be the duty of the Municipal Board to enact the ordinances so forwarded; . . . .
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> SEC. 1020. *Subject matter of Manila health ordinances*. — The ordinances drafted by the Director of Health for the City of Manila may provide for —
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> (*g*) Sanitary regulations of the business and fixing the location of tanneries, ... and other offensive or unwholesome establishment, businesses, or occupations which are dangerous to the public health, or the removal of the same when already established, if necessary to secure proper sanitation; ... and such other matters and things as may be deemed desirable for the purpose of securing the proper sanitary conduct of such trades, business, manufactories, and occupations.

The constitutionality of these two provisions cannot be put in issue: They flow from the police power inherent in every legislature, and here delegated to the City of Manila. It is insinuated that had they been restricted to *toyo* factories thereafter established, such provisions would not have been assailed by anyone as invalid. But as

the city fiscal has pointed out with good authority in his brief, such an ordinance would be open to question.

There can be no doubt that the City of Manila has the power to divide its territory into residential and industrial zones, and to prescribe that offensive and unwholesome trades and occupations are to be established exclusively in the latter zone.

> The benefits to be derived by cities adopting such regulations (zoning) may be summarized as follows: They attract a desirable and assure a permanent citizenship; they foster pride in and attachment to the city; they promote happiness and contentment; they stabilize the use and value of property and promote the peace, tranquillity, and good order of the city. We do not hesitate to say that the attainment of these objects affords a legitimate field for the exercise of the police power. He who owns property in such a district is not deprived of its use by such regulations. He may use it for the purpose to which the section in which it is located is dedicated. That he shall not be permitted to use it no desecration of the community constitutes no unreasonable or permanent hardship and results in no unjust burden. (State *ex rel*. Carter*vs*. Harper, 182 Wis., 148.)

> It is a matter definitely settled by both Philippine and American cases, and the defendant-appellant so admits, that municipal corporations may, in the exercise of their police power, enact ordinances or regulations on zonification (43 Corpus Juris, 334). Within the powers granted to municipal councils in section 2238 of the Revised Administrative Code, the municipal council of Cabanatuan was authorized to enact the zonification ordinance with which we are now concerned. (People *vs*. Cruz, 54 Phil., 24, 27.)

Likewise, it cannot be denied that the City of Manila has the authority, derived from the police power, of forbidding the appellant to continue the manufacture of *toyo* in the zone where it is now situated, which has been declared residential, without providing for any compensation; these provisions of the Revised Ordinances do not in fact deprive Manila residents of their property without just compensation, for it deprives then neither of the ownership nor of the possession thereof, but simply restricts them from the use of such property at certain places for the goods of the majority of inhabitants.

> The 14th Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public. (Murphy *vs*. California, 225 U.S., 623.)

> Police regulations are not a taking under the right of eminent domain or a deprivation of property without due process of law. Thus, a prohibition on the use of property, for purposes that are declared by valid legislation to be injurious to the health, morals, or safety of the community cannot, in any sense, be deemed a taking or an appropriation of property for the public benefit, as such legislation does not disturb the owner in the control or use of his property for lawful purpose,

> nor restrict his right to dispose or it. It is only a declaration by the state that its use by any one for certain forbidden purpose is prejudicial to the public interests, the exercise of the police power by the destruction of the property, which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. (Mugler *vs*. Kansas, 123 U.S., 623; 8 Sup. Ct., 273; 31 Law. ed., 205.)

The sixth error assigned discusses nothing useful or practical, and need not be considered. It assigns no reversible error.

The eight error might have been deserving of consideration had the appellant asked to state in the stenographic notes the court's findings with respect to the personal inspection, and the court had refused to do so; but nothing of the kind appears to have been done, and therefore the contention that such findings have been set forth for the first time in the judgment appealed from is unfounded.

The last two errors assigned, the thirteenth and fourteenth are corollaries of the preceding ones, and require no further discussion. The trial court arrived at the correct conclusion that the plaintiff had no sufficient cause of action, and rightly cancelled the preliminary injunction issued against the appellees.

Finding that the judgment appealed from suffers from none of the errors assigned, it is hereby affirmed in its entirety, with costs against the appellant. So ordered.

Avanceña, C.J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez and Villa-Real, JJ., concur.