

Supreme Court Decision—

ESTABLISHMENT AND OPERATION OF PUBLIC MARKETS

CO CHIONG ET AL., petitioner and appellees, vs. MIGUEL CUADERNO, SR., ETC., ET AL., respondents. MIGUEL CUADERNO, SR., appellant, RAMONA CLEMENTE ET AL., intervenors and appellees.

(No. L—1440. March 31, 1949).

1. STATUTES; DEPARTMENT OF FINANCE ORDER NO. 32 PURPOSE.—We hold that the provision of section 2 of Department of Finance Order No. 32 declaring that all stalls or booths in any public market shall be vacated by their occupants and their leases terminated on January 1, 1947, has been issued to make effective the provisions of Republic Act No. 37.
2. ID.; PUBLIC MARKET STALLS RE-PUBLIC ACT NO. 37; PURPOSE.—The main purpose of said act is to grant to Filipino citizens preference in the lease of public market stalls.
3. ID.; ID.; POWER OF SECRETARY OF FINANCE; ISSUANCE OF DEPARTMENT ORDER NO. 32.—Congress decreed that the act shall take effect on January 1, 1947, and empowered the Secretary of Finance to promulgate the necessary rules to carry into effect the purpose of this act that beginning January 1, 1947, if occupancy for any public market stall is applied for by Filipino citizens and by aliens, the same shall be awarded to the former. Department of Finance Order No. 32, in declaring vacated all public market stalls as of January 1, 1947, had only made clear the legislative intent that from then on the preference given by Republic Act No. 37 to Filipino citizens shall be made effective. As a matter of fact, the declaration in said Department of Finance Order can be considered as a mere surplusage as, even without it, Filipino applicants would still be entitled to lease and occupy, beginning January 1, 1947, public market stalls then occupied by aliens.
4. CONSTITUTIONAL LAW; PUBLIC MARKETS AS PUBLIC SERVICES OR UTILITIES.—Public markets or public services are utilities as much as the public supply and sale of gas, gasoline, electricity, water and public transportation are. Under the Constitution, the operation of all public services are reserved to Filipino citizens and to corporations or associations sixty *per centum* of the capital of which belongs to Filipino citizens.
5. ID.; SALES OF FOODSTUFFS IN PUBLIC MARKETS; NECESSITY OF OFFICIAL SUPERVISION; OCCUPANCY OF PUBLIC MARKET STALLS PREFERENCE TO FILIPINO CITIZENS.—Foodstuffs sold in public markets demand, at least, as much official control and supervision as the commodities sold and distributed in other public utilities. They affect the life and health of the people, the safeguarding of which is one of the basic obligations of a constituted governments. Official control and supervision can be exercised more effectively if public market stalls are occupied by citizens rather than by aliens.
6. ID.; PUBLIC MARKETS, ESTABLISHMENT AND OPERATION OF, ARE FUNCTIONS OF GOVERNMENT; PUBLIC FUNCTIONS ARE POWERS OF SOVEREIGNTY EXCLUSIVELY FOR NATIONALS.—The establishment, maintenance, and operation of public markets, as much as public works, are part of the functions of government. The privilege of participating in said functions, such as that of occupying public market stalls, is not among the fundamental rights or even among the general civil rights protected by the guarantee of the Bill of Rights. The exercise or enjoyment of public functions are reserved to a class of persons possessing the specific qualifications required by law. Such is the case of the privilege to vote, to occupy a government position or to participate in public works. They are reserved exclusively to citizens. Public functions are powers of national sovereignty and it is elementary that such sovereignty be exercised exclusively by nationals.

7. ID.; FOREIGNERS' RIGHTS AND PRIVILEGES, LIMITATION OF.—Although foreigners are entitled to all the rights and privileges of friendly guests, they can not claim the right to enjoy privileges which in their nature belong exclusively to the hosts.

DECISION

PERFECTO, J.:

On October 1, 1946, Congress enacted Republic Act No. 37 which reads as follows:

“AN ACT GRANTING PREFERENCE TO FILIPINO CITIZENS IN THE LEASE OF PUBLIC MARKET STALLS.

“Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

“Section 1. All citizens of the Philippines shall have preference in the lease of public market stalls.

“Sec. 2. The Secretary of Finance is hereby empowered to promulgate the necessary rules to carry into effect the purposes of this Act.

“Sec. 3. All existing laws or parts thereof contrary to the provisions of this Act are hereby repealed.

“Sec. 4. This Act shall take effect on the first day of January, nineteen hundred and forty-seven.

“Approved, October 1, 1946.”

Furporting to carry into effect said act, the Secretary of Finance promulgated on November 29, 1946, Department of Finance Order No. 32, declaring all stalls or booths in all markets as vacated by their occupants and their leases terminated on January 1, 1947. Section 2 of said order provides:

“Vacancy of Stalls; Notice of

Application.—

For the purpose of this Order, all stalls or booths in any public market shall be deemed to be vacated by their present occupants and their lease terminated on January 1, 1947, and the same shall be leased to applicants therefor beginning said date in the following manner:

“(a) Notice of this general vacancy shall be posted on the bulletin board in each public market and other conspicuous places therein immediately upon the promulgation of this Order.

“(b) If the occupants or holders of the stalls on December 31, 1946 are citizens of the Philippines, and have been occupying or holding the same for not less than thirty (30) days before said date, and they file their applications to continue occupying the same in the manner herein prescribed, they shall be given the lease of their respective stalls, subject to the conditions prescribed in these regulations. The application shall be substantially in the form prescribed in section 3 (c) hereof and shall expressly state that the applicant is the actual occupant on December 31, 1946, of the stalls applied for.

“(c) If their occupants on December 31, 1946, are not Filipino citizens, the stalls affected shall be awarded for occupancy to the Filipino applicant who first filed his application therefor in accordance with the provisions hereof.

“(d) In case two or more applications from Filipino citizens are filed at the same time for the same market stall, or it can not be ascertained which one of them was filed first, the lease of the stall shall be awarded by lot under the supervision of the Market Committee as herein provided.

“(e) The award of market stalls to an alien applicant can be made only in the absence of a Filipino applicant.”

On December 27, 1946, petitioners-appellees filed with the lower court a petition for prohibition to restrain appellants from enforcing the above act and department order, alleging that they are unconstitutional.

On December 28, 1946, the lower court issued a writ of preliminary injunction ordering appellants to desist from ejecting appellees from the leased public market stalls mentioned in the petition.

The writ was dissolved by order of January 7, 1947. Appellees filed with the Supreme Court a petition for certiorari and mandamus, L-1266, to annul the order of dissolution of the writ of preliminary injunction. The petition was dismissed on August 29, 1947, because among other reasons, the Secretary of Finance suspended the operation of Department Order No. 32 which respondents were about to enforce.

Trial was held in the lower court where appellees called to testify three market stall holders, Yee Shi, Go Hong and Uy Ho.

Yee Shi, Chinese, widow, 46, testified that she continuously occupied her stalls in Divisoria Market since June, 1932, upon the death of her husband a former lessee thereof; that she signed contracts of lease for the occupancy of said stalls, but no copy was given her by the market authorities; that on December 24, 1946, she received notice to vacate the stalls not later than 4 p.m. of December 31, 1946; that she has no means of livelihood other than her business conducted at said stall; that, if ejected, she will have no means to support her five children and that there are no other alien market vendors than the Chinese.

Go Hong, 49, Chinese, testified that he has been occupying his stalls at Quiapo Market since 1916; that he signed contracts of lease but no copy was given to him by the market authorities; that if ejected, he will have no means of supporting his Filipino wife and four children; that there are no alien vendors other than the Chinese; and that approximately 50 Chinese vendors occupy about 9% of the stalls in Quiapo market.

Uy Ho, Chinese, 48, testified that he continuously occupied his stalls at Divisoria market since 1928, except for a period from 1943 to 1944 when he joined the Marking guerillas; that he signed contracts of lease but no copy was given him by the market authorities; that, if ejected therefrom, he will have no means of supporting his wife and six children; that his youngest

child is only 10 months old; that on December 21, 1946, he received notice to vacate the stalls not later than 4 p.m. of December 31, 1946.

Appellees also presented the following documentary proofs: Exh. A, Market Code of Manila or Ordinance No. 2898; Exhibit B, Department of Finance Order No. 32; Exh. C, notice given by the City Treasurer to appellees to vacate the public market stalls not later than 4 o'clock p.m. December 31, 1946, pursuant to the provisions of Republic Act No. 37 and Department of Finance Order No. 32; Exh. D, record of Mendoza vs. Nolasco, civil case No. 72532 of the Court of First Instance of Manila; Exh. E, opinion of the City Fiscal given to the Mayor of Manila dated November 15, 1946; Exh. F, records of Sy Choc Chay vs. Market Master, civil case No. 915 of the court of First Instance of Manila; Exh. G, portion of the transcript of the stenographic notes taken on December 28 1946; Exh. H, Section 653 or Ordinance No. 1600 of Manila; Exh. I, Secs. 795, 801 and 809(c) of Ordinance Order No. 1600 of Manila; Exh. J to Exh. J-19, treaties of the United States with several foreign countries; Exhs. K to K-3, opinion of the Atty. General; Exhs. L to L-5, decisions of the Supreme Court; Exh. M, Philippine Immigration Act of 1940; Exh. N, order of the Military Governor of September 20, 1898; Exh. O, Note of the Secretary of State Hay of December 5, 1898; Exh. O-1, Note of Secretary of State Knox; Exh. O-2, Lobinger, American Courts in China; Exh. P, Charter of the United Nations; Exh. Q, certificate of the City Treasurer of Manila to show that only 13.02% of the public market stalls of Manila are occupied by aliens, herein appellees; Exhs. R and S, identification cards issued to Yee Shi; and Exh. T, certificate of delegation of the Republic of China to the Philippines, to show that appellees have exhausted all administrative remedies to secure repeal or modification of Republic Act No. 37 and Department of Finance Order No. 32.

Appellants presented as their only evidence Exh. 1, showing that all the

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market stalls in Manila have already been applied for by citizens of the Philippines; that there are 3,479 applications received from Filipino citizens, or an average of five applications to every two stalls and almost eight Filipinos to every alien occupant; and that these stalls are being awarded to the Filipinos pursuant to the provisions of Republic Act No. 37.

The lower court rendered judgment upholding the constitutionality of Republic Act No. 37 but voiding the provisions of Section 2 of Department of Finance Order No. 32, as not in conformity with said Republic Act No. 37 and commanded appellants to desist from enforcing the provisions of Department Order No. 32.

Appellants assigned in their brief six errors as having been committed by the lower court, all relating to the interpretation of Republic Act No. 37 and as to the validity of Department of Finance Order No. 32.

The whole controversy in this appeal can, however, be limited to the question as to whether or not Sec. 2 of Department of Finance Order No. 32 is authorized by Republic Act No. 37.

The trial court answered the question in the negative and, therefore, ordered appellant public officers to refrain from executing said department order and from ejecting appellees from their respective stalls.

The trial court reasons out that, although the act was approved on October 1, 1946, it expressly provides that it shall take effect on the first day of January, 1947, and that it does not appear in the text that Congress intended to give to the act a retroactive application. Hence, the unconstitutionality of Section 2 of said order No. 32.

Appellants contend that on the hypothetical assumption that awards in public markets are leases the same had already expired on January 1, 1947; and that, since the fees of the stallholders are collected either daily, weekly or monthly, without definite periods, the leases should be understood as being from day to day, week to week or month to month, as the case may be according to Article 1951 of the Civil

Code, all of them had expired since December 31, 1946.

They allege that on January 1, 1947, all awards to stalls could be renewed and reassigned to holders to hold them pursuant to the national policy declared in Republic Act No. 37, and the Secretary of Finance, in declaring all stalls or booths in any public market vacant and their lease terminated on January 1, 1947, as provided in Section 2 of Department of Finance Order No. 32, simply recognized the day-to-day nature of the leases in question, aside from what is provided in Section 26 of Ordinance No. 2808 of Manila, known as the Market Code, as amended by Ordinance No. 2993, which reads:

"Citizenship of Stallholders.—No person shall be permitted to engage in any form of business in the public markets of Manila other than citizens of the Philippines and of the United States, PROVIDED, That foreigners having existing business in the said markets and duly licensed therefor are hereby given a grace of three years upon approval of this Ordinance to vacate the stalls they occupy."

Appellees, on the other hand, contend that the power granted by Section 2 of Republic Act No. 37 to the Secretary of Finance to promulgate rules is limited to strict conformity with the requirements of the statute, adding that the context of Republic Act No. 37 can be searched in vain for any provision authorizing the termination of all existing leases and the possible dispossession of all stallholders on January 1, 1947, and that the omission cannot be supplied by the Secretary of Finance.

We hold that the provision of Section 2 of Department of Finance Order No. 32 declaring that all stalls or booths in any public market shall be vacated by their occupants and their leases terminated on January 1, 1947, has been issued to make effective the provisions of Republic Act No. 37.

The main purpose of said act is to grant to Filipino citizens preference in the lease of public market stalls.

Congress decreed that the act shall take effect on January 1, 1947, and empowered the Secretary of Finance to promulgate the necessary rules to carry into effect the purpose of the act that beginning January 1, 1947, if occupancy of any public market stall is applied for by Filipino citizens and by aliens, the same shall be awarded to the former. Department of Finance Order No. 32, in declaring vacated all public market stalls as of January 1, 1947, had only made clear the legislative intent that from then on the preference given by Republic Act No. 37 to Filipino citizens shall be made effective. As a matter of fact, the declaration in said Department of Finance Order can be considered as a mere surplusage as, even without it, Filipino applicants would still be entitled to lease and occupy, beginning January 1, 1947, public market stalls then occupied by aliens.

Although appellees did not appeal against the trial court's decision, where, in the constitutionality of Republic Act No. 37 was upheld, they reproduce here their attack against the validity of said act, submitting before us long and elaborate printed brief and memorandum.

Public markets are public services or utilities as much as the public supply and sale of gas, gasoline, electricity, water and public transportation are. Under the Constitution, the operation of all public services are reserved to Filipino citizens and to corporations or associations sixty *per centum* of the capital of which belongs to Filipino citizens.

"No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines sixty per centum of the capital of which is owned by citizens of the Philippines nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any

individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires."

Foodstuffs sold in public markets demand, at least, as much official control and supervision as the commodities sold and distributed in other public utilities. They affect the life and health of the people, the safeguarding of which is one of the basic obligations of a constituted government. Official control and supervision can be exercised more effectively if public market stalls are occupied by citizens rather than by aliens.

In impugning the validity of Republic Act No. 37, appellees invoke general guarantees in the Bill of Rights, such as the due process of law and the equal protection of the laws. Even if their position could be supported under said general guarantees, a hypothesis the validity of which we consider unnecessary to decide, said guarantees have to give way to the specific provision above quoted, which reserves to Filipino citizens the operation of public services or utilities.

Furthermore, the establishment, maintenance, and operation of public markets, as much as public works, are part of the functions of government. The privilege of participating in said functions, such as that of occupying public market stalls, is not among the fundamental rights or even among the general civil rights protected by the guarantees of the Bill of Rights. The exercise or enjoyment of public functions are reserved to a class of persons possessing the specific qualifications required by law. Such is the case of the privilege to vote, to occupy a government position, or to participate in public works. They are reserved exclusively to citizens. Public functions are powers of national sovereignty and it is elementary that such sovereignty be exercised exclusively by nationals.

Although foreigners are entitled to all the rights and privileges of friendly guests, they can not claim the right to