

FIRST DIVISION

[G.R. No. 199172, February 21, 2018]

HON. LEONCIO EVASCO, JR., IN HIS CAPACITY AS OIC CITY ENGINEER OF DAVAO CITY AND HON. WENDEL AVISADO, IN HIS CAPACITY AS THE CITY ADMINISTRATOR OF DAVAO CITY, PETITIONERS, VS. ALEX P. MONTAÑEZ, DOING BUSINESS UNDER THE NAME AND STYLE APM OR AD AND PROMO MANAGEMENT, RESPONDENTS,

DAVAO BILLBOARD AND SIGNMAKERS ASSOCIATION (DABASA), INC., RESPONDENT-INTERVENOR.

DECISION

LEONARDO-DE CASTRO, ** J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision^[1] dated June 14, 2011 and Amended Decision^[2] dated October 13, 2011 of the Court of Appeals in CA-G.R. CV No. 02281-MIN, where it declared null and void Sections 7, 8, 37 and 45 of the Davao City Ordinance No. 092, Series of 2000 (hereinafter referred to as "Ordinance No. 092-2000" or "the Ordinance").^[3]

The facts are as follows:

On August 8, 2000, the city government of Davao (City Government), through its Sangguniang Panlungsod, approved Ordinance No. 092-2000 entitled "An Ordinance Regulating the Construction, Repair, Renovation, Erection, Installation and Maintenance of Outdoor Advertising Materials and For Related Purposes." Sections 7, 8, 37, and 45 of the ordinance provided as follows:

CHAPTER 5 SPECIAL PROVISIONS

Article 1 Advertising Sign

SECTION 7 - BILLBOARD - Outdoor advertising signs shall not be allowed in a residential zone as designated in the Official Zoning Map. Adjacent billboards shall be erected in such a way as to maintain 150.00 meters unobstructed line of sight.

Billboards and other self-supporting outdoor signs along highways shall be located within a minimum of 10.00 meters away from the property lines abutting the road right-of-way.

SECTION 8 - REGULATED AREAS - Bridge approach areas within 200 meters of the following bridges shall be designated as "regulated areas" in order to preserve, among others, the natural view and beauty of the Davao River, Mt. Apo, the Davao City Skyline and the view of Samal Island, to wit:

1. Generoso Bridge I and II;
2. Bolton Bridge I and II;
3. Lasang Bridge

x x x x

CHAPTER 10 FEES

SECTION 37 - FEES - Fees for the application of Sign Permits to be paid at the Office of the City Treasurer shall be as follows:

I. DISPLAY SURFACE

a) Sign fee shall be collected per square meter of the display surface of billboards, business signs, electrical signs, ground signs, projecting signs, roof signs, signboards and wall signs for such amount as follows:

a.1	outdoor video screen.....	P 150.00
a.2	tri-wind billboard.....	P 100.00
a.3	neon.....	P 75.00
a.4	illuminated.....	P 50.00
a.5	painted-on.....	P 30.00
a.6	others.....	P 15.00

b)	Posters	(per
piece).....		P
5.00		

c)	Temporary	signs	(per	square
meter).....			P	5.00

d)	Other advertising and/or propaganda Materials (per square meter).....	P 10.00
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e)	Building lines/staking line and Grade (fixed amount).....	P 200.00
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II. STRUCTURE

Erection of support for any signboard, billboard and the like shall be charged a fee as follows:

- 1) up to 4 square meter of signboard..... P 100.00
- 2) in every square meter or fraction

thereof..... P 50.00

III. RENEWAL FEE

Renewal of sign permit shall include among others the corresponding payment for the display surface and support structure of the sign as determined in accordance with this Section and Section 35 of this Ordinance.

IV. OTHER FEES

Sign fees paid under this Ordinance shall be without prejudice to an additional payment of electrical permit fee for signs with electrical devices as required in accordance with the provisions of the National Building Code.

x x x x

CHAPTER 14 REMOVAL OF ILLEGAL MATERIALS

SECTION 45 - REMOVAL. The City Engineer or his duly authorized representative shall remove, upon recommendation of the Building Official, the following at the expense of the displaying party:

1. Those displayed without permit from the Local Building Official, provided that the displaying party shall be given a reasonable period of sixty (60) days from receipt of the notice to comply with the sign permit requirement provided hereof;
2. Those displayed with a permit but without bearing the necessary permit marking requirement as provided in Section 39 hereof, provided that the displaying party shall be given a reasonable period of sixty (60) days from receipt of the notice to comply with the marking permit requirement provided hereof;
3. Those displayed beyond the expiry date as provided in Section 34 hereof, however, if the displaying party intends to renew such permit even beyond the period sought to be extended, the same shall be given a reasonable period of sixty (60) days from receipt of the notice to comply with the renewal requirement provided hereof without prejudice to the payment of surcharge of 25% of the total fees for such delay.
4. Those displayed in public places and/or structures as stated in section 41;
5. Those billboards, business signs, electrical signs, ground signs, projecting signs, roof signs or wall signs which are installed or constructed in violation of this Ordinance or other applicable statutes and ordinances.

As early as 2003, the City Engineer of Davao City (City Engineer) started sending notices of illegal construction to various outdoor advertising businesses, including Ad & Promo Management (APM), owned by herein respondent Alex P. Montañez, that constructed the billboards in different areas within the city. The City Engineer reminded the entities to secure a sign permit or apply for a renewal for each billboard structure as required by Ordinance No. 092-2000.

In February^[4] and March 2006, the City Engineer issued orders^[5] of demolition directing erring outdoor advertising businesses, including APM, to "voluntarily dismantle" their billboards that violate Ordinance No. 092-2000 within three days from receipt of the order. Otherwise, the city government shall summarily remove these structures without further notice. In the orders of demolition dated March 17, 2006, the summary removal was scheduled on March 30, 2006 at 8:30 in the morning.

With the impending demolition of APM's billboard structures, respondent Montañez sought recourse before the Regional Trial Court (RTC), Branch 14, Davao City on March 28, 2006 and filed a petition for injunction and declaration of nullity of Ordinance No. 092-2000 and order of demolition dated March 17, 2006 with application for a writ of preliminary injunction and temporary restraining order docketed as Sp. Civil Case No. 31,346-06.

In his petition,^[6] respondent Montañez claimed that Ordinance No. 092-2000 is unconstitutional for being overbreadth in its application, vague, and inconsistent with Presidential Decree No. 1096 or the National Building Code of the Philippines (National Building Code).

In an Order^[7] dated April 17, 2006, the RTC granted respondent Montañez's application for the issuance of a writ of preliminary injunction, to wit:

WHEREFORE, conformably with the foregoing, the instant prayer for the issuance of the writ of preliminary injunction is hereby GRANTED. The respondents, namely, OIC Leoncio Evasco, Jr. of the Davao City Engineer's Office and Davao City Administrator Wendel Avisado are hereby restrained from implementing the Order of demolition dated March 17, 2006 and from actually demolishing the advertising structures of petitioner Alex P. Montañez along Bolton Bridge and Bankerohan Bridge until the main case is decided and tried on the merits or until further orders from this Court.

Meanwhile, in response to the damage caused by typhoon Milenyo in September 2006 especially to various billboard structures within Metro Manila, former President Gloria Macapagal-Arroyo (President Arroyo) issued Administrative Order (AO) No. 160^[8] directing the Department of Public Works and Highways (DPWH) to conduct nationwide field inspections, evaluations, and assessments of billboards and to abate and dismantle those: (a) posing imminent danger or threat to the life, health, safety and property of the public; (b) violating applicable laws, rules and regulations; (c) constructed within the easement of road right-of-way; and/or, (d) constructed without the necessary permits. President Arroyo also issued AO No. 160-A^[9] specifying the legal grounds and procedures in the abatement of billboards and signboards constituting public nuisance or other violations of law.

Assuming the role given by AO No. 160, Acting DPWH Secretary Hermogenes E. Ebdane, Jr. issued National Building Code Development Office (NBCDO) Memorandum Circular No. 3^[10] directing all local government Building Officials to cease and desist from processing application for and issuing and renewing billboard permits.

Pursuant to this directive, the city government suspended all pending applications for billboard permits.

While petitioner Montañez's case was still pending before the RTC, the city government issued another order of demolition dated September 25, 2008, this time directed against Prime Advertisements & Signs (Prime), on the ground that the latter's billboards had no sign permits and encroached a portion of the road right of way. The city government gave Prime until October 8, 2008 to voluntarily trim its structures. Otherwise, the same shall be removed by the city demolition team.

The directive against Prime prompted herein respondent Davao Billboards and Signmakers Association, Inc. (DABASA) to intervene^[11] in Sp. Civil Case No. 31,346-06 in behalf of its members consisting of outdoor advertising and signmaker businesses in Davao City such as APM and Prime.

The RTC Decision

In its Decision^[12] dated January 19, 2009, the RTC ruled in favor of herein respondents Montañez and DABASA, to wit:

WHEREFORE, and in view of all the foregoing, judgment is rendered declaring as void and unconstitutional the following provisions of City Ordinance No. 092-2000 as follows:

(a) Sections 7, 8 and 41

for being contrary to P.D. 1096 or the National Building Code of the Philippines.

The injunction previously issued base (sic) on the aforesaid provisions of the ordinance is hereby made permanent.^[13]

Both parties moved for reconsideration. Thus, in its Joint Order dated April 1, 2009, the RTC modified its original decision, to wit:

WHEREFORE, and in view of all the foregoing, the instant motion for partial reconsideration of petitioner is GRANTED modifying the court's decision dated JANUARY 19, 2009 as follows:

(a) declaring as void and unconstitutional the following provisions of City Ordinance No. 092-2000, as follows:

aa) Sections 7, 8 and 37, for being contrary to P.D. 1096 or the National Building Code of the Philippines;