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SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Vasquez and *Gutierrez, Jr., JJ.*, concur.

Plana, J., no part.

FIRST DIVISION

[G.R. No. L-34915. June 24, 1983]

CITY GOVERNMENT OF QUEZON CITY and CITY COUNCIL OF QUEZON CITY, petitioners, *vs.* HON. JUDGE VICENTE G. ERICTA as Judge of the Court of First Instance of Rizal, Quezon City, Branch XVIII; HIMLAYANG PILIPINO, INC., respondents.

SYLLABUS

1. ADMINISTRATIVE LAW; CITY ORDINANCE; REGULATING THE ESTABLISHMENT, MAINTENANCE AND OPERATION OF PRIVATE MEMORIAL TYPE CEMETERIES; NOT JUSTIFIABLE; CASE AT BAR.— We find the stand of the private respondent as well as the decision of the respondent Judge to be well-founded. We quote with approval the lower court's ruling which declared null and void Section 9 of the questioned city ordinance: "The issue is: Is Section 9 of the ordinance in question a valid exercise of the police power? An examination of the Charter of Quezon City (Rep. Act No. 537), does not reveal any provision that would justify the ordinance in question except the provision granting police power to the City. Section 9 cannot be justified under the power granted to Quezon City to tax, fix the license fee, and *regulate* such other business, trades, and occupation as may be established or practised in the City (Sub-sections 'C,' Sec. 12, R.A. 537). The power to regulate does not include the power to prohibit (People *vs.* Esguerra, 81 Phil. 33 Vega *vs.* Municipal Board of Iloilo, L-6765, May 12, 1954; 39 N.J. Law, 70, Mich. 396). A fortiori, the power to regulate does not include the power to confiscate. The ordinance in question not only confiscates but also prohibits the operation of a memorial park cemetery, because under Section 13 of said ordinance, 'Violation of the provision thereof is punishable with a fine and/or imprisonment

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and that upon conviction thereof the permit to operate and maintain a private cemetery shall be revoked or cancelled.' The confiscatory clause and the penal provision in effect deter one from operating a memorial park cemetery. Neither can the ordinance in question be justified under sub-section 't,' Section 12 of Republic Act 537. There is nothing in the above provision which authorizes confiscation."

2. ID.; ID.; NOT A VALID EXERCISE OF POLICE POWER.— We now come to the question whether or not Section 9 of the ordinance in question is a valid exercise of police power. The police power of Quezon City is defined in sub-section 00, Sec. 12, Rep. Act 537. Police power is usually exercised in the form of mere regulation or restriction in the use of liberty or property for the promotion of the general welfare. It does not involve the taking or confiscation of property with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting the peace and order and of promoting the general welfare as for instance, the confiscation of an illegally possessed article, such as opium and firearms. "It seems to the court that Section 9 of Ordinance No. 6118, Series of 1964 of Quezon City is not a mere police regulation but an outright confiscation. It deprives a person of his private property without due process of law, nay, even without compensation."

3. POLITICAL LAW; POLICE POWER; DEFINITION AND CONCEPT.— Police power is defined by Freund as 'the power of promoting the public welfare by restraining and regulating the use of liberty and property' (Quoted in Political Law by Tañada and Carreon, V-II, p. 50). It is usually exerted in order to merely regulate the use and enjoyment of property of the owner. If he is deprived of his property outright, it is not taken for public use but rather to destroy in order to promote the general welfare. In police power, the owner does not recover from the government for injury sustained in consequence thereof.

4. ADMINISTRATIVE LAW; CITY ORDINANCE; LACK OF REASONABLE RELATION BETWEEN SETTING ASIDE OF 6% OF THE TOTAL AREA OF ALL PRIVATE CEMETERIES AND THE GENERAL WELFARE.— There is no reasonable relation between the setting aside of at least six (6) percent of the total area of all private cemeteries for charity burial grounds of deceased paupers and the promotion of health, morals, good order, safety, or the general welfare of the people. The ordinance is actually a taking without compensation of a certain area from a private cemetery to benefit paupers who are

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charges of the municipal corporation. Instead of building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries.

5. ID.; ID.; AUTHORITY OF CITY TO PROVIDE ITS OWN PUBLIC CEMETERIES; LAW AND PRACTICE.— The expropriation without compensation of a portion of private cemeteries is not covered by Section 12(t) of Republic Act 537, the Revised Charter of Quezon City which empowers the city council to prohibit the burial of the dead within the center of population of the city and to provide for their burial in a proper place subject to the provisions of general law regulating burial grounds and cemeteries. When the Local Government Code, Batas Pambansa Blg. 337 provides in Section 177(g) that a sangguniang panlungsod may "provide for the burial of the dead in such place and in such manner as prescribed by law or ordinance" it simply authorizes the city to provide its own city owned land or to buy or expropriate private properties to construct public cemeteries. This has been the law and practise in the past. It continues to the present.

6. ID.; MUNICIPAL CORPORATION; GENERAL WELFARE CLAUSE; BROAD AND LIBERAL INTERPRETATION; STRETCH INTERPRETATION NO LONGER FEASIBLE IN THE CASE AT BAR.— As a matter of fact, the petitioners rely solely on the general welfare clause or on implied powers of the municipal corporation, not on any express provision of law as statutory basis of their exercise of power. The clause has always received broad and liberal interpretation but we cannot stretch it to cover this particular taking. Moreover, the questioned ordinance was passed after Himlayang Pilipino, Inc. had incorporated, received necessary licenses and permits, and commenced operating. The sequestration of six percent of the cemetery cannot even be considered as having been impliedly acknowledged by the private respondent when it accepted the permits to commence operations.

APPEARANCES OF COUNSEL

City Fiscal of Quezon City for petitioners.
Manuel Villareal, Jr. and *Feliciano Tumale* for private respondent.

DECISION

GUTIERREZ, JR., *J.*:

This is a petition for review which seeks the reversal of the decision of the Court of First Instance of Rizal, Branch XVIII

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declaring Section 9 of Ordinance No. 6118, S-64, of the Quezon City Council null and void.

Section 9 of Ordinance No. 6118, S-64, entitled "ORDINANCE REGULATING THE ESTABLISHMENT, MAINTENANCE AND OPERATION OF PRIVATE MEMORIAL TYPE CEMETERY OR BURIAL GROUND WITHIN THE JURISDICTION OF QUEZON CITY AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF" provides:

"Sec. 9. At least six (6) percent of the total area of the memorial park cemetery shall be set aside for charity burial of deceased persons who are paupers and have been residents of Quezon City for at least 5 years prior to their death, to be determined by competent City Authorities. The area so designated shall immediately be developed and should be open for operation not later than six months from the date of approval of the application."

For several years, the aforequoted section of the Ordinance was not enforced by city authorities but seven years after the enactment of the ordinance, the Quezon City Council passed the following resolution:

"*RESOLVED by the council of Quezon assembled,* to request, as it does hereby request the City Engineer, Quezon City, to stop any further selling and/or transaction of memorial park lots in Quezon City where the owners thereof have failed to donate the required 6% space intended for paupers burial."

Pursuant to this resolution, the Quezon City Engineer notified respondent Himlayang Pilipino, Inc. in writing that Section 9 of Ordinance No. 6118, S-64 would be enforced.

Respondent Himlayang Pilipino reacted by filing with the Court of First Instance of Rizal, Branch XVIII at Quezon City, a petition for declaratory relief, prohibition and mandamus with preliminary injunction (Sp. Proc. No. Q-16002) seeking to annul Section 9 of the Ordinance in question. The respondent alleged that the same is contrary to the Constitution, the Quezon City Charter, the Local Autonomy Act, and the Revised Administrative Code.

There being no issue of fact and the questions raised being purely legal, both petitioners and respondent agreed to the

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rendition of a judgment on the pleadings. The respondent court, therefore, rendered the decision declaring Section 9 of Ordinance No. 6118, S-64 null and void.

A motion for reconsideration having been denied, the City Government and City Council filed the instant petition.

Petitioners argue that the taking of the respondent's property is a valid and reasonable exercise of police power and that the land is taken for a public use as it is intended for the burial ground of paupers. They further argue that the Quezon City Council is authorized under its charter, in the exercise of local police power, "to make such further ordinances and resolutions not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred by this Act and such as it shall deem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the city and the inhabitants thereof, and for the protection of property therein."

On the other hand, respondent Himlayang Pilipino, Inc. contends that the taking or confiscation of property is obvious because the questioned ordinance permanently restricts the use of the property such that it cannot be used for any reasonable purpose and deprives the owner of all beneficial use of his property.

The respondent also stresses that the general welfare clause is not available as a source of power for the taking of the property in this case because it refers to "the power of promoting the public welfare by restraining and regulating the use of liberty and property." The respondent points out that if an owner is deprived of his property outright under the State's police power, the property is generally not taken for public use but is urgently and summarily destroyed in order to promote the general welfare. The respondent cites the case of a nuisance *per se* or the destruction of a house to prevent the spread of a conflagration.

We find the stand of the private respondent as well as the decision of the respondent Judge to be well-founded. We quote

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with approval the lower court's ruling which declared null and void Section 9 of the questioned city ordinance:

"The issue is: Is Section 9 of the ordinance in question a valid exercise of the police power?

"An examination of the Charter of Quezon City (Rep. Act. No. 537), does not reveal any provision that would justify the ordinance in question except the provision granting police power to the City. Section 9 cannot be justified under the power granted to Quezon City to tax, fix the license fee, and *regulate* such other business, trades, and occupation as may be established or practised in the City (Sub-sections 'C,' Sec. 12, R.A. 537).

"The power to regulate does not include the power to prohibit (People *vs.* Esguerra, 81 Phil. 33 Vega *vs.* Municipal Board of Iloilo, L-6765, May 12, 1954; 39 N.J. Law, 70, Mich. 396). A fortiori, the power to regulate does not include the power to confiscate. The ordinance in question not only confiscates but also prohibits the operation of a memorial park cemetery, because under Section 13 of said ordinance, 'Violation of the provision thereof is punishable with a fine and/or imprisonment and that upon conviction thereof the permit to operate and maintain a private cemetery shall be revoked or cancelled.' The confiscatory clause and the penal provision in effect deter one from operating a memorial park cemetery. Neither can the ordinance in question be justified under sub-section 't,' Section 12 of Republic Act 537 which authorizes the City Council to—

> " 'prohibit the burial of the dead within the center of population of the city and provide for their burial in such proper place and in such manner as the council may determine, subject to the provisions of the general law regulating burial grounds and cemeteries and governing funerals and disposal of the dead.' (Sub-sec. (t), Sec. 12, Rep. Act. No. 537)

There is nothing in the above provision which authorizes confiscation or as euphemistically termed by the respondents, 'donation.'

We now come to the question whether or not Section 9 of the ordinance in question is a valid exercise of police power. The police power of Quezon City is defined in sub-section 00, Sec. 12, Rep. Act 537 which reads as follows:

> " '(00) To make such further ordinance and regulations not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred by this act and such as it shall deem necessary and proper to provide for the health and safety, promote, the prosperity, improve the morals, peace, good order, comfort and

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convenience of the city and the inhabitants thereof, and for the protection of property therein; and enforce obedience thereto with such lawful fines or penalties as the City Council may prescribe under the provisions of subsection (jj) of this section.'

"We start the discussion with a restatement of certain basic principles. Occupying the forefront in the bill of rights is the provision which states that 'no person shall be deprived of life, liberty or property without due process of law' (Art. III, Section 1 subparagraph 1, Constitution).

"On the other hand, there are three inherent powers of government by which the state interferes with the property rights, namely: (1) police power, (2) eminent domain, (3) taxation. These are said to exist independently of the Constitution as necessary attributes of sovereignty.

"Police power is defined by Freund as 'the power of promoting the public welfare by restraining and regulating the use of liberty and property' (Quoted in Political Law by Tañada and Carreon V-II, p. 50). It is usually exerted in order to merely regulate the use and enjoyment of property of the owner. If he is deprived of his property outright, it is not taken for public use but rather to destroy in order to promote the general welfare. In police power, the owner does not recover from the government for injury sustained in consequence thereof (12 C.J. 623). It has been said that police power is the most essential of government powers, at times the most insistent, and always one of the least limitable of the powers of government (Ruby *vs.* Provincial Board, 39 Phil. 660; Ichong *vs.* Hernandez, L-7995, May 31, 1957). This power embraces the whole system of public regulation (U.S. *vs.* Linsuya Fan, 10 Phil. 104). The Supreme Court has said that police power is so far-reaching in scope that it has almost become impossible to limit its sweep. As it derives its existence from the very existence of the state itself, it does not need to be expressed or defined in its scope. Being coextensive with self-preservation and survival itself, it is the most positive and active of all governmental processes, the most essential, insistent and illimitable. Especially it is so under the modern democratic framework where the demands of society and nations have multiplied to almost unimaginable proportions. The field and scope of police power have become almost boundless, just as the fields of public interest and public welfare have become almost all embracing and have transcended human foresight. Since the Court cannot foresee the needs and demands of public interest and welfare, they cannot delimit beforehand the extent or scope of the police power by which and through which the state seeks to attain or achieve public interest and welfare. (Ichong *vs.* Hernandez, L-7995, May 31, 1957)

"The police power being the most active power of the government and the due process clause being the broadest limitation on governmental power,

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the conflict between this power of government and the due process clause of the Constitution is oftentimes inevitable.

"It will be seen from the foregoing authorities that police power is usually exercised in the form of mere regulation or restriction in the use of liberty or property for the promotion of the general welfare. It does not involve the taking or confiscation of property with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting the peace and order and of promoting the general welfare as for instance, the confiscation of an illegally possessed article, such as opium and firearms.

"It seems to the court that Section 9 of Ordinance No. 6118, Series of 1964 of Quezon City is not a mere police regulation but an outright confiscation. It deprives a person of his private property without due process of law, nay, even without compensation."

In sustaining the decision of the respondent court, we are not unmindful of the heavy burden shouldered by whoever challenges the validity of duly enacted legislation, whether national or local. As early as 1913, this Court ruled in *Case v. Board of Health* (24 Phil. 250) that the courts resolve every presumption in favor of validity and, more so, where the municipal corporation asserts that the ordinance was enacted to promote the common good and general welfare.

In the leading case of *Ermita-Malate Hotel and Motel Operators Association Inc. v. City Mayor of Manila* (20 SCRA 849) the Court speaking through the then Associate Justice and now Chief Justice Enrique M. Fernando stated:

"Primarily what calls for a reversal of such a decision is the absence of any evidence to offset the presumption of validity that attaches to a challenged statute or ordinance. As was expressed categorically by Justice Malcolm: 'The presumption is all in favor of validity. . . . The action of the elected representatives of the people cannot be lightly set aside. The councilors must in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitates action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well-being of the people. . . . The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation.' (U.S. *v.* Salaveria [1918], 39 Phil. 102, at p. 111. There was an affirmation of the presumption

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of validity of municipal ordinance as announced in the leading Salaveria decision in Eboña *v.* Daet, [1950] 85 Phil. 369.)

We have likewise considered the principles earlier stated in *Case v. Board of Health, supra:*

". . . Under the provisions of municipal charters which are known as the general welfare clauses, a city, by virtue of its police power, may adopt ordinances to secure the peace, safety, health, morals and the best and highest interests of the municipality. It is a well-settled principle, growing out of the nature of well-ordered and civilized society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in the state is held subject to its general regulations, which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations, established by law, as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient. The state, under police power is possessed with plenary power to deal with all matter relating to the general health, morals, and safety of the people, so long as it does not contravene any positive inhibition of the organic law and providing that such power is not exercised in such a manner as to justify the interference of the courts to prevent positive wrong and oppression."

but find them not applicable to the facts of this case.

There is no reasonable relation between the setting aside of at least six (6) percent of the total area of all private cemeteries for charity burial grounds of deceased paupers and the promotion of health, morals, good order, safety, or the general welfare of the people. The ordinance is actually a taking without compensation of a certain area from a private cemetery to benefit paupers who are charges of the municipal corporation. Instead of building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries.

The expropriation without compensation of a portion of private cemeteries is not covered by Section 12(t) of Republic Act 537, the Revised Charter of Quezon City which empowers the city council to prohibit the burial of the dead within the center of

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population of the city and to provide for their burial in a proper place subject to the provisions of general law regulating burial grounds and cemeteries. When the Local Government Code, Batas Pambansa Blg. 337 provides in Section 177(q) that a sangguniang panlungsod may "provide for the burial of the dead in such place and in such manner as prescribed by law or ordinance" it simply authorizes the city to provide its own city owned land or to buy or expropriate private properties to construct public cemeteries. This has been the law and practise in the past. It continues to the present. Expropriation, however, requires payment of just compensation. The questioned ordinance is different from laws and regulations requiring owners of subdivisions to set aside certain areas for streets, parks, playgrounds, and other public facilities from the land they sell to buyers of subdivision lots. The necessities of public safety, health, and convenience are very clear from said requirements which are intended to insure the development of communities with salubrious and wholesome environments. The beneficiaries of the regulation, in turn, are made to pay by the subdivision developer when individual lots are sold to homeowners.

As a matter of fact, the petitioners rely solely on the general welfare clause or on implied powers of the municipal corporation, not on any express provision of law as statutory basis of their exercise of power. The clause has always received broad and liberal interpretation but we cannot stretch it to cover this particular taking. Moreover, the questioned ordinance was passed after Himlayang Pilipino, Inc. had incorporated, received necessary licenses and permits, and commenced operating. The sequestration of six percent of the cemetery cannot even be considered as having been impliedly acknowledged by the private respondent when it accepted the permits to commence operations.

WHEREFORE, the petition for review is hereby DISMISSED. The decision of the respondent court is affirmed.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and *Relova, JJ.*, concur.