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final and executory without raising that point of law, even on appeal.

WHEREFORE, the writ of execution complained of is set aside and annulled. Instead of enforcing said writ, the respondent Trial Court is ordered to effect the partition of the land in question in accordance with the terms of its now final and executory decision and the provisions of Rule 69 of tne Rules of Court. No pronouncement as to costs in this instance.

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Cruz, and *Feliciano, JJ.*, concur.

FIRST DIVISION

[G.R. Nos. 72969-70. December 17, 1986]

PHILIPPINE GAMEFOWL COMMISSION AND HEE ACUSAR, *petitioners, vs.* **HON. INTERMEDIATE APPELLATE COURT, MAYOR CELESTINO E. MARTINEZ, JR., THE SANGGUNIANG BAYAN OF BOGO (CEBU), and SANTIAGO SEVILLA,** *respondents.*

SYLLABUS

1. **ADMINISTRATIVE LAW; LOCAL GOVERNMENT; P.D. 1802, AS AMENDED BY P.D. 1802-A; MUNICIPAL MAYOR WITH CONCURRENCE OF SANGGUNIANG BAYAN HAS PRIMARY POWER TO ISSUE LICENSES FOR OPERATION OF ORDINARY COCKPITS; POWER TO REGULATE COCKPITS SUBJECT TO GUIDELINES LAID DOWN BY PHILIPPINE GAMEFOWL COMMISSION.**— A study of P.D. 1802, as amended by P.D. 1802-A shows that it is the municipal mayor with

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the authorization of the Sangguniang Bayan that has the primary power to issue licenses for the operation of ordinary cockpits. Even the regulation of cockpits is vested in the municipal officials, subject only to the guidelines laid down by the Philippine Gamefowl Commission. Its power to license is limited only to *international* derbies and does not extend to ordinary cockpits. Over the latter kind of cockpits, it has the power not of control but only of review and supervision.

2. **ID.; ADMINISTRATIVE SUPERVISION DISTINGUISHED FROM POWER OF CONTROL AND REVIEW.**— We have consistently held that supervision means "overseeing or the power or authority of an officer to see that their subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or steps as prescribed by law to make them perform their duties." Supervision is a lesser power than control, which connotes "the power of the officer to alter or modify or set aside what a subordinate had done in the performance of his duties and to substitute the judgment of the former for that of the latter." Review, on the other hand, is a reconsideration or reexamination for purposes of correction. As thus defined, the power of supervision does not allow the supervisor to annul the acts of the subordinate, for that comes under the power of control. What it can do only is to see to it that the subordinate performs his duties in accordance with law. The power of review is exercised to determine whether it is necessary to correct the acts of the susbordinate. If such correction is necessary, it must be done by the authority exercising control over the subordinate or through the instrumentality of the courts of justice, unless the subordinate *motu propio* corrects himself after his error is called to his attention by the official exercising the power of supervision and review over him.

3. **ID.; PHILIPPINE GAMEFOWL COMMISSION; POWER OF REVIEW, MODIFIED BY LOCAL GOVERNMENT CODE.**— The power of review vested in the Philippine Gamefowl Commission by P.D. 1802-A have been modified by the Local Government Code, which became effective on February 14, 1983. Under the Code, the Sangguniang Panlalawigan is supposed to examine the ordinance, resolutions and executive orders issued by the municipal government and to annul the same, but only on one ground, to wit, that it is beyond the powers of the municipality or *ultra vires*.

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Significantly, no similar authority is conferred in such categorical terms on the Philippine Gamefowl Commission regarding the licensing and regulation of cockpits by the municipal government.

4. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE LOWER COURT, GENERALLY UPHELD BY THIS COURT.**— The other issue raised by the petitioner is easily resolved. It appearing that they are supported by substantial evidence, we accept the factual findings of the respondent court that Acusar's cockpit was within the prohibited area and was therefore correctly considered phased out when its operator failed to relocate it as required by law. According to the Court of Appeals, "it is not controverted that Acusar's cockpit is near a Roman Catholic church, near the Cebu Roosevelt Memorial College, near residential dwelling and near a public market." These circumstances should be more than enough to disqualify Acusar even under the prior-operator rule he invokes, assuming that rule was applicable.

APPEARANCES OF COUNSEL

Ramon M. Durano & Associates for petitioner Hee Acusar.
Clavel Asas-Martinez for respondents.

D E C I S I O N

CRUZ, *J.*:

This case involves a conflict of jurisdiction between the Philippine Gamefowl Commission and the municipal government of Bogo, Cebu, both of which claim the power to issue licenses for the operation of cockpits in the said town.

The issue when Hee Acusar, who was operating the lone cockpit in Bogo, was ordered to relocate the same pursuant to P.D. No. 449, the Cockfighting Law of 1974, on the ground that it was situated in a tertiary commercial zone, a prohibited area.[1] Although the period of grace for such relocation was extended to June 11, 1980 by P.D. 1535, Acusar failed to comply with the requirement, as a result of which the Philippine

[1] *Rollo*, p. 272.

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Constabulary considered the cockpit phased out.[2] To add to his troubles, the Court of First Instance of Cebu, in a petition to compel the municipal mayor to issue Acusar a permit to operate a cockpit, declared that he had waived his right to a renewal thereof because of his failure to relocate.[3]

On July 24, 1980, Santiago Sevilla, private respondent herein, was granted a license to operate a cockpit by Mayor Celestino E. Martinez by authority of the Sangguniang Bayan of Bogo and with subsequent approval of the PC Regional Command 7 as required by law.[4] As only one cockpit is allowed by law in cities or municipalities with a population of not more than one hundred thousand.[5] Acusar sued to revoke this license. He failed, however, first before the PC Recom 7[6] and later before the Court of First Instance of Cebu.[7] His petition for *certiorari* challenging the decision of the lower court was dismissed by this Court.[8]

Nothing daunted, Acusar went to the Philippine Gamefowl Commission seeking a renewal of his cockpit license and the cancellation of Sevilla's in what was docketed as PGC Case No. 10. He succeeded initially with the issuance by the PGC on August 16, 1984, of an interlocutory order allowing him to temporarily operate his cockpit.[9] This was challenged in two separate actions[10] filed by Sevilla and the municipal government of Bogo in the Court of First Instance of Cebu which, on petition of Acusar, were temporarily restrained by the Intermediate

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[2] *Ibid.*, p. 276.

[3] *Id.*, pp. 279-280.

[4] IAC Decision, p. 3.

[5] Section 5(b), Presidential Decree No. 449.

[6] IAC Decision, p. 4.

[7] *Ibid.*

[8] *Id.*

[9] *Rollo*, p. 8.

[10] *Ibid.*, pp. 8-9.

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Appellate Court.[11] This same court also temporarily restrained the enforcement of the PGC order of August 16, 1984 pending consideration of the petition to nullify it filed by Sevilla and the Bogo municipal officials.[12]

On December 6, 1984, the Philippine Gamefowl Commission issued its resolution on the merits of Acusar's petition and ordered Mayor Martinez and the Sangguniang Bayan "to issue the necessary mayor's permit in favor of Hee Acusar" and "to cancel and/or revoke the mayor's permit in favor of Engr. Santiago A. Sevilla." The Commission also "RESOLVED to issue the Registration Certificate of Hee Acusar for the current year 1984 and revoke the Registration Certificate of Engr. Santiago A. Sevilla."[13]

The above-stated resolution was on appeal declared null and void by the Intermediate Court of Appeals,[14] and its decision is now before us in a petition for review on *certiorari*.

We shall first compare the powers vested respectively in the Philippine Gamefowl Commission and the city and municipal officials under the applicable laws, to wit, P.D. 1802, P.D. 1802-A and the Local Government Code.

The pertinent powers of the Philippine Gamefowl Commission under Section 2 of P.D. 1802, which became effective on January 16, 1981, are the following:

"a) Promulgate and enforce rules and regulations relative to the holding of cockfight derbies and cockfights in the Philippines including the frequency sites, conduct and operation of such derbies and cockfights;

b) Issue licenses for the holding of international derbies;

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[11] *Id.*, pp. 10-11.

[12] *Id.*, pp. 11-12.

[13] *Id.*, pp. 61-67.

[14] IAC Decision, pp. 16-17.

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d) Fix and periodically revise whenever necessary, subject to the approval of the Ministry of Finance, the rates of license fees and other levies that may be imposed on local derbies and cockfights and international cockfight derbies, cockpit personnel and employees;

e) To promulgate rules and regulations relative to the holding. methods, procedures, operations and conduct of cockfighting in general as well as accreditation of cockpit personnel and association of cockpit owners, operators and lessees, to elevate the standard of cockfighting;

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By contrast, P.D. 1802, as amended by P.D. 1802-A, provides as follows:

"SECTION 1. Section 4 of Presidential Decree No. 1802 is hereby amended to read as follows:

> 'Sec. 4. City and Municipal Mayors with the concurrence of their respective 'Sanggunians' shall have the authority to license and regulate regular cockfighting pursuant to the rules and regulations promulgated by the Commission and subject to its review and supervision.'"

According to the Local Government Code, the municipal mayor has the power to "grant licenses and permits in accordance with existing laws and municipal ordinances and revoke them for violation of the conditions upon which they have been granted,"[15] and the Sangguniang Bayan is authorized to "regulate cockpits, cockfighting and the keeping or training of gamecocks, subject to existing guidelines promulgated by the Philippine Gamefowl Commission."[16]

A study of the above-cited powers shows that it is the municipal mayor with the authorization of the Sangguniang Bayan that has the primary power to issue licenses for the operation of ordinary cockpits. Even the regulation of cockpits is vested in the municipal officials, subject only to the guidelines laid down by the Philippine Gamefowl Commission. Its power to license is limited only to *international* derbies and does not

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[15] Section 141, par. 2(k), Local Government Code.

[16] *Ibid.*, Sec. 149, par. 1(oo).

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extend to ordinary cockpits. Over the latter kind of cockpits, it has the power not of control but only of review and supervision.

We have consistently held that supervision means "overseeing or the power or authority of an officer to see that their subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or steps as prescribed by law to make them perform their duties."[17] Supervision is a lesser power than control, which connotes "the power of the officer to alter or modify or set aside what a subordinate had done in the performance of his duties and to substitute the judgment of the former for that of the latter."[18] Review, on the other hand, is a reconsideration or reexamination for purposes of correction.[19]

As thus defined, the power of supervision does not allow the supervisor to annul the acts of the subordinate, for that comes under the power of control. What it can do only is to see to it that the subordinate performs his duties in accordance with law. The power of review is exercised to determine whether it is necessary to correct the acts of the subordinate. If such correction is necessary, it must be done by the authority exercising control over the subordinate or through the instrumentality of the courts of justice, unless the subordinate *motu proprio* corrects himself after his error is called to his attention by the official exercising the power of supervision and review over him.

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[17] *Mondano vs. Silvosa,* 97 Phil. 143; *Hebron vs. Reyes*, 104 Phil. 175; *Ganzon vs. Kayanan*, 104 Phil. 483; *Pelaez vs. Auditor General,* 15 SCRA 569, 582.

[18] *Mondano vs. Silvosa, supra; Hebron vs. Reyes, supra; Ganzon vs. Kayanan, supra Ang-Angco vs. Castillo*, 9 SCRA 619; *Villaluz vs. Zaldivar,* 15 SCRA 710; *Lacson-Magallanes Co. Inc. vs. Paño,* 21 SCRA 895; *NAMARCO vs. Arca,* 29 SCRA 648; *Province of Pangasinan vs. Secretary of Public Works & Communications,* 30 SCRA 134; *Oliveros-Torre vs. Bayot,* 58 SCRA 272; *Noblejas vs. Salas*, 67 SCRA 47; *Sichangco vs. Board of Commissioners of Immigration,* 94 SCRA 61.

[19] Black's Law Dictionary, Rev. 4th Ed., 1968, p. 1483.

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At that, even the power of review vested in the Philippine Gamefowl Commission by P.D. 1802-A may have been modified by the Local Government Code, which became effective on February 14, 1983. Under the Code, the Sangguniang Panlalawigan is supposed to examine the ordinances, resolutions and executive orders issued by the municipal government and to annul the same, but only on one ground, to wit, that it is beyond the powers of the municipality or *ultra vires*.[20] Significantly, no similar authority is conferred in such categorical terms on the Philippine Gamefowl Commission regarding the licensing and regulation of cockpits by the municipal government.

The conferment of the power to license and regulate municipal cockpits in the municipal authorities is in line with the policy of local autonomy embodied in Article II, Section 10, and Article XI of the 1973 Constitution. It is also a recognition, as the Court of Appeals correctly points out, of the superior competence of the municipal officials in dealing with this local matter with which they can be expected to be more knowledgeable than the national officials. Surely, the Philippine Gamefowl Commission cannot claim to know more than the municipal mayor and the Sangguniang Bayan of Bogo, Cebu, about the issues being disputed by the applicants to the cockpit license.

At any rate, assuming that the resolution of the Sangguniang Bayan authorizing the issuance of a cockpit license to Sevilla was subject to reversal by the PGC, such action could be justified only if based upon a proven violation of law by the municipal officials. It may not be made only for the purpose of substituting its own discretion for the discretion exercised by the municipal authorities in determining the applicant to which the lone cockpit license should be issued.

In the absence of a clear showing of a grave abuse of discretion, the choice of the municipal authorities should be respected by the PGC and in any event cannot be replaced by it simply because it believes another person should have been selected. Stated

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[20] Section 208 (1), Local Government Code.

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otherwise, the PGC cannot directly exercise the power to license cockpits and in effect usurp the authority directly conferred by law on the municipal authorities.

If at all, the power to review includes the power to disapprove; but it does not carry the authority to substitute one's own preferences for that chosen by the subordinate in the exercise of its sound discretion. In the instant case, the PGC did not limit itself to vetoing the choice of Sevilla, assuming he was disqualified, but directly exercised the authority of replacing him with its own choice. Assuming Sevilla was really disqualified, the choice of his replacement still remained with the municipal authorities, subject only to the review of the PGC.

In ordering the respondent municipal officials to cancel the mayor's permit in favor of Santiago A. Sevilla and to issue another one in favor of Acusar, the PGC was exercising not the powers of mere supervision and review but the power of control, which had not been conferred upon it.

The other issue raised by the petitioner is easily resolved. It appearing that they are supported by substantial evidence, we accept the factual findings of the respondent court that Acusar's cockpit was within the prohibited area and was therefore correctly considered phased out when its operator failed to relocate it as required by law. According to the Court of Appeals, "it is not controverted that Acusar's cockpit is near a Roman Catholic church, near the Cebu Roosevelt Memorial College, near residential dwellings and near a public market." These circumstances should be more than enough to disqualify Acusar even under the prior-operator rule he invokes, assuming that rule was applicable.

Under that rule, preference is given to the actual holder of the permit, but in the instant case Acusar could not be said to be actually holding the permit at the time it was given to Sevilla. Acusar had then already forfeited his right to renew it by reason of his non-compliance with the requirement to relocate.

This is as good an occasion as any to stress the commitment of the Constitution to the policy of local autonomy which is

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intended to provide the needed impetus and encouragement to the development of our local political subdivisions as "self-reliant communities." In the words of Jefferson, "Municipal corporations are the small republics from which the great one derives its strength." The vitalization of local governments will enable their inhabitants to fully exploit their resources and, more important, imbue them with a deepened sense of involvement in public affairs as members of the body politic. This objective could be blunted by undue interference by the national government in purely local affairs which are best resolved by the officials and inhabitants of such political units. The decision we reach today conforms not only to the letter of the pertinent laws but also to the spirit of the Constitution.

WHEREFORE, the petition is dismissed. The decision of the respondent Court of Appeals dated May 29, 1985, is hereby affirmed *in toto*, with costs against petitioner Hee Acusar.

SO ORDERED.

Yap (Chairman), Narvasa, Melencio-Herrera, and *Feliciano, JJ.*, concur.

EN BANC

[G.R. Nos. 54645-76. December 18, 1986]

REYNALDO R. BAYOT, *petitioner, vs.* **THE SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN CASE OF CONFLICTING TESTIMONIES OF EXPERTS, CONSTITUTIONAL PRESUMPTION OF INNOCENCE MUST PREVAIL.**— The Court is left now to assess the probative value of the respective