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[G.R. No. 159110. December 10, 2013]

VALENTINO L. LEGASPI, *petitioner, vs*. **CITY OF CEBU, T.C. (TITO) SAYSON and RICARDO HAPITAN,** *respondents.*

[G.R. No. 159692. December 10, 2013]

BIENVENIDO P. JABAN, SR., and BIENVENIDO DOUGLAS LUKE BRADBURY JABAN, *petitioners, vs*. **COURT OF APPEALS, CITY OF CEBU, CITY MAYOR ALVIN GARCIA, SANGGUNIANG PANLUNSOD OF CITY OF CEBU, HON. RENATO V. OSMEÑA, AS PRESIDING OFFICER OF THE SANGGUNIANG PANLUNSOD, AND CITOM CHAIRMAN ALAN GAVIOLA, AS CITOM CHIEF, CITOM TRAFFIC ENFORCER E. A. ROMERO, and LITO GILBUENA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF AN ORDINANCE; THE ENACTMENT OF ORDINANCE NO. 1664, WHICH AUTHORIZED THE IMMOBILIZATION OF VEHICLES VIOLATING TRAFFIC RULES, WAS WITHIN THE CORPORATE POWERS OF THE LOCAL GOVERNMENT OF THE CITY OF CEBU.— Was the enactment of Ordinance No. 1664 within the corporate powers of the LGU of the City of Cebu? The answer is in the affirmative. Indeed, with no issues being hereby raised against the formalities attendant to the enactment of Ordinance No. 1664, we presume its full compliance with the test in that regard. Congress enacted the LGC as the implementing law for the delegation to the various LGUs of the State's great powers, namely: the police power, the power of eminent domain, and the power of taxation. The LGC was fashioned to delineate the specific parameters and

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limitations to be complied with by each LGU in the exercise of these delegated powers with the view of making each LGU a fully functioning subdivision of the State subject to the constitutional and statutory limitations. In particular, police power is regarded as "the most essential, insistent and the least limitable of powers, extending as it does 'to all the great public needs.'" It is unquestionably "the power vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subject of the same." According to Cooley: "[The police power] embraces the whole system of internal regulation by which the state seeks not only to preserve the public order and to prevent offences against itself, but also to establish for the intercourse of citizens with citizens, those rules of good manners and good neighborhood which are calculated to prevent the conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as it is reasonably consistent with the right enjoyment of rights by others." In point is the exercise by the LGU of the City of Cebu of delegated police power. x x x The CA opined, and correctly so, that vesting cities like the City of Cebu with the legislative power to enact traffic rules and regulations was expressly done through Section 458 of the LGC, and also generally by virtue of the General Welfare Clause embodied in Section 16 of the LGC.

2. ID.; ID.; ID.; ORDINANCE NO. 1664 MET THE SUBSTANTIVE TESTS OF DUE PROCESS AS WELL AS WITH THE REQUIREMENTS OF FAIRNESS AND REASONABLENESS, AND ITS CONSISTENCY WITH PUBLIC POLICY.— The first substantive requirement for a valid ordinance is the adherence to the constitutional guaranty of due process of law. x x x The guaranty of due process of law is a constitutional safeguard against any arbitrariness on the part of the Government, whether committed by the Legislature, the Executive, or the Judiciary. x x x In *City of Manila v. Laguio, Jr.*, the Court expounded on the aspects of the guaranty of due process of law as a limitation on the acts of government, *viz*: x x x Substantive due process, as that phrase connotes, asks whether the government has an adequate

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reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there is sufficient justification for the government's action. Case law in the United States (U.S.) tells us that whether there is such a justification depends very much on the level of scrutiny used. For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose. x x x Judged according to the foregoing enunciation of the guaranty of due process of law, the contentions of the petitioners cannot be sustained. Even under strict scrutiny review, Ordinance No. 1664 met the substantive tests of validity and constitutionality by its conformity with the limitations under the Constitution and the statutes, as well as with the requirements of fairness and reason, and its consistency with public policy. To us, the terms *encroachment* and *obstacles* used in Section 458 of the LGC, *supra*, were broad enough to include illegally parked vehicles or whatever else obstructed the streets, alleys and sidewalks, which were precisely the subject of Ordinance No. 1664 in avowedly aiming to ensure "a smooth flow of vehicular traffic in all the streets in the City of Cebu at all times" (Section 1). x x x Considering that traffic congestions were already retarding the growth and progress in the population and economic centers of the country, the plain objective of Ordinance No. 1664 was to serve the public interest and advance the general welfare in the City of Cebu. Its adoption was, therefore, in order to fulfill the compelling government purpose of immediately addressing the burgeoning traffic congestions caused by illegally parked vehicles obstructing the streets of the City of Cebu.

3. ID.; ID.; ID.; ORDINANCE NO. 1664 DID NOT VIOLATE THE REQUIREMENTS OF PROCEDURAL DUE PROCESS; IMMOBILIZATION OF ILLEGALLY PARKED VEHICLES BY CLAMPING THE TIRES IS AKIN TO THOSE INSTANCES WHERE NOTICE AND HEARING MAY BE DISPENSED WITH AND THE ABSENCE OF THESE REQUIREMENTS WOULD NOT NECESSARILY

AMOUNT TO DENIAL OF DUE PROCESS.— Notice and hearing are the essential requirements of procedural due process. Yet, there are many instances under our laws in which the absence of one or both of such requirements is not necessarily a denial or deprivation of due process. Among the instances are the cancellation of the passport of a person being sought for the commission of a crime, the preventive suspension of a civil servant facing administrative charges, the distraint of properties to answer for tax delinquencies, the padlocking of restaurants found to be unsanitary or of theaters showing obscene movies, and the abatement of nuisance *per se*. Add to them the arrest of a person *in flagrante delicto*. The clamping of the petitioners' vehicles pursuant to Ordinance No. 1664 (and of the vehicles of others similarly situated) was of the same character as the aforecited established exceptions dispensing with notice and hearing. As already said, the immobilization of illegally parked vehicles by clamping the tires was necessary because the transgressors were not around at the time of apprehension. Under such circumstance, notice and hearing would be superfluous. Nor should the lack of a trial-type hearing prior to the clamping constitute a breach of procedural due process, for giving the transgressors the chance to reverse the apprehensions through a timely protest could equally satisfy the need for a hearing. In other words, the prior intervention of a court of law was not indispensable to ensure a compliance with the guaranty of due process.

APPEARANCES OF COUNSEL

Evangeline T. Abatayo and Lyndon B.J. Basan for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The goal of the decentralization of powers to the local government units (LGUs) is to ensure the enjoyment by each of the territorial and political subdivisions of the State of a genuine and meaningful local autonomy. To attain the goal, the National Legislature has devolved the three great inherent

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powers of the State to the LGUs. Each political subdivision is thereby vested with such powers subject to constitutional and statutory limitations.

In particular, the *Local Government Code* (LGC) has expressly empowered the LGUs to enact and adopt ordinances to regulate vehicular traffic and to prohibit illegal parking within their jurisdictions. Now challenged before the Court are the constitutionality and validity of one such ordinance on the ground that the ordinance constituted a contravention of the guaranty of due process under the Constitution by authorizing the immobilization of offending vehicles through the clamping of tires. The challenge originated in the Regional Trial Court (RTC) at the instance of the petitioners – vehicle owners who had borne the brunt of the implementation of the ordinance – with the RTC declaring the ordinance unconstitutional, but it has now reached the Court as a consolidated appeal taken in due course by the petitioners after the Court of Appeals (CA) reversed the judgment of the RTC.

Antecedents

On January 27, 1997 the Sangguniang Panlungsod of the City of Cebu enacted Ordinance No. 1664 to authorize the traffic enforcers of Cebu City to immobilize any motor vehicle violating the parking restrictions and prohibitions defined in Ordinance No. 801 (*Traffic Code of Cebu City*).[1] The pertinent provisions of Ordinance No. 1664 read:

> Section 1. POLICY – It is the policy of the government of the City of Cebu to immobilize any motor vehicle violating any provision of any City Ordinance on Parking Prohibitions or Restrictions, more particularly Ordinance No. 801, otherwise known as the Traffic Code of Cebu City, as amended, in order to have a smooth flow of vehicular traffic in all the streets in the City of Cebu at all times.
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> Section 2. IMMOBILIZATION OF VEHICLES – Any vehicle found violating any provision of any existing ordinance of the City of Cebu which prohibits, regulates or restricts the parking of vehicles shall

[1] Records (Vol. 1), pp. 146-149.

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be immobilized by clamping any tire of the said violating vehicle with the use of a denver boot vehicle immobilizer or any other special gadget designed to immobilize motor vehicles. For this particular purpose, any traffic enforcer of the City (regular PNP Personnel or Cebu City Traffic Law Enforcement Personnel) is hereby authorized to immobilize any violating vehicle as hereinabove provided.

Section 3. PENALTIES – Any motor vehicle, owner or driver violating any ordinance on parking prohibitions, regulations and/or restrictions, as may be provided under Ordinance No. 801, as amended, or any other existing ordinance, shall be penalized in accordance with the penalties imposed in the ordinance so violated, provided that the vehicle immobilizer may not be removed or released without its owner or driver paying first to the City Treasurer of Cebu City through the Traffic Violations Bureau (TVB) all the accumulated penalties for all prior traffic law violations that remain unpaid or unsettled, plus the administrative penalty of Five Hundred Pesos (₱500.00) for the immobilization of the said vehicle, and receipts of such payments presented to the concerned personnel of the bureau responsible for the release of the immobilized vehicle, unless otherwise ordered released by any of the following officers:

a) Chairman, CITOM
b) Chairman, Committee on Police, Fire and Penology
c) Asst. City Fiscal Felipe Belciña

3.1 Any person who tampers or tries to release an immobilized or clamped motor vehicle by destroying the denver boot vehicle immobilizer or other such special gadgets, shall be liable for its loss or destruction and shall be prosecuted for such loss or destruction under pain or penalty under the Revised Penal Code and any other existing ordinance of the City of Cebu for the criminal act, in addition to his/her civil liabilities under the Civil Code of the Philippines; Provided that any such act may not be compromised nor settled amicably extrajudicially.

3.2 Any immobilized vehicle which is unattended and constitute an obstruction to the free flow of traffic or a hazard thereof shall be towed to the city government impounding area for safekeeping and may be released only after the provision of Section 3 hereof shall have been fully complied with.

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3.3 Any person who violates any provision of this ordinance shall, upon conviction, be penalized with imprisonment of not less than one (1) month nor more than six (6) months or of a fine of not less than Two Thousand Pesos (₱2,000.00) nor more than Five Thousand Pesos (₱5,000.00), or both such imprisonment and fine at the discretion of the court.[2]

On July 29, 1997, Atty. Bienvenido Jaban (Jaban, Sr.) and his son Atty. Bienvenido Douglas Luke Bradbury Jaban (Jaban, Jr.) brought suit in the RTC in Cebu City against the City of Cebu, then represented by Hon. Alvin Garcia, its City Mayor, the Sangguniang Panlungsod of Cebu City and its Presiding Officer, Hon. Renato V. Osmeña, and the chairman and operatives or officers of the City Traffic Operations Management (CITOM), seeking the declaration of Ordinance No. 1644 as unconstitutional for being in violation of due process and for being contrary to law, and damages.[3] Their complaint alleged that on June 23, 1997, Jaban Sr. had properly parked his car in a paying parking area on Manalili Street, Cebu City to get certain records and documents from his office;[4] that upon his return after less than 10 minutes, he had found his car being immobilized by a steel clamp, and a notice being posted on the car to the effect that it would be a criminal offense to break the clamp;[5] that he had been infuriated by the immobilization of his car because he had been thereby rendered unable to meet an important client on that day; that his car was impounded for three days, and was informed at the office of the CITOM that he had first to pay ₱4,200.00 as a fine to the City Treasurer of Cebu City for the release of his car;[6] that the fine was imposed without any court hearing and without due process of law, for he was not even told why his car had been immobilized; that he had undergone a similar incident of clamping of his car on the early

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[2] *Id*.

[3] *Id*. at 1-10.

[4] *Id*. at 3.

[5] *Id*.

[6] *Id*. at 4.

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morning of November 20, 1997 while his car was parked properly in a parking lot in front of the San Nicolas Pasil Market in Cebu City without violating any traffic regulation or causing any obstruction; that he was compelled to pay ₱1,500.00 (itemized as ₱500.00 for the clamping and ₱1,000.00 for the violation) without any court hearing and final judgment; that on May 19, 1997, Jaban, Jr. parked his car in a very secluded place where there was no sign prohibiting parking; that his car was immobilized by CITOM operative Lito Gilbuena; and that he was compelled to pay the total sum of ₱1,400.00 for the release of his car without a court hearing and a final judgment rendered by a court of justice.[7]

On August 11, 1997, Valentino Legaspi (Legaspi) likewise sued in the RTC the City of Cebu, T.C. Sayson, Ricardo Hapitan and John Does to demand the delivery of personal property, declaration of nullity of the *Traffic Code of Cebu City*, and damages.[8] He averred that on the morning of July 29, 1997, he had left his car occupying a portion of the sidewalk and the street outside the gate of his house to make way for the vehicle of the *anay* exterminator who had asked to be allowed to unload his materials and equipment from the front of the residence inasmuch as his daughter's car had been parked in the carport, with the assurance that the unloading would not take too long;[9] that while waiting for the *anay* exterminator to finish unloading, the phone in his office inside the house had rung, impelling him to go into the house to answer the call; that after a short while, his son-in-law informed him that unknown persons had clamped the front wheel of his car;[10] that he rushed outside and found a traffic citation stating that his car had been clamped by CITOM representatives with a warning that the unauthorized removal of the clamp would subject the remover to criminal charges;[11]

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[7] *Id*.

[8] Records (Vol. 2), pp. 1-10.

[9] *Id*. at 1-2.

[10] *Id*. at 2.

[11] *Id*. at 3.

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and that in the late afternoon a group headed by Ricardo Hapitan towed the car even if it was not obstructing the flow of traffic.[12]

In separate answers for the City of Cebu and its co-defendants,[13] the City Attorney of Cebu presented similar defenses, essentially stating that the traffic enforcers had only upheld the law by clamping the vehicles of the plaintiffs;[14] and that Ordinance No. 1664 enjoyed the presumption of constitutionality and validity.[15]

The cases were consolidated before Branch 58 of the RTC, which, after trial, rendered on January 22, 1999 its decision declaring Ordinance No. 1664 as null and void upon the following ratiocination:

> In clear and simple phrase, the essence of due process was expressed by Daniel Webster as a "law which hears before it condemns". In another case[s], "procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." It contemplate(s) notice and opportunity to be heard before judgment is rendered affecting ones (sic) person or property." In both procedural and substantive due process, a hearing is always a pre-requisite, hence, the taking or deprivation of one's life, liberty or property must be done upon and with observance of the "due process" clause of the Constitution and the non-observance or violation thereof is, perforce, unconstitutional.
>
> Under Ordinance No. 1664, when a vehicle is parked in a prohibited, restrycted (sic) or regulated area in the street or along the street, the vehicle is immobilized by clamping any tire of said vehicle with the use of a denver boot vehicle immobilizer or any other special gadget which immobilized the motor vehicle. The violating vehicle is immobilized, thus, depriving its owner of the use thereof at the sole determination of any traffic enforcer or regular PNP personnel or Cebu City Traffic Law Enforcement Personnel. The vehicle immobilizer cannot be removed or released without the owner or

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[12] *Id*.

[13] Records (Vol. 1), pp. 14-27 and Records (Vol. 2), pp. 16-22.

[14] Records (Vol. 1), p. 20 and Records (Vol. 2), p. 18.

[15] Records (Vol. 1), p. 21.

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driver paying first to the City Treasurer of Cebu through the Traffic Violations Bureau all the accumulated penalties of all unpaid or unsettled traffic law violations, plus the administrative penalty of ₱500.00 and, further, the immobilized vehicle shall be released only upon presentation of the receipt of said payments and upon release order by the Chairman, CITOM, or Chairman, Committee on Police, Fire and Penology, or Asst. City Fiscal Felipe Belcina. It should be stressed that the owner of the immobilized vehicle shall have to undergo all these ordeals at the mercy of the Traffic Law Enforcer who, as the Ordinance in question mandates, is the arresting officer, prosecutor, Judge and collector. Otherwise stated, the owner of the immobilized motor vehicle is deprived of his right to the use of his/her vehicle and penalized without a hearing by a person who is not legally or duly vested with such rights, power or authority. The Ordinance in question is penal in nature, and it has been held;

x x x x x x x x x

WHEREFORE, premised (sic) considered, judgment is hereby rendered declaring Ordinance No. 1664 unconstitutional and directing the defendant City of Cebu to pay the plaintiff Valentino Legaspi the sum of ₱110,000.00 representing the value of his car, and to all the plaintiffs, Valentino L. Legaspi, Bienvenido P. Jaban and Bienvenido Douglas Luke Bradbury Jaban, the sum of ₱100,000.00 each or ₱300,000.00 all as nominal damages and another ₱100,000.00 each or ₱300,000.00 all as temperate or moderate damages. With costs against defendant City of Cebu.

SO ORDERED.[16] (citations omitted)

The City of Cebu and its co-defendants appealed to the CA, assigning the following errors to the RTC, namely: (*a*) the RTC erred in declaring that Ordinance No. 1664 was unconstitutional; (*b*) granting, *arguendo*, that Ordinance No. 1664 was unconstitutional, the RTC gravely erred in holding that any violation prior to its declaration as being unconstitutional was irrelevant; (*c*) granting, *arguendo*, that Ordinance No. 1664 was unconstitutional, the RTC gravely erred in awarding damages to the plaintiffs; (*d*) granting, *arguendo*, that the plaintiffs were entitled to damages, the damages awarded were

[16] *Rollo* (G.R. No. 159692), pp. 47-49.

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excessive and contrary to law; and (*e*) the decision of the RTC was void, because the Office of the Solicitor General (OSG) had not been notified of the proceedings.

On June 16, 2003, the CA promulgated its assailed decision,[17] overturning the RTC and declaring Ordinance No. 1664 valid, to wit:

> The principal thrust of this appeal is the constitutionality of Ordinance 1664. Defendants-appellants contend that the passage of Ordinance 1664 is in accordance with the police powers exercised by the City of Cebu through the Sangguniang Panlungsod and granted by RA 7160, otherwise known as the Local Government Code. A thematic analysis of the law on municipal corporations confirms this view. As in previous legislation, the Local Government Code delegates police powers to the local governments in two ways. Firstly, it enumerates the subjects on which the Sangguniang Panlungsod may exercise these powers. Thus, with respect to the use of public streets, Section 458 of the Code states:
>
> > Section 458 (a) The sangguniang panlungsod, as the legislative branch of the city, x x x shall x x x
> >
> > (5) (v) Regulate the use of streets, avenues, alleys, sidewalks, bridges, park and other public places and approve the construction, improvement, repair and maintenance of the same; establish bus and vehicle stops and terminals or regulate the use of the same by privately owned vehicles which serve the public; regulate garages and the operation of conveyances for hire; designate stands to be occupied by public vehicles when not in use; regulate the putting up of signs, signposts, awnings and awning posts on the streets; and provide for the lighting, cleaning and sprinkling of streets and public places;
> >
> > (vi) Regulate traffic on all streets and bridges; prohibit encroachments or obstacles thereon and, when necessary in the interest of public welfare, authorize the removal of encroachments and illegal constructions in public places.
>
> It then makes a general grant of the police power. The scope of the legislative authority of the local government is set out in Section 16, to wit:

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[17] *Id*. at 51-60.

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> Section 16. General Welfare. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare.

This provision contains what is traditionally known as the general welfare clause. As expounded in *United States vs. Salaveria*, 39 Phil. 102, the general welfare clause has two branches. One branch attaches itself to the main trunk of municipal authority, and relates to such ordinances and regulations as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second branch of the clause is much more independent of the specific functions of the council, and authorizes such ordinances as shall seem necessary and proper to provide for health, safety, prosperity and convenience of the municipality and its inhabitants.

In a vital and critical way, the general welfare clause complements the more specific powers granted a local government. It serves as a catch-all provision that ensures that the local government will be equipped to meet any local contingency that bears upon the welfare of its constituents but has not been actually anticipated. So varied and protean are the activities that affect the legitimate interests of the local inhabitants that it is well-nigh impossible to say beforehand what may or may not be done specifically through law. To ensure that a local government can react positively to the people's needs and expectations, the general welfare clause has been devised and interpreted to allow the local legislative council to enact such measures as the occasion requires.

Founded on clear authority and tradition, Ordinance 1664 may be deemed a legitimate exercise of the police powers of the Sangguniang Panlungsod of the City of Cebu. This local law authorizes traffic enforcers to immobilize and tow for safekeeping vehicles on the streets that are illegally parked and to release them upon payment of the announced penalties. As explained in the preamble, it has become necessary to resort to these measures because of the traffic congestion caused by illegal parking and the inability of existing penalties to curb it. The ordinance is designed to improve traffic conditions in the City of Cebu and thus shows a real and substantial relation to the welfare, comfort and convenience of the people of Cebu. The only restrictions to an ordinance passed under the general

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welfare clause, as declared in *Salaveria*, is that the regulation must be reasonable, consonant with the general powers and purposes of the corporation, consistent with national laws and policies, and not unreasonable or discriminatory. The measure in question undoubtedly comes within these parameters.

Upon the denial of their respective motions for reconsideration on August 4, 2003, the Jabans and Legaspi came to the Court via separate petitions for review on *certiorari*. The appeals were consolidated.

Issues

Based on the submissions of the parties, the following issues are decisive of the challenge, to wit:

1. Whether Ordinance No. 1664 was enacted within the ambit of the legislative powers of the City of Cebu; and
2. Whether Ordinance No. 1664 complied with the requirements for validity and constitutionality, particularly the limitations set by the Constitution and the relevant statutes.

Ruling

The petitions for review have no merit.

A.
Tests for a valid ordinance

In *City of Manila v. Laguio, Jr.*,[18] the Court restates the tests of a valid ordinance thusly:

The tests of a valid ordinance are well established. A long line of decisions has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and must be passed according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory;

[18] G.R. No. 118127, April 12, 2005, 455 SCRA 308.

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(4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[19]

As jurisprudence indicates, the tests are divided into the formal (*i.e.*, whether the ordinance was enacted within the corporate powers of the LGU, and whether it was passed in accordance with the procedure prescribed by law), and the substantive (*i.e.*, involving inherent merit, like the conformity of the ordinance with the limitations under the Constitution and the statutes, as well as with the requirements of fairness and reason, and its consistency with public policy).

B.
Compliance of Ordinance No. 1664 with the formal requirements

Was the enactment of Ordinance No. 1664 within the corporate powers of the LGU of the City of Cebu?

The answer is in the affirmative. Indeed, with no issues being hereby raised against the formalities attendant to the enactment of Ordinance No. 1664, we presume its full compliance with the test in that regard. Congress enacted the LGC as the implementing law for the delegation to the various LGUs of the State's great powers, namely: the police power, the power of eminent domain, and the power of taxation. The LGC was fashioned to delineate the specific parameters and limitations to be complied with by each LGU in the exercise of these delegated powers with the view of making each LGU a fully functioning subdivision of the State subject to the constitutional and statutory limitations.

In particular, police power is regarded as "the most essential, insistent and the least limitable of powers, extending as it does

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[19] *Id*. at 326, citing *Tatel v. Municipality of Virac*, G.R. No. L-40243, March 11, 1992, 207 SCRA 157, 161; *Solicitor General v. Metropolitan Manila Authority*, G.R. No. 102782, December 11, 1991, 204 SCRA 837, 845; *Magtajas v. Pryce Properties Corporation, Inc*., G.R. No. 111097, July 20, 1994, 234 SCRA 255, 266-267.

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'to all the great public needs.'"[20] It is unquestionably "the power vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subject of the same."[21] According to Cooley: "[The police power] embraces the whole system of internal regulation by which the state seeks not only to preserve the public order and to prevent offences against itself, but also to establish for the intercourse of citizens with citizens, those rules of good manners and good neighborhood which are calculated to prevent the conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as it is reasonably consistent with the right enjoyment of rights by others."[22]

In point is the exercise by the LGU of the City of Cebu of delegated police power. In *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*,[23] the Court cogently observed:

> It bears stressing that police power is lodged primarily in the National Legislature. It cannot be exercised by any group or body of individuals not possessing legislative power. **The National Legislature, however, may delegate this power to the President and administrative boards as well as the lawmaking bodies of municipal corporations or local government units. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body.** (emphasis supplied)

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[20] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, No. L-24693, July 31, 1967, 20 SCRA 849, 857-858.

[21] Chief Justice Shaw, in *Commonwealth v. Alger*, 7 Cush. 53, 85, 61 Mass 53.

[22] *Constitutional Limitations*, p. 572.

[23] G.R. No. 135962, March 27, 2000, 328 SCRA 836, 843-844; see also *Gancayco v. City Government of Quezon City*, G.R. No. 177807, October 11, 2011, 658 SCRA 853, 863.

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The CA opined, and correctly so, that vesting cities like the City of Cebu with the legislative power to enact traffic rules and regulations was expressly done through Section 458 of the LGC, and also generally by virtue of the General Welfare Clause embodied in Section 16 of the LGC.[24]

Section 458 of the LGC relevantly states:

Section 458. Powers, Duties, Functions and Composition. – (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

x x x x x x x x x

(5) **Approve ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, shall**:

x x x x x x x x x

(v) **Regulate the use of streets, avenues, alleys, sidewalks, bridges, parks and other public places and approve the construction, improvement repair and maintenance of the same; establish bus and vehicle stops and terminals or regulate the use of the same by privately-owned vehicles which serve the public; regulate garages and operation of conveyances for hire; designate stands to be occupied**

[24] Section 16. *General Welfare.*- Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

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by public vehicles when not in use; regulate the putting up of signs, signposts, awnings and awning posts on the streets; and provide for the lighting, cleaning and sprinkling of streets and public places;

(vi) **Regulate traffic on all streets and bridges; prohibit encroachments or obstacles thereon and, when necessary in the interest of public welfare, authorize the removal of encroachments and illegal constructions in public places;** (emphasis supplied)

The foregoing delegation reflected the desire of Congress to leave to the cities themselves the task of confronting the problem of traffic congestions associated with development and progress because they were directly familiar with the situations in their respective jurisdictions. Indeed, the LGUs would be in the best position to craft their traffic codes because of their familiarity with the conditions peculiar to their communities. With the broad latitude in this regard allowed to the LGUs of the cities, their traffic regulations must be held valid and effective unless they infringed the constitutional limitations and statutory safeguards.

C.
Compliance of Ordinance No. 1664 with the substantive requirements

The first substantive requirement for a valid ordinance is the adherence to the constitutional guaranty of due process of law. The guaranty is embedded in Article III, Section 1 of the Constitution, which ordains:

Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

The guaranty of due process of law is a constitutional safeguard against any arbitrariness on the part of the Government, whether committed by the Legislature, the Executive, or the Judiciary. It is a protection essential to every inhabitant of the country, for, as a commentator on Constitutional Law has vividly written:[25]

[25] Cruz, *Constitutional Law*, 2007 Ed., pp. 100-101.

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x x x. If the law itself unreasonably deprives a person of his life, liberty, or property, he is denied the protection of due process. If the enjoyment of his rights is conditioned on an unreasonable requirement, due process is likewise violated. Whatsoever be the source of such rights, be it the Constitution itself or merely a statute, its unjustified withholding would also be a violation of due process. Any government act that militates against the ordinary norms of justice or fair play is considered an infraction of the great guaranty of due process; and this is true whether the denial involves violation merely of the procedure prescribed by the law or affects the very validity of the law itself.

In *City of Manila v. Laguio, Jr.*,[26] the Court expounded on the aspects of the guaranty of due process of law as a limitation on the acts of government, *viz*:

> This clause has been interpreted as imposing two separate limits on government, usually called "procedural due process" and "substantive due process."
>
> Procedural due process, as the phrase implies, refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Classic procedural due process issues are concerned with that kind of notice and what form of hearing the government must provide when it takes a particular action.
>
> Substantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there is sufficient justification for the government's action. Case law in the United States (U.S.) tells us that whether there is such a justification depends very much on the level of scrutiny used. For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose.

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[26] *Supra* note 18.

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The police power granted to local government units must always be exercised with utmost observance of the rights of the people to due process and equal protection of the law. Such power cannot be exercised whimsically, arbitrarily or despotically as its exercise is subject to a qualification, limitation or restriction demanded by the respect and regard due to the prescription of the fundamental law, particularly those forming part of the Bill of Rights. Individual rights, it bears emphasis, may be adversely affected only to the extent that may fairly be required by the legitimate demands of public interest or public welfare. Due process requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty and property.[27]

The Jabans contend that Ordinance No. 1664, by leaving the confiscation and immobilization of the motor vehicles to the traffic enforcers or the regular personnel of the Philippine National Police (PNP) instead of to officials exercising judicial authority, was violative of the constitutional guaranty of due process; that such confiscation and immobilization should only be after a hearing on the merits by courts of law; and that the immobilization and the clamping of the cars and motor vehicles by the police or traffic enforcers could be subject to abuse.

On his part, Legaspi likewise contends that Ordinance No. 1664 violated the constitutional guaranty of due process for being arbitrary and oppressive; and that its provisions conferring upon the traffic enforcers the absolute discretion to be the enforcers, prosecutors, judges and collectors all at the same time were vague and ambiguous.[28] He reminds that the grant of police powers for the general welfare under the LGC was not unlimited but subject to constitutional limitations;[29] and that these consolidated cases should not be resolved differently from the resolution of a third case assailing the validity of Ordinance No. 1664 (Astillero case), in which the decision of the same RTC declaring Ordinance No. 1664 as unconstitutional had

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[27] *Id*. at 330-331.

[28] *Rollo* (G.R. No. 159110), pp. 12-13.

[29] *Id*. at 15.

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attained finality following the denial of due course to the appeal of the City of Cebu and its co-defendants.

Judged according to the foregoing enunciation of the guaranty of due process of law, the contentions of the petitioners cannot be sustained. Even under strict scrutiny review, Ordinance No. 1664 met the substantive tests of validity and constitutionality by its conformity with the limitations under the Constitution and the statutes, as well as with the requirements of fairness and reason, and its consistency with public policy.

To us, the terms *encroachment* and *obstacles* used in Section 458 of the LGC, *supra*, were broad enough to include illegally parked vehicles or whatever else obstructed the streets, alleys and sidewalks, which were precisely the subject of Ordinance No. 1664 in avowedly aiming to ensure "a smooth flow of vehicular traffic in all the streets in the City of Cebu at all times" (Section 1). This aim was borne out by its Whereas Clauses, *viz*:

> WHEREAS, the City of Cebu enacted the Traffic Code (Ordinance No. 801) as amended, provided for Parking Restrictions and Parking Prohibitions in the streets of Cebu City;
>
> **WHEREAS**, **despite the restrictions and prohibitions of parking on certain streets of Cebu City, violations continued unabated due, among others, to the very low penalties imposed under the Traffic Code of Cebu City**;
>
> **WHEREAS, City Ordinance 1642 was enacted in order to address the traffic congestions caused by illegal parkings in the streets of Cebu City;**
>
> **WHEREAS, there is a need to amend City Ordinance No.1642 in order to fully address and solve the problem of illegal parking and other violations of the Traffic Code of Cebu City**;[30] (emphasis supplied)

Considering that traffic congestions were already retarding the growth and progress in the population and economic centers

[30] Records (Vol. 1), p. 146.

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of the country, the plain objective of Ordinance No. 1664 was to serve the public interest and advance the general welfare in the City of Cebu. Its adoption was, therefore, in order to fulfill the compelling government purpose of immediately addressing the burgeoning traffic congestions caused by illegally parked vehicles obstructing the streets of the City of Cebu.

Legaspi's attack against the provisions of Ordinance No. 1664 for being vague and ambiguous cannot stand scrutiny. As can be readily seen, its text was forthright and unambiguous in all respects. There could be no confusion on the meaning and coverage of the ordinance. But should there be any vagueness and ambiguity in the provisions, which the OSG does not concede,[31] there was nothing that a proper application of the basic rules of statutory construction could not justly rectify.

The petitioners further assert that drivers or vehicle owners affected by Ordinance No. 1664 like themselves were not accorded the opportunity to protest the clamping, towing, and impounding of the vehicles, or even to be heard and to explain their side prior to the immobilization of their vehicles; and that the ordinance was oppressive and arbitrary for that reason.

The adverse assertions against Ordinance No. 1664 are unwarranted.

Firstly, Ordinance No. 1664 was far from oppressive and arbitrary. Any driver or vehicle owner whose vehicle was immobilized by clamping could protest such action of a traffic enforcer or PNP personnel enforcing the ordinance. Section 3 of Ordinance No. 1664, *supra*, textually afforded an administrative escape in the form of permitting the release of the immobilized vehicle upon a protest directly made to the Chairman of CITOM; or to the Chairman of the Committee on Police, Fire and Penology of the City of Cebu; or to Asst. City Prosecutor Felipe Belciña – officials named in the ordinance itself. The release could be ordered by any of such officials even without the payment of

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[31] *Rollo* (G.R. No. 159110), p. 143.

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the stipulated fine. That none of the petitioners, albeit lawyers all, resorted to such recourse did not diminish the fairness and reasonableness of the escape clause written in the ordinance. Secondly, the immobilization of a vehicle by clamping pursuant to the ordinance was not necessary if the driver or vehicle owner was around at the time of the apprehension for illegal parking or obstruction. In that situation, the enforcer would simply either require the driver to move the vehicle or issue a traffic citation should the latter persist in his violation. The clamping would happen only to prevent the transgressor from using the vehicle itself to escape the due sanctions. And, lastly, the towing away of the immobilized vehicle was not equivalent to a summary impounding, but designed to prevent the immobilized vehicle from obstructing traffic in the vicinity of the apprehension and thereby ensure the smooth flow of traffic. The owner of the towed vehicle would not be deprived of his property.

In fine, the circumstances set forth herein indicate that Ordinance No. 1664 complied with the elements of fairness and reasonableness.

Did Ordinance No. 1664 meet the requirements of procedural due process?

Notice and hearing are the essential requirements of procedural due process. Yet, there are many instances under our laws in which the absence of one or both of such requirements is not necessarily a denial or deprivation of due process. Among the instances are the cancellation of the passport of a person being sought for the commission of a crime, the preventive suspension of a civil servant facing administrative charges, the distraint of properties to answer for tax delinquencies, the padlocking of restaurants found to be unsanitary or of theaters showing obscene movies, and the abatement of nuisance *per se*.[32] Add to them the arrest of a person *in flagrante delicto*.[33]

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[32] Cruz, *op. cit*., note 25, at 119.

[33] Section 5(a), Rule 113, *Rules of Court*.

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The clamping of the petitioners' vehicles pursuant to Ordinance No. 1664 (and of the vehicles of others similarly situated) was of the same character as the aforecited established exceptions dispensing with notice and hearing. As already said, the immobilization of illegally parked vehicles by clamping the tires was necessary because the transgressors were not around at the time of apprehension. Under such circumstance, notice and hearing would be superfluous. Nor should the lack of a trial-type hearing prior to the clamping constitute a breach of procedural due process, for giving the transgressors the chance to reverse the apprehensions through a timely protest could equally satisfy the need for a hearing. In other words, the prior intervention of a court of law was not indispensable to ensure a compliance with the guaranty of due process.

To reiterate, the clamping of the illegally parked vehicles was a fair and reasonable way to enforce the ordinance against its transgressors; otherwise, the transgressors would evade liability by simply driving away.

Finally, Legaspi's position, that the final decision of the RTC rendered in the Astillero case declaring Ordinance No. 1664 unconstitutional bound the City of Cebu, thereby precluding these consolidated appeals from being decided differently, is utterly untenable. For one, Legaspi undeservedly extends too much importance to an irrelevant decision of the RTC – irrelevant, because the connection between that case to these cases was not at all shown. For another, he ignores that it should be the RTC that had improperly acted for so deciding the Astillero case despite the appeals in these cases being already pending in the CA. Being the same court in the three cases, the RTC should have anticipated that in the regular course of proceedings, the outcome of the appeal in these cases then pending before the CA would ultimately be elevated to and determined by no less than the Court itself. Such anticipation should have made it refrain from declaring Ordinance No. 1664 unconstitutional, for a lower court like itself, appreciating its position in the

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"interrelation and operation of the integrated judicial system of the nation," should have exercised a "becoming modesty" on the issue of the constitutionality of the same ordinance that the Constitution required the majority vote of the Members of the Court sitting *en banc* to determine.[34] Such "becoming modesty" also forewarned that any declaration of unconstitutionality by an inferior court was binding only on the parties, but that a declaration of unconstitutionality by the Court would be a precedent binding on all.[35]

WHEREFORE, the Court **DENIES** the petitions for review on *certiorari* for their lack of merit; **AFFIRMS** the decision promulgated on June 16, 2003 by the Court of Appeals; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

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[34] Bernas, *The 1987 Constitution of the Republic of the Philippines – A Commentary*, 2009 Edition, at p. 996, citing *People v. Vera*, 65 Phil. 56 (1937).

[35] *Id.*