

Historical Museums at the Expense of Private Individuals

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A MUSEUM is defined in the dictionary as a building or part of one in which are reserved and exhibited objects of permanent interest in one or more of the arts and sciences. Perhaps unknown to most of the owners of buildings in the district of Intramuros in Manila, the National Assembly passed Commonwealth Act No. 171 which in effect converted all the buildings now erected or to be erected in the said district into historical museums. This act is stated in the enacting clause of the law itself wherein it is said that "the buildings in Intramuros, City of Manila, dating many centuries back, present a type of architecture which constitutes the only vestige of a historic past of the city, the capital of the nation, and so it is of public interest to preserve said type of architecture as a monument of the past." This law provides: "Section 1. All plans of buildings to be constructed, altered, or repaired in the district of Intramuros, City of Manila, shall be approved and passed upon, by the consulting architect of the National Government through the city engineer of Manila. Said consulting architect shall require that all buildings to be constructed in said district shall adopt the Spanish Colonial type of architecture for its facade.

"Section 2. In case any building in said district is desired to be altered or repaired, the Spanish Colonial type of architecture shall likewise be adopted when the entire facade is affected by the alteration or repair, otherwise, the

repair or alteration shall be in conformity with the existing style of architecture of the building."

By these provisions all buildings now erected or to be erected in the district of Intramuros are made museums in which are preserved and exhibited an object of permanent interest—the Spanish Colonial type of architecture of the facade of each and every building or the existing style of architecture.

The power of the National Assembly "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 subjects of the same" cannot be denied. This power whether provided in the constitution or not is said to be inherent in sovereignty and to be exercised by the legislative body. The constitution presupposes the existence of the police power. Its scope, however, is not capable of exact determination for it is a growing power and its growth depends upon the needs of public order and the general welfare of the community.

"Much difficulty had been encountered by courts and text writers in the attempt to set forth its precise limitations." (Fabie v. City of Manila, 21 Phil. 486) Justice Shaw said that it is much easier to perceive and realize the existence and sources of this power than to mark its boundaries, or to prescribe the limits of

its exercise. (Commonwealth v. Alger, 7 Cush. 53). "The numerous attempts which have been made to limit by definition the scope of the police power are only interesting as illustrating its rapid extension within comparatively recent years to points heretofore deemed entirely within the field of private liberty and property rights" (Churchill v. Rafferty, 32 Phil. 602).

The aim of our legislative body is highly laudable; but why should it be carried out at the expense of the private individuals who own buildings in Intramuros? Can this aim be properly carried out by Commonwealth Act No. 171 under the protective wings of the police power of the state? Or has it wandered into the forbidden territory of the due process clause of our fundamental law which provides that "no person shall be deprived of life, liberty, or property without due process of law and private property shall not be taken for public use without just compensation"? (Art. III, sec. 1, subsec. (1) and (2), Phil. Const.). Can this law be a proper limitation on the control and enjoyment of one's property? We shall endeavor to answer these questions by presenting both sides of the issue for there is no authority as yet squarely deciding the problem.

"It is a well settled principle, growing out of the nature of well-ordered society, that every owner 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 enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this Commonwealth is held subject to those general regulations which

are necessary to the common good and welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient." (Commonwealth v. Alger, 7 Cush. 53.) There is ample authority that a city may be divided into different zones or districts and the kind of building to be constructed in the different districts may be regulated or prescribed by law, but the aim of such laws or regulations is the protection, convenience, comfort, or welfare of the community as a whole or the individuals residing therein. For instance, wooden buildings may not be constructed in a city, or factories may not be constructed in residential districts of a city.

The law is undoubtedly a limitation or restriction on the right of the owner to control his property, for all owners of buildings in the district of Intramuros cannot alter or repair them without adopting the existing style or the Spanish Colonial type of architecture and all owners of a space of ground in the said district cannot construct a building thereon adopting any other architecture than the Spanish Colonial type. But, because this law is a limitation to the control and enjoyment of one's property does not *ipso facto* mean that it violates the property rights of individuals which is protected by the due process clause. "The beauty of a fashionable residence neighborhood in a city or municipality is for the comfort and happiness of the residents, and it sustains in a general way the value of the property in the neighborhood." (State v. Orleans, 97 Co. 440, 33 A.L.R.

260). "But statutes which are prompted and inspired by esthetic considerations merely, having for their sole purpose the promotion and gratification of the esthetic sense, and not for the protection of the public safety, the public peace and good order of society, must be held invalid and contrary to the constitutional provisions holding inviolate the rights of property." (*Churchill v. Rafferty*, 32 Phil. 580).

The aim of Commonwealth act No. 171, however, is not esthetic but historical—the preservation of a historical architecture on buildings in the district of Intramuros as a monument of the past. More beautiful buildings with a facade different from the Spanish Colonial type of architecture cannot be constructed in said district.

It is true that our legislative body declares the preservation of the said architecture to be of public interest but this does not necessarily mean that the law is a proper imposition on the property right of individuals. Our Supreme Court in the case of *Fabie v. City of Manila* (21 Phil. 846) said that "the legislature under the pretext of serving public interest, may not arbitrarily impose unusual and unnecessary restriction on the innocent and licit use of private property." Courts will declare unconstitutional such restrictions which has gone beyond the legal limits. In the case of *Switzer v. Cebu* (20 Phil. 111) our Supreme Court said that Municipal Councils have no power under section 39 of the Municipal code, which authorizes the establishment of fire limits and the regulation of the kind of buildings to be erected within such limits, to enact ordi-

nances providing that buildings shall be constructed . . . in any particular style of architecture or with any special kind of ornamentation.

Commonwealth act No. 171 is a unique and unprecedented legislation for it is a limitation and restriction of the property right of owners which is based on grounds of historical sentiment and such owners are forced to make historical museums out of their own homes. There seems to be an unwarranted invasion on the property right of individuals and therefore a violation of the due process clause of the constitution. Whether this apparent invasion is lawful or unlawful cannot yet be decided for whether Commonwealth Act 171 is for the general welfare still remains a question.

So long as human society is progressive, conceptions of what general welfare is will inevitably change and progress. As justice Cardozo said: "We live in a world of change. If a body of law were in existence adequately for the civilization of today, it could not meet the demands of civilization tomorrow. There is a change whether we will or not. Many a statutory innovation that would seem of sinister or destructive aspect if it were considered in advance, has lost its terror with its novelty. Take such a group of statutes as the zoning laws that have made their way to recognition and enforcement in so many of our states. I have no doubt that a generation ago they would have been thrown out by the courts as illegitimate encroachments upon that freedom of use which is attribute of property. I venture to express some doubt as

to the face they would have suffered even in our own day if they have been before the Supreme Court while they were yet novelties in legislation. The fact is, however, that by the time they were subjected to that challenge, they were in successful operation far and wide throughout the land. The test of experience has proved them to be forces that made for conservation rather than destruction. The ogre lost its talons and assume the aspect of a friend." (Cardozo, *Paradoxes of Legal Science*, p. 125-126).

A PRACTICAL PHILOSOPHY

“**B**E genuine and strenuous; earn for yourself, and look for grace from those in high places; from the powerful, favor; from the active and the good, advancement; from the many, affection; from the individual, love.”—GOETHE.