

ZOSIMO ROJAS & BROS., PLAINTIFF-APPELLANT VS. CITY OF CAVITE, ET AL., DEFENDANT-APPELLEES.

G.R. No. L-10730. May 26, 1958

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Cavite, Hon. Primitivo L. Gonzales, presiding, dismissing an action filed by plaintiff-appellant seeking to recover the sum of P88,177.63 collected by the defendant-appellee as municipal amusement taxes during the years 1948 to 1954, inclusive.

The taxes sought to be refunded were collected under and by virtue of Ordinance No. 29, sections 227 to 230 of the City of Cavite, approved on December 12, 1946, consisting of the following P0.05 for every balcony admission ticket sold and P0.03 for every general admission ticket. The City of Cavite had also been collecting under its ordinance a license tax of P800.00 per annum or P70.00 per month from proprietors of theatres under Sections 221 to 222 of the city ordinance and amusement taxes of from P0.02 to P0.10, according to the value of the tickets sold under Section 260 of the National Internal Revenue Code, although these two forms of taxes are not subject to question. It is alleged in the complaint that the taxes in question were paid under protest verbally and/or in writing; that the collection of said taxes are not expressly authorized in the Charter of said City; and that the provisions of the ordinance under which the same are collected are unconstitutional.

The defendant in its answer expressly denied that the taxes were paid "under protest verbally and/or in writing," and alleged that it was only in the year 1954 that the payment of the taxes for the months of September and October, 1954 was made under protest; that the amounts collected under the ordinance as taxes on the tickets come from cinemagoers, the plaintiff merely acting as agent for the collection of the same. In answer to the claim that the taxes are not expressly authorized and that the ordinance is unconstitutional, the defendant alleges that the collection of the same is authorized by the City Charter and that the collection thereof is in no sense objectionable.

Under the above issues the parties went to trial, and thereafter the court rendered decision dismissing the action. The court, however, did not pass upon all the issues of fact raised in the pleadings, but only on the legal issue as to whether or not the ordinance under which the taxes were collected was within the power of the municipal council of Cavite to enact, the court holding that the enactment of said ordinance was authorized under the City Charter which grants the said City the legislative power to (a) provide for the levy and collection of taxes for general and special purposes, and (b) regulate and fix the amount of license fees for the operation of theatres and cinematographs and other places of amusement

On this appeal reliance is placed by plaintiff-appellant on the decision we have rendered in the case of *Icard vs. The City of Baguio*, G. R. No. L-1281, promulgated May 31, 1949. It is argued by the plaintiff-appellant that the decision was promulgated under provisions of the charter of the City of Baguio similar to those of the Cavite City Charter, as follows:

Cavite City Charter

Baguio City Charter

Sec. 15. (a) "To provide for the levy and collection of taxes for general and special purposes in accordance with law including specifically the power to levy real property tax not to exceed two per centum ad valorem."

Sec. 2553. (b) Rev. Adm. Code.- "To provide for the levy and collection of taxes and other city revenues, as provided by law and apply the same to the payment of municipal expenses in accordance with appropriations."

Sec. 2553 (c) before the amendment-

"(c) To issue licenses fixing the amount of the license fee for the following x x x theaters, theatrical performances and all other performances and places of amusements X X X."

Sec. 2553 (c) as amended by Republic Act 329 -

"(c) To tax, fix the license and regulate the business of the following

"x x x theaters x x x theatrical performances x x x."

The defendants-appellees do not question the applicability of the decision cited to the case at bar. We find that the provisions of the Charter of the City of Cavite under which the additional amusement tax of P0.03 and P0.05 per ticket was collected, are similar to those of the Charter of the City of Baguio under which the taxes sought to be recovered in *Icard vs. The City of Baguio*, supra, were collected. Section 15(a) of the City Charter of Cavite does not authorize the imposition of the P0.03 and P0.05 additional tax; it only authorizes the levy and collection of taxes "in accordance with law;" so for the authority to impose the additional tax of P0.05 and P0.03 recourse must be had to the other provisions of the Charter. There is no such provision which grants the authority. Paragraph (n), Section 15, of the Charter (of Cavite City) which authorizes the City to regulate and fix the amount of license fees for the operators of cinematographs and other places of amusement, is merely regulatory fixing the amount of license fees for theatres. This is authority for Sections 221 to 222 of the ordinance of the City of Cavite, which impose a license fee of P800.00 per annum on proprietors of theatres. But an authority to collect the additional P0.03 and P0.05 tax on tickets cannot be inferred or implied from this provision. The P0.03 and P0.05 tax on admission tickets is a tax and not a license fee, a tax being an assessment against property or business, whereas a license fee is collected for the purpose of regulation. (*Cooley on Taxation*, Vol. 1, 4th ed., p. 110; *Calalang vs. Lorenzo*, et al., G.R. No. L-6961, June 17, 1955, 51 O.G. [6] 2859.) We, therefore, find that the claim of the plaintiff-appellant that the collection of the tax of P0.03 and P0.05 per admission ticket imposed by the ordinance of the City of Cavite is beyond the power granted to the said City in its Charter and the collection of said tax is, therefore, illegal and void.

As we have heretofore indicated, defendant-appellee does not dispute the claim of plaintiff-appellant that the ordinance imposing the tax of P0.03 and P0.05 per admission ticket is beyond the power granted the City of Cavite. But reliance is placed on the claim that the payer of the said tax has been voluntary until the collection of taxes for September and October, 1954. It is, however, unnecessary to consider this defense because the other defense is determinative of the action.

With respect to the defense raised to the effect that the taxes collected came from cinemagoers and not from the

plaintiff, counsel for plaintiff-appellant argues that the taxes came from the plaintiff and not from the public patronizing the theatres, because the ordinance requires that the said taxes should be paid by the "proprietor, lessee or operator of theatre," It is also argued that when the taxes were imposed the prices for admission were reduced. While it is true that the plaintiff-appellant is the one that paid the taxes the evidence submitted at the trial shows that said taxes were charged by the plaintiff-appellant against the cinemagoers. This is borne out by the admission tickets that the plaintiff-appellant issued to theatre goers, thus:

"REPUBLIC OF THE PHILIPPINES
CAVITE CITY OFFICE OF THE TREASURER

December 8, 1955

TO WHOM IT MAY CONCERN:

This is to certify that the following are the true copies of the balcony and general admission tickets sold to cinemagoers of Perla theatre.

PERLA THEATRE
Cavite City
P0.80 Balcony P0.80
Inc. Tax Admit One Inc. Tax
Good for Today only
262001 262001

PERLA THEATRE
Cavite City
P0.40 Gen. Adm. P0.40
Inc. Tax Admit One Inc. Tax
Good for Today only
599001 599001

G. BUSTAMANTE
City Treasurer

By:
RICARDO IÑOLA
Chief Collection Division"

It may be true, as the evidence for the plaintiff seems to indicate, that when the taxes were collected the prices for admission were reduced. The reduction, however, was not made in order that the cinemagoers be relieved from the obligation of paying the tax. Notwithstanding the reduction in the price for admission, the plaintiff-appellant continued collecting the tax from the cinema-goers as proved by the tickets that plaintiff-appellant himself issued. The reduction was made in the admission tickets for election purposes, to impress upon the public that the plaintiff-appellant was waiving a portion of the price of the tickets for the public benefit. The claim of the plaintiff-appellant that the taxes were paid with plaintiff-appellant's own money is, therefore, not supported by the evidence.

It is also argued on behalf of the plaintiff-appellant that even if the taxes collected belong to the cinemagoers the city is merely a trustee thereof. Admitting for the sake of argument that because of the illegality of the tax the City has become a mere trustee, it does not necessarily follow that plaintiff-appellant by the mere circumstance that it collected said taxes for and on behalf of the City, thereby acquires the right to recover the same from the City.

Plaintiff-appellant is not the owner of the taxes collected by the City, so he has no right to bring an action for the refund thereof. Without pursuing the argument further on this issue, suffice it for Us to state that in a similar case, We have decided that the person who collects the tax, which is illegal, and pays it to a city, has no right to bring an action to recover said tax from the city for said right belongs to the taxpayers themselves. To such effect was our holding in the case of *Medina, et al. vs. City of Baguio*, G. R. No. L-4060, Aug. 29, 1952, 48 O, G. (3) 4769:

"It is evident that the amusement tax was paid by the public thru the manager of the plaintiff acting as agent of the government, therefore the amusement tax paid to the government is not the property of the plaintiff, and if anybody has the right to claim it is the public who paid it and not the plaintiff. If anybody has a right to claim it, it is those who paid it. Only owner of the property has the right to claim said property."

Resuming what We have stated above, We hereby find that while the taxes sought to be recovered have been collected under an invalid ordinance, for the reason that the City of Cavite had no authority to enact the same, plaintiff-appellant is without right to recover the taxes from the City, as such right belongs to the cinema-goers or public that had paid the same.

Wherefore, the judgment appealed from is hereby affirmed, although on other grounds. Costs against the plaintiff-appellant. So ordered.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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