

EL PARIL RESORTS INC., REPRESENTED BY JULIAN L. RODRIGUEZ III, MAXIMA RESORT AND AQUAFUN, INC., REPRESENTED BY PHILIP S. DIZON, ARACELI A. PE BENITO, MAHAN GARDEN RESORT, INC., ...

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a Petition for Certiorari[1] under Rule 65 assailing the Orders dated February 16, 2011[2] and September 12, 2011[3] issued by the Regional Trial Court, Branch 4, 11[th] Judicial Region, Panabo City in Civil Case No. CC-01-20011 entitled “Petition for Declaratory Relief and/or Injunction with Prayer for Issuance of Temporary Restraining Order and Writ of Injunction.”

The assailed Order dated February 16, 2011 dismissed petitioners' action for declaratory relief and/or injunction while the Order dated September 12, 2011 denied petitioners' motion for reconsideration.

The Facts

Petitioners are individuals and/or corporations engaged in the operation of beach resorts, aqua-related sport and leisure activities and/or restaurants located within the Island Garden City of Samal.

Petitioner El Paril Resorts, Inc., is a corporation duly organized under Philippine laws and engaged in business under the name Paradise Island Park and Beach Resort located at Barangay Caliclic, Babak Island, Garden City of Samal and herein represented by its Vice President, Julian L. Rodriguez III, of legal age, married, Filipino, and a resident of Davao City. Petitioner Maxima Resort and Aquafun, Inc. is a corporation duly organized and existing under Philippine laws and herein represented by its President Philip S. Dizon. Petitioner Araceli A. Pe Benito is of legal age, married, Filipino, and owner of Punta del Sol Araceli Beach Resort and Restaurant with principal address at Samal District, Island Garden City of Samal. Petitioner Ian Voltaire M. Lozada, Jr. is of legal age, Filipino, and the General Manager of Mahan Garden Resort. Lastly, petitioner Robert Q. Rodriguez is a co-owner of Caliclic Beach Resort with principal address at P-1, Babak District, Island Garden City of Samal, Davao del Norte.[4]

Public respondent, on the other hand, Island Garden City of Samal (IGACOS for brevity), is a local government unit created under Philippine law represented by the City Mayor Aniano P. Antalan with office address at City Hall Building, Island Garden City of Samal, Davao del Norte.[5]

On August 25, 2009, the City Council of IGACOS passed and approved City Ordinance No. 2009-156, otherwise known as the “Revised Revenue Code of 2009 of the Island Garden City of Samal.” One of the highlights of the said Revised Revenue Code of 2009 is Article X thereof which mandates the imposition of the Environmental Users Fee (EUF for brevity). The said ordinance lapsed into law through the inaction of the City Mayor.

In implementing City Ordinance No. 2009-156, IGACOS Mayor Aniano P. Antalan issued Executive Order No. 04 on March 22, 2010 providing for the implementing rules and regulations governing the collection of the EUF. Some of the petitioners herein allegedly paid the questioned EUF under protest as shown by the receipts issued by

the Barangay Treasurer and attached to the petition.

Petitioners then instituted a Petition for Declaratory Relief with application for TRO. On January 27, 2011, a TRO was issued by the court a quo restraining the City Government of IGACOS from implementing Tax Ordinance No. 2009-156 particularly Chapter 6 thereof on the ground of non-publication of the tax ordinance.

On January 26, 2011, respondent filed a motion to dismiss the petition. Acting on the motion, the court a quo denied petitioners' prayer for a writ of preliminary injunction and dismissed their petition for declaratory relief in its Order dated February 16, 2011, the dispositive portion of which reads:

In view of all the foregoing, the prayer for a writ of preliminary injunction is hereby DENIED and this petition [is] hereby ordered DISMISSED.

SO ORDERED.[6]

The RTC also denied petitioners' motion for reconsideration in an Order dated September 12, 2011. Hence, this petition for certiorari.

Issues

In this recourse, petitioners raise the following issues, viz:

I

[WHETHER OR NOT] THE TRIAL COURT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT THE INSTANT ACTION DOES NOT INVOLVE A PURE LEGAL QUESTION BUT INVOLVES QUESTIONS OF BOTH FACT AND LAW[;]

II

THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF [OR] IN EXCESS OF JURISDICTION WHEN IT DISMISSED THE CASE ON A MERE TECHNICAL GROUND THAT THERE IS FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES IN ACCORDANCE WITH THE LOCAL GOVERNMENT CODE[;]

III

THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN CONCLUDING THAT THE CITY ORDINANCE PARTICULARLY CHAPTER 6 THEREOF, BECAME EFFECTIVE AND ENFORCEABLE ONLY AFTER THE BELATED PUBLICATION AND NOT DECLARING SAID PROVISIONS OF THE CITY ORDINANCE AS UNCONSTITUTIONAL IN THE CLEAR ABSENCE OF ITS PUBLICATION[;]

IV

THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION BY FAILING TO RULE ON THE OTHER COMPELLING CONSTITUTIONAL GROUNDS RAISED BY THE PETITIONERS THROUGH ITS OUTRIGHT DISMISSAL OF THE PETITION ON A MERE TECHNICAL GROUND.[7]

Our Ruling

The petition lacks merit.

Essentially, the pivotal issue in the instant case hinges on the alleged unconstitutionality of Sections 189 - 204 of City Ordinance 2009-16 on the grounds of non-publication, among others.

We shall jointly discuss the first and second issues raised by the petitioners as they are interrelated.

Petitioners maintain that the court a quo should not have dismissed the case as the issues raised involved purely questions of law considering that the non-publication of Sections 189 to 204 of City Ordinance 2009-16 was undisputably established. Thus, the filing of the petition for declaratory relief by the petitioners is procedurally correct since the issues brought before the court a quo were a purely legal one. Exhaustion of administrative remedies does not apply to the instant case. To support their allegation, petitioners invoke the ruling laid down in *Evelyn Ongsuco and Antonia Salaya v. Hon. Mariano M. Malones*.^[8]

We are not persuaded.

A careful scrutiny of the records shows that respondent, City Government of IGACOS, consistently denies non-publication of Sections 189 to 204 of City Ordinance 2009-16. Respondent asserts that it faithfully complied with the requisite of publication through a newspaper of local circulation when it caused the publication of the entire text of the Ordinance within the period prescribed by law. The omission of Sections 189 to 204 of City Ordinance 2009-16 in the publication was due to the publisher's fault and not the respondent. Thus, the presumption of regularity and good faith in intending to faithfully comply with the law requiring the mandatory publication applies in favor of the respondent.

It may not be amiss to state that a determination of whether or not the subject tax ordinance was indeed enacted in accordance with, and in faithful compliance of, the requisites provided under the law is a question of fact that “would clearly involve a calibration of the probative value of the evidence presented by the respondent.”^[9] Contrary to what the petitioners would want Us to believe, We hold that the instant case does not only involve questions of law but also of facts. Thus, petitioners should have filed their case to the Secretary of Justice within 30 days of City Ordinance 2009-16's effectivity and not before the court a quo.

Section 187 of the Local Government Code expressly provides:

Sec. 187 — Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings. — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction. (emphasis supplied)

Clearly, the law requires that the dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file his appeal to the Secretary of Justice, within 30 days from effectivity thereof. In case the Secretary decides the appeal, a period also of 30 days is allowed for an aggrieved party to go to court. But if the Secretary does not act thereon, after the lapse of 60 days, a party could already proceed to seek relief in court. These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions.^[10]

Nonetheless, the case of *Ongsuco, et.al v. Malones*[11] invoked by the petitioners cannot apply in the instant case considering that the fact of non-publication of the subject ordinance therein was undisputably established and a non-issue. In stark contrast, the fact of publication of City Ordinance 2009-156, or its alleged non-publication, is the material issue in the instant case.

Consequently, the failure of the petitioners in the instant case to appeal to the Secretary of Justice within 30 days as required by Sec. 187 of R.A. 7160 is fatal to their cause. Clearly, the court a quo was acting in accordance with law when it dismissed petitioners' action for declaratory relief on the ground of non-exhaustion of administrative remedies. As held by the Supreme Court in *Reyes v. CA*,[12] viz:

A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that protests over tax ordinances are required to be done within certain time frames. In the instant case, it is our view that the failure of petitioners to appeal to the Secretary of Justice within 30 days as required by Sec. 187 of R.A. 7160 is fatal to their cause. (emphasis supplied)

As regards the third issue, petitioners claim that the court a quo seriously erred in not declaring the unconstitutionality of Sections 189 to 204 due to its non-publication.

The argument is misplaced.

Section 188 of the Local Government Code expressly provides:

SEC. 188. Publication of Tax ordinances and Revenue Measures. - Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation: Provided, however, that in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places. (emphasis and underscoring supplied)

Upon the other hand, the Rules and Regulations Implementing the Local Government Code of 1991, insofar as pertinent, mandates:

Art. 277. Publication of Tax Ordinances and Revenue Measures. – (a) within ten (10) days after their approval, certified true copies of all provincial, city and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation provided that in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

xxx

(emphasis supplied)

It is clear from the above-quoted provisions of R.A. No. 7160 and its implementing rules that the requirement of publication is mandatory and leaves no choice. The use of the word “shall” in both provisions is imperative, operating to impose a duty that may be enforced.[13]

In the instant case, it was established that the respondent, in view of the absence of a newspaper of local circulation in the city, complied with the posting requirement in lieu of publication when it posted the whole text of City Ordinance 2009-156 in three (3) conspicuous and publicly accessible places within the city. This fact of posting remained unrebutted by the petitioners. Thus, We hold that the posting of City Ordinance 2009-156 and

its subsequent publication in the Mindanao Truck News on its March 22-28, 2010 issue is compliance of the publication requirement set forth in Section 188 of the Local Government Code.

Anent the fourth issue, petitioners claim that the court a quo seriously erred in dismissing the case on a mere technical ground and failing to consider the other constitutional issues affecting the validity of City Ordinance 2009-156 on the grounds that it violates the equal protection clause of the Constitution, the due process clause for its being unjust, oppressive and confiscatory, and its enactment without genuine public consultation.

We note that this last issue raised by the petitioners directly involves the constitutionality of the provisions of City Ordinance 2009-156 the determination of which requires the presentation of evidence, thus a factual issue. To reiterate, the petitioners, in questioning the constitutionality of City Ordinance 2009-156 should have filed their appeal before the Secretary of Justice within 30 days from its effectivity and not before the court a quo.

In fine, We hold that the court a quo acted in accordance with law when it dismissed petitioners' action for declaratory relief on the ground of non-exhaustion of administrative remedies.

THE FOREGOING CONSIDERED, the instant PETITION is thus DISMISSED. The Orders dated February 16, 2011 and September 12, 2011 issued by the Regional Trial Court, Branch 4, 11th Judicial Region, Panabo City in Civil Case No. CC-01-20011 is hereby AFFIRMED in toto.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Borja, J., Chairperson and Badelles, JJ., concur.

[1] Rollo, p. 6.

[2] Rollo, p.40.

[3] Rollo, p.45.

[4] Rollo, pp. 8-9.

[5] Rollo, p. 10.

[6] Rollo, p. 44.

[7] Rollo, pp. 13-15.

[8] G.R. No. 182065, October 27, 2009.

[9] Coca-Cola Bottlers Philippines, Inc., v. City Of Manila, Liberty M. Toledo – City Treasurer And Joseph Santiago, G.R. No. 156252, June 27, 2006.

[10] Reyes v. CA, 378 Phil. 232, 237-238 (1999).

[11] Supra at note 8.

[12] Supra at note 10.

[13] *Soco v. Militante*, 123 SCRA 160, 167; *Modern Coach Corp. v. Faver*, 173 SE 2d 497, 499.

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