

**CITY OF MANILA AND CITY TREASURER,
PETITIONERS-APPELLANTS, VS. JUDGE AMADOR E. GOMEZ OF THE
COURT OF FIRST INSTANCE OF MANILA AND ESSO PHILIPPINES,
INC., RESPONDENTS-APPELLEES.**

G.R. No. L-37251. August 31, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the legality of the additional one-half percent (1/2%) realty tax imposed by the City of Manila.

Section 64 of the Revised Charter of Manila, Republic Act No. 409, which took effect on June 18, 1949, fixes the annual realty tax at one and one-half percent (1-1/2%).

On the other hand, section 4 of the Special Education Fund Law, Republic Act No. 5447, which took effect on January 1, 1969, imposed "an annual additional tax of one per centum on the assessed value of real property in addition to the real property tax regularly levied thereon under existing laws" but "the total real property tax shall not exceed a maximum of three per centum".

That maximum limit gave the municipal board of Manila the idea of fixing the realty tax at three percent. So, by means of Ordinance No. 7125, approved by the city mayor on December 26, 1971 and effective beginning the third quarter of 1972, the board imposed an additional one-half percent realty tax. The ordinance reads:

"SECTION 1. An additional annual realty tax of one-half percent (1/2%), or in short a total of three percent (3%) realty tax (1-1/2% pursuant to the Revised Charter of Manila; 1% per Republic Act No. 5447; and 1/2% per this Ordinance) on the assessed value x x x is hereby levied and imposed."

Esso Philippines, Inc. paid under protest the sum of P16,092.69 as additional one-half percent realty tax for the third quarter of 1972 on its land and machineries located in Manila.

On November 9, 1972, Esso filed a complaint in the Court of First Instance of Manila for the recovery of the said amount. It contended that the additional one-half percent tax is void because it is not authorized by the city charter nor by any law (Civil Case No. 88827).

After hearing, the trial court declared the tax ordinance void and ordered the city treasurer of Manila to refund to Esso the said tax. The City of Manila and its treasurer appealed to this Court under Republic Act No. 5440 (which superseded Rule 42 of the Rules of Court).

The only issue is the validity of the tax ordinance or the legality of the additional one-half percent realty tax.

The petitioners in their manifestation of March 17, 1981 averred that the said tax ordinance is still in force; that Ordinance No. 7566, which was enacted on September 10, 1974, imposed a two percent tax on commercial real properties (like the real properties of Esso) and that that two percent tax plus the one percent tax under the Special Education Fund Law gives a total of three percent realty tax on commercial properties.

Esso Philippines, Inc., now Petrophil Corporation, in its manifestation of March 2, 1981, revealed that up to this time it has been paying the additional one-half percent tax and that from 1975 to 1980 it paid the total sum of P4,206,240.71 as three percent tax on its real properties.

In this connection, it is relevant to note that section 39(2) of the Real Property Tax Code, Presidential Decree No. 464, which took effect on June 1, 1974, provides that a city council may, by ordinance, impose a realty tax "of not less than one-half of one percent but not more than two percent of the assessed value of real property".

Section 41 of the said Code reaffirms the one percent tax on real property for the Special Education Fund in addition to the basic two percent realty tax.

So, there is no question now that the additional one-half percent realty tax is valid under the Real Property Tax Code. What is in controversy is the legality of the additional one-half percent realty tax for the two-year period from the third quarter of 1972 up to the second quarter of 1974.

We hold that the doctrine of implications in statutory construction sustains the City of Manila's contention that the additional one-half percent realty tax is sanctioned by the pro-vision in section 4 of the Special Education Fund Law that "the total real property tax shall not exceed a maximum of three per centum".

The doctrine of implications means that "that which is plainly implied in the language of a statute is as much a part of it as that which is expressed" (In re McCulloch Dick, 38 Phil. 41, 45, 90; 82 C.J.S. 632; 73 Am Jur 2nd 404).

While the 1949 Revised Charter of Manila fixed the realty tax at one and a half percent, on the other hand, the 1968 Special Education Fund Law definitively fixed three percent as the maximum real property tax of which one percent would accrue to the Special Education Fund.

The obvious implication is that an additional one-half percent tax could be imposed by municipal corporations. Inferentially, that law fixed at two percent the realty tax that would accrue to a city or municipality.

And the fact that the 1974 Real Property Tax Code specifically fixes the real property tax at two percent con-firms the prior intention of the lawmaker to impose two per-cent as the realty tax proper. That was also the avowed in-tention of the questioned ordinance.

In invalidating the ordinance, the trial court upheld the view of Esso Philippines, Inc. that the Special Education Fund Law refers to a contingency where the application of the addi-tional one percent realty tax would have the effect of raising the total realty tax to more than three percent and that it cannot be construed as an authority to impose an additional realty tax beyond the one percent fixed by the said law.

At first glance, that appears to be a specious or reason-able contention. But the fact remains that the city charter fixed the realty tax at 1-1/2% and the later law, the Special Education Fund Law, provides for three percent as the maximum realty tax of which one percent would be earmarked for the education fund.

The unavoidable inference is that the later law authorized the imposition of an additional one-half percent realty tax since the contingency referred to by the complaining taxpayer would not arise in the City of Manila.

It is true, as contended by the taxpayer, that the power of a municipal corporation to levy a tax should be expressly granted and should not be merely inferred. But in this case, the power to impose a realty tax is not controverted. What is disputed is the amount thereof, whether one and one-half percent only or two percent. (See sec. 2 of Rep. Act No. 2264.)

As repeatedly observed, section 4 of the Special Educa-tion Fund Law, as confirmed by the Real Property Tax

Code, in prescribing a total realty tax of three percent impliedly authorizes the augmentation by one-half percent of the pre-existing one and one-half percent realty tax.

WHEREFORE, the decision of the trial court is reversed and set aside. The complaint of Esso Philippines, Inc. for recovery of the realty tax paid under protest is dismissed. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Fernandez, and De Castro, JJ., concur.

Abad Santos, J., on leave.

Fernandez, J., was designated to sit in the Second Division.

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