

MATALIN COCONUT CO., INC., PETITIONER-APPELLEE, VS. THE MUNICIPAL COUNCIL OF MALABANG, LANAOS DEL SUR, AMIR M. BALINDONG AND HADJI PANGILAMUN MANALOCON, MUNICIPAL MAYOR AND MUNIC...*G.R. No. L-28138. August 13, 1986*

Ponente: YAP, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2f08875efc4b/>**YAP, J.:**

On August 24, 1966, the Municipal Council of Malabang, Lanao del Sur, invoking the authority of Section 2 of Republic Act No. 2264, otherwise known as the Local Autonomy Act, enacted Municipal Ordinance No. 45-66, entitled "AN ORDINANCE IMPOSING A POLICE INSPECTION FEE OF P.30 PER SACK OF CASSAVA STARCH PRODUCED AND SHIPPED OUT OF THE MUNICIPALITY OF MALABANG AND IMPOSING PENALTIES FOR VIOLATIONS THEREOF". The ordinance made it unlawful for any person, company or group of persons "to ship out of the Municipality of Malabang, cassava starch or flour without paying to the Municipal Treasurer or his authorized representatives the corresponding fee fixed by (the) ordinance". It imposed a "police inspection fee" of P.30 per sack of cassava starch or flour, which shall be paid by the shipper before the same is transported or shipped outside the municipality. Any person or company or group of individuals violating the ordinance "is liable to a fine of not less than P100.00, but not more than P1,000.00, and to pay P1.00 for every sack of flour being ille-gally shipped outside the municipality, or to suffer imprisonment of 20 days, or both, in the discretion of the court".

The validity of the ordinance was challenged by the Matalin Coconut, Inc. in a petition for declaratory relief filed with the then Court of First Instance of Lanao del Sur against the Municipal Council, the Municipal Mayor and the Municipal Treasurer of Malabang, Lanao del Sur. Alleging among others that the ordinance is not only ultra vires, being violative of Republic Act No. 2264, but also unreasonable, oppressive and confiscatory, the petitioner prayed that the ordinance be declared null and void ab initio, and that the respondent Municipal Treasurer be ordered to refund the amounts paid by petitioner under the ordinance. The petitioner also prayed that during the pendency of the action, a preliminary injunction be issued enjoining the respondents from enforcing the ordinance. The application for preliminary injunction, however, was denied by the trial court; instead respondent Municipal Treasurer was ordered to allow payment of the taxes imposed by the ordinance under protest.

Claiming that it was also adversely affected by the ordinance, Purakan Plantation Company was granted leave to intervene in the action. The intervenor alleged that while its cassava flour factory was situated in another municipality, i.e., Balabagan, Lanao del Sur, it had to transport the cassava starch and flour it produced to the seashore through the Municipality of Malabang for loading in coastwise vessels; that the effect of the enactment of Ordinance No. 45-66, is that intervenor had to refrain from transporting its products through the Municipality of Malabang in order to ship them by sea to other places.

After trial, the Court a quo rendered a decision declaring the municipal ordinance in question null and void;

ordering the respondent Municipal Treasurer to refund to the petitioner the payments it made under the said ordinance from September 27, 1966 to May 2, 1967, amounting to P25,500.00, as well as all payments made subsequently thereafter; and enjoining and prohibiting the respondents, their agents or deputies, from collecting the tax of P.30 per bag on the cassava flour or starch belonging to intervenor, Purakan Plantation Company, manufactured or milled in the Municipality of Balabagan, but shipped out through the Municipality of Malabang.

After the promulgation of the decision, the Trial Court issued a writ of preliminary mandatory injunction, upon motion of petitioner, requiring the respondent Municipal Treasurer to deposit with the Philippine National Bank, Iligan Branch, in the name of the Municipality of Malabang, whatever amounts the petitioner had already paid or shall pay pursuant to the ordinance in question up to and until final termination of the case; the deposit was not to be withdrawn from the said bank without any order from the court. On motion for reconsideration by respondents, the writ was subsequently modified on July 20, 1967, to require the deposit only of amounts paid from the effectivity of the writ up to and until the final termination of the suit.

From the decision of the trial court, the respondents appealed to this Court.

A motion to dismiss appeal filed by petitioner-appellee, was denied by this court in its resolution of October 31, 1967. Subsequently, respondents-appellants filed a motion to dissolve the writ of preliminary mandatory injunction issued by the trial court on July 20, 1967. This motion was also denied by this Court on January 10, 1968.

Of the assignments of error raised by the appellants in their Brief, only the following need be discussed: (1) that the trial court erred in adjudicating the money claim of the petitioner in an action for declaratory relief; and (2) that the trial court erred in declaring the municipal ordinance in question null and void.

The respondents-appellants maintain that it was error for the trial court, in an action for declaratory relief, to order the refund to petitioner-appellee of the amounts paid by the latter under the municipal ordinance in question. It is the contention of respondents-appellants that in an action for declaratory relief, all the court can do is to construe the validity of the ordinance in question and declare the rights of those affected thereby. The court cannot declare the ordinance illegal and at the same time order the refund to petitioners of the amounts paid under the ordinance, without requiring petitioner to file an ordinary action to claim the refund after the declaratory relief judgment has become final. Respondents maintain that under Rule 64 of the Rules of Court, the court may advise the parties to file the proper pleadings and convert the hearing into an ordinary action, which was not done in this case.

We find no merit in such contention. Under Sec. 6 of Rule 64, the action for declaratory relief may be converted into an ordinary action and the parties allowed to file such pleadings as may be necessary or proper, if before the final termination of the case "a breach or violation of an . . . ordinance, should take place". In the present case, no breach or violation of the ordinance occurred. The petitioner decided to pay "under protest" the fees imposed by the ordinance. Such payment did not affect the case; the declaratory relief action was still proper because the applicability of the ordinance to future transactions still remained to be resolved, although the matter could also be threshed out in an ordinary suit for the recovery of taxes paid (*Shell Co. of the Philippines, Ltd. vs. Municipality of Sipocot*, L-12680, March 20, 1959). In its petition for declaratory relief, petitioner-appellee alleged that by reason of the enforcement of the municipal ordinance by respondents it was forced to pay under protest the fees imposed pursuant to the said ordinance, and accordingly, one of the reliefs prayed for by the petitioner was that the respondents be ordered to refund all the amounts it paid to respondent Municipal Treasurer during the pendency of the case. The inclusion of said allegation and prayer in the petition was not objected to by the respondents in their answer. During the trial, evidence of the payments made by the petitioner was introduced. Respondents were thus fully aware of the petitioner's claim for refund and of what would happen if the ordinance

were to be declared invalid by the court.

Respondents' contention, if sustained, would in effect require a separate suit for the recovery of the fees paid by petitioner under protest. Multiplicity of suits should not be allowed or encouraged and, in the context of the present case, is clearly uncalled for and unnecessary.

The main issue to be resolved in this case is whether or not Ordinance No. 45-66 enacted by respondent Municipal Council of Malabang, Lanao del Sur, is valid. The respondents-appellants contend that the municipality has the power and authority to approve the ordinance in question pursuant to Section 2 of the Local Autonomy Act (Republic Act No. 2264).

Since the enactment of the Local Autonomy Act, a liberal rule has been followed by this Court in construing municipal ordinances enacted pursuant to the taxing power granted under Section 2 of said law. This Court has construed the grant of power to tax under the above-mentioned provision as sufficiently plenary to cover "everything, excepting those which are mentioned" therein, subject only to the limitation that the tax so levied is for public purposes, just and uniform. (*Nin Bay Mining Company vs. Municipality of Roxas, Province of Palawan*, 14 SCRA 661; *C.N. Hodges vs. Municipal Board, Iloilo City, et al.*, 19 SCRA 28).

We agree with the finding of the trial court that the amount collected under the ordinance in question partakes of the nature of a tax, although denominated as "police inspection fee" since its undeniable purpose is to raise revenue. However, we cannot agree with the trial court's finding that the tax imposed by the ordinance is a percentage tax on sales which is beyond the scope of the municipality's authority to levy under Section 2 of the Local Autonomy Act. Under the said provision, municipalities and municipal districts are prohibited from imposing "any percentage tax on sales or other taxes in any form based thereon." The tax imposed under the ordinance in question is not a percentage tax on sales or any other form of tax based on sales. It is a fixed tax of P.30 per bag of cassava starch or flour "shipped out" of the municipality. It is not based on sales.

However, the tax imposed under the ordinance can be stricken down on another ground. According to Section 2 of the above-mentioned Act, the tax levied must be "for public purposes, just and uniform" (Emphasis supplied.) As correctly held by the trial court, the so-called "police inspection fee" levied by the ordinance is "unjust and unreasonable". Said the court a quo:

"... It has been proven that the only service rendered by the Municipality of Malabang, by way of inspection, is for the policeman to verify from the driver of the trucks of the petitioner passing by at the police checkpoint the number of bags loaded per trip which are to be shipped out of the municipality based on the trip tickets for the purpose of computing the total amount of tax to be collect (sic) and for no other purpose. The pretention of respondents that the police, aside from counting the number of bags shipped out, is also inspecting the cassava flour starch contained in the bags to find out if the said cassava flour starch is fit for human consumption could not be given credence by the Court because, aside from the fact that said purpose is not so stated in the ordinance in question, the policemen of said municipality are not competent to determine if the cassava flour starch are fit for human consumption. The further pretention of respondents that the trucks of the petitioner hauling the bags of cassava flour starch from the mill to the bodega at the beach of Malabang are escorted by a policeman from the police checkpoint to the beach for the purpose of protecting the truck and its cargoes from molestation by undesirable elements could not also be given credence by the Court because it has been shown, beyond doubt, that the petitioner has not asked for the said police protection because there has been no occasion where its trucks have been molested, even for once, by bad elements from the police checkpoint to the bodega at the beach, it is solely for the purpose of verifying the correct number of bags of cassava flour starch loaded on the trucks of the petitioner as stated in the trip tickets, when unloaded at its bodega at the beach. The imposition, therefore, of a police inspection fee of P.30 per bag, imposed by said ordinance is unjust and unreasonable.

The Court finally finds the inspection fee of P0.30 per bag, imposed by the ordinance in question to be excessive and confiscatory. It has been shown by the petitioner, Matalin Coconut Company, Inc., that it is merely realizing a marginal average profit of P0.40, per bag, of cassava flour starch shipped out from the Municipality of Malabang because the average production is P15.60 per bag, including transportation costs, while the prevailing market price is P16.00 per bag. The further imposition, therefore, of the tax of P0.30 per bag, by the ordinance in question would force the petitioner to close or stop its cassava flour starch milling business considering that it is maintaining a big labor force in its operation, including a force of security guards to guard its properties. The ordinance, therefore, has an adverse effect on the economic growth of the Municipality of Malabang, in particular, and of the nation, in general, and is contrary to the economic policy of the government."

Having found the ordinance in question to be invalid, we find it unnecessary to rule on the other errors assigned by the appellants.

WHEREFORE, petition is dismissed. The decision of the court a quo is hereby affirmed. No costs.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, and Paras, JJ., concur.

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