

**THE CENTRAL (POBLACION) BARRIO, CITY OF DAVAO,
RE-PRESENTED BY ITS BARRIO CAPTAIN, HONORIO B. GARCIA,
PETITIONER-APPELLANT, VS. CITY TREASURER, MAXIMINO
ASSISTIDO, THE HON. CITY...**

G.R. No. L-25811. April 03, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On August 29, 1962, the City of Davao passed Resolution No. 732 declaring as officially and legally existing, pursuant to Republic Act 2370, the several barrios of the city. Among these were barrios Agdao, Bucana and Poblacion.

Subsequently, barrio Poblacion, also called barrio Central, claiming that it was created under Section 27 of the Code of Mindanao and Sulu, asked from Davao City for its alleged 10% share in taxes collected on real property located within the barrio, as provided in Section 23 of Republic Act 3590. Davao City's Treasurer, however, re-fused to release the share for said barrio, on the ground that the amount pertaining to said barrio, in relation to those of barrios Agdao and Bucana, cannot be determined, because the respective boundaries of said barrios were not yet fixed as required by law.

Stated otherwise, Davao City's stand was that the amount covering the 10% share of these three barrios combined has been allocated, but it cannot be determined how much thereof pertains to each of said barrios, because their boundaries not having been fixed as regards each other, it could not be determined how much of the taxes were collected from real properties located in each of the three aforesaid barrios, taken separately.

On September 3, 1964, however, the Secretary of Finance, acting on the request of the same barrio Central or Poblacion for release of its 10% share in real property taxes, stated that barrios Agdao and Bucana were created only in 1963 in violation of Republic Act 2370 that prohibited creation of barrios out of chartered cities, so that said barrios are not recognized under Republic Act 3590 providing for the abovementioned share of 10% in realty taxes. Accordingly, he ruled that the allocated 10% share of taxes for barrios Agdao, Bucana and Central should accrue and be given to Barrio Central only, after all conditions therefor are met.

On December 2, 1964, barrio Central filed in the Court of First Instance of Davao, thru its barrio captain, a petition for declaratory relief with mandamus, against Davao City's Treasurer, Council, Auditor and Mayor, alleging the facts mentioned earlier in this decision. Among others, the petition questioned the legality of Resolution No. 732 of Davao City's Council creating barrios Agdao and Bucana; the actuations of the Auditor in passing in audit an alleged expenditure of P50,000 out of the 10% fund; and the failure of the council to delimit the territorial boundaries of the three barrios concerned. And it prayed that the court order payment to petitioner by respondents of its 10% share in realty taxes as provided by Republic Act 3590, declare illegal the creation of barrios Agdao and Bucana, and prohibit the Auditor from approving expenditures out of its 10% share.

Respondents moved to dismiss but their motion was de-nied. On January 29, 1965, respondents answered, stating among other averments, that barrio Central is inexistent or not a part of Davao City; that there are other barrios claiming the 10% share in real property taxes correspond-ing to the territory claimed by petitioner; that Republic Act 3590 providing for the 10% share applies only to bar-rios in municipalities and municipal districts, not to those in cities; and that the alleged expenditure in ques-tion was legal and not taken from the 10% share allocated for barrios.

After issues were thus joined the case was set for trial. On August 2, 1965, however, the Court, upon motion of the Fiscal, dismissed the case without prejudice, on the ground that the issues were rendered academic by the passage of Republic Act 4354, on June 19, 1965, amending the Charter of Davao City. Petitioner, having failed in its motion for reconsideration, took the present appeal.

At issue is the legal question or the propriety or correctness of the dismissal order.

Republic Act 4354, in Section 2, enumerated the bar-rios comprising the City of Davao. Petitioner barrio Cenral or Poblacion was not mentioned therein. Accordingly, there prima facie arises the conclusion that said law abolished barrio Central as part of Davao City. Expressio unius est exclusio alterius. The court a quo had sufficient and tenable reason to dismiss the suit in the face of said law, for being academic. A non-existent barrio, or a barrio not situated in Davao City, cannot present a claim against it or its officials for a share in taxes un-der Republic Act 3570. Said law must be presumed, until squarely challenged and declared by the courts to be other-wise, as constitutional, especially because the power to create or abolish municipal corporations resides in Con-gress (*Mendenilla v. Onandia*, L-17803, June 30, 1962). Petitioner may of course assail the constitutionality of said new law. The present suit, however, is not for that purpose. Nothing in the pleadings questions said law's validity, for the reason that said law came after the pleadings were joined. Neither was there amendment to said pleadings. The court a quo therefore, rightly dismissed the present suit, without prejudice, that is, not thereby precluding the filing of a suit to assail the validity of Republic Act 4354.

WHEREFORE, the appealed order of dismissal is hereby affirmed. No costs.

SO ORDERED.

Jose B.L. Reyes, (Acting C.J.), Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

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