

**MUNICIPALITY OF SAN FERNANDO, LA UNION REPRESENTED BY
MAYOR LORENZO L. DACANAY, PLAINTIFF-APPELLEE
(RESPONDENT), VS. MAYOR TIMOTEO STA. ROMANA, MUNICIPAL
TREASURER AND THEIR AUT...**

G.R. No. L-30159. March 31, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the November 11, 1968 Order of the Court of First Instance of La Union, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the preliminary injunction already issued is made permanent and the defendants are enjoined not to prevent the plaintiff from getting sand and gravel from barrio Nalvo Norte."

The undisputed facts of this case are as follows:

The Municipality of San Fernando, La Union which was undertaking a cement road construction around its Supermarket and other municipal projects, needed sufficient gravel and sand from their source, the Municipality of Luna but its trucks sent to the latter municipality to haul said road construction materials were allegedly charged unreasonable fees per truck load.

On March 18, 1968, the Municipality of San Fernando represented by its incumbent Municipal Mayor Lorenzo L. Dacanay filed a complaint for Injunction with Writ of Preliminary Injunction at the Court of First Instance of La Union against the Municipality of Luna and its officials and authorized agents, praying that the defendants be immediately enjoined from preventing plaintiff's truck obtaining road construction materials from Luna, La Union and from levying unreasonable fees, and after trial to make the injunction permanent (Complaint "Annex A", Rollo, p. 13).

On the same day the complaint was filed, the Court of First Instance of La Union (Branch II) issued an Order granting the Writ of Preliminary Injunction ex-parte (Petition, Rollo, p. 7, "Annex", Rollo, p. 18). On March 26, 1968, the defendants filed their Answer wherein they averred that the license fees collected from the hauling of sand and gravel excavated from the municipality of Luna, La Union are by virtue of an ordinance duly approved by the Municipal Council of defendant municipality in consonance with its power to tax, and that the fees collected are reasonable, fair and legal. The Answer further pointed out that the remedy of Injunction availed of is not the proper remedy. On May 21, 1968, after the issues were joined, the lower court issued an Order requiring the parties to submit their respective memoranda since the issue raised was purely a question of law. On November 11, 1968, the lower court issued an Order making permanent the writ of preliminary injunction issued and further ordered the defendants not to prevent the plaintiff from getting sand and gravel from Barrio Nalvo Norte, a barrio of Luna, La Union.

Hence, this petition.

The main issue in this case is whether or not the Municipality of Luna has the authority to pass Ordinance No. 1 and impose the license fees in question.

Aforesaid Ordinance reads:

"ORDINANCE NO. 1

"Section 1. There shall be collected from any person, partnership or corporation engaged in any business, occupation or call-ing or enjoying any privilege hereunder enumerated the following municipal license and/or fees at the rate set opposite each:

"x x x

"14. Dealer and/or hauler of sand, gravel and/or stones for every truck load or fraction thereof:

"Sand P 1.50

"Gravel 8.00

"Coarse sand 10.00

"Selected stones or pea size 15.00"

The Municipality of Luna insists on the validity of its Ordinance No. 1 imposing the license fees in question on the basis of its authority to exercise police power under Section 2238 of the Revised Administrative Code, otherwise known as the General Welfare Clause and its power to levy licenses and fees for public purposes under Republic Act 2264 (Petition, Rollo, p. 10) and justifies the inclusion of the Municipality of San Fernando thereunder, among the persons, partnership or cor-poration engaged in any business, occupation or calling to be charged for hauling sand and gravel from its sea-shore, claiming that respondent municipality in hauling sand and gravel for the improvement of its roads is engaged in a proprietary function as it can later exact higher license fees from those in the business center. Thus, for eventually obtaining profit by the improvement of its roads, the Municipality of San Fernando should allegedly pay license fees to the Municipality of Luna (Brief for Petitioner, pp. 5 and 6).

On the other hand, respondent Municipality alleges that the license fee embodied in Ordinance No. 1 is be-yond the authority of the Municipality of Luna, La Union to impose, as the sand and gravel deposits in the sea-shore of Nalvo Norte are classified as minerals under the Mining Laws of the Philippines and as such belong to the State, and fall under the administration and control of the Bureau of Mines and not of the Municipality of Luna. For this purpose, respondent Municipality obtained on March 18, 1968, a gratuitous Revocable Permit from the Bureau of Mines (Answer, Rollo, pp. 55-56; Brief for Respondent, pp. 3 and 4). Even granting arguendo that the disposition of sand and gravel belongs to petitioner, nevertheless, the Municipality of San Fernando does not fall under Ordinance No. 1 because the gravel and sand extracted by said municipality are used for the improvement of its streets which function is governmental.

This issue in the case at bar is now governed by Presidential Decree No. 231, enacting a Local Tax Code (for Provinces, Cities, Municipalities and Barrios) which took effect on July 1, 1973. The Code provides:

"SEC. 10. Sand and gravel fee. — The province may levy and collect a fee of not exceeding seventy-five centavos per cubic meter of ordinary stones, sand, gravel, earth and other materials extracted from lakes, rivers, streams, creeks, and other public waters within the jurisdiction of the province.

"SEC. 22. Specific limitations on power. — Except as otherwise provided in this Code, the municipality shall not levy the following:

- (a) Taxes, fees, and charges that the province or city is authorized to levy in this Code;
- (b) Taxes on articles, subject to specific tax under the provisions of the National Internal Revenue Code; and
- (c) Taxes and other impositions enumerated in Section 5, Chapter I of this Code."

Section 10 of aforesaid decree was later amended by Presidential Decree No. 426, dated March 30, 1974, and now reads:

"Sec. 10. Sand and gravel tax. — The province may levy and collect a tax of not exceeding seventy-five centavos per cubic meter of ordinary stones, sand, gravel, earth and other materials extracted from public and private lands of the government or from the beds of seas, lakes, rivers, streams, creeks and other public waters within the jurisdiction of the province. The municipality where the materials are extracted shall share in the proceeds of the tax herein authorized at a rate of not less than thirty per cent thereof as may be determined by the Provincial Board.

"The permit to extract the materials shall be issued by the Director of Mines or his duly authorized representative and the extraction thereof shall be governed by regulations issued by the Director of Mines." (As amended by Presidential Decree No. 426).

Under the above-quoted provisions of the Local Tax Code, there is no question that the authority to impose the license fees in dispute, properly belongs to the province concerned and not to the Municipality of Luna which is specifically prohibited under Section 22 of the same Code "from levying taxes, fees and charges that the province or city is authorized to levy in this Code." On the other hand, the Municipality of San Fernando cannot extract sand and gravel from the Municipality of Luna without paying the corresponding taxes or fees that may be imposed by the province of La Union.

PREMISES CONSIDERED, the Court RESOLVED to DISMISS this petition and to AFFIRM assailed Order of the trial court.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

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