

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
SANTIAGO MENDAROS, ET AL., DEFENDANTS-APPELLEES.***G.R. No. L-6975. May 27, 1955*

Ponente: BAUTISTA ANGELO, J.

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Santiago Mendaros, Vidal Canondon, Anastacio Cuevas, Angel Pagador, Federico Feria, Simplicio Streeter and Cenon Mendaros were accused in separate informations before the Justice of the Peace Court of Palauig, Zambales, of a violation of Municipal Ordinance No. 5, S. 1946, of the municipal council of Palauig for their failure to pay the occupation tax for the year 1952 as prescribed in said ordinance. After a joint trial, following the denial of a motion to quash filed by the defense on the ground that said ordinance is void for lack of approval by the Secretary of Agriculture and Natural Resources, said defendants were convicted and sentenced each to pay a fine of P5.00, to suffer subsidiary imprisonment in case of insolvency, and to pay the costs. Defendants were also ordered to pay the tax due for the year 1952.

On appeal to the court of first instance, the provincial fiscal filed against them a joint information wherein they were charged with a similar violation. Defendants again presented a motion to quash on the same ground that the municipal ordinance does not bear the approval of the Secretary of Agriculture and Natural Resources. This time the motion was sustained, the trial court holding that the ordinance was null and void because the municipal council of Palauig had no authority to impose the license tax levied therein. His motion for reconsideration having been denied, the provincial fiscal took the case on appeal directly to this Court.

The pertinent portion of the ordinance in question reads as follows:

"CLASS 'C'

"(Business, occupation or privileges taxable at the rate of P50.00 or less per annum. The maximum rate of P50.00 per annum may be exceeded with the approval of the Secretary of Finance. - Section k (2), Commonwealth Act No. 472).

Business or Occupation

Rate of Tax per annum

31. Fishponds, owners having not more than 10 hectares -----

P25.00

32 Fishponds, owners having more than 50 hectares-----

50.00

33 Fishponds, owners having more than 10 but less than 50 hectares ----

35.00

Section 12 - Penal Provisions

"Violation of any provision of this Ordinance shall subject the offender, upon conviction, to a fine not exceeding P200.00 or to imprisonment not exceeding 6 months, or both, at the discretion of the Court, (pp. 25, 127, rec.)"

The ground on which the trial court declared the municipal ordinance invalid would seem to be that, since the land on which the fishpond is situated is already subject to land tax, it would be unfair and discriminatory to levy another tax on the owner of the fishpond because that would amount to double taxation. This view is erroneous because it is a well settled rule that a license tax may be levied upon a business or occupation although the land or property used therein is subject to property tax. It was also held that "the state may collect an ad. valorem tax on property fused in a calling, and at the same time impose a license tax on the pursuit of that calling," The imposition of this kind of tax "is in no sense called a double tax."

"24. Double Taxation.- In general, the same property cannot be taxed twice by the same taxing authority. This rule, however does not preclude the imposition of a "license tax upon a business or calling although the property used therein has been subjected to a property tax. It is a well-settled rule that the state may collect an ad valorem tax on property used in a calling, "and at the same time impose a license tax on the pursuit of that calling. This is in no sense a double tax; the state does not tax the calling as property, but simply requires a license for the privilege of engaging in it, or for enjoying advantages incident to its exercise. The same principle applies to the imposition of a privilege tax upon property which has been subjected to a property tax. For example, the imposition of license and privilege taxes upon automobiles, upon which property taxes have also been imposed, is not double taxation. It is not necessarily double taxation where an occupation tax is imposed upon a particular business and a license tax is imposed upon a particular article sold in such business. " (33 Am. Jur., Licenses, pp. 344-345; Underlining supplied)

As to whether the municipal council of Palauig has the power to impose an occupation or business tax on owners of fishponds, it cannot be denied, for such power is expressly vested by Commonwealth Act No. 472 which took effect on June 16, 1939. Section 1 of said Act reads as follows;

"Section 1. A municipal council or municipal district council shall have authority to impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality or municipal district, by requiring them to secure licenses at rates fixed by the municipal council, or municipal district council, and to collect fees and charges for services rendered by the municipality or municipal district and shall otherwise have power to levy for public local purposes, and for school purposes, including teachers' salaries, just and uniform taxes other than percentage taxes and taxes on specified articles."

From the foregoing it clearly appears that a municipal council has authority "to impose municipal license taxes upon persons engaged in any occupation or business" within the municipality or "to levy for public local purposes x x x just and uniform taxes other than percentage taxes and taxes on specified articles." The ordinance in question, as its language would indicate, levies a business or occupation tax on owners of fishponds, which clearly comes within the purview of the power first mentioned. And even if the running of a fishpond be not considered as business in the strict sense, still the imposition of the tax may be justified under the grant of the second power because it was undoubtedly levied for a public purpose within the municipality. In either case, therefore, the validity of the ordinance may be sustained.

But it is contended that the ordinance is not valid because it does not bear the approval of the Secretary of Agriculture and Natural Resources, and in this respect the Fisheries Act (Act No. 4003) as amended by Commonwealth Act No. 471, is invoked. This Act indeed provides that "all ordinances, rules or regulations pertaining to fishing or fisheries promulgated or enacted by provincial boards, municipal boards or councils, or municipal district councils shall be submitted to the Secretary of Agriculture and Commerce for approval"

(Section 4). This section, however, only applies to fishponds operated within "municipal waters" which, by the very provisions of said Act, do not include those operated on lands "subject of private ownership" (Section 6). Since the fishponds in question are operated on lands of private ownership, it is evident that they may be the subject of an ordinance which does not require the approval of the Secretary of Agriculture and Natural Resources.

The decision appealed from is reversed. The case shall be remanded to the lower court for further proceedings. No costs,

Bengzon, Padilla Montemayor, Reyes, Labrador, Concepcion, and J.B.L. Reyes, JJ., concur.

Pablo, J., took no part.

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