

NIN BAY MINING COMPANY, PLAINTIFF AND APPELLEE VS. MUNICIPALITY OF ROXAS, PROVINCE OF PALAWAN, DEFENDANT AND APPELLANT.

G.R. No. L-20125. July 20, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal by writ of error from a decision of the Court of First Instance of Manila annulling Ordinance No. 12, series of 1960 of the Municipality of Roxas—hereafter referred to as the defendant—Province of Palawan, and ordering the defendant to refund to Nin Bay Mining Company—hereafter referred to as the plaintiff—the sum of P3,042.40 paid by the latter to the former under the aforementioned ordinance, as well as all sums subsequently paid, by the plaintiff to the defendant in pursuance of said ordinance, and the costs.

Said ordinance is entitled:

"AN ORDINANCE IMPOSING AN INSPECTION AND VERIFICATION FEE OF P.10 PER TON OF SILICA SAND EXCAVATED WITHIN THE JURISDICTION OF ROXAS, PALAWAN, REVIVING ORDINANCE NO. 3-S-1951."

It provides that "any person or group of persons engaged in excavating Silica Mines or load silica sand for shipment from any of the claims within the jurisdiction of Roxas, Palawan" shall pay P0.10 "per ton as excavation and inspection fee" (Section 1); that "the excavation, mining, hauling and loading of silica sand" shall be "inspected and verified by the Municipal Treasurer and the Chief of Police or their representatives to find out whether" the party undertaking the excavation has a permit therefor "from the Bureau of Mines" and to see to it that the excavation does not encroach upon "the claims of other claimants" (Section 2); that no watercraft "that loads silica sand shall leave any port of Roxas, Palawan, without first paying said inspection and verification fee" (Section 3); that the purpose of the ordinance "is to collect an inspection and verification fee of ten centavos (P0.10) per ton of silica sand excavated and shipped out from" said municipality (Section 4); and that violations of any section of said ordinance shall be punished "by a fine of not less than P100, nor more than P200, or imprisonment of not less than one month nor more than two months or both such fine and imprisonment" in the discretion of the court (Section 5).

It appears that, pursuant to mining lease contracts with the government, executed way back in 1949 and 1950, plaintiff had been exploring, developing, mining, extracting and disposing of silica sand and other minerals belonging to the same group in and/or from several mining-claims located in Roxas, Palawan; that, since the enactment of said Ordinance No. 12, on October 15, 1960, plaintiff had been paying, under protest, the charges therein prescribed, which up to May, 1961, aggregated P3,042.40; and that representations made by the plaintiff with the local authorities for the suspension of the effectivity of said ordinance and the refund of said sum of P3,042.40 had failed to produce these results. Hence, on July 3, 1961, plaintiff commenced this ordinary action in the Court of First Instance of Manila, for the annulment of the aforementioned ordinance and the refund of the

sums it had paid to the defendant under the provisions thereof, upon the ground that the fees imposed in said ordinance cannot be regarded as a police power measure, because it applies to a business which is "not inherently subject to police regulations"; that the inspection and verification fee prescribed in said ordinance is in effect a tax, not a license fee; and that it is the nature of an export tax, in violation of Sections 2287 and 2629 of the Revised Administrative Code.

In due course, the lower court rendered the decision appealed from, sustaining plaintiff's pretense. Hence, this appeal by the defendant.

This case hinges on whether defendant has authority to impose the fees in question assuming that the same are in the nature of taxes. Plaintiff and the lower court rely heavily upon Sections 2287 and 2629 of the Revised Administrative Code denying to municipal councils the power to "impose a tax in any form whatsoever upon goods and merchandise carried out of the municipality". However, Republic Act No. 2264 confers upon all chartered cities, municipalities and municipal districts the general power to levy not only taxes, but, also, municipal license taxes, subject to specified exceptions, as well as service fees. The general grant of authority is found in the first part of Section 2 of said Act, reading:

"Any provision of law to the contrary notwithstanding, all chartered cities, municipalities and municipal districts shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities, municipalities or municipal districts by requiring them to secure licenses at rates fixed by the municipal board or city council of the city, the municipal council of the municipality, or the municipal district council of the municipal district; to collect fees and charges for services rendered by the city, municipality or municipal district; to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation being conducted within the city, municipality or municipal district and otherwise to levy for public purposes, just and uniform taxes, licenses or fees."

The exceptions are contained in two (2) provisos. The first is:

"That municipalities and municipal districts shall, in no case, impose any percentage tax on sales or other taxes in any form based thereon nor impose taxes on articles subject to specific tax, except gasoline, under the provisions of the national internal revenue code."

The second is to the effect:

"That no city, municipality or municipal district may levy or impose any of the following:

- (a) Residence tax;
- (b) Documentary stamp tax;
- (c) Taxes on the business of persons engaged in the printing and publication of any newspaper, magazine, review or bulletin appearing at regular intervals and having fixed prices for subscription and sale, and which is not published primarily for the purpose of publishing advertisements;
- (d) Taxes on persons operating waterworks, irrigation and other public utilities except electric light, heat and power;
- (e) Taxes on forest products and forest concessions;
- (f) Taxes on estates, inheritances, gifts, legacies, and other acquisitions mortis causa;
- (g) Taxes on income of any kind whatsoever;
- (h) Taxes or fees for the registration of motor vehicles and for the issuance of all kinds of licenses or permits

for the driving thereof;

(i) Customs duties, registration, wharfage on wharves owned by the national government, tonnage, and all other kinds of customs fees, charges and dues;

(j) Taxes on any kind on banks, insurance companies, and persons paying franchise tax; and

(k) Taxes on premiums paid by owners of property who obtain insurance directly with foreign insurance companies."

Neither the plaintiff nor the lower court maintains that the subject matter of the ordinance in question comes under any of the foregoing exceptions. Hence, under the rule "expressio unius est exclusio alterius", the ordinance should be deemed to come within the purview of the general rule. Indeed, the sponsor of the bill, which upon its passage became Republic Act No. 2264, explicitly informed the House of Representatives, when he urged the same to approve it, that, under its provisions, local governments would be "able to tax everything, excepting those things which are mentioned" therein. Moreover, the bill originally excluded "taxes on mines and mining concessions", from the authority therein vested upon said governments, but this provision was eliminated from the bill, thus indicating clearly the intent to include mines and mining claims among the objects of local taxation (See H. R. Congressional Record, Vol. II, pp. 2750 and 2752, May 4, 1959). In fact, plaintiff and the lower court have not attempted to show that the fees complained of transcend the limits of the general grant of authority contained in the first part of Section 2 of Republic Act No. 2264.

Upon the other hand, it is not claimed that the excavation, mining, hauling and loading of silica sand by plaintiff has not been actually inspected by the Municipal Treasurer and the Chief of Police of Roxas, Palawan, or their representatives, to verify whether plaintiff had a permit for said excavation from the Bureau of Mines and to see to it that the excavation did not encroach upon the claims of other claimants. In other words, services had been rendered by the plaintiff. What is more, public interest clearly demands that excavations from mining claims be undertaken only by those duly authorized therefor by the Bureau of Mines. It is similarly obvious that public peace and order would be jeopardized if holders of permit to excavate extended their activities to claims other than those for which the authority has been granted. Accordingly, the matter falls within the legitimate province of police power.

It is worthy of note, also, that the fee of P0.10 per ton of silica sand imposed in the ordinance under consideration is not assailed as excessive or unreasonable. The circumstance that it applies only to silica sand shipped out from the municipality does not affect either the reasonableness of the ordinance or its validity. Indeed, it is not claimed that there are people or enterprises engaged in excavating silica sand in Roxas, Palawan, for use therein, who are unreasonably favored by the ordinance. Seemingly, defendant limited itself to regulating the excavation of silica sand to be exported merely because such was the only activity that called for the exercise of its regulatory power in connection with silica sand excavated within the municipality.

As regards Sections 2287 and 2629 of the Revised Administrative Code, suffice it to say that the same are inconsistent with both the general grant of authority under Section 2 of Republic Act No. 2264 and the exceptions thereto, and must, accordingly, be considered repealed by the same. We are not unmindful of the transcendental effects that municipal export or import licenses or taxes might have upon the national economy, but the language of Republic Act No. 2264 does not, to our mind, leave us another alternative. If remedial measures are desired or needed, let Congress provide the same. Courts have no authority to grant relief against the evils that may result from the operation of unwise or imperfect legislation, unless its flaw partakes of the nature of a constitutional infirmity, and such is not the case before us.

Wherefore, the decision appealed from is hereby reversed, and another one shall be entered dismissing the case,

with costs against plaintiff, Nin Bay Mining Company. It is so ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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