

DR. ESTEBAN MEDINA, DR. JOSE DE LA ROSA, MR. ENRIQUE SANTAMARIA, AND BENGUET DEVELOPMENT CO., INC., PLAINTIFFS, AND APPELLANTS, VS. CITY OF BAGUIO, DEFENDANT AND APPELLEE.

G.R. No. L-4060. August 29, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiffs brought this action in the Court of First Instance of Baguio seeking to nullify Ordinances Nos. 62, 99 and 100 of the City Council of Baguio on the ground that they were enacted without authority or power, and are oppressive, unjust and unreasonable, and to recover the taxes and fees they had paid as itemized in the complaint.

Esteban Medina is the owner and operator of Pines Theater, a duly licensed movie house in the city of Baguio. Jose Y. de la Rosa is the owner and operator of Plaza Theater, another duly licensed movie house in the city. Enrique Santamaria is the owner and operator under a contract of lease of Session Theater, also a duly licensed movie house in said city, while Benguet Development Co., Inc., is an operator of a gasoline station engaged in selling gasoline, petroleum and imported oil products within the city.

Under Ordinance No. 99, Esteban Medina paid under protest a municipal license for 1949 for two quarters in the amount of P1,200, and Jose Y. de la Rosa paid under protest a municipal license for the same year in the amount of P1,800 for three quarters. Under Ordinance No. 62, Esteban Medina paid an additional tax of P4,896.60 during the months of July, August, September and November, 1949. Enrique Santamaria also paid an additional tax of P1,855.05 during the months of July and August of the same year. The Benguet Development Co., Inc., on the other hand, paid under Ordinance No. 100 the amount of P3,554.44 as specific tax for gasoline and oil sold from September 20, 1948, to November 17, 1949.

After trial, the court rendered decision declaring Ordinances Nos. 99 and 100 valid and legal but rendering Ordinance No. 62 null and void while denying the claim of the plaintiffs for reimbursement of the different amounts paid by them under protest to the City of Baguio, without special pronouncement as to costs. From this decision only the plaintiffs appealed assigning four errors as committed by the lower court.

The first question to be determined refers to the validity of Ordinance No. 99 which fixes the license fees to be paid by persons, entities or corporations who may engage in business within the city of Baguio. This ordinance fixes a license fee of P120 a year for every gasoline station installed in the city, and a fee of P2,400 for theaters which come under class "A", P1,800 for those coming under class "B", and P1,200 for those coming under class "C". Plaintiffs paid the fees required by this Ordinance, but now dispute the power of the city to enact it, contending that it only has the power to impose a license fee but not to levy a tax upon theaters and gasoline stations which are operated within its limits. They contend that, while this ordinance expressly recites that its purpose is to fix or impose a license fee on the business or trade therein specified, in fact its purpose is to levy a tax for purposes of revenue under the guise of a license fee. This, they contend, defendants cannot do.

This contention has no merit. Appellants apparently have in mind section 2553, paragraph (c) of the revised Administrative Code, which empowers the city of Baguio merely to impose a license fee for purpose of regulating the business that may be established in the city. The power as thus conferred is indeed limited, as it does not include the power to levy a tax. But on July 15, 1948, Republic Act No. 329 was enacted amending the charter of said city and adding to its power to license the power to tax and to regulate. And it is precisely having in view this amendment that Ordinance No. 99 was approved in order to increase the revenues of the city. In our opinion, the amendment above adverted to empowers the city council not only to impose a license fee but also to levy a tax for purposes of revenue, more so when in amending section 2553 (b), the phrase "as provided by law" has been removed by section 2 of Republic Act No. 329. The city council of Baguio, therefore, has now the power to tax, to license and to regulate provided that the subjects affected are one of those included in the charter. In this sense, the ordinance under consideration cannot be considered ultra vires whether its purpose be to levy a tax or impose a license fee. The terminology used is of no consequence.

Coming now to Ordinance No. 100, we find that its validity is assailed not only because of lack of power to enact it but also because it imposes a specific tax on some articles which, it is claimed, is not contemplated by law.

We have already stated that under its charter, as amended, the city of Baguio has now the power not only to levy a tax but to impose a license fee as well. But, can it also levy a specific tax on items or articles covered by the business of the taxpayer? After an examination of section 2553 of the revised Administrative Code, as amended by Republic Act No. 329, we are inclined to uphold the negative view.

It is settled that a municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality cannot assume it. And the power when granted is to be construed strictissimi juris. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions—all these—have no place in the interpretation of the taxing power of a municipal corporation (*Joseph Icard vs. City Council of Baguio and the City of Baguio*, 83 Phil., 870).

An examination of section 2553 (c), of the revised Administrative Code, as amended, will reveal that the power given to the city of Baguio to tax, to license and to regulate only refers to the business of the taxpayer and not to the articles used in said business. This is clearly inferred from a reading of said section and from the concluding sentence appearing therein, to wit, "and such other businesses, trade and occupations as may be established or practiced in the city". One reason for this undoubtedly is the fact that under section 142 of the Internal Revenue Code (Commonwealth Act No. 466, as amended by Republic Act No. 39), most of the products-mentioned in the charter, particularly gasoline and oil, are already specifically taxed, and under section 361 of said code, the city of Baguio gets a share of 20 per cent of the amount of specific tax collected. At any rate, the charter of the city of Baguio does not show plainly an intent to confer that power upon the city of Baguio and, following the rule already adverted to, this doubt or ambiguity must be resolved against the city. An indication of the legislative intent on this matter is Commonwealth Act No. 472 which confers general authority upon municipal councils to levy taxes, subject to certain limitations, wherein it was specifically provided that the general authority so conferred shall not include "percentage taxes and taxes on specified articles". In other words, the power to levy a percentage tax or a specific tax has been expressly withheld. It is, therefore, our considered opinion that Ordinance No. 100 is ultra vires and has no force and effect.

With respect to Ordinance No. 62, the lower court declared it null and void and from this part of the decision no appeal has been taken. That finding should be left undisturbed. As to whether appellants can collect the additional amounts they charged the public under the ordinance, the lower court said: "The amount collected from the theater goes as additional price of admission tickets is not the property of plaintiffs or any of them. It is paid by

the public. If anybody has the right to claim it, it is those who paid it. Only owners of property has the fight to claim said property. The cine owners acted as mere agents of the city in collecting the additional price charged in the sale of admission tickets." Consequently, the court denied the claim of appellants for reimbursement. We find no error in this respect.

Wherefore, the decisions appealed from is hereby affirmed, with the only modification as to Ordinance No. 100, which is hereby declared null and void. Defendant is hereby ordered to return to the Benguet Development Co., Inc., the amount of P3,554.44 it has paid as specific tax. No pronouncement as to costs.

Pablo, Bengzon, Padilla, Jugo, and Labrador, JJ., concur.

RESOLUTION

November 28, 1952

BAUTISTA ANGELO, J.:

This concerns the motion for reconsideration filed by the City of Baguio in which it seeks to modify the decision rendered in this case on August 29, 1952.

It is reiterated that Ordinance No. 100 is valid under the provisions of section 2553 (c), as amended by Republic Act. No. 329, of the Revised Administrative Code, and that, granting arguendo that it is invalid, there is no point to order the City of Baguio to return the taxes paid under said ordinance to appellant Benguet Development Co., Inc., for the reason that said taxes were not paid by said company but by the car owners who bought the gasoline and oil subject of the tax.

The first claim is not well taken. We already held that section 2553 (c), as amended by Republic Act No. 329, merely empowers the City of Baguio to impose a tax on business and not on the articles used therein. This is clear in said section and in the other authorities we cited in the main opinion. The case of *Eastern Theatrical Co., Inc., et al. vs. Victor Alfonso, et al.*[1] (46 Off. Gaz., [Supp. 11] p. 303), can not be cited as a precedent in this case because the tax therein imposed by the City of Manila is amusement tax. This is not a specific tax but a tax on business. A municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. The intent to confer such power must be clear and manifest. Any doubt or ambiguity must be resolved against the corporation (*Icard vs. City Council of Baguio and the City of Baguio*,[2] (46 Off. Gaz., [Supp. 11] p. 320).

The second claim is disputed. It involves a question of fact. It does not appear in the record that the appellant corporation has collected the tax from the car owners as agent of the City of Baguio. Counsel for the city of Baguio sustains the affirmative and pleads that the ruling applied in the case of the theater-owners wherein it was declared that the tax should be returned to the persons from whom it was collected, should also guide the determination of this case. But counsel for the appellant corporation maintains the contrary and attempted to show that the tax was collected directly from said corporation and not from the car owners.

The view of the Court on this point is to leave it pending and remand the case to the lower court in order that it may be clarified with the presentation of the necessary evidence considering the precedent already set on this matter.

Wherefore, the Court holds in abeyance that portion of the decision relative to the return of the specific tax paid by the Benguet Development Co., Inc., pending determination of the question of fact pointed out above, and orders the remand of this case to the lower court for the presentation of the necessary evidence. After the

presentation of the evidence, the lower court may render judgment in line with the decision of this Court relative to the theater-owners. The decision of this Court is maintained in all other respects.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, and Labrador, JJ., concur.

[1] 83 Phil., 852.

[2] 83 Phil., 871.

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