

VALLEY TRADING CO., INC., PETITIONER, VS. COURT OF FIRST INSTANCE OF ISABELA, BRANCH II; DR. CARLOS UY (IN HIS CAPACITY AS MAYOR OF CAUAYAN, ISABELA); MOISES BALMACEDA (IN HIS C...

G.R. No. L-49529. March 31, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

Challenged in this petition for certiorari are the orders of the then Court of First Instance of Isabela,[1] dated October 13, 1978 and November 17, 1978, denying petitioner's prayer for a writ of preliminary injunction in Special Civil Action Br. II-61.[2]

The records show that petitioner Valley Trading Co., Inc. filed a complaint in the court a quo seeking a declaration of the supposed nullity of Section 2B.02, Sub-paragraph 1, Letter (A), Paragraph 2 of Ordinance No. T-1, Revenue Code of Cauayan, Isabela, which imposed a graduated tax on retailers, independent wholesalers and distributors; and for the refund of P23,202.12, plus interest of 14% per annum thereon, which petitioner had paid pursuant to said ordinance. Petitioner likewise prayed for the issuance of a writ of preliminary prohibitory injunction to enjoin the collection of said tax.[3] Defendants in said case were Dr. Carlos A. Uy and Moises Balmaceda, who were sued in their capacity as mayor and municipal treasurer of Cauayan, Isabela, respectively, together with the Sangguniang Bayan of the same town.

Petitioner takes the position that said ordinance imposes a "graduated fixed tax based on Sales" that "in effect imposes a sales tax in contravention of Sec. 5, Chapter I, par. (L) of P.D. 231 amended by P.D. 426 otherwise known as the Local Tax Code"[4] which prohibits a municipality from imposing a percentage tax on sales.

Respondents, on the other hand, claim in their answer that the tax is an annual fixed business tax, not a percentage tax on sales, imposable by a municipality under Section 19(A-1) of the Local Tax Code. They cited the ruling of the Acting Secretary of Finance, in his letter of April 14, 1977, upholding the validity of said tax on the ground that the same is an annual graduated fixed tax imposed on the privilege to engage in business, and not a percentage tax on sales which consists of a fixed percentage of the proceeds realized out of every sale transaction of taxable items sold by the taxpayer.[5]

After a reply to the answer had been filed, the trial court set the case for a pre-trial conference.[6] However, on October 13, 1978, the court issued an order terminating the pre-trial and reset the hearing on the merits for failure of the parties to arrive at an amicable settlement. In the same order, the trial court also denied the prayer for a writ of preliminary injunction on the ground that "the collection of taxes cannot be enjoined".[7]

Petitioner moved for the reconsideration of the order, contending that a hearing is mandatory before action may be taken on the motion for the issuance of a writ of preliminary injunction,[8] but the court below denied said motion and reiterated its previous order.[9]

At the center of this controversy is the submission of the petitioner that a hearing on the merits is necessary before a motion for a writ of preliminary injunction may be denied. Petitioner supports its contention by invoking Section 7, Rule 58 of the Rules of Court which provides that "(a)fter hearing on the merits the court may grant or refuse, continue, modify or dissolve the injunction as justice may require". Petitioner maintains that Section 6 of Rule 58 relied upon by respondents refers to the objections that might be interposed to the issuance of the writ or the justification for the dissolution of an injunction previously issued *ex parte*, but that nowhere is it mentioned that a hearing is not necessary.

The weakness of petitioner's position is easily discernible. While it correctly pointed out that Section 6 of Rule 58 provides for the grounds for objection to an injunction, petitioner ignores the circumstances under which these objections may be appreciated by the trial court. Thus, if the ground is the insufficiency of the complaint, the same is apparent from the complaint itself and preliminary injunction may be refused outright, with or without notice to the adverse party. In fact, under said section, the court may also refuse an injunction on other grounds on the basis of affidavits which may have been submitted by the parties in connection with such application. In the foregoing instances, a hearing is not necessary.

The reliance of the petitioner on Section 7 of Rule 58 is misplaced. This section merely specifies the actions that the court may take on the application for the writ if there is a hearing on the merits; it does not declare that such hearing is mandatory or a prerequisite therefor. Otherwise, we may have a situation where courts will be forced to conduct a hearing even if from a consideration of the pleadings alone it can readily be ascertained that the movant is not entitled to the writ. In fine, it will thereby entail a useless exercise and unnecessary waste of judicial time.

It would be different, of course, if there is a *prima facie* showing on the face of the motion and/or pleadings that the grant of preliminary injunction may be proper, in which case notice to the opposing party would be necessary since the grant of such writ on an *ex parte* proceeding is now proscribed.[10] A hearing should be conducted since, under such circumstances, only in cases of extreme urgency will the writ issue prior to a final hearing.[11] Such requirement for prior notice and hearing underscores the necessity that a writ of preliminary injunction is to be dispensed with circumspection and both sides should be heard whenever possible.[12] It does not follow, however, that such a hearing is indispensable where right at the outset the court is reasonably convinced that the writ will not lie. What was then discouraged, and is now specifically prohibited, is the issuance of the writ without notice and hearing.

An opinion has been expressed that injunction is available as an ancillary remedy in actions to determine the construction or validity of a local tax ordinance.[13] Unlike the National Internal Revenue Code, the Local Tax Code does not contain any specific provision prohibiting courts from enjoining the collection of local taxes. Such statutory lapse or intent, however it may be viewed, may have allowed preliminary injunction where local taxes are involved but cannot negate the procedural rules and requirements under Rule 58.

The issuance of a writ of preliminary injunction in the present case, as in any other case, is addressed to the sound discretion of the court, conditioned on the existence of a clear and positive right of the movant which should be protected. It is an extraordinary peremptory remedy available only on the grounds expressly provided by law, specifically Section 3 of Rule 58 of the Rules of Court.

The circumstances required for the writ to issue do not obtain in the case at bar. The damage that may be caused to the petitioner will not, of course, be irreparable; where so indicated by subsequent events favorable to it, whatever it shall have paid is easily refundable. Besides, the damage to its property rights must perforce take a back seat to the paramount need of the State for funds to sustain governmental functions. Compared to the damage to the State which may be caused by reduced financial resources, the damage to petitioner is negligible.

The policy of the law is to discountenance any delay in the collection of taxes because of the oft-repeated but unassailable consideration that taxes are the lifeblood of the Government and their prompt and certain availability is an imperious need.

Equally pertinent is the rule that courts should avoid issuing a writ of preliminary injunction which, in effect, would dispose of the main case without trial.[14] In the present case, it is evident that the only ground relied upon for injunctive relief is the alleged patent nullity of the ordinance.[15] If the court should issue the desired writ, premised on that sole justification therefor of petitioner, it would be a virtual acceptance of his claim that the imposition is patently invalid or, at the very least, that the ordinance is of doubtful validity. There would, in effect, be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioner is inceptively duty bound to prove.

Furthermore, such action will run counter to the well settled rule that laws are presumed to be valid unless and until the courts declare the contrary in clear and unequivocal terms. A court should issue a writ of preliminary injunction only when the petitioner assailing a statute has made out a case of unconstitutionality or invalidity strong enough to overcome, in the mind of the judge, the presumption of validity, aside from a showing of a clear legal right to the remedy sought.[16] The case before Us, however, presents no features sufficient to overcome such presumption. This must have been evident to the trial court from the answer of the respondents and the well reasoned ruling of the Acting Secretary of Finance.

The mere fact that a statute is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined.[17] Under the foregoing disquisitions, We see no plausible reason to consider this case as an exception.

WHEREFORE, judgement is hereby rendered DISMISSING this petition and SUSTAINING the validity of the questioned orders of the trial court.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Branch II, presided over by Judge Andres B. Plan.

[2] Rollo, 27, 31.

[3] Ibid., 2, 11.

[4] Ibid., 8.

[5] Ibid., 55, Annex B.

[6] Ibid., 21.

[7] Ibid., 27, Annex C.

[8] Ibid., 28, Annex D.

[9] Ibid., 31, Annex E.

[10] Sec. 5, Rule 58, as amended by B. P. 224; Par. 8, Interim or Transitional Rules or Guidelines.

[11] Alvaro vs. Zapanta, 118 SCRA 722 (1982).

[12] Ramos vs. Court of Appeals, et al., 95 SCRA 359 (1980).

[13] See Vitug, Compendium on Tax Law and Jurisprudence, 1988 Ed., 350.

[14] Ortigas & Co. vs. Court of Appeals, et al., G.R. No. 79128, June 16, 1988. See also Obias, et al. vs. Borja, et al., 136 SCRA 687 (1985).

[15] Rollo, 4, 71, 106.

[16] Tablarin vs. Gutierrez, 152 SCRA 737, 737 (1997).

[17] Co Chiong vs. Dinglasan, 79 Phil. 122 (1947); J.M. Tuazon & Co., Inc., et al. vs. Court of Appeals, et al., 113 Phil. 673, 681 (1961); Sto. Domingo vs. De los Angeles, 96 SCRA 139, 147 (1980).

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