

CITY OF BAGUIO, PLAINTIFF-APPELLEE, VS. FORTUNATO DE LEON, DEFENDANT-APPELLANT.*G.R. No. L-24756. October 31, 1968*

Ponente: FERNANDO, J.

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In this appeal, a lower court decision upholding the validity of an ordinance^[1] of the City of Baguio imposing a license fee on any person, firm, entity or corporation doing business in the City of Baguio is assailed by defendant-appellant Fortunato de Leon. He was held liable as a real estate dealer with a property therein worth more than P10,000, but not in excess of P50,000, and therefore obligated to pay under such ordinance the P50 annual fee. That is the principal question. In addition, there has been a firm and unyielding insistence by defendant-appellant of the lack of jurisdiction of the City Court of Baguio, where the suit originated, a complaint having been filed against him by the City Attorney of Baguio for his failure to pay the amount of P300 as license fee covering the period from the first quarter of 1958 to the fourth quarter of 1962, allegedly, inspite of repeated demands.

Nor was defendant-appellant agreeable to such a suit being instituted by the City Treasurer without the consent of the Mayor, which for him was indispensable. The lower court was of a different mind.

In its decision of December 19, 1964, it declared the above ordinance as amended, valid and subsisting, and held defendant-appellant liable for the fees therein prescribed as a real estate dealer. Hence, this appeal. Assume the validity of such ordinance, and there would be no question about the liability of defendant-appellant for the above license fee, it being shown in the partial stipulation of facts, that he was "engaged in the rental of his property in Baguio" deriving income there from during the period covered by the first quarter of 1958 to the fourth quarter of 1962.

The source of authority for the challenged ordinance is supplied by Republic Act No. 329, amending the city charter of Baguio^[2] empowering it to fix the license fee and regulate "businesses, trades and occupations as may be established or practiced in the City."

Unless it can be shown then that such a grant of authority is not broad enough to justify the enactment of the ordinance now assailed, the decision appealed from must be affirmed. The task confronting defendant-appellant, therefore, was far from easy. Why he failed is understandable, considering that even a cursory reading of the above amendment readily discloses that the enactment of the ordinance in question finds support in the power thus conferred.

Nor is the question raised by him as to the validity thereof novel in character. In *Medina v. City of Baguio*,^[3] the effect of the amendatory section insofar as it would expand the previous power vested by the city charter was clarified in these terms: "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 be 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."

It would be an undue and unwarranted emasculation of the above power thus granted if defendant-appellant were to be sustained in his contention that no such statutory authority for the enactment of the challenged ordinance could be discerned from the language used in the amendatory act. That is about all that needs to be said in upholding the lower court, considering that the City of Baguio was not devoid of authority in enacting this particular ordinance. As mentioned at the outset, however, defendant-appellant likewise alleged procedural missteps and asserted that the challenged ordinance suffered from certain constitutional infirmities. To such points raised by him, we shall now turn.

1. Defendant-appellant makes much of the alleged lack of jurisdiction of the City Court of Baguio in the suit for the collection of the real estate dealer's fee from him in the amount of P300. He contended before the lower court, and it is his contention now, that while the amount of P300 sought was within the jurisdiction of the City Court of Baguio where this action originated, since the principal issue was the legality and constitutionality of the challenged ordinance, it is not such City Court but the Court of First Instance that has original jurisdiction.

There is here a misapprehension of the Judiciary Act. The City Court has jurisdiction. Only recently, on September 7, 1968 to be exact, we rejected a contention similar in character in *Nemenzo v. Sabillano*.^[4] The plaintiff in that case filed a claim for the payment of his salary before the Justice of the Peace Court of Pagadian, Zamboanga del Sur. The question of jurisdiction was raised; the defendant Mayor asserted that what was in issue was the enforcement of the decision of the Commission of Civil Service; the Justice of the Peace Court was thus without jurisdiction to try the case. The above plea was curtly dismissed by us, as what was involved was "an ordinary money claim" and therefore "within the original jurisdiction of the Justice of the Peace Court where it was filed, considering the amount involved." Such is likewise the situation here.

Moreover, in *City of Manila v. Bugsuk Lumber Co.*,^[5] a suit to collect from a defendant this license fee corresponding to the years 1951 and 1952 was filed with the Municipal Court of Manila, in view of the amount involved. The thought that the municipal court lacked jurisdiction apparently was not even in the minds of the parties and did not receive any consideration by this Court.

Evidently, the fear is entertained by defendant-appellant that whenever a constitutional question is raised, it is the Court of First Instance that should have original jurisdiction on the matter. It does not admit of doubt, however, that what confers jurisdiction is the amount set forth in the complaint. Here, the sum sought to be recovered was clearly within the jurisdiction of the City Court of Baguio.

Nor could it be plausibly maintained that the validity of such ordinance being open to question as a defense against its enforcement from one adversely affected, the matter should be elevated to the Court of First Instance. For the City Court could rely on the presumption of the validity of such ordinance,^[6] and the mere fact, however, that in the answer to such a complaint a constitutional question was raised did not suffice to oust the City Court of its jurisdiction. The suit remains one for collection, the lack of validity being only a defense to such an attempt

at recovery. Since the City Court is possessed of judicial power and it is likewise axiomatic that the judicial power embraces the ascertainment of facts and the application of the law, the Constitution as the highest law superseding any statute or ordinance in conflict therewith, it cannot be said that a City Court is bereft of competence to proceed on the matter. In the exercise of such delicate power, however, the admonition of Cooley on inferior tribunals is well worth remembering. Thus: "It must be evident to any one that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of the human judgment, will shrink from exercising in any case where he can conscientiously and with due regard to duty and official oath decline the responsibility." [7] While it remains undoubted that such a power to pass on the validity of an ordinance alleged to infringe certain constitutional rights of a litigant exists, still it should be exercised with due care and circumspection, considering not only the presumption of validity but also the relatively modest rank of a city court in the judicial hierarchy.

2. To repeat the challenged ordinance cannot be considered ultra vires as there is more than ample statutory authority for the enactment thereof. Nonetheless, its validity on constitutional grounds is challenged because of the allegation that it imposed double taxation, which is repugnant to the due process clause, and that it violated the requirement of uniformity. We do not view the matter thus.

As to why double taxation is not violative of due process, Justice Holmes made clear in this language: "The objection to the taxation as double may be laid down on one side. * * * The 14th Amendment [the due process clause] no more forbids double taxation than it does doubling the amount of a tax, short of confiscation or proceedings unconstitutional on other grounds." [8] With that decision rendered at a time when American sovereignty in the Philippines was recognized, it possesses more than just a persuasive effect. To some, it delivered the coup de grace to the bogey of double taxation as a constitutional bar to the exercise of the taxing power. It would seem though that in the United States, as with us, its ghost, as noted by an eminent critic, still stalks the juridical stage. In a 1947 decision, however, [9] we quoted with approval this excerpt from a leading American decision: [10] "Where, as here, Congress has clearly expressed its intention, the statute must be sustained even though double taxation results."

At any rate, it has been expressly affirmed by us that such an "argument against double taxation may not be invoked where one tax is imposed by the state and the other is imposed by the city * * *, it being widely recognized that there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof." [11]

The above would clearly indicate how lacking in merit is this argument based on double taxation.

Now, as to the claim that there was a violation of the rule of uniformity established by the constitution. According to the challenged ordinance, a real estate dealer who leases property worth P50,000 or above must pay an annual fee of P100. If the property is worth P10,000 but not over P50,000, then he pays P50 and P24 if the value is less than P10,000. On its face, therefore, the above ordinance cannot be assailed as violative of the constitutional requirement of uniformity. In *Philippine Trust Company v. Yatco*, [12] Justice Laurel, speaking for the Court, stated: "A tax is considered uniform when it operates with their same force and effect in every place where the subject may be found."

There was no occasion in that case to consider the possible effect on such a constitutional requirement where there is a classification. The opportunity came in *Eastern Theatrical Co. v. Alfonso*. [13] Thus: "Equality and uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. The taxing power has the authority to make reasonable and natural classifications for purposes of taxation; * * *." About two years later, Justice Tuason, speaking for this Court in *Manila Race Horses Trainers Assn. v. de la*

Fuente[14] incorporated the above excerpt in his opinion and continued: "Taking everything into account, the differentiation against which the plaintiffs complain conforms to the practical dictates of justice and equity and is not discriminatory within the meaning of the Constitution."

To satisfy this requirement then, all that is needed as held in another case decided two years later,[15] is that the statute or ordinance in question "applies equally to all persons, firms and corporations placed in similar situation." This Court is on record as accepting the view in a leading American case[16] that "inequalities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation." [17]

It is thus apparent from the above that in much the same way that the plea of double taxation is unavailing, the allegation that there was a violation of the principle of uniformity is in-herently lacking in persuasiveness. There is no need to pass upon the other allegations to assail the validity of the above ordinance, it being maintained that the license fees therein imposed "is excessive, unreasonable and oppressive" and that there is a failure to observe the mandate of equal protection. A reading of the ordinance will readily disclose their inherent lack of plausibility.

3. That would dispose of all the errors assigned, except the last two, which would predicate a grievance on the complaint having been started by the City Treasurer rather than the City Mayor of Baguio. These alleged errors, as was the case with the others assigned, lack merit.

In much the same way that an act of a department head of the national government, performed within the limits of his authority, is presumptively the act of the President unless reprobated or disapproved,[18] similarly the act of the City Treasurer, whose position is roughly analogous, may be assumed to carry the seal of approval of the City Mayor unless repudiated or set aside. This should be the case considering that such city official is called upon to see to it that revenues due the City are collected. When administrative steps are futile and unavailing, given the stubbornness and obduracy of a taxpayer, convinced in good faith that no tax was due, judicial remedy may be resorted to by him. It would be a reflection on the state of the law if such fidelity to duty would be met by condemnation rather than commendation.

So much for the analytical approach. The conclusion thus reached has a reinforcement that comes to it from the functional and pragmatic test. If a city treasurer has to await the nod from the city mayor before a municipal ordinance is enforced, then opportunity exists for favoritism and undue discrimination to come into play. Whatever valid reason may exist as to why one taxpayer is to be accorded a treatment denied another, the suspicion is unavoidable that such a manifestation of official favor could have been induced by unnamed but not unknown consideration. It would not be going too far to assert that even defendant-appellant would find no satisfaction in such a sad state of affairs. The more desirable legal doctrine therefore, on the assumption that a choice exists, is one that would do away with such temptation on the part of both taxpayer and public official alike.

WHEREFORE, the lower court decision of December 19, 1964, is hereby affirmed. Costs against defendant-appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, and Capistrano, JJ., concur.
Zaldivar, J., on leave.

[1] Ordinance No. 218.

[2] Section 2553, paragraph (c), Revised Administrative Code.

[3] 91 Phil. 854, 856-857 (1952).

[4] L-20977.

- [5] 101 Phil. 859 (1957).
- [6] U.S. v. Salaveria, 39 Phil. 102 (1918) and Ermita-Malate Hotel Association v. Mayor of Manila, L-24693, July 31, 1967.
- [7] Cooley on Constitutional Limitations, Vol. I, 8th ed. 332 (1927).
- [8] Fort Smith Lumber Co. v. Arkansas, 251 US 523, 533 (1920).
- [9] Wise & Co. v. Meer, 78 Phil. 655.
- [10] Helmich v. Hellman, 276 US 233 (1928).
- [11] Punsalan v. Municipal Board of Manila, 95 Phil. 46, 49 (1954).
- [12] 69 Phil. 420 (1940).
- [13] 83 Phil. 852, 862 (1949).
- [14] 88 Phil. 60, 65 (1951).
- [15] Uy Matias v. City of Cebu, 93 Phil. 300 (1953).
- [16] Carmichael v. Southern Coal and Coke Co., 301 US 495 (1937).
- [17] Lutz v. Araneta, 98 Phil. 148, 153 (1955).
- [18] Villena v. Sec. of the Interior, 67 Phil. 451 (1939).

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