

**DR. HERMENEGILDO SERAFICA, PLAINTIFF-APPELLANT, VS. THE
TREASURER OF ORMOC CITY, THE MUNICIPAL BOARD OF ORMOC
CITY, HON. ESTEBAN C. CONEJOS, AS MAYOR OF ORMOC CITY AND
ORMOC CIT...**

G.R. No. L-24813. April 28, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal from a decision of the Court of First Instance of Leyte dismissing plaintiff's complaint, without pronouncement as to costs.

Plaintiff, Dr. Hermenegildo Serafica, seeks a declaration of nullity of Ordinance No. 13, Series of 1964, of Ormoc City, im-posing a "tax of five pesos (P5.00) for every one thousand (1,000) board feet of lumber sold at Ormoc City by any person, partner-ship, firm, association, corporation, or entities", pursuant to which the Treasurer of said City levied on and collected from said plaintiff, as owner of the Serafica Sawmill, the aggregate sum of P1,837.84, as tax on 367,568 board feet of lumber sold, in said City, during the third quarter of 1964. After appropriate proceed-ings, the lower court rendered judgment upholding the validity of said ordinance and denying the relief prayed for by Dr. Serafica. Hence, this appeal by the latter.

The contested ordinance reads:

"ORDINANCE NO. 13

"AN ORDINANCE IMPOSING A TAX OF FIVE PESOS (P5.00) FOR EVERY ONE THOUSAND BOARD FEET OF LUMBER SOLD AT ORMOC CITY AND FOR OTHER PURPOSES

"BE IT ORDAINED, by authority of the Muni-cipal Board of Ormoc City, Philippines, pursuant to the provisions of Republic Act 179, as amended by RA. 429, otherwise known as the Charter of Ormoc City, That:

"Section 1. City tax. - There shall be paid to the City Treasurer a city tax of five pesos (P5.00) for every one thousand (1,000) board feet of lumber sold at Ormoc City by any person, partnership, firm, association, corporation or entity.

"Section 2. Time and manner of payment and penalty for delinquency. - The city tax herein pres-cribed shall be payable without penalty within twenty (20) days after the close of every quarter for 'which the tax is due. Failure to pay the tax within the Pres-cribed time shall render the taxpayer subject to a surcharge of fifty percentum (50%) for the first offense and one hundred percentum (100%) for subsequent failures to pay within the prescribed period.

"Section 3. Payment to be rendered by tax payer. - The taxpayer is hereby obliged to include the tax due in every invoice issued for the sale of lumber which tax shall be submitted for payment to the City Treasurer within twenty (20) days after the close of every quarter.

"Section 4. Inspection of taxpayer's books and records. - For the purpose of enforcing the provisions of this Ordinance, the City Treasurer or any of his deputies specifically authorized in writing for the purpose, shall have authority to examine the books and records of any person, partnership, firm, association, corporation or entity subject to the tax herein imposed, PROVIDED, HOWEVER, That such examination shall be made only during regular business hours, unless the person, partnership, firm, association, corporation or entity concerned shall consent otherwise.

"Sec. 5. Penalty for violation. - Any violation of the provisions of this Ordinance shall be punishable by a fine of not more than five hundred (P500.00) pesos and an imprisonment of not more than three (3) months.

"Sec. 6. Construction of this Ordinance. - If any part or section of this Ordinance shall be declared unconstitutional or ultra vires, such part or section shall not invalidate any other provision hereof.

"Sec. 7. Effectivity. - This Ordinance shall take effect immediately upon its approval. ENACTED, June 17, 1964.

"RESOLVED, FURTHER, to authorize the City Treasurer to copies of this Ordinance for issuance to all concerned;

"RESOLVED, FINALLY, to furnish a copy of this resolution-ordinance each to the City Treasurer, the City Auditor, the City Fiscal, the City Judge, and all concerned;

"CARRIED. Six affirmative votes registered by Councilors Tugonon, Alfaro, Kierulf, Abas, Besabella, and Du; one abstention registered by Councilor Aviles."

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Plaintiff assails this ordinance as null and void upon the grounds that: (1) the Charter of Ormoc City (Republic Acts Nos. 179 and 429) authorizes the same to "regulate", but not to "tax" lumber yards; (2) the ordinance in question imposes, in effect, double taxation, because the business of lumber yard is already regulated under said Charter and the sale of lumber is "a mere incident to the business of lumber yard"; (3) the tax imposed is "unfair, unjust, arbitrary, unreasonable, oppressive and contrary to the principles of taxation"; and (4) "the public was not heard and given a chance to air its views" thereon.

With respect to the first ground, We have held in *Ormoc Sugar Co. v. Municipal Board of Ormoc City*,^[1] that the taxing power of the City of Ormoc, under section 2 of the Local Autonomy Act ^[2] is "broad" and "sufficiently plenary to cover everything, excepting those mentioned therein".¹ It should be noted that in said case of *Ormoc Sugar Co.*, We upheld the validity of a sales tax.

As regards the second ground, suffice it to say that regulation and taxation are two different things, the first being an exercise of police power, whereas the latter is not, apart from the fact that double taxation is not prohibited in the Philippines.²

The third objection is premised upon the fact that the tax in question is imposed regardless of the class of lumber sold, although there are several categories thereof, commanding different prices. Plaintiff has not proven, however, or even alleged the prices corresponding to each category, so that, like the lower court, We have no means to ascertain the accuracy of the conclusions drawn by him, and must, accordingly, rely upon the presumption that the City Council had merely complied with its duty and that the ordinance is valid, unless and until the contrary has been duly established.³

The last objection is based upon Provincial Circular No. 24 of the Department of Finance, dated March 31, 1960, suggesting that, "in the enactment of tax ordinances x x under the Local Autonomy Act, x x x where practicable, public hearings be held wherein the views of the public x x x may be heard." This is, however, a mere suggestion,

compliance with which is not obligatory, so that failure to act in accordance therewith can not and does not affect the validity of the tax ordinance.

Indeed, since local governments are subject, not to the control, but merely to the general supervision of the President, it is, to say the least, doubtful that the latter could have made compliance with said circular obligatory.⁴

We have not overlooked the fact that, pursuant to Sec. 2 of Republic Act No. 2264 as amended, "no city, municipality or municipal district may levy or impose x x x

x x x x x x x x

(e) Taxes on forest products or forest concessions."

Although lumber is a forest product, this limitation has no application to the case at bar, the tax in question being imposed, not upon lumber, but upon its sale. Said tax is not levied upon the lumber in plaintiff's sawmill and does not become due until after the lumber has been sold. Hence, the case at bar is distinguishable from *Golden Ribbon, Lumber Co., Inc. v. City of Butuan*¹ in that the ordinance involved therein, provided that "every person, association or corporation operating a lumber mill and/or lumber yard within the territory of the City of Butuan shall pay to the City a tax of two-fifths (P.004) centavo for every board foot of lumber sawn, manufactured and/or produced." In short, the tax in that case was imposed upon the "lumber" - a forest product, not subject to local taxation - whether sold or not. Similarly, *Santos Lumber Co. v. City of Cebu*² and *Jos. S. Johnston & Sons v. Ramon Regondola*³ cited by the plaintiff, refer to situations arising before the enactment of Republic Act No. 2264⁴, and hence, are inapplicable to the present case.

Neither have We overlooked the proviso in Sec. 2 of said Act prohibiting the imposition of "any percentage tax on sales or other taxes in any form based thereon," for this injunction is directed exclusively to "municipalities and municipal districts, " and does not apply to cities.

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against plaintiff herein.

IT IS SO ORDERED.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Barredo, JJ., concur.

Castro and Capistrano, JJ., did not take part.

Teehankee, J., in the result.

[1] L-24322, July 21, 1967.

[2] Republic Act No. 2264, as amended by Republic Act No. 4497.

¹ *City of Bacolod v. Cruet*, L-18290, Jan. 31, 1963; *Hodges v. Municipal Board*, L-18129, Jan. 31, 1963; *Hodges v. Municipal Board*, L-18276, Jan. 12, 1967.

² *Pepsi-Cola Bottling Co. v. City of Butuan*, L-22814, Aug. 28, 1968; *Manufacturers Life Ins. Co. v. Meer*, 89 Phil. 351, 357; *City of Baguio v. De Leon*, L-24756, Oct. 31, 1968; *Comm. of Int. Revenue v. Hawaiian-Phil. Co.*, L-16315, May 30, 1964; *City of Bacolod v. Gruet*, supra; *Syjuco v. Municipality of Parañaque*, L-11265, Nov. 27, 1959; *City of Manila v. Interisland Gas Service*, 99 Phil. 847, 854.

³ *Central Barrio, City of Davao v. City Treasurer*, L-25811, April 3, 1968; *Morfe v. Mutuc*, L-20387, Jan. 31, 1968.

⁴ *Pelaez v. Auditor General*, L-23825, Dec. 24, 1965; *Hebron v. Reyes*, 104 Phil. 175; *Querubin v. Castro*,

L-9779, July 31, 1958.

1 L-18534, Dec. 24, 1964.

2 102 Phil. 871.

3 L-9355, Nov. 26, 1957.

4 June 19, 1959.

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