

BENGUET CORPORATION, PETITIONER, VS. CENTRAL BOARD OF ASSESSMENT APPEALS, LOCAL BOARD OF ASSESSMENT APPEALS OF THE PROVINCE OF BENGUET, AND MUNICIPAL ASSESSOR OF ITOGON, BENGUET...*G.R. No. 100959. June 29, 1992*

Ponente: BELLOSILLO, J.

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BENGUET CORPORATION, in this original petition for certiorari, seeks to annul and set aside the Decision of the Central Board of Assessment Appeals of May 28, 1991, as well as the Resolution of July 1, 1991, denying its motion for reconsideration, which affirmed the decision of respondent Local Board of Assessment Appeals of the Province of Benguet declaring as valid the tax assessments made by the Municipal Assessor of Itogon, Benguet, on the bunkhouses of petitioner occupied as dwelling by its rank and file employees based on Tax Declarations Nos. 8471 and 10454.

The Provincial Assessor of Benguet, through the Municipal Assessor of Itogon, assessed real property tax on the bunkhouses of petitioner Benguet Corporation occupied for residential purposes by its rank and file employees under Tax Declarations Nos. 8471 (effective 1985) and 10454 (effective 1986). According to the Provincial Assessor, the tax exemption of bunkhouses under Sec. 3 (a), P.D. 745 (Liberalizing the Financing and Credit Terms for Low Cost Housing Projects of Domestic Corporations and Partnerships), was withdrawn by P.D. 1955 (Withdrawing, Subject to Certain Conditions, the Duty and Tax Privileges Granted to Private Business Enterprises and/or Persons Engaged in Any Economic Activity, and Other Purposes). Petitioner appealed the assessment on Tax Declarations Nos. 8471 and 10454 to the Local Board of Assessment Appeals (LBAA) of the Province of Benguet, docketed as LBAA Cases Nos. 42 and 43, respectively. Both were heard jointly.

Meanwhile, the parties agreed to suspend hearings in LBAA Cases Nos. 42 and 43 to await the outcome of another case, LBAA Case No. 41, covering Tax Declaration No. 9534 (effective 1984), which involved the same parties and issue until the appeal was decided by the Central Board of Assessment Appeals (CBAA). On July 15, 1986, CBAA handed down its decision in LBAA Case No. 41 holding that the buildings of petitioner used as dwellings by its rank and file employees were exempt from real property tax pursuant to P.D. 745.

Thereafter, the proceedings in LBAA Cases Nos. 42 and 43 proceeded after which a decision was rendered affirming the taxability of subject property of petitioner. On appeal, CBAA sustained the decision holding that the realty tax exemption under P.D. 745 was withdrawn by P.D. 1955 and E.O. 93, so that petitioner should have applied for restoration of the exemption with the Fiscal Incentives Review Board (FIRB). The decision of CBAA clarified that Case No. 41 was different because it was effective prior to 1985, hence, was not covered by P.D. 1955 nor by E.O. 93.

Petitioner moved for reconsideration but was denied with CBAA holding that petitioner's "classification" of P.D. 745 is unavailing because P.D. 1955 and E.O. 93 do not discriminate against the so-called "social statutes".

Hence, this petition.

Encapsulized, the issues raised in the petition are: (1) whether respondent Assessors may validly assess real property tax on the properties of petitioner considering the proscription in The Local Tax Code (P.D. 231) and the Mineral Resources Development Decree of 1974 (P.D. 463) against imposition of taxes on mines by local governments; and, (2) whether the real tax exemption granted under P.D. 745 (promulgated July 15, 1975) was withdrawn by P.D. 1955 (took effect October 15, 1984) and E.O. 93.

Presidential Decree No. 745, particularly Sec. 3 thereof, provides:

"Section 3. Pursuant to the above incentive, such domestic corporations and partnerships shall enjoy tax exemption on: (a) real estate taxes on the improvements which will be used exclusively for housing their employees and workers x x x x"

Presidential Decree No. 1955, Sec. 1, provides:

"Section 1. The provisions of any special or general law to the contrary notwithstanding, all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts and other charges heretofore granted to private business enterprises and/or persons engaged in any economic activity are hereby withdrawn, except those enjoyed by the following: x x x x (e) Those that will be approved by the President of the Philippines upon the recommendation of the Minister of Finance,"

should be read in connection with Ministry Order No. 39-84, Sec. 1 (d), of the then Ministry of Finance, which took effect October 15, 1984, states:

"Section 1. The withdrawal of exemptions from, or any preferential treatment in, the payment of duties, taxes, fees, imposts and other charges as provided for under Presidential Decree No. 1955, does not apply to exemptions or preferential treatment embodied in the following laws: x x x x (d) The Real Property Tax Code x x x x"

Executive Order No. 93, promulgated December 17, 1986, is also to the same effect. Both P.D. 1955 and E.O. 93 operate as wholesale withdrawal of tax incentives granted to private entities so that the government may re-examine existing tax exemptions and restore through the "review mechanism" of the Fiscal Incentives Review Board only those that are consistent with declared economic policy. Thuswise, the chief revenue source of the government will not be greatly, if not unnecessarily, eroded since tax exemptions that were granted on piecemeal basis, and which have lost relevance to existing programs, are eliminated.

On the first issue, petitioner contends that local government units are without any authority to levy realty taxes on mines pursuant to Sec. 52 of P.D. 463, which states:

"Sec. 52. Power to Levy Taxes on Mines, Mining Operations and Mineral Products. - Any law to the contrary notwithstanding, no province, city, municipality, barrio or municipal district shall levy and collect taxes, fees, rentals, royalties or charges of any kind whatsoever on mines, mining claims, mineral products, or any operation, process or activity connected therewith,"

and Sec. 5 (m) of The Local Tax Code, as amended by P.D. 426 (reiterated in Secs. 17 [d] and 22 [c], same Code), which provides:

"Sec. 5. Common limitations on the taxing powers of local governments. - The exercise of the taxing powers of provinces, cities, municipalities and barrios shall not extend to the imposition of the following: x x x x (m) Taxes on mines; mining operations; and minerals, mineral products, and their by-products when sold domestically by the operator x x x x"

The Solicitor General observes that the petitioner is estopped from raising the question of lack of authority to issue the challenged assessments inasmuch as it was never raised before, hence, not passed upon by, the municipal and provincial assessors, LBAA and CBAA. This observation is well taken. The rule that the issue of jurisdiction over subject matter may be raised anytime, even during appeal, has been qualified where its application results in mockery of the tenets of fair play, as in this case when the issue could have been disposed of earlier and more authoritatively by any of the respondents who are supposed to be experts in the field of realty tax assessment. As We held in *Suarez v. Court of Appeals*[1]:

"x x x It is settled that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. The only exception is where the party raising the issue is barred by estoppel (*Tijam v. Sibonghanoy*, 23 SCRA 29, reiterated in *Solid Homes, Inc. v. Payawal* and *Court of Appeals*, G.R. No. 84811, August 29, 1989; underscoring supplied).

"While petitioner could have prevented the trial court from exercising jurisdiction over the case by seasonably taking exception thereto, they instead invoked the very same jurisdiction by filing an answer and seeking affirmative relief from it. What is more, they participated in the trial of the case by cross-examining respondent. Upon the premises, petitioner cannot now be allowed belatedly to adopt an inconsistent posture by attacking the jurisdiction of the court to which they had submitted themselves voluntarily (*Tijam v. Sibonghanoy*, supra)."

In *Aguinaldo Industries Corporation v. Commissioner of Internal Revenue and the Court of Tax Appeals*,[2] We held:

"To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court - which is supposed to review administrative determinations - would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal."

Besides, the special civil action of certiorari is available to pass upon the determinations of administrative bodies where patent denial of due process is alleged as a consequence of grave abuse of discretion or lack of jurisdiction, or question of law is raised and no appeal is available. In this case, petitioner may not complain of denial of due process since it had enough opportunity, but opted not, to raise the issue of jurisdiction in any of the administrative bodies to which the case may have been brought.

Petitioner argues that realty taxes are local taxes because they are levied by local government units, citing Sec. 39 of P.D. 464, which provides:

"Sec. 39. Rates of Levy. - The provincial, city or municipal board or council shall fix a uniform rate of real property tax applicable to their respective localities x x x x"

While local government units are charged with fixing the rate of real property taxes, it does not necessarily follow from that authority the determination of whether or not to impose the tax. In fact, local governments have no alternative but to collect taxes as mandated in Sec. 38 of the Real Property Tax Code, which states:

"Sec. 38. Incidence of Real Property Tax. - There shall be levied, assessed and collected in all provinces, cities and municipalities an annual ad valorem tax on real property, such as land, buildings, machinery and other improvements affixed or attached to real property not hereinafter specifically exempted."

It is thus clear from the foregoing that it is the national government, expressing itself through the legislative

branch, that levies the real property tax. Consequently, when local governments are required to fix the rates, they are merely constituted as agents of the national government in the enforcement of the Real Property Tax Code. The delegation of taxing power is not even involved here because the national government has already imposed realty tax in Sec. 38 above-quoted, leaving only the enforcement to be done by local governments.

The challenge of petitioner against the applicability of *Meralco Securities Industrial Corporation v. Central Board of Assessment Appeals, et al.*,^[3] is unavailing, absent any cogent reason to overturn the same. Thus -

"Meralco Securities argues that the realty tax is a local tax or levy and not a tax of general application. This argument is untenable because the realty tax has always been imposed by the lawmaking body and later by the President of the Philippines in the exercise of his lawmaking powers, as shown in Sections 342 et seq. of the Revised Administrative Code, Act No. 3995, Commonwealth Act No. 470 and Presidential Decree No. 464.

"The realty tax is enforced throughout the Philippines and not merely in a particular municipality or city but the proceeds of the tax accrue to the province, city, municipality and barrio where the realty taxed is situated (Sec. 86, P.D. No. 464). In contrast, a local tax is imposed by the municipal or city council by virtue of the Local Tax Code, Presidential Decree No. 231, which took effect on July 1, 1973 (69 O.G. 6197)."

Consequently, the provisions of Sec. 52 of the Mineral Resources Development Decree of 1974 (P.D. 463), and Secs. 5 (m), 17 (d) and 22 (c) of The Local Tax Code (P.D. 231) cited by petitioner are mere limitations on the taxing power of local government units; they are not pertinent to the issue before Us and, therefore, cannot and should not affect the imposition of real property tax by the national government.

As regards the second issue, petitioner, which claims that E.O. 93 does not repeal social statutes like P.D. 745, in the same breath takes refuge in Sec. 1 (e) of the same E.O. 93, to wit:

"Section 1. The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn except: x x x (e) those conferred under the four basic codes, namely: x x x (iv) the Real Property Tax Code, as amended x x x"

in relation to Sec. 40 of the Real Property Tax Code, which provides:

"Sec. 40. Exemptions from Real Property Tax. - The exemption shall be as follows: x x x (g) Real property exempt under other laws,"

and concluding that P.D. 745 is one of the "other laws" referred to.

We do not agree. If We are to sanction this interpretation, then necessarily all real properties exempt by any law would be covered, and there would be no need for the legislature to specify "Real Property Tax Code, as amended", instead of stating clearly "realty tax exemption laws". Indubitably, the intention is to limit the application of the "exception clause" only to those conferred by the Real Property Tax Code. This is not only a logical construction of the provisions but more so in keeping with the principle of statutory construction that tax exemptions are construed strictly against taxpayers, hence, they cannot be created by mere implication but must be clearly provided by law. Non-exemption, in case of doubt, is favored.

Quite obviously, the exception in Sec. 1 (e), (iv), of E.O. 93, refers to "those conferred under x x x Real Property Tax Code, as amended", and that the exemption claimed by petitioner is granted not by the Real Property Tax Code but by P.D. 745. When Sec. 40 (g) of the Property Tax Code provides that "[T]he exemption shall be as follows: x x x Real Property exempt under other laws", the Code merely recognizes realty tax exemptions provided by other laws, otherwise, it may unwittingly repeal those "other laws".

The argument of petitioner that P.D. 745 is a social statute to give flesh to the Constitutional provisions on

housing, hence, not covered by P.D. 1955, was squarely met by respondent CBAA in its Resolution of July 1, 1991, to which We fully agree -

"The phrase 'any special or general law' explicitly indicates that P.D. No. 1955 did not distinguish between a social statute and an economic or tax legislation. Hence, where the law does not distinguish, we cannot distinguish. In view thereof, we have no recourse but to apply the express provision of P.D. No. 1955 and rule in favor of the withdrawal of the real property tax exemption provided under P.D. No. 745. We also find without merit the contention of Petitioner-Appellant that B.P. No. 391 (Investment Incentives Policy Act of 1983) is the source and reason for the existence of P.D. No. 1955; therefore, the scope of P.D. No. 1955 is limited to investment incentives. Although Section 20 of said B.P. which authorizes the President to restructure investment incentives systems/legislations to align them with the overall economic development objectives is one of the declared policies of P.D. No. 1955, its primary aim is the formulation of national recovery program to meet and overcome the grave emergency arising from the current economic crisis. Hence, it cannot be maintained that its provisions apply only to investment incentives.

Besides, even granting that its scope is limited, it is noted that P.D. No. 745 also speaks of investment incentives in Sections 2 and 3 thereof x x x x"

In fine, despite the spirited effort put up by petitioner, We find no compelling reason to disturb the findings and conclusion of public respondents. Petitioner, which even changed theories midstream, utterly failed to show that respondents, in issuing the challenged Decision and Resolution, committed grave abuse of discretion amounting to lack of or excess of jurisdiction.

WHEREFORE, for lack of merit, the instant petition is dismissed, with costs against petitioner.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] G.R. No 80199, June 6, 1990; 186 SCRA 339.

[2] L-29790, February 25, 1982; 112 SCRA 136.

[3] 199 Phil. 453; G.R. No. L-46245, May 31, 1982.

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