

PHILIPPINE PORTS AUTHORITY, PETITIONER, VS. CITY OF ILOILO, RESPONDENT.

G.R. No. 109791. July 14, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

Before us is a petition for review on certiorari assailing the Decision of the Regional Trial Court of Iloilo City, Branch 39, dated February 26, 1993 in Civil Case No. 18477, a case for collection of a sum of money. Seeking to raise questions purely of law, petitioner Philippine Ports Authority (PPA) would want us to set aside the ruling ordering it to pay real property and business taxes to respondent City of Iloilo.

The factual antecedents are summarized by the trial court:

This is an action for the "recovery of sum of money" filed by [respondent] City of Iloilo, a public corporation organized under the laws of the Republic of the Philippines, represented by the Hon. Rodolfo T. Ganzon as City Mayor, against petitioner, Philippine Ports Authority (PPA), a government corporation created by P.D. 857.

[Respondent] seeks to collect from [petitioner] real property taxes as well as business taxes, computed from the last quarter of 1984 up to fourth quarter of 1988.

[Respondent] alleges that [petitioner] is engaged in the business of arrastre and stevedoring services and the leasing of real estate for which it should be obligated to pay business taxes. It further alleges that [petitioner] is the declared and registered owner of a warehouse which is used in the operation of its business and is also thereby subject to real property taxes.

It demands the aggregate amount of P510,888.86 in realty and business taxes as of December 1988 (real property tax - last quarter of 1984 to 1988; business tax- 1984 to 1988) including its corresponding interests and penalty charges.

On July 19, 1989, [petitioner] filed a motion to dismiss but [it] was denied by this court. A motion for reconsideration was filed, but the same was still denied, after which [petitioner] filed its answer.

During the pre-trial conference, the following factual and legal issues were defined and clarified.

Factual Issues:

- Whether or not [petitioner] is engaged in business;
- Whether or not the assessment of tax by [respondent] is accurate as of 4th quarter of 1988 from the year 1984; real property tax in the amount of P180,953.93 and business tax in the amount of P329,934.93 as of December 31, 1988.

Legal Issues:

- Whether or not Philippine Ports Authority is exempt from the payment of real property tax and business tax;

- Whether by filing a motion to dismiss, [petitioner] impliedly admitted the allegations in the complaint;
- Whether Philippine Ports Authority is engaged in business. If in the negative, whether or not it is exempt from payment of business taxes.

During trial, [respondent] presented two witnesses, namely: Mrs. Rizalina F. Tulio and Mr. Leoncio Macrangala.

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After [respondent] had rested its case, [petitioner] did not present any evidence. Instead, its counsel asked the court to give him time to file a memorandum, as said counsel is convinced that the issues involved in this case are purely legal issues.

He has no quarrel as regards the computation of the real property and business taxes made by [respondent]. He is convinced, however, that the issue in this case involves a question of law and that [petitioner] is not liable to pay any kind of taxes to the City of Iloilo.[1]

The court a quo rendered its decision holding petitioner liable for real property taxes from the last quarter of 1984 to December 1986, and for business taxes with respect to petitioner's lease of real property from the last quarter of 1984 up to 1988. It, however, held that respondent may not collect business taxes on petitioner's arrastre and stevedoring services, as these form part of petitioner's governmental functions. The dispositive portion of said decision states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the plaintiff, as follows:

- the amount of P98,519.16 as real property tax, from [the] last quarter of 1984 up to December 1986;
- the amount of P3,828.07, as business tax, for leasing of real estate from [the] last quarter of 1984 up to 1988.[2]

Petitioner now seeks a review of the case, contending that the court a quo decided a question of substance which has not been decided by us in that:

- (i) It decreed a property of public dominion (port facility) as subject to realty taxes just because the mentioned property is being administered by what it perceived to be a taxable government corporation. And,
- (ii) It declared that petitioner PPA is subject to "business taxes" for leasing to private persons or entities real estate without considering that petitioner PPA is not engaged in "business." [3]

In its Comment, respondent in addition raises the issue of whether or not petitioner may change its theory on appeal. It points out that petitioner never raised the issue that the subject property is of public dominion during the trial nor did it mention it in the memorandum it filed with the lower court. It further contends that such change of theory patently contradicts petitioner's admission in its pleadings and is disallowed under applicable jurisprudence.[4]

The records show that the theory of petitioner before the trial court was different from that of the present petition. In fact, even while at the trial court stage, petitioner was not consistent in its theory.[5] Initially in its pleadings therein, it argued that as a government-owned corporation, it is exempt from paying real property taxes by virtue of its specific exemption in its charter,[6] Section 40 of the Real Property Tax Code and Executive Order No. 93. Subsequently, in the memorandum it filed with the trial court, it omitted its earlier argument and changed its theory by alleging that it is a government instrumentality, which, according to applicable jurisprudence, may not be taxed by the local government. After obtaining an adverse decision from the trial court, it adopts yet another

stance on appeal before us, contesting the taxability of its warehouse. It argued for the first time that since "ports constructed by the State" are considered under the Civil Code as properties of public dominion, its warehouse, which it insists to be part of its port, should be treated likewise. To support this, it invokes Article 420 of the Civil Code, which provides:

Art. 420. The following things are property of public dominion:

- (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

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[Emphasis supplied]

Insisting that the subject warehouse is considered as part of its port, it points to Section 3 (e) of its charter quoted hereunder:

- e) "port" means a place where ships may anchor or tie up for the purpose of shelter, repair, loading or discharge of cargo, or for other such activities connected with water-borne commerce, and including all the land and water areas and the structures, equipment and facilities related to these functions. [Emphasis supplied]

A perusal of the records shows that this thesis was never presented nor discussed at the trial stage.

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal.[7] Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule.[8] It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[9] To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.[10]

Petitioner however cites an exception to the rule, as enunciated in *Liangsa Lumber Co. v. Liangsa Timber Co., Inc.*, [11] wherein we said:

- [I]n the interest of justice and within the sound discretion of the appellate court, a party may change his theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.

Petitioner contends that its new theory falls under the aforecited exception, as the issue does not involve any disputed evidentiary matter.

Contrary to petitioner's claim, we find that the new issue raised is not a purely legal question. It must be emphasized that the enumeration of properties of public dominion under Article 420 of the Civil Code specifically states "ports constructed by the State." Thus, in order to consider the port in the case at bar as falling under the said classification, the fact that the port was constructed by the State must first be established by sufficient evidence. This fact proved crucial in *Santos v. Moreno*, [12] where the issue raised was whether the canals constructed by private persons were of public or private ownership. We ruled that the canals were privately owned, thus:

- Under Art. 420, canals constructed by the State and devoted and devoted to public use are of public ownership. Conversely, canals constructed by private persons within private lands and devoted exclusively for private use must be of private ownership.

In the case at bar, no proof was adduced to establish that the port was constructed by the State. Petitioner cannot have us automatically conclude that its port qualified as "property of public dominion." It would be unfair to respondent, which would be deprived of its opportunity to present evidence to disprove the factual basis of the new theory. It is thus clear that the Lianga exception cannot apply in the case at bar.

Moreover, as correctly pointed out by respondent, we cannot ignore the fact that petitioner's new position runs contrary to its own admission in the pleadings filed in the trial court. Under paragraph 3 of respondent's complaint quoted hereunder, the fact of petitioner's ownership of the property was specifically alleged as follows:

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Defendant is likewise the declared and registered owner of a warehouse standing on Lot No. 1065 situated at Bgy. Concepcion, City Proper, declared under Tax Declaration No. 56325. Xerox copy of the said Tax Declaration is hereto attached as annex "D" and form[s] an integral part of herein complaint;[13]

In its Answer, referring to the abovesited complaint, petitioner stated, "Paragraph 3 is admitted." [14] Notably, this admission was never questioned nor put at issue during the trial.

Now before us, petitioner contradicts its earlier admission by claiming that the subject warehouse is a property of public dominion. This inconsistency is made more apparent by looking closely at what public dominion means. Tolentino explains this in this wise:

Private ownership is defined elsewhere in the Code; but the meaning of public dominion is nowhere defined. From the context of various provisions, it is clear that public dominion does not carry the idea of ownership; property of public dominion is not owned by the State, but pertains to the State, which as territorial sovereign exercises certain judicial prerogatives over such property. The ownership of such property, which has the special characteristics of a collective ownership for the general use and enjoyment, by virtue of their application to the satisfaction of collective needs, is in the social group, whether national, provincial, or municipal. Their purpose is not to serve the State as a juridical person, but the citizens; they are intended for the common and public welfare, and so they cannot be the object of appropriation, either by the State or by private persons.[15] [Emphasis supplied]

Following the above, properties of public dominion are owned by the general public and cannot be declared to be owned by a public corporation, such as petitioner.

As the object of the pleadings is to draw the lines of battle, so to speak, between the litigants and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with his pleadings.[16] Unless a party alleges palpable mistake or denies such admission, judicial admissions cannot be controverted.[17] Petitioner is thus bound by its admission of ownership of the subject property and is barred from claiming otherwise.

We also note that petitioner failed to raise the issue of ownership during the pre-trial. In its petition, it insists that to determine liability for real property tax, the ownership of the property must first be ascertained.[18] In the pre-trial order, however, to which petitioner did not object, nowhere was the issue of ownership included in the stipulated factual or legal issues.[19]

We have ruled that a pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised. Thus to obviate the element of surprise, parties are expected to disclose at the pre-trial conference all issues of law and fact which they intend to raise at the trial. Consequently, the determination of issues at a pre-trial conference bars the consideration of other questions on appeal.[20] Hence, in the case at bar, the fact that the issue of ownership is outside of what has been delimited during the pre-trial further justifies the

disallowance of petitioner's new theory.

Therefore, on the basis of the foregoing considerations and in the absence of compelling reasons to rule otherwise, we hold that petitioner may not be permitted to change its theory at this stage. Well-settled is the rule that questions that were not raised in the lower court cannot be raised for the first time on appeal.[21]

In any case, granting that petitioner's present theory is allowed at this stage, we nevertheless find it untenable. Concededly, "ports constructed by the State" are properties of the public dominion, as Article 420 of the Civil Code enumerates these as properties "intended for public use." It must be stressed however that what is being taxed in the present case is petitioner's warehouse, which, although located within the port, is distinct from the port itself. In *Light Rail Transit Authority v. Central Board of Assessment Appeals et al.*,[22] petitioner therein similarly sought an exemption from real estate taxes on its passenger terminals, arguing that said properties are considered as part of the "public roads," which are classified as property of public dominion in the Civil Code.[23] We ruled therein that:

...[T]he properties of petitioner are not exclusively considered as public roads being improvements placed upon the public road, and this [separable] nature of the structure in itself physically distinguishes it from a public road. Considering further that carriageways or passenger terminals are elevated structures which are not freely accessible to the public, vis-à-vis roads which are public improvements openly utilized by the public, the former are entirely different from the latter.

Using the same reasoning, the warehouse in the case at bar may not be held as part of the port, considering its separable nature as an improvement upon the port, and the fact that it is not open for use by everyone and freely accessible to the public. In the same way that we ruled in one case that the exemption of public property from taxation does not extend to improvements made thereon by homesteaders or occupants at their own expense,[24] we likewise uphold the taxability of the warehouse in the instant case, it being a mere improvement built on an alleged property of public dominion, assuming petitioner's port to be so. Moreover, petitioner may not invoke the definition of "port" in its charter to expand the meaning of "ports constructed by the State" in the Civil Code to include improvements built thereon. It must be noted that the charter itself limited the use of said definition only for the interpretation of Presidential Decree (P.D.) No. 857, its by-laws, regulations and rules,[25] and not of other statutes such as the Civil Code. Given these parameters, therefore, petitioner's move to present its new theory, even if allowed, would nonetheless prove to be futile.

The trial court correctly ruled that for the assessed period of 1984 to 1988, petitioner's exemption from real property taxes was withdrawn by P.D. No. 1931, at least for the period of 1984 to 1986.

Originally, petitioner was exempt from real property taxes on the basis of the Real Property Tax Code[26] then governing, which provided:

SECTION 40. Exemptions from Real Property Tax. - The exemption shall be as follows:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions and any government-owned corporation so exempt by its charter: Provided; however, That this exemption shall not apply to real property of the above-named entities the beneficial use of which has been granted, for consideration or otherwise, to a taxable person.

Petitioner's charter, P.D. 857,[27] further specifically exempted it from real property taxes:

SECTION 25. Exemption from Realty Taxes - The Authority shall be exempt from the payment of real property taxes imposed by the Republic of the Philippines, its agencies, instrumentalities or political subdivisions; Provided, That no tax exemptions shall be extended to any subsidiaries of the Authority that may be organized; Provided, finally, That investments in fixed assets shall be deductible for income tax purposes.

It can thus be seen from the foregoing that petitioner, as a government-owned or controlled corporation, enjoyed an exemption from real property taxes.

On June 11, 1984, however, P.D. 1931 effectively withdrew all tax exemption privileges granted to government-owned or controlled corporations as stated in Section 1 thereof, which reads:

Sec. 1. The provisions of special or general law to the contrary notwithstanding, all exemptions from the payment of duties, taxes, fees, imposts and other charges heretofore granted in favor of government-owned or controlled corporations including their subsidiaries, are hereby withdrawn.

Under the same law, the exemption can be restored in special cases through an application for restoration with the Secretary of Finance,[28] which, notably, petitioner did not avail.

Subsequently, Executive Order (E.O.) No. 93 was enacted on December 17, 1986 restoring tax exemptions provided under certain laws, one of which is the Real Property Tax Code. The pertinent portion of said law provides:

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:

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e) those conferred under four basic codes namely:

- (i) the Tariff and Customs Code, as amended;
- (ii) the National Internal Revenue Code, as amended;
- (iii) the Local Tax Code, as amended;
- (iv) the Real Property Tax Code, as amended;

[Emphasis supplied]

The abovesited laws, therefore, indicate that petitioner's tax exemption from real property taxes was withdrawn by P.D. 1931 effective June 11, 1984, but was subsequently restored by virtue of E.O. 93, starting December 17, 1986.[29] Hence, petitioner is liable for real property taxes on its warehouse, computed from the last quarter of 1984 up to December 1986.

Petitioner, however, seeks to be excused from liability for taxes by invoking the pronouncement in *Basco v. PAGCOR*[30] (*Basco*) quoted hereunder:

PAGCOR has a dual role, to operate and to regulate gambling casinos. The latter role is governmental, which places it in the category of an agency or instrumentality of the Government. Being an instrumentality of the Government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subject to control by a mere Local government. [Emphasis supplied]

Petitioner points out that its exercise of regulatory functions as decreed by its charter[31] places it within the category of an "agency or instrumentality of the government," which, according to *Basco*, is beyond the reach of local taxation.

Reliance in the abovesited case is unavailing considering that P.D. 1931 was never raised therein, and given that the issue in said case focused on the constitutionality of P.D. 1869, the charter of PAGCOR. The said decision did not absolutely prohibit local governments from taxing government instrumentalities. In fact we stated therein:

The power of local government to "impose taxes and fees" is always subject to "limitations" which Congress may provide by law. Since P.D. 1869 remains an "operative" law until "amended, repealed or revoked"...its "exemption clause" remains an exemption to the exercise of the power of local governments to impose taxes and fees.[32]

Furthermore, in the more recent case of *Mactan Cebu International Airport Authority v. Marcos*,[33] where the *Basco* case was similarly invoked for tax exemption, we stated: "[N]othing can prevent Congress from decreeing that even instrumentalities or agencies of the Government performing governmental functions may be subject to tax. Where it is done precisely to fulfill a constitutional mandate and national policy, no one can doubt its wisdom." The fact that tax exemptions of government-owned or controlled corporations have been expressly withdrawn by the present Local Government Code[34] clearly attests against petitioner's claim of absolute exemption of government instrumentalities from local taxation.

Petitioner also contends that the term "government-owned or controlled corporations" referred in P.D. 1931 covers only those not performing governmental functions. This argument is without legal basis for it reads into the law a distinction that is not there. It runs contrary to the clear intent of the law to withdraw from all units of the government, including government-owned or controlled corporations, their exemptions from taxes. Had it been otherwise, the law would have said so.[35]

Moreover, the trial court correctly pointed out that if indeed petitioner were not subject to local taxation, petitioner's charter would not have specifically provided for its exemption from the payment of real property tax. Its exemption therein therefore proves that it was only an exception to the general rule of taxability of petitioner. Given that said privilege was withdrawn by subsequent law, petitioner's claim for exemption from real property taxes for the entire assessed period fails.

We affirm the finding of the lower court on petitioner's liability for business taxes for the lease of its building to private corporations. During the trial, petitioner did not present any evidence to refute respondent's proof of petitioner's income from the lease of its property. Neither did it present any proof of exemption from business taxes. Instead, it emphasized its charter provisions defining its functions as governmental in nature. It averred that it allowed port users to occupy certain premises within the port area only to ensure order and convenience in discharging its governmental functions. It hence claimed that it is not engaged in business, as the act of leasing out its property was not motivated by profit, but by its duty to manage and control port operations.

The argument is unconvincing. As admitted by petitioner, it leases out its premises to private persons for "convenience" and not necessarily as part of its governmental function of administering port operations. In fact, its charter classifies such act of leasing out port facilities as one of petitioner's corporate powers.[36] Any income or profit generated by an entity, even of a corporation organized without any intention of realizing profit in the conduct of its activities, is subject to tax.[37] What matters is the established fact that it leased out its building to ten private entities from which it regularly earned substantial income. Thus, in the absence of any proof of exemption therefrom, petitioner is liable for the assessed business taxes.

In closing, we reiterate that in taxing government-owned or controlled corporations, the State ultimately suffers no loss. In *National Power Corp. v. Presiding Judge, RTC, Br. XXV*,[38] we elucidated:

Actually, the State has no reason to decry the taxation of NAPOCOR's properties, as and by way of real property taxes. Real property taxes, after all, form part and parcel of the financing apparatus of the Government in development and nation-building, particularly in the local government level.

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To all intents and purposes, real property taxes are funds taken by the State with one hand and given to the

other. In no measure can the government be said to have lost anything.

Finally, we find it appropriate to restate that the primary reason for the withdrawal of tax exemption privileges granted to government-owned and controlled corporations and all other units of government was that such privilege resulted in serious tax base erosion and distortions in the tax treatment of similarly situated enterprises, hence resulting in the need for these entities to share in the requirements of development, fiscal or otherwise, by paying the taxes and other charges due from them.[39]

WHEREFORE, the Petition is DENIED and the assailed Decision AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., Vitug, Ynares-Santiago, and Carpio, JJ., concur.

[1] Rollo, pp. 35-38.

[2] Id. at 51.

[3] Id. at 14-15.

[4] Id. at 4-6.

[5] Id. at 38.

[6] P.D. No. 857.

[7] Lianga Lumber Co. v. Lianga Timber Co., Inc., 76 SCRA 197 (1977).

[8] Del Rosario v. Bonga, 350 SCRA 101 (2001).

[9] China Airlines Ltd., v. CA et al., 185 SCRA 449 (1990).

[10] Siredy Enterprises, Inc., v. CA et al., G.R. No. 129039, September 17, 2002.

[11] Supra, note 7.

[12] 21 SCRA 1141 (1967).

[13] Records, p. 2.

[14] Id. at 97.

[15] 2 A. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE 30 (1994), citing 3 Manresa 66-69.

[16] Lianga Lumber Co. v. Lianga Timber Co., Inc., supra, note 7.

[17] Santiago v. Delos Santos, 61 SCRA 146 (1974). See also Sec. 4, Rule 129 of the 1997 Rules of Civil Procedure, which provides:

Judicial admissions- An admission, verbal or written, made by a party in the course of the proceedings in the same case does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[18] Rollo, p. 17.

[19] Records, pp. 113-114.

[20] Son v. Son, 251 SCRA 556 (1995).

[21] Lianga Lumber Co. v. Lianga Timber Co., Inc., supra, note 7.

[22] 342 SCRA 692 (2000).

[23] CIVIL CODE, art. 420.

[24] National Development Co. v. Cebu City, 215 SCRA 382 (1992).

[25] Sec. 3 of P.D. 857 provides: Definitions - For the purpose of this Decree and of the by-laws, regulations, or rules promulgated thereunder, the terms or words used herein, shall, unless the context indicates otherwise, mean or be understood to mean, as follows: xxx

[26] P.D. 464, which took effect on June 1, 1974, is the precursor of the Local Government Code of 1991.

[27] Revised Charter of the Philippine Ports Authority effective December 23, 1975.

[28] Sec. 2, P.D. 1931.

[29] Note: In National Power Corp. v. Province of Albay, (186 SCRA 198 [1990]), E.O. 93 was declared to be prospective in character.

[30] 197 SCRA 52 (1991).

[31] P.D. 857, Secs. 26-29.

[32] Basco v. PAGCOR, supra, note 30.

[33] 261 SCRA 667 (1996).

[34] Sec. 234, R.A. 7160, effective January 1, 1992, provides: Exemptions from Real Property Tax - The following are exempted from payment of the real property tax:

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Except as provided herein, any exemption from payment of real property tax previously granted to or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.

[35] National Power Corp. v. Presiding Judge, RTC, Br. XXV, 190 SCRA 477 (1990).

[36] Sec. 6, P.D. 857 reads:

(b) The corporate powers of the Authority shall be as follows:

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(vii) To acquire, purchase, own, lease, mortgage, sell, or otherwise dispose of any land, port facility, wharf, quay, or property of any kind, whether movable or immovable.

[37] CIR v. CA and Commonwealth Management and Services Corp., 329 SCRA 237 (2000).

[38] Supra, note 35.

[39] Mactan Cebu International Airport Authority v. Marcos, citing P.D. No. 1931, *supra*, note 33.

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