

**MUNICIPALITY OF COTABATO, ET AL., PLAINTIFFS AND APPELLEES,
VS. ROMAN R. SANTOS, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 12757. May 29, 1959*

Ponente: BAUTISTA ANGELO, J.

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This is an action to collect certain taxes and penalties allegedly due from defendants. Under the first cause of action, plaintiff seeks to recover the sum of P37,530.00 representing the taxes and penalties due on defendants' fishponds corresponding to the years 1949, 1950 and the first quarter of 1951, and under the second cause of action, the sum of P4,111.94 representing the accumulated taxes and penalties due on the improvements made on the land covered by said fishponds from 1949 to 1950.

Defendants, in their answer, set up certain special defenses among them being that the ordinance under which the taxes are sought to be collected is invalid because it does not bear the approval of the Secretary of Agriculture and Natural Resources as required by Section 4 of Act No. 4003, as amended, nor the approval of the Secretary of Finance as required by laws. After trial, the court rendered decision ordering defendants to pay the taxes prayed for in the complaint. Defendants appealed to the Court of Appeals. The case was certified to this Court on the ground that it involves purely questions of law.

On February 24, 1949, the Municipal Council of Cotabato enacted Ordinance No. 6 to take effect on January 1, 1949. This ordinance was approved on March 28, 1949 by the provincial board under its Resolution No. 138, series of 1949. In Article I, Chapter 5, of said Ordinance, may be found a paragraph which imposes an annual tax for the operation of a fish-breeding ground or fishpond at the rate of P10.00 per hectare.

On October 8, 1949, the Bureau of Fisheries issued in favor of defendants fishpond permits covering a total area of 1,390 hectares pursuant to the provisions of Act No. 4003, as amended. After defendants had taken possession of the leased premises, they surrounded them with dikes and converted them into fishponds.

The first issue raised by appellants refers to the validity of the ordinance in question. They contend that it is null and void because being an ordinance which imposes a tax on fishponds, it should have been submitted to the Secretary of Agriculture and Natural Resources for approval as required by Section 4, Act No. 4003, as amended by Republic Act No. 659, which provides:

" 'All ordinances, rules or regulations pertaining to fishing or fisheries promulgated or enacted by provincial boards, municipal boards or councils, or municipal district councils shall be submitted to the Secretary of Agriculture and Natural Resources for approval and shall have full force and effect unless notice in writing of their disapproval is communicated by the Secretary to the board or council concerned within thirty days after submission of the ordinance, rule, or regulation.' (As amended by Republic Act No. 659.)

The contention has no merit. While the provision above-quoted refers to ordinances that may be approved by a municipality pertaining to fishing or fisheries, the same does not apply to the ordinance in question for its purpose is not to regulate fishing or the operation of fishpond but merely to impose taxes for purposes of revenue. In

effect, the ordinance imposes a tax on the privilege, business, or occupation of operating a fish-breeding ground or fishpond. The law requiring the submission of an ordinance to the Secretary of Agriculture and Natural Resources for approval refers to ordinances which prescribe rules relative to fishing or to the operation of fishponds, and this must be so for a careful perusal of the provisions of the Fisheries Act (Commonwealth Act No. 4003) will disclose that all its provisions refer to the promotion, development, propagation and preservation of fish and other aquatic resources. Not being an ordinance regulating fishing or fishpond, the same need not be submitted to the Secretary of Agriculture and Natural Resources to be valid, it being sufficient that it be approved by the provincial board concerned.

On the other hand, it cannot be disputed that the municipality of Cotabato has the power to enact the ordinance in question, for, under Section 1 of Commonwealth Act No. 472, a municipal council is given authority to impose taxes upon any person engaged in any occupation or business, or exercising privileges in the municipality for purposes of revenue. The privilege of operating a fishpond is not one of those cases excepted in the law which are placed beyond the power of a municipal council to tax or levy (Section 3, Commonwealth Act 472). The contention that the ordinance in question comes within the exception provided for in said Section 3, paragraph (r), which provides that "Taxes or fees for the privilege of fishing, collecting or gathering sponges from the sea bottoms or reefs or for prospecting for, sponges in any waters of the Philippines", is untenable for, as already said, said ordinance does not seek to regulate fishing but merely to impose a tax on the privilege of operating a fishpond.

It is not also necessary that the ordinance be submitted to the Secretary of Finance for approval as counsel contends, because the same does not involve an increase of more than 50 per cent of the original tax (Section 4 [3], Commonwealth Act No. 472). The ordinance is imposing such tax on fishponds for the first time.

The validity of the ordinance is also impugned on the ground that it imposes a license fee which is excessive, unreasonable and confiscatory. It is contended that such fee is imposed to regulate merely the operation of fishponds and not for purposes of raising revenue. This is not correct, for the real purpose of the ordinance is to raise revenue as may be gleaned from its title.

We however believe that the assessment on the improvements introduced by defendant on the fishpond has included more than what is authorized by law. The improvements as assessed consist of dikes, gates, bodegas and guard-houses. The assessed value of the guard-houses and bodegas totals P6,850.00 which appellants are not now questioning, but they dispute the assessment on the dikes and gates in this wise: "After the swamps were leased to appellants, the latter cleared the swamps and built dikes, by pushing the soil to form these dikes in the same way that paddies are built on lands intended for the cultivation of palay, the only difference being that dikes used in fishponds are relatively much larger than the dikes used in ricelands." We believe this contention to be correct, because those dikes can really be considered as integral parts of the fishponds and not as independent improvements. They cannot be taxed under the assessment law. The assessment, therefore, with regard to improvements should be modified by excluding the dikes and gates.

Modified as above indicated, we affirm the decision appealed from in all other respects, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, and Endencia, JJ., concur.

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