

DR. PABLO R. OLIVARES, DR. ROSARIO DE LEON OLIVARES, EDWIN D. OLIVAREZ AND OLIVAREZ REALTY CORPORATION, PETITIONERS, VS. MAYOR JOEY MARQUEZ, CITY TREASURER SILVESTRE A. DE LEON,...

G.R. No. 155591. September 22, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Order dated July 24, 2002 of the Regional Trial Court (Branch 257) of Parañaque City (RTC for brevity), dismissing Civil Case No. 98-0313 on the following grounds:

- Questions involving tax assessment is within the jurisdiction of the Bureau of Internal Revenue (BIR).
- It is improper for this Court to prohibit or annul a tax assessment issued by the City Assessor's Office since it is legally inherent in the functions of their office. Any complaint or protest thereto should be coursed through the BIR.
- It appears on record that the City Treasurer's Office had already responded to the letter-protest of plaintiff. Hence, the prayer in the complaint asking that the City Treasurer be ordered to act on it is now moot.
- It is also of judicial notice that at present there is no longer any publication regarding plaintiffs' tax delinquency. Hence, the prayer that this kind of publication be ordered stopped is now, likewise, moot.[1]

Civil Case No. 98-0313 is a petition for certiorari, prohibition and mandamus filed by petitioners with the RTC on August 18, 1998, questioning the assessment and levy made by the Office of the City Treasurer of Parañaque City on petitioners' properties. Petitioners alleged that on July 1, 1998, they received a final notice from the Office of the City Treasurer on their real estate tax delinquencies. They protested said notice in a letter dated July 7, 1998, and sought reinvestigation on the grounds that: (1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; (4) some properties are exempt from taxation as they are being used exclusively for educational purposes; and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties. They wrote another letter on July 24, 1998, but respondents failed to act thereon. Thus, petitioners sought, among others, the annulment of the assessments and respondents be ordered to act on their protest immediately.[2]

Respondents filed a motion to dismiss Civil Case No. 98-0313 on the grounds that: (1) the trial court has no jurisdiction over tax assessment matters; (2) petitioners failed to comply with the requirements of a tax protest; and (3) the petition states no cause of action.[3]

Petitioners opposed the motion, arguing that the trial court has jurisdiction over the case as the issue raised pertains to the authority of respondents to assess and collect the real estate taxes. Petitioners cite the case of Ty vs.

Trampe,[4] wherein the Court upheld the jurisdiction of the Regional Trial Court (Branch 163) of Pasig to entertain the petition for prohibition as it questions the power of the assessor to impose and collect any tax, and not merely the reasonableness thereof.

Ruling in favor of respondents' motion to dismiss, the trial court issued the herein assailed order dismissing Civil Case No. 98-0313. The trial court denied petitioners' motion for reconsideration.[5]

Hence, petitioners filed the herein petition for review raising the following "questions of law" to be resolved by the Court:

FIRST QUESTION OF LAW

WHETHER OR NOT THE COURT A QUO HAS JURISDICTION TO TRY THE CASE INVOLVING MATTERS QUESTIONING THE VERY AUTHORITY AND POWER OF THE ASSESSOR TO IMPOSE ASSESSMENT AND OF THE CITY TREASURER TO COLLECT THE TAX.

SECOND QUESTION OF LAW

WHETHER OR NOT THE COURT A QUO BLATANTLY ERRED [IN] NOT DECLARING THE CONFISCATORY AND OPPRESSIVE NATURE OF THE ASSESSMENTS AS ILLEGAL, VOID AB INITIO, UNCONSTITUTIONAL AND CONSTITUTING DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW.[6]

The Court rules against petitioners. The petition has no merit.

The extraordinary remedies of certiorari, prohibition and mandamus may be resorted to only when there is no other plain, available, speedy and adequate remedy in the course of law.[7] Where administrative remedies are available, petitions for the issuance of these peremptory writs do not lie[8] in order to give the administrative body the opportunity to decide the matter by itself correctly and to prevent unnecessary and premature resort to courts.[9]

Republic Act (R.A.) No. 7160, or the Local Government Code of 1991, clearly sets forth the administrative remedies available to a taxpayer or real property owner who is not satisfied with the assessment or reasonableness of the real property tax sought to be collected.[10]

Section 252 of R.A. No. 7160 provides:

SEC. 252. Payment Under Protest. - (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credits against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II[11] of this Code. (Emphasis supplied)

Chapter 3, Title Two, Book II of the Local Government Code, entitled "Assessment Appeals," refers to the appellate procedure before the Local Board of Assessment Appeals (LBAA), as provided in Section 226, et seq.

of the Code, and the Central Board of Assessment Appeals (CBAA), as provided in Section 230 thereof.

Thus, should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 directs that the taxpayer should first pay the tax due before his protest can be entertained. There shall be annotated on the tax receipts the words “paid under protest.” It is only after the taxpayer has paid the tax due that he may file a protest in writing within thirty days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

If the local treasurer denies the protest or fails to act upon it within the 60-day period provided for in Section 252, the taxpayer/real property owner may then appeal or directly file a verified petition with the LBAA within sixty days from denial of the protest or receipt of the notice of assessment, as provided in Section 226 of R.A. No. 7160, to wit:

SEC. 226. Local Board of Assessment Appeals. - Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

And, if the taxpayer is not satisfied with the decision of the LBAA, he may elevate the same to the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits or overpayments of taxes.[12] An appeal may be taken to the CBAA by filing a notice of appeal within thirty days from receipt thereof.[13]

From the CBAA, the dispute may then be taken to the Court of Appeals by filing a verified petition for review under Rule 43 of the Rules of Court.

The Court is not convinced with petitioners’ argument that their recourse of filing a petition before the trial court is proper as they are questioning the very authority of respondents to assess and collect the real estate taxes due on their properties, and not merely the correctness of said amount.

The well-established rule is that the allegations in the complaint and the character of the relief sought determine the nature of an action.[14] A perusal of the petition before the RTC plainly shows that what is actually being assailed is the correctness of the assessments made by the local assessor of Parañaque on petitioners’ properties. The allegations in the said petition purportedly questioning the assessor’s authority to assess and collect the taxes were obviously made in order to justify the filing of the petition with the RTC. In fact, there is nothing in the said petition that supports their claim regarding the assessor’s alleged lack of authority. What petitioners raise are the following: (1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; (4) some properties are exempt from taxation as they are being used exclusively for educational purposes; and (5) some errors are made in the assessment and collection of taxes due on petitioners’ properties,[15] and that respondents committed grave abuse of discretion in making the “improper, excessive and unlawful the collection of taxes against the petitioner[s].”[16] Moreover, these arguments essentially involve questions of fact. Hence, the petition should have been brought, at the very first instance, to the LBAA.

Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively

pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. But an appeal shall not suspend the collection of the tax assessed without prejudice to a later adjustment pending the outcome of the appeal.[17]

Even assuming that the assessor's authority is indeed an issue, it must be pointed out that in order for the court a quo to resolve the petition, the issues of the correctness of the tax assessment and collection must also necessarily be dealt with.

In *Ty vs. Trampe*,^[18] cited by petitioners, the Court held that jurisdiction over the case was properly vested with the trial court because what was being questioned is the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax, and not merely of amounts of the increase in the tax. The petitioners therein were questioning the increased real estate taxes imposed by and being collected in Pasig City effective from the year 1994, premised on the legal question of whether or not P.D. No. 921 was repealed by R.A. No. 7160. P.D. No. 921, particularly Section 9 thereof, requires that the schedule of values of real properties in the Metropolitan Manila area shall be prepared jointly by the city assessors in the districts created therein; while Sec. 212 of R.A. No. 7160 states that the schedule shall be prepared by the provincial, city or municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the sanggunian concerned.

In the present case, the authority of the assessor is not being questioned. Despite petitioners' protestations, the petition filed before the court a quo primarily involves the correctness of the assessments, which are questions of fact, that are not allowed in a petition for certiorari, prohibition and mandamus. The court a quo is therefore precluded from entertaining the petition, and it appropriately dismissed the petition.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Petition, Annex "A".

[2] Rollo, pp. 79-82.

[3] *Id.*, p. 36.

[4] G.R. No. 117577, December 1, 1995, 250 SCRA 500.

[5] Rollo, p. 85.

[6] Petition, p. 4; Rollo, p. 6.

[7] Rule 65 of the Rules of Court.

[8] *Union Bank vs. Court of Appeals*, G.R. No. 131729, May 19, 1998, 290 SCRA 198, 219; *Manila Electric Company vs. Barlis*, G.R. No. 114231, May 18, 2001, 357 SCRA 832, 843; and *Systems Plus Computer College of Caloocan City vs. Local Government of Caloocan City*, G.R. No. 146382, August 7, 2003.

[9] *Lopez vs. City of Manila*, G.R. No. 127139, February 19, 1999, 303 SCRA 448, 458.

[10] Rep. Act No. 7160 or the Local Government Code of 1991, which took effect on January 1, 1992, repealed P.D. No. 464 or the Real Property Tax Code, as provided in Section 534 thereof.

[11] Entitled "Assessment Appeals."

[12] Rule III, Section 1, Rules of Procedure of the Central Board of Assessment Appeals.

[13] Section 229(c), Rep. Act No. 7160; Rule IV, Sections 2 and 3, Rules of Procedure of the Central Board of Assessment Appeals.

[14] *International Flavors and Fragrances (Phil.), Inc., vs. Argos*, G.R. No. 130362, September 10, 2001, 364 SCRA 792, 797.

[15] *Rollo*, p. 79.

[16] *Rollo*, p. 81.

[17] *Manila Electric Company vs. Barlis*, G.R. No. 114231, May 18, 2001, 357 SCRA 832, 843.

[18] *Supra.*, Note No. 4.

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