COCA-COLA BOTTLERS PHILIPPINES, INC., PETITIONER, VS. CITY OF MANILA, LIBERTY M. TOLEDO – CITY TREASURER AND JOSEPH SANTIAGO – CHIEF, LICENSING DIVISION, RESPONDENTS.

G.R. NO. 156252. June 27, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Order[1] of the Regional Trial Court (RTC) of Manila, Branch 21, dated 8 May 2002, dismissing petitioner's Petition for Injunction, and the Order[2] dated 5 December 2002, denying petitioner's Motion for Reconsideration.

Petitioner Coca-Cola Bottlers Philippines, Inc. is a corporation engaged in the business of manufacturing and selling beverages and maintains a sales office located in the City of Manila.

On 25 February 2000, the City Mayor of Manila approved Tax Ordinance No. 7988, otherwise known as "Revised Revenue Code of the City of Manila" repealing Tax Ordinance No. 7794 entitled, "Revenue Code of the City of Manila." Tax Ordinance No. 7988 amended certain sections of Tax Ordinance No. 7794 by increasing the tax rates applicable to certain establishments operating within the territorial jurisdiction of the City of Manila, including herein petitioner.

Aggrieved by said tax ordinance, petitioner filed a Petition[3] before the Department of Justice (DOJ), against the City of Manila and its Sangguniang Panlungsod, invoking Section 187[4] of the Local Government Code of 1991 (Republic Act No. 7160). Said Petition questions the constitutionality or legality of Section 21 of Tax Ordinance No. 7988. According to petitioner:

> Section 21 of the Old Revenue Code of the City of Manila (Ordinance No. 7794, as amended) was reproduced verbatim as Section 21 under the new Ordinance except for the last paragraph thereof which reads: "PROVIDED, that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof", which was deleted; that said deletion would, in effect, impose additional business tax on businesses, including herein petitioner, that are already subject to business tax under the other sections, specifically Sec. 14, of the New Revenue Code of the City of Manila, which imposition, petitioner claims, "is beyond or exceeds the limitation on the taxing power of the City of Manila under Sec. 143 (h) of the LGC of 1991; and that deletion is a palpable and manifest violation of the Local Government Code of 1991, and the clear mandate of Article X, Sec. 5 of the 1987 Constitution, hence Section 21 is "illegal and unconstitutional."

On 17 August 2000, then DOJ Secretary Artemio G. Tuquero issued a Resolution declaring Tax Ordinance No. 7988 null and void and without legal effect, the pertinent portions of which read:

> After a judicious scrutiny of the records of this case, in the light of the pertinent provisions of the Local Government Code of 1991, this Department finds for the petitioner.
>
> The Local Government Code of 1991 provides:"Section 188. Publication of Tax Ordinances and Revenue

> Measures. – Within ten (10) days after their approval, certified true copies of all provincial, city and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation; Provided, however, that in provinces, cities, and municipalities where there are no newspapers or local circulations the same may be posted in at least two (2) conspicuous and publicly accessible places." (R.A. No. 7160) (stress supplied)

Upon the other hand, the Rules and Regulations Implementing the Local Government Code of 1991, insofar as pertinent, mandates:

> "Art. 277. Publication of Tax Ordinances and Revenue Measures. – (a) within ten (10) days after their approval, certified true copies of all provincial, city and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation provided that in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.
>
> If the tax ordinances or revenue measure contains penal provisions as authorized under Art. 279 of this Rule, the gist of such tax ordinance or revenue measure shall be published in a newspaper of general circulation within the province, posting of such ordinance or measure shall be made in accessible and conspicuous public places in all municipalities and cities of the province to which the sanggunian enacting the ordinance or revenue measure belongs.
>
> xxx xxx xxx."

(emphasis ours)

It is clear from the above-quoted provisions of R.A. No. 7160 and its implementing rules that the requirement of publication is MANDATORY and leaves no choice. The use of the word "shall" in both provisions is imperative, operating to impose a duty that may be enforced (Soco v. Militante, 123 SCRA 160, 167; Modern Coach Corp. v. Faver 173 SE 2d 497, 499).

Its essence is simply to inform the people and the entities who may likely be affected, of the existence of the tax measure. It bears emphasis, that, strict observance of the said procedural requirement is the only safeguard against any unjust and unreasonable exercise of the taxing powers by ensuring that the taxpayers are notified through publication of the existence of the measure, and are therefore able to voice out their views or objections to the said measure. For, after all, taxes are obligatory exactions or enforced contributions corollary to taking of property.

x x x x

In the case at bar, respondents, by its failure to file their comments and present documentary evidence to show that the mandatory requirement of law on publication, among other things, has been met, may be deemed to have waived its right to controvert or dispute the documentary evidence submitted by petitioner which indubitably show that subject tax ordinance was published only once, i.e., on the May 22, 2000 issue of the Philippine Post. Clearly, therefore, herein respondents failed to satisfy the requirement that said ordinance shall be published for three (3) consecutive days as required by law.

x x x x

In view of the foregoing, we find it unnecessary to pass upon the other issues raised by the petitioner.

WHEREFORE, premises considered, Tax Ordinance No. 7988 of the City of Manila is hereby declared NULL and VOID and WITHOUT LEGAL EFFECT for having been enacted in contravention of the provisions of the Local Government Code of 1991 and its implementing rules and regulations.[5]

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The City of Manila failed to file a Motion for Reconsideration nor lodge an appeal of said Resolution, thus, said Resolution of the DOJ Secretary declaring Tax Ordinance No. 7988 null and void has lapsed into finality.

On 16 November 2000, Atty. Leonardo A. Aurelio wrote the Bureau of Local Government Finance (BLGF) requesting in behalf of his client, Singer Sewing Machine Company, an opinion on whether the Office of the City Treasurer of Manila has the right to enforce Tax Ordinance No. 7988 despite the Resolution, dated 17 August 2000, of the DOJ Secretary. Acting on said letter, the BLGF Executive Director issued an Indorsement on 20 November 2000 ordering the City Treasurer of Manila to "cease and desist" from enforcing Tax Ordinance No. 7988. According to the BLGF:

> In the attached Resolution dated August 17, 2000 of the Department of Justice, it is stated that "x x x Ordinance No. 7988 of the City of Manila is hereby declared NULL AND VOID AND WITHOUT LEGAL EFFECT for having been enacted in contravention of the provisions of the Local Government Code of 1991 and its implementing rules and regulations."
>
> x x x x
>
> In view thereof, that Office is hereby instructed to cease and desist from implementing the aforementioned Manila Tax Ordinance No. 7988, inviting attention to Section 190 of the Local Government Code (LGC) of 1991, quoted hereunder:"Section 190. Attempt to Enforce Void or Suspended Tax Ordinances and Revenue Measures.- The enforcement of any tax ordinance or revenue measures after due notice of the disapproval or suspension thereof shall be sufficient ground to administrative disciplinary action against the local officials and employees responsible therefore."

Be guided accordingly.[6]

Despite the Resolution of the DOJ declaring Tax Ordinance No. 7988 null and void and the directive of the BLGF that respondents cease and desist from enforcing said tax ordinance, respondents continued to assess petitioner business tax for the year 2001 based on the tax rates prescribed under Tax Ordinance No. 7988. Thus, petitioner filed a Complaint with the RTC of Manila, Branch 21, on 17 January 2001, praying that respondents be enjoined from implementing the aforementioned tax ordinance.

On 28 November 2001, the RTC of Manila, Branch 21, rendered a Decision in favor of petitioner, the decretal portion of which states:

> The defendants did not follow the procedure in the enactment of Tax Ordinance No. 7988. The Court agrees with plaintiff's contention that the ordinance should first be published for three (3) consecutive days in a newspaper of local circulation aside from the posting of the same in at least four (4) conspicuous public places.
>
> x x x x
>
> WHEREFORE, premises considered, judgment is hereby rendered declaring the injunction permanent. Defendants are enjoined from implementing Tax Ordinance No. 7988. The bond posted by the plaintiff is hereby CANCELLED.[7]

During the pendency of the said case, the City Mayor of Manila approved on 22 February 2001 Tax Ordinance No. 8011 entitled, "An Ordinance Amending Certain Sections of Ordinance No. 7988." Said tax ordinance was again challenged by petitioner before the DOJ through a Petition questioning the legality of the aforementioned tax ordinance on the grounds that (1) said tax ordinance amends a tax ordinance previously declared null and void and without legal effect by the DOJ; and (2) said tax ordinance was likewise not published upon its approval in accordance with Section 188 of the Local Government Code of 1991.

On 5 July 2001, then DOJ Secretary Hernando Perez issued a Resolution declaring Tax Ordinance No. 8011 null

and void and legally not existing. According to the DOJ Secretary:

> After a careful examination/evaluation of the records of this case and applying the pertinent provisions of the Local Government Code of 1991, this Department finds the instant petition of Coca-Cola Bottlers, Philippines, Inc. meritorious.
>
> It bears stress, at the outset, that the subject ordinance was passed and approved by the respondents principally to amend Ordinance No. 7988 which was earlier nullified by this Department in its Resolution Dated August 17, 2000, also at the instance of the herein petitioner. x x x
>
> x x x x
>
> x x x [T]he only logical conclusion, therefore, is that Ordinance No. 8011, subject herein, is also null and void, it being a mere amendatory ordinance of Ordinance No. 7988 which, as earlier stated, had been nullified by this Department. An invalid or unconstitutional law or ordinance does not, in legal contemplation, exist (Manila Motors Co., Inc. vs. Flores, 99 Phil. 738). Where a statute which has been amended is invalid, nothing, in effect, has been amended. As held in People vs. Lim, 108 Phil. 1091:"If an order or law sought to be amended is invalid, then it does not legally exist. There would be no occasion or need to amend it; x x x" (at p. 1097)

Instead of amending Ordinance No. 7988, herein respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive. The passage of the assailed ordinance did not have the effect of curing the defects of Ordinance No. 7988 which, any way, does not legally exist.

x x x x

WHEREFORE, premises considered, Tax Ordinance No. 8011 is hereby declared NULL and VOID and LEGALLY NOT EXISTING.[8]

Respondent's Motion for Reconsideration of the Resolution of the DOJ was subsequently denied in a Resolution,[9] dated 12 March 2002.

The City of Manila appealed the DOJ Resolution, dated 12 March 2002, denying its Motion for Reconsideration of the Resolution nullifying Tax Ordinance No. 8011 before the RTC of Manila, Branch 17, but the same was dismissed for lack of jurisdiction in an Order, dated 2 December 2002. According to the trial court:

> From whatever angle the recourse of herein petitioners was viewed, either from the standpoint of Section 1, Rule 43, or Section 1 and the last sentence of the second paragraph of Section 4, Rule 65 of the 1997 Rules of Civil Procedure, the conclusion was inevitable that petitioners' remedial measure from dispositions of the Secretary of Justice should have been ventilated before the next judicial plane. x x x
>
> Accordingly, by reason of the foregoing premises, Civil Case No. 02-103372 for "Certiorari" is DISMISSED.

Consequently, respondents appealed the foregoing Order, dated 2 December 2002, via a Petition for Review on Certiorari to the Supreme Court docketed as G.R. No. 157490. However, said appeal was dismissed in our Resolution, dated 23 June 2003, the dispositive of which reads:

> Pursuant to Rule 45 and other related provisions of the 1997 Rules of Civil Procedure as amended governing appeals by certiorari to the Supreme Court, only petitions which are accompanied by or which comply strictly with the requirements specified therein shall be entertained. On the basis thereof, the Court resolves to DENY the instant petition for review on certiorari of the orders of the Regional Trial Court, Manila, Branch 17 dated December 2, 2002 and March 7, 2003 for the late filing as the petition was filed beyond the reglementary period of fifteen (15) days fixed in Sec. 2, Rule 45 in relation to Sec. 5(a), Rule 56.

> The omnibus motion of petitioners for reconsideration of the resolution of April 23, 2003 which denied the motion for an extension of time to file a petition is DENIED for lack of merit.

Respondents' Motion for Reconsideration was subsequently denied in a Resolution, dated 11 August 2003, in which the Court resolved as follows:

> Acting on the motion of petitioners for reconsideration of the resolution of June 23, 2003 which denied the petition for review on certiorari and considering that there is no compelling reason to warrant a modification of this Court's resolution, the Court resolves to DENY reconsideration with FINALITY.

Meanwhile, on the basis of the enactment of Tax Ordinance No. 8011, the City of Manila filed a Motion for Reconsideration with the RTC of Manila, Branch 21, of its Decision, dated 28 November 2001, which the court a quo granted in the herein assailed Order dated 8 May 2002, the full text of which reads:

> Considering that Ordinance No. 7988 (Amended Revenue Code of the City of Manila) has already been amended by Ordinance No. 8011 entitled "An Ordinance Amending Certain Sections of Ordinance No. 7988" approved by the City Mayor of Manila on February 22, 2001, let the above-entitled case be as it is hereby DISMISSED. Without pronouncement as to costs."[10]

Petitioner's Motion for Reconsideration of the abovequoted Order was denied by the trial court in the second challenged Order, dated 5 December 2002; hence the instant Petition.

The case at bar revolves around the sole pivotal issue of whether or not Tax Ordinance No. 7988 is null and void and of no legal effect. However, respondents, in their Comment and Memorandum, raise the procedural issue of whether or not the instant Petition has complied with the requirements of the 1997 Rules on Civil Procedure; thus, the Court resolves to first pass upon this issue before tackling the substantial matters involved in this case.

Respondents insist that the instant Petition raises questions of fact that are proscribed under Rule 45 of the 1997 Rules of Civil Procedure which states that Petitions for Certiorari before the Supreme Court shall raise only questions of law. We do not agree. There is a question of fact when doubt or controversy arises as to the truth or falsity of the alleged facts, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct is a question of law.[11] A thorough reading of the Petition will reveal that petitioner does not present an issue in which we are called to rule on the truth or falsity of any fact alleged in the case. Furthermore, the resolution of whether or not the court a quo erred in dismissing petitioner's case in light of the enactment of Tax Ordinance No. 8011, allegedly amending Tax Ordinance No. 7988, does not necessitate an incursion into the facts attending the case.

Contrarily, it is respondents who actually raise questions of fact before us. While accusing petitioner of raising questions of fact, respondents, in the same breath, proceeded to allege that the RTC of Manila, Branch 21, in its Decision, dated 28 November 2001, failed to take into account the evidence presented by respondents allegedly proving that Tax Ordinance No. 7988 was published for four times in a newspaper of general circulation in accordance with the requirements of law. A determination of whether or not the trial court erred in concluding that Tax Ordinance No. 7988 was indeed published for four times in a newspaper of general circulation would clearly involve a calibration of the probative value of the evidence presented by respondents to prove such allegation. Therefore, said issue is a question of fact which this Court, not being a trier of facts, will decline to pass upon.

Respondents also point out that the Petition was not properly verified and certified because Nelson Empalmado, the Vice President for Tax and Financial Services of Coca-Cola Bottlers Philippines, Inc. who verified the subject Petition was not duly authorized to file said Petition. Respondents assert that nowhere in the attached Secretary's Certificate can it be found the authority of Nelson Empalmado to institute the instant Petition. Thus, there being a

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lack of proper verification, respondents contend that the Petition must be treated as a mere scrap of paper, which has no legal effect as declared in Section 4, Rule 7 of the 1997 Rules of Civil Procedure.

An inspection of the Secretary's Certificate attached to the petition will show that Nelson Empalmado is not among those designated as representative to prosecute claims in behalf of Coca-Cola Bottlers Philippines, Inc. However, it would seem that the authority of Mr. Empalmado to file the instant Petition emanated from a Special Power of Attorney signed by Ramon V. Lapez, Jr., Associate Legal Counsel/Assistant Corporate Secretary of Coca-Cola Bottlers Philippines, Inc. and one of those named in the Secretary's Certificate as authorized to file a Petition in behalf of the corporation. A careful perusal of said Secretary's Certificate will further reveal that the persons authorized therein to represent petitioner corporation in any suit are also empowered to designate and appoint any individual as attorney-in-fact of the corporation for the prosecution of any suit. Accordingly, by virtue of the Special Power of Attorney executed by Ramon V. Lapez, Jr. authorizing Nelson Emplamado to file a Petition before the Supreme Court, the instant Petition has been properly verified, in accordance with the 1997 Rules of Civil Procedure.

Having disposed of the procedural issues raised by respondents, We now come to the pivotal issue in this petition.

It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by law. Neither is there quibbling on the fact that the said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal.

Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.

Despite the nullity of Tax Ordinance No. 7988, the court a quo, in the assailed Order, dated 8 May 2002, went on to dismiss petitioner's case on the force of the enactment of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988. Significantly, said amending ordinance was likewise declared null and void by the DOJ Secretary in a Resolution, dated 5 July 2001, elucidating that "[I]nstead of amending Ordinance No. 7988, [herein] respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive. The passage of the assailed ordinance did not have the effect of curing the defects of Ordinance No. 7988 which, any way, does not legally exist." Said Resolution of the DOJ Secretary had, as well, attained finality by virtue of the dismissal with finality by this Court of respondents' Petition for Review on Certiorari in G.R. No. 157490 assailing the dismissal by the RTC of Manila, Branch 17, of its appeal due to lack of jurisdiction in its Order, dated 11 August 2003.

Based on the foregoing, this Court must reverse the Order of the RTC of Manila, Branch 21, dismissing petitioner's case as there is no basis in law for such dismissal. The amending law, having been declared as null and void, in legal contemplation, therefore, does not exist. Furthermore, even if Tax Ordinance No. 8011 was not declared null and void, the trial court should not have dismissed the case on the reason that said tax ordinance had already amended Tax Ordinance No. 7988. As held by this Court in the case of People v. Lim,[12] if an order or law sought to be amended is invalid, then it does not legally exist, there should be no occasion or need to amend it.[13]

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WHEREFORE, premises considered, the instant Petition is hereby GRANTED. The Orders of the RTC of Manila, Branch 21, dated 8 May 2002 and 5 December 2002, respectively, are hereby REVERSED and SET ASIDE.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Civil Case No. 01-99848, penned by Judge Amor A. Reyes; Rollo, p. 36.

[2] Rollo, p. 37.

[3] Records, pp. 42-48.

[4] Section 187. Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings. – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal x x x. (Emphasis ours)

[5] Resolution pp. 2-5; Rollo, pp. 48-51.

[6] Rollo, p. 52.

[7] Rollo, p. 56.

[8] DOJ Resolution, pp. 3, 5-6; Rollo, pp. 59, 61-62.

[9] Rollo, pp. 64-68.

[10] Rollo, p. 36.

[11] Morales v. The Board of Regents of the University of the Philippines, G.R. No. 161172, 13 December 2004, 446 SCRA 227, 237, citing Far East Marble (Philippines), Inc. v. Court of Appeals, G.R. No. 94093, 10 August 1993, 225 SCRA 249, 255.

[12] 108 Phil. 1091 (1960).

[13] Id. at 1097.

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