

C. N. HODGES, PETITIONER AND APPELLEE, VS. THE MUNICIPAL BOARD OF THE CITY OF ILOILO, HON. RODOLFO GANZON, IN HIS CAPACITY AS CITY MAYOR OF THE CITY OF ILOILO; AND THE CITY OF I...*G.R. No. 18276. January 12, 1967*

Ponente: RUIZ CASTRO, J.

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The respondents, on appeal by writ of error, ask us to review a judgment of the Court of First Instance of Iloilo, in an action for declaratory relief, annulling ordinance 31, series of 1960, of the City of Iloilo and ordering the said City to reimburse to the petitioner C. N. Hodges whatever amounts he had paid to the former by reason of the operation of the ordinance.

The parties are agreed on the antecedent facts. On June 7, 1960, invoking Republic Act 2264, otherwise known as the Local Autonomy Act, the municipal board of the City of Iloilo enacted ordinance 31, entitled "An Ordinance Imposing Municipal Tax On The Sale of Real Property Situated In The City of Iloilo", which ordains that "Any person, firm, association or corporation who shall sell real property situated in the City of Iloilo shall pay a real property sales tax of one-half (1/2) of one percent (1%) of the contract price and/or consideration before such sale could be registered and the ownership thereof transferred in the Office of the Register of Deeds of Iloilo" (section 1). It is therein expressly provided that the tax is to be paid to the city treasurer "within five (5) days from the sale", subject to the payment of a surcharge of 20 of the tax due in case of default, and such payment, the receipt whereof is made part of the documents on the sale, "shall be a requirement for the registration * * * of the sale in the Office of the Register of Deeds or the Office of the City Treasurer of the City of Iloilo" (sections 3 and 4). Penal sanction consisting of a fine of not less than fifty pesos (P50) nor more than two hundred pesos (P200) or imprisonment of not less than five (5) days nor more than thirty (30) days, at the discretion of the court, is prescribed for any infraction of the said ordinance (section 7). By its terms, the ordinance took effect on July 1, 1960.

The petitioner C. N. Hodges, who was engaged in the business of buying and selling real estate in the city and the province of Iloilo, stood to be subjected to the tax thus imposed. Contending that the ordinance was beyond the corporate powers of the respondent City, he instituted on June 28, 1960—prior to the effectivity date of the ordinance—an action for declaratory relief to test the validity thereof. Meanwhile, after the ordinance became effective, the petitioner paid taxes imposed under the authority thereof upon sales of real estate made by him. He accordingly amended his petition to include the City itself as a party-respondent, as well as to incorporate therein a prayer for the reimbursement to him of the amounts thus far paid by him pursuant to the ordinance.

In their return to the petition, the respondents justified the enactment of the ordinance not only under the city charter but also upon the authority vested in the respondent City by section 2 of the Local Autonomy Act. By way of special defense, they contended that the petition states no cause of action for declaratory relief.

Subscribing to the position assumed by the petitioner, the trial court ruled as heretofore stated.

Hence, the present recourse.

The preliminary procedural issue of non-exhaustion of administrative remedies is raised by the appellants, but the vortex of the present controversy is whether or not the questioned ordinance is ultra vires viewed vis-a-vis the corporate powers of the appellant City.

1. On the preliminary issue, the appellants argue that the court a quo acquired no jurisdiction over the case because the appellee failed to exhaust administrative remedies, more particularly that indicated in the penultimate and last paragraphs of section 2 of the Local Autonomy Act, to wit:

"A tax ordinance shall go into effect on the fifteenth day after its passage unless the ordinance shall provide otherwise: Provided, however, That the Secretary of Finance shall have authority to suspend the effectivity of any ordinance within one hundred and twenty days after its passage, if, in his opinion, the tax or fee therein levied or imposed is unjust, excessive, oppressive, or confiscatory, and when the said secretary exercises this authority the effectivity of such ordinance shall be suspended.

"In such event the municipal board or city council in the case of cities and the municipal council or municipal district council in the case of municipalities and municipal districts may appeal the decision of the Secretary of Finance to the court during the pendency of which case the tax levied shall be considered as paid under protest".

Nothing in the foregoing quotation even remotely applies to the situation at hand. The authority vested in the Secretary of Finance to suspend the effectivity of a tax ordinance is limited to cases wherein the tax or fee thereby levied is "unjust, excessive, oppressive, or confiscatory". Nowhere in the pleadings below was the tax imposed by the questioned ordinance challenged by the appellee upon any of these specific bases. He chose to prosecute his case upon the ground that the ordinance was beyond the corporate powers of the appellant City to enact. This is a purely legal question; no relief of an administrative nature is or would have been available to the appellee from the Secretary of Finance (*Pascual vs. Provincial Board of Nueva Ecija*, 106 Phil., 466, citing: *Mondano vs. Silvosa*, 97 Phil., 143, 51 Off. Gaz., p. 2884.). Besides, it does not appear from the aforequoted legal precept that it is the mandatory duty of a party adversely affected, assuming that the matter comes within the purview of the law, to invoke the suspension authority of the Secretary of Finance. The said Secretary, from the text of the law, may exercise the prerogative vested in him upon his own initiative, i.e., "if, in his opinion" the tax or fee levied suffers from any of the infirmities enumerated. Accordingly, it cannot be said that recourse to the Secretary of Finance is a pre-requisite to an action in court. And the rule requiring exhaustion of administrative remedies applies only "when there is an express legal provision requiring such administrative step as a condition precedent to taking action in court" (*Azuelo vs. Arnaldo, et al.*, 58 Off.Gaz., No. 26, pp. 4738, 4740). At all events, even assuming that the recourse indicated by the appellants were indeed a requirement, the same does not appear to be exclusive. It is discretionary upon the court to permit an aggrieved party to institute a court action without first resorting to an administrative remedy for the purpose (*Hoskyns vs. National City Bank of New York, et al.*, 85 Phil., 201). Finding, as we do, after reading the record, that there exists here a justiciable controversy between real parties asserting adverse legal interests which is ripe for judicial determination (*Caltex Philippines, Inc. vs. Palomar*, G.R. L-19650, September 29, 1966), the recourse to the courts was in no way premature. There is, therefore, no room for the application of the doctrine of exhaustion of administrative remedies to the case at bar.

Prescinding from the foregoing, it seems necessary to correct the impression of the appellants that failure to exhaust administrative remedies goes into the jurisdiction on the trial court. The fact of the matter is that such discrepancy, if any, merely implies absence of a cause of action (*Pineda vs. Court of First Instance of Davao, et al.*, 59 Off.Gaz., No. 33, pp. 5266, 5271; *Atlas Consolidated Mining and Development Corporation vs. Mendoza*,

et al., 112 Phil., 960; 59 Off.Gaz., No. 11, pp. 1729, 1733). This point specially acquires pertinence when it is noted that while the appellants set up in their answer the defense of want of a cause of action, the same was based upon the alleged inexistence of a justiciable controversy. The absence of a cause of action upon the ground of non-exhaustion of administrative remedies does not appear to have been posed in issue below. It is thus likewise too late to invoke it at this stage. Hence, the result stands the same.

2. No special difficulty attends the resolution of the main issue. Heretofore, we have announced the doctrine that the grant of the power to tax to chartered cities under section 2 of the Local Autonomy Act is sufficiently plenary to cover "everything, excepting those which are mentioned" therein, subject only to the limitation that the tax so levied is for "public purposes, just and uniform" (Nin Bay Mining Company vs. Municipality of Roxas, Province of Palawan, G.R. L-20125, July 20, 1965). There is no showing, and we do not believe it is possible to show, that the tax levied, called by any name, - percentage tax or sales tax - comes under any of the specific exceptions listed in section 2 of the Local Autonomy Act. Not being excepted, it must be regarded as coming within the purview of the general rule. As the maxim goes, "Exceptio firmat regulam in casibus non exceptis". Since its public purpose, justness and uniformity of application are not disputed, the tax so levied must be sustained as valid.

Nor is this without precedent. On all fours to the case at bar is C.N. Hodges vs. The Municipal Board of the City of Iloilo, et al., G.R. 18129, January 31, 1963, which, significantly enough, not only involved the same parties but as well concerned another ordinance of the appellant City, ordinance 33, series of 1960, enacted barely six days after the enactment of the ordinance now under scrutiny, that is, on June 13, 1960. Ordinance 33, similar to the one now in controversy, levied a sales tax of one-half (1/2) of one percent (1%) of the selling price of any motor vehicle sold in the city of Iloilo, imposing the payment of the said tax as a condition to the registration of the sale in the Motor Vehicles Office as well as the transfer of ownership of the vehicle sold. In an action similar to the case at bar, the appellee herein, invoking grounds and advancing arguments similar to those herein relied upon, also challenged the validity of the ordinance. Upholding the validity thereof and affirming the corporate power of the appellant City to enact the same, this Court made the following pronouncements:[1]

"It would appear that the City of Iloilo, thru its municipal board, is empowered (a) to impose municipal licenses, taxes or fees upon any person engaged in any occupation or business, or exercising any privilege, in the city; (b) to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation conducted within the city; and (c) to levy for public purposes just and uniform taxes, licenses and fees. It would also appear that municipalities and municipal districts are prohibited from imposing any percentage tax on sales, or other taxes in any form on articles subject to specific tax, except gasoline, under the provisions of the National Internal Revenue Code.

"From a cursory analysis of the provisions above-stated we can readily draw the conclusion that the City of Iloilo has the authority and power to approve the ordinance in question for it merely imposes a percentage tax on the sale of a second-hand motor vehicle that may be carried out within the city by any person, firm, association or corporation owning or dealing with it who may come within its jurisdiction. Indeed, it cannot be disputed that a sales tax of ½ of 1% of the selling price of a second-hand motor vehicle comes within the purview of the provisions of Section 2 of Republic Act 2264. It is true that the tax in question is in the form of a percentage tax on the proceeds of the sale of a second-hand motor vehicle which comes within the prohibition of the section above adverted to; but the prohibition only refers to municipalities and municipal districts and does not comprehend chartered cities as the City of Iloilo".

We perceive no overriding reason to depart from the doctrine thus laid down.

3. The questioned ordinance, however, does more than merely levy a tax. It commands that "The payment of this municipal tax shall be a requirement for the registration * * * of said sale in the Office of the Register of Deeds or the Office of the City Treasurer of the City of Iloilo" and, for purposes of which, demands that "the tax receipt

shall be made a part of the documents to be presented for registration" (section 3). Challenging this requirement, the appellee contended and the trial court agreed that, in effect, it imposes a condition to the registration of the deed of conveyance not otherwise called for by the general statutory law on the matter and, to that extent, amounts to amending or modifying the applicable statute, which it is argued, is not within the competence of the appellant municipal board of Iloilo city to do.

In the *C.N. Hodges vs. The Municipal Board of the City of Iloilo* case hereinbefore cited, this Court, confronted with a similar question in so far as the registration of vehicles under the ordinance there involved was concerned, took the view that the imposition of the payment of the tax levied as a pre-requisite to the registration of the sale in the Motor Vehicles Office was "merely a coercive measure to make the enforcement of the contemplated sales tax more effective" and, accordingly, sustained the same under the principle of implication, that is, that being a measure reasonably necessary to carry out the power expressly granted, it was considered impliedly included in the grant of the express power.

However, after carefully re-examining the ruling thus enunciated, we are persuaded to say that, while we find no cause to doubt the validity thereof as a general principle, the same cannot by any means be regarded as a hard-and-fast rule. Applied to specific cases, the broad sweep thereof must be limited or qualified depending upon the particular attendant circumstances. And we declare that the generality of the rule may not prevail when, in its application, it runs counter to or tends to impair a specific legal mandate of a superior authority. But another way, the rule should be that the appellant municipal board may resort to all means reasonably necessary and proper to give effect to the powers expressly conferred upon it, provided, however, that said means are not otherwise contrary to any statutory or other more authoritative provision on the subject.

The registration with the registry of deeds of voluntary conveyances of real property under the Torrens system is, in this jurisdiction, mainly controlled by the Land Registration Act, Act 496, as amended. Amongst others, this statute provides that " * * * The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of the register of deeds for the province or provinces or city where the land lies" (section 50). The requirements for deeds or other voluntary instruments of conveyance to be registrable thereunder are specified in the law (section 54) and, for purposes of registration, "The production of the owner's duplicate certificate whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the register of deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum "shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith * * *" (section 55, par. 2). The schedule of fees to be paid upon such registration is likewise therein set forth (section 114, sub-section C, as amended by Republic Act 928). In addition, Republic Act 456 also requires that "No voluntary document by which real property or an interest therein is sold, transferred, assigned, mortgaged or leased shall be registered in the registry of property, unless the real estate taxes levied and actually due thereon shall have been fully paid (section 1); and, that "Every document of transfer or alienation of real property filed with the Register of Deeds shall be accompanied with an extra copy of the same which copy shall be transmitted by said officer to the city or provincial assessor x x x" (section 2). As it thus results, the legislature appears to have specified the minimum requirements for the registration of conveyances of real property. Upon satisfaction of the said requirements, it becomes the legal duty of the registrar to make the registration requested. No entity, it seems clear enough, except the Legislature itself, may add to or detract from or otherwise alter or amend the requirements it has so enumerated—and then only by the corresponding amendment of the existing statutes or the enactment of new ones.

In this posture, to sanction the condition to registration imposed by the ordinance under examination would

virtually allow the appellant municipal board to add new requirements for registration not otherwise provided by applicable statutory law on the matter. In effect, it gives power to the said appellant to amend or modify the law—a power which, definitely, is not vested in it. We therefore conclude that the condition thus imposed by the ordinance in question is ultra vires. Considering that this portion is severable from the rest of the provisions thereof without affecting the integrity of the remaining portions as a complete set of provisions on the matter standing by themselves, the same may properly be nullified while the rest of the ordinance not otherwise infirm may be sustained. In passing, it should be understood that to the extent that this rule conflicts with that laid down in *C.N. Hodges vs. The Municipal Board of the City of Iloilo*, G.R. No. L-18129, January 31, 1963, the latter must be taken to be pro tanto so qualified.

Accordingly, the judgment a quo is hereby modified in the sense that Ordinance 31, series of 1960, of the City of Iloilo, is declared valid as being within the corporate powers of the said City to adopt, with the exception of the portion thereof which prescribes payment of the tax therein levied as a requirement for the transfer of ownership and the registration of the sale in the office of the Register of Deeds, in reference to which the judgment appealed from is hereby affirmed. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

[1] See also: *The City of Bacolod, etc. vs. Gruet, etc.*, G.R. L-18290, January 31, 1963.

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