

SAN MIGUEL BREWERY INC., PLAINTIFF-APPELLANT, VS. FRANCISCO MAGNO, DEFENDANT-APPELLEE.

G.R. No. 21879. September 29, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

An appeal from a decision of the Court of First Instance of Manila, in civil case No. 46039, dismissing the complaint filed by the San Miguel Brewery, Inc., and ordering it to pay to the defendant P2,000.00 in damages, P1,000.00 as attorneys fees, and costs.

The appeal was originally lodged with the Court of Appeals which certified the case to this Court, the issue involved being purely one of law.

From the stipulation of facts submitted by the parties in the lower court and the various annexes referred to therein, the facts of the case that gave rise to the controversy are as follows:

On December 14, 1950, the Municipal Board of Butuan City passed Ordinance No. 11 amending Ordinance No. 7 of said City, imposing a tax of two per cent (2%) on the gross sales or receipts of those engaged in the sale, trading in, or disposal of all alcoholic or malt beverages, wines and mixed or fermented liquors, including tuba, basi and tapuy. (Sec. 1 [e], Annex A.) On June 6, 1960, the same Municipal Board passed Ordinance No. 110 amending Ordinance No. 11, fixing instead a tax on the sale of beer at the rate of P.25 per case of twenty-four bottles, and on the sales of soft drinks at the rate of P.10 per case of twenty-four bottles of Coca-Cola, Pepsi-Cola, Tru-Orange, Seven-Up, Bireley, Soda Water, and any other kind of soft drinks or carbonated drinks. (Sec. 2 [e] and Sec. 3, respectively, Annex B.)

The San Miguel Brewery, Inc., a corporation organized and existing under the laws of the Philippines with principal offices at Manila, maintains a warehouse or branch office in the City of Butuan and is engaged in the sale of beer and soft drinks in said City. Although it appears to have paid the required taxes under Ordinance No. 11 promptly and religiously upon the effectivity of the ordinance, the company stopped paying the taxes thereafter (Annex D), and thereby incurred in back taxes. Verbal demands were made by the City Treasurer of Butuan on the representative of the San Miguel Brewery, Inc. at Butuan City with warnings that a warrant of distraint and levy will be issued against its properties unless it settles its tax liability under the ordinance aforesaid. On September 23, 1960, counsel for the company wrote a letter to the City Treasurer of Butuan questioning the power of the city government of Butuan to levy upon its properties pointing out, "that the power of distraint and levy as embodied in your Charter (Republic Act No. 523, as amended), can only be exercised by your goodselves in respect to delinquencies in the payment of real estate taxes". To this, the City Treasurer of Butuan, in a letter dated September 29, 1960, promptly answered and explained that he may issue warrants of distraint and levy upon properties of delinquent taxpayers under Ordinance No. 26 of the City of Butuan. Thereafter, the San Miguel Brewery, Inc received a formal letter of demand for payment of its tax liability from the City Treasurer of Butuan, to which the Branch Manager of the company at Cagayan de Oro City who has supervision of the

company's warehouse at Butuan City, answered on October 10, 1960, requesting more time "within which to act on said demand and in order to refer the matter to its Manila Office". Several other written demands were thereafter made by the City Treasurer of Butuan to officials of plaintiff's branch office in said city, but failed to yield any concrete result. Accordingly, on January 6, 1961, the city treasurer, with the approval of the Mayor of Butuan City issued a warrant of distraint and levy against the properties of the San Brewery, Inc. at its branch office in that city to enforce the collection of the taxes assessed against it, i. e., under ordinance Nos. 11 and 110, amounting to P9,129.42, including penalties corresponding to the period from May, 1957 to August 15, 1960, and under Ordinance No. 110, the amount of P15,618.96, including penalty, for the period corresponding to June 6 up to October 30, 1960, or a total of P24,747.32. On January 9, 1961, at about 9 o'clock in the morning a notice of seizure by virtue of the warrant of distraint and levy was served on the company's Branch Manager at Butuan City who, upon previous arrangement with the representative of the City Treasurer of Butuan, voluntarily surrendered the two (2) delivery trucks of the company seized under the warrant to the said City Treasurer at about 5 o'clock in the afternoon of the same day.

On January 12, 1961, the San Miguel Brewery, Inc. instituted the present action in the Court of First Instance of Manila, praying for an order directing defendant Francisco Magno to release the delivery trucks seized and impounded by the City Government of Butuan allegedly "without authority and for reasons unknown to the company", and to order the defendant to pay to the plaintiff damages in the amount of P6,000.00 the corresponding to the period from January 9, 1961 to January 10, 1961, and 3,000.00 for each day thereafter that the trucks remain impounded and unused by the plaintiff, plus the costs of the suit. Parenthetically, the action was brought against the defendant Francisco Magno in his individual capacity, as disclosed in the allegations in the complaint, and as expressly admitted in the appellant's brief, thus - "As a matter of fact, plaintiff filed this action against Francisco Magno, not in his official capacity, but in his individual capacity, x x x." (p. 13).

In his answer, defendant Francisco Magno inter-posed, among others, the defense that in seizing the delivery trucks of the San Miguel Brewery, Inc., he was acting, and was in the performance of his official duty, as Treasurer of Butuan City, and can not be held liable to pay to the company any damages. He set up a counterclaim of P40,000.00 and P10,000.00 as moral and exemplary damages, respectively, allegedly sustained by him and the members of his family on account of the shock, fright, wounded feelings, mental anguish besmirched reputation and social humiliation they suffered by reason of the filing of the case against him by the plaintiff, plus attorney's fees in the amount of P2,000.00.

During the pendency of the action, the San Miguel Brewery, Inc. paid under protest the taxes assessed against it by the City Treasurer of Butuan, and forth-with the impounded trucks were released.

The parties submitted no testimonial evidence. Instead, they submitted a stipulation of facts along with documentary evidence, on the basis of which the court a quo, on April 2, 1962, rendered the decision appealed from. A motion for reconsideration of the decision having been denied, the plaintiff interposed the instant appeal.

Under the first assignment of error, appellant assails the conclusion of the court that "the allegation in the complaint (par. 5) that the seizure of plaintiff's trucks was made for reasons unknown to the plaintiff, is false", because it is not sustained by the evidence; said appellant claiming that it was only at the time that the stipulation of facts was being prepared that the defendant-appellee made mention for the first time of his alleged authority to issue a warrant of distraint and levy against properties of tax delinquents under Ordinance No. 26 of the City of Butuan. The contention is untenable. In paragraph 8 of the stipulation of facts, it is admitted that on September 29, 1960, in a letter of the City Treasurer of Butuan to Attys. Ponce Enrile, Siguion Reyna, Montecillo & Belo, counsel for the plaintiff, said counsel was informed that the city government was exercising its power of levy and distraint against properties of taxpayers under Ordinance No. 26 of the city. Appellant, therefore, may not

now feign ignorance of such notice which appears in the records.

To the charge that Ordinance No. 26 of the City of Butuan is ultra vires, suffice it to say that the same may not be considered in this appeal. An examination of the complaint filed in this case, reveals that except for the general averment therein that its delivery trucks were seized and impounded by order of the de-fendant Francisco Magno "without authority of law and for reasons unknown to the plaintiff", which is with-out factual basis as pointed out above, no mention was made in the stipulation of facts nor any evidence ever introduced during the trial of the case in the lower court, to show that it was the intention of the appell-ant to place in issue the validity of the ordinance a-foresaid.

In cases where the constitutionality of statutes are directly put in issue, the general rule is, that the question of constitutionality must be raised at the earliest opportunity, so that if not raised by the plead-ings, ordinarily it may not be raised at the trial, and if not raised in the trial court, it will not be consi-dered on appeal (People and Hongkong & Shanghai Banking Corporation vs. Vera and Cu Unjieng, 37 O.G., 164 citing 12 C. J., p. 786). (See also Cadwalader-Gibson Lumber Co. vs. Del Rosario, 26 Phil. 192; Robb and Hilscher vs. People of the Philippines, 68 Phil., 320; Macondray & Co. vs. Benito and Ocampo, 62 Phil., 137; Sofronio L. Quimson vs. P. L. de Guzman, G.R. No. L-18240, January 31, 1963.) The exceptions are, as stated in Hongkong etc. vs. Cu Unjieng, supra, in criminal cases, where the question may be raised at any stage of the proceedings, either in the trial court or on appeal; in civil cases, it has been held that it is the duty of the court to pass on the constitutional question, though raised for the first time on appeal, if it appears that a determination of the question is necessary to a decision of the case; and it has also been held that a constitutional question will be considered by an appellate court at any time, where it involves the jurisdiction of the court below. The same rule should apply where the validity of a mu-nicipal ordinance is questioned. We do not find any of the exceptions aforementioned applicable to this case to justify a conclusion that the validity of Ordinance No. 26 of the City of Butuan may be properly passed upon in this appeal.

Moreover, Francisco Magno is sued in this case not in his capacity as City Treasurer of Butuan but in his individual capacity. He is not the proper party against whom the alleged invalidity of the ordinance in question should be pleaded, nor is this the proper proceeding wherein the alleged infirmity of the said ordinance may be raised. A municipal ordinance is not subject to col-lateral attack. Public policy forbids collateral im-peachment of legislative acts (43 C. J., 555-556).

Under the second assignment of error, it is con-tended that the trial court fell into error in not or-dering the defendant-appellee to pay to the appellant in damages the amount of P2,160.00, notwithstanding the admission of the defendant in the stipulation of facts that the San Miguel Brewery, Inc. incurred dam-ages in that amount, representing the hire of two (2) trucks at the rate of P80.00 per day which the plain-tiff was compelled to secure and use for the period from January 9, 1961 to February 8, 1961, during which time the two delivery trucks of the plaintiff were im-pounded by the appellee. The argument is based on a wrong premise. It erroneously assumes that the de-fendant is personally liable for damages to the appel-lant, disregarding the established fact that the de-fendant had issued the warrant of distraint and levy against plaintiff's properties in his capacity as City Treasurer of Butuan who, under the law, is empowered to issue the warrant. Ordinance No. 26 of the City of Butuan provides, among others, as follows:

"SECTION 1.- Upon the failure of any person owing any delinquent tax or de-linquent revenue to pay the same, at the time required under existing ordi-nance, the City Treasurer, his deputy, or any of his clerks duly authorized in writing by the City Treasurer may seize or distraint any goods, chattels or effects, and other personal property, including stocks and other securities, debts, credits, bank accounts and any interest in and rights to personal pro-perty, of such person in sufficient quantity to satisfy the tax, or charge, together with any

increment thereto in-cident to delinquency, and the expenses of the distraint."

Since there is no dispute that the appellee issued the warrant of distraint and levy against the delivery trucks of the appellant on January 9, 1961, in his capacity as City Treasurer of Butuan, and as there is no disagreement that defendant-appellee issued said warrant by virtue of Ordinance No. 26 of the City of Butuan above-quoted (Par. 15, Stipulation of Facts), and not having been shown that the defendant, either as a private citizen or as City Treasurer of Butuan, had acted in bad faith, there can be no question that appellee Francisco Magno, who was merely performing a duty enjoined by law to be performed when he issued the warrant of distraint and levy, cannot be made to answer personally for damages to the appellant.

Finally, under the third assignment of error, appellant maintains that the trial court should have awarded damages in favor of the appellee under the counterclaim of the latter, for the reason that no evidence was introduced by the appellee in support of the moral and exemplary damages he and his family allegedly suffered. It argues further that attorney's fees should not have been assessed against it.

In respect of the appellee's counterclaim for moral and exemplary damages, the trial court said:

"With respect to the counterclaim of defendant, it appears that defendant introduced no evidence to support his claim for P40,000.00 moral damages, P10,000.00 exemplary damages and P2,000.00 attorney's fees."

Nevertheless, the trial court sentenced the plaintiff to pay to the defendant, damages in the sum of P2,000. 00, and costs.

In order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like (*Darang vs. Belizar*, G.R. No. L--19487, January 31, 1967). While no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court (Article 2216), it is, nevertheless, essential that the claimant should satisfactorily prove the existence of the factual basis of the damages (Article 2217) and its causal connection to defendant's acts. This is so, because moral damages, though incapable of pecuniary estimation, are in the category of an award, designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrong-doer (*Algarra vs. Sandejas*, 27 Phil. 284; *Malonzo vs. Galang*, G.R. No. L-13851, July 27, 1960). Neither may we consider the award as exemplary damages, because the mere findings that certain allegations in the complaint are not true, and the plaintiff committed a mistake in instituting the action against the wrong party, do not justify the award of this kind of damages. It infringes upon the right of a citizen to have access to the courts. The portals of the courts of justice should not be closed to litigants who ask for the protection of their rights. Penalty in the concept of damages should not be imposed simply because a complaint is found unmeritorious by the courts.

The amount of attorney's fees, on the other hand, is addressed to the sound discretion of the court. It may be awarded along with expenses of litigation, other than judicial costs, in cases where the court deems it just and equitable under the circumstances of the case. And when as in this case, the defendant public officer was sued in his private capacity for acts done in the performance of official duty required by law, and was forced to employ the services of private counsel to defend his rights, it is but proper that attorney's fees be charged against the plaintiff. Nominal damages may also be adjudicated. We believe the award of P2,000.00 attorney's fees and P100.00 nominal damages, is just and equitable in the premises.

WHEREFORE, the decision appealed from is modified, setting aside the award of P2,000.00 to the defendant in concept of damages, but increasing the attorney's fees to P2,000.00, and ordering the plaintiff to pay to the defendant P100.00 as nominal damages. Judgment is affirmed in all other respects. Costs against plaintiff-appellant.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

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