

LOPE NIETO, AS MANAGER OF ILAGAN ELECTRIC & ICE PLANT, INC., PLAINTIFF AND APPELLEE, VS. FERNANDO M. LAGGUI, MUNICIPAL TREASURER OF ILAGAN, ISABELA, DEFENDANT AND APPELLANT.

G.R. No. 46114. November 02, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

On December 14, 1935, the Municipal Council of Ilagan, Province of Isabela, approved Ordinance No. 13, the pertinent portion of which reads:

"[Municipal Ordinance No. 13]

"AN ORDINANCE CREATING AND IMPOSING MUNICIPAL LICENSE TAX ON BUSINESS OR OCCUPATIONS ENUMERATED HEREUNDER.

"By virtue of the faculties conferred upon Municipal Councils by the Administrative Code, as amended, and by authority of section one of Act No. 3422, the Municipal Council of Ilagan, Isabela, hereby decrees:

"SECTION 1. That the following taxes be imposed in this municipality upon the business, occupations and privileges specified hereunder and shall be collected in accordance with the following schedule of rates:

Per annum

"For managers or Administrators of business corporations or commercial firms, each administrator or manager, P50.00

"For each Notary Public, 6.00

"For each Drug Store, 12.00

"For each Concessionaire of forest products, 8.00

"For each seller of Sewing Machines, 6.00

"For each seller of gasoline, petroleum and other products of petroleum, 25.00

"For each seller of gasoline, petroleum and other products of petroleum on commission basis, 10.00

On January 20, 1936, the defendant, as municipal treasurer of Ilagan, demanded of the plaintiff, as manager of Ilagan Electric & Ice Plant, Inc., the payment of the amount of P12.50 by way of municipal license tax pursuant to the said ordinance, corresponding to the first quarter of the said year 1936, and the plaintiff paid it under protest. Thereafter the plaintiff brought this action to recover from the defendant the aforesaid amount which he paid under protest and to declare the ordinance null and void. The parties submitted the case upon a stipulation of facts and the court rendered judgment on December 18, 1937 declaring ordinance No. 13 illegal and ordering the

defendant to return the aforesaid sum of money to the plaintiff. From this judgment, the defendant appealed.

As stated in the ordinance itself, the municipal council of Ilagan based its power to enact it on the provisions of Act No. 3422. This Act was amended by Act No. 3790 which was approved by the Legislature on December 2, 1930 and was, consequently, the law in force on the date of the adoption of the ordinance. The parts of Act No. 3790 bearing on the question raised in this appeal are the following:

"SECTION 1. Section one of Act Numbered Thirty-four hundred and twenty-two is hereby amended to read as follows:

" 'SECTION 1. A municipal council shall have authority to impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality, by requiring them to secure licenses at rates fixed by the municipal council, and to collect fees and charges for services rendered by the municipality, and shall otherwise have power to levy for public local purposes and for school purposes, including teachers' salaries, just and uniform taxes other than percentage taxes and taxes on specified articles: Provided, That it shall be beyond the power of the municipal council to impose the following taxes, charges, and fees:

* * * * *

"(d) Taxes on persons operating telephones and telegraph lines or exchanges, broadcasting or wireless stations, sugar centrals, rice mills, coconut oil factories, tanning industries, hemp grading establishments, and on persons selling light, heat, or power and engaged in the installation of gas, or electric light, heat, or power."

The anonymous company Ilagan Electric & Ice Plant, Inc., of which the plaintiff is the director-manager, holds a franchise granted by the Philippine Legislature under Act No. 3407. Section 1 of this Act specifying the purposes of the company reads:

"SECTION 1. Subject to the conditions established in this Act and the provisions of Act Numbered Thirty-one hundred and eight and its amendments, applicable thereto, there is hereby granted to the company known as Ilagan Electric and Ice Plant, Incorporated, for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate on all the streets, public thoroughfares, and public places within the limits of the municipality of Ilagan, Isabela, poles, wires, and all other necessary apparatus and appurtenances for the transmission and distribution of electric current for electric power, heat, and light and any other use to which electricity may be put, and to furnish electric power, heat, and light within said municipality of Ilagan, Province of Isabela, for municipal, domestic, or manufacturing uses and for any other use to which electricity may be put, and to charge and collect a schedule of prices and conventional rates for the use of same: Provided, That said prices shall always be subject to rules provided by act of the Philippine Legislature or by the entities or authorities authorized by law, and shall in no case exceed thirty centavos per kilowatt."

In his five assignments of error the defendant sustains the legality and validity of Ordinance No. 13 and alleges that the plaintiff is not entitled to the return of the money paid by him under protest. The trial court declared the ordinance illegal in its entirety. In our opinion the question properly raised by the appeal is not the validity or legality of the ordinance, but rather whether the said ordinance reaches and may be applied to the plaintiff, in the capacity in which he paid the tax. To answer this question, it is not necessary to go into the legality of the ordinance.

According to the saving clause of section 1 of Act No. 3422, as amended by Act No. 3790, the municipal council of Ilagan is without power to impose municipal license taxes on persons engaged in installing, supplying, and selling electric light, heat, or power. Ilagan Electric & Ice Plant, Inc., under its franchise granted by Act No. 2407, is an anonymous company engaged in the exploitation and sale of electric power or current, and the plaintiff, who

is merely an officer of said company, is exempt from the payment of the municipal license tax required by Ordinance No. 13 under express the provision of subsection (d) of section 1 of Act No. 3422, as amended by section 1 of Act No. 3790.

Modifying the appealed decision, it is held that the plaintiff, as Manager of Ilagan Electric & Ice Plant, Inc., is exempt from the payment of the municipal license tax provided in section 1 of Ordinance No. 13 of the municipality of Ilagan, and the defendant is ordered to return to the plaintiff the sum of P12.50, in this respect affirming the said decision, without special pronouncement as to the costs in this instance. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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