359 Phil. 779

THIRD DIVISION

[G.R. No. 126232, November 27, 1998]

THE PROVINCE OF BULACAN, ROBERTO M. PAGDANGANAN, FLORENCE CHAVEZ, AND MANUEL DJ SIAYNGCO IN THEIR CAPACITY AS PROVINCIAL GOVERNOR, PROVINCIAL TREASURER, PROVINCIAL LEGAL ADVISE, RESPECTIVELY, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS (FORMER SPECIAL 12TH DIVISION), PUBLIC CEMENT CORPORATION, RESPONDENTS.

D E C I S I O N

ROMERO, J.:

Before us is a petition for c*ertiorari* seeking the reversal of the decision of the Court of Appeals dated September 27, 1995 declaring petitioner without authority to levy taxes on stones, sand, gravel, earth and other quarry resources extracted from private lands, as well as the August 26, 1996 resolution of the appellate court denying its motion for reconsideration.

The facts are as follows:

On June 26, 1992, the Sangguniang Panlalawigan of Bulacan passed Provincial Ordinance No. 3, known as "An ordinance Enacting the Revenue Code of the Bulacan Province," which was to take effect on July 1, 1992, section 21 of the ordinance provides as follows:

> Section 21. Imposition of Tax. There is hereby levied and collected a tax of 10% of the fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth and other quarry resources, such, but not limited to marble, granite, volcanic cinders, basalt, tuff and rock phosphate, extracted from public lands or from beds of seas, lakes, rivers, streams, creeks and other public waters within its territorial jurisdiction. (Italics ours)

Pursuant thereto, the Provincial Treasurer of Bulacan, in a letter dated November 11, 1993, assessed private respondent Republic Cement Corporation (hereafter Republic Cement) P2,524,692.13 for extracting limestone, shale and silica from several parcels of private land in the province during the third quarter of 1992 until the second quarter of 1993. Believing that the province, on the basis of above-said ordinance, had no authority to impose taxes on quarry resources extracted from private lands, Republic

Cement formally contested the same on December 23, 1993. The same was, however, denied by the Provincial Treasurer on January 17, 1994. Republic Cement, consequently filed a petition for declaratory relief with the Regional Trial Court of Bulacan on February 14, 1994. The province filed a motion to dismiss Republic Cement's petition, which was granted by the trial court on May 13, 1993, which ruled that declaratory relief was improper, allegedly because a breach of the ordinance had been committed by Republic Cement.

On July 11, 1994, Republic Cement filed a petition for certiorari with the Supreme Court seeking to reverse the trial court's dismissal of their petition. The Court, in a resolution dated July 27, 1994, referred the same to the Court of Appeals, where it was docketed as CA G.R. SP No. 34915. The appellate court required petitioners to file a comment, which they did on September 7, 1994.

In the interim, the Province of Bulacan issued a warrant of levy against Republic Cement, allegedly because of its unpaid tax liabilities. Negotiations between Republic Cement and petitioners resulted in an agreement and modus vivendi on December 12, 1994, whereby Republic Cement agreed to pay under protest P1,262,346.00, 50% of the tax assessed by petitioner, in exchange for the lifting of the warrant of levy. Furthermore, Republic Cement and petitioners agreed to limit the issue for resolution by the Court of Appeals to the question as to whether or not the provincial government could impose and/or assess taxes on quarry resources extracted by Republic Cement from private lands pursuant to Section 21 of the Provincial Ordinance No. 3. This agreement and modus vivendi were embodied in a joint manifestation and motion signed by Governor Roberto Pagdanganan, on behalf of the Province of Bulacan, by Provincial Treasurer Florence Chavez, and by Provincial Legal Officer Manuel Siayngco, as petitioner's counsel and filed with the Court of Appeals on December 13, 1994. In a resolution dated December 29, 1994, the appellate court approved the same and limited the issue to be resolved to the question whether or not the provincial government could impose taxes on stones, sand, gravel, earth and other quarry resources extracted from private lands.

After due trial, the Court of Appeals, on September 27, 1995, rendered the following judgment:

> WHEREFORE, judgment is hereby rendered declaring the Province of Bulacan under its Provincial Ordinance No. 3 entitled "An Ordinance Enacting the Revenue Code of Bulacan Province" to be without legal authority to impose and assess taxes on quarry resources extracted by RCC from private lands, hence the interpretation of Respondent Treasurer of Chapter II, Article D, Section 21 of the Ordinance, and the assessment made by the Province of Bulacan against RCC is null and void.
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> Petitioner's motion for reconsideration, as well as their supplemental motion for reconsideration, was denied by the appellate court on august 26, 1996, hence this appeal.

Petitioner's claim that the Court of Appeals erred in:

1. NOT HAVING OUTRIGHTLY DISMISSED THE SUBJECT PETITION ON THE GROUND THAT THE SAME IS NOT THE APPROPRIATE REMEDY FROM THE TRIAL COURT'S GRANT OF THE PRIVATE RESPONDENTS' (HEREIN PETITIONER) MOTION TO DISMISS;

2. NOT DISMISSING THE SUBJECT PETITION FOR BEING VIOLATIVE OF CIRCULAR 2-90 ISSUED BY THE SUPREME COURT;

3. NOT DISMISSING THE PETITION FOR REVIEW ON THE GROUND THAT THE TRIAL COURT'S ORDER OF MAY 13, 1994 HAD LONG BECOME FINAL AND EXECUTORY;

4. GOING BEYOND THE PARAMETERS OF ITS APPELLATE JURISDICTION IN RENDERING THE SEPTEMBER 27, 1995 DECISION;

5. HOLDING THAT PRIVATE RESPONDENT (HEREIN PETITIONER) ARE ESTOPPED FROM RAISING THE PROCEDURAL ISSUE IN THE MOTION FOR RECONSIDERATION;

6. THE INTERPRETATION OF SECTION 134 OF THE LOCAL GOVERNMENT CODE AS STATED IN THE SECOND TO THE LAST PARAGRAPH OF PAGE 5 OF ITS SEPTEMBER 27, 1995 DECISION;

7. SUSTAINING THE ALLEGATIONS OF HEREIN RESPONDENT WHICH UNJUSTLY DEPRIVED PETITIONER THE POWER TO CREATE ITS OWN SOURCES OF REVENUE;

8. DECLARING THAT THE ASSESSMENT MADE BY THE PROVINCE OF BULACAN AGAINST RCC AS NULL AND VOID WHICH IN EFFECT IS A COLLATERAL ATTACK ON PROVINCIAL ORDINANCE NO. 3; AND

9. FAILING TO CONSIDER THE REGALIAN DOCTRINE IN FAVOR OF THE LOCAL GOVERNMENT.

The issues raised by petitioners are devoid of merit. The number and diversity of errors raised by appellants impel us, however, to discuss the points raised seriatim.

In their first assignment of error, petitioners contend that instead of filing a petition for certiorari with the Supreme Court, Republic Cement should have appealed from the order of the trial court dismissing their petition. Citing *Martinez vs. CA,*[1] they allege that a motion to dismiss is a final order, the remedy against which is not a petition for certiorari, but an appeal, regardless of the questions sought to be raised on appeal,

whether of fact or of law, whether involving jurisdiction or grave abuse of discretion of the trial court.

Petitioners' argument is misleading. While it is true that the remedy against a final order is an appeal, and not a petition for certiorari, the petition referred to is a petition for certiorari under Rule 65. As stated in Martinez, the party aggrieved does not have the option to substitute the special civil action for certiorari under Rule 65 for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availment of the special civil action for certiorari.

Republic Cement did not, however, file a petition for certiorari under Rule 65, but an appeal by certiorari under Rule 45. Even law students know that certiorari under Rule 45 is a mode of appeal, an appeal from the Regional Trial Court being taken in either of two ways (a) by writ of error (involving questions of fact and law) and (b) by certiorari (limited only to issues of law), with an appeal by certiorari being brought to the Supreme Court, there being no provision of law for taking appeals by certiorari to the Court of Appeals.[2] It is thus clearly apparent that Republic Cement correctly contested the trial court's order of dismissal by filing an appeal by certiorari under Rule 45. In fact, petitioners, in their second assignment of error, admit that a petition for review on certiorari under Rule 45 is available to a party aggrieved by an order granting a motion to dismiss.[3] They claim, however, that Republic Cement could not avail of the same allegedly because the latter raised issues of fact, which is prohibited, Rule 45 providing that "(t)he petition shall raise only questions of law which must be distinctly set forth."[4] In this respect, petitioners claim that Republic Cement's petition should have been dismissed by the appellate court, Circular 2-90 providing:

> 4. Erroneous Appeals. - An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.
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> x x x x x x x x x
>
> d) No transfer of appeals erroneously taken. -- No transfers of appeals erroneously taken to the Supreme Court or to the Court of Appeals to whichever of these Tribunals has appropriate appellate jurisdiction will be allowed; continued ignorance or wilful disregard of the law on appeals will not be tolerated.

Petitioners even fault the Court for referring Republic Cement's petition to the Court of Appeals, claiming that the same should have been dismissed pursuant to Circular 2-90. Petitioners conveniently overlook the other provisions of Circular 2-90, specifically 4b) thereof, which provides:

> b) Raising factual issues in appeal by certiorari. - Although submission of issues of fact in an appeal by certiorari taken to the Supreme Court from the regional trial court is ordinarily proscribed, the Supreme Court

> nonetheless retains the option, in the exercise of its sound discretion and considering the attendant circumstances, either itself to take cognizance of and decide such issues or to refer them to the Court of Appeals for determination.

As can be clearly adduced from the foregoing, when an appeal by certiorari under Rule 45 erroneously raises factual issues, the Court has the option to refer the petition to the Court of Appeals. The exercise by the Court of this option may not now be questioned by petitioners.

As the trial court's order was properly appealed by Republic Cement, the trial court's May 13, 1994 order never became final and executory, rendering petitioner's third assignment of error moot and academic.

Petitioners' fourth and fifth assignment of errors are likewise without merit. Petitioners assert that the Court of Appeals could only rule on the propriety of the trial court's dismissal of Republic Cement's petition for declaratory relief, allegedly because that was the sole relief sought by the latter in its petition for certiorari. Petitioners claim that the appellate court overstepped its jurisdiction when it declared null and void the assessment made by the Province of Bulacan against Republic Cement.

Petitioners gloss over the fact that, during the proceedings before the Court of Appeals, they entered into an agreement and modus vivendi whereby they limited the issue for resolution to the question as to whether or not the provincial government could impose and/or assess taxes on stones, sand, gravel, earth and other quarry resources extracted by Republic Cement from private lands. This agreement and modus vivendi were approved by the appellate court on December 29, 1994. All throughout the proceedings, petitioners never questioned the authority of the Court of Appeals to decide this issue, an issue which it brought itself within the purview of the appellate court. Only when an adverse decision was rendered by the Court of Appeals did petitioners question the jurisdiction of the former.

Petitioners are barred by the doctrine of estoppel from contesting the authority of the Court of Appeals to decide the instant case, as this Court has consistently held that " (a) party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction."[5] The Supreme Court frowns upon the undesirable practice of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse.[6]

In a desperate attempt to ward off defeat, petitioners now repudiate the above-mentioned agreement and modus vivendi, claiming that the same was not binding in the Province of Bulacan, not having been authorized by the Sangguniang Panlalawigan of Bulacan. While it is true that the Provincial Governor can enter into contract and obligate the province only upon authority of the sangguniang panlalawigan,[7] the

same is inapplicable to the case at bar. The agreement and modus vivendi may have been signed by petitioner Roberto Pagdanganan, as Governor of the Province of Bulacan, without authorization from the sangguniang panlalawigan, but it was also signed by Manuel Siayngco, the Provincial Legal Officer, in his capacity as such, and as counsel of petitioners.

It is a well-settled rule that all proceedings in court to enforce a remedy, to bring a claim, demand, cause of action or subject matter of a suit to hearing, trial, determination, judgment and execution are within the exclusive control of the attorney.[8] With respect to such matters of ordinary judicial procedure, the attorney needs no special authority to bind his client.[9] Such questions as what action or pleading to file, where and when to file it, what are its formal requirements, what should be the theory of the case, what defenses to raise, how may the claim or defense be proved, when to rest the case, as well as those affecting the competency of a witness, the sufficiency, relevancy, materiality or immateriality of certain evidence and the burden of proof are within the authority of the attorney to decide.[10] Whatever decision an attorney makes on any of these procedural questions, even if it adversely affects a client's case, will generally bind a client. The agreement and modus vivendi signed by petitioner's counsel is binding upon petitioners, even if the Sanggunian had not authorized the same, limitation of issues being a procedural question falling within the exclusive authority of the attorney to decide.

In any case, the remaining issues raised by petitioner are likewise devoid of merit, a province having no authority to impose taxes on stones, sand, gravel, earth and other quarry resources extracted from private lands. The pertinent provisions of the Local Government Code are as follows:

> Sec. 134. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the province may levy only the taxes, fees, and charges as provided in this Article.
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> Sec. 138. *Tax on Sand, Gravel and Other Quarry Resources.* - The province may levy and collect not more than ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.
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> x x x x x x x x x (Italics supplied)

The appellate court, on the basis of Section 134, ruled that a province was empowered to impose taxes only on sand, gravel, and other quarry resources extracted from public lands, its authority to tax being limited by said provision only to those taxes, fees and charges provided in Article One, Chapter 2, Title One of Book II of the Local

Government Code.[11] On the other hand, petitioners claim that Sections 129[12] and 186[13] of the Local Government Code authorizes the province to impose taxes other than those specifically enumerated under the Local Government Code.

The Court of Appeals erred in ruling that a province can impose only the taxes specifically mentioned under the Local Government Code. As correctly pointed out by petitioners, Section 186 allows a province to levy taxes other than those specifically enumerated under the Code, subject to the conditions specified therein.

This finding, nevertheless, affords cold comfort to petitioners as they are still prohibited from imposing taxes on stones, sand, gravel, earth and other quarry resources extracted from private lands. The tax imposed by the Province of Bulacan is an excise tax, being a tax upon the performance, carrying on, or exercise of an activity.[14] The Local Government Code provides:

> Section 133. - *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
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> x x x x x x x x x
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> (h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;
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> x x x x x x x x x

A province may not, therefore, levy excise taxes on articles already taxed by the National Internal Revenue Code. Unfortunately for petitioners, the National Internal Revenue Code provides:

> Section 151. - *Mineral Products.* -
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> (A) Rates of Tax. - There shall be levied, assessed and collected on minerals, mineral products and quarry resources, excise tax as follows:
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> x x x x x x x x x
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> (2) On all nonmetallic minerals and quarry resources, a tax of two percent (2%) based on the actual market value of the gross output thereof at the time of removal, in case of those locally extracted or produced; or the values used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation.
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> x x x x x x x x x

(B) [Definition of Terms]. - *For purposes of this Section, the term-*

x x x x x x x x x

(4) Quarry resources shall mean any common stone or other common mineral substances as the Director of the Bureau of Mines and Geo-Sciences may declare to be quarry resources such as, but not restricted to, marl, marble, granite, volcanic cinders, basalt, tuff and rock phosphate; Provided, That they contain no metal or metals or other valuable minerals in economically workable quantities.

It is clearly apparent from the above provision that the National Internal Revenue Code levies a tax on all quarry resources, regardless of origin, whether extracted from public or private land. Thus, a province may not ordinarily impose taxes on stones, sand, gravel, earth and other quarry resources, as the same are already taxed under the National Internal Revenue Code. The province can, however, impose a tax on stones, sand, gravel, earth and other quarry resources extracted from public land because it is expressly empowered to do so under the Local Government Code. As to stones, sand, gravel, earth and other quarry resources extracted from private land, however, it may not do so, because of the limitation provided by Section 133 of the Code in relation to Section 151 of the National Internal Revenue Code.

Given the above disquisition, petitioners cannot claim that the appellate court unjustly deprived them of the power to create their sources of revenue, their assessment of taxes against Republic Cement being ultra vires, traversing as it does the limitations set by the Local Government Code.

Petitioners likewise aver that the appellate court's declaration of nullity of its assessment against Republic Cement is a collateral attack on Provincial Ordinance No. 3, which is prohibited by public policy.[15] Contrary to petitioners' claim, the legality of the ordinance was never questioned by the Court of Appeals. Rather, what the appellate court questioned was petitioners' assessment of taxes on Republic Cement on the basis of Provincial Ordinance No. 3, not the ordinance itself.

Furthermore, Section 21 of Provincial Ordinance No. 3 is practically only a reproduction of Section 138 of the Local Government Code. A cursory reading of both would show that both refer to ordinary sand, stone, gravel, earth and other quarry resources extracted from public lands. Even if we disregard the limitation set by Section 133 of the Local Government Code, petitioners may not impose taxes on stones, sand, gravel, earth and other quarry resources extracted from private lands on the basis of Section 21 of Provincial Ordinance No. 3 as the latter clearly applies only to quarry resources extracted from public lands. Petitioners may not invoke the Regalian doctrine to extend the coverage of their ordinance to quarry resources extracted from private lands, for taxes, being burdens, are not to be presumed beyond what the applicable statute

expressly and clearly declares, tax statutes being construed strictissimi juris against the government.[16]

WHEREFORE, premises considered, the instant petition is **DISMISSED** for lack of merit and the decision of the Court of Appeals is hereby **AFFIRMED** *in toto.* Costs against petitioner.

SO ORDERED.

Narvasa, C.J. (Chairman), Kapunan, Purisima, and Pardo, JJ., concur.

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[1] 237 SCRA 575 (1994) citing Bell Carpets vs. CA, 185 SCRA 35 (1990).

[2] Del Pozo vs. Penaco, 167 SCRA 577 (1988).

[3] Petition for Certiorari, p. 6.

[4] Section 1, Rule 45, Rules of Court.

[5] Lee vs. Presiding Judge, 145 SCRA 408 (1986).

[6] Zamboanga Electric Cooperative, Inc. vs. Buat, 243 SCRA 47 (1995).

[7] LOCAL GOVERNMENT CODE, Section 465.

[8] Belendres vs. Lopez Sugar Central Mill Co., 97 Phil. 100 (1955).

[9] See Sec. 23, Rule 138, Rules of Court.

[10] AGPALO, LEGAL ETHICS, 5th Ed., p. 249

[11] LOCAL GOVERNMENT CODE, Sections 135-141.

[12] Section 129. Power to Create Sources of Revenue.-- Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units.

[13] Section 186. Power To Levy Other Taxes, Fees or Charges.-- Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National

Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: Provided, further, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

[14] Cordero vs. Conda, 18 SCRA 341 (1966).

[15] See San Miguel Brewery vs. Magno, 21 SCRA 292 (1967).

[16] Republic v. IAC, 196 SCRA 335 (1991).
