

EN BANC

[G.R. No. 203754, October 15, 2019]

**FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES,
PETITIONER, VS. COLON HERITAGE REALTY CORPORATION,
OPERATOR OF ORIENTE GROUP OF THEATERS, REPRESENTED BY
ISIDORO A. CANIZARES, RESPONDENT.**

[G.R. No. 204418]

**FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES,
PETITIONER, VS. CITY OF CEBU AND SM PRIME HOLDINGS, INC.,
RESPONDENTS.**

R E S O L U T I O N

PERLAS-BERNABE, J.:

For resolution are: (a) the motion for reconsideration^[1] filed by petitioner Film Development Council of the Philippines (FDCP); (b) the motion for partial reconsideration^[2] filed by respondent Colon Heritage Realty Corporation (CHRC); and (c) the motion for partial reconsideration^[3] filed by respondent City of Cebu (Cebu City), all relative to the Court's Decision^[4] dated June 16, 2015 (Main Decision). In the Main Decision, the Court affirmed with modification the Judgment^[5] of the Regional Trial Court (RTC) of Cebu City, Branch 5 in Civil Case No. CEB-35601 dated September 25, 2012, and the Decision^[6] of the RTC of Cebu City, Branch 14 in Civil Case No. CEB-35529 dated October 24, 2012, and thereby, declared Sections 13 and 14 of Republic Act No. (RA) 9167^[7] invalid and unconstitutional.

The Facts

Sometime in 1993, respondent Cebu City passed City Ordinance No. LXIX, otherwise known as the "Revised Omnibus Tax Ordinance of the City of Cebu."^[8] Sections 42^[9] and 43,^[10] Chapter XI of the Ordinance required proprietors, lessees or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement to pay amusement tax equivalent to thirty percent (30%) of the gross receipts of the admission fees to the Office of the City Treasurer of Cebu City.

On June 7, 2002, Congress passed RA 9167, creating petitioner FDCP. Sections 13^[11] and 14^[12] thereof provide that **the amusement tax on certain graded films which would otherwise accrue to the cities and municipalities** in Metropolitan Manila and highly urbanized and independent component cities in the

Philippines during the period the graded film is exhibited, **should be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and remitted to the FDCP**, which shall reward the same to the producers of the graded films.

According to FDCP, since the effectivity of RA 9167, all cities and municipalities in Metro Manila, as well as highly urbanized and independent component cities, have complied with the mandate of the said law, with the sole exception of Cebu City.^[13] which adamantly insisted on its entitlement to the amusement taxes and hence, prompted cinema proprietors and operators within the city to remit the same to it.^[14] Consequently, FDCP sent demand letters for unpaid amusement taxes with surcharge to these proprietors and operators, including respondents CHRC and SM Prime Holdings, Inc. (SMPHI).^[15]

As a result of the demand letters, Cebu City filed a Petition for Declaratory Relief^[16] before the RTC of Cebu City, Branch 14, docketed as Civil Case No. CEB-35529, and respondent CHRC filed a similar petition^[17] before the RTC of Cebu City, Branch 5, docketed as Civil Case No. CEB-35601. Both petitions sought to declare Sections 13 and 14 of RA 9167 invalid and unconstitutional. On August 13, 2010, SMPHI moved to intervene^[18] in Civil Case No. CEB-35529.

On September 25, 2012, the RTC of Cebu City, Branch 5 issued a Judgment^[19] in Civil Case No. CEB-35601 which declared Sections 13 and 14 of RA 9167 as invalid and unconstitutional.^[20] On October 24, 2012, the RTC of Cebu City, Branch 14 rendered a similar Decision^[21] in Civil Case No. CEB-35529 also ruling against the constitutionality of Sections 13 and 14 of RA 9167.^[22]

Aggrieved, FDCP filed two (2) separate petitions for review on *certiorari*^[23] before the Court, presenting the singular issue as to whether or not the RTCs of Cebu City gravely erred in declaring Sections 13 and 14 of RA 9167 unconstitutional. The petitions were later consolidated in the Court's Resolution^[24] dated March 4, 2013.

The Proceedings and Issues Before the Court

On June 16, 2015, the Court rendered the Main Decision^[25] in this case, affirming the assailed RTC Decisions and thereby, declaring Sections 13 and 14 of RA 9167 invalid and unconstitutional. It ruled that these provisions violated the principle of local fiscal autonomy because they authorized FDCP to earmark, and hence, effectively confiscate the amusement taxes which should have otherwise inured to the benefit of the local government units (LGUs).^[26] In this relation, the Court further found that the grant of amusement tax reward does not partake the nature of a tax exemption since the burden and incidence of the tax still fall on the cinema proprietors.^[27]

However, as a matter of equity and fair play, the Court applied the doctrine of operative fact and rendered, among others, the following dispositions which are subject of the present motions:

Disposition 1: FDCP and the producers of graded films need not return the amounts already received from LGUs because they merely complied with the provisions of RA 9167 which were in effect at that time;^[28]

Disposition 2: Any amounts retained by cinema proprietors and operators due to FDCP at that time should be remitted to the latter since Sections 13 and 14 of RA 9167 produced legal effects prior to their being declared unconstitutional;^[29] in this regard, Cebu City was ordered to turn over to FDCP the amount of P76,836,807.08, which represented the amount that should have been remitted by SMPHI to FDCP at that time;^[30] and

Disposition 3: Cinema proprietors and operators within Cebu City should not be held liable for any surcharge since they did not know whether or not it was proper for them to remit the amusement taxes to either FDCP or Cebu City at that time.^[31]

Dissatisfied, FDCP, CHRC, and Cebu City filed their respective motions for reconsideration^[32] before the Court. The issues in the motions are summarized as follows:

(a) In reference to the Court's **Disposition 3 above, FDCP**, in its motion, seeks the imposition of surcharges to the delinquent taxpayers who failed to remit the proper taxes at the time Sections 13 and 14 of RA 9167 were not yet declared unconstitutional. In this accord, FDCP argues that in applying the operative fact doctrine, "all parts of the questioned provisions including the payment of surcharges should be given effect prior to [their] being declared unconstitutional."^[33]

(b) For its part, **CHRC**, in reference to the Court's **Disposition 2 above**, admits, in its motion, that it did not "withhold" the remittance of amusement taxes on graded films to FDCP. However, it claims that notwithstanding the effectivity of Sections 13 and 14 of RA 9167 at that time, it had already "paid and remitted **all** due taxes to the right authority: the City of Cebu."^[34] Hence, it should not remit any more taxes in favor of FDCP because to do so would amount to double taxation. In this regard, CHRC prays that it be declared relieved from any obligation to remit amusement taxes to FDCP. In the alternative, CHRC manifests that it is willing to go through a factual determination before the trial court to prove that it had indeed fully paid and fully remitted said taxes to Cebu City and as such, fully complied with its tax obligations under the law; hence, it asks the Court to remand the case for such purpose.^[35]

(c) And lastly, **Cebu City**, in reference to the Court's **Dispositions 1 and 2 above**, argues, in its motion, against the application of the operative fact doctrine in the present case. Accordingly, it claims that Sections 13 and 14 of RA 9167 should not have produced any legal effects in favor of FDCP because they have been declared unconstitutional and hence, null and void.^[36] In any event, Cebu City posits that, assuming that the operative fact doctrine is applicable, it should not be asked to remit the P76,836,807.08 it received from SMPHI to FDCP as it would be violative of equity and fair play.^[37] It reasons that it had already utilized the same for public services, and to order it to pay the same would involve disbursement of public funds which must be met with the proper procedural requirements.^[38]

The Court's Ruling

At the center of all three (3) motions is the proper application of the doctrine of operative fact in relation to the Court's declaration of Sections 13 and 14 of RA 9167 as unconstitutional. In the Main Decision, the Court observed that:

It is a well-settled rule that an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. Applying this principle, the logical conclusion would be to order the return of all the amounts remitted to FDCP and given to the producers of graded films, by all of the covered cities, which actually amounts to hundreds of millions, if not billions. In fact, just for Cebu City, the aggregate deficiency claimed by FDCP is ONE HUNDRED [FIFTY-NINE] MILLION THREE HUNDRED [SEVENTY-SEVEN] THOUSAND NINE HUNDRED EIGHTY-EIGHT PESOS AND [FIFTY-FOUR] CENTAVOS (P159,377,988.54). Again, this amount represents the unpaid amounts to FDCP by eight cinema operators or proprietors in only one covered city.

An exception to the above rule, however, is the doctrine of operative fact, which applies as a matter of equity and fair play. This doctrine nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. **It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law.**^[39] (Emphases supplied)

In *Commissioner of Internal Revenue v. San Roque Power Corporation*,^[40] citing *Serrano de Agbayani v. Philippine National Bank*,^[41] the Court had the opportunity to extensively discuss the operative fact doctrine, explaining the "realistic" consequences whenever an act of Congress is declared as unconstitutional by the proper court. Furthermore, the operative fact doctrine has been discussed within the context of fair play such that "[i]t would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to [its] adjudication [by the Court as unconstitutional],"^[42] viz.:

The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is

understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. **It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with.** This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. **It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with.** This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. **It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.**

In the language of an American Supreme Court decision: "**The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored.** The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." x x x.

x x x x^[43] (Emphases supplied)

The operative fact doctrine recognizes the existence and validity of a legal provision prior to its being declared as unconstitutional and hence, legitimizes otherwise invalid acts done pursuant thereto because of considerations of practicality and fairness. In this regard, certain acts done pursuant to a legal provision which was just recently declared as unconstitutional by the Court cannot be anymore undone because not only would it be highly impractical to do so, but more so, unfair to those who have relied on the said legal provision prior to the time it was struck down.

However, in the fairly recent case of *Mandanas v. Ochoa, Jr.*,^[44] citing *Araullo v. Aquino III*,^[45] the Court stated that the doctrine of operative fact "applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application."^[46] The doctrine of operative fact "nullifies the effects of an unconstitutional law or an