

EN BANC

[G.R. No. 185420, August 29, 2017]

LANAO DEL NORTE ELECTRIC COOPERATIVE, INC., AS REPRESENTED BY ITS GENERAL MANAGER ENGR. RESNOL C. TORRES, PETITIONER, VS. PROVINCIAL GOVERNMENT OF LANA DEL NORTE, AS REPRESENTED BY ITS GOVERNOR HON. MOHAMAD KHALID Q. DIMAPORO AND ITS PROVINCIAL TREASURER, MILDRED J. HINGCO, PROVINCIAL ASSESSOR, NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), AS REPRESENTED BY ITS ADMINISTRATOR HON. EDITA S. BUENO, POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM), AS REPRESENTED BY ITS PRESIDENT AND CEO HON. JOSE C. IBAZETA, DEPARTMENT OF ENERGY (DOE), AS REPRESENTED BY ITS SECRETARY HON. ANGELO T. REYES, THE COMMISSION ON AUDIT (COA), AS REPRESENTED BY ITS CHAIRMAN HON. REYNALDO A. VILLAR, RESPONDENTS.

DECISION

VELASCO JR., J.:

Nature of the Case

Before this Court is a Petition for Prohibition and Mandamus under Rule 65 of the Rules of Court, with prayer for injunctive relief to enjoin and prevent the respondent Provincial Government of Lanao del Norte (PGLN) from levying and auctioning off all the assets, properties, and equipment of petitioner Lanao del Norte Electric Cooperative, Inc. (LANECO) to satisfy its unpaid real property taxes.

Factual Antecedents

Pursuant to Republic Act (R.A.) No. 6038, otherwise known as the National Electrification Administration Act, LANECA was granted a franchise on January 8, 1972 to distribute electricity over the municipalities of Linamon, Kauswagan, Bacolod, Maigo, Kolambugan, Tubod, Baroy, Lala, Salvador, Kapatagan, Sapad, Magsaysay, and Karomatan.^[1] On December 14, 1995, the NEA expanded the coverage of LANECA's franchise by including barangays Abaga, Maria Cristina, and Nangka, all in the municipality of Balo-i, Lanao del Norte.^[2]

In order to finance its operations, LANECA contracted several loans from respondent National Electrification Administration (NEA) from 1972 until 1991, secured by real estate mortgage contracts over its properties.^[3] The NEA also gave LANECA grants and subsidies from 1996 to 2006 to fund its various rural electrification programs in the countryside.^[4] LANECA's total loans from the NEA amounted to P117,645,358.00, a substantial portion of which, however, had already been paid.^[5]

Upon the enactment of R.A. No. 9136, or the Electric Power Industry Reform Act of 2001, respondent Power Sector Assets and Liabilities Management (PSALM) assumed LANECO's loan balance of P32,507,813.70 to the NEA pursuant to Section 60^[6] thereof.^[7]

Meanwhile, Congress enacted R.A. No. 7160, otherwise known as the Local Government Code of 1991 (LGC), which conferred power to local government units (LGUs) to impose taxes on real properties located within their territories.^[8] Thus, on January 7, 1993, and in accordance with Sections 232^[9] and 233^[10] of the LGC, the Sangguniang Panlalawigan of the PGLN enacted Provincial Tax Ordinance No. 1, Series of 1993, entitled "*An Ordinance Adopting the Provincial Revenue Code of the Province of Lanao del Norte pursuant to the Provisions of Republic Act No. 7160, otherwise known as the Local Government Code of 1991*" (Provincial Revenue Code).^[11]

On January 26, 2006, LANECO received a letter from respondent Provincial Treasurer of the PGLN, demanding payment of P22,841,842.60 representing real property taxes assessed against the cooperative for the municipalities of Bacolod, Baroy, Kolambugan, Balo-i, Kapatagan, Magsaysay, Maigo, and Tubod for the period of 1995 to 2005. The Provincial Treasurer sent additional billings to LANECO on July 28, 2006, this time for payment of its real property taxes for the municipalities of Kauswagan, Lala, Salvador, and Kolambugan, in the amount of P8,270,469.04.^[12] In a letter dated September 26, 2006, the Provincial Treasurer made a final demand for the payment of the aforestated amounts, thus:

x x x x

To avoid publication and/or Advertisement of Public Auction of all your delinquent real properties in the province in a newspaper of general circulation, please cause the payment of your real property taxes' obligations to this Office within fifteen (15) days upon receipt of this FINAL DEMAND.^[13]

On several occasions, LANECO allegedly requested the PGLN for the original or a certified true copy of the Provincial Revenue Code to be used by the Energy Regulatory Commission (ERC) as basis to allow LANECO to pay its real property taxes and subsequently pass it on to its member-consumers, but the PGLN supposedly refused to do so.^[14]

Aggrieved, LANECO questioned the validity of the real property tax assessments and the Provincial Revenue Code in a Petition for Declaratory Relief with Preliminary Prohibitory Injunction,^[15] docketed as Special Civil Action No. 003-07-2006 before the Regional Trial Court (RTC) of Lanao del Norte, Branch 7.

However, on ex-parte motion^[16] by LANECO, the case was dismissed as the parties agreed to resolve the issues before the Bureau of Local Government Finance, instead of pursuing court action.

Nevertheless, the PGLN continued to demand payment from LANECO through a

letter^[17] dated June 19, 2008. LANECO reiterated its claim that it attempted to secure an original or certified true copy of the Provincial Revenue Code for submission to the ERC on several occasions but was unable to do so.^[18] On November 12, 2008, it requested for a certified true copy of the ordinance from the Office of the Municipal Assessor of the Municipality of Kolambugan. The latter, however, simply referred the request to the Sangguninang Panlalawigan. The Sangguniang Panlalawigan, in turn, issued a certification^[19] on November 25, 2008 stating that its Legislative Building was gutted by fire, including all the records/documents of its offices, on December 7, 2003.

Hence, LANECO filed the present petition on December 5, 2008 to raise the issue of whether or not respondent PGLN is acting in excess of its authority amounting to grave abuse of discretion and want of jurisdiction in enforcing the collection of unpaid real property tax through administrative action, *i.e.*, levy and auction of its assets, instead of through judicial action. LANECO theorizes that the PGLN's recourse through administrative action by levying on its real property allegedly violates Section 60 of R.A. No. 9136 and Executive Order No. (EO) 119, series of 2002.^[20] Nevertheless, on December 8, 2008, LANECO's counsel discovered that the PGLN issued another Notice of Delinquency of Delinquent Properties of Lanao del Norte Electric Cooperative and caused its publication on the December 1, 2008 issue of *Gold Star Daily*^[21]

The Petition

While LANECO does not dispute its liability to pay real property taxes to the PGLN, it argues that the PGLN will commit grave abuse of discretion amounting to lack or excess of jurisdiction if it resorts to administrative action through levy to enforce the payment of unpaid real property taxes. Instead, the petition proposes that the PGLN has another remedy of filing a collection case against LANECO under Section 60 of R.A. No. 9136. It also asserts that it is prohibited from disposing, transferring, and conveying its assets, properties, and the management and control of electric cooperatives while under the rehabilitation and modernization program.

LANECO further claims that the PGLN should be prohibited from auctioning off its assets, otherwise, it would violate the constitutional rights of the national agencies to enter into a contract. It also avers that the PGLN gravely abused its discretion in refusing to provide the original or a certified true copy of the Provincial Revenue Code to allow LANECO to determine the correctness of its assessment and its demand letter.

Incidents that transpired after the filing of the petition

On December 9, 2008, LANECO filed a Petition^[22] for Declaratory Relief with prayer for the issuance of a TRO and/or preliminary prohibitory injunction against the PGLN before the RTC of Tubod, Branch 7, **assailing the validity and constitutionality of the franchise tax provisions of the Provincial Revenue Code contained in Sections 84 to 87 thereof**. The said case was entitled "*LANECO versus The Sangguniang Panlalawigan of Lanao del Norte, et. al.*" and docketed as **Special Civil Case No. 012-07-2008**. The trial court granted the preliminary prohibitory injunction prayed for therein in an Order dated July 29, 2009.^[23]

In the interim, LANEKO filed before this Court three Urgent Ex-Parte Motions^[24] or the issuance of a TRO on the following dates: 1) December 5, 2008; 2) December 15, 2008; and 3) January 22, 2009. In a Resolution dated March 24, 2009, LANEKO's 3rd Urgent Ex-Parte Motion for the Issuance of a Temporary Restraining Order was denied by this Court for lack of merit.

On April 3, 2009, LANEKO learned that the PGLN, through its Provincial Treasurer, issued a Memorandum dated March 30, 2009, directing the Municipal Treasurers of Baroy, Kolambugan, Bacolod, Kapatagan, Magsaysay, Maigo, Lala, and Tubod to issue warrants of levy on its properties thereat.^[25] Consequently, on April 7, 2009, LANEKO received the warrants of levy from the Municipality of Tubod for deficient real property tax amounting to P10,066,234.48. LANEKO thereafter received warrants of levy of its real property from the Municipality of Baroy on April 17, 2009 for deficient real property tax amounting to P3,260,452.58.

Thus, on August 14, 2009, LANEKO filed yet another Petition^[26] for Prohibition with prayer for the issuance of a TRO and/or preliminary prohibitory injunction against the PLGN, including the Provincial Treasurer and its deputized municipal treasurers, with the RTC of Tubod, Branch 7. Docketed as **Special Civil Case No. 015-07-2009, LANEKO prayed for the annulment of the provisions imposing real property tax in the Provincial Revenue Code, and for the court to prohibit the PGLN from continuously implementing the real property tax provisions of the Provincial Revenue Code, and collecting real property tax from it.**

In a Decision^[27] dated May 11, 2010, the trial court in **Special Civil Case No. 012-07-2008** declared the Provincial Revenue Code invalid, unconstitutional, and ineffective:

WHEREFORE, in the light of the foregoing consideration, and the evidence of petitioner preponderates on its side, by application of pertinent laws and jurisprudence, the Court Orders the 1993 Provincial Revenue Code of Lanao del Norte, as invalid, unconstitutional, non-existing. The Court issues a permanent injunction against the respondents Local Government of Lanao del Norte and [Provincial] Treasurer in assessment, imposition, and collection of the franchise tax against petitioner.

SO ORDERED.^[28]

On the other hand, in a Decision^[29] promulgated on May 17, 2010, the RTC resolved **Special Civil Case No. 015-07-2009** in favor of LANEKO in this wise:

WHEREFORE, in the light of the foregoing consideration, and by preponderance of evidence in favor of petitioner, the Court renders judgment directing the respondent Office of Provincial Treasurer of Lanao del Norte, at the instance of the incumbent Provincial Treasurer, Mildred J. Hingco, her deputized municipal treasurers in Lanao del Norte, and respondent Office of Provincial Assessor of Lanao del Norte, and respondent Office of Provincial Assessor of Lanao del Norte, through Rogelio Aguaviva, Provincial Assessor, and his deputized municipal assessors, to cease and desist in the furtherance of the assessment,

imposition and collection of the real property taxes vis-[a]-vis petitioner on the ground that on May 11, 2010, this Court, in the action for [Declaratory] Relief, Special Civil Case No. 012-07-2008 ,[]declared as invalid, and unconstitutional and ineffective the 1993 Revenue Code of Lanao del Norte, of which the provisions of collection, imposition and assessment of real property taxes are found therein.

The Court also cancels the warrants of levy issued by the respondent Office of the Provincial Treasurer of Lanao del Norte, as well as the annotations of the levy on the tax declarations and certificates of titles (sic) of the levied real properties, by respondent Office of Provincial Assessor of Lanao del Norte and its deputized municipal assessors in the same province and the Register of Deeds of Lanao del Norte. The preliminary prohibitory injunction issued by the Court on September 3, [2009], is ordered declared permanent injunction (sic). No costs to the proceedings.

SO ORDERED.^[30]

The ruling was arrived at in view of the declaration in Special Civil Case No. 012-07-2008 that the Provincial Revenue Code is invalid and unconstitutional. Consequently, the court ordered the cancellation of the warrants of levy issued against LANEKO and directed the Provincial Treasurer and her deputized municipal treasurers, the Provincial Assessor, and his assessors, to cease and desist from assessing, imposing, and collecting real property taxes on LANEKO.

On January 10, 2011, the PGLN filed a Manifestation and Motion,^[31] informing this Court that LANEKO filed a Petition for Declaratory Relief and Injunction,^[32] with prayer for the issuance of a writ of preliminary prohibitory injunction, before the RTC of Tubod, Branch 7, docketed as Special Civil Case No. 020-07-2010. This petition questions Provincial Ordinance No. 001-2006, otherwise known as "An Ordinance Enacting the Provincial Revenue Code of Lanao del Norte of 2006," on the ground that the said tax ordinance is unconstitutional, invalid, and ineffective for failure to comply with the required public hearings, consultations, and publication.

To date, the Court is only apprised of the pendency of three other cases between the parties: 1) Special Civil Case No. 012-07-2008, 2) Special Civil Case No. 015-07-2009, and c) Special Civil Case No. 020-07-2010. The PGLN manifested that Special Civil Case Nos. 012-07-2008 and 015-07-2009 are still pending appeal before the CA as of January 10, 2011.

Respondents' comments to the petition

Pursuant to this Court's directive in its Resolution dated December 16, 2008, respondents filed their respective comments to the petition.

Respondents NEA, DOE, and COA filed a consolidated Comment, alleging that LANEKO is guilty of forum shopping for filing several petitions before the RTC, aside from the present petition, which all raised similar issues pertaining to the validity of the Provincial Revenue Code of the PGLN. They reject LANEKO's argument that the non-impairment clause of the Constitution was violated with the imposition of real