

EN BANC

[G.R. No. 210551, June 30, 2015]

JOSE J. FERRER, JR., PETITIONER, VS. CITY MAYOR HERBERT BAUTISTA, CITY COUNCIL OF QUEZON CITY, CITY TREASURER OF QUEZON CITY, AND CITY ASSESSOR OF QUEZON CITY, RESPONDENTS.

DECISION

PERALTA, J.:

Before this Court is a petition for *certiorari* under Rule 65 of the Rules of Court with prayer for the issuance of a temporary restraining order (*TRO*) seeking to declare unconstitutional and illegal Ordinance Nos. SP-2095, S-2011 and SP-2235, S-2013 on the Socialized Housing Tax and Garbage Fee, respectively, which are being imposed by the respondents.

The Case

On October 17, 2011,^[1] respondent Quezon City Council enacted **Ordinance No. SP-2095, S-2011**,^[2] or the *Socialized Housing Tax of Quezon City*, Section 3 of which provides:

SECTION 3. IMPOSITION. A special assessment equivalent to one-half percent (0.5%) on the assessed value of land in excess of One Hundred Thousand Pesos (Php100,000.00) shall be collected by the City Treasurer which shall accrue to the Socialized Housing Programs of the Quezon City Government. The special assessment shall accrue to the General Fund under a special account to be established for the purpose.

Effective for five (5) years, the Socialized Housing Tax (*SHT*) shall be utilized by the Quezon City Government for the following projects: (a) land purchase/land banking; (b) improvement of current/existing socialized housing facilities; (c) land development; (d) construction of core houses, sanitary cores, medium-rise buildings and other similar structures; and (e) financing of public-private partnership agreement of the Quezon City Government and National Housing Authority (*NHA*) with the private sector.^[3] Under certain conditions, a tax credit shall be enjoyed by taxpayers regularly paying the special assessment:

SECTION 7. TAX CREDIT. Taxpayers dutifully paying the special assessment tax as imposed by this ordinance shall enjoy a tax credit. The tax credit may be availed of only after five (5) years of continue[d] payment. Further, the taxpayer availing this tax credit must be a taxpayer in good standing as certified by the City Treasurer and City Assessor.

The tax credit to be granted shall be equivalent to the total amount of

the special assessment paid by the property owner, which shall be given as follows:

1. 6th year - 20%
2. 7th year - 20%
3. 8th year - 20%
4. 9th year - 20%
5. 10th year - 20%

Furthermore, only the registered owners may avail of the tax credit and may not be continued by the subsequent property owners even if they are buyers in good faith, heirs or possessor of a right in whatever legal capacity over the subject property.^[4]

On the other hand, **Ordinance No. SP-2235, S-2013**^[5] was enacted on December 16, 2013 and took effect ten days after when it was approved by respondent City Mayor.^[6] The proceeds collected from the garbage fees on residential properties shall be deposited solely and exclusively in an earmarked special account under the general fund to be utilized for garbage collections.^[7] Section 1 of the Ordinance set forth the schedule and manner for the collection of garbage fees:

SECTION 1. The City Government of Quezon City in conformity with and in relation to Republic Act No. 7160, otherwise known as the Local Government Code of 1991 HEREBY IMPOSES THE FOLLOWING SCHEDULE AND MANNER FOR THE ANNUAL COLLECTION OF GARBAGE FEES, AS FOLLOWS:

On all domestic households in Quezon City;

LAND AREA	IMPOSABLE FEE
Less than 200 sq. m.	PHP 100.00
201 sq. m. – 500 sq. m.	PHP 200.00
501 sq. m. – 1,000 sq. m.	PHP 300.00
1,001 sq. m. – 1,500 sq. m.	PHP 400.00
1,501 sq. m. – 2,000 sq. m. or more	PHP 500.00

On all condominium unit and socialized housing projects/units in Quezon City;

FLOOR AREA	IMPOSABLE FEE
Less than 40 sq. m.	PHP25.00
41 sq. m. – 60 sq. m.	PHP50.00
61 sq. m. – 100 sq. m.	PHP75.00
101 sq. m. – 150 sq. m.	PHP100.00
151 sq. m. – 200 sq. [m.]	PHP200.00

On high-rise Condominium Units

- a) High-rise Condominium – The Homeowners Association of high-rise condominiums shall pay the annual garbage fee on the total size of the entire condominium and socialized Housing Unit and an additional garbage fee shall be collected based on area occupied for every unit already sold or being amortized.
- b) High-rise apartment units – Owners of high-rise apartment units shall pay the annual garbage fee on the total lot size of the entire apartment and an additional garbage fee based on the schedule prescribed herein for every unit occupied.

The collection of the garbage fee shall accrue on the first day of January and shall be paid simultaneously with the payment of the real property tax, but not later than the first quarter installment.^[8] In case a household owner refuses to pay, a penalty of 25% of the garbage fee due, plus an interest of 2% per month or a fraction thereof, shall be charged.^[9]

Petitioner alleges that he is a registered co-owner of a 371-square-meter residential property in Quezon City which is covered by Transfer Certificate of Title (TCT) No. 216288, and that, on January 7, 2014, he paid his realty tax which already included the garbage fee in the sum of Php100.00.^[10]

The instant petition was filed on January 17, 2014. We issued a TRO on February 5, 2014, which enjoined the enforcement of Ordinance Nos. SP-2095 and SP-2235 and required respondents to comment on the petition without necessarily giving due course thereto.^[11]

Respondents filed their Comment^[12] with urgent motion to dissolve the TRO on February 17, 2014. Thereafter, petitioner filed a Reply and a Memorandum on March 3, 2014 and September 8, 2014, respectively.

Procedural Matters

A. Propriety of a Petition for Certiorari

Respondents are of the view that this petition for *certiorari* is improper since they are not tribunals, boards or officers exercising judicial or quasi-judicial functions. Petitioner, however, counters that in enacting Ordinance Nos. SP-2095 and SP-2235, the Quezon City Council exercised quasi-judicial function because the ordinances ruled against the property owners who must pay the SHT and the garbage fee, exacting from them funds for basic essential public services that they should not be held liable. Even if a Rule 65 petition is improper, petitioner still asserts that this Court, in a number of cases like in *Rosario v. Court of Appeals*,^[13] has taken cognizance of an improper remedy in the interest of justice.

We agree that respondents neither acted in any judicial or quasi-judicial capacity nor arrogated unto themselves any judicial or quasi-judicial prerogatives.

A respondent is said to be exercising *judicial function* where he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties.

Quasi-judicial function, on the other hand, is "a term which applies to the actions, discretion, etc., of public administrative officers or bodies required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature."

Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the respective rights of the contending parties.^[14]

For a writ of *certiorari* to issue, the following requisites must concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. The enactment by the Quezon City Council of the assailed ordinances was done in the exercise of its **legislative**, not judicial or quasi-judicial, function. Under Republic Act (R.A.) No. 7160, or the *Local Government Code of 1991 (LGC)*, local legislative power shall be exercised by the *Sangguniang Panlungsod* for the city.^[15] Said law likewise is specific in providing that the power to impose a tax, fee, or charge, or to generate revenue shall be exercised by the *sanggunian* of the local government unit concerned through an appropriate ordinance.^[16]

Also, although the instant petition is styled as a petition for *certiorari*, it essentially seeks to declare the unconstitutionality and illegality of the questioned ordinances. It, thus, partakes of the nature of a petition for declaratory relief over which this Court has only appellate, not original, jurisdiction.^[17]

Despite these, a petition for declaratory relief may be treated as one for prohibition or mandamus, over which We exercise original jurisdiction, in cases with far-reaching implications or one which raises transcendental issues or questions that need to be resolved for the public good.^[18] The judicial policy is that this Court will entertain direct resort to it when the redress sought cannot be obtained in the proper courts or when exceptional and compelling circumstances warrant availment of a remedy within and calling for the exercise of Our primary jurisdiction.^[19]

Section 2, Rule 65 of the Rules of Court lay down under what circumstances a petition for prohibition may be filed:

SEC. 2. *Petition for prohibition.* - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his

jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceeding in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

In a petition for prohibition against any tribunal, corporation, board, or person – whether exercising judicial, quasi-judicial, or ministerial functions – who has acted without or in excess of jurisdiction or with grave abuse of discretion, the petitioner prays that judgment be rendered, commanding the respondents to desist from further proceeding in the action or matter specified in the petition. In this case, petitioner's primary intention is to prevent respondents from implementing Ordinance Nos. SP-2095 and SP-2235. Obviously, the writ being sought is in the nature of a prohibition, commanding desistance.

We consider that respondents City Mayor, City Treasurer, and City Assessor are performing **ministerial** functions. A ministerial function is one that an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done.^[20] Respondent Mayor, as chief executive of the city government, exercises such powers and performs such duties and functions as provided for by the LGC and other laws.^[21] Particularly, he has the duty to ensure that all taxes and other revenues of the city are collected, and that city funds are applied to the payment of expenses and settlement of obligations of the city, in accordance with law or ordinance.^[22] On the other hand, under the LGC, all local taxes, fees, and charges shall be collected by the provincial, city, municipal, or barangay treasurer, or their duly-authorized deputies, while the assessor shall take charge, among others, of ensuring that all laws and policies governing the appraisal and assessment of real properties for taxation purposes are properly executed.^[23] Anent the SHT, the Department of Finance (DOF) Local Finance Circular No. 1-97, dated April 16, 1997, is more specific:

6.3 The Assessor's office of the Identified LGU shall:

- a. immediately undertake an inventory of lands within its jurisdiction which shall be subject to the levy of the Social Housing Tax (SHT) by the local sanggunian concerned;
- b. inform the affected registered owners of the effectivity of the SHT; a list of the lands and registered owners shall also be posted in 3 conspicuous places in the city/municipality;
- c. furnish the Treasurer's office and the local sanggunian concerned of the list of lands affected;

6.4 The Treasurer's office shall:

- a. collect the Social Housing Tax on top of the Real Property Tax, SEF Tax and other special assessments;