

EN BANC

[G.R. No. 203754, June 16, 2015]

**FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES,
PETITIONER, VS. COLON HERITAGE REALTY CORPORATION,
OPERATOR OF ORIENTE GROUP 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.**

D E C I S I O N

VELASCO JR., J.:

The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution. In the discharge of their defined functions, the three departments of government have no choice but to yield obedience to the commands of the Constitution. Whatever limits it imposes must be observed.^[1]

The Case

Once again, We are called upon to resolve a clash between the inherent taxing power of the legislature and the constitutionally-delegated power to tax of local governments in these consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Decision dated September 25, 2012 of the Regional Trial Court (RTC), Branch 5 in Cebu City, in Civil Case No. CEB-35601, entitled *Colon Heritage Realty Corp., represented by Isidoro Canizares v. Film Development Council of the Philippines*, and Decision dated October 24, 2012 of the RTC, Branch 14 in Cebu City, in Civil Case No. CEB-35529, entitled *City of Cebu v. Film Development Council of the Philippines*, collectively declaring Sections 13 and 14 of Republic Act No. (RA) 9167 invalid and unconstitutional.

The Facts

The facts are simple and undisputed.

Sometime in 1993, respondent City of Cebu, in its exercise of its power to impose amusement taxes under Section 140 of the Local Government Code^[2] (LGC) anchored on the constitutional policy on local autonomy,^[3] passed City Ordinance No. LXIX otherwise known as the "Revised Omnibus Tax Ordinance of the City of Cebu (tax ordinance)." Central to the case at bar are Sections 42 and 43, Chapter XI thereof which require proprietors, lessees or operators of theatres,

cinemas, concert halls, circuses, boxing stadia, and other places of amusement, to pay an amusement tax equivalent to thirty percent (30%) of the gross receipts of admission fees to the Office of the City Treasurer of Cebu City. Said provisions read:

CHAPTER XI – Amusement Tax

Section 42. Rate of Tax. – There shall be paid to the Office of the City Treasurer by the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia and other places of amusement, an amusement tax at the rate of thirty percent (30%) of the gross receipts from admission fees.^[4]

Section 43. Manner of Payment. – In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the city treasurer before the gross receipts are divided between said proprietor, lessees, operators, and the distributors of the cinematographic films.

Almost a decade later, or on June 7, 2002, Congress passed RA 9167,^[5] creating the Film Development Council of the Philippines (FDCP) and abolishing the Film Development Foundation of the Philippines, Inc. and the Film Rating Board. Secs. 13 and 14 of RA 9167 provided for the tax treatment of certain graded films as follows:

Section 13. Privileges of Graded Films. – Films which have obtained an “A” or “B” grading from the Council pursuant to Sections 11 and 12 of this Act shall be entitled to the following privileges:

a. Amusement tax reward. – A grade “A” or “B” film shall entitle its producer to an incentive **equivalent to the amusement tax imposed and collected on the graded films** by cities and municipalities in Metro Manila and other highly urbanized and independent component cities in the Philippines pursuant to Sections 140 to 151 of Republic Act No. 7160 at the following rates:

1. For grade “A” films – 100% of the amusement tax collected on such film; and
2. For grade “B” films – 65% of the amusement tax collected on such films. The remaining thirty-five (35%) shall accrue to the funds of the Council.

Section 14. Amusement Tax Deduction and Remittance. - **All revenue from the amusement tax on the graded film which may otherwise accrue to the cities and municipalities** in Metropolitan Manila and highly urbanized and independent component cities in the Philippines **pursuant to Section 140 of Republic Act. No. 7160** during the period the graded film is exhibited, **shall be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and remitted** within thirty (30) days from the termination of the exhibition **to the Council which shall reward the corresponding amusement tax to the producers of the graded film** within fifteen (15) days from receipt thereof.

Proprietors, operators and lessees of theaters or cinemas who fail to remit the amusement tax proceeds within the prescribed period shall be liable to a surcharge equivalent to five percent (5%) of the amount due for each month of delinquency which shall be paid to the Council.
(emphasis added)

According to petitioner, from the time RA 9167 took effect up to the present, all the cities and municipalities in Metro Manila, as well as urbanized and independent component cities, with the sole exception of Cebu City, have complied with the mandate of said law.

Accordingly, petitioner, through the Office of the Solicitor General, sent on January 2009 demand letters for unpaid amusement tax reward (with 5% surcharge for each month of delinquency) due to the producers of the Grade "A" or "B" films to the following cinema proprietors and operators in Cebu City:

| Cinema Proprietor/Operator | Amusement Tax Reward (with 5% surcharge for each month of delinquency) | Number of CEB Graded Films | Period Covered |
|-----------------------------------|---|-----------------------------------|-------------------------------|
| SM Prime Holdings Inc. | 76,836,807.08 | 89 | Sept. 11, 2003 – Nov. 4, 2008 |
| Ayala Center Cinemas | 43,435,718.23 | 70 | May 14, 2003 – Nov. 4, 2008 |
| Colon Heritage Realty Corp. | 8,071,267.00 | 50 | Aug. 11, 2004 – Nov. 4, 2008 |
| Eden Theater | 428,938.25 | 4 | May 5, 2005 – Sept. 2, 2008 |
| Cinema Theater | 3,100,354.80 | 22 | Feb. 18, 2004 – Oct. 7, 2008 |
| Visaya Cineplex Corp. | 17,582,521.89 | 86 | June 25, 2005 – Oct. 21, 2008 |
| Ultra Vistarama Cinema | 68,821.60 | 2 | July 2 – 22, 2008 |
| Cebu Central Realty Corp. | 9,853,559.69 | 48 | Jan. 1, 2004 – Oct. 21, 2008 |

In said letters, the proprietors and cinema operators, including private respondent Colon Heritage Realty Corp. (Colon Heritage), operator of the Oriente theater, were given ten (10) days from receipt thereof to pay the aforestated amounts to FDCP. The demand, however, fell on deaf ears.

Meanwhile, on March 25, 2009, petitioner received a letter from Regal Entertainment, Inc., inquiring on the status of its receivables for tax rebates in Cebu cinemas for all their A and B rate films along with those which it co-produced with GMA films. This was followed by a letter from Star Cinema ABS-CBN Film Productions, Inc., requesting the immediate remittance of its amusement tax rewards for its graded films for the years 2004-2008.

Because of the persistent refusal of the proprietors and cinema operators to remit the said amounts as FDCP demanded, on one hand, and Cebu City's assertion of a claim on the amounts in question, the city finally filed on May 18, 2009 before the RTC, Branch 14 a petition for declaratory relief with application for a writ of preliminary injunction, docketed as Civil Case No. CEB-35529 (*City of Cebu v. FDCP*). In said petition, Cebu City sought the declaration of Secs. 13 and 14 of RA 9167 as invalid and unconstitutional.

Similarly, Colon Heritage filed before the RTC, Branch 5 Civil Case No. CEB-35601 (*Colon Heritage v. FDCP*), seeking to declare Sec. 14 of RA 9167 as unconstitutional.

On May 25, 2010, the RTC, Branch 14 issued a temporary restraining order (TRO) restraining and enjoining FDCP, *et al.* from, *inter alia*:

- (a) Collecting amusement tax incentive award in the City of Cebu and from imposing surcharges thereon;
- (b) Demanding from the owners, proprietors, and lessees of theaters and cinemas located and operated within Cebu City, payment of said amusement tax incentive award which should have been deducted, withheld, and remitted to FDCP, etc. by the owners, etc., or being operated within Cebu City and imposing surcharges on the unpaid amount; and
- (c) Filing any suit due to or arising from the failure of the owners, etc., of theaters or cinemas within Cebu City, to deduct, withhold, and remit the incentive to FDCP.

Meanwhile, on August 13, 2010, SM Prime Holdings, Inc. moved for leave to file and admit attached comment-in-intervention and was later granted.^[6]

Rulings of the Trial Courts

In ***City of Cebu v. FDCP***, the RTC, Branch 14 issued the challenged Decision^[7] declaring Secs. 13 and 14 of RA 9167 unconstitutional, disposing as follows:

WHEREFORE, in view of all the disquisitions, judgment is rendered in favor of petitioner City of Cebu against respondent Film Development Council of the Philippines, as follows:

1. Declaring Sections 13 and 14 of the (sic) Republic Act No. 9167 otherwise known as an Act Creating the Film Development Council of the Philippines, Defining its Powers and Functions, Appropriating

Funds Therefor and for other purposes, as violative of Section 5 Article X of the 1997 (sic) Philippine Constitution; Consequently

2. Declaring that defendant Film Development Council of the Philippines (FDCP) cannot collect under Sections 13 and 14 of R.A. 9167 as of the finality of the decision in G.R. Nos. 203754 and 204418;
3. Declaring that Intervenor SM Cinema Corporation has the obligation to remit the amusement taxes, withheld on graded cinema films to respondent FDCP under Sections 13 and 14 of R.A. 9167 for taxes due prior to the finality of the decision in G.R. Nos. 203754 and 204418;
4. Declaring that after the finality of the decision in G.R. Nos. 203754 and 204418, all amusement taxes withheld and those which may be collected by Intervenor SM on graded films shown in SM Cinemas in Cebu City shall be remitted to petitioner Cebu City pursuant to City Ordinance LXIX, Chapter XI, Section 42.

As to the sum of PhP 76,836,807.08 remitted by the Intervenor SM to petitioner City of Cebu, said amount shall be remitted by the City of Cebu to petitioner FDCP within thirty (30) days from finality of this decision in G.R. Nos. 203754 and 204418 without interests and surcharges.

SO ORDERED.

According to the court, what RA 9167 seeks to accomplish is the segregation of the amusement taxes raised and collected by Cebu City and its subsequent transfer to FDCP. The court concluded that this arrangement cannot be classified as a tax exemption but is a confiscatory measure where the national government extracts money from the local government's coffers and transfers it to FDCP, a private agency, which in turn, will award the money to private persons, the film producers, for having produced graded films.

The court further held that Secs. 13 and 14 of RA 9167 are contrary to the basic policy in local autonomy that all taxes, fees, and charges imposed by the LGUs shall accrue exclusively to them, as articulated in Article X, Sec. 5 of the 1987 Constitution. This edict, according to the court, is a limitation upon the rule-making power of Congress when it provides guidelines and limitations on the local government unit's (LGU's) power of taxation. Therefore, when Congress passed this "limitation," it went beyond its legislative authority, rendering the questioned provisions unconstitutional.

By the same token, in ***Colon Heritage v. FDCP***, the RTC, Branch 5, in its Decision of September 25, 2012, also ruled against the constitutionality of said Secs. 13 and 14 of RA 9167 for the following reasons: (a) while Congress, through the enactment of RA 9167, may have amended Secs. 140 (a)^[8] and 151^[9] of the LGC, in the exercise of its plenary power to amend laws, such power must be exercised within constitutional parameters; (b) the assailed provision violates the constitutional directive that taxes should accrue exclusively to the LGU concerned; (c) the Constitution, through its Art. X, Sec. 5,^[10] directly conferred LGUs with authority to