

FIRST DIVISION

[G.R. No. 181756, June 15, 2015]

**MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA),
PETITIONER, VS. CITY OF LAPU-LAPU AND ELENA T. PACALDO,
RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a clear opportunity for this Court to clarify the effects of our two previous decisions, issued a decade apart, on the power of local government units to collect real property taxes from airport authorities located within their area, and the nature or the juridical personality of said airport authorities.

Before us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking to reverse and set aside the October 8, 2007 **Decision**^[1] of the Court of Appeals (Cebu City) in **CA-G.R. SP No. 01360** and the February 12, 2008 **Resolution**^[2] denying petitioner's motion for reconsideration.

THE FACTS

Petitioner *Mactan-Cebu International Airport Authority* (MCIAA) was created by Congress on July 31, 1990 under Republic Act No. 6958^[3] to "undertake the economical, efficient and effective control, management and supervision of the *Mactan* International Airport in the Province of Cebu and the Lahug Airport in Cebu City x x x and such other airports as may be established in the Province of Cebu." It is represented in this case by the Office of the Solicitor General.

Respondent City of Lapu-Lapu is a local government unit and political subdivision, created and existing under its own charter with capacity to sue and be sued. Respondent Elena T. Pacaldo was impleaded in her capacity as the City Treasurer of respondent City.

Upon its creation, petitioner enjoyed exemption from realty taxes under the following provision of Republic Act No. 6958:

Section 14. Tax Exemptions. – The Authority shall be exempt from realty taxes imposed by the National Government or any of its political subdivisions, agencies and instrumentalities: *Provided*, That no tax exemption herein granted shall extend to any subsidiary which may be organized by the Authority.

On September 11, 1996, however, this Court rendered a decision in *Mactan-Cebu International Airport Authority v. Marcos*^[4] (the 1996 MCIAA case) declaring that

upon the effectivity of Republic Act No. 7160 (The Local Government Code of 1991), petitioner was no longer exempt from real estate taxes. The Court held:

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its Charter, R.A. No. 6958, has been withdrawn. x x x.

On January 7, 1997, respondent City issued to petitioner a Statement of Real Estate Tax assessing the lots comprising the *Mactan* International Airport in the amount of P162,058,959.52. Petitioner complained that there were discrepancies in said Statement of Real Estate Tax as follows:

- (a) [T]he statement included lots and buildings not found in the inventory of petitioner's real properties;
- (b) [S]ome of the lots were covered by two separate tax declarations which resulted in double assessment;
- (c) [There were] double entries pertaining to the same lots; and
- (d) [T]he statement included lots utilized exclusively for governmental purposes.^[5]

Respondent City amended its billing and sent a new Statement of Real Estate Tax to petitioner in the amount of P151,376,134.66. Petitioner averred that this amount covered real estate taxes on the lots utilized solely and exclusively for public or governmental purposes such as the airfield, runway and taxiway, and the lots on which they are situated.^[6]

Petitioner paid respondent City the amount of four million pesos (P4,000,000.00) monthly, which was later increased to six million pesos (P6,000,000.00) monthly. As of December 2003, petitioner had paid respondent City a total of P275,728,313.36.^[7]

Upon request of petitioner's General Manager, the Secretary of the Department of Justice (DOJ) issued Opinion No. 50, Series of 1998,^[8] and we quote the pertinent portions of said Opinion below:

You further state that among the real properties deemed transferred to MCIAA are the airfield, runway, taxiway and the lots on which the runway and taxiway are situated, the tax declarations of which were transferred in the name of the MCIAA. In 1997, the City of Lapu-Lapu imposed real estate taxes on these properties invoking the provisions of the Local Government Code.

It is your view that these properties are not subject to real property tax because they are exclusively used for airport purposes. You said that the runway and taxiway are not only used by the commercial airlines but also by the Philippine Air Force and other government agencies. As such and

in conjunction with the above interpretation of Section 15 of R.A. No. 6958, you believe that these properties are considered owned by the Republic of the Philippines. Hence, this request for opinion.

The query is resolved in the affirmative. The properties used for airport purposes (i.e. airfield, runway, taxiway and the lots on which the runway and taxiway are situated) are owned by the Republic of the Philippines.

x x x x

Under the Law on Public Corporations, the legislature has complete control over the property which a municipal corporation has acquired in its public or governmental capacity and which is devoted to public or governmental use. The municipality in dealing with said property is subject to such restrictions and limitations as the legislature may impose. On the other hand, property which a municipal corporation acquired in its private or proprietary capacity, is held by it in the same character as a private individual. Hence, the legislature in dealing with such property, is subject to the constitutional restrictions concerning property (*Martin, Public Corporations* [1997], p. 30; see also *Province of Zamboanga del [Norte] v. City of Zamboanga* [131 Phil. 446]). The same may be said of properties transferred to the MCIAA and used for airport purposes, such as those involved herein. Since such properties are of public dominion, they are deemed held by the MCIAA in trust for the Government and can be alienated only as may be provided by law.

Based on the foregoing, it is our considered opinion that the properties used for airport purposes, such as the airfield, runway and taxiway and the lots on which the runway and taxiway are located, are owned by the State or by the Republic of the Philippines and are merely held in trust by the MCIAA, notwithstanding that certificates of titles thereto may have been issued in the name of the MCIAA. (Emphases added.)

Based on the above DOJ Opinion, the Department of Finance issued a 2nd Indorsement to the City Treasurer of Lapu-Lapu dated August 3, 1998,^[9] which reads:

The distinction as to which among the MCIAA properties are still considered "owned by the State or by the Republic of the Philippines," such as the resolution in the above-cited DOJ Opinion No. 50, for purposes of real property tax exemption is hereby deemed tenable considering that the subject "airfield, runway, taxiway and the lots on which the runway and taxiway are situated" appears to be the subject of real property tax assessment and collection of the city government of Lapu-Lapu, hence, the same are definitely located within the jurisdiction of Lapu-Lapu City.

Moreover, **then Undersecretary Antonio P. Belicena of the Department of Finance, in his 1st Indorsement dated May 18, 1998, advanced that "this Department (DOF) interposes no**

objection to the request of *Mactan Cebu International Airport Authority* for exemption from payment of real property tax on the property used for airport purposes” mentioned above.

The City Assessor, therefore, is hereby instructed to transfer the assessment of the subject airfield, runway, taxiway and the lots on which the runway and taxiway are situated, from the “Taxable Roll” to the “Exempt Roll” of real properties.

The City Treasurer thereat should be informed on the action taken for his immediate appropriate action. (Emphases added.)

Respondent City Treasurer Elena T. Pacaldo sent petitioner a Statement of Real Property Tax Balances up to the year 2002 reflecting the amount of P246,395,477.20. Petitioner claimed that the statement again included the lots utilized solely and exclusively for public purpose such as the airfield, runway, and taxiway and the lots on which these are built. Respondent Pacaldo then issued Notices of Levy on 18 sets of real properties of petitioner.^[10]

Petitioner filed a petition for prohibition^[11] with the Regional Trial Court (RTC) of Lapu-Lapu City with prayer for the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction, docketed as SCA No. 6056-L. Branch 53 of RTC Lapu-Lapu City then issued a 72-hour TRO. The petition for prohibition sought to enjoin respondent City from issuing a warrant of levy against petitioner’s properties and from selling them at public auction for delinquency in realty tax obligations. The petition likewise prayed for a declaration that the airport terminal building, the airfield, runway, taxiway and the lots on which they are situated are exempted from real estate taxes after due hearing. Petitioner based its claim of exemption on DOJ Opinion No. 50.

The RTC issued an Order denying the motion for extension of the TRO. Thus, on December 10, 2003, respondent City auctioned 27 of petitioner’s properties. As there was no interested bidder who participated in the auction sale, respondent City forfeited and purchased said properties. The corresponding Certificates of Sale of Delinquent Property were issued to respondent City.^[12]

Petitioner claimed before the RTC that it had discovered that respondent City did not pass any ordinance authorizing the collection of real property tax, a tax for the special education fund (SEF), and a penalty interest for its nonpayment. Petitioner argued that without the corresponding tax ordinances, respondent City could not impose and collect real property tax, an additional tax for the SEF, and penalty interest from petitioner.^[13]

The RTC issued an Order^[14] on December 28, 2004 granting petitioner’s application for a writ of preliminary injunction. The pertinent portions of the Order are quoted below:

The supervening legal issue has rendered it imperative that the matter of the consolidation of the ownership of the auctioned properties be placed on hold. Furthermore, it is the view of the Court that great prejudice and damage will be suffered by petitioner if it were to lose its dominion over

these properties now when the most important legal issue has still to be resolved by the Court. Besides, the respondents and the intervenor have not sufficiently shown cause why petitioner's application should not be granted.

WHEREFORE, the foregoing considered, petitioner's application for a writ of preliminary injunction is granted. Consequently, upon the approval of a bond in the amount of one million pesos (P1,000,000.00), let a writ of preliminary injunction issue enjoining the respondents, the intervenor, their agents or persons acting in [their] behalf, to desist from consolidating and exercising ownership over the properties of the petitioner.

However, upon motion of respondents, the RTC lifted the writ of preliminary injunction in an Order^[15] dated December 5, 2005. The RTC reasoned as follows:

The respondent City, in the course of the hearing of its motion, presented to this Court a certified copy of its Ordinance No. 44 (Omnibus Tax Ordinance of the City of Lapu-Lapu), Section 25 whereof authorized the collection of a rate of one and one-half (1 ½) [per centum] from owners, executors or administrators of any real estate lying within the jurisdiction of the City of Lapu-Lapu, based on the assessed value as shown in the latest revision.

Though this ordinance was enacted prior to the effectivity of Republic Act No. 7160 (Local Government Code of 1991), to the mind of the Court this ordinance is still a valid and effective ordinance in view of Sec. 529 of RA 7160 x x x [and the] Implementing Rules and Regulations of RA 7160 x x x.

x x x x

The tax collected under Ordinance No. 44 is within the rates prescribed by RA 7160, though the 25% penalty collected is higher than the 2% interest allowed under Sec. 255 of the said law which provides:

In case of failure to pay the basic real property tax or any other tax levied under this Title upon the expiration of the periods as provided in Section 250, or when due, as the case may be, shall subject the taxpayer to the payment of interest at the rate of two percent (2%) per month on the unpaid amount or a fraction thereof, until the delinquent tax shall have been fully paid: Provided, however, That in no case shall the total interest on the unpaid tax or portion thereof exceed thirty-six (36) months.

This difference does not however detract from the essential enforceability and effectivity of Ordinance No. 44 pursuant to Section 529 of RA 7160 and Article 278 of the Implementing Rules and Regulations. The outcome of this disparity is simply that respondent City can only collect an interest of 2% per month on the unpaid tax. Consequently, respondent City [has] to recompute the petitioner's tax liability.