

THIRD DIVISION

[G.R. No. 180654, April 21, 2014]

**NATIONAL POWER CORPORATION PETITIONER, VS.
PROVINCIAL GOVERNMENT OF BATAAN, SANGGUNIANG
PANLALAWIGAN OF BATAAN, PASTOR B. VICHUACO (IN HIS
OFFICIAL CAPACITY AS PROVINCIAL TREASURER OF BATAAN)
AND THE REGISTER OF DEEDS OF THE PROVINCE OF BATAAN,
RESPONDENTS.**

DECISION

ABAD, J.:

This case is about the distinction between an action contesting a local tax assessment and an action seeking to enjoin the local government from enforcing a tax assessment against a person who claims that the taxable business does not belong to him.

The Facts and the Case

On March 28, 2003 petitioner National Power Corporation (NPC) received a notice of franchise tax delinquency from the respondent Provincial Government of Bataan (the Province) for P45.9 million covering the years 2001, 2002, and 2003. The Province based its assessment on the NPC's sale of electricity that it generated from two power plants in Bataan. Rather than pay the tax or reject it, the NPC chose to reserve its right to contest the computation pending the decision of the Supreme Court in *National Power Corporation v. City of Cabanatuan*,^[1] a case where the issue of the NPC's exemption from the payment of local franchise tax was then pending.

On May 12 and 14, 2003 the Province again sent notices of tax due to the NPC, calling its attention to the Court's Decision in *National Power Corporation v. City of Cabanatuan* that held the NPC liable for the payment of local franchise tax. The NPC replied, however, that it had ceased to be liable for the payment of that tax after Congress enacted Republic Act (R.A.) 9136, also known as the Electric Power Industry Reform Act (EPIRA) that took effect on June 26, 2001. The new law relieved the NPC of the function of generating and supplying electricity beginning that year. Consequently, the Province has no right to further assess it for the 2001, 2002, and 2003 local franchise tax.

Ignoring the NPC's view, the Province issued a "Warrant of Levy" on 14 real properties that it used to own in Limay, Bataan. In March 2004 the Province caused their sale at public auction with itself as the winning bidder. Shortly after, the NPC received a copy of the Certificate of Sale of Real Property covering the auctioned properties for P60,477,285.22, the amount of its franchise tax delinquency.

On July 7, 2004 the NPC filed with the Regional Trial Court (RTC) of Mariveles, Bataan, a petition for declaration of nullity of the foreclosure sale with prayer for preliminary mandatory injunction against the Province, the provincial treasurer, and the *Sangguniang Panlalawigan*.

The NPC alleged that the foreclosure had no legal basis since R.A. 7160 which authorized the collection of local franchise tax had been modified by the EPIRA. The latter law provided that power generation is not a public utility operation requiring a franchise, hence, not taxable. What remains subject to such tax is the business of transmission and distribution of electricity since these required a national franchise. As it happened, NPC had ceased by operation of the EPIRA in 2001 to engage in power transmission, given that all its facilities for this function, including its nationwide franchise, had been transferred to the National Transmission Corporation (TRANSCO).

Thus, the NPC asked the RTC to issue a preliminary injunction, enjoining the transfer of title and the sale of the foreclosed lands to Bataan and, after trial, to make the injunction permanent, declare NPC exempt from the local franchise tax and annul the foreclosure sale.

On November 3, 2005 the RTC dismissed the NPC's petition, stating that the franchise tax was not based on ownership of property but on the NPC's exercise of the privilege of doing business within Bataan. Further, the NPC presented no evidence that it had ceased to operate its power plants in that jurisdiction.

The NPC appealed the RTC Decision to the Court of Appeals (CA) but the Province moved to dismiss the same for lack of jurisdiction of that court over the subject matter of the case. The Province pointed out that, although the NPC denominated its suit before the RTC as one for declaration of nullity of foreclosure sale, it was essentially a local tax case questioning the validity of the Province's imposition of the local franchise tax. Any appeal from the action should, therefore, be lodged with the Court of Tax Appeals (CTA). On November 27, 2007 the CA granted the Province's motion and dismissed the petition on the ground cited.

Issue

The issue in this case is whether or not the CA erred in failing to rule that the NPC no longer owned or operated the business subject to local franchise tax and that the Province cannot execute on former NPC properties that had been taken from it and transferred to other government corporations.

Ruling of the Court

The RTC found that the NPC failed to present evidence that it no longer owned or operated the business subject to local franchise tax and that the properties the Province levied on did not belong to it. But proving these things did not require the presentation of evidence in this case since these events took place by operation of law, particularly the EPIRA. Thus, Section 8 of the EPIRA provides:

SEC. 8. *Creation of the National Transmission Company.* There is hereby created a National Transmission Corporation, hereinafter referred to as