

## FIRST DIVISION

[ G.R. No. 189999, June 27, 2012 ]

**ANGELES UNIVERSITY FOUNDATION, PETITIONER, VS. CITY OF ANGELES, JULIET G. QUINSAAT, IN HER CAPACITY AS TREASURER OF ANGELES CITY AND ENGR. DONATO N. DIZON, IN HIS CAPACITY AS ACTING ANGELES CITY BUILDING OFFICIAL, RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, which seeks to reverse and set aside the Decision<sup>[1]</sup> dated July 28, 2009 and Resolution<sup>[2]</sup> dated October 12, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 90591. The CA reversed the Decision<sup>[3]</sup> dated September 21, 2007 of the Regional Trial Court of Angeles City, Branch 57 in Civil Case No. 12995 declaring petitioner exempt from the payment of building permit and other fees and ordering respondents to refund the same with interest at the legal rate.

The factual antecedents:

Petitioner Angeles University Foundation (AUF) is an educational institution established on May 25, 1962 and was converted into a non-stock, non-profit education foundation under the provisions of Republic Act (R.A.) No. 6055<sup>[4]</sup> on December 4, 1975.

Sometime in August 2005, petitioner filed with the Office of the City Building Official an application for a building permit for the construction of an 11-storey building of the Angeles University Foundation Medical Center in its main campus located at MacArthur Highway, Angeles City, Pampanga. Said office issued a Building Permit Fee Assessment in the amount of P126,839.20. An Order of Payment was also issued by the City Planning and Development Office, Zoning Administration Unit requiring petitioner to pay the sum of P238,741.64 as Locational Clearance Fee.<sup>[5]</sup>

In separate letters dated November 15, 2005 addressed to respondents City Treasurer Juliet G. Quinsaat and Acting City Building Official Donato N. Dizon, petitioner claimed that it is exempt from the payment of the building permit and locational clearance fees, citing legal opinions rendered by the Department of Justice (DOJ). Petitioner also reminded the respondents that they have previously issued building permits acknowledging such exemption from payment of building permit fees on the construction of petitioner's 4-storey AUF Information Technology Center building and the AUF Professional Schools building on July 27, 2000 and March 15, 2004, respectively.<sup>[6]</sup>

Respondent City Treasurer referred the matter to the Bureau of Local Government Finance (BLGF) of the Department of Finance, which in turn endorsed the query to the DOJ. Then Justice Secretary Raul M. Gonzalez, in his letter-reply dated December 6, 2005, cited previous issuances of his office (Opinion No. 157, s. 1981 and Opinion No. 147, s. 1982) declaring petitioner to be exempt from the payment of building permit fees. Under the 1st Indorsement dated January 6, 2006, BLGF reiterated the aforesaid opinion of the DOJ stating further that "xxx the Department of Finance, thru this Bureau, has no authority to review the resolution or the decision of the DOJ."<sup>[7]</sup>

Petitioner wrote the respondents reiterating its request to reverse the disputed assessments and invoking the DOJ legal opinions which have been affirmed by Secretary Gonzalez. Despite petitioner's plea, however, respondents refused to issue the building permits for the construction of the AUF Medical Center in the main campus and renovation of a school building located at Marisol Village. Petitioner then appealed the matter to City Mayor Carmelo F. Lazatin but no written response was received by petitioner.<sup>[8]</sup>

Consequently, petitioner paid under protest<sup>[9]</sup> the following:

Medical Center (new construction)	
Building Permit and Electrical Fee	P
	217,475.20
Locational Clearance Fee	283,741.64
Fire Code Fee	<u>144,690.00</u>
Total -	P
	645,906.84

Petitioner likewise paid the following sums as required by the City Assessor's Office:

Real Property Tax – Basic Fee	P
	86,531.10
SEF	43,274.54
Locational Clearance Fee	<u>1,125.00</u>
Total -	P130,930.64 <sup>[10]</sup>
<b>[GRAND TOTAL - P 826,662.99]</b>	

By reason of the above payments, petitioner was issued the corresponding Building Permit, Wiring Permit, Electrical Permit and Sanitary Building Permit. On June 9, 2006, petitioner formally requested the respondents to refund the fees it paid under protest. Under letters dated June 15, 2006 and August 7, 2006, respondent City Treasurer denied the claim for refund.<sup>[11]</sup>

On August 31, 2006, petitioner filed a Complaint<sup>[12]</sup> before the trial court seeking the refund of P826,662.99 plus interest at the rate of 12% per annum, and also praying for the award of attorney's fees in the amount of P300,000.00 and litigation expenses.

In its Answer,<sup>[13]</sup> respondents asserted that the claim of petitioner cannot be granted because its structures are not among those mentioned in Sec. 209 of the National Building Code as exempted from the building permit fee. Respondents argued that R.A. No. 6055 should be considered repealed on the basis of Sec. 2104 of the National Building Code. Since the disputed assessments are regulatory in nature, they are not taxes from which petitioner is exempt. As to the real property taxes imposed on petitioner's property located in Marisol Village, respondents pointed out that said premises will be used as a school dormitory which cannot be considered as a use exclusively for educational activities.

Petitioner countered that the subject building permit are being collected on the basis of Art. 244 of the Implementing Rules and Regulations of the Local Government Code, which impositions are really taxes considering that they are provided under the chapter on "Local Government Taxation" in reference to the "revenue raising power" of local government units (LGUs). Moreover, petitioner contended that, as held in *Philippine Airlines, Inc. v. Edu*,<sup>[14]</sup> fees may be regarded as taxes depending on the purpose of its exaction. In any case, petitioner pointed out that the Local Government Code of 1991 provides in Sec. 193 that non-stock and non-profit educational institutions like petitioner retained the tax exemptions or incentives which have been granted to them. Under Sec. 8 of R.A. No. 6055 and applicable jurisprudence and DOJ rulings, petitioner is clearly exempt from the payment of building permit fees.<sup>[15]</sup>

On September 21, 2007, the trial court rendered judgment in favor of the petitioner and against the respondents. The dispositive portion of the trial court's decision<sup>[16]</sup> reads:

WHEREFORE, premises considered, judgment is rendered as follows:

- a. Plaintiff is exempt from the payment of building permit and other fees  
Ordering the Defendants to refund the total amount of Eight Hundred Twenty Six Thousand Six Hundred Sixty Two Pesos and 99/100 Centavos (P826,662.99) plus legal interest thereon at the rate of twelve percent (12%) per annum commencing on the date of extra-judicial demand or June 14, 2006, until the aforesaid amount is fully paid.
- b. Finding the Defendants liable for attorney's fees in the amount of Seventy Thousand Pesos (Php70,000.00), plus litigation expenses.
- c. Ordering the Defendants to pay the costs of the suit.

SO ORDERED.<sup>[17]</sup>

Respondents appealed to the CA which reversed the trial court, holding that while petitioner is a tax-free entity, it is not exempt from the payment of regulatory fees. The CA noted that under R.A. No. 6055, petitioner was granted exemption only from income tax derived from its educational activities and real property used exclusively for educational purposes. Regardless of the repealing clause in the National Building

Code, the CA held that petitioner is still not exempt because a building permit cannot be considered as the other "charges" mentioned in Sec. 8 of R.A. No. 6055 which refers to impositions in the nature of tax, import duties, assessments and other collections for revenue purposes, following the *ejusdem generis* rule. The CA further stated that petitioner has not shown that the fees collected were excessive and more than the cost of surveillance, inspection and regulation. And while petitioner may be exempt from the payment of real property tax, petitioner in this case merely alleged that "the subject property is to be used actually, directly and exclusively for educational purposes," declaring merely that such premises is intended to house the sports and other facilities of the university but by reason of the occupancy of informal settlers on the area, it cannot yet utilize the same for its intended use. Thus, the CA concluded that petitioner is not entitled to the refund of building permit and related fees, as well as real property tax it paid under protest.

Petitioner filed a motion for reconsideration which was denied by the CA.

Hence, this petition raising the following grounds:

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS NECESSITATING THE HONORABLE COURT'S EXERCISE OF ITS POWER OF SUPERVISION CONSIDERING THAT:

I. IN REVERSING THE TRIAL COURT'S DECISION DATED 21 SEPTEMBER 2007, THE COURT OF APPEALS EFFECTIVELY WITHDREW THE PRIVILEGE OF EXEMPTION GRANTED TO NON-STOCK, NON-PROFIT EDUCATIONAL FOUNDATIONS BY VIRTUE OF RA 6055 WHICH WITHDRAWAL IS BEYOND THE AUTHORITY OF THE COURT OF APPEALS TO DO.

1. INDEED, RA 6055 REMAINS VALID AND IS IN FULL FORCE AND EFFECT. HENCE, THE COURT OF APPEALS ERRED WHEN IT RULED IN THE QUESTIONED DECISION THAT NON-STOCK, NON-PROFIT EDUCATIONAL FOUNDATIONS ARE NOT EXEMPT.

2. THE COURT OF APPEALS' APPLICATION OF THE PRINCIPLE OF EJUSDEM GENERIS IN RULING IN THE QUESTIONED DECISION THAT THE TERM "OTHER CHARGES IMPOSED BY THE GOVERNMENT" UNDER SECTION 8 OF RA 6055 DOES NOT INCLUDE BUILDING PERMIT AND OTHER RELATED FEES AND/OR CHARGES IS BASED ON ITS ERRONEOUS AND UNWARRANTED ASSUMPTION THAT THE TAXES, IMPORT DUTIES AND ASSESSMENTS AS PART OF THE PRIVILEGE OF EXEMPTION GRANTED TO NON-STOCK, NON-PROFIT EDUCATIONAL FOUNDATIONS ARE LIMITED TO COLLECTIONS FOR REVENUE PURPOSES.

3. EVEN ASSUMING THAT THE BUILDING PERMIT AND OTHER RELATED FEES AND/OR CHARGES ARE NOT INCLUDED IN THE TERM "OTHER CHARGES IMPOSED BY THE GOVERNMENT" UNDER SECTION 8 OF RA 6055, ITS IMPOSITION IS GENERALLY A TAX MEASURE AND THEREFORE, STILL COVERED UNDER THE PRIVILEGE OF EXEMPTION.

II. THE COURT OF APPEALS' DENIAL OF PETITIONER AUF'S EXEMPTION FROM REAL PROPERTY TAXES CONTAINED IN ITS QUESTIONED DECISION AND QUESTIONED RESOLUTION IS CONTRARY TO APPLICABLE LAW AND JURISPRUDENCE.<sup>[18]</sup>

Petitioner stresses that the tax exemption granted to educational stock corporations which have converted into non-profit foundations was broadened to include any other charges imposed by the Government as one of the incentives for such conversion. These incentives necessarily included exemption from payment of building permit and related fees as otherwise there would have been no incentives for educational foundations if the privilege were only limited to exemption from taxation, which is already provided under the Constitution.

Petitioner further contends that this Court has consistently held in several cases that the primary purpose of the exaction determines its nature. Thus, a charge of a fixed sum which bears no relation to the cost of inspection and which is payable into the general revenue of the state is a tax rather than an exercise of the police power. The standard set by law in the determination of the amount that may be imposed as license fees is such that is commensurate with the cost of regulation, inspection and licensing. But in this case, the amount representing the building permit and related fees and/or charges is such an exorbitant amount as to warrant a valid imposition; such amount exceeds the probable cost of regulation. Even with the alleged criteria submitted by the respondents (e.g., character of occupancy or use of building/structure, cost of construction, floor area and height), and the construction by petitioner of an 11-storey building, the costs of inspection will not amount to P645,906.84, presumably for the salary of inspectors or employees, the expenses of transportation for inspection and the preparation and reproduction of documents. Petitioner thus concludes that the disputed fees are substantially and mainly for purposes of revenue rather than regulation, so that even these fees cannot be deemed "charges" mentioned in Sec. 8 of R.A. No. 6055, they should properly be treated as tax from which petitioner is exempt.

In their Comment, respondents maintain that petitioner is not exempt from the payment of building permit and related fees since the only exemptions provided in the National Building Code are public buildings and traditional indigenous family dwellings. *Inclusio unius est exclusio alterius*. Because the law did not include petitioner's buildings from those structures exempt from the payment of building permit fee, it is therefore subject to the regulatory fees imposed under the National Building Code.

Respondents assert that the CA correctly distinguished a building permit fee from those "other charges" mentioned in Sec. 8 of R.A. No. 6055. As stated by petitioner itself, charges refer to pecuniary liability, as rents, and fees against persons or property. Respondents point out that a building permit is classified under the term