

## SECOND DIVISION

[ G.R. NO. 162015, March 06, 2006 ]

**THE CITY GOVERNMENT OF QUEZON CITY, AND THE CITY  
TREASURER OF QUEZON CITY, DR. VICTOR B. ENRIGA,  
PETITIONERS, VS. BAYAN TELECOMMUNICATIONS, INC.,  
RESPONDENT.**

### D E C I S I O N

**GARCIA, J.:**

Before the Court, on *pure questions of law*, is this petition for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Regional Trial Court (RTC) of Quezon City, Branch 227, in its *Civil Case No. Q-02-47292*, to wit:

- 1) **Decision<sup>[1]</sup> dated June 6, 2003**, declaring respondent Bayan Telecommunications, Inc. exempt from real estate taxation on its real properties located in Quezon City; and
- 2) **Order<sup>[2]</sup> dated December 30, 2003**, denying petitioners' motion for reconsideration.

The facts:

Respondent Bayan Telecommunications, Inc.<sup>[3]</sup> (Bayantel) is a legislative franchise holder under Republic Act (Rep. Act) No. 3259<sup>[4]</sup> to establish and operate radio stations for domestic telecommunications, radiophone, broadcasting and telecasting.

Of relevance to this controversy is the tax provision of Rep. Act No. 3259, embodied in Section 14 thereof, which reads:

SECTION 14. (a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, **exclusive of the franchise**, as other persons or corporations are now or hereafter may be required by law to pay. (b) The grantee shall further pay to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and one-half *per centum* of all gross receipts from the business transacted under this franchise by the said grantee (Emphasis supplied)

On **January 1, 1992**, Rep. Act No. 7160, otherwise known as the "*Local Government Code of 1991*" (LGC), took effect. Section 232 of the Code grants local government units within the Metro Manila Area the power to levy tax on real properties, thus:

SEC. 232. — *Power to Levy Real Property Tax.* — A province or city or a municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery and other improvements not hereinafter specifically exempted.

Complementing the aforequoted provision is the second paragraph of Section 234 of the same Code which withdrew any exemption from realty tax heretofore granted to or enjoyed by all persons, natural or juridical, to wit:

SEC. 234 — *Exemptions from Real Property Tax.* The following are exempted from payment of the real property tax:

xxx                      xxx                      xxx

Except as provided herein, any exemption from payment of real property tax previously granted to, or enjoyed by, all persons, whether natural or juridical, including government-owned-or-controlled corporations ***is hereby withdrawn upon effectivity of this Code*** (Emphasis supplied).

On July 20, 1992, barely few months after the LGC took effect, Congress enacted Rep. Act No. 7633, amending Bayantel's original franchise. The amendatory law (Rep. Act No. 7633) contained the following tax provision:

SEC. 11. The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, ***exclusive of this franchise***, as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof. *Provided*, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code ....  
xxx. [Emphasis supplied]

It is undisputed that within the territorial boundary of Quezon City, Bayantel owned several real properties on which it maintained various telecommunications facilities. These real properties, as hereunder described, are covered by the following tax declarations:

(a) Tax Declaration Nos. D-096-04071, D-096-04074, D-096-04072 and D-096-04073 pertaining to Bayantel's Head Office and Operations Center in Roosevelt St., San Francisco del Monte, Quezon City allegedly the nerve center of petitioner's telecommunications franchise operations, said Operation Center housing mainly petitioner's Network Operations Group and switching, transmission and related equipment;

(b) Tax Declaration Nos. D-124-01013, D-124-00939, D-124-00920 and D-124-00941 covering Bayantel's land, building and equipment in Maginhawa St., Barangay East Teacher's Village, Quezon City which houses telecommunications facilities; and

(c) Tax Declaration Nos. D-011-10809, D-011-10810, D-011-10811, and D-011-11540 referring to Bayantel's Exchange Center located in Proj. 8, Brgy. Bahay Toro, Tandang Sora, Quezon City which houses the Network Operations Group and cover switching, transmission and other related equipment.

In 1993, the government of Quezon City, pursuant to the taxing power vested on local government units by Section 5, Article X of the 1987 Constitution, *infra*, in relation to Section 232 of the LGC, *supra*, enacted City Ordinance No. SP-91, S-93, otherwise known as the *Quezon City Revenue Code (QCRC)*,<sup>[5]</sup> imposing, under Section 5 thereof, a real property tax on all real properties in Quezon City, and, reiterating in its Section 6, the withdrawal of exemption from real property tax under Section 234 of the LGC, *supra*. Furthermore, much like the LGC, the QCRC, under its Section 230, withdrew tax exemption privileges in general, as follows:

SEC. 230. *Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this Code, **tax exemptions** or incentives **granted to, or presently enjoyed by all persons, whether natural or juridical**, including government owned or controlled corporations, except local water districts, cooperatives duly registered under RA 6938, non-stock and non-profit hospitals and educational institutions, business enterprises certified by the Board of Investments (BOI) as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively, ... are **hereby withdrawn effective upon approval of this Code** (Emphasis supplied).

Conformably with the City's *Revenue Code*, new tax declarations for Bayantel's real properties in Quezon City were issued by the City Assessor and were received by Bayantel on August 13, 1998, except one (Tax Declaration No. 124-01013) which was received on July 14, 1999.

Meanwhile, on March 16, 1995, Rep. Act No. 7925,<sup>[6]</sup> otherwise known as the "*Public Telecommunications Policy Act of the Philippines*," envisaged to level the playing field among telecommunications companies, took effect. Section 23 of the Act provides:

SEC. 23. *Equality of Treatment in the Telecommunications Industry.* — Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: *Provided*, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise.

On January 7, 1999, Bayantel wrote the office of the City Assessor seeking the exclusion of its real properties in the city from the roll of taxable real properties. With its request having been denied, Bayantel interposed an appeal with the Local Board of Assessment Appeals (LBAA). And, evidently on its firm belief of its exempt status, Bayantel did not pay the real property taxes assessed against it by the Quezon City government.

On account thereof, the Quezon City Treasurer sent out notices of delinquency for the total amount of P43,878,208.18, followed by the issuance of several warrants of levy against Bayantel's properties preparatory to their sale at a public auction set on July 30, 2002.

Threatened with the imminent loss of its properties, Bayantel immediately withdrew its appeal with the LBAA and instead filed with the RTC of Quezon City a petition for prohibition with an urgent application for a temporary restraining order (TRO) and/or writ of preliminary injunction, thereat docketed as *Civil Case No. Q-02-47292*, which was raffled to Branch 227 of the court.

On July 29, 2002, or in the eve of the public auction scheduled the following day, the lower court issued a TRO, followed, after due hearing, by a writ of preliminary injunction *via* its order of August 20, 2002.

And, having heard the parties on the merits, the same court came out with its challenged Decision of June 6, 2003, the dispositive portion of which reads:

**WHEREFORE**, premises considered, pursuant to the enabling franchise under Section 11 of Republic Act No. 7633, the real estate properties and buildings of petitioner [now, respondent Bayantel] which have been admitted to be used in the operation of petitioner's franchise described in the following tax declarations are hereby DECLARED exempt from real estate taxation:

- (1) Tax Declaration No. D-096-04071 —
- (2) Tax Declaration No. D-096-04074 —
- (3) Tax Declaration No. D-124-01013 —
- (4) Tax Declaration No. D-011-10810 —
- (5) Tax Declaration No. D-011-10811 —
- (6) Tax Declaration No. D-011-10809 —
- (7) Tax Declaration No. D-124-00941 —
- (8) Tax Declaration No. D-124-00940 —
- (9) Tax Declaration No. D-124-00939 —
- (10) Tax Declaration No. D-096-04072 —
- (11) Tax Declaration No. D-096-04073 —
- (12) Tax Declaration No. D-011-11540 —

The preliminary prohibitory injunction issued in the August 20, 2002 Order of this Court is hereby made permanent. Since this is a resolution of a purely legal issue, there is no pronouncement as to costs.

SO ORDERED.

Their motion for reconsideration having been denied by the court in its Order dated December 30, 2003, petitioners elevated the case directly to this Court on *pure questions of law*, ascribing to the lower court the following errors:

I. [I]n declaring the real properties of respondent exempt from real property taxes notwithstanding the fact that the tax exemption granted to Bayantel in its original franchise had been withdrawn by the [LGC] and that the said exemption was not restored by the enactment of RA 7633.

II. [In] declaring the real properties of respondent exempt from real property taxes notwithstanding the enactment of the [QCRC] which withdrew the tax exemption which may have been granted by RA 7633.

III. [In] declaring the real properties of respondent exempt from real property taxes notwithstanding the vague and ambiguous grant of tax exemption provided under Section 11 of RA 7633.

IV. [In] declaring the real properties of respondent exempt from real property taxes notwithstanding the fact that [it] had failed to exhaust administrative remedies in its claim for real property tax exemption. (Words in bracket added.)

As we see it, the errors assigned may ultimately be reduced to two (2) basic issues, namely:

1. Whether or not Bayantel's real properties in Quezon City are exempt from real property taxes under its legislative franchise; and
2. Whether or not Bayantel is required to exhaust administrative remedies before seeking judicial relief with the trial court.

We shall first address the second issue, the same being procedural in nature.

Petitioners argue that Bayantel had failed to avail itself of the administrative remedies provided for under the LGC, adding that the trial court erred in giving due course to Bayantel's petition for prohibition. To petitioners, the appeal mechanics under the LGC constitute Bayantel's plain and speedy remedy in this case.

The Court does not agree.

Petitions for prohibition are governed by the following provision of Rule 65 of the Rules of Court:

*SEC. 2. Petition for prohibition.* — When the proceedings of any tribunal, — 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 proceedings in the action or matter specified therein, or otherwise, granting such incidental reliefs as law and justice may require.

With the reality that Bayantel's real properties were already levied upon on account of its nonpayment of real estate taxes thereon, the Court agrees with Bayantel that an appeal to the LBAA is not a speedy and adequate remedy within the context of the aforementioned Section 2 of Rule 65. This is not to mention of the auction sale of said properties already scheduled on July 30, 2002.

Moreover, one of the recognized exceptions to the exhaustion- of-administrative remedies rule is when, as here, only legal issues are to be resolved. In fact, the