

SECOND DIVISION

[G.R. NO. 127383, August 18, 2005]

**THE CITY OF DAVAO, CITY TREASURER AND THE CITY ASSESSOR
OF DAVAO CITY, PETITIONERS, VS. THE REGIONAL TRIAL
COURT, BRANCH XII, DAVAO CITY AND THE GOVERNMENT
INSURANCE SYSTEM (GSIS), RESPONDENTS.**

DECISION

TINGA, J.:

A Davao City Regional Trial Court (RTC) upheld the tax-exempt status of the Government Service Insurance System (GSIS) for the years 1992 to 1994 in contravention of the mandate under the Local Government Code of 1992,^[1] the precedent set by this Court in *Mactan-Cebu International Airport Authority v. Hon. Marcos*,^[2] and the public policy on local autonomy enshrined in the Constitution.^[3]

The matter was elevated to this Court directly from the trial court on a pure question of law.^[4] The facts are uncontroverted.

On 8 April 1994, the GSIS Davao City branch office received a Notice of Public Auction scheduling the public bidding of GSIS properties located in Matina and Ulas, Davao City for non-payment of realty taxes for the years 1992 to 1994 totaling Two Hundred Ninety Five Thousand Seven Hundred Twenty One Pesos and Sixty One Centavos (P295,721.61).^[5] The auction was subsequently reset by virtue of a deadline extension allowed by Davao City for the payment of delinquent real property taxes.^[6]

On 28 July 1994, the GSIS received Warrants of Levy and Notices of Levy on three parcels of land owned by the GSIS. Another Notice of Public Auction was received by the GSIS on 29 August 1994, setting the date of auction sale for 20 September 1994.

On 13 September 1994, the GSIS filed a *Petition for Certiorari, Prohibition, Mandamus And/Or Declaratory Relief* with the RTC of Davao City. It also sought the issuance of a temporary restraining order. The case was raffled to Branch 12, presided by Judge Maximo Magno Libre. On 13 September 1994, the RTC issued a temporary restraining order for a period of twenty (20) days,^[7] effectively enjoining the auction sale scheduled seven days later. Following exchange of arguments, the RTC issued an *Order* dated 3 April 1995 issuing a writ of preliminary injunction effective for the duration of the suit.^[8]

At the pre-trial, it was agreed that the sole issue for resolution was purely a question of law, that is, whether Sections 234 and 534 of the Local Government Code, which have withdrawn real property tax exemptions of government owned

and controlled corporations (GOCCs), have also withdrawn from the GSIS its right to be exempted from payment of the realty taxes sought to be levied by Davao City.^[9] The parties submitted their respective memoranda.

On 28 May 1996, the RTC rendered the *Decision*^[10] now assailed before this Court. It concluded that notwithstanding the enactment of the Local Government Code, the GSIS retained its exemption from all taxes, including real estate taxes. The RTC cited Section 33 of Presidential Decree (P.D.) No. 1146, the Revised Government Service Insurance Act of 1977, as amended by P. D. No. 1981, which mandated such exemption.

The RTC conceded that the tax exempting statute, P.D. No. 1146, was enacted prior to the Local Government Code. However, it noted that the earlier law had prescribed two conditions in order that the tax exemption provided therein could be withdrawn by future enactments, namely: (1) that Section 33 be expressly and categorically repealed by law; and (2) that a provision be enacted to substitute the declared policy of exemption from any and all taxes as an essential factor for the solvency of the GSIS fund.^[11] The RTC concluded that both conditions had not been satisfied by the Local Government Code. The RTC likewise accorded weight to Legal Opinion No. 165 of the Secretary of Justice dated 16 December 1996 concluding that Section 33 was not repealed by the Local Government Code, and a memorandum emanating from the Office of the President dated 14 February 1995 expressing the same opinion.^[12]

The dispositive portion of the assailed *Decision* reads:

Now then, in light of the foregoing observation, the court perceives, that the cause of action asseverated by petitioner in its petition has been well established by law and jurisprudence, and therefore the following relief should be granted:

- a) The tax exemption privilege of petitioner should be upheld and continued and that the warrants of levy and notices of levy issued by the respondent Treasurer is hereby voided and declared of no effect;
- b) Let a writ of prohibition be issued restraining the City Treasurer from proceeding with the auction sale of the subject properties, as well as the respondents Register of Deeds from annotating the warrants/notices of levy on the certificate of titles of petitioners real properties subject of this suit; and
- c) Compelling the City Assessor of Davao City to include the properties of petitioner in the list of properties exempt from payment of realty tax and if the warrants and levies issued by the City Treasurer had been annotated in the memorandum of encumbrance on the certificates of title of petitioner's properties, to cancel such annotation so that the certificates of titles of petitioners will be free from such liens and encumbrances.

SO ORDERED.^[13]

Petitioners' *Motion for Reconsideration* was denied by the RTC in an *Order* dated 30 October 1996, hence the present petition.

Petitioners argue that the exemption granted in Section 33 of P.D. No. 1146, as amended, was effectively withdrawn upon the enactment of the Local Government Code, particularly Sections 193 and 294 thereof. These provisions made the GSIS, along with all other GOCCs, subject to realty taxes. Petitioners point out that under Section 534(f) of the Local Government Code, even special laws, such as PD No. 1146, which are inconsistent with the Local Government Code, are repealed or modified accordingly.

On the other hand, GSIS contends, as the RTC held, that the requisites for repeal are laid down in Section 33 of P.D. No. 1146, as amended, namely that it be done expressly and categorically by law, and that a provision be enacted to substitute the declared policy of exemption from taxes as an essential factor for the solvency of the GSIS fund. It stresses that it had been exempt from taxation as far back as 1936, when its original charter was enacted through Commonwealth Act No. 186.

^[14] It asserts further that this Court had previously recognized the "extraordinary exemption" of GSIS in *Testate Estate of Concordia T. Lim v. City of Manila*,^[15] and such exemption has similarly been affirmed by the Secretary of Justice and the Office of the President in the aforementioned issuances also cited by the RTC.^[16]

GSIS likewise notes that had it been the intention of the legislature to repeal Section 33 of P.D. No. 1146 through the Local Government Code, said law would have included the appropriate retraction in its repealing clause found in Section 534(f). However, said section, according to the GSIS, partakes the nature of a general repealing provision which is accorded less weight in light of the rule that implied repeals are not favored. Consequently with its position that it remains exempt from realty taxation, the GSIS argues that the Notices of Assessment, Warrants and Notices of Levy, Notices of Public Auction Sale and the Annotations of the Notice of Levy are void *ab initio*.

A review of the relevant statutory provisions is in order.

Presidential Decree No. 1146 was enacted in 1977 by President Marcos in the exercise of his legislative powers. Section 33, as originally enacted, read:

Sec. 33. Exemption from tax, Legal Process and Lien.- It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the System shall be preserved and maintained at all times and that the contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the system and/or their employees. . . . Accordingly, notwithstanding any laws to the contrary, the System, its assets, revenues including the accruals thereto, and benefits paid, shall be exempt from all taxes. These exemptions shall continue unless expressly and specifically revoked and any assessment against the System as of the approval of this Act are hereby considered paid.

As it stood then, Section 33 merely provided a general rule exempting the GSIS from all taxes. However, Section 33 of P.D. No. 1146 was amended in 1985 by President Marcos, again in the exercise of his legislative powers, through P.D. No. 1981. It was through this latter decree that a second paragraph was added to Section 33 delineating the requisites for repeal of the tax exemption enjoyed by the GSIS by incorporating the following:

. . .

Moreover, these exemptions shall not be affected by subsequent laws to the contrary, such as the provisions of Presidential Decree No. 1931 and other similar laws that have been or will be enacted, unless this section is expressly and categorically repealed by law and a provision is enacted to substitute the declared policy of exemption from any and all taxes as an essential factor for the solvency of the fund.^[17]

It bears noting though, and it is perhaps key to understanding the necessity of the addendum provided under P.D. No. 1981, that a presidential decree enacted a year earlier, P.D. No. 1931, effectively withdrew all tax exemption privileges granted to GOCCs.^[18] In fact, P.D. No. 1931 was specifically named in the afore-quoted addendum as among those laws which, despite passage, would not affect the tax exempt status of GSIS. Section 1 of P.D. No. 1931 states:

Sec. 1. The provisions of special or general law to the contrary notwithstanding, all exemptions from the payment of duties, taxes, fees, imposts and other charges heretofore granted in favor of government-owned or controlled corporations including their subsidiaries, are hereby withdrawn.

There is no doubt that the GSIS which was established way back in 1937 is a GOCC, a fact that GSIS itself admits in its petition for certiorari before the RTC.^[19] It thus clear that Section 1 of P.D. No. 1931 expressly withdrew those exemptions granted to the GSIS. Presidential Decree No. 1931 did allow the exemption to be restored in special cases through an application for restoration with the Secretary of Finance, but otherwise, the exemptions granted to the GSIS prior to the enactment of P.D. No. 1931 were withdrawn.

Notably, P.D. No. 1931 was also an exercise of legislative powers then accorded to President Marcos by virtue of Amendment No. 6 to the 1973 Constitution. Whether he was aware of the effect of P.D. No. 1931 on the GSIS's tax-exempt status or the ramifications of the decree thereon is unknown; but apparently, he immediately reconsidered the withdrawal of the exemptions on the GSIS. Thus, P.D. No. 1981 was enacted, expressly stating that the tax-exempt status of the GSIS under Section 33 of P.D. No. 1146 remained in place, notwithstanding the passage of P.D. No. 1931.

However, P.D. No. 1981 did not stop there, serving merely as it should to restore the previous exemptions on the GSIS. It also attempted to proscribe future attempts to alter the tax-exempt status of the GSIS by imposing unorthodox conditions for its future repeal. Thus, as intimated earlier, a second paragraph was added to Section 33, containing the restrictions relied upon by the RTC and presently invoked by the GSIS before this Court.

These laws have to be weighed against the Local Government Code of 1992, a landmark law which implemented the constitutional aspirations for a more extensive breadth of local autonomy. The Court, in *Mactan*, was asked to consider the effect of the Local Government Code on the taxability by local governments of GOCCs such as the Mactan Cebu International Airport Authority (MCIAA). Particularly, MCIAA invoked Section 133(o) of the Local Government Code as the basis for its claimed exemption, the provision reading:

SECTION 133. *Common Limitations on the Taxing Powers of Local Government Units.*- Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

. . . .

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities and local government units.

However, the Court, in ruling MCIAA non-exempt from realty taxes, considered that Section 133 qualified the exemption of the National Government, its agencies and instrumentalities from local taxation with the phrase "unless otherwise provided herein." The Court then considered the other relevant provisions of the Local Government Code, particularly the following:

SECTION 193. *Withdrawal of Tax Exemption Privileges.* - Unless otherwise provided in this Code, **tax exemption or incentives granted to, or enjoyed by all persons, whether natural or juridical, including government-owned and controlled corporations,** except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, **are hereby withdrawn upon the effectivity of this Code.**

SECTION 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 hereafter specifically exempted.

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

- (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;
- (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious charitable or educational purposes;
- (c) All machineries and equipment that are actually, directly