

SECOND DIVISION

[G.R. NO. 154993, October 25, 2005]

**LUZ R. YAMANE, IN HER CAPACITY AS THE CITY TREASURER OF
MAKATI CITY, PETITIONER, VS. BA LEPANTO CONDOMINIUM
CORPORATION, RESPONDENT.**

D E C I S I O N

TINGA, J.:

Petitioner City Treasurer of Makati, Luz Yamane (City Treasurer), presents for resolution of this Court two novel questions: one procedural, the other substantive, yet both of obvious significance. The first pertains to the proper mode of judicial review undertaken from decisions of the regional trial courts resolving the denial of tax protests made by local government treasurers, pursuant to the Local Government Code. The second is whether a local government unit can, under the Local Government Code, impel a condominium corporation to pay business taxes.^[1]

While we agree with the City Treasurer's position on the first issue, there ultimately is sufficient justification for the Court to overlook what is essentially a procedural error. We uphold respondents on the second issue. Indeed, there are disturbing aspects in both procedure and substance that attend the attempts by the City of Makati to flex its taxing muscle. Considering that the tax imposition now in question has utterly no basis in law, judicial relief is imperative. There are fewer indisputable causes for the exercise of judicial review over the exercise of the taxing power than when the tax is based on whim, and not on law.

The facts, as culled from the record, follow.

Respondent BA-Lepanto Condominium Corporation (the "Corporation") is a duly organized condominium corporation constituted in accordance with the Condominium Act,^[2] which owns and holds title to the common and limited common areas of the BA-Lepanto Condominium (the "Condominium"), situated in Paseo de Roxas, Makati City. Its membership comprises the various unit owners of the Condominium. The Corporation is authorized, under Article V of its Amended By-Laws, to collect regular assessments from its members for operating expenses, capital expenditures on the common areas, and other special assessments as provided for in the Master Deed with Declaration of Restrictions of the Condominium.

On 15 December 1998, the Corporation received a Notice of Assessment dated 14 December 1998 signed by the City Treasurer. The Notice of Assessment stated that the Corporation is "liable to pay the correct city business taxes, fees and charges," computed as totaling P1,601,013.77 for the years 1995 to 1997.^[3] The Notice of Assessment was silent as to the statutory basis of the business taxes assessed.

Through counsel, the Corporation responded with a written tax protest dated 12 February 1999, addressed to the City Treasurer. It was evident in the protest that the Corporation was perplexed on the statutory basis of the tax assessment.

With due respect, we submit that the Assessment has no basis as the Corporation is not liable for business taxes and surcharges and interest thereon, under the Makati [Revenue] Code or even under the [Local Government] Code.

The Makati [Revenue] Code and the [Local Government] Code do not contain any provisions on which the Assessment could be based. One might argue that Sec. 3A.02(m) of the Makati [Revenue] Code imposes business tax on owners or operators of any business not specified in the said code. We submit, however, that this is not applicable to the Corporation as the Corporation is not an owner or operator of any business in the contemplation of the Makati [Revenue] Code and even the [Local Government] Code.^[4]

Proceeding from the premise that its tax liability arose from Section 3A.02(m) of the Makati Revenue Code, the Corporation proceeded to argue that under both the Makati Code and the Local Government Code, "business" is defined as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." It was submitted that the Corporation, as a condominium corporation, was organized not for profit, but to hold title over the common areas of the Condominium, to manage the Condominium for the unit owners, and to hold title to the parcels of land on which the Condominium was located. Neither was the Corporation authorized, under its articles of incorporation or by-laws to engage in profit-making activities. The assessments it did collect from the unit owners were for capital expenditures and operating expenses.^[5]

The protest was rejected by the City Treasurer in a letter dated 4 March 1999. She insisted that the collection of dues from the unit owners was effected primarily "to sustain and maintain the expenses of the common areas, with the end in view [sic] of getting full appreciative living values [sic] for the individual condominium occupants and to command better marketable [sic] prices for those occupants" who would in the future sell their respective units.^[6] Thus, she concluded since the "chances of getting higher prices for well-managed common areas of any condominium are better and more effective than condominiums with poor [sic] managed common areas," the corporation activity "is a profit venture making [sic]".^[7]

From the denial of the protest, the Corporation filed an *Appeal* with the Regional Trial Court (RTC) of Makati.^[8] On 1 March 2000, the Makati RTC Branch 57 rendered a *Decision*^[9] dismissing the appeal for lack of merit. Accepting the premise laid by the City Treasurer, the RTC acknowledged, in sadly risible language:

Herein appellant, to defray the improvements and beautification of the common areas, collect [sic] assessments from its members. Its end view is to get appreciate living rules for the unit owners [sic], to give an impression to outsiders [sic] of the quality of service the condominium

offers, so as to allow present owners to command better prices in the event of sale.^[10]

With this, the RTC concluded that the activities of the Corporation fell squarely under the definition of "business" under Section 13(b) of the Local Government Code, and thus subject to local business taxation.^[11]

From this *Decision* of the RTC, the Corporation filed a *Petition for Review* under Rule 42 of the Rules of Civil Procedure with the Court of Appeals. Initially, the petition was dismissed outright^[12] on the ground that only decisions of the RTC brought on appeal from a first level court could be elevated for review under the mode of review prescribed under Rule 42.^[13] However, the Corporation pointed out in its *Motion for Reconsideration* that under Section 195 of the Local Government Code, the remedy of the taxpayer on the denial of the protest filed with the local treasurer is to appeal the denial with the court of competent jurisdiction.^[14] Persuaded by this contention, the Court of Appeals reinstated the petition.^[15]

On 7 June 2002, the Court of Appeals Special Sixteenth Division rendered the *Decision*^[16] now assailed before this Court. The appellate court reversed the RTC and declared that the Corporation was not liable to pay business taxes to the City of Makati.^[17] In doing so, the Court of Appeals delved into jurisprudential definitions of profit,^[18] and concluded that the Corporation was not engaged in profit. For one, it was held that the very statutory concept of a condominium corporation showed that it was not a juridical entity intended to make profit, as its sole purpose was to hold title to the common areas in the condominium and to maintain the condominium.^[19]

The Court of Appeals likewise cited provisions from the Corporation's Amended Articles of Incorporation and Amended By-Laws that, to its estimation, established that the Corporation was not engaged in business and the assessment collected from unit owners limited to those necessary to defray the expenses in the maintenance of the common areas and management the condominium.^[20]

Upon denial of her *Motion for Reconsideration*,^[21] the City Treasurer elevated the present *Petition for Review* under Rule 45. It is argued that the Corporation is engaged in business, for the dues collected from the different unit owners is utilized towards the beautification and maintenance of the Condominium, resulting in "full appreciative living values" for the condominium units which would command better market prices should they be sold in the future. The City Treasurer likewise avers that the rationale for business taxes is not on the income received or profit earned by the business, but the privilege to engage in business. The fact that the Corporation is empowered "to acquire, own, hold, enjoy, lease, operate and maintain, and to convey sell, transfer or otherwise dispose of real or personal property" allegedly qualifies "as incident to the fact of [the Corporation's] act of engaging in business."^[22]

The City Treasurer also claims that the Corporation had filed the wrong mode of appeal before the Court of Appeals when the latter filed its *Petition for Review* under Rule 42. It is reasoned that the decision of the Makati RTC was rendered in the

exercise of original jurisdiction, it being the first court which took cognizance of the case. Accordingly, with the Corporation having pursued an erroneous mode of appeal, the RTC *Decision* is deemed to have become final and executory.

First, we dispose of the procedural issue, which essentially boils down to whether the RTC, in deciding an appeal taken from a denial of a protest by a local treasurer under Section 195 of the Local Government Code, exercises "original jurisdiction" or "appellate jurisdiction." The question assumes a measure of importance to this petition, for the adoption of the position of the City Treasurer that the mode of review of the decision taken by the RTC is governed by Rule 41 of the Rules of Civil Procedure means that the decision of the RTC would have long become final and executory by reason of the failure of the Corporation to file a notice of appeal.^[23]

There are discernible conflicting views on the issue. The first, as expressed by the Court of Appeals, holds that the RTC, in reviewing denials of protests by local treasurers, exercises appellate jurisdiction. This position is anchored on the language of Section 195 of the Local Government Code which states that the remedy of the taxpayer whose protest is denied by the local treasurer is **"to appeal** with the court of competent jurisdiction."^[24] Apparently though, the Local Government Code does not elaborate on how such "appeal" should be undertaken.

The other view, as maintained by the City Treasurer, is that the jurisdiction exercised by the RTC is original in character. This is the first time that the position has been presented to the court for adjudication. Still, this argument does find jurisprudential mooring in our ruling in *Garcia v. De Jesus*,^[25] where the Court proffered the following distinction between original jurisdiction and appellate jurisdiction: "Original jurisdiction is the power of the Court to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law. Appellate jurisdiction is the authority of a Court higher in rank to re-examine the final order or judgment of a lower Court which tried the case now elevated for judicial review."^[26]

The quoted definitions were taken from the commentaries of the esteemed Justice Florenz Regalado. With the definitions as beacon, the review taken by the RTC over the denial of the protest by the local treasurer would fall within that court's original jurisdiction. In short, the review is the initial judicial cognizance of the matter. Moreover, labeling the said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official.

The stringent concept of original jurisdiction may seemingly be neutered by Rule 43 of the 1997 Rules of Civil Procedure, Section 1 of which lists a slew of administrative agencies and quasi-judicial tribunals or their officers whose decisions may be reviewed by the Court of Appeals in the exercise of its appellate jurisdiction. However, the basic law of jurisdiction, Batas Pambansa Blg. 129 (B.P. 129),^[27] ineluctably confers appellate jurisdiction on the Court of Appeals over final rulings of quasi-judicial agencies, instrumentalities, boards or commission, by explicitly using the phrase "appellate jurisdiction."^[28] The power to create or characterize jurisdiction of courts belongs to the legislature. While the traditional notion of appellate jurisdiction connotes judicial review over lower court decisions, it has to yield to statutory redefinitions that clearly expand its breadth to encompass even

review of decisions of officers in the executive branches of government.

Yet significantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer. On the other hand, Section 22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities.

From these premises, it is evident that the stance of the City Treasurer is correct as a matter of law, and that the proper remedy of the Corporation from the RTC judgment is an ordinary appeal under Rule 41 to the Court of Appeals. However, we make this pronouncement subject to two important qualifications. First, in this particular case there are nonetheless significant reasons for the Court to overlook the procedural error and ultimately uphold the adjudication of the jurisdiction exercised by the Court of Appeals in this case. Second, the doctrinal weight of the pronouncement is confined to cases and controversies that emerged prior to the enactment of Republic Act No. 9282, the law which expanded the jurisdiction of the Court of Tax Appeals (CTA).

Republic Act No. 9282 definitively proves in its Section 7(a)(3) that the CTA exercises exclusive appellate jurisdiction to review on appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases original decided or resolved by them in the exercise of their originally or appellate jurisdiction. Moreover, the provision also states that the review is triggered "by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure."^[29]

Republic Act No. 9282, however, would not apply to this case simply because it arose prior to the effectivity of that law. To declare otherwise would be to institute a jurisdictional rule derived not from express statutory grant, but from implication. The jurisdiction of a court to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implications,^[30] and this settled rule would be needlessly emasculated should we declare that the Corporation's position is correct in law.

Be that as it may, characteristic of all procedural rules is adherence to the precept that they should not be enforced blindly, especially if mechanical application would defeat the higher ends that animates our civil procedure-the just, speedy and inexpensive disposition of every action and proceeding.^[31] Indeed, we have repeatedly upheld-and utilized ourselves-the discretion of courts to nonetheless take cognizance of petitions raised on an erroneous mode of appeal and instead treat these petitions in the manner as they should have appropriately been filed.^[32] The Court of Appeals could very well have treated the Corporation's petition for review as an ordinary appeal.

Moreover, we recognize that the Corporation's error in elevating the RTC decision for review via Rule 42 actually worked to the benefit of the City Treasurer. There is wider latitude on the part of the Court of Appeals to refuse cognizance over a