

EN BANC

[G.R. NO. 154126, October 11, 2005]

ALLIED BANKING CORPORATION AS TRUSTEE FOR THE TRUST FUND OF COLLEGE ASSURANCE PLAN PHILIPPINES, INC. (CAP), PETITIONER, VS. THE QUEZON CITY GOVERNMENT, THE QUEZON CITY TREASURER, THE QUEZON CITY ASSESSOR AND THE CITY MAYOR OF QUEZON CITY, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

From the Resolution^[1] of April 10, 2002 issued by Branch 225 of the Regional Trial Court (RTC) of Quezon City dismissing the petition for prohibition and declaratory relief^[2] of Allied Banking Corporation (petitioner), the present appeal by certiorari was lodged.

On December 19, 1995, the Quezon City government enacted City Ordinance No. 357, Series of 1995 (the ordinance),^[3] Section 3 of which reads:

Section 3. The City Assessor shall undertake a general revision of real property assessments using as basis the newly approved schedule specified in Sections 1 and 2 hereof. He shall apply the new assessment level of 15% for residential and 40% for commercial and industrial classification, respectively as prescribed in Section 8 (a) of the 1993 Quezon City Revenue Code to determine the assessed value of the land. Provided; however, that **parcels of land sold, ceded, transferred and conveyed for remuneratory consideration after the effectivity of this revision shall be subject to real estate tax based on the actual amount reflected in the deed of conveyance or the current approved zonal valuation of the Bureau of Internal Revenue prevailing at the time of sale, cession, transfer and conveyance, whichever is higher, as evidenced by the certificate of payment of the capital gains tax issued therefor.**^[4] (Emphasis and underscoring supplied)

On July 1, 1998, petitioner, as trustee for College Assurance Plan of the Philippines, Inc., purchased from Liwanag C. Natividad et al. a 1,000 square meter parcel of land located along Aurora Boulevard, Quezon City in the amount of P38,000,000.00.^[5]

Prior to the sale, Natividad et al. had been paying the total amount of P85,050.00^[6] as annual real property tax based on the property's fair market value of P4,500,000.00 and assessed value of P1,800,000.00 under Tax Declaration No. D-102-03778.^[7]

After its acquisition of the property, petitioner was, in accordance with Section 3 of the ordinance, required to pay P102,600.00 as quarterly real estate tax (or P410,400.00 annually) under Tax Declaration No. D-102-03780 which pegged the market value of the property at P38,000,000.00 - the consideration appearing in the Deed of Absolute Sale, and its assessed value at P15,200,000.00.^[8]

Petitioner paid the quarterly real estate tax for the property from the 1st quarter of 1999 up to the 3rd quarter of 2000. Its tax payments for the 2nd, 3rd, and 4th quarter of 1999, and 1st and 2nd quarter of 2000 were, however, made under protest.^[9]

In its written protest^[10] with the City Treasurer, petitioner assailed Section 3 of the ordinance as null and void, it contending that it is violative of the equal protection and uniformity of taxation clauses of the Constitution.^[11] Petitioner, moreover, contended that the proviso is unjust, excessive, oppressive, unreasonable, confiscatory and contrary to Section 130 of the Local Government Code which provides:

SECTION 130. ***Fundamental Principles.*** - The following fundamental principles shall govern the exercise of the taxing and revenue-raising powers of local government units:

- (a) Taxation shall be uniform in each local government unit;
- (b) Taxes, fees, charges and other impositions shall:
 - (1) be equitable and based as far as practicable on the taxpayer's ability to pay;
 - (2) be levied and collected only for public purposes;
 - (3) not be unjust, excessive, oppressive, or confiscatory;
 - (4) not be contrary to law, public policy, national economic policy, or in restraint of trade;

x x x

Petitioner, through its counsel, later sent a March 24, 2000 demand letter to the Quezon City Treasurer's Office seeking a refund of the real estate taxes it erroneously collected from it.^[12] The letter was referred for appropriate action^[13] to the City Assessor who, by letter dated May 7, 2000, denied the demand for refund on the ground that the ordinance is presumed valid and legal unless otherwise declared by a court of competent jurisdiction.^[14]

Petitioner thereupon filed on August 11, 2000 a petition for prohibition and declaratory relief before the Quezon City RTC for the declaration of nullity of Section 3 of the ordinance; the enjoining of respondents - Quezon City Treasurer, Quezon City Assessor, and City Mayor of Quezon City - from further implementing the ordinance; for the Quezon City Treasurer to be ordered to refund the amount of P633,150.00 representing the real property tax erroneously collected and paid under protest; and for respondents to pay attorney's fees in the amount of P1,000,000.00 and costs of the suit.^[15]

In support of its thesis, petitioner contended that the re-assessment under the third

sentence of Section 3 of the ordinance for purposes of real estate taxation of a property's fair market value where it is sold, ceded, transferred or conveyed for remuneratory consideration is null and void as it is an invalid classification of real properties which are transferred, ceded or conveyed and those which are not, the latter remaining to be valued and assessed in accordance with the general revisions of assessments of real properties under the first sentence of Section 3.^[16]

Petitioner additionally contended that the proviso of Section 3 of the ordinance which allows re-assessment every time the property is transferred, ceded or conveyed violates Sections 219^[17] and 220^[18] of the Local Government Code which provide that the assessment of real property shall not be increased oftener than once every three (3) years except in case of new improvements substantially increasing the value of said property or of any change in its actual use.^[19]

Before respondents could file any responsive pleading or on March 6, 2001, respondent Quezon City Government enacted Ordinance No. SP-1032, S-2001^[20] which repealed the assailed proviso in Section 3 of the 1995 Ordinance. The repealing ordinance which took effect upon its approval on March 28, 2001 reads in part:

"WHEREAS, the implementation of the second (2nd) sentence of Section 3 of the Ordinance creates a situation whereby owners of newly acquired land for remuneratory consideration beginning January 1, 1996 and forward will have to pay higher taxes than its adjoining/adjacent lot or lots in the adjoining blocks, or nearby lots within its immediate vicinity which have remained undisturbed, not having been sold, ceded, transferred, and/or conveyed;

WHEREAS, the owners of the newly acquired property are complaining/protesting the validity/legality of the second (2nd) sentence of Section 3 of the ordinance for being either arbitrary, unjust, excessive, oppressive, and/or contrary to law;

WHEREAS, Section 5 Article X of the Philippine Constitution provides that: 'Each local government unit shall have the power to create its own sources of revenue and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the local government' (Underscoring supplied);

WHEREAS, the guidelines and limitations imposed on the local government units in the exercise of their taxing powers have been expressly stipulated by Congress when it enacted Section 130 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 xxx;

WHEREAS, these fundamental principles of taxation find support and affirmation in the following applicable cases decided by the Court of Tax Appeals (sic), on similar cases which held that:

1. An increase in the valuation of land due to sale and transfer of such property was arbitrary. Uniformity in taxation means that all kinds

of property of the same class shall be taxed at the same rate. (Churchhill vs. Concepcion, 34 Phi. 969; Eastern Theatrical Co. vs. Alfonso, 83 Phil. 852) xxx.

2. The law requires the real property shall be assessed at its true and full value, or cash value, or fair market value. But in determining or fixing the fair market value of property for tax purposes it is essential that the rules of uniformity be observed. More important tha[n] the obligation to seek the fair market value of property is the obligation of the assessor to see to it that the "rule of taxation shall be uniform," for this a (sic) rule which is guaranteed by the Constitution. A taxpayer should not be made to pay more taxes on his property while owners of surrounding properties, under the same circumstance pay less.

WHEREAS, it is clear from the foregoing premises that the second (2nd) sentence of the Ordinance, fixing the realty tax based on the actual amount reflected in the deed of conveyance or the current approved zonal valuation x x x is violative of, and repugnant to, the uniformity rule of taxation;

WHEREAS, in view of the above considerations there appear to be merit and validity to the complaints/protests of tax payers, a re-examination and repeal of the entire second sentence of Section 3 of the Ordinance is in order."

Petitioner subsequently moved to declare respondents in default^[21] for failure to file a responsive pleading within the period, as extended. Before the motion could be heard,^[22] however, respondents moved to dismiss the petition,^[23] averring that the passage of the repealing ordinance had rendered the petition moot and academic.

Petitioner opposed the motion, it alleging that while its action for the declaration of nullity of the proviso was rendered moot and academic by its repeal, its claim for refund and attorney's fees had not been mooted, and the trial court still had to determine if Section 3 of the ordinance "is null and void *ab initio* and perforce, may not be enforced during the intervening period from the time of its enactment until the time of its repeal."^[24]

Respondents maintained, however, that the assailed proviso remained in full force and effect until the date of its repeal, based on the rule that a statute is construed prospectively unless the legislative intent was to give it retrospective application.^[25] And they called attention to the provision in Section 2 of the repealing ordinance that "[it] shall take effect upon its approval," hence, clearly showing that the local legislative body was to grant it prospective application.^[26]

As to the claim for refund, respondents averred that it was premature for the trial court to take cognizance thereof as petitioner had an administrative remedy.^[27]

By Resolution of April 10, 2002, the trial court granted respondents' motion to dismiss in this wise:

There is no need for this Court to resolve whether the subject Ordinance is null and void as the same was already declared to be violative of, and repugnant to the "uniformity rule" on taxation by the Quezon City Council itself thru its pronouncements in Quezon City Ordinance No. 1032, Series of 2001. x x x

x x x

As to petitioner's claim for refund, since an administrative remedy is available for refund of taxes illegally and erroneously collected and petitioner has not yet availed of it, the Court shall not take cognizance of this issue considering the rule on "Exhaustion of Administrative Remedy."

[28] (Underscoring supplied)

Its Motion for Reconsideration^[29] having been denied,^[30] petitioner comes before this Court on appeal by certiorari under Rule 45 on the following issues:

A

WHETHER OR NOT THE TRIAL COURT ERRED IN DISMISSING THE INSTANT CASE FOR FAILURE OF THE PETITIONER TO EXHAUST ADMINISTRATIVE REMEDIES.

B

WHETHER OR NOT SECTION 3, QUEZON CITY ORDINANCE NO. 357, SERIES OF 1995, WHICH WAS ABROGATED FOR BEING UNCONSTITUTIONAL CAN BE THE BASIS OF COLLECTING REAL ESTATE TAXES PRIOR TO ITS REPEAL.^[31]

Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law.^[32]

Nevertheless, while cases raising purely legal questions are excepted from the rule requiring exhaustion of administrative remedies before a party may resort to the courts, petitioner, in the case at bar, does not raise just pure questions of law. Its cause of action requires the determination of **the amount of real property tax paid under protest** and the **amount of attorney's fees**. These issues are essentially questions of fact which preclude this Court from reviewing the same.^[33]

Since the procedure for obtaining a refund of real property taxes is provided under Sections 252,^[34] 226,^[35] 229,^[36] 230^[37] and 231^[38] of the Local Government Code, petitioner's action for prohibition in the RTC was premature as it had a plain, speedy and adequate remedy of appeal in the ordinary course of law.^[39] As such, the trial court correctly dismissed its action on the ground that it failed to exhaust the administrative remedies stated above.^[40]

Raising questions of fact is moreover inappropriate in an appeal by certiorari under Rule 45 of the Rules of Court where only questions of law may be reviewed.^[41] It is axiomatic that the Supreme Court is not a trier of facts^[42] and the factual findings