

SECOND DIVISION

[G.R. No. 150763, July 02, 2004]

**RURAL BANK OF MAKATI, INC., ESTEBAN S. SILVA AND
MAGDALENA V. LANDICHO, PETITIONERS, VS. MUNICIPALITY
OF MAKATI AND ATTY. VICTOR A. L. VALERO, RESPONDENTS.**

DECISION

QUISUMBING, J.:

In its decision^[1] dated July 17, 2001, in CA-G.R. CV No. 58214, the Court of Appeals affirmed the decision^[2] dated October 22, 1996 of the Regional Trial Court of Makati City, Branch 134, in Civil Case No. 91-2866 dismissing petitioners' complaint for recovery of a sum of money and damages. Petitioners now assail said CA decision as well as the Resolution^[3] dated November 9, 2001, which denied their Motion for Reconsideration.

The facts are as follows:

Sometime in August 1990, Atty. Victor A.L. Valero, then the municipal attorney of the Municipality of Makati, upon request of the municipal treasurer, went to the Rural Bank of Makati to inquire about the bank's payments of taxes and fees to the municipality. He was informed, however, by petitioner Magdalena V. Landicho, corporate secretary of the bank, that the bank was exempt from paying taxes under Republic Act No. 720, as amended.^[4]

On November 19, 1990, the municipality lodged a complaint with the Prosecutor's Office, charging petitioners Esteban S. Silva, president and general manager of the bank and Magdalena V. Landicho for violation of Section 21(a), Chapter II, Article 3 in relation to Sections 105 and 169 of the Metropolitan Tax Code.

On April 5, 1991, an Information docketed as Criminal Case No. 140208, for violation of Municipal Ordinance Nos. 122 and 39 for non-payment of the mayor's permit fee, was filed with the Metropolitan Trial Court (MeTC) of Makati against petitioners. Another Information, docketed as Criminal Case No. 140209, for non-payment of annual business tax, in violation of Metro Manila Commission Ordinance No. 82-03, Section 21(a), Chapter II, Article 3, was likewise filed with the MeTC.

While said cases were pending with the municipal court, respondent municipality ordered the closure of the bank. This prompted petitioners to pay, under protest, the mayor's permit fee and the annual fixed tax in the amount of ₱82,408.66.

On October 18, 1991, petitioners filed with the RTC of Makati a Complaint for Sum of Money and Damages, docketed as Civil Case No. 91-2866. Petitioners alleged that they were constrained to pay the amount of ₱82,408.66 because of the closure order, issued despite the pendency of Criminal Cases Nos. 140208-09 and the lack

of any notice or assessment of the fees to be paid. They averred that the collection of the taxes/fees was oppressive, arbitrary, unjust and illegal. Additionally, they alleged that respondent Atty. Valero had no power to enforce laws and ordinances, thus his action in enforcing the collection of the permit fees and business taxes was *ultra vires*. Petitioners claimed that the bank lost expected earnings in the amount of ₱19,778. Petitioners then assailed the municipal ordinances of Makati as invalid for want of the requisite publication.

In its Answer, respondent municipality asserted that petitioners' payment of ₱82,408.66 was for a legal obligation because the payment of the mayor's permit fee as well as the municipal business license was required of all business concerns. According to respondent, said requirement was in furtherance of the police power of the municipality to regulate businesses.

For his part, Atty. Valero filed an Answer claiming that there was no coercion committed by the municipality, that payment was a legal obligation of the bank, and that its claim of exemption had no legal basis. He further alleged that petitioners' action was clearly intended to harass and humiliate him and as counterclaim, he asked for moral and other damages.

On October 22, 1996, the RTC decided Civil Case No. 91-2866 as follows:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered dismissing the complaint.

On the counterclaim, the plaintiffs are hereby ordered jointly and severally to pay to defendant Victor Valero the sum of ₱200,000.00 as moral damages and the amount of ₱50,000.00 as attorney's fees.

The counterclaim of defendant Municipality is dismissed.

Cost against the plaintiffs.

SO ORDERED.^[5]

In finding for respondents, the RTC ruled that the bank was engaged in business as a rural bank. Hence, it should secure the necessary permit and business license, as well as pay the corresponding charges and fees. It found that the municipality had authority to impose licenses and permit fees on persons engaging in business, under its police power embodied under the general welfare clause. Also, the RTC declared unmeritorious petitioners' claim for exemption under Rep. Act No. 720 since said exemption had been withdrawn by Executive Order No. 93^[6] and the Rural Bank Act of 1992.^[7] These statutes no longer exempted rural banks from paying corporate income taxes and local taxes, fees and charges. It also found petitioners' claim of lack of publication of MMC Ordinance Nos. 82-03 and Municipal Ordinance No. 122 to be mere allegations unsupported by clear and convincing evidence.

In awarding damages to Atty. Valero, the RTC found that he had been maliciously impleaded as defendant. It noted that Atty. Valero, as a municipal legal officer, was tasked to enforce municipal ordinances. In short, he was merely an agent of the local chief executive and should not be faulted for performing his assigned task.

Petitioners seasonably moved for reconsideration, but this was denied by the RTC in its Order dated January 10, 1997.^[8]

Petitioners appealed to the Court of Appeals in CA-G.R. CV No. 58214. The appellate court sustained the lower court in this wise:

WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED in toto.

SO ORDERED.^[9]

The Court of Appeals found the order of closure of the bank valid and justified since the bank was operating without any permit and without having paid the requisite permit fee. Thus, declared the Court of Appeals, "it is not merely a matter of enforcement and collection of fees, as the appellants would have it, but a violation of the municipality's authority to regulate the businesses operating within its territory."^[10]

The appellate court also brushed aside petitioners' claim that the general welfare clause is limited only to legislative action. It declared that the exercise of police power by the municipality was mandated by the general welfare clause, which authorizes the local government units to enact ordinances, not only to carry into effect and discharge such duties as are conferred upon them by law, but also those for the good of the municipality and its inhabitants. This mandate includes the regulation of useful occupations and enterprises.

Petitioner moved for reconsideration, but the appellate court in its Resolution^[11] of November 9, 2001 denied the same.

Hence, this instant petition alleging that the Honorable Court of Appeals seriously erred in:

1.HOLDING THAT THE CLOSURE BY THE APPELLEE, VICTOR VALERO, OF THE APPELLANT BANK WAS A LEGITIMATE EXERCISE OF POLICE POWER BY THE MUNICIPALITY OF MAKATI;
2.NOT CONSIDERING THE FACT THAT MAKATI ORDINANCE 122 REQUIRING MAYOR'S PERMIT FOR OPERATION OF AN ESTABLISHMENT AND MMC ORDINANCE NO. 82-03 WERE ADMITTED AS NOT PUBLISHED AS REQUIRED IN TAÑADA, ET AL., vs. TIVERA, NO. L-63915, DECEMBER 29, 1986 AND THAT NO TAX ASSESSMENT WAS PRESENTED TO THE BANK;
3.AWARDING MORAL DAMAGES TO APPELLEE VICTOR VALERO IN THE AMOUNT OF ₱200,000.00 AND ATTORNEY'S FEES IN THE SUM OF ₱50,000.00;
4.NOT AWARDING TO THE APPELLANT BANK, THE AMOUNT OF ₱57,854.00 REPRESENTING THE AMOUNT UNJUSTLY AND ILLEGALLY COLLECTED FROM THE APPELLANT BANK;

5.NOT AWARDING THE AMOUNT OF ₱10,413.75 YEARLY REPRESENTING THE UNREALIZED PROFIT WHICH THE APPELLANT BANK IS BEING DEPRIVED OF IN THE USE OF THE AFORESAID AMOUNT PLUS LEGAL INTEREST ALLOWED IN JUDGMENT FROM THE TIME OF THE EXTRAJUDICIAL DEMAND. (DEMAND LETTER, DATED OCTOBER 4, 1991, EXHIBIT "O" FOR THE APPELLANTS);
6.NOT GRANTING TO APPELLANTS ESTEBAN S. SILVA AND MAGDALENA LANDICHO MORAL DAMAGES IN THE AMOUNT OF ₱15,000.00;
7.NOT AWARDING TO APPELLANTS, ₱1,000,000.00 EXEMPLARY DAMAGES; 25% OF THE APPELLANTS CLAIM AS AND FOR ATTORNEYS' FEE AND COSTS OF SUIT.^[12]

Essentially, the following are the relevant issues for our resolution:

1. Whether or not petitioner bank is liable to pay the business taxes and mayor's permit fees imposed by respondent;
2. Whether or not the closure of petitioner bank is valid;
3. Whether or not petitioners are entitled to an award of unrealized profit and damages;
4. Whether or not respondent Atty. Victor Valero is entitled to damages.

On the *first issue*, petitioner bank claims that of the ₱82,408.66 it paid under protest, it is actually liable only for the amount of ₱24,154, representing taxes, fees and charges due beginning 1987, or after the issuance of E.O. No. 93. Prior to said year, it was exempt from paying any taxes, fees, and charges by virtue of Rep. Act No. 720.

We find the bank's claim for refund untenable now.

Section 14 of Rep. Act No. 720, as amended by Republic Act No. 4106,^[13] approved on July 19, 1964, had exempted rural banks with net assets not exceeding one million pesos (₱1,000,000) from the payment of all taxes, charges and fees. The records show that as of December 29, 1986, petitioner bank's net assets amounted only to ₱745,432.29^[14] or below the one million ceiling provided for in Section 14 of the old Rural Banking Act. Hence, under Rep. Act No. 720, petitioner bank could claim to be exempt from payment of all taxes, charges and fees under the aforementioned provision.

However, on December 17, 1986, Executive Order No. 93 was issued by then President Corazon Aquino, withdrawing all tax and duty incentives with certain exceptions. Notably, not included among the exceptions were those granted to rural banks under Rep. Act No. 720. With the passage of said law, petitioner could no longer claim any exemption from payment of business taxes and permit fees.

Now, as to the refund of ₱57,854 claimed by petitioners allegedly because of

overpayment of taxes and fees, we note that petitioners have not adequately substantiated their claim. As found by the Court of Appeals:

As to the computation of the payable fees, the plaintiffs-appellants claim an overpayment and pray for a refund. It is not clearly shown from their argument that such overpayment exists. And from their initial complaint, they even asked for the refund of the whole P82,408.66 paid, which complaint was instituted in 1991. They claim having paid the fees and charges due since 1991, which is irrelevant, since the P82,408.66 was paid for the period before 1991, and thus no deduction can be made for payments after that period. It is not clear where their computation of P57,854.00 owed them came from, and lacking solid support, their prayer for a partial refund must fail. Plaintiffs-appellants have failed to show that the payment of fees and charges even covered the period before their exemption was withdrawn.^[15]

Factual findings of the Court of Appeals, which are supported on record, are binding and conclusive upon this Court. As repeatedly held, such findings will not be disturbed unless they are palpably unsupported by the evidence on record or unless the judgment itself is based on misapprehension of facts.^[16] Moreover, in a petition for review, only questions of law are properly raised. On this score, the refund sought by petitioners could not be entertained much less granted.

Anent the *second issue*, petitioner bank claims that the closure of respondent bank was an improper exercise of police power because a municipal corporation has no inherent but only delegated police power, which must be exercised not by the municipal mayor but by the municipal council through the enactment of ordinances. It also assailed the Court of Appeals for invoking the General Welfare Clause embodied in Section 16^[17] of the Local Government Code of 1991, which took effect in 1992,^[18] when the closure of the bank was actually done on July 31, 1991.

Indeed the Local Government Code of 1991 was not yet in effect when the municipality ordered petitioner bank's closure on July 31, 1991. However, the general welfare clause invoked by the Court of Appeals is not found on the provisions of said law alone. Even under the old Local Government Code (Batas Pambansa Blg. 337)^[19] which was then in effect, a general welfare clause was provided for in Section 7 thereof. Municipal corporations are agencies of the State for the promotion and maintenance of local self-government and as such are endowed with police powers in order to effectively accomplish and carry out the declared objects of their creation.^[20] The authority of a local government unit to exercise police power under a general welfare clause is not a recent development. This was already provided for as early as the Administrative Code of 1917.^[21] Since then it has been reenacted and implemented by new statutes on the matter. Thus, the closure of the bank was a valid exercise of police power pursuant to the general welfare clause contained in and restated by B.P. Blg. 337, which was then the law governing local government units. No reversible error arises in this instance insofar as the validity of respondent municipality's exercise of police power for the general welfare is concerned.

The general welfare clause has two branches. The first, known as the *general legislative power*, authorizes the municipal council to enact ordinances and make