

FIRST DIVISION

[G.R. No. 109791, July 14, 2003]

PHILIPPINE PORTS AUTHORITY, PETITIONER, VS. CITY OF ILOILO, RESPONDENT.

DECISION

AZCUNA, J.:

Before us is a petition for review on *certiorari* assailing the Decision of the Regional Trial Court of Iloilo City, Branch 39, dated February 26, 1993 in Civil Case No. 18477, a case for collection of a sum of money. Seeking to raise questions purely of law, petitioner Philippine Ports Authority (PPA) would want us to set aside the ruling ordering it to pay real property and business taxes to respondent City of Iloilo.

The factual antecedents are summarized by the trial court:

This is an action for the "recovery of sum of money" filed by [respondent] City of Iloilo, a public corporation organized under the laws of the Republic of the Philippines, represented by the Hon. Rodolfo T. Ganzon as City Mayor, against petitioner, Philippine Ports Authority (PPA), a government corporation created by P.D. 857.

[Respondent] seeks to collect from [petitioner] real property taxes as well as business taxes, computed from the last quarter of 1984 up to fourth quarter of 1988.

[Respondent] alleges that [petitioner] is engaged in the business of arrastre and stevedoring services and the leasing of real estate for which it should be obligated to pay business taxes. It further alleges that [petitioner] is the declared and registered owner of a warehouse which is used in the operation of its business and is also thereby subject to real property taxes.

It demands the aggregate amount of P510,888.86 in realty and business taxes as of December 1988 (real property tax - last quarter of 1984 to 1988; business tax- 1984 to 1988) including its corresponding interests and penalty charges.

On July 19, 1989, [petitioner] filed a motion to dismiss but [it] was denied by this court. A motion for reconsideration was filed, but the same was still denied, after which [petitioner] filed its answer.

During the pre-trial conference, the following factual and legal issues were defined and clarified.

Factual Issues:

1. Whether or not [petitioner] is engaged in business;
2. Whether or not the assessment of tax by [respondent] is accurate as of 4th quarter of 1988 from the year 1984; real property tax in the amount of P180,953.93 and business tax in the amount of P329,934.93 as of December 31, 1988.

Legal Issues:

1. Whether or not Philippine Ports Authority is exempt from the payment of real property tax and business tax;
2. Whether by filing a motion to dismiss, [petitioner] impliedly admitted the allegations in the complaint;
3. Whether Philippine Ports Authority is engaged in business. If in the negative, whether or not it is exempt from payment of business taxes.

During trial, [respondent] presented two witnesses, namely: Mrs. Rizalina F. Tulio and Mr. Leoncio Macrangala.

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After [respondent] had rested its case, [petitioner] did not present any evidence. Instead, its counsel asked the court to give him time to file a memorandum, as said counsel is convinced that the issues involved in this case are purely legal issues.

He has no quarrel as regards the computation of the real property and business taxes made by [respondent]. He is convinced, however, that the issue in this case involves a question of law and that [petitioner] is not liable to pay any kind of taxes to the City of Iloilo.^[1]

The court *a quo* rendered its decision holding petitioner liable for real property taxes from the last quarter of 1984 to December 1986, and for business taxes with respect to petitioner's lease of real property from the last quarter of 1984 up to 1988. It, however, held that respondent may not collect business taxes on petitioner's arrastre and stevedoring services, as these form part of petitioner's governmental functions. The dispositive portion of said decision states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the plaintiff, as follows:

1. the amount of P98,519.16 as real property tax, from [the] last quarter of 1984 up to December 1986;
2. the amount of P3,828.07, as business tax, for leasing of real estate from [the] last quarter of 1984 up to 1988.^[2]

Petitioner now seeks a review of the case, contending that the court *a quo* decided a question of substance which has not been decided by us in that:

(i) It decreed a property of public dominion (port facility) as subject to realty taxes just because the mentioned property is being administered by what it perceived to be a taxable government corporation. And,

(ii) It declared that petitioner PPA is subject to "business taxes" for leasing to private persons or entities real estate without considering that petitioner PPA is not engaged in "business."^[3]

In its Comment, respondent in addition raises the issue of whether or not petitioner may change its theory on appeal. It points out that petitioner never raised the issue that the subject property is of public dominion during the trial nor did it mention it in the memorandum it filed with the lower court. It further contends that such change of theory patently contradicts petitioner's admission in its pleadings and is disallowed under applicable jurisprudence.^[4]

The records show that the theory of petitioner before the trial court was different from that of the present petition. In fact, even while at the trial court stage, petitioner was not consistent in its theory.^[5] Initially in its pleadings therein, it argued that as a government-owned corporation, it is exempt from paying real property taxes by virtue of its specific exemption in its charter,^[6] Section 40 of the Real Property Tax Code and Executive Order No. 93. Subsequently, in the memorandum it filed with the trial court, it omitted its earlier argument and changed its theory by alleging that it is a government instrumentality, which, according to applicable jurisprudence, may not be taxed by the local government. After obtaining an adverse decision from the trial court, it adopts yet another stance on appeal before us, contesting the taxability of its warehouse. It argued for the first time that since "ports constructed by the State" are considered under the Civil Code as properties of public dominion, its warehouse, which it insists to be part of its port, should be treated likewise. To support this, it invokes Article 420 of the Civil Code, which provides:

Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, *ports and bridges constructed by the State*, banks, shores, roadsteads, and others of similar character;

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[Emphasis supplied]

Insisting that the subject warehouse is considered as part of its port, it points to Section 3 (e) of its charter quoted hereunder:

e) "port" means a place where ships may anchor or tie up for the purpose of shelter, repair, loading or discharge of cargo, or for other such activities connected with water-borne commerce, and *including all the land and water areas and the structures, equipment and facilities related to these functions*. [Emphasis supplied]

A perusal of the records shows that this thesis was never presented nor discussed at the trial stage.

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal.^[7] Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule.^[8] It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.^[9] To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.^[10]

Petitioner however cites an exception to the rule, as enunciated in *Lianga Lumber Co. v. Lianga Timber Co., Inc.*,^[11] wherein we said:

[I]n the interest of justice and within the sound discretion of the appellate court, a party may change his theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.

Petitioner contends that its new theory falls under the aforecited exception, as the issue does not involve any disputed evidentiary matter.

Contrary to petitioner's claim, we find that the new issue raised is not a purely legal question. It must be emphasized that the enumeration of properties of public dominion under Article 420 of the Civil Code specifically states "ports constructed by the State." Thus, in order to consider the port in the case at bar as falling under the said classification, the fact that the port was constructed by the State must first be established by sufficient evidence. This fact proved crucial in *Santos v. Moreno*,^[12] where the issue raised was whether the canals constructed by private persons were of public or private ownership. We ruled that the canals were privately owned, thus:

Under Art. 420, canals constructed by the State and devoted and devoted to public use are of public ownership. Conversely, canals constructed by private persons within private lands and devoted exclusively for private use must be of private ownership.

In the case at bar, no proof was adduced to establish that the port was constructed by the State. Petitioner cannot have us automatically conclude that its port qualified as "property of public dominion." It would be unfair to respondent, which would be deprived of its opportunity to present evidence to disprove the factual basis of the new theory. It is thus clear that the *Lianga* exception cannot apply in the case at bar.

Moreover, as correctly pointed out by respondent, we cannot ignore the fact that petitioner's new position runs contrary to its own admission in the pleadings filed in the trial court. Under paragraph 3 of respondent's complaint quoted hereunder, the fact of petitioner's ownership of the property was specifically alleged as follows:

Defendant is likewise the declared and registered owner of a warehouse standing on Lot No. 1065 situated at Bgy. Concepcion, City Proper, declared under Tax Declaration No. 56325. Xerox copy of the said Tax Declaration is hereto attached as annex "D" and form[s] an integral part of herein complaint;^[13]

In its Answer, referring to the abovesited complaint, petitioner stated, "Paragraph 3 is admitted."^[14] Notably, this admission was never questioned nor put at issue during the trial.

Now before us, petitioner contradicts its earlier admission by claiming that the subject warehouse is a property of public dominion. This inconsistency is made more apparent by looking closely at what public dominion means. Tolentino explains this in this wise:

Private ownership is defined elsewhere in the Code; but the meaning of public dominion is nowhere defined. From the context of various provisions, it is clear that *public dominion* does not carry the idea of ownership; property of public dominion is not owned by the State, but pertains to the State, which as territorial sovereign exercises certain judicial prerogatives over such property. *The ownership of such property*, which has the special characteristics of a collective ownership for the general use and enjoyment, by virtue of their application to the satisfaction of collective needs, *is in the social group*, whether national, provincial, or municipal. Their purpose is not to serve the State as a juridical person, but the citizens; *they are intended for the common and public welfare, and so they cannot be the object of appropriation, either by the State or by private persons.*^[15] [Emphasis supplied]

Following the above, properties of public dominion are owned by the general public and cannot be declared to be owned by a public corporation, such as petitioner.

As the object of the pleadings is to draw the lines of battle, so to speak, between the litigants and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with his pleadings.^[16] Unless a party alleges palpable mistake or denies such admission, judicial admissions cannot be controverted.^[17] Petitioner is thus bound by its admission of ownership of the subject property and is barred from claiming otherwise.

We also note that petitioner failed to raise the issue of ownership during the pre-trial. In its petition, it insists that to determine liability for real property tax, the ownership of the property must first be ascertained.^[18] In the pre-trial order, however, to which petitioner did not object, nowhere was the issue of ownership included in the stipulated factual or legal issues.^[19]

We have ruled that a pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised. Thus to obviate the element of surprise, parties are expected to disclose at the pre-trial conference all issues of law and fact which they intend to raise at the trial. Consequently, the determination of issues at a pre-trial conference bars the consideration of other