

THIRD DIVISION

[G.R. No. 120082, September 11, 1996]

**MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY,
PETITIONER, VS. HON. FERDINAND J. MARCOS, IN HIS
CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL
COURT, BRANCH 20, CEBU CITY, THE CITY OF CEBU,
REPRESENTED BY ITS MAYOR, HON. TOMAS R. OSMEÑA, AND
EUSTAQUIO B. CESA, RESPONDENTS.**

DECISION

DAVIDE, JR., J.:

For review under Rule 45 of the Rules of Court on a pure question of law are the decision of 22 March 1995^[1] of the Regional Trial Court (RTC) of Cebu City, Branch 20, dismissing the petition for declaratory relief in Civil Case No. CEB-16900, entitled "*Mactan Cebu International Airport Authority vs. City of Cebu*," and its order of 4 May 1995^[2] denying the motion to reconsider the decision.

We resolved to give due course to this petition for it raises issues dwelling on the scope of the taxing power of local government units and the limits of tax exemption privileges of government-owned and controlled corporations.

The uncontradicted factual antecedents are summarized in the instant petition as follows:

Petitioner Mactan Cebu International Airport Authority (MCIAA) was created by virtue of Republic Act No. 6958, mandated to "principally undertake the economical, efficient and effective control, management and supervision of the Mactan International Airport in the Province of Cebu and the Lahug Airport in Cebu City, x x x and such other airports as may be established in the Province of Cebu x x x" (Sec. 3, RA 6958). It is also mandated to:

- a) encourage, promote and develop international and domestic air traffic in the Central Visayas and Mindanao regions as a means of making the regions centers of international trade and tourism, and accelerating the development of the means of transportation and communication in the country; and,
- b) upgrade the services and facilities of the airports and to formulate internationally acceptable standards of airport accommodation and service.

Since the time of its creation, petitioner MCIAA enjoyed the privilege of exemption from payment of realty taxes in accordance with Section 14 of

its Charter:

Sec. 14. Tax Exemptions. -- The Authority shall be exempt from realty taxes imposed by the National Government or any of its political subdivisions, agencies and instrumentalities x x x.

On October 11, 1994, however, Mr. Eustaquio B. Cesa, Officer-in-Charge, Office of the Treasurer of the City of Cebu, demanded payment for realty taxes on several parcels of land belonging to the petitioner (Lot Nos. 913-G, 743, 88 SWO, 948-A, 989-A, 474, 109(931), I-M, 918, 919, 913-F, 941, 942, 947, 77 Psd., 746 and 991-A), located at Barrio Apas and Barrio Kasambagan, Lahug, Cebu City, in the total amount of P2,229,078.79.

Petitioner objected to such demand for payment as baseless and unjustified, claiming in its favor the aforecited Section 14 of RA 6958 which exempts it from payment of realty taxes. It was also asserted that it is an instrumentality of the government performing governmental functions, citing Section 133 of the Local Government Code of 1991 which puts limitations on the taxing powers of local government units:

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:

a) x x x

x x x

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

Respondent City refused to cancel and set aside petitioner's realty tax account, insisting that the MCIAA is a government-controlled corporation whose tax exemption privilege has been withdrawn by virtue of Sections 193 and 234 of the Local Government Code that took effect on January 1, 1992:

Section 193. Withdrawal of Tax Exemption Privilege.-- Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under RA No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code. (underscoring supplied)

x x x

Section 234. *Exemptions from Real Property Taxes.* -- x x x

(a)x x x

x x x

(e)x x x

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.

As the City of Cebu was about to issue a warrant of levy against the properties of petitioner, the latter was compelled to pay its tax account "under protest" and thereafter filed a Petition for Declaratory Relief with the Regional Trial Court of Cebu, Branch 20, on December 29, 1994. MCIAA basically contended that the taxing powers of local government units do not extend to the levy of taxes or fees of any kind on an instrumentality of the national government. Petitioner insisted that while it is indeed a government-owned corporation, it nonetheless stands on the same footing as an agency or instrumentality of the national government by the very nature of its powers and functions.

Respondent City, however, asserted that MCIAA is not an instrumentality of the government but merely a government-owned corporation performing proprietary functions. As such, all exemptions previously granted to it were deemed withdrawn by operation of law, as provided under Sections 193 and 234 of the Local Government Code when it took effect on January 1, 1992.^[3]

The petition for declaratory relief was docketed as Civil Case No. CEB-16900.

In its decision of 22 March 1995,^[4] the trial court dismissed the petition in light of its findings, to wit:

A close reading of the New Local Government Code of 1991 or RA 7160 provides the express cancellation and withdrawal of exemption of taxes by government-owned and controlled corporation per Sections after the effectivity of said Code on January 1, 1992, to wit: [proceeds to quote Sections 193 and 234]

Petitioners claimed that its real properties assessed by respondent City Government of Cebu are exempted from paying realty taxes in view of the exemption granted under RA 6958 to pay the same (citing Section 14 of RA 6958).

However, RA 7160 expressly provides that "All general and special laws, acts, city charters, decrees [sic], executive orders, proclamations and administrative regulations, or part of parts thereof which are inconsistent

with any of the provisions of this Code are hereby repealed or modified accordingly." (/f/, Section 534, RA 7160).

With that repealing clause in RA 7160, it is safe to infer and state that the tax exemption provided for in RA 6958 creating petitioner had been expressly repealed by the provisions of the New Local Government Code of 1991.

So that petitioner in this case has to pay the assessed realty tax of its properties effective after January 1, 1992 until the present.

This Court's ruling finds expression to give impetus and meaning to the overall objectives of the New Local Government Code of 1991, RA 7160. "It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units. x x x"^[5]

Its motion for reconsideration having been denied by the trial court in its 4 May 1995 order, the petitioner filed the instant petition based on the following assignment of errors:

I. RESPONDENT JUDGE ERRED IN FAILING TO RULE THAT THE PETITIONER IS VESTED WITH GOVERNMENT POWERS AND FUNCTIONS WHICH PLACE IT IN THE SAME CATEGORY AS AN INSTRUMENTALITY OR AGENCY OF THE GOVERNMENT.

II. RESPONDENT JUDGE ERRED IN RULING THAT PETITIONER IS LIABLE TO PAY REAL PROPERTY TAXES TO THE CITY OF CEBU.

Anent the first assigned error, the petitioner asserts that although it is a government-owned or controlled corporation, it is mandated to perform functions in the same category as an instrumentality of Government. An instrumentality of Government is one created to perform governmental functions primarily to promote certain aspects of the economic life of the people.^[6] Considering its task "not merely to efficiently operate and manage the Mactan-Cebu International Airport, but more importantly, to carry out the Government policies of promoting and developing the Central Visayas and Mindanao regions as centers of international trade and tourism, and accelerating the development of the means of transportation and communication in the country,"^[7] and that it is an attached agency of the Department of Transportation and Communication (DOTC),^[8] the petitioner "may stand in [sic] the same footing as an agency or instrumentality of the national government." Hence, its tax exemption privilege under Section 14 of its Charter "cannot be considered withdrawn with the passage of the Local Government Code of 1991 (hereinafter LGC) because Section 133 thereof specifically states that the `taxing powers of local government units shall not extend to the levy of taxes or

fees or charges of any kind on the national government, its agencies and instrumentalities."

As to the second assigned error, the petitioner contends that being an instrumentality of the National Government, respondent City of Cebu has no power nor authority to impose realty taxes upon it in accordance with the aforesaid Section 133 of the LGC, as explained in *Basco vs. Philippine Amusement and Gaming Corporation*:^[9]

Local governments have no power to tax instrumentalities of the National Government. PAGCOR is a government owned or controlled corporation with an original charter, PD 1869. All of its shares of stock are owned by the National Government. . . .

PAGCOR has a dual role, to operate and regulate gambling casinos. The latter role is governmental, which places it in the category of an agency or instrumentality of the Government. Being an instrumentality of the Government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subjected to control by a mere Local government.

The states have no power by taxation or otherwise, to retard, impede, burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the federal government. (*McCulloch v. Maryland*, 4 Wheat 316, 4 L Ed. 579)

This doctrine emanates from the "supremacy" of the National Government over local governments.

"Justice Holmes, speaking for the Supreme Court, made reference to the entire absence of power on the part of the States to touch, in that way (taxation) at least, the instrumentalities of the United States (*Johnson v. Maryland*, 254 US 51) and it can be agreed that no state or political subdivision can regulate a federal instrumentality in such a way as to prevent it from consummating its federal responsibilities, or even to seriously burden it in the accomplishment of them." (*Antieau*, *Modern Constitutional Law*, Vol. 2, p. 140)

Otherwise, mere creatures of the State can defeat National policies thru extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as "a tool for regulation" (*U.S. v. Sanchez*, 340 US 42). The power to tax which was called by Justice Marshall as the "power to destroy" (*McCulloch v. Maryland*, *supra*) cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it. (underscoring supplied)

It then concludes that the respondent Judge "cannot therefore correctly say that the questioned provisions of the Code do not contain any distinction between a government corporation performing governmental functions as against one performing merely proprietary ones such that the exemption privilege withdrawn under the said Code would apply to all government corporations." For it is clear