

636 Phil. 43

FIRST DIVISION**[G.R. No. 166134, June 29, 2010]****ANGELES CITY, PETITIONER, VS. ANGELES CITY ELECTRIC CORPORATION AND REGIONAL TRIAL COURT BRANCH 57, ANGELES CITY, RESPONDENTS.****D E C I S I O N****DEL CASTILLO, J.:**

The prohibition on the issuance of a writ of injunction to enjoin the collection of taxes applies only to national internal revenue taxes, and not to local taxes.

This Petition^[1] for *Certiorari* under Rule 65 of the Rules of Court seeks to set aside the Writ of Preliminary Injunction issued by the Regional Trial Court (RTC) of Angeles City, Branch 57, in Civil Case No. 11401, enjoining Angeles City and its City Treasurer from levying, seizing, disposing and selling at public auction the properties owned by Angeles Electric Corporation (AEC).

Factual Antecedents

On June 18, 1964, AEC was granted a legislative franchise under Republic Act No. (RA) 4079^[2] to construct, maintain and operate an electric light, heat, and power system for the purpose of generating and distributing electric light, heat and power for sale in Angeles City, Pampanga. Pursuant to Section 3-A thereof,^[3] AEC's payment of franchise tax for gross earnings from electric current sold was in lieu of all taxes, fees and assessments.

On September 11, 1974, Presidential Decree No. (PD) 551 reduced the franchise tax of electric franchise holders. Section 1 of PD 551 provided that:

SECTION 1. Any provision of law or local ordinance to the contrary notwithstanding, the franchise tax payable by all grantees of franchises to generate, distribute and sell electric current for light, heat and power shall be two percent (2%) of their gross receipts received from the sale of electric

current and from transactions incident to the generation, distribution and sale of electric current.

Such franchise tax shall be payable to the Commissioner of Internal Revenue or his duly authorized representative on or before the twentieth day of the month following the end of each calendar quarter or month as may be provided in the respective franchise or pertinent municipal regulation and shall, any provision of the Local Tax Code or any other law to the contrary notwithstanding, be in lieu of all taxes and assessments of whatever nature imposed by any national or local authority on earnings, receipts, income and privilege of generation, distribution and sale of electric current.

On January 1, 1992, RA 7160 or the Local Government Code (LGC) of 1991 was passed into law, conferring upon provinces and cities the power, among others, to impose tax on businesses enjoying franchise.^[4] In accordance with the LGC, the *Sangguniang Panlungsod* of Angeles City enacted on December 23, 1993 Tax Ordinance No. 33, S-93, otherwise known as the Revised Revenue Code of Angeles City (RRCAC).

On February 7, 1994, a petition seeking the reduction of the tax rates and a review of the provisions of the RRCAC was filed with the *Sangguniang Panlungsod* by Metro Angeles Chamber of Commerce and Industry Inc. (MACCI) of which AEC is a member. There being no action taken by the *Sangguniang Panlungsod* on the matter, MACCI elevated the petition^[5] to the Department of Finance, which referred the same to the Bureau of Local Government Finance (BLGF). In the petition, MACCI alleged that the RRCAC is oppressive, excessive, unjust and confiscatory; that it was published only once, simultaneously on January 22, 1994; and that no public hearings were conducted prior to its enactment. Acting on the petition, the BLGF issued a First Indorsement^[6] to the City Treasurer of Angeles City, instructing the latter to make representations with the *Sangguniang Panlungsod* for the appropriate amendment of the RRCAC in order to ensure compliance with the provisions of the LGC, and to make a report on the action taken within five days.

Thereafter, starting July 1995, AEC has been paying the local franchise tax to the Office of the City Treasurer on a quarterly basis, in addition to the national franchise tax it pays every quarter to the Bureau of Internal Revenue (BIR).

Proceedings before the City Treasurer

On January 22, 2004, the City Treasurer issued a Notice of Assessment^[7] to AEC for payment of business tax, license fee and other charges for the period 1993 to 2004 in the

total amount of P94,861,194.10. Within the period prescribed by law, AEC protested the assessment claiming that:

- (a) pursuant to RA 4079, it is exempt from paying local business tax;
- (b) since it is already paying franchise tax on business, the payment of business tax would result in double taxation;
- (c) the period to assess had prescribed because under the LGC, taxes and fees can only be assessed and collected within five (5) years from the date they become due; and
- (d) the assessment and collection of taxes under the RRCAC cannot be made retroactive to 1993 or prior to its effectivity.^[8]

On February 17, 2004, the City Treasurer denied the protest for lack of merit and requested AEC to settle its tax liabilities.^[9]

Proceedings before the RTC

Aggrieved, AEC appealed the denial of its protest to the RTC of Angeles City *via* a Petition for Declaratory Relief,^[10] docketed as Civil Case No. 11401.

On April 5, 2004, the City Treasurer levied on the real properties of AEC.^[11] A Notice of Auction Sale^[12] was published and posted announcing that a public auction of the levied properties of AEC would be held on May 7, 2004.

This prompted AEC to file with the RTC, where the petition for declaratory relief was pending, an Urgent Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction^[13] to enjoin Angeles City and its City Treasurer from levying, annotating the levy, seizing, confiscating, garnishing, selling and disposing at public auction the properties of AEC.

Meanwhile, in response to the petition for declaratory relief filed by AEC, Angeles City and its City Treasurer filed an Answer with Counterclaim^[14] to which AEC filed a Reply.^[15]

After due notice and hearing, the RTC issued a Temporary Restraining Order (TRO)^[16] on May 4, 2004, followed by an Order^[17] dated May 24, 2004 granting the issuance of a Writ of Preliminary Injunction, conditioned upon the filing of a bond in the amount of P10,000,000.00. Upon AEC's posting of the required bond, the RTC issued a Writ of

Preliminary Injunction on May 28, 2004,^[18] which was amended on May 31, 2004 due to some clerical errors.^[19]

On August 5, 2004, Angeles City and its City Treasurer filed a "Motion for Dissolution of Preliminary Injunction and Motion for Reconsideration of the Order dated May 24, 2004,"^[20] which was opposed by AEC.^[21]

Finding no compelling reason to disturb and reconsider its previous findings, the RTC denied the joint motion on October 14, 2004.^[22]

Issue

Being a special civil action for *certiorari*, the issue in the instant case is limited to the determination of whether the RTC gravely abused its discretion in issuing the writ of preliminary injunction enjoining Angeles City and its City Treasurer from levying, selling, and disposing the properties of AEC. All other matters pertaining to the validity of the tax assessment and AEC's tax exemption must therefore be left for the determination of the RTC where the main case is pending decision.

Petitioner's Arguments

Petitioner's main argument is that the collection of taxes cannot be enjoined by the RTC, citing *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II*,^[23] wherein the lower court's denial of a motion for the issuance of a writ of preliminary injunction to enjoin the collection of a local tax was upheld. Petitioner further reasons that since the levy and auction of the properties of a delinquent taxpayer are proper and lawful acts specifically allowed by the LGC, these cannot be the subject of an injunctive writ. Petitioner likewise insists that AEC must first pay the tax before it can protest the assessment. Finally, petitioner contends that the tax exemption claimed by AEC has no legal basis because RA 4079 has been expressly repealed by the LGC.

Private respondent's Arguments

Private respondent AEC on the other hand asserts that there was no grave abuse of discretion on the part of the RTC in issuing the writ of preliminary injunction because it was issued after due notice and hearing, and was necessary to prevent the petition from becoming moot. In addition, AEC claims that the issuance of the writ of injunction was proper since the tax assessment issued by the City Treasurer is not yet final, having been seasonably appealed pursuant to Section 195^[24] of the LGC. AEC likewise points out that following the case of *Pantoja v. David*,^[25] proceedings to invalidate a warrant of distraint

and levy to restrain the collection of taxes do not violate the prohibition against injunction to restrain the collection of taxes because the proceedings are directed at the right of the City Treasurer to collect the tax by distraint or levy. As to its tax liability, AEC maintains that it is exempt from paying local business tax. In any case, AEC counters that the issue of whether it is liable to pay the assessed local business tax is a factual issue that should be determined by the RTC and not by the Supreme Court via a petition for *certiorari* under Rule 65 of the Rules of Court.

Our Ruling

We find the petition bereft of merit.

The LGC does not specifically prohibit an injunction enjoining the collection of taxes

A principle deeply embedded in our jurisprudence is that taxes being the lifeblood of the government should be collected promptly,^[26] without unnecessary hindrance^[27] or delay.^[28] In line with this principle, the National Internal Revenue Code of 1997 (NIRC) expressly provides that no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the code.^[29] An exception to this rule obtains only when in the opinion of the Court of Tax Appeals (CTA) the collection thereof may jeopardize the interest of the government and/or the taxpayer.^[30]

The situation, however, is different in the case of the collection of local taxes as there is no express provision in the LGC prohibiting courts from issuing an injunction to restrain local governments from collecting taxes. Thus, in the case of *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II*, cited by the petitioner, we ruled that:

Unlike the National Internal Revenue Code, the Local Tax Code^[31] does not contain any specific provision prohibiting courts from enjoining the collection of local taxes. Such statutory lapse or intent, however it may be viewed, may have allowed preliminary injunction where local taxes are involved but cannot negate the procedural rules and requirements under Rule 58.^[32]

In light of the foregoing, petitioner's reliance on the above-cited case to support its view that the collection of taxes cannot be enjoined is misplaced. The lower court's denial of the motion for the issuance of a writ of preliminary injunction to enjoin the collection of the local tax was upheld in that case, not because courts are prohibited from granting such injunction, but because the circumstances required for the issuance of writ of injunction

were not present.

Nevertheless, it must be emphasized that although there is no express prohibition in the LGC, injunctions enjoining the collection of local taxes are frowned upon. Courts therefore should exercise extreme caution in issuing such injunctions.

No grave abuse of discretion was committed by the RTC

Section 3, Rule 58, of the Rules of Court lays down the requirements for the issuance of a writ of preliminary injunction, *viz*:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, or agency or a person is doing, threatening, or attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Two requisites must exist to warrant the issuance of a writ of preliminary injunction, namely: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.^[33]

In issuing the injunction, the RTC ratiocinated that:

It is very evident on record that petitioner^[34] resorted and filed an urgent motion for issuance of a temporary restraining order and preliminary injunction to stop the scheduled auction sale only when a warrant of levy was issued and published in the newspaper setting the auction sale of petitioner's property by the City Treasurer, merely few weeks after the petition for declaratory relief has been filed, because if the respondent will not be restrained, it will render this petition moot and academic. To the mind of the Court, since there is no other plain, speedy and adequate remedy available to the petitioner in the ordinary

course of law except this application for a temporary restraining order and/or writ of preliminary injunction to stop the auction sale and/or to enjoin and/or restrain respondents from levying, annotating the levy, seizing, confiscating, garnishing, selling and disposing at public auction the properties of petitioner, or otherwise exercising other administrative remedies against the petitioner and its properties, this alone justifies the move of the petitioner in seeking the injunctive reliefs sought for.

Petitioner in its petition is questioning the assessment or the ruling of the City Treasurer on the business tax and fees, and not the local ordinance concerned. This being the case, the Court opines that notice is not required to the Solicitor General since what is involved is just a violation of a private right involving the right of ownership and possession of petitioner's properties. Petitioner, therefore, need not comply with Section 4, Rule 63 requiring such notice to the Office of the Solicitor General.

The Court is fully aware of the Supreme Court pronouncement that injunction is not proper to restrain the collection of taxes. The issue here as of the moment is the restraining of the respondent from pursuing its auction sale of the petitioner's properties. The right of ownership and possession of the petitioner over the properties subject of the auction sale is at stake.

Respondents assert that not one of the witnesses presented by the petitioner have proven what kind of right has been violated by the respondent, but merely mentioned of an injury which is only a scenario based on speculation because of petitioner's claim that electric power may be disrupted.

Engr. Abordo's testimony reveals and even his Affidavit Exhibit "S" showed that if the auction sale will push thru, petitioner will not only lose control and operation of its facility, but its employees will also be denied access to equipments vital to petitioner's operations, and since only the petitioner has the capability to operate Petersville sub station, there will be a massive power failure or blackout which will adversely affect business and economy, if not lives and properties in Angeles City and surrounding communities.

Petitioner, thru its witnesses, in the hearing of the temporary restraining order, presented sufficient and convincing evidence proving irreparable damages and injury which were already elaborated in the temporary restraining order although the same may be realized only if the auction sale will proceed. And unless prevented, restrained, and enjoined, grave and irreparable damage will be suffered not only by the petitioner but all its electric consumers in Angeles, Clark, Dau and Bacolor, Pampanga.

would be sold at public auction. As we see it then, the writ of injunction was properly issued.

A final note. While we are mindful that the damage to a taxpayer's property rights generally takes a back seat to the paramount need of the State for funds to sustain governmental functions,^[40] this rule finds no application in the instant case where the disputed tax assessment is not yet due and demandable. Considering that AEC was able to appeal the denial of its protest within the period prescribed under Section 195 of the LGC, the collection of business taxes^[41] through levy at this time is, to our mind, hasty, if not premature.^[42] The issues of tax exemption, double taxation, prescription and the alleged retroactive application of the RRCAC, raised in the protest of AEC now pending with the RTC, must first be resolved before the properties of AEC can be levied. In the meantime, AEC's rights of ownership and possession must be respected.

WHEREFORE, the petition is hereby **DISMISSED**.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

^[1] *Rollo*, pp. 3-17.

^[2] Amended by Republic Act No. 9381, which lapsed into law on March 9, 2010.

^[3] Sec. 3-A. The franchise tax paid for the gross earnings from electric current sold under this franchise shall be in lieu of all taxes, fees and assessments of whatever authority now and in the future upon privileges, capital stock, income, franchise, right of way, machinery and equipment, poles, wires, transformers, watt-hour meters, insulators of the grantee and all other property owned or operated by the grantee under this concession or franchise, from which taxes and assessments the grantee is hereby expressly exempted.

^[4] SECTION 137. *Franchise Tax*. - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one

percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein.

[5] *Rollo*, pp. 63-73.

[6] *Id.* at 74.

[7] *Id.* at 81-91.

[8] *Id.* at 92-96.

[9] *Id.* at 103.

[10] *Id.* at 18-37; The Petition for Declaratory Relief filed by AEC should be considered as an appeal under Section 195 of the LGC. In the case of *CJH Development Corporation v. Bureau of Internal Revenue*, G.R. No. 172457, December 24, 2008, 575 SCRA 467, it was ruled that courts do not have jurisdiction over petitions for declaratory relief involving tax assessments.

[11] *Id.* at 113-114.

[12] *Id.* at 157-158.

[13] *Id.* at 104-112.

[14] *Id.* at 124-131.

[15] *Records*, pp. 120-124.

[16] *Rollo*, pp. 132-137.

[17] *Id.* at 138-143.

[18] *Records*, pp. 154-155.

[19] *Id.* at 157-158.

[20] *Rollo*, pp. 144-150.

[21] Records, pp. 190-194.

[22] *Rollo*, pp. 151-154.

[23] 253 Phil. 494 (1989).

[24] SECTION 195. *Protest of Assessment*. - When the local treasurer or his duly authorized representative finds that the correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day (60) period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

[25] 111 Phil. 197, 199-200 (1961).

[26] *Filipino Metals Corp. v. Secretary of the Dept. of Trade and Industry*, 502 Phil. 191, 198 (2005).

[27] *Republic v. Caguioa*, G.R. No. 168584, October 15, 2007, 536 SCRA 193, 223-224.

[28] *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II*, supra note 23 at 500.

[29] NATIONAL INTERNAL REVENUE CODE of 1997, Section 218.

[30] Section 11 of RA 1125, as amended by Section 9 of RA 9282.

[31] Now Local Government Code.

- [32] *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II*, supra note 23 at 499.
- [33] *Talento v. Escalada, Jr.*, G.R. No. 180884, June 27, 2008, 556 SCRA 491, 500.
- [34] Herein Private Respondent AEC.
- [35] *Rollo*, pp. 142-unpaged.
- [36] *City of Naga v. Asuncion*, G.R. No. 174042, July 9, 2008, 557 SCRA 528, 545.
- [37] *Levi Strauss (Phils.), Inc. v. Lim*, G.R. No. 162311, December 4, 2008, 573 SCRA 25, 42-43.
- [38] *Basmala v. Commission on Elections*, G.R. No. 176724, October 6, 2008, 567 SCRA 664, 668.
- [39] *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 286-287.
- [40] *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II*, supra note 23 at 499-500.
- [41] This should be distinguished from real property taxes. Section 231 of the LGC provides that an appeal on assessments of real property made under the provision of the Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved.
- [42] Vitug, Jose C. and Acosta, Ernesto D., *Tax Law and Jurisprudence*, 2006 Edition, p. 487.