

## THIRD DIVISION

[ G.R. No. 180884, June 27, 2008 ]

**EMERLINDA S. TALENTO, IN HER CAPACITY AS THE  
PROVINCIAL TREASURER OF THE PROVINCE OF BATAAN,  
PETITIONER, VS. HON. REMIGIO M. ESCALADA, JR., PRESIDING  
JUDGE OF THE REGIONAL TRIAL COURT OF BATAAN, BRANCH  
3, AND PETRON CORPORATION, RESPONDENTS.**

### *DECISION*

**YNARES-SATIAGO, J.:**

The instant petition for *certiorari* under Rule 65 of the Rules of Court assails the November 5, 2007 Order<sup>[1]</sup> of the Regional Trial Court of Bataan, Branch 3, in Civil Case No. 8801, granting the petition for the issuance of a writ of preliminary injunction filed by private respondent Petron Corporation (Petron) thereby enjoining petitioner Emerlinda S. Talento, Provincial Treasurer of Bataan, and her representatives from proceeding with the public auction of Petron's machineries and pieces of equipment during the pendency of the latter's appeal from the revised assessment of its properties.

The facts of the case are as follows:

On June 18, 2007, Petron received from the Provincial Assessor's Office of Bataan a notice of revised assessment over its machineries and pieces of equipment in Lamao, Limay, Bataan. Petron was given a period of 60 days within which to file an appeal with the Local Board of Assessment Appeals (LBAA).<sup>[2]</sup> Based on said revised assessment, petitioner Provincial Treasurer of Bataan issued a notice informing Petron that as of June 30, 2007, its total liability is P1,731,025,403.06,<sup>[3]</sup> representing deficiency real property tax due from 1994 up to the first and second quarters of 2007.

On August 17, 2007, Petron filed a petition<sup>[4]</sup> with the LBAA (docketed as LBAA Case No. 2007-01) contesting the revised assessment on the grounds that the subject assessment pertained to properties that have been previously declared; and that the assessment covered periods of more than 10 years which is not allowed under the Local Government Code (LGC). According to Petron, the possible valid assessment pursuant to Section 222 of the LGC could only be for the years 1997 to 2006. Petron further contended that the fair market value or replacement cost used by petitioner included items which should be

properly excluded; that prompt payment of discounts were not considered in determining the fair market value; and that the subject assessment should take effect a year after or on January 1, 2008. In the same petition, Petron sought the approval of a surety bond in the amount of P1,286,057,899.54.<sup>[5]</sup>

On August 22, 2007, Petron received from petitioner a final notice of delinquent real property tax with a warning that the subject properties would be levied and auctioned should Petron fail to settle the revised assessment due.<sup>[6]</sup>

Consequently, Petron sent a letter<sup>[7]</sup> to petitioner stating that in view of the pendency of its appeal<sup>[8]</sup> with the LBAA, any action by the Treasurer's Office on the subject properties would be premature. However, petitioner replied that only Petron's payment under protest shall bar the collection of the realty taxes due,<sup>[9]</sup> pursuant to Sections 231 and 252 of the LGC.

With the issuance of a Warrant of Levy<sup>[10]</sup> against its machineries and pieces of equipment, Petron filed on September 24, 2007, an urgent motion to lift the final notice of delinquent real property tax and warrant of levy with the LBAA. It argued that the issuance of the notice and warrant is premature because an appeal has been filed with the LBAA, where it posted a surety bond in the amount of P1,286,057,899.54.<sup>[11]</sup>

On October 3, 2007, Petron received a notice of sale of its properties scheduled on October 17, 2007.<sup>[12]</sup> Consequently, on October 8, 2007, Petron withdrew its motion to lift the final notice of delinquent real property tax and warrant of levy with the LBAA.<sup>[13]</sup> **On even date, Petron filed with the Regional Trial Court of Bataan the instant case (docketed as Civil Case No. 8801) for prohibition with prayer for the issuance of a temporary restraining order (TRO) and preliminary injunction.**<sup>[14]</sup>

On October 15, 2007, the trial court issued a TRO for 20 days enjoining petitioner from proceeding with the public auction of Petron's properties.<sup>[15]</sup> Petitioner thereafter filed an urgent motion for the immediate dissolution of the TRO, followed by a motion to dismiss Petron's petition for prohibition.

On November 5, 2007, the trial court issued the assailed Order granting Petron's petition for issuance of writ of preliminary injunction, subject to Petron's posting of a P444,967,503.52 bond in addition to its previously posted surety bond of P1,286,057,899.54, to complete the total amount equivalent to the revised assessment of P1,731,025,403.06. The trial court held that in scheduling the sale of the properties despite the pendency of Petron's appeal and posting of the surety bond with the LBAA, petitioner deprived Petron of the right to appeal. The dispositive portion thereof, reads:

WHEREFORE, the writ of preliminary injunction prayed for by plaintiff is

hereby GRANTED and ISSUED, enjoining defendant Treasurer, her agents, representatives, or anybody acting in her behalf from proceeding with the scheduled public auction of plaintiff's real properties, or any disposition thereof, pending the determination of the merits of the main action, to be effective upon posting by plaintiff to the Court of an injunction bond in the amount of Four Hundred Forty Four Million Nine Hundred Sixty Seven Thousand Five Hundred Three and 52/100 Pesos (P444,967,503.52) and the approval thereof by the Court.

Defendant's Urgent Motion for the Immediate Dissolution of the Temporary Restraining Order dated October 23, 2007 is hereby DENIED.

SO ORDERED.<sup>[16]</sup>

From the said Order of the trial court, petitioner went directly to this Court via the instant petition for certiorari under Rule 65 of the Rules of Court.

The question posed in this petition, *i.e.*, whether the collection of taxes may be suspended by reason of the filing of an appeal and posting of a surety bond, is undoubtedly a pure question of law. Section 2(c) of Rule 41 of the Rules of Court provides:

SEC. 2. Modes of Appeal. -

(c) Appeal by certiorari. - In all cases when only questions of law are raised or involved, the appeal shall be to the Supreme Court by **petition for review on certiorari under Rule 45**. (Emphasis supplied)

Thus, petitioner resorted to the erroneous remedy when she filed a petition for certiorari under Rule 65, when the proper mode should have been a petition for review on certiorari under Rule 45. Moreover, under Section 2, Rule 45 of the same Rules, the period to file a petition for review is 15 days from notice of the order appealed from. In the instant case, petitioner received the questioned order of the trial court on November 6, 2007, hence, she had only up to November 21, 2007 to file the petition. However, the same was filed only on January 4, 2008, or 43 days late. Consequently, petitioner's failure to file an appeal within the reglementary period rendered the order of the trial court final and executory.

The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and beyond the power of the Court's review. Jurisprudence mandates that when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors in interest. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been.<sup>[17]</sup>

Petitioner's resort to a petition under Rule 65 is obviously a play to make up for the loss of the right to file an appeal *via* a petition under Rule 45. However, a special civil action

under Rule 65 can not cure petitioner's failure to timely file a petition for review on certiorari under Rule 45 of the Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.<sup>[18]</sup>

Moreover, even if we assume that a petition under Rule 65 is the proper remedy, the petition is still dismissible.

We note that no motion for reconsideration of the November 5, 2007 order of the trial court was filed prior to the filing of the instant petition. The settled rule is that a motion for reconsideration is a *sine qua non* condition for the filing of a petition for *certiorari*. The purpose is to grant the public respondent an opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. Petitioner's failure to file a motion for reconsideration deprived the trial court of the opportunity to rectify an error unwittingly committed or to vindicate itself of an act unfairly imputed. Besides, a motion for reconsideration under the present circumstances is the plain, speedy and adequate remedy to the adverse judgment of the trial court.<sup>[19]</sup>

Petitioner also blatantly disregarded the rule on hierarchy of courts. Although the Supreme Court, Regional Trial Courts, and the Court of Appeals have concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. Recourse should have been made first with the Court of Appeals and not directly to this Court.<sup>[20]</sup>

True, litigation is not a game of technicalities. It is equally true, however, that every case must be presented in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.<sup>[21]</sup> The failure therefore of petitioner to comply with the settled procedural rules justifies the dismissal of the present petition.

Finally, we find that the trial court correctly granted respondent's petition for issuance of a writ of preliminary injunction. Section 3, Rule 58, of the Rules of Court, provides:

SEC. 3. Grounds for issuance of preliminary injunction. – A preliminary injunction may be granted by the court when it is established:

(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.

The requisites for the issuance of a writ of preliminary injunction are: (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.<sup>[22]</sup>

The urgency and paramount necessity for the issuance of a writ of injunction becomes relevant in the instant case considering that what is being enjoined is the sale by public auction of the properties of Petron amounting to at least P1.7 billion and which properties are vital to its business operations. If at all, the repercussions and far-reaching implications of the sale of these properties on the operations of Petron merit the issuance of a writ of preliminary injunction in its favor.

We are not unaware of the doctrine that taxes are the lifeblood of the government, without which it can not properly perform its functions; and that appeal shall not suspend the collection of realty taxes. However, there is an exception to the foregoing rule, *i.e.*, where the taxpayer has shown a clear and unmistakable right to refuse or to hold in abeyance the payment of taxes. In the instant case, we note that respondent contested the revised assessment on the following grounds: that the subject assessment pertained to properties that have been previously declared; that the assessment covered periods of more than 10 years which is not allowed under the LGC; that the fair market value or replacement cost used by petitioner included items which should be properly excluded; that prompt payment of discounts were not considered in determining the fair market value; and that the subject assessment should take effect a year after or on January 1, 2008. To our mind, the resolution of these issues would have a direct bearing on the assessment made by petitioner. Hence, it is necessary that the issues must first be passed upon before the properties of respondent is sold in public auction.

In addition to the fact that the issues raised by the respondent would have a direct impact on the validity of the assessment made by the petitioner, we also note that respondent has posted a surety bond equivalent to the amount of the assessment due. The Rules of Procedure of the LBAA, particularly Section 7, Rule V thereof, provides:

Section 7. Effect of Appeal on Collection of Taxes. – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the Provincial, City or Municipal Assessor, without prejudice to the subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained but the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a

surety bond, subject to the following conditions:

(1) the amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount;

(2) the bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety is duly authorized to issue such bond; (a) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and

(3) the amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which case, a certification to this effect must likewise accompany the surety bond.

Corollarily, Section 11 of Republic Act No. 9282,<sup>[23]</sup> which amended Republic Act No. 1125 (The Law Creating the Court of Tax Appeals) provides:

Section 11. Who may Appeal; Mode of Appeal; Effect of Appeal; –

x x x x

No appeal taken to the Court of Appeals from the Collector of Internal Revenue x x x shall suspend the payment, levy, distraint, and/or sale of any property for the satisfaction of his tax liability as provided by existing law. **Provided, however, That when in the opinion of the Court** the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the processing may suspend the collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

**WHEREFORE**, in view of all the foregoing, the instant petition is **DISMISSED**.

**SO ORDERED**.

*Austria-Martinez, Carpio Morales, [\*] Chico-Nazario, and Reyes, JJ., concur.*

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[\*] In lieu of Associate Justice Antonio Eduardo B. Nachura.

[1] *Rollo*, pp. 49-63. Penned by Judge Remigio M. Escalada, Jr.

[2] *Id.* at 203-204.

[3] *Id.* at 205-226.

[4] *Id.* at 228-250.

[5] *Id.* at 248 and 254-255.

[6] *Id.* at 265.

[7] *Id.* at 288-289. Dated September 12, 2007.

[8] Incidentally, Petron's appeal in LBAA Case No. 2007-01 was dismissed on December 10, 2007 on the ground of forum shopping (*Rollo*, pp. 436-440). On January 17, 2008, Petron appealed to the Central Board of Assessment Appeals. (*Rollo*, p. 468)

[9] *Id.* at 291-292.

[10] *Id.* at 339-340.

[11] *Id.* at 293-297.

[12] *Id.* at 348.

[13] *Id.* at 349-351.

[14] The Complaint was subsequently amended. (*Rollo*, pp. 64-80)

[15] *Rollo*, pp. 352-361.

[16] *Id.* at 63.

[17] *Lapu-Lapu Development and Housing Corporation v. Group Management Corporation*, G.R. No. 141407, September 9, 2002, 388 SCRA 493, 506-507.

[18] *Chua v. Santos*, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 374.

[19] *Serra v. Heirs of Primitivo Hernaez*, G.R. No. 142913, August 9, 2005, 466 SCRA 120, 127.

[20] *Zamboanga Barter Goods Retailers Association, Inc. v. Lobregat*, G.R. No. 145466, July 7, 2004, 433 SCRA 624, 628-629.

[21] *Mindanao Savings and Loan Association, Inc. v. Vda. De Flores*, G.R. No. 142022, September 7, 2005, 469 SCRA 416, 423.

[22] *Manila International Airport Authority v. Court of Appeals*, G.R. No. 118249, February 14, 2003, 397 SCRA 348, 359.

[23] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as mended, otherwise known as the Law Creating the Court of Tax Appeals, and for other purposes.