

565 Phil. 810

SECOND DIVISION

[**G.R. No. 174617, December 27, 2007**]

**ROMULO D. SAN JUAN, PETITIONER, VS. RICARDO L. CASTRO,
IN HIS CAPACITY AS CITY TREASURER OF MARIKINA CITY,
RESPONDENT.**

DECISION

CARPIO MORALES, J.:

Romulo D. San Juan (petitioner), registered owner of real properties in Rancho Estate I, Concepcion II, Marikina City covered by Transfer Certificates of Title Nos. 160435, 236658, and 233877,^[1] with the consent of his wife, conveyed on August 24, 2004, by Deed of Assignment,^[2] the properties to the Saints and Angels Realty Corporation (SARC), then under the process of incorporation, in exchange for 258,434 shares of stock therein with a total par value of P2,584,340. Two hundred thousand (200,000) of the said shares of stock with a par value of P2,000,000 were placed in San Juan's name while the remaining 58,434 shares of stock with a par value of P584,340 were placed in the name of his wife.

On June 24, 2005, the Securities and Exchange Commission approved the Articles of Incorporation of SARC.^[3]

Respondent's representative thereafter went to the Office of the Marikina City Treasurer to pay the transfer tax based on the consideration stated in the Deed of Assignment.^[4] Ricardo L. Castro (respondent), the City Treasurer, informed him, however, that the tax due is based on the fair market value of the property.^[5]

Petitioner in writing protested the basis of the tax due in reply to which respondent wrote:

In your letter, you asserted that there is no monetary consideration involved in the afore-mentioned transfer of the properties inasmuch as what you received as transferor thereof, are shares of stock of said realty company in exchange of the properties transferred.

In reply, we wish to inform you that in cases of transfer of real property not involving monetary consideration, it is certain that the fair market value or zonal value of the property is the basis of the tax rate. As provided for under the Local [G]overnment Code, fair market value is defined as the price at which a property may be sold by a seller who is not compelled to sell and bought by the buyer who is not compelled to buy. Hence, the preliminary computation based on the fair market value of the property made by the revenue collector is correct.^[6] (Underscoring supplied)

Petitioner thus filed before the Regional Trial Court (RTC) of Marikina City a Petition^[7] for mandamus and damages against respondent in his capacity as Marikina City Treasurer praying that respondent be compelled to "perform a ministerial duty, that is, to accept the payment of transfer tax based on the actual consideration of the transfer/assignment."^[8]

Citing Section 135 of the Local Government Code which provides:

Sec. 135. Tax on Transfer of Real Property Ownership. (a) The province [*or the city pursuant to Section 151 of the Local Government Code*] may impose a tax on the sale, donation, barter, or on any other mode of transferring ownership or title of real property at the rate of not more than fifty percent (50%) of the one percent (1%) of the **total consideration involved** in the acquisition of the property or the fair market value in case the monetary consideration involved in the transfer is not substantial, whichever is higher. The sale, transfer or other disposition of real property pursuant to R.A. 6657 shall be exempt from this tax. (Emphasis supplied),

petitioner contended:

It is beyond dispute that under the abovementioned provision of the law, transfer tax is computed on the total consideration involved. The intention of the law is not to automatically apply the "whichever is higher" rule. Clearly, from a reading of the above-quoted provision, **it is only when there is a monetary consideration involved and the monetary consideration is not substantial that the tax rate is based on the higher fair market value . . .**^[9] (Emphasis, underscoring, and italics in original)

In his Comment on petitioner's petition before the RTC, respondent stated:

x x x x

"[M]onetary consideration" as used in Section 135 of R.A. 7160 does not only

pertain to the price or money involved but likewise, as in the case of donations or barter, this refers to the value or monetary equivalent of what is received by the transferor.

In the case at hand, the monetary consideration involved is the par value of shares of stocks acquired by the petitioner in exchange for his real properties. As admitted by the petitioner himself, the fair market value of the properties transferred is more than seven million pesos. It is undeniable therefore that the actual consideration for the assignment in the amount of two million five hundred eighty four thousand and three hundred forty pesos (P2,584,340.00) is far less substantial than the aforesaid fair market value. Thus, the City Treasurer is constrained to assess the transfer tax on the higher base.^[10]

X X X X

The respondent did not refuse to accept payment, it is the petitioner that refuses to pay the correct amount of transfer tax.

X X X X

The petitioner did not exhaust the available administrative remedies. Under the Local Government Code, the petitioner should have filed an appeal on the tax assessment and made a payment under protest pending the resolution thereof. The issues raised in the case therein, being matters of facts and law, the petitioner should have availed of the aforesaid relief before resorting to a court action. X X X

X X X X

The subject of this Petition is the performance of a duty which is not ministerial in character. Assessment of tax liabilities or obligations and the corresponding duty to collect the same involves a degree of discretion. It is erroneous to assume that the City Treasurer is powerless to ascertain if the payment of the tax obligation is proper or correct.

X X X X

Mandamus cannot lie to compel the City Treasurer to accept as full compliance a tax payment which in his reasoning and assessment is deficient and incorrect.
^[11] (Emphasis in the original)

Finding for respondent, Branch 272 of the Marikina City RTC dismissed the petition by

Decision of August 22, 2006.

Hence, the present Petition for Review on Certiorari,^[12] petitioner faulting the RTC with having committed serious errors of law in dismissing the petition for mandamus with damages.^[13]

For mandamus to lie, petitioner must comply with Section 3 of Rule 65 of the Rules of Court which provides:

SEC. 3. *Petition for Mandamus.* -- When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

x x x x (Underscoring supplied)

In the case at bar, the condition that "there is no other plain, speedy and adequate remedy in the ordinary course of law" is absent.

Under Section 195 of the Local Government Code which is quoted immediately below, a taxpayer who disagrees with a tax assessment made by a local treasurer may file a written protest thereof.^[14]

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. (Emphasis and underscoring supplied)

That petitioner protested in writing against the assessment of tax due and the basis thereof is on record as in fact it was on that account that respondent sent him the above-quoted July 15, 2005 letter which operated as a denial of petitioner's written protest.

Petitioner should thus have, following the earlier above-quoted Section 195 of the Local Government Code, either appealed the assessment before the court of competent jurisdiction^[15] or paid the tax and then sought a refund.^[16]

Petitioner did not observe any of these remedies available to him, however. He instead opted to file a petition for mandamus to compel respondent to accept payment of transfer tax as computed by him.

Mandamus lies only to compel an officer to perform a ministerial duty (one which is so clear and specific as to leave no room for the exercise of discretion in its performance) but not a discretionary function (one which by its nature requires the exercise of judgment).^[17] Respondent's argument that "[m]andamus cannot lie to compel the City Treasurer to accept as full compliance a tax payment which in his reasoning and assessment is deficient and incorrect" is thus persuasive.

WHEREFORE, the petition is **DENIED**.

Costs against petitioner, Romulo D. San Juan.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr. JJ., concur.

^[1] Records, pp. 57-59.

^[2] Id. at 18-20.

^[3] Id. at 24-39.

^[4] Id. at 4.

[5] Id. at 4, 87, 97-104.

[6] Id. at 14.

[7] Id. at 1-13.

[8] Id. at 5.

[9] Id. at 6-7.

[10] Id. at 88.

[11] Id. at 89-90.

[12] *Rollo*, pp. 3-19.

[13] Id. at 8.

[14] *Vide* Ernesto D. Acosta and Jose C. Vitug, TAX LAW AND JURISPRUDENCE, 2nd edition. Rex Book Store: Manila, Philippines, 2000, pp. 463-464:

When the correct tax, fee or charge is not paid, the local treasurer shall issue a notice of assessment within the applicable prescriptive period xxx stating the nature of the levy, the amount of deficiency, the surcharges, interests and penalties. The taxpayer may contest the assessment or pay the tax, fee or charge, either of which if done before the lapse of sixty (60) days from receipt of the assessment, would prevent such assessment from becoming final and executory thereby allow the herein-below described remedies to be pursued.

X X X X

Within sixty (60) days, from receipt of the assessment, the taxpayer may file a *written protest* with the local treasurer contesting the assessment; if not thus done, the assessment becomes final and executory. x x x

X X X X

The taxpayer may, instead of filing a written protest, opt to pay the tax, fee or charge and

then to seek a refund thereof within the 2-year statute of limitation. The payment, if an assessment is therefore issued, must be made before the lapse of the 6-day period from receipt thereof; otherwise, the assessment becomes final and executory and it may no longer thus be disputed. The written claim for refund itself may be filed with the court of competent jurisdiction within two years from the payment of the tax, fee or charge, or from the date the taxpayer is entitled to a refund or credit. The case shall not, however, be *maintained* "until a written claim for refund or credit has been filed with the local treasurer." (Italics in the original)

[15] *Vide Yamane v. BA Lepanto Condominium Corp.*, G.R. No. 154993, October 25, 2005, 474 SCRA 258, 267-269.

[16] *Vide* note 14.

[17] *Vide Cariño v. Capulong*, G.R. No. 97203, May 26, 1993, 222 SCRA 593, 602.