115 OG NO. 27, 6604 (July 8, 2019)

SECOND DIVISION

[G.R. No. 222886, October 17, 2018]

HONORABLE LEILA M. DE LIMA, IN HER CAPACITY AS SECRETARY OF JUSTICE, PETITIONER, V. CITY OF MANILA, REPRESENTED BY MAYOR JOSEPH EJERCITO ESTRADA, RESPONDENT.

D E C I S I O N

A. REYES, JR., J.:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 139281 dated July 9, 2015, and its Resolution[3] dated January 8, 2016, denying the motion for reconsideration thereof.

The Antecedent Facts

On November 26, 2013, the City Council of Manila passed Ordinance No. 8331, entitled "*An Ordinance Enacting the 2013 Omnibus Revenue Code of the City of Manila*." It was approved by Mayor Joseph Ejercito Estrada on December 3, 2013, and thereafter published in the *Manila Times* and *Manila Standard* on December 6, 7, and 8, 2013.[4] The Ordinance took effect on December 9, 2013 and implemented by the City of Manila (respondent) on January 2, 2014.[5]

On January 6, 2014, operators of retail businesses in the City of Manila-Mandurriao Star, Inc., Metro Manila Shopping Mecca Corporation, SM Mart, Inc., Supervalue, Inc., and Super Shopping Market, Inc. (hereinafter referred to as retail business operators) filed an *Appeal* before Secretary of Justice Leila M. De Lima (petitioner). Therein, the retail business operators claimed that Section 104 of Ordinance No. 8331, which imposed percentage tax on gross sales of retailers from 1% to 3%, is unconstitutional for being violative of Section 5, Article X of the Constitution, and illegal for being excessive and contrary to limitations set forth under Sections 130, 186, and 191 of the Local Government Code of 1991 (LGC).[6]

Specifically, the retail business operators alleges that the respondent increased the local business tax rates from 0.20% to 3% and 1%, which is beyond the 10% limit on increase provided for under Section 191 of the LGC.[7]

Per the petitioner's Order dated February 3, 2014, the respondent filed its Comment, whereby it submits that Ordinance No. 8331 was enacted in compliance with the procedural requirements under the law and therefore has in its favor the presumption of validity. Moreover, the respondent argued that its imposition of retail tax under the Ordinance is a valid exercise of its power to impose rates which are within the limits provided for under Section 143(d), and as such, must be sustained.[8]

On April 7, 2014, the petitioner issued a Resolution[9] declaring Section 104 of Ordinance No. 8331 void for being contrary to Section 191 of the LGC, *viz*.:

> WHEREFORE, premises considered, Section 104 of Ordinance No. 8331, series of 2013, of the City of Manila is HEREBY DECLARED VOID for being contrary to Section 191 of the [LGC].
>
> SO ORDERED.[10]

In its Resolution, the petitioner explained that under the LGC, the respondent has the power to impose local business taxes and determine accordingly the rates to be levied, through the adoption of revenue ordinance. But after a revenue ordinance has been enacted, the succeeding amendments increasing the rates therein specified would have to be in accordance with the limitations set forth under Section 191 of the LGC.[11]

In the case of the respondent, the petitioner found that it has elected to exercise such power when it enacted Ordinance No. 7794 in 1993 and its amendment passed two months thereafter - Ordinance No. 7807.[12] In this light, the petitioner ratiocinated that any further amendment of the tax rates through the enactment of a new revenue ordinance would have to comply with the 10% maximum ceiling of increase under the LGC. The petitioner adjudged that the adjustment of tax rates from Ordinance Nos. 7794 and 7807 to Ordinance No. 8331 violates the said ceiling and as such is invalid.[13]

On April 24, 2014, the respondent filed a Motion for Reconsideration[14] of the petitioner's Resolution dated April 7, 2014.

Without awaiting for the petitioner's action on its Motion, the respondent filed a Petition for Review *Ad Cautelam*[15] before the Regional Trial Court (RTC) of Manila on May 15, 2014. In its petition, the respondent sought to annul the petitioner's Resolution dated April 7, 2014 for having been issued with grave abuse of discretion and to declare Section 104 of Ordinance No. 8331 as valid and enforceable.

On May 19, 2014, the RTC issued an Order [16] treating the Petition for Review *Ad Cautelam* as a petition for *certiorari* under Rule 65 of the Rules of Court.

After the parties filed their respective Comment and Reply, the RTC rendered its Decision on July 25, 2014 dismissing the petition in this wise:

> WHEREFORE, premises considered, the Petition for Review *Ad Cautelam* is hereby **DISMISSED** for lack of jurisdiction.
>
> SO ORDERED.[17]

The Motion for Reconsideration of the Decision dated July 25, 2014 having been denied by the RTC through its Order[18] dated October 30, 2014, the respondent elevated the matter to the CA *via certiorari* on appeal.

On July 9, 2015, the CA rendered the herein assailed Decision,[19] the dispositive portion of which reads:

> WHEREFORE, premises considered, the assailed Decision dated July 25, 2014 and Order dated October 30, 2014 of the RTC, Branch 7, Manila in Civil Case No. 14-131817 are hereby **SET ASIDE**. Let the case be **REMANDED** to the RTC, Branch 7, Manila to conduct further proceedings with dispatch.
>
> SO ORDERED.[20]

In its decision, the CA held that the RTC committed reversible error in dismissing the Petition for Review *Ad Cautelam* for lack of jurisdiction, considering that the LGC does not require the prior filing of a motion for reconsideration before the Secretary of Justice nor the elevation of the case to the Office of the President.[21]

Anent the issues relating to the validity and enforceability of Section 104 of Ordinance No. 8331, the CA refused to make any ruling, finding that these matters should be first threshed out before the RTC. Considering that the RTC dismissed the Petition for Review *Ad Cautelam* solely on the basis of technicality, the CA ordered the case to be remanded for further proceedings.[22]

On January 8, 2016, the CA, acting on the petitioner's Motion for Reconsideration and the retail business operators' Motion for Partial Reconsideration, issued a Resolution,[23] as follows:

> In fine, there being no substantial argument which would warrant the modification much less the reversal of this Court's July 9, 2015 Decision, [petitioner's] Motion for Reconsideration and [retail business operators'] Motion for Partial Reconsideration are hereby **DENIED** for lack of merit.
>
> SO ORDERED.[24]

Thus, the instant petition for review on *certiorari* whereby the petitioner raises the following for the Court's consideration:

I.

> THE CA COMMITTED REVERSIBLE ERROR IN RULING THAT THE RTC ERRED IN DISMISSING RESPONDENT'S PETITION FOR REVIEW *AD CAUTELAM* FOR LACK OF JURISDICTION.
>
> 1.) A petition for *certiorari* before the RTC is not the proper remedy to question a decision of the Secretary of Justice on the constitutionality of a tax ordinance.
> 2.) A motion for reconsideration of the assailed resolution is required before the respondent may file a petition for *certiorari* before the RTC.

II.

> THE CA COMMITTED REVERSIBLE ERROR IN NOT AFFIRMING THE DISMISSAL OF RESPONDENT'S PETITION FOR REVIEW *AD CAUTELAM* ON THE GROUND OF FORUM SHOPPING. RESPONDENT FILED ITS PETITION FOR REVIEW *AD CAUTELAM* BEFORE THE RTC WHILE ITS MOTION FOR RECONSIDERATION WAS PENDING BEFORE PETITIONER.[25]

The issues raised by the petitioner are essentially procedural, namely: *first*, whether the CA erred in ruling that the RTC has the jurisdiction to resolve an appeal from the resolution of the Secretary of Justice; and *second*, whether the CA erred ruling that the respondent did not commit forum shopping.

Ruling of the Court

The petition is ***partly meritorious***.

The resolution of the first issue necessitates that the Court deal with two matters - *first*, the timeliness of the appeal, and *second*, the proper action to be filed.

The appeal before the RTC has been timely filed.

Section 187 of the LGC sets forth the appropriate procedure and time limitations that must be followed in assailing tax ordinances or revenue measures, *viz*. :

> SEC. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings*. - The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision **or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal**, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction. (Emphasis Ours)

The Court in *Reyes v. CA*[26] explained that the aforementioned provision sets forth "three separate periods" that are mandatory in nature, in that compliance therewith is a prerequisite before an aggrieved party could seek relief from the courts. They are as follows: *first*, an appeal questioning the constitutionality or legality of a tax ordinance or revenue measure must be filed before the Secretary of Justice within **30 days** from effectivity thereof. Then, from the receipt of the decision of the Secretary of Justice, the aggrieved party has a period of **30 days** within which to file an appeal before the courts. However, when the Secretary of Justice fails to act on the appeal, after the lapse of **60 days**, a party could already proceed and seek relief in court.[27]

In *Hagonoy Market Vendor Association v. Municipality of Hagonoy*,[28] the Court explained the importance of observing the timeframe provided for under Section 187 of the LGC and emphasized that the same is not a mere technicality that can easily be brushed aside by the parties.[29] The Court enunciated the purpose of the said periods within the context of the nature and relevance of revenue measures and tax ordinances, thus:

> Ordinance No. 28 is a revenue measure adopted by the municipality of Hagonoy to fix and "Collect public market stall rentals. Being its lifeblood,

> collection of revenues by the government is of paramount importance. The funds for the operation of its agencies and provision of basic services to its inhabitants are largely derived from its revenues and collections. Thus, it is essential that **the validity of revenue measures is not left uncertain for a considerable length of time**. Hence, the law provided a time limit for an aggrieved party to assail the legality of revenue measures and tax ordinances.[30] (Citation omitted and emphasis in the original)

Simply, as the revenue measures are the source of funds that give life and support the operations of the local government, it is imperative that any question as to its validity must be resolved with utmost dispatch. Towards this end therefore, the LGC has set limits which the parties must strictly comply with.

Preliminarily, the Court notes that contrary to the respondent's submission in its petition for review *ad cautelam*, the appeal before the RTC could not be anchored on *inaction* as in fact, the petitioner, *acted* on the appeal. While ideally, "action upon the appeal" would mean issuance of a final disposition upon the dispute, the urgency presented by questions regarding revenue measures must be balanced with the dictates of due process and that of achieving a full ventilation of the issues presented for review. With this, the Court finds that the petitioner has *acted upon the appeal* when it issued an Order on February 3, 2014, requiring the respondent to file its Comment.

In this controversy, Ordinance No. 8331 of the respondent was passed by the City Council on November 26, 2013, and subsequently published in the *Manila Times* and *Manila Standard* on December 6, 7, and 8, 2013. Herein involved retail business operators filed an appeal questioning the constitutionality and legality of the subject ordinance before the petitioner on January 6, 2014, within the 30-day period fixed by law. The petitioner then issued her Resolution on April 7, 2014, which the respondent **received on <u>April 15, 2014.</u>** The respondent then **filed before the RTC a Petition for Review *Ad Cautelam* assailing the Resolution dated April 7, 2014 of the petitioner on <u>May 15, 2014</u>.**[31]

As the petition for review *ad cautelam* before the RTC assails the petitioner's Resolution dated April 7, 2014, the applicable period in determining the timeliness of the appeal before the RTC is 30 days from the respondent's receipt of the petitioner's resolution. With this, the appeal before the RTC has been timely filed, the action having been instituted exactly 30 days from the respondent's receipt of the petitioner's resolution.

The determination by the petitioner of the constitutionality or legality of the subject ordinance involves an exercise of quasi-judicial power that is the proper subject of a Special Civil Action for Certiorari cognizable by the CA.

The petitioner argues that the remedy of *certiorari* is not available as the questioned resolution does not involve an exercise of quasi-judicial function by the Secretary of Justice. The petitioner cites in support of its argument the case of *Hon. Drilon v. Mayor Lim*,[32] whereby the Court ruled that the Secretary of Justice does not