

SPECIAL THIRD DIVISION

[G.R. No. 180654, March 06, 2017]

NATIONAL POWER CORPORATION, PETITIONER, V. PROVINCIAL GOVERNMENT OF BATAAN, SANGGUNIANG PANLALAWIGAN OF BATAAN, PASTOR B. VICHUACO (IN HIS OFFICIAL CAPACITY AS PROVINCIAL TREASURER OF BATAAN) AND THE REGISTER OF DEEDS OF THE PROVINCE OF BATAAN, RESPONDENTS.

R E S O L U T I O N

LEONEN, J.:

For resolution is respondents' Motion for Reconsideration^[1] of this Court's April 21, 2014 Decision,^[2] which granted the petition of National Power Corporation (Napocor), and set aside the Court of Appeals' Resolution^[3] dated November 27, 2007. The Decision further remanded "the case to the Regional Trial Court so that the Power Sector Assets and Liabilities Management Corporation [PSALM Corporation] and the National Transmission Corporation [TRANSCO] may be impleaded as proper parties."^[4]

Recalling the facts of this case:

On March 28, 2003, petitioner National Power Corporation (NPC) received a notice of franchise tax delinquency from the respondent Provincial Government of Bataan (the Province) for P45.9 million covering the years 2001, 2002, and 2003. The Province based its assessment on [Napocor's] sale of electricity that it generated from two power plants in Bataan. Rather than pay the tax or reject it, [Napocor] chose to reserve its right to contest the [amounts of franchise tax stated in the notice, including the] computation pending the decision of the Supreme Court in *National Power Corporation v. City of Cabanatuan*, a case [where] the issue of [Napocor's] exemption from the payment of local franchise tax was then pending.

On May 12 and 14, 2003 the Province again sent notices of tax due to [Napocor], calling its attention to the Court's decision in *National Power Corporation v. City of Cabanatuan* that held [Napocor] liable for the payment of local franchise tax. [Napocor] replied, however, that it had ceased to be liable for the payment of that tax after Congress enacted Republic Act (R.A.) 9136, also known as the Electric Power Industry Reform Act (EPIRA) that took effect on June 26, 2001. The new law relieved [Napocor] of the function of [transmitting electricity] beginning that year. Consequently, the Province has no right to further assess it for the 2001, 2002, and 2003 local franchise tax.

Ignoring [Napocor's] view, the Province issued a "Warrant of Levy" [dated January 29, 2004]^[5] on 14 real properties that it used to own in Limay, Bataan. [Through a letter dated February 17, 2004, Napocor requested a "deferment of [the Province's] chosen course of action and give [Napocor] Management and Board of Directors, as well as the OSG; to reconsider the matter at hand."^[6] In March 2004 the Province caused their sale at public auction with itself as the winning bidder. Shortly after, [Napocor] received a copy of the Certificate of Sale of Real Property covering the auctioned properties for P60,477,285.22, the amount of its franchise tax delinquency, [including surcharges and interest].

On July 7, 2004, [Napocor] filed with the Regional Trial Court (RTC) of Mariveles, Bataan, a petition for declaration of nullity of the foreclosure sale with prayer for preliminary mandatory injunction against the Province, the provincial treasurer, and the *Sangguniang Panlalawigan*.

[Napocor] alleged that the foreclosure had no legal basis since R.A. 7160 which authorized the collection of local franchise tax had been modified by the EPIRA. The latter law provided that power generation is not a public utility operation requiring a franchise, hence, not taxable. What remains subject to such tax is the business of transmission and distribution of electricity since these required a national franchise. As it happened, [Napocor] had ceased by operation of the EPIRA in 2001 to engage in power transmission, given that all its facilities for this function, including its nationwide franchise, had been transferred to the National Transmission Corporation (TRANSCO).

Thus, [Napocor] asked the RTC to issue a preliminary injunction, enjoining the transfer of title and the sale of the foreclosed lands to Bataan and, after trial, to make the injunction permanent, declare [Napocor] exempt from the local franchise tax and annul the foreclosure sale.

On November 3, 2005 the RTC dismissed [Napocor's] petition, stating that the franchise tax was not based on ownership of property but on [Napocor's] exercise of the privilege of doing business within Bataan. Further, [Napocor] presented no evidence that it had ceased to operate its power plants in that jurisdiction.

[Napocor] appealed the RTC Decision to the Court of Appeals (CA) but the Province moved to dismiss the same for lack of jurisdiction of that court over the subject matter of the case. The Province pointed out that, although [Napocor] denominated its suit before the RTC as one for declaration of nullity of foreclosure sale, it was essentially a local tax case questioning the validity of the Province's imposition of the local franchise tax. Any appeal from the action should, therefore, be lodged with the Court of Tax Appeals (CTA). On November 27, 2007 the CA granted the Province's motion and dismissed the petition on the ground cited.^[7] (Citation omitted)

On January 18, 2008, Napocor filed by registered mail a Petition for Review on Certiorari,^[8] assailing the correctness of the Court of Appeals' dismissal of its appeal for lack of jurisdiction. Napocor prayed that "judgment be rendered reversing and

setting aside the Court of Appeals' Resolution dated November 27, 2007 and in lieu thereof, directing said Court to reinstate and give due course to petitioner's appeal in CA-G.R. CV No. 87218."^[9]

In a Decision dated April 21, 2014, this Court granted the petition and set aside the resolution of the Court of Appeals. This Court ruled that with the transfer of Napocor's power transmission and generation functions, and their associated facilities by operation of the Electric Power Industry Reform Act (EPIRA) in June 2001, Napocor was not the proper party subject to the local franchise tax.^[10] The Province also could not levy on the transmission facilities to satisfy the tax assessment against Napocor.^[11] This Court further found the proceedings in the court *a quo* a nullity for failure to include PSALM Corporation and TRANSCO, companies which were indispensable parties to the case.^[12] At this point, this Court opined that it did not matter where the Regional Trial Court decision was appealed, whether before the Court of Appeals or the Court of Tax Appeals,^[13] and remanded the case to the Regional Trial Court so that PSALM Corporation and TRANSCO may be impleaded as proper parties.^[14]

Hence, this Motion for Reconsideration^[15] was filed by the respondents. The issues raised in the motion are:

1. Whether Napocor is the real party in interest; and
2. Whether the foreclosure sale on March 2, 2004 is valid.

Respondents argue that from this Court's disquisition on the purported transfer of Napocor's power generation and transmission functions to PSALM Corporation, and its corresponding generation and transmission facilities to TRANSCO, it follows that petitioner was not the real party in interest and had no legal personality to file the complaint before the Regional Trial Court in the first place.^[16] Accordingly, they pray that instead of remanding the case to the trial court for the inclusion of indispensable parties, the complaint should be ordered dismissed for lack of cause of action.^[17]

Respondents further contend that Napocor was estopped from invoking the EPIRA as a shield against the franchise tax impositions.^[18] They assert that Napocor could have raised the EPIRA provisions at the earliest instance when it received the notice of franchise tax delinquency on March 28, 2003, close to two (2) years after the effectivity of EPIRA. Instead, Napocor merely chose to reserve its right to contest the franchise tax assessment and suspend its payment pending the decision of this Court in *NPC v. City of Cabanatuan*.^[19]

Respondents lastly argue that EPIRA was not self-executing and the transfer of the transmission functions and assets to TRANSCO was not made to take place by operation of law.^[20] It cites Section 8 of EPIRA, which provides that "[w]ithin six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of [Napocor] and all other assets related to transmission operations, including the nationwide franchise of [Napocor] for the operation of the transmission system and the grid, shall be transferred to the TRANSCO." It also renders that "[p]rior to the transfer of the transmission functions by [Napocor] to TRANSCO, and before promulgation of the Grid Code, ERC shall ensure that [Napocor] shall provide to all electric power industry participants open and non-discriminatory access to its

transmission system."^[21] Similarly, respondents assert that the transfer of the generation assets to PSALM Corporation did not take place upon the effectivity of EPIRA, citing Section 47 of the law.^[22] Thus, the court *a quo* correctly dismissed Napocor's complaint on the latter's failure "to present evidence that it no longer owned [the property] or operated the business subject to local franchise tax."^[23]

In its Comment,^[24] petitioner partially agrees with the respondents that the case should not be ordered remanded to the court of origin. According to petitioner, the trial court will then be "confronted with a bizarre situation of ordering PSALM and the TRANSCO to be party-plaintiffs/petitioners when, in truth and in fact, there is no actual controversy confronting them at the moment" as no assessments have yet been issued to these corporations.^[25]

However, contrary to respondents' submissions, petitioner avers that "the instant case is not dismissible on the ground of lack of cause of action."^[26] Petitioner asserts that it "has a valid cause of action against respondents for the nullification of the foreclosure sale" since, as found by this Court, it is not the proper party subject to the local franchise tax being imposed by respondents.^[27]

On respondents' claim of estoppel, petitioner submits that as a government-owned and controlled corporation, it is "protected by the principle that estoppel does not lie against the government as it is not bound by the errors committed by its agents."^[28] Moreover, petitioner maintains that it has consistently invoked that it is not liable for the local franchise tax being collected by respondents because "it has ceased to operate its electric transmission functions upon effectivity of the EPIRA in 2001."^[29] Allegedly, this has been its stand from the time it filed its complaint with the Regional Trial Court.^[30]

Lastly, petitioner counters that it does not need to present "evidence to prove its position that it no longer owned or operated the business subject to local franchise tax," and that the properties, which respondent Provincial Government of Bataan levied on, did not belong to it.^[31]

We partially grant the motion for reconsideration.

I

The Court of Appeals correctly dismissed the appeal for lack of jurisdiction. We deem it proper to clarify the last sentence in the decision that "[i]t did not matter where the RTC decision was appealed, whether before the C[ourt of] A[ppeals] or the C[ourt of] T[ax] A[ppeals]."^[32]

Republic Act No. 9282, which amended Republic Act No. 1125, took effect on April 23, 2004, and significantly expanded the extent and scope of the cases that the Court of Tax Appeals was tasked to hear and adjudicate. Under Section 7, paragraph (a)(3), the Court of Tax Appeals is vested with the exclusive appellate jurisdiction over, among others, appeals from the "decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction."

The case *a quo* is a local tax case that is within the exclusive appellate jurisdiction of the Court of Tax Appeals. Parenthetically, the case arose from the dispute between

Napocor and respondents over the purported franchise tax delinquency of Napocor. Although the complaint filed with the trial court is a *Petition for declaration of nullity of foreclosure sale with prayer for preliminary mandatory injunction*, a reading of the petition shows that it essentially assails the correctness of the local franchise tax assessments by the Provincial Government of Bataan. Indeed, one of the prayers in the petition is for the court *a quo* to declare Napocor "as exempt from payment of local franchise taxes."^[33] Basic is the rule that allegations in the complaint and the character of the relief sought determine the nature of an action.^[34] In order for the trial court to resolve the complaint, the issues regarding the correctness of the tax assessment and collection must also necessarily be dealt with. As correctly ruled by the Court of Appeals, "the issue of the validity and legality of the foreclosure sale is essentially related to the issue of the demandability of the local franchise tax."^[35]

Therefore, the dismissal of Napocor's appeal by the Court of Appeals was in order. Napocor's procedural lapse would have been sufficient to reconsider this Court's decision and instead deny the instant petition. However, the substantial merits of the case and the patent error committed by the Bataan Regional Trial Court compels this Court to exercise its power of judicial review for purposes of judicial economy.

II

"A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."^[36] In the instant case, petitioner's complaint has sought not only the nullification of the foreclosure sale but also a declaration from the trial court that it is exempt from the local franchise tax. The action began when respondent ignored petitioner's claim for exemption from franchise tax, and pursued its collection of the franchise tax delinquency by issuing the warrant of levy and conducting the sale at public auction – where the Provincial Government of Bataan was declared as purchaser – of the transmission assets, despite the purported prior mutual agreement to suspend administrative remedies for the collection of taxes. The assets were sold to enforce collection of a franchise tax delinquency **against** the petitioner. Petitioner thus had to assail the correctness of the local franchise tax assessments made against it by instituting the complaint with the Regional Trial Court; otherwise, the assessment would become conclusive and unappealable.^[37] Certainly, petitioner is a real party in interest, which stands to gain or lose from the judgment that the trial court may render.

III

The main issue for the court *a quo* was a legal issue^[38] on whether Napocor was liable to pay the assessed franchise tax imposed under Section 137 of Republic Act No. 7160 (the Local Government Code of 1991) by virtue of EPIRA.

Section 137 of the Local Government Code provides:

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 a 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.