

EN BANC

[G.R. NO. 121782, May 09, 2005]

THE HONORABLE SECRETARY OF FINANCE, PETITIONER, VS. THE HONORABLE RICARDO M. ILARDE, PRESIDING JUDGE, REGIONAL TRIAL COURT, 6TH JUDICIAL REGION, BRANCH 26, ILOILO CITY, AND CIPRIANO P. CABALUNA, JR., RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

At the fulcrum in the case before Us is the constitutional question of whether or not the then Ministry of Finance could legally promulgate regulations prescribing a rate of penalty on delinquent taxes other than that provided for under Presidential Decree (P.D.) No. 464, also known as the Real Property Tax Code.

In this petition for review, petitioner Secretary of Finance seeks to reverse and set aside the Decision^[1] dated 28 August 1995 rendered by respondent Judge Ricardo M. Ilarde of the Regional Trial Court (RTC), 6th Judicial Region, Branch 26, Iloilo City, in Civil Case No. 21207 for *Declaratory Relief with Damages*, declaring as null and void Joint Assessment Regulations No. 1-85 and Local Treasury Regulations No. 2-85 of the Ministry (now Department) of Finance for being contrary to Section 66 of P.D. No. 464 or the Real Property Tax Code, which pegged the maximum penalty for delinquency in the payment of real estate taxes at 24% of the delinquent tax.

Private respondent Cipriano P. Cabaluna, Jr., was the Regional Director of Regional Office No. VI of the Department of Finance in Iloilo City. He co-owns with his wife certain properties, namely, Lot No. 941-D-1, Lot No. 941-D-2, and a residential house on Lot No. 942-D-1, all situated in 14 Jalandoni St., Jaro, Iloilo City. Aside from these properties, the Cabaluna spouses own Lot No. 12 (4491-E and F) and Lot No. 14 (4495-E and F), both situated in Barangay Tacas, Jaro, Iloilo City.^[2]

Private respondent failed to pay the land taxes on Lot No. 12 (4491-E and F) and Lot No. 14 (4495-E and F) for the years 1986 to 1992. For the years 1991 to 1992, taxes were also unpaid on Lot No. 941-D-2, on the residential house, and on Lot No. 941-D-1.^[3]

A breakdown of the computation of the delinquent taxes and penalties, both Basic and Special Education Fund (SEF),^[4] for private respondent's lots and residential house as of May 1993 as reflected in the various receipts issued by the City Treasurer's Office of Iloilo City, shows that more than twenty-four percent (24%) of the delinquent taxes were charged and collected from private respondent by way of penalties. On the 6th and 7th of May 1993, private respondent paid his land taxes and the corresponding receipts were issued to him by the City Treasurer's Office with the notation "paid under protest."

On 27 May 1993, soon after private respondent retired from his post as Regional Director of Regional Office No. VI of the Department of Finance in Iloilo City, he filed a formal letter of protest with the City Treasurer of Iloilo City^[5] wherein he contends that the City Treasurer's computation of penalties was erroneous since the rate of penalty applied exceeded twenty-four percent (24%) in contravention of Section 66 of P.D. No. 464, otherwise known as the Real Property Tax Code, as amended.

In response, however, respondent Assistant City Treasurer, Rizalina F. Tulio, for and in behalf of the City Treasurer of Iloilo City, turned down private respondent's protest, citing Sec. 4(c) of Joint Assessment Regulations No. 1-85 and Local Treasury Regulations No. 2-85 of the then Ministry (now Department) of Finance which reads:

Sec. 4. Computation of Penalties on Delinquent Real Property Taxes. –

(a) Unless condoned, wholly or partially, in a duly approved resolution of the Local Sanggunian, delinquent real property taxes shall be subject to penalty at the rate of two per cent (2%) for every month of delinquency, provided that the total penalty for one tax year shall not exceed twenty-four percent (24%).

(b) Failure to pay on time at least the first quarter installment of the real property tax shall constitute a waiver on the part of the property owner or administrator to avail of the privilege granted by law for him to pay without penalty his annual realty tax obligation in four (4) equal installment on or before the end of every quarter of the tax year.

Accordingly, if the portion of the real property tax due for the first quarter of tax year is not paid on or before the thirty-first day of March of the same year, the penalty shall be reckoned from the first day of January at the rate of two per cent (2%) for every month of delinquency on the basis of the total amount due for the entire year and not only on the amount due for the said first quarter of the tax year.

(c) The penalty of two percent (2%) per month of delinquency, or twenty-four percent (24%) per annum, as the case may be, shall continue to be imposed on the unpaid tax from the time the delinquency was incurred up to the time that it is paid for in full.^[6] (Underlining supplied)

Despite his labors to exhaust all administrative remedies, the denial of his protest and his motion for reconsideration compelled private respondent to file a *Petition for Declaratory Relief with Damages* on 06 July 1993 before the sala of respondent Judge, assailing Joint Assessment Regulations No. 1-85 and Local Treasury Regulations No. 2-85 which, according to him, flouted Section 66 of P.D. No. 464 which fixed the maximum penalty for delinquency in the payment of real estate taxes at 24% of the delinquent tax.

On 28 August 1995, respondent Judge rendered his Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered, (1) declaring as null and void Section 4(c) of Joint Assessment Regulation No. 1-85 and Local Treasury Regulation No. 2-85 issued on August 1, 1985 by respondent Secretary (formerly Minister) of Finance; (2) declaring that the penalty that should be imposed for delinquency in the payment of real property taxes should be two per centum on the amount of the delinquent tax for each month of delinquency or fraction thereof, until the delinquent tax is fully paid but in no case shall the total penalty exceed twenty-four per centum of the delinquent tax as provided for in Section 66 of P.D. 464 otherwise known as the Real Property Tax Code; and (3) ordering the respondent City Treasurer of Iloilo City to refund and/or reimburse to petitioner Cipriano P. Cabaluna [Jr.] the amounts paid by the latter corresponding to the penalties on his delinquent real property taxes in excess of twenty-four percent (24%) thereof. No pronouncement as to cost.^[7]

Petitioner, in this appeal, attributes the following errors to the trial court as grounds for the reversal of the assailed Decision:

I.

RESPONDENT JUDGE'S DECISION OF AUGUST 28, 1995 GRANTING PRIVATE RESPONDENT'S PRAYER FOR DECLARATORY RELIEF WAS PREMISED ON ERRONEOUS GROUNDS.

II.

RESPONDENT JUDGE ERRED WHEN HE IGNORED THE FACT THAT PRIVATE RESPONDENT WAS ESTOPPED TO QUESTION THE VALIDITY OF THE SUBJECT REGULATION WHICH HE HIMSELF UPHELD AND APPLIED TO OTHER PROPERTY OWNERS WHILE HE WAS THEN THE REGIONAL DIRECTOR OF FINANCE FOR REGION VI.^[8]

The key in unlocking the present constitutional imbroglio is to address the following issues: (1) Whether or not Joint Assessment Regulations No. 1-85 and Local Treasury Regulations No. 2-85 are valid; (2) What is the proper rate of penalty for delinquent real property taxes; and (3) Whether or not the penalties for delinquent real property tax imposed by petitioner on the properties of private respondent are valid.

petitioner claims that respondent Judge has decided questions of substance in a way not in accord with law and jurisprudence as to call for an exercise of the power of review and supervision vested in this Honorable Court.^[9] Private respondent, on the other hand, assails as unconstitutional the said Joint Assessment and Local Treasury Regulations.^[10]

Petitioner's standpoint is devoid of basis in law or in logic. The subject Regulations must be struck down for being repugnant to Section 66 of P.D. No. 464 or the Real Property Tax Code, which is the law prevailing at the time material to this case. Section 66 provides:

Section 66. *Penalty for delinquency.* - Failure to pay the real property tax before the expiration of the period for the payment without penalty of the

quarterly installments thereof shall subject the taxpayer to the payment of a penalty of two per centum on the amount of the delinquent tax for each month of delinquency or fraction thereof, until the delinquent tax shall be fully paid: *Provided*, That in no case shall the total penalty exceed twenty-four per centum of the delinquent tax. The rate of penalty for tax delinquency fixed herein shall be uniformly applied in all provinces and cities. (Underlining supplied)

Note that under Section 66 of P.D. No. 464, the maximum penalty for delinquency in the payment of real property tax shall **in no case exceed twenty-four per centum of the delinquent tax**. Upon the other hand, Section 4(c) of the challenged Joint Assessment Regulations No. 1-85 and Local Treasury Regulations No. 2-85 issued by respondent Secretary (formerly Minister) of Finance provides that "the penalty of two percent (2%) per month of delinquency or twenty-four percent (24%) **per annum** as the case may be, **shall continue to be imposed** on the unpaid tax from the time the delinquency was incurred up to the time that the delinquency is paid for in full." As adeptly observed by the trial court, the penalty imposed under the assailed Regulations has no limit inasmuch as the 24% penalty **per annum** shall be **continuously** imposed on the unpaid tax until it is paid for in full unlike that imposed under Section 66 of the Real Property Tax Code where the total penalty is limited only to twenty-four percent of the delinquent tax.

That such is the effect of an application of the Regulations under review is not disclaimed by the petitioner anywhere in his pleadings. Petitioner, however, attempts to justify the issued Regulations' departure from the Real Property Tax Code. Said Regulations, petitioner says, are sanctioned by Executive Order (E.O.) No. 73 and its implementing guidelines, Joint Local Assessment/Treasury Regulations No. 2-86.^[11] Joint Local Assessment/Treasury Regulations No. 2-86, which provides in material parts:

SECTION 1. Computation of Real Property Taxes. – Effective January 1, 1987 the assessed values of real properties determined by the assessors during the latest general revision of real property assessments, which ended in December 1984, shall be used as the basis for the computation of the basic and additional 1% (SEF) real property taxes.

However, in order to ease the tax burden, and pursuant to the provisions of Section 97-A of the Real Property Tax Code (PD 464, as amended), increases in real property taxes arising from the 1984 new or revised assessments shall become due and collectible, in addition to the preceding year's tax, as follows:

(a) in CY 1987, a maximum increase of fifty percent (50%) over the 1986 tax,

(b) in CY 1988, the remaining increase in tax but not exceeding a second fifty percent (50%) increase, or a total of 100%, over the 1986 tax, and

(c) in CY 1989, the remaining increase in tax shall not exceed the yearly increments originally arrived at in applying the

1984 new or revised assessment of the property subject to tax.

It is understood that the herein-authorized annual increases but not exceeding a third fifty percent (50%) increase, or a total of 150%, over the 1986 tax.

Any increase in tax in excess of the maximum authorized for CY 1989 shall no longer be collectible.

The annual 50% increase ceiling prescribed in the foregoing provisions may be availed of, however, only by taxpayers who shall meet the quarterly deadlines provided for in the Real Property Tax Code and where the subject property has no outstanding real property tax delinquency except those that are covered by Amnesty Compromise Agreements executed by and between the taxpayer and the local government pursuant to the provisions of Executive Order No. 42, dated August 22, 1986, of the President, as implemented by Joint Assessment/Treasury Regulations No. 2-86, dated August 26, 1986 of this Ministry.

In case of failure to make prompt payments, the taxpayer shall be required to pay in full the increase in tax due and demandable for the tax year as a result of the full application of the 1984 new or revised assessment of the subject property. In addition, the two percent (2%) per month penalty shall be imposed on the amount due in the manner provided for under existing regulations. (Underscoring supplied.)^[12]

Petitioner Secretary of Finance avers in his petition that the last paragraph of Section 1, Joint Local Assessment/Treasury Regulations No. 2-86, explicitly provides for a 2% per month penalty **without any limitation as to the maximum amount thereof**, which is **entirely consistent** with the then existing Regulations, the now challenged Joint Assessment Regulations No. 1-85 and Local Treasury Regulations No. 2-85.^[13] Petitioner further asserts that inasmuch as Joint Local Assessment/Treasury Regulations No. 2-86, which echoes the disputed Regulations, was issued to implement E.O. No. 73, private respondent's recourse is to file a case questioning the validity of Joint Local Assessment/Treasury Regulations No. 2-86 in the same way that he has assailed Joint Assessment Regulations No. 1-85 and Local Treasury Regulations No. 2-85.^[14]

Petitioner's reasoning is, to our mind, but a futile attempt to muddle the facts of the case and the issues involved. Recall that the present controversy cropped up when private respondent Cabaluna protested the payment of penalties on his delinquent taxes for being in excess of the 24% cap provided in p.d. No. 464 or the Real Property Tax Code. In response to his letter of protest, the Assistant Treasurer of Iloilo City justified the assessment by citing Sec. 4(c) of Joint Assessment Regulations No. 1-85 and Local Treasury Regulations No. 2-85 issued by petitioner Minister (now Secretary) of Finance. This has led to the filing of the present case by Cabaluna to question the validity of the said regulations. It is the validity of said regulations, not Joint Local Assessment/Treasury Regulations No. 2-86, that is sought to be resolved herein and petitioner should not depart from the issue on hand.