

## EN BANC

[ G.R. No. 114231, June 29, 2004 ]

**MANILA ELECTRIC COMPANY, PETITIONER, VS. NELIA A. BARLIS, IN HER CAPACITY AS OFFICER-IN-CHARGE/ACTING MUNICIPAL TREASURER OF MUNTINLUPA, SUBSTITUTING EDUARDO A. ALON, FORMER MUNICIPAL TREASURER OF MUNTINLUPA, METRO MANILA, RESPONDENT.**

### R E S O L U T I O N

**CALLEJO, SR., J.:**

For the Court's Resolution is petitioner Manila Electric Company's (MERALCO) "Motion for Leave to File Motion for Reconsideration," filed on June 2, 2002 and the attached Motion for Reconsideration of the

Resolution of this Court dated April 15, 2002, denying its second motion for reconsideration and ordering that entry of judgment be made in due course,<sup>[1]</sup> as well as its motion for reconsideration dated March 19, 2002.

To preface, the above-entitled petition was an off-shoot of the following antecedents:

From 1968 to 1972, petitioner MERALCO, a duly-organized corporation in the Philippines engaged in the distribution of electricity, erected four (4) power generating plants in Sucat, Muntinlupa, namely, the Gardner I, Gardner II, Snyder I and Snyder II stations. To equip the power plants, various machineries and equipment were purchased both locally and abroad. When the Real Property Tax Code took effect on June 1, 1974, MERALCO filed its tax declarations covering the Sucat power plants, including the buildings thereon as well as the machineries and equipment.<sup>[2]</sup> In 1976, the Provincial Assessor found that the market value of the machineries amounted to P41,660,220.00, and its assessed value at P33,328,380.00. Later, in 1978, the Municipal Assessor assessed the value of the machineries and equipment at P36,974,610.00. From 1975 to 1978, MERALCO paid the real property taxes on the said properties on the basis of their assessed value as stated in its tax declarations.

On December 29, 1978, MERALCO sold all the power-generating plants including the landsite to the National Power Corporation (NAPOCOR), a corporation fully owned and controlled by the Philippine government.

In 1985, the Municipal Assessor of Muntinlupa, while reviewing records pertaining to assessment and collection of real property taxes, discovered, among others, that MERALCO, for the period beginning January 1, 1976 to December 29, 1978, misdeclared and/or failed to declare for taxation purposes a number of real properties consisting of several equipment and machineries found in the said power

plants. A review of the Deed of Sale which MERALCO executed in favor of NAPOCOR when it sold the power plants to the latter convinced the municipal government of Muntinlupa that the true value of the machineries and equipment was misdeclared/undeclared. The Municipal Assessor of Muntinlupa, on his own, then determined and assessed the value<sup>[3]</sup> of the subject properties for taxation purposes from 1977 to 1978 under Tax Declarations Nos. T-009-05486 to T-05506, viz:

TAX DECL.	ASSESSED VALUE
B-009-05495	P 68,208,610.00
	(1977-1978)
B-009-0496	P 62,524,550.00
	(1978)
B-009-05486	P102,088,300.00
	(1978)
B-009-05490	P 79,881,420.00
	(1977-1978)
B-009-05491	P 74,555,990.00
	(1978)
B-009-05494	P 73,892,660.00
	(1976-1978)
B-009-05501	P 86,874,490.00
	(1976-1978)
B-009-05502	P 81,082,860.00
	(1977-1978)
B-009-05503	P 75,291,220.00
	(1978) <sup>[4]</sup>

The matter of collection of the tax due and the enforcement of the remedies provided for in Presidential Decree No. 464 was then referred to the Municipal Treasurer, conformably to Section 57 thereof. <sup>[5]</sup>

Thereafter, on September 3, 1986, the Municipal Treasurer of Muntinlupa issued three notices to MERALCO, requesting it to pay the full amount of the claimed deficiency in the real property taxes covering the machinery and equipment found in the said power plants.<sup>[6]</sup> He warned the taxpayer that its properties could be sold at public auction unless the tax due was paid. Still, MERALCO did not pay the assessed tax, nor take steps to question the tax assessed as contained in the said notices. The Municipality of Muntinlupa then sought the assistance of the Bureau of Local Government Finance-Department of Finance (BLGF-DOF) for the collection of the tax due from MERALCO.

On August 14, 1989, the BLGF-DOF issued a Letter-Indorsement<sup>[7]</sup> declaring that the properties of MERALCO were not used in a new and preferred industry, hence, taxable from 1976 up to but not beyond December 31, 1978, the year the properties were acquired by NAPOCOR. The municipal treasurer was directed, in the same letter, to inform the BLGF-DPF of any recent action taken by MERALCO on the collection letter dated September 3, 1986. On the basis thereof, the Municipal Treasurer of Muntinlupa, in a Letter<sup>[8]</sup> dated October 31, 1989, reminded MERALCO of its deficiency tax liability, demanded the immediate payment of the amount of P36,432,001.97 as unpaid real property taxes inclusive of penalties and accrued

interest, and reiterated its warning that its properties may be sold at public auction if it failed to pay the taxes due. Subsequently, the Municipality of Muntinlupa, through its Municipal Treasurer, sent MERALCO another Letter<sup>[9]</sup> dated November 20, 1989, reiterating its previous demands for tax payment. Attached to the latter was the computation of the taxes due. Still, no payment was made.

Accordingly, after issuing the requisite certification of non-payment of real property taxes and complying with the additional requirement of public posting of the notices of delinquency, the Municipal Treasurer issued, on October 4, 1990, Warrants of Garnishment<sup>[10]</sup> ordering the attachment of MERALCO's bank deposits with the Philippine Commercial and Industrial Bank (PCIB), Metropolitan Bank and Trust Company (METROBANK) and the Bank of the Philippine Islands (BPI) to the extent of its unpaid real property taxes.

On October 10, 1990, MERALCO filed before the Regional Trial Court (RTC) of Makati a Petition for Prohibition with Prayer for Writ of Preliminary Mandatory Injunction and/or Temporary Restraining Order (TRO) praying, among others, that a TRO be issued to enjoin the Municipal Treasurer of Muntinlupa from enforcing the warrants of garnishment. The petitioner therein alleged, *inter alia*, that it had paid the real property taxes on its properties from 1975 to 1978 in full, based on the assessed value thereof, as well as the taxes on the machineries and equipment, based on their appraisal value as determined by the Provincial Assessor. According to the petitioner, the collection letters of the municipal assessor for real property taxes amounting to P36,432,001.97 was made arbitrarily and without legal authority, for the following reasons: (a) in times of rising cost, especially of imported machinery and equipment such as those installed at the Sucat Power Plants, the prices of articles several years after their acquisition would be very much higher; (b) the respondent could not levy additional real estate taxes without a prior re-appraisal of the property and an amendment of the tax declaration; and, (c) assuming *arguendo* that there was such a re-appraisal made, and a new tax declaration issued, such re-appraisal should operate prospectively and not retroactively as was done in this case.<sup>[11]</sup> According to the petitioner, the respondent had no authority to distrain its personal property not found in the real property subject of the delinquent real estate taxes, the authority of respondent being limited to those found in the real property subject of the delinquent real estate taxes.<sup>[12]</sup> The petitioner further averred that real estate tax is a tax on real property; as such, any tax delinquency on property should follow the present owner, in this case, the National Power Corporation.

The petitioner further claimed that the alleged delinquent real estate taxes claimed by respondent as shown in the annex to the Notice of Garnishment,<sup>[13]</sup> were arrived at by taxing the same property twice, and, in one case, even three times; by evaluating the property based on the selling price of the machineries and equipment rather than the actual acquisition cost; by taxing, as undeclared machineries, items that were already declared by the petitioner in 1974; and, by including the value of the land and other tax-exempt property in the computation of the alleged deficiency tax. Even assuming that it was liable for the real property tax delinquency, the petitioner asserted that the collection of the said amount had already prescribed.

The petitioner later filed an Amended Petition alleging as follows:

12. To further pursue his unjustified aims, respondent issued three Warrants of Garnishment against petitioner's bank deposits with the Philippine Commercial International Bank, Metropolitan Bank and Trust Company, and Bank of the Philippine Islands which required the said Banks to turn over to petitioner all the garnished amount, copies of which are attached hereto as Annexes "E," "F," and "G."<sup>[14]</sup>

The trial court issued a TRO which, after the hearing on the injunctive aspect of the case, was modified to the effect that the warrants of garnishment against the bank accounts would be in full force and effect, provided that the Municipal Treasurer would not, in the meantime, collect, receive or withdraw the frozen bank deposits. MERALCO was also allowed therein to withdraw from the frozen deposits, provided that it would not leave a balance less than the tax claim of the Municipality of Muntinlupa.

For its part, the Municipal Treasurer filed a Motion to Dismiss<sup>[15]</sup> on the following grounds: (a) lack of jurisdiction, since under Sec. 64 of the Real

Property Tax Code, courts are prohibited from entertaining any suit assailing the validity of a tax assessed thereunder until the taxpayer shall have paid, under protest, the tax assessed against him; and (b) lack of cause of action, by reason of MERALCO's failure to question the notice of assessment issued to it by the Municipality of Muntinlupa before the Local Board of Assessment Appeals. MERALCO opposed the motion, contending that it was the NAPOCOR that was liable for the taxes being collected by the Municipal Treasurer, and that the right to collect such taxes had already prescribed under Section 25 of P.D. No. 464.

In its June 17, 1991 Order, the trial court denied the said motion, ratiocinating that since MERALCO was not the present owner or possessor of the properties in question, it was not the "taxpayer" contemplated under Section 64 of the Tax Code:

After careful examination of the grounds and arguments of the motion to dismiss and the opposition thereto, the Court is of the view that the petitioner in this case, the Manila Electric Company, is not the "taxpayer" contemplated under Section 64 of the Tax Code. For as rightly argued by the petitioner, the tax due on the property constitutes a lien thereto which lien shall be enforceable against the property whether in the possession of the delinquent or any subsequent owner or possessor. In the case at bar, it is undisputed that the present owner or the possessor of the property in question is not the petitioner Manila Electric Company but the National Power Corporation.<sup>[16]</sup>

The trial court no longer delved into and resolved the issue of whether the petitioner's action was premature.

On a Petition for Certiorari filed before the Supreme Court, later endorsed to the Court of Appeals,<sup>[17]</sup> the Municipal Treasurer of Muntinlupa assailed the June 17, 1991 Order of the RTC alleging that MERALCO was the taxpayer liable for the tax due and the penalties thereon; that despite receipt by it of the 1985 notice of assessment from the Municipal Assessor, it failed to appeal therefrom and, as such, the assessment had become final and enforceable; and, that MERALCO was proscribed from filing its petition assailing the assessment. In its answer to the

petition, MERALCO denied having received a notice of assessment from the Municipal Treasurer, but admitted to having received collection letters.

On August 11, 1993, the Court of Appeals, in its Decision, granted the petition and declared the assailed order "void and without life in law, having been issued without jurisdiction, on a petition that further does not state a sufficient cause of action, filed by a party who had not exhausted available administrative remedies."<sup>[18]</sup> The CA ruled that MERALCO was the taxpayer liable for the taxes due, and that it was barred under Section 64 of P.D. No. 464 from assailing the 1986 assessment of the Municipal Assessor for its failure to appeal therefrom. MERALCO moved for a reconsideration of the Decision, which the CA denied for lack of merit in a Resolution<sup>[19]</sup> dated February 28, 1994.

On further recourse to this Court via a petition for review on certiorari under Rule 45, the petitioner alleged, *inter alia*, that the Court of Appeals erred in applying Section 64 of the Real Property Tax Code for the following reasons: (a) the petitioner was not the taxpayer for the purpose of an assessment under the Real Property Tax Code; and, (b) no assessment was made by the respondent, and only collection letters were sent to it; hence, Section 30 of the said Code had no application. The petitioner also alleged that its petition stated a sufficient cause of action for prohibition against the petitioner. Thus:

...Respondent Alon committed a grave mistake in going after MERALCO. He should have first asked the registered owner to explain the difference between the original assessment and the purchase price of the plant. Then he should have asked for a revision of the assessment and thereafter serve the notice of assessment on the new owner.

Respondent cannot use MERALCO as a scapegoat for his errors.

Moreover, as the PETITION FOR PROHIBITION states, the Municipal Treasurer made an erroneous conclusion as to the application of the valuation of the properties.

The Real Property Tax Code provides that "real property shall be appraised at its current and fair market value." (Sec. 2, Pres. Decree No. 469).

As a rule, the market value is that "highest price estimated in terms of money which the property will buy if exposed for sale in the open market x x x" (Sec. 3 [n], *ibid*). But in appraising machineries, the following provision applies:

The current market value of machinery shall be determined on the basis of the original cost in the case of newly acquired machinery not yet depreciated and is appraised within the year of its purchase. In the case of all others, the current market value shall be determined by dividing the remaining economic life of the machinery by its economic life and multiplied by the replacement or reproduction cost (new) of said machinery.

"If the machinery is imported, replacement or reproduction