364 Phil. 683

SECOND DIVISION

[G.R. No. 119172, March 25, 1999]

BELEN C. FIGUERRES, PETITIONER, VS. COURT OF APPEALS, CITY OF ASSESSORS OF MANDALUYONG, CITY TREASURER OF MANDALUYONG, AND SANGGUNIANG BAYAN OF MANDALUYONG, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision of the Court of Appeals, dated February 8, 1995, dismissing a prohibition suit brought by petitioner against respondent officials of the Municipality, now City, of Mandaluyong to prevent them from enforcing certain ordinances revising the schedule of fair market values of the various classes of real property in that municipality and the assessment levels applicable thereto.

Petitioner Belen C. Figuerres is the owner of a parcel of land, covered by Transfer Certificate of Title No. 413305, and located at Amarillo Street, Barangay Mauway, City of Mandaluyong. In 1993, she received a notice of assessment, dated October 20, 1993, from the municipal assessor of the then Municipality of Mandaluyong, containing the following specifics:

TYPE AREA BASE VALUE MARKET ASSESSMENT ASSESSED

PER SQ. M. VALUE LEVEL VALUE

Residential 530 sq.m. P2,500.00 P1,325,000.00 20 P265,000.00[1]

The assessment, effective in the year 1994, was based on Ordinance Nos. 119 and 125, series of 1993, and Ordinance No. 135, series of 1994, of the Sangguniang Bayan of Mandaluyong. Ordinance No. 119, series of 1993, which was promulgated on April 22, 1993, contains a schedule of fair market values of the different classes of real property in the municipality.[2] Ordinance No. 125, series of 1993, which was promulgated on November 11, 1993, on the other hand, fixes the assessment levels applicable to such classes of real property.[3] Finally, Ordinance No. 135, series of 1994, which was promulgated on February 24, 1994, amended Ordinance No. 119, §6 by providing that only one third (1/3) of the increase in the market values applicable to residential lands pursuant to the said ordinance shall be implemented in the years 1994, 1995, and 1996.[4]

Petitioner brought a prohibition suit in the Court of Appeals against the Assessor, the Treasurer, and the Sangguniang Bayan to stop them from enforcing the ordinances in question on the ground that the ordinances were invalid for having been adopted allegedly without public hearings and prior publication or posting and without

complying with the implementing rules yet to be issued by the Department of Finance.[5]

In its decision, dated February 8, 1995,[6] the Court of Appeals threw out the petition. The appellate court said in part:

> Petitioner's claim that Ordinance Nos. 119, 125 and 135 are null and void since they were prepared without the approval and determination of the Department of Finance is without merit.
>
> The approval and determination by the Department of Finance is not needed under the Local Government Code of 1991, since it is now the city council of Mandaluyong that is empowered to determine and approve the aforecited ordinances. Furthermore, contrary to the claim of petitioner that the Department of Finance "has not promulgated the necessary rules and regulations for the classification, appraisal and assessment of real property as prescribed by the 1991 Local Government Code," Department of Finance Local Assessment Regulation No. 1-92 dated October 6, 1992, which is addressed to provincial, city, and municipal assessors and others concerned with the proper implementation of Section 219 of R.A. No. 7160, provides for the rules relative to the conduct of general revisions of real property assessments pursuant to Sections 201 and 219 of the Local Government Code of 1991.
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> Regarding petitioner's claim that there is need for municipal ordinances to be published in the Official Gazette for their effectivity, the same is also without merit.
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> Section 511 of R.A. No. 7160 provides that
>
> > . . . .
> >
> > The secretary to the Sanggunian concerned shall transmit official copies of such ordinances to the chief executive officer of the Official Gazette within seven (7) days following the approval of the said ordinances for publication purposes. The Official Gazette may publish ordinances with penal sanctions for archival and reference purposes.
>
> Thus, the posting and publication in the Official Gazette of ordinances with penal sanctions is not a prerequisite for their effectivity. This finds support in the case of Tañada v. Tuvera (146 SCRA 446), wherein the Supreme Court declared that municipal ordinances are covered by the Local Government Code.
>
> Moreover, petitioner failed to exhaust the administrative remedies available to him as provided for under Section 187 of R.A. No. 7160, before filing the instant petition with this Court.
>
> . . . .

> In fact, aside from filing an appeal to the Secretary of Justice as provided under Section 187 of R.A. No. 7160, the petitioner . . . could have appealed to the Local Board of Assessment Appeals, the decision of which is in turn appealable to the Central Board of Assessment Appeals as provided under Sections 226 and 230 of the said law. According to current jurisprudence, administrative remedies must be exhausted before seeking judicial intervention. (Gonzales v. Secretary of Education, 5 SCRA 657). If a litigant goes to court without first pursuing the available administrative remedies, his action is considered premature and not yet ripe for judicial determination (Allied Brokerage Corporation v. Commissioner of Customs, 40 SCRA 555).
>
> As the petitioner has not pursued the administrative remedies available to him, his petition for prohibition cannot prosper (Gonzales v. Provincial Auditor of Iloilo, 12 SCRA 711).
>
> WHEREFORE, the petition is hereby DENIED due course and is hereby DISMISSED.[7]

Petitioner Figuerres assails the above decision. She contends that

1. THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN FINDING LACK OF EXHAUSTION OF ADMINISTRATIVE REMEDIES ON THE PART OF HEREIN PETITIONER WHEN UNDER THE CIRCUMSTANCES, EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT REQUIRED BY LAW AND WOULD HAVE BEEN A USELESS FORMALITY.

2. THE HONORABLE COURT OF APPEALS ERRED WHEN IT STATED THAT THE CITY COUNCIL OF MANDALUYONG IS EMPOWERED TO DETERMINE AND APPROVE THE AFORECITED ORDINANCES WITHOUT TAKING INTO ACCOUNT THE MANDATORY PUBLIC HEARINGS REQUIRED BY R.A. No. 7160.

3. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN STATING THAT THERE IS NO NEED FOR PUBLICATION OF TAX ORDINANCES.

4. THERE IS NON COMPLIANCE BY PUBLIC RESPONDENTS OF ASSESSMENT REGULATION No. 1-92 DATED OCTOBER 6, 1992, EVEN IF THE HONORABLE COURT OF APPEALS MENTIONED THE EXISTENCE OF THE SAID ASSESSMENT REGULATIONS.[8]

On the other hand, the Municipality of Mandaluyong contends:

(1) the present case does not fall within any of the exceptions to the doctrine of exhaustion of administrative remedies;

(2) apart from her bare allegations, petitioner Figuerres has not presented any evidence to show that no public hearings were conducted prior to the enactment of the ordinances in question;

(3) although an ordinance concerning the imposition of real property taxes is not

required to be published in the Official Gazette in order to be valid, still the subject ordinances were disseminated before their effectivity in accordance with the relevant provisions of R.A. No. 7160; and

(4) the Municipality of Mandaluyong complied with the regulations of the Department of Finance in enacting the subject ordinances.

Exhaustion of administrative remedies

In *Lopez v. City of Manila*,[9] we recently held:

> . . . Therefore, where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to the courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts. . . .
>
> With regard to questions on the legality of a tax ordinance, the remedies available to the taxpayer are provided under Sections 187, 226, and 252 of R.A. 7160.
>
> *Section 187 of R.A. 7160* provides, that the taxpayer may question the constitutionality or legality of a tax ordinance on appeal within thirty (30) days from effectivity thereof, to the Secretary of Justice. The petitioner after finding that his assessment is unjust, confiscatory, or excessive, may bring the case before the Secretary of Justice for questions of legality or constitutionality of the city ordinance.
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> Under *Section 226 of R.A. 7160*, an owner of real property who is not satisfied with the assessment of his property may, within sixty (60) days from notice of assessment, appeal to the Board of Assessment Appeals.
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> Should the taxpayer question the excessiveness of the amount of tax, he must first pay the amount due, in accordance with *Section 252 of R.A. No. 7160*. Then, he must request the annotation of the phrase "paid under protest" and accordingly appeal to the Board of Assessment Appeals by filing a petition under oath together with copies of the tax declarations and affidavits or documents to support his appeal.

Although cases raising purely legal questions are excepted from the rule requiring exhaustion of administrative remedies before a party may resort to the courts, in the case at bar, the legal questions raised by petitioner require, as will presently be shown, proof of facts for their resolution. Therefore, the petitioner's action in the Court of Appeals was premature, and the appellate court correctly dismissed her action on the ground that she failed to exhaust available administrative remedies as above stated.

Petitioner argues that resort to the Secretary of Justice is not mandatory but only directory because R.A. No. 7160, §187 provides that "any question on the constitutionality or legality of tax ordinances or revenue measures" may be appealed to the Secretary of Justice. Precisely, the Secretary of Justice can take cognizance of a case involving the constitutionality or legality of tax ordinances