

## TWENTY-FIRST DIVISION

[ CA-G.R. SP NO. 04559-MIN, March 27, 2014 ]

**EL PARIL RESORTS INC., REPRESENTED BY JULIAN L. RODRIGUEZ III, MAXIMA RESORT AND AQUAFUN, INC., REPRESENTED BY PHILIP S. DIZON, ARACELI A. PE BENITO, MAHAN GARDEN RESORT, INC., REPRESENTED BY IAN VOLTAIRE M. LOZADA, JR., AND ROBERT Q. RODRIGUEZ, PETITIONERS, VS. ISLAND GARDEN CITY OF SAMAL, REPRESENTED BY THE CITY MAYOR, HON. ANIANO P. ANTALAN, PROVINCE OF DAVAO DEL NORTE, AND HONORABLE REGIONAL TRIAL COURT, BRANCH 4, PANABO CITY, DAVAO PROVINCE, RESPONDENTS.**

### D E C I S I O N

**FRANCISCO, J.:**

This is a Petition for Certiorari<sup>[1]</sup> under Rule 65 assailing the Orders dated February 16, 2011<sup>[2]</sup> and September 12, 2011<sup>[3]</sup> issued by the Regional Trial Court, Branch 4, 11<sup>th</sup> Judicial Region, Panabo City in Civil Case No. CC-01-20011 entitled "*Petition for Declaratory Relief and/or Injunction with Prayer for Issuance of Temporary Restraining Order and Writ of Injunction.*"

The assailed Order dated February 16, 2011 dismissed petitioners' action for declaratory relief and/or injunction while the Order dated September 12, 2011 denied petitioners' motion for reconsideration.

#### The Facts

Petitioners are individuals and/or corporations engaged in the operation of beach resorts, aqua-related sport and leisure activities and/or restaurants located within the Island Garden City of Samal.

Petitioner El Paril Resorts, Inc., is a corporation duly organized under Philippine laws and engaged in business under the name Paradise Island Park and Beach Resort located at Barangay Caliclic, Babak Island, Garden City of Samal and herein represented by its Vice President, Julian L. Rodriguez III, of legal age, married, Filipino, and a resident of Davao City. Petitioner Maxima Resort and Aquafun, Inc. is a corporation duly organized and existing under Philippine laws and herein represented by its President Philip S. Dizon. Petitioner Araceli A. Pe Benito is of legal age, married, Filipino, and owner of Punta del Sol Araceli Beach Resort and Restaurant with principal address at Samal District, Island Garden City of Samal. Petitioner Ian Voltaire M. Lozada, Jr. is of legal age, Filipino, and the General Manager of Mahan Garden Resort. Lastly, petitioner Robert Q. Rodriguez is a co-owner of Caliclic Beach Resort with principal address at P-1, Babak District, Island Garden City of Samal, Davao del Norte.<sup>[4]</sup>

Public respondent, on the other hand, Island Garden City of Samal (IGACOS for brevity), is a local government unit created under Philippine law represented by the City Mayor Aniano P. Antalan with office address at City Hall Building, Island Garden City of Samal, Davao del Norte.<sup>[5]</sup>

On August 25, 2009, the City Council of IGACOS passed and approved City Ordinance No. 2009-156, otherwise known as the "Revised Revenue Code of 2009 of the Island Garden City of Samal." One of the highlights of the said Revised Revenue Code of 2009 is Article X thereof which mandates the imposition of the Environmental Users Fee (EUF for brevity). The said ordinance lapsed into law through the inaction of the City Mayor.

In implementing City Ordinance No. 2009-156, IGACOS Mayor Aniano P. Antalan issued Executive Order No. 04 on March 22, 2010 providing for the implementing rules and regulations governing the collection of the EUF. Some of the petitioners herein allegedly paid the questioned EUF under protest as shown by the receipts issued by the Barangay Treasurer and attached to the petition.

Petitioners then instituted a Petition for Declaratory Relief with application for TRO. On January 27, 2011, a TRO was issued by the court *a quo* restraining the City Government of IGACOS from implementing Tax Ordinance No. 2009-156 particularly Chapter 6 thereof on the ground of non-publication of the tax ordinance.

On January 26, 2011, respondent filed a motion to dismiss the petition. Acting on the motion, the court *a quo* denied petitioners' prayer for a writ of preliminary injunction and dismissed their petition for declaratory relief in its Order dated February 16, 2011, the dispositive portion of which reads:

In view of all the foregoing, the prayer for a writ of preliminary injunction is hereby DENIED and this petition [is] hereby ordered DISMISSED.

SO ORDERED.<sup>[6]</sup>

The RTC also denied petitioners' motion for reconsideration in an Order dated September 12, 2011. Hence, this petition for certiorari.

### Issues

In this recourse, petitioners raise the following issues, *viz*:

#### I

**[WHETHER OR NOT] THE TRIAL COURT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT THE INSTANT ACTION DOES NOT INVOLVE A PURE LEGAL QUESTION BUT INVOLVES QUESTIONS OF BOTH FACT AND LAW[;]**

#### II

**THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF [OR] IN EXCESS OF JURISDICTION WHEN IT DISMISSED THE CASE ON A MERE TECHNICAL GROUND THAT THERE IS FAILURE TO EXHAUST ADMINISTRATIVE**

**REMEDIES IN ACCORDANCE WITH THE LOCAL GOVERNMENT CODE[;]**

**III**

**THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN CONCLUDING THAT THE CITY ORDINANCE PARTICULARLY CHAPTER 6 THEREOF, BECAME EFFECTIVE AND ENFORCEABLE ONLY AFTER THE BELATED PUBLICATION AND NOT DECLARING SAID PROVISIONS OF THE CITY ORDINANCE AS UNCONSTITUTIONAL IN THE CLEAR ABSENCE OF ITS PUBLICATION[;]**

**IV**

**THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION BY FAILING TO RULE ON THE OTHER COMPELLING CONSTITUTIONAL GROUNDS RAISED BY THE PETITIONERS THROUGH ITS OUTRIGHT DISMISSAL OF THE PETITION ON A MERE TECHNICAL GROUND.[7]**

*Our Ruling.*

The petition lacks merit.

Essentially, the pivotal issue in the instant case hinges on the alleged unconstitutionality of Sections 189 - 204 of City Ordinance 2009-16 on the grounds of non-publication, among others.

We shall jointly discuss the first and second issues raised by the petitioners as they are interrelated.

Petitioners maintain that the court *a quo* should not have dismissed the case as the issues raised involved purely questions of law considering that the non-publication of Sections 189 to 204 of City Ordinance 2009-16 was undisputably established. Thus, the filing of the petition for declaratory relief by the petitioners is procedurally correct since the issues brought before the court *a quo* were a purely legal one. Exhaustion of administrative remedies does not apply to the instant case. To support their allegation, petitioners invoke the ruling laid down in *Evelyn Ongsuco and Antonia Salaya v. Hon. Mariano M. Malones*.<sup>[8]</sup>

We are not persuaded.

A careful scrutiny of the records shows that respondent, City Government of IGACOS, consistently denies non-publication of Sections 189 to 204 of City Ordinance 2009-16. Respondent asserts that it faithfully complied with the requisite of publication through a newspaper of local circulation when it caused the publication of the entire text of the Ordinance within the period prescribed by law. The omission of Sections 189 to 204 of City Ordinance 2009-16 in the publication was due to the publisher's fault and not the respondent. Thus, the presumption of regularity and good faith in intending to faithfully comply with the law requiring the mandatory publication applies in favor of the respondent.