

THIRTEENTH DIVISION

[CA-G.R. CV No. 96845, November 21, 2014]

MARCELINO S. BUL-LONG (NOW DECEASED), CARMEN D. CORDOVA (NOW DECEASED) AND WILMA T. BOMOWEY, TERIO B. KENIS, CAROLINE P. BADECAO, DALEN L. PAYDOAN, AMELIA N. BINAYAT, JUNALYN D. DOMICLONG, ESBERTA B. TAYABAN, NENITA C. CAPACAP, AND PRIMA B. ANTALAN, ALL OFFICERS AND MEMBERS OF THE ABATAN OPEN GYM, AND BAGSAKAN VENDORS ASSOCIATION (BUGUIAS, 2607 BENGUET), PLAINTIFFS-APPELLANTS, VS. THE MUNICIPAL GOVERNMENT OF BUGUIAS, BENGUET, HEREIN REPRESENTED BY THE HONORABLE MAYOR FELICIO K. BAYACSAN, IN HIS CAPACITY AS THE HEAD OF THE LOCAL GOVERNMENT UNIT OF BUGUIAS, THE HONORABLE VICE MAYOR MELCHOR DICLAS AND THE HONORABLE COUNCILORS JULIUS AMOS, VICENTE KITONGAN, FRANCISCO LESINO, DIONE BANCAS, SAMSON MAYAN, BASILIO TUMPAP, JR., RANIEL IGUALDO AND ARSEBINO TALABIS, IN THEIR CAPACITIES AS HEAD MEMBERS OF THE LAW-MAKING BODY OF BUGUIAS, THE HONORABLE DELPIN VICENTE, IN HIS CAPACITY AS SECRETARY OF THE SANGGUNIAN BAYAN OF BUGUIAS, THE HONORABLE MUNICIPAL TREASURER ANECITA C. SUYAT, IN HER CAPACITY AS THE HEAD OF THE MUNICIPAL TREASURY OFFICE OF BUGUIAS CHARGED WITH THE COLLECTION OF TAXES, FEES, CHARGES, LICENSES AND OTHER IMPOSITIONS, THE HONORABLE HILDA KIMAKIM, DANILO GANASI, GEORGE BATONAN, IN THEIR CAPACITIES AS HEAD OF THEIR RESPECTIVE DEPARTMENTS OF [LGU]-BUGUIAS AND THE OTHER HONORABLE HEADS OF THE OTHER DEPARTMENT OF LGU-BUGUIAS IMPOSING AND/OR COLLECTING FEES, CHARGES AND OTHER IMPOSITIONS, INVOKING AUTHORITY OF TAX ORDINANCE 03-98 WITH OR WITHOUT OFFICIAL RECEIPTS, DEFENDANTS-APPELLEES.

DECISION

SADANG, J.:

This is an appeal from the Order^[1] dated March 25, 2009 of the Regional Trial Court (RTC) of Abatan, Buguias, Benguet, Branch 64, in Civil Case No. 6408-CV-098, which dismissed plaintiffs-appellants' Petition^[2] for lack of cause of action.

Antecedents of the Appeal

On January 30, 2008, plaintiffs-appellants^[3] (hereafter, appellants), as constituents of Buguias, Benguet, filed in the RTC a Petition^[4] against defendants-appellees Municipal Government of Buguias, Benguet (MG-Buguias, for brevity), represented

by its elected officials and department heads, for the declaration of nullity of Municipal Tax Ordinance No. 03, series of 1998 (MTO 03-98) and the refund of taxes paid thereunder. They prayed for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction.

Appellants alleged that the illegality of MTO 03-98 was discovered in December 2006 when the Municipal Treasurer of Buguias started to impose on the vendors of Abatan Open Gym the amount of P10.00 per basket/sack a day on their goods, allegedly pursuant to said ordinance over and above the daily cash ticket ranging from P5.00 to P300.00 and the annual permits and licenses. Based on their research, it appeared that on September 4, 1998, the Sangguiang Bayan of Buguias (SB, for brevity) approved MTO 03-98. On February 18, 2000, the Provincial Legal Office of Benguet (PLO) favorably endorsed the ordinance to the Sangguniang Panlalawigan of Benguet (SP, for brevity). On March 15, 2000, the SP passed Resolution No. 00-173^[5] accepting the recommendation of the PLO and giving favorable review of MTO 03-98. Thereafter, the group of Atty. Severino Manuel Lumiqued and Concepcion Dangpa-Subangan submitted a letter^[6] to the SP to withdraw its endorsement of the ordinance on the ground that the requirements of hearing and publication were not complied with. The SP returned the ordinance to the SB for correction but nothing was done thereafter; however, the ordinance became the basis of taxation in Buguias.

Appellants alleged that: MTO 03-98 never became a law because there was no publication and public hearings; it provides for many penal sanctions and was not thoroughly studied as shown by the fact that it contains provisions which do not apply to Buguias and is full of grammatical and typographical errors; there are no official records showing compliance with Section 187 and Article 276 of R.A. 7160 (Local Government Code) on public hearings and publication of tax ordinances.

On February 20, 2008, the RTC issued a TRO^[7] enjoining the implementation of MTO 03-98. The RTC granted the TRO after it found in the record Resolution No. 168-2000^[8] of the SB, dated December 29, 2000, which urged Mayor Bay-an to suspend implementation of some provisions of MTO 03-98 *"for Current Year 2001 until such time that the Committee on Taxation would come up with their final recommendations on the proposal of the petitioners."*

MG-Buguias filed an Urgent Motion for Reconsideration^[9] of the issuance of the TRO contending that the suspension of MTO 03-98 was only for 2001. Further, the resolution contains no directive for its implementation and contravenes a valid tax ordinance.

Appellants filed an Opposition to Defendant's Motion for Reconsideration^[10] contending that Resolution 168-2000 is still good law.

In a Resolution,^[11] dated February 27, 2008, the lower court granted the Motion for Reconsideration of MG-Buguias and lifted the TRO.

On March 11, 2008, the MG-Buguias filed its Answer^[12] averring that: MTO 03-98 became a law when it was enacted by the SB in 1998 and took effect on January 2, 1999 upon approval by the SP, hence, there was legal basis to enforce it; public

hearings were conducted and notices thereof were posted and sent to interested parties as shown by the November 12, 1998 Minutes of the Regular Meeting^[13] of the SB and the November 20, 1998 Minutes of the Public Hearing.^[14]

By way of opposition to the application for TRO and preliminary injunction, MG-Buguias reiterated that the requirements of law for the enactment of MTO 03-98 were complied with and that the issuance of a TRO would jeopardize and paralyze the municipality. MG-Buguias cited Sec. 187 of RA No. 7160 which provides that pending an action questioning the legality of a tax ordinance, the effectivity thereof shall not be suspended.^[15]

As affirmative defense, MG-Buguias alleged that: it complied with the hearing and posting requirements; at its regular session on December 3, 1998, the SB unanimously approved the ordinance and during the period of one (1) month from said approval, no one questioned it; a Notice of Public Hearing^[16] was issued to all barangay captains, owners of stores and business establishment, NGOs, and others setting the hearing on November 20, 1998, 9 AM at the Municipal Hall, Abatan, Buguias;^[17] the SB resorted to posting in lieu of publication because there were no registered newspapers of local circulation in Buguias in 1998;^[18] copies of MTO 03-98 were posted^[19] in four conspicuous places on December 7, 1998, namely, the main lobby of the Municipal Hall, main entrance of the SB Hall, Buguias Police Station, and Barangay Hall of Loo, Buguias; letters of invitation, together with copies of the proposed tax ordinance were also sent to barangay officials, non-government organizations, owners of stores and business establishments requiring them to attend the public hearing; on November 20, 1998, MTO 03-98 was referred to the SP for review;^[20] upon favorable recommendation of the PLO,^[21] the SP, on March 15, 2000, passed Resolution No. 00-173^[22] approving the ordinance; on June 30, 2000, concerned stall owners sent a letter to the SP asking for the recall of the ordinance; the SP, per Resolution No. 00-496^[23] referred the letter to the SB for comment but did not suspend the implementation of MTO 03-98; the letter was intended for harassment because appellant Bul-long, being a lawyer and former executive assistant of then Vice-Governor Robert Tindaan could have easily advised Tindaan and the SP not to approve the tax ordinance.^[24]

By way of motion to dismiss, MG-Buguias alleged that under Section 187 of RA No. 7160, any question on the constitutionality or legality of tax ordinances may be raised on appeal within 30 days from the effectivity of the tax ordinance to the Secretary of Justice, which appellants failed to do.^[25] As counterclaim, MG-Buguias averred that the complaint had caused waste of public funds and official time for which it seeks P2million as damages.^[26]

Appellants filed an "Opposition to Defendants' Motion to Dismiss with Special Prayer before the Honorable Court to take Judicial Notice of the On-Going Revision of the Subject Ordinance."^[27]

On June 25, 2008, the SB-Buguias passed Municipal Ordinance No. 2008-17,^[28] otherwise known as "Buguias Municipal Revenue Code Revised 2008" (MO 2008-17) to take effect on October 1, 2008 and to supersede previous ordinances.

On January 19, 2009, MG-Buguias filed a Motion to Dismiss^[29] on the ground that appellants' action for declaration of nullity of MTO 03-98 had been mooted with the passage of MO 2008-17.

Appellants filed a "Vehement Opposition to Defendants' Second Motion to Dismiss"^[30] alleging that MO 2008-17 never became a law as it was referred by the SP to the Joint Committee on Ways and Means and Legal Matters pending a committee report to the plenary^[31] and that the validity of MTO 03-98 must first be resolved because if it is declared null and void it follows that MO 2008-17 is also null and void.

MG-Buguias filed a Rejoinder with Motion to Admit^[32] to which appellants filed a Reply to the Rejoinder.^[33] MG-Buguias filed Comment (to the Reply to the Rejoinder).^[34]

In the Order^[35] dated March 25, 2009, the lower court granted MG-Buguias' Motion to Dismiss and dismissed the Petition for lack of cause of action.

Appellants filed a Motion for Reconsideration^[36] but it was denied in an Order^[37] dated July 14, 2009, without prejudice to appellants' right to assail MO 2008-17 if it still contains defects and unjust provisions.

In this appeal, appellants raise the following:

MAIN ISSUE

WHETHER OR NOT APPELLANTS' CAUSE OF ACTION BECAME MOOT AND ACADEMIC BY VIRTUE OF THE PASSAGE OF A NEW TAX ORDINANCE.

SUB-ISSUES

1. WHETHER OR NOT THE COURT A *QUO* CORRECTLY INTERPRETED SB RESOLUTION NO. 168-2000 AND SB RESOLUTION NO. 2008-044 AS ITS BASIS IN LIFTING THE TEMPORARY RESTRAINING ORDER AND IN RULING THAT TAX ORDINANCE 03-98 WAS SUSPENDED FOR THE YEAR 2001 ONLY; and
2. WHETHER OR NOT TAX ORDINANCE 2008-17 IS VALID.

ASSIGNMENT OF ERRORS

1. THE LOWER COURT ERRED IN RULING THAT THE CHALLENGED ORDINANCE (TAX ORDINANCE 03-98) WAS SUSPENDED FOR THE YEAR 2001 ONLY:
2. THE LOWER COURT ERRED IN RULING THAT THE NEW MUNICIPAL TAX ORDINANCE [NO. 2008-17] WAS VALID; [AND]

3. THE LOWER COURT ERRED IN RULING THAT APPELLANTS' ACTION
BECAME MOOT AND ACADEMIC.^[38]

Appellees filed their Appellees' Brief^[39] to which appellants filed a Reply.^[40]

RULING

The appeal is not impressed with merit.

Appellants contend that the lower court did not resolve the issue of whether MTO 03-98 was suspended only for the year 2001. They argue that whether said ordinance "remains suspended to date" will determine if MG-Buguias validly taxed the people and whether the local officials are administratively liable. The contention is untenable.

Records show that MTO 03-98 was approved by the SP through Resolution No. 00-173; however, in view of the letters of concerned citizens, the SP, by Resolution No. 046, referred the matter to the SB for comment. Thereafter, the SB passed Resolution No. 168-2000 suspending implementation of the tax ordinance *"for Current Year 2001 until such time that the Committee on Taxation would come up with their final recommendations on the proposal of the petitioners."*

We sustain the contention of MG-Buguias that the suspension of MTO 03-98 was only for 2001 and that the committee on taxation should have submitted its recommendation on the proposal of the concerned citizens within that year. Records show that on February 21, 2008, the SB passed Resolution No. 2008-044.^[41] It appears from the whereas clauses of this resolution that Councilor Lesino, having been called upon by the SB to shed light on the issue, explained that "whether or not the assigned committee would come up with the recommendation or not within 2001, it is deemed understood that the resolution (Resolution 168-2000) has no bearing or effects anymore after December 31, 2001;" thus, the SB resolved to inform Mayor Bayacsan that Resolution No. 168-2000 "has no effect to Municipal Ordinance No. 03-98 after the end of year 2001." Considering that the legislative body that passed Resolution No. 168-2000 had interpreted its own ordinance, it is not for the lower court, or this Court, to second guess the legislative intent or meaning. Moreover, the records show that appellants did not question the ordinance via an appeal to the Secretary of Justice within 30 days from its approval by the SP. And even if they did, that would not have suspended the effectivity of said ordinance. Section 187 of RA No. 7160 clearly provides that pending an action questioning the legality of a tax ordinance, the effectivity thereof shall not be suspended. As the suspension of MTO 03-98 was only for 2001, it follows that it became effective after that year. It must also be noted in this regard, that there is nothing in the record to show that the SP recalled its approval of the ordinance.

Appellants contend that MO 2008-17 is procedurally infirm because the mandatory publication should have been done *after* said ordinance was approved by the SP "even if the SP had approved the ordinance *in toto* for it does not make sense for the law to require a review by a higher authority." They contend that MG-Buguias did not comply with Sections 188 and 511 of R.A. 7160 which, read together,