REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NATIONAL FOOD AUTHORITY, Represented by Edna T. Loveria in her capacity as Director of Legal Affairs Department, Petitioner,	CTA AC NO. 169
-versus-	Members:
HON JOSE T. TABOSARES, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT BRANCH 23, KIDAPAWAN CITY; CITY GOVERNMENT OF KIDAPAWAN; CITY TREASURER OF KIDAPAWAN, Respondents.	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.* Promulgated: NOV 03 2016 11:53 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

Before the Court are the following incidents:

1) Motion to dismiss and denial of prayer for temporary restraining order (TRO) and preliminary injunction incorporated in the Comment dated July 22, 2016, filed by respondent City Government of Kidapawan on August 4, 2016;[1]

2) Omnibus Motion (Urgent Motion for Early Resolution of the Prayer to Dismiss and a Motion to Suspend the Hearing of Petitioner's Interim Relief on August 30, 2016) dated August 15, 2016, also filed by

[1] Docket, pp. 286-290

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respondent City Government Kidapawan on August 22, 2016;

3) Comment/Opposition (To Respondent's Comment with Urgent Prayer for the Dismissal of the Petition dated July 22, 2016) filed by Petitioner National Food Authority (NFA) on September 6, 2016;

4) Very Urgent Manifestation dated September 15, 2016 filed by petitioner NFA on September 16, 2016;

5) Rejoinder (With Opposition to Petitioner's Very Urgent Manifestation dated September 16, 2016 filed by respondent City of Kidapawan on September 20, 2016;

6) Very Urgent Motion to Amend the Prayer with Manifestation filed by petitioner on October 13, 2016;

7) Comment with Summation of Important Legal Issues filed by respondent City Government of Kidapawan on October 19, 2016; and

8) Formal Offer of Exhibits filed by petitioner on October 20, 2016.

In its Comment (With Urgent Prayer for the Dismissal of the Petition and Denial of the TRO and Preliminary Injunction) filed on August 4, 2016, respondent City Government moves for the outright dismissal of the instant petition claiming that the remedy of certiorari taken by petitioner under Rule 65 of the Rules of Court to assail the **Order dated April 29, 2016** and the **Decision dated August 20, 2015,** both issued by the Regional Trial Court (RTC), is erroneous thereby depriving the Court of jurisdiction to entertain the same. The assailed Order of April 29, 2016, which denied petitioner's Motion for Reconsideration, is not an interlocutory order but a final order punctuating the issues determined in the similarly assailed Decision of August 20, 2015. Errors of judgment, according to respondent, cannot be proper subjects of a

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special civil action for certiorari. The proper remedy to correct the perceived errors of judgment committed by respondent RTC is a petition for review under Rule 42 of the 1997 Rules of Civil Procedure and pursuant to Section 7(a) of R.A. 9282. Further, certiorari will not lie where the remedy of appeal is available or the right to appeal is already lost occasioned by the wrongful choice of remedy as in the present case.

Further, respondent also failed to exhaust administrative remedies when it filed a Petition for Prohibition with respondent RTC to prevent enforcement of the collection of realty taxes by respondent City Government without first elevating within the reglementary period the adverse ruling of the Local Board of Assessment Appeals (LBAA) on the legality of the subject assessement to the Central Board of Assessment Appeals (CBAA). Although petitioner admitted that it erroneously challenged before LBAA the legality of the subject assessment issued against it by respondent City Government, it is nonetheless bound by the decision of the LBAA which consequently became final and executory precluding the RTC as well as this Court from acquiring jurisdiction over the case.

In its Omnibus Motion dated August 15, 2016, respondent City Government merely reiterates its prayer for the dismissal of the instant Petition for Certiorari and for the denial of petitioner's prayer for a Temporary Restraining Order (TRO) and Preliminary Injunction (PI), and moves for early resolution of its motion to dismiss.

In its Comment/Opposition (To Respondent's Comment with Urgent Prayer for the Dismissal of the Petition dated July 22, 2016), petitioner rejects the motion to dismiss arguing that the subject of the instant Petition for Certiorari is the denial of respondent RTC of its Motion for Reconsideration assailing the Decision dated August 20, 2015 on the ground that it was filed out of time. Allegedly, the said ruling is tainted with grave abuse of discretion since it presented proof that it timely filed its Motion for Reconsideration through registered mail on September 30, 2015 or within the 15-day period to appeal, having received the adverse RTC Decision of August 20, 2015 on September 16, 2015.

The LBAA Decision dated June 23, 2009 referred to by respondent City Government is of no moment as it merely questioned the Notice of Assessment of realty taxes for taxable year 2008 issued against it by respondent City Treasurer of Kidapawan CITY. Admittedly, the resort to the LBAA was not the proper remedy as it assailed not the correctness of the subject assessment which was within the jurisdiction of the LBAA but the authority of the respondent City Treasurer to issue such assessment. Petitioner also believes that the finality of the LBAA Decision dated June 23, 2009 can neither constitute *res judicata* nor a waiver on its part to avail the proper remedy under Rule 65 of the Rules of Court given that the main issue in the present petition is grave abuse of discretion amounting to lack of jurisdiction committed by respondent RTC when it denied petitioner's Motion for Reconsideration on the ground that it was filed out of time. A question of law is also raised in the present petition which is well within this Court's competence and beyond that of the LBAA.

Even assuming that the special civil action of certiorari under Rule 65 of the Rules of Court is not the proper remedy under the obtaining circumstances, still the instant case should not be dismissed. The Court has the discretion to treat the Petition for Certiorari as a Petition for Review especially considering that it was filed within the 15-day period for filing a regular appeal to this Court and errors of judgment on the part of the RTC were also raised.

In its Very Urgent Manifestation dated September 15, 2016, petitioner prays for the immediate resolution of its prayer for TRO and PI as it allegedly received from respondent City Treasurer of Kidapawan a Notice of Sale of Delinquent Real Properties set on October 6, 2016, hence, the need to enjoin the City Treasurer of Kidapawan from proceeding with the public sale of petitioner's property to enforce collection of realty taxes assessed against it. In addition, petitioner prays that the continuation of hearing on its motion to suspend collection of taxes previously set on October 11, 2016 be reset to an earlier date or before the said public sale.

On September 20, 2016, respondent City Government filed a Rejoinder reiterating its prayer for the outright

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dismissal of the instant petition and denial of petitioner's prayer for issuance of a TRO. Respondent City Government points out that the ancillary remedy prayed for is dependent on the main action. Since this Court has no jurisdiction over the main action, it follows that it also has no power to issue the TRO. Moreover, petitioner has not posted the required surety bond for the grant of the relief sought.

On October 13, 2016, petitioner filed a Very Urgent Motion to Amend the Prayer with Manifestation to include the nullification of the sale of its property during the public auction conducted on October 6, 2016 to satisfy its alleged realty tax liabilities.

On October 19, 2016, respondent City Government filed a Comment with Summation of Important Legal Issues basically reiterating its position advanced in its previous pleadings filed with the Court. In addition, it states that the pendency of the instant petition was not a bar to the conduct of a public sale of petitioner's properties for the satisfaction of its tax liabilities, pursuant to Article 358 of the Implementing Rules of the LGC and Rule 10 of the Revised Rules of the Court of Tax Appeals.

On October 17, 2016, petitioner filed Formal Offer of Exhibits in support of its prayer for issuance of a TRO/PI.

The Ruling of the Court

Unquestionably, the present action is a Petition for Certiorari filed under Rule 65 of the Revised Rules of Court. Petitioner itself declares in no uncertain terms the nature of its action as such in the heading "Nature of the Petition," and continued such pronouncement throughout the pleading.

Under Rule 65 of the Rules of Court, a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Such *cannot be used for any other purpose*, as its function is limited to keeping the inferior court within the

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bounds of its jurisdiction.[2] Certiorari will not lie to correct errors of judgment[3] or procedure or mistakes in the court's findings and conclusion.[4] The *raison d'etre* for the rule is when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a scenario, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision - not the jurisdiction of the court to render said decision - the same is beyond the province of a special civil action for *certiorari*.[5]

In a number of cases, the Supreme Court has ruled that a Rule 65 review is strictly confined to the determination of the propriety of the trial court's jurisdiction — whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction. x x x an ordinary appeal and a Rule 45 petition tackle errors committed by the trial court in the appreciation of the evidence and/or the application of law. In contrast, a Rule 65 petition resolves jurisdictional errors committed in the proceedings in the principal case. In sum, errors of judgment are the proper subjects of an ordinary appeal and in a Rule 45 petition; errors of jurisdiction are addressed in a Rule 65 petition.[6]

Applying the foregoing established principles in the present Petition for Certiorari filed under Rule 65 of the Revised Rules of Court, as insisted by petitioner, the only issue for resolution is whether respondent RTC acted with grave abuse of discretion amounting to lack of jurisdiction

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[2] Alfredo Tagle vs. Equitable PCI Bank (Formerly Philippine Commercial International Bank) and The Honorable Herminia V. Pasamba, Acting Presiding Judge, Regional Trial Court-Branch 82, City of Malolos, Bulacan, G.R. No. 172299, April 22, 2008
[3] New Frontier Sugar Corporation v. RTC, GR. No. 165001, January 31, 2007, 513 SCRA.
[4] Lee, et al. v. Court of Appeals, G. R. No. 137914, December 4, 2002, 393 SCRA 397; Microsoft Corporation v. Best Deal Computer Center, G.R. No. 148029, September 24, 2002, 389 SCRA 615.
[5] Land Bank of the Philippines vs. The Hon. Court of Appeals, Mamerta B. Rodriguez, Sps. Armando and Zenaida Sta Ana, El Observatorio De Manila Incorporada, Sps. Wilfredo and Aurora Posadas, Reginald F. Francisco, Bienvenido L. Maceda, Sps. Hector and Matilde Mendoza and Eugenio V. Romillo, G.R. No. 129368, August 25, 2003
[6] Arnold James M. Ysidoro vs. Hon. Teresita J. Leonardo- De Castro, et al., G.R. No. 171513, February 06, 2012 and People of the Philippines vs. First Division of the Sandiganbayan and Arnold James M. Ysidoro, G.R. NO. 190963

when it issued the assailed Order of April 29, 2016, which denied petitioner's Motion for Reconsideration for having been filed out of time and the similarly assailed Decision of August 20, 2015, which denied its Petition for Prohibition and upheld the validity of the assessment for realty taxes issued against it by the respondent City Government.

Grave abuse of discretion is defined as capricious or whimsical exercise of judgment equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility. It must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[7] On the other hand, excess of jurisdiction occurs when the court having jurisdiction fails to comply with the conditions prescribed for its exercise.[8]

A hard look at the arguments of petitioner in all its pleadings shows that it is actually questioning the correctness of the Order of April 29, 2016 which denied its Motion for Reconsideration challenging the wisdom or soundness of the Decision of August 20, 2015. Since the issue to be resolved by the Court is the correctness of the assailed Order and Decision both rendered by respondent RTC, the correct remedy is ordinary appeal to this Court via a Petition for Review under Rule 42[9] and not certiorari under Rule 65 of the Rules of Court, as amended.

Further, only in the presence of extraordinary circumstances evincing a patent disregard of justice and fair play where resort to a petition for *certiorari* is proper.[10] Precisely petitioner's contention that the Order dated April 29, 2016 denying its Motion for Reconsideration on the

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[7] Land Bank of the Philippines vs. The Hon. Court of Appeals, Mamerta B. Rodriguez, Sps. Armando and Zenaida Sta Ana, El Observatorio De Manila Incorporada, Sps. Wilfredo and Aurora Posadas, Reginald F. Francisco, Bienvenido L. Maceda, Sps. Hector and Matilde Mendoza and Eugenio V. Romillo, G.R. No. 129368, August 25, 2003; Julie's Franchise Corporation v. Ruiz, G.R. No. 180988, August 28, 2009, 597 SCRA 463
[8] Tengson v. Jocson, 43 Phil. 715.
[9] Section 11, Republic Act No. 1125, as amended, pertinently provides, as follows: x x x Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling x x x.
[10] Judy Anne L. Santos vs. People of the Philippines and Bureau of Internal Revenue, G.R. No. 173176, August 26, 2008

ground that it was filed out of time constitutes grave abuse of discretion could hardly seek refuge under Rule 65.

Even assuming that the RTC erred in holding that petitioner's Motion for Reconsideration was filed out of time, it is by no means extraoridinary and may be considered a simple mistake in the findings and conclusions of law and fact of respondent RTC. It cannot, by any stretch of imagination, be deemed a capricious and arbitrary exercise of authority to merit resort to the extraordinary remedy of certiorari.

Further, the nature of an action is determined by the material averments in the complaint and the character of the relief sought, not by the defenses asserted in the answer or motion to dismiss.[11]

In the Petition, petitioner prays for the following relief:

1. GRANTING Petitioner's prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction;

2. REVERSING the Order of the Respondent Regional Trial Court dated 29 April 2016 and HOLDING that Petitioner's Motion for Reconsideration was timely filed;

3. REVERSING the Decision dated 20 August 2015 of Respondent Regional Trial Court and HOLDING that Petitioner is a government instrumentality, thus, exempt from payment of real property taxes;

4. DECLARING the Notice of Assessment, Notice of Delinquency, Warrants of Levy and Notice of Sale involving Petitioner's real properties in Kidapawan City NULL and VOID;

5. ABSOLVING Pettiioner from any liability for real property taxes and DECLARING Petitioner's real properties EXEMPT from taxation;

6. PRHIBITING, ENJOINING and RESTRAINING Respondent's from making any future assessment and/or imposition of real property taxes upon Petitioner;

Note that except for the first and second, all relief sought pertain to the merits of the ruling in the challenged Decision of August 20, 2015. Clearly, petitioner seeks to correct the alleged flaws in the judgment of the respondent RTC, all of which are proper subject of an appeal.

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[11] Jimenez Jr, et al. and Jordana, G.R. No. 152526, November 25, 2004

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A hornbook rule also states that a petition for *certiorari* under Rule 65 is proper only if there is no appeal, or any plain speedy, and adequate remedy in the ordinary course of law,[12] or when the right to appeal exists[13] or if it was lost through the fault of of the petitioner such as in the instant case. The record shows that petitioner could have easily filed within the reglementary period an appeal to this Court through a petition for review under Rule 42 of the Rules of Court, as amended, and prayed for the same relief.

Unfortunately, petitioner squandered the opportunity for instead of elevating to this Court the assailed Order of April 29, 2016, it opted to seek a reconsideration of the said Order by filing a Very Urgent Manifestation[14] with the RTC. It was only when the RTC denied it in the Order dated May 25, 2016[15] that petitioner sought intervention of this Court through its Petition for Certiorari filed on June 9, 2016.

Obviously, petitioner failed to consider the basic tenet that the special civil action of *certiorari* is not and cannot be a substitute for an appeal where the latter is available especially if such loss or lapse was occasioned by one's own negligence or error in the choice of remedies.[16] A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file a petition for review. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal. Pursuant to Rule 56, Section 5(f) of the Revised Rules of Court, the instant Petition for *Certiorari* merits an outright dismissal for being wrong or inappropriate mode of appeal.[17]

On the alleged option to treat the present petition as an ordinary appeal as suggested by petitioner, jurisprudence has this to say:

> "It is true that in accordance with the liberal spirit pervading the Rules of Court and in the

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[12] Jesus G. Crisologo and Nanette B. Crisologo vs. Jewm Agro-Industrial Corporation, G.R. No. 196894, March 03, 2014

[13] MMDA v. Jancom Environmental Corporation, G.R. No. 147465, January 30, 2002, 375 SCRA 320

[14] Docket pp. 117-122

[15] Docket pp. 127-129

[16] Alfredo Tagle v. Equitable PCI Bank (Formerly Philippine Cormmercial International Bank) and the Honorable Herminia V. Pasamba, G.R. No. 172299, April 22, 2008

[17] Rebecca E. Badiola vs. Hon. Court of Appeals, The Office of the Ombudsman, and Lerma G. Abesamis, G.R. No. 170691, April 23, 2008

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> interest of substantial justice, this Court has, before, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules."[18]

The record shows that petitioner received the assailed Order dated April 29, 2016 on May 2, 2016,[19] hence, it had 30 days or until June 1, 2016 to file an ordinary appeal via a petition for review pursuant to Section 11[20] of Republic Act (R.A.) No. 1125, as amended. However, the present Petition for Certiorari was filed only on June 9, 2016, evidently beyond the reglementary period for the filing of a proper petition for review, thereby precludes the Court from treating it as such.

Even assuming that petitioner's arguments fall right into the groove, the intant petition will still be denied for lack of merit. The Local Government Code (LGC), upon its effectivity, has expressly withdrawn exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, instrumentalities and agencies of the national government, except those indicated in the same Code:

> Sec. 193. *Withdrawal of Tax Exemption Privileges*.- Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

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[18] Alfredo Tagle vs. Equitable PCI Bank (Formerly Philippine Commercial International Bank) and The Honorable Herminia V. Pasamba, Acting Presiding Judge, Regional Trial Court-Branch 82, City of Malolos, Bulacan, G.R. No. 172299, April 22, 2008

[19] Paragraphs 10 and 24, Petition For Certiorari dated June 8, 2016

[20] Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. x x x

The withdrawal of the exemption in Section 193 was upheld as follows:

> One of the most significant provisions of the LGC is the removal of the blanket exclusion of instrumentalities and agencies of the national government from the coverage of local taxation. Although as a general rule, LGUs cannot impose taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, this rule now admits an exception, i.e., when specific provisions of the LGC authorize the LGUs to impose taxes, fees or charges on the aforementioned entities, *viz*:
>
> > "Section 133. *Common Limitations on the Taxing Powers of the Local Government Units*.- **Unless otherwise provided herein**, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
> >
> > xxx xxx xxx
> >
> > (o) Taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, and local government units."
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> x x x x x x x x x
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> As a rule, tax exemptions are construed strongly against the claimant. Exemptions must be shown to exist clearly and categorically, and supported by clear legal provisions. In the case at bar, the petitioner's sole refuge is section 13 of Rep. Act No. 6395 exempting from, among others, "all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities." However, Section 193 of the LGC withdrew, subject to limited exceptions, the sweeping tax privileges previously enjoyed by private and public corporations. Contrary to the contention of petitioner, Section 193 of the LGC is an express, albeit general, repeal of all statutes granting tax exemptions from local taxes. x x
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> It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. Not being a local water district, a cooperative registered under R.A. No. 6938, or a non-stock and non-profit hospital or educational institution, petitioner clearly does not belong to the exception. It is therefore incumbent upon the petitioner to

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point to some provisions of the LGC that expressly grant it exemption from local taxes.[21]

Moreover, Section 234 of the Local Government Code (LGC) enumerates the properties exempt from payment of real property and petitioner is not included in the enumeration, hence, it is excluded by virtue of the said provision, which reads as follows:

Section 234. *Exemptions from Real Property Tax*. - The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environment protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code. (emphasis ours)

Expounding on the foregoing provision, the Supreme Court held, to wit:

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from

[21] National Power Corporation vs. City of Cabanatuan, G.R. No. 149110, April 09, 2003

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> payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its Charter, R.A. No. 6958, has been withdrawn.[22]

Under the maxim *expressio unius exclusion alterius*, the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. This rule, as a guide to probable legistaltive intent, is based upon the rules of logic and natural workings of the human mind.[23]

On petitioner's contention that it is not liable for real property taxes for being a government instrumentality, suffice it to say that such contention, as admitted by petitioner itself, is merely based on the opinion it sought from the Office of the Government Corporate Counsel (OGCC). In other words, it has no legal mooring as to bind this Court. The OGCC is not a judicial or quasi-judicial entity, hence, its opinion has no binding force upon the courts.[24]

Corollarily, Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a government-owned or controlled corporation as follows:

> SEC. 2. *General Terms Defined.* - x x x x
>
> (13) *Government-owned or controlled corporation* refers to any agency **organized as a stock or**

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[22] Mactan Cebu International Airport Authority vs. Hon. Ferdinand J. Marcos, In his capacity as the Presiding Judge of the Regional Trial Court, Branch 20, Cebu City, The City of Cebu, Represented by its Mayor, Hon. Tomas R. Osmeña, and Eustaquio B. Cesa, G.R. No. 120082, September 11, 1996

[23] Municipality of Nueva Era, Ilocos Norte, represented by its Municipal Mayor, Caroloine Arzadon-Garvida vs. Municipality of Marcos, Ilocos Norte, represented by its Municipal Mayor, Salvador Pillos, and the Honorable Court of Appeals, G.R. No. 169435, February 27, 2008.

[24] Development Bank of the Philippines, National Development Company and National Steel Corporation vs. Judge Amir Pundogar, in his capacity as Presiding Judge of the Regional Trial Court of Iligan City, 12th Judicial Region, Branch III, Fernando Jacinto, Jacinto Steel, Inc., and Iligan Integrated Steel Mills, Inc., G.R. No. 96921 January 29, 1993

> **non-stock corporation,** vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x. (Emphasis supplied)

A government-owned or controlled corporation must be "**organized as a stock or non-stock corporation.**" x x x Section 3 of the Corporation Code defines a stock corporation as one whose "**capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x.** [25]

Based on its Charter, namely, Presidential Decree (PD) No. 1770, specifically Section 9 [26] thereof, petitioner was organized as a stock corporation, it reads:

> Section 9. *Capitalization.* The Authority shall have an authorized capital stock of five billion pesos, divided into fifty million shares of par value of one hundred pesos each. These shares shall be wholly subscribed and paid by the national government, local government units, or other government owned or controlled corporations.

Indeed, petitioner cannot legally insist that it is a government instrumentality exempt from payment of real property tax for it has been held that a government instrumentality cannot, at the same time, be a stock corporation, to wit:

> Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "instrumentality" as follows:
>
> SEC. 2. *General Terms Defined.* - x x x x

[25] Id.
[26] **RECONSTITUTING THE NATIONAL GRAINS AUTHORITY TO THE NATIONAL FOOD AUTHORITY, BROADENING ITS FUNCTIONS AND POWERS AND FOR OTHER PURPOSES**

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> (10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. x x x
>
> When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. **Unless** the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. [27] (emphasis ours)

In fine, since petitioner is a stock corporation, it cannot be deemed a government instrumentality.

WHEREFORE, the motion to dismiss incorporated in the Comment dated July 22, 2016 file by respondent City Government of Kidapawan (City Government) is hereby **GRANTED**.

Accordingly, the Petition for Certiorari (under Rule 65 of the Rules of Court) with Prayer for TRO and/or Writ of Preliminary Injunction dated June 8, 2016 filed by petitioner NFA, is hereby **DISMISSED**, rendering the other incidents moot and academic.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[27] Manila International Airport Authority vs. Court of Appeals, City of Parañaque, City Mayor of Parañaque, Sangguniang Panglungsod ng Parañaque, City Assessor of Parañaque, and City Treasurer of Parañaque, G.R. NO. 155650, July 20, 2006

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We concur:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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