REPUBLIC OF THE PHILIPPINES
*Court Of Tax Appeals*
QUEZON CITY

## ***SECOND DIVISION***

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| MANILA ELECTRIC COMPANY (MERALCO), ***Petitioner,*** | **C.T.A. AC NO. 14** **(RTC Civil Case No. 7126)** Members: |
| -versus- | CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ. |
| CITY GOVERNMENT OF BATANGAS, THE SANGGUNIANG PANLUNSOD OF BATANGAS and THE CITY TREASURER OF BATANGAS, ***Respondents.*** | **Promulgated:** APR 18 2006 |

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# DECISION

**PALANCA-ENRIQUEZ, J.:**

**THE CASE**

This is an appeal from the Decision, dated April 1, 2005, rendered by the Regional Trial Court of Batangas City, Branch 3, in Civil Case No. 7126, entitled "Manila Electric Company vs. City of Batangas, et al.", the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, this Court finds

(a) Section 88 of the Batangas City Tax Code of 2002 valid and Petitioner is liable to pay the rental fees therein provided.

(b) The prayer for the issuance of a writ of injunction is hereby denied for lack of merit.

SO ORDERED."

and the Order dated July 12, 2005 denying petitioner's Motion For Reconsideration, which reads as follows:

"ORDER

There being no new issues raised by the petitioner in its Motion For Reconsideration since the same had already been passed upon by the Court and considering that the Court had likewise declared the constitutionality of the ordinance and that the liability of the petitioner to pay rental fees had been clearly and lucidly explained by this Court in view of the enactment of a valid ordinance, and considering further, that the issues involved are purely questions of law which was agreed upon by the parties to be resolved by this Court, petitioner's Motion For Reconsideration of the Court Decision being meritless is hereby DENIED.

SO ORDERED."

**THE FACTS**

The facts of this case, as culled from the records, are as follows:

Sometime in 2002, respondent City of Batangas revised its *1992 Tax Code* and subsequently enacted *Ordinance No. 20, Series of 2001,* otherwise known as the *Batangas City Tax Code of 2002, Section 88* of which is hereunder quoted, to wit:

> "Section 88. RENTAL FEES
>
> xxx xxx
>
> B. RENTAL FEES ON GOVERNMENT FACILITIES AND PROPERTY
>
> There shall be imposed rental fees for the use of government facilities and property on the following:
>
> xxx xxx
>
> 5. Government Property
>
> | | |
> |---|---|
> | a. Per post or pole erected by Utility companies | php 100.00 per post or pole per year |
>
> xxx xxx."

Said *2002 City Tax Code* took effect on January 1, 2002.

In the conduct of its business, Manila Electric Company (hereafter "petitioner") had installed and continues to install posts/poles to hold the distribution lines necessary to bring electric energy to the consumers in Batangas City.

On May 21, 2002, petitioner filed Application No. 4340-200202-0003rl for the installation of an electric pole in J. Pastor St., Public Market, in the City of Batangas and it was being charged the rental fee for the pole, pursuant to the hereinabove-quoted provision of the *Batangas City Tax Code*.

On July 19, 2002, petitioner, instead of paying the fee imposed by the respondents, filed the instant action with the court a quo for Declaratory Relief and Injunction with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction.

On September 3, 2002, respondents through their City Legal Office, filed their answer.

During the pendency of the case, particularly on October 14, 2002, pursuant to *Section 88 (B) (5) of the Batangas City Tax Code of 2002*, respondent City Treasurer sent a letter of demand to the petitioner to remit the amount of P440, 900.00 representing the total rental fees of the

4,409 poles/posts erected by the latter at the city at the rate of P100.00 per pole/post, per year.

On December 10, 2002, petitioner protested the subject assessment by filing a letter protest with the respondent City Treasurer, pursuant to *Section 195 of the Local Government Code*.

Respondent City Treasurer has failed to rule on the protest, which amounted to a denial thereof. Hence, on March 12, 2003, petitioner filed with the trial court a "Motion To Admit Appended Supplemental Petition", by way of appealing the assessment.

On November 19, 2003, the trial court admitted the Supplemental Petition.

On December 9, 2004, upon motion of petitioner, the trial court issued on Order, which reads as follows:

> "ORDER
>
> Acting on the petitioner's Motion To Set the Case for Hearing on the Prayer for Issuance of Writ of Preliminary Injunction, which the Court finds to be well taken, the same is hereby GRANTED.
>
> Accordingly, set this case for hearing on the prayer for issuance of Writ of Preliminary Injunction on January 21, 2005 at 2:00 o'clock in the afternoon.

SO ORDERED."

At the scheduled hearing on the application for the issuance of a Writ of Preliminary Injunction on January 21, 2005, the trial court issued an Order, which reads as follows:

"ORDER

In today's hearing on the Motion To Set Case for Hearing on the Prayer for issuance of Writ of Preliminary Injunction, parties agreed, that since the issue involved is a question of law, they opted to file their respective Memorandum to decipher whether the subject ordinance is legal or otherwise and they are given time to make their respective reply and thereafter the Court shall act accordingly.

In the meantime, the resolution of the preliminary injunction on the part of petitioner and the collection of the city treasurer with respect to the alleged rental are agreed to be held in abeyance.

SO ORDERED."

In compliance with this Order, both parties filed their respective memoranda.

On April 1, 2005, the court a quo rendered the assailed Decision in favor of the respondents in the terms earlier set forth.

On April 20, 2005, petitioner filed its "Motion For Reconsideration" of the decision, which the court a quo denied for lack of merit on July 12, 2005.

Hence, this appeal.

On August 30, 2005, the Court required respondents to comment on the petition, within ten (10) days from notice, and granted petitioner five (5) days from receipt of respondents' comment within which to file its Reply, if necessary.

On September 23, 2005, respondents filed their "Comments on the Petition For Review".

On October 14, 2005, petitioner filed its "Reply".

On November 7, 2005, respondents filed their "Rejoinder".

On November 11, 2005, We gave due course to the petition and granted the parties thirty (30) days from notice within which to file their simultaneous memoranda, afterwhich the petition shall be considered submitted for decision.

On December 21, 2005, respondents filed their "Memorandum", and on December 22, 2005, respondent City Government of Batangas filed its "Supplement To the Respondent's Memorandum".

On January 23, 2006, petitioner filed its "Memorandum".

On February 1, 2006, the case was deemed submitted for decision.

**THE ISSUES**

The petition raises the following issues:

I

WHETHER OR NOT THE COURT *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN DECIDING THE ENTIRE CASE AFTER THE HEARING ON THE PRAYER FOR A WRIT OF PRELIMINARY INJUNCTION.

II

WHETHER OR NOT THE COURT *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN DECIDING THE CASE ON PURE QUESTION OF LAW AND WITHOUT TRIAL, DESPITE THE EXISTENCE OF FACTUAL ISSUES.

III

WHETHER OR NOT PETITIONER WAS DENIED DUE PROCESS OF LAW WHEN IT WAS DENIED THE OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF ITS PETITION.

IV

WHETHER OR NOT SECTION 88B OF THE BATANGAS TAX CODE OF 2002 IS A VALID ORDINANCE AS THE SUBJECT MATTER THEREOF IS OUTSIDE THE COMMERCE OF MAN.

V

WHETHER OR NOT THE COURT *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN UPHOLDING THE POWER OF BATANGAS CITY TO IMPOSE RENTAL FEES ON PETITIONER'S ELECTRIC POLES WITHOUT EVIDENCE THAT THE POLES ARE ERECTED ON PUBLIC ROADS FUNDED AND CONSTRUCTED BY SAID CITY.

*Petitioner's Theory*

Petitioner claims that:

1) The trial judge committed grave abuse of discretion and serious error in deciding the entire case on purely questions of law.

2) The trial court committed grave abuse of discretion and serious error in denying petitioner the right to present evidence.

3) The trial court seriously erred in concluding that the general provisions of *Article 424* in relation to *Article 1347 of the*

*Civil Code of the Philippines* referring to patrimonial and property of public dominion cannot prevail over the express provisions of *Section 155 of the Local Government Code of 1991.*

4) The trial court seriously erred in concluding that *Section 88(B) of the Batangas City Tax Code* is valid.

*Respondents' Theory*

Respondents, on the other hand, argue that:

1) The rental fee imposed under *Section 88(B)(5)(a) of the Batangas City Tax Code of 2002* is well within the taxing power of the City of Batangas, as provided under *R.A. 7160.*

2) Injunction cannot be issued against the respondents for enforcing a valid ordinance.

3) The Honorable Court has no jurisdiction over the instant case.

4) Petitioner is in estoppel.

5) Petitioner had its day in court.

## THE COURT'S RULING

The petition should be granted.

The decisive issue to be resolved is whether or not the trial court erred in ordering petitioner liable to pay the rental fees provided in said *Section 88 of the Batangas City Tax Code of 2002*.

In its assailed decision, the trial court found *Section 88 of the Batangas City Tax Code of 2002* as valid and ordered petitioner liable to pay the rental fees thereon provided, and denied for lack of merit the prayer for the issuance of a writ of injunction in the light of its findings, to wit:

> "Deciphering parties respective allegations, the court noted, that the issue to be resolved by this Court is whether or not the Petitioner is liable to pay rental fees for the posts/poles it erects on government property as provided in Section 88 (B)(5)(b) of the Batangas City Tax Code for 2005.
>
> This issue is resolved in the affirmative.
>
> Times are past when local government units can not impose taxes and fees unless such power is delegated to them. The 1987 Constitution of the Philippines has clearly changed all that. Today, local government units, by express provision of Article X Section 5 of the Constitution are empowered to impose taxes and create their own sources of revenue.

Thus, the Constitution provides:

> 'Section 5. Each local government unit shall have the power to create its own sources of revenue and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the local governments.'

This constitutional mandate is amplified in Section 129 of the Local Government Code which quoted verbatim the aforesaid provision of the Constitution.

In the exercise of this power, the local government units under Section 155 of the same Code may impose toll fees or charges for the use of any public road, pier or wharf, waterway, bridge, ferry, telecommunications system funded and constructed by the government, subject, however, to the limitations provided by law that the taxes, fees and charges imposed shall not be unjust, excessive, oppressive and confiscatory.

This grant of power to the local government units to create their own sources of revenue is in line with the present national policy of devolution – to make the local government units responsible for the revenues needed by them to finance and support their myriad activities for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress and prosperity of the people.

To the mind of the Court, the rental fees being collected by the Respondents from the petitioner are in the nature of toll fees or charges for the use of public roads and other facilities funded and constructed by the government.

The general provisions of Section 424 in relation to Art. 1347 of the Civil Code of the Philippines referring to patrimonial and property of public dominion can not prevail over the express provisions of Section 155 of the Local Government Code of 1991 which prescribes the manner of the imposition and the collection of toll fees and charges on public roads and other facilities constructed by the government. Aside from the fact that Articles 424 and 1347 of the Civil Code are of general application, Section 155 of the Local Government Code are specific provisions of a later legislation. It is a basic principle of law that specific provisions of law prevail over general ones. (Rosario Valera, et al., v. Mariano Tuazon, Jr., et al. G.R. # L-1276. April 30, 1948)

Further, this court is not convinced that pursuant to the provisions of Section 88 of the Batangas City Tax Code, in relation to Section 155 of the Local Government Code, a contract of lease is necessary in the imposition and collection of the fees therein provided.

While petitioner has enjoyed for a long time the use of public roads and other government facilities for free under the Deed of Assignment executed by and between the petitioner and the Respondent City of Batangas in April, 1992, it does not estop the latter from regulating such right and collecting compensation therefor. As stated beforehand, the right of the Respondents to collect toll fees from the petitioner is expressly provided under Section 155 of the Local Government Code. This is true notwithstanding the enactment of RA 9209 otherwise known as the Meralco Franchise. There is no provision in RA 9209 which prohibits in anyway local government units from enacting ordinances intended to impose and collect tolls and other fees from the Petitioner.

In the case of Mascarina et al. v. Eastern College, et al. L-48974, November 29, 1988, it was held that '(a) though the easement for the servient estate x x x. In the determination of the proper compensation, Section 649 of the Civil Code is very explicit: 'If the passage is permanent, pay the value of the land occupied by the path plus damages. If temporary, pay for the damages caused.'

This Court is not unaware of the fact that the petitioner is a private corporation primarily formed and organized to earn profits. While petitioner provides electric services to the public, such service is merely incidental or secondary to the purpose for which the Petitioner was created. Petitioner's electric service is not provided to all who needs it. Petitioner provides electricity to those and only those who can afford to pay for it. Being a private entity primarily organized for profits, petitioner is liable to pay the rental fees provided for in Section 88 of the Batangas City Code.

The mere allegation that the rental fees imposed by the Respondents under Section 88 of the Batangas City Code of 2002 are unjust, excessive, oppressive and confiscatory is not enough. Such claim must be supported by clear and convincing evidence. On this point, Petitioner has miserably failed to present any. Absent of proof, this Court can not support the proposition that Section 88 of the Batangas City Tax Code of 2002 is invalid. It may be added significantly, that the ordinance enacted was in conformity with the charter, the same did not contravene the constitution and the same is consistent with the general laws and policy of the estate. It did not contravene common right, general and impartial in its application and the court believes that the same is reasonable and not oppressive. Hence, the said ordinance satisfies the requirements for its validity.

> There being no ground, this court has no alternative but to deny the issuance of the provisional remedy of injunction as prayed for by the Petitioner. For the injunctive writ to be issued, it must be shown that (a) there exists a right in ease to be protected; (b) the act against which the injunction is to be directed is a violation of such right. (China Banking Corporation v. Court of Appeals, G.R. No. 121158, December 5, 1996; Viray v. Court of Appeals 191 SCRA 308, [1990]).
>
> Petitioner failed to show that Section 88 of the Batangas City Tax Code is not a valid legislation. As a matter of fact, the Office of the Solicitor General has, in its pleadings, sustained the validity of the Ordinance.
>
> xxx xxx."

A reading of the aforequoted decision of the trial court shows that the case was decided on the basis of the parties' memoranda, without a valid trial on the merits. While the original petition filed on July 22, 2002 is one for Declaratory Relief and Injunction with Application For Issuance of Temporary Restraining Order and Writ of Preliminary Injunction, record shows that on March 12, 2003, petitioner filed a "Motion To Admit Amended Supplemental Petition", which the trial court granted in its Order of November 19, 2003, and the Supplemental Petition was admitted.

In its Supplemental Petition, petitioner appealed the assessment made by the respondent City Treasurer enforcing *Section 88 of the Batangas City Tax Code of 2002.*

With the admission of the Supplemental Petition, the question of whether or not the assessment made by the respondent City Treasurer of Batangas City has factual and legal basis has been put in issue and this involves the factual determination of whether the poles of the petitioner were installed on roads funded and constructed by the respondent City.

The trial court clearly erred in ruling that the case involves a pure question of law, when in fact the trial court has also to determine the factual issue of whether the posts/poles of petitioner were erected on roads funded and constructed by the respondent City of Batangas so as to justify the imposition by respondent City of a yearly rental fee of P100.00 per pole on the 4,409 poles of the petitioner.

The determination of this factual issue is left to the findings and judgment of the trial court, according to the circumstances of the case, but only after a full blown trial where both parties will have the opportunity to present their respective evidence. This determination is very material in this case, in the light of the provisions of *Section 155 of the Local Government Code*, to wit:

> "SEC. 155. *Toll Fees or Charges.* – The sanggunian concerned may prescribe the terms and conditions and fix the rates for the imposition of toll fees or charges for the use of any public road, pier or wharf, waterway, bridge, ferry or telecommunication system funded and constructed by the local government unit concerned: *Provided*, That no such toll fees and charges shall be collected from officers and enlisted men of the Armed Forces of the Philippines and members of the Philippine National Police on mission, post office personnel delivering mail, physically-handicapped, and disabled citizens who are sixty-five (65) years or older.
>
> When public safety and welfare so requires, the sanggunian concerned may discontinue the collection of the tolls, and thereafter the said facility shall be free and open for public use."

Pursuant to *Section 155 of the Local Government Code*, the authority of the local government unit concerned to impose toll fees or charges thereunder is subject to the concurrence of the following conditions, to wit:

1) The toll fees are imposed only for the use of the public road, pier or wharf, waterway, bridge, ferry or telecommunication system; and

2) The public road, pier or wharf, waterway, bridge, ferry or telecommunication system are funded and constructed by the local government unit concerned.

*Section 155*, thus, clearly provides that the public road must have been funded and constructed by the local government unit concerned for the latter to legally impose toll fees or charges for the use thereof.

There must be proof that the posts of petitioner were erected on roads funded and constructed by the respondent City of Batangas. Without proof, the assessment will have no factual and legal basis.

The trial court disposed of the case, at the time when what was up for resolution was only the application for a writ of preliminary injunction and when trial has not even started and, despite the repeated pleas of counsel for petitioner at the scheduled hearing on January 21, 2005 that the case be set for ocular inspection and commissioner's hearing to ascertain whether the subject poles/posts of petitioner were erected on roads funded and constructed by the respondent City (*TSN, January 21, 2005, pp. 15-25*).

Moreover, the trial court further ruled as follows:

"To the mind of the Court, the rental fees being collected by the Respondents from the Petitioner are in the nature of toll fees or charges for the use of public roads and other facilities funded and constructed by the government. The general provisions of Article 424 in relation to Art. 1347 of the Civil Code of the Philippines referring to patrimonial and property of public dominion can not prevail over the express provisions of Section 155 of the Local Government Code of 1991 which prescribes the manner of the imposition and the collection of toll fees and charges on public roads and other facilities constructed by the government. x x x."

The trial court misquoted *Section 155 of the Local Government Code*. The qualification that the "x x x the public road, x x x funded and constructed by the local government unit concerned" had noticeably disappeared.

At any rate, this case is being remanded to the court of origin for trial on the merits and no prejudice can be caused to respondents if both parties are allowed to present their respective evidence to determine whether the assessment made by the respondent City Treasurer has factual and legal basis.

**WHEREFORE**, premises considered, the petition is hereby **GRANTED** and the assailed Decision, dated April 1, 2005, and Order, dated July 12, 2005, are **REVERSED** and **SET ASIDE**. This case is remanded to the Regional Trial Court of Batangas City, Branch 3, for further proceedings.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

**WE CONCUR:**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

# ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairman, Second Division

# CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

**ERNESTO D. ACOSTA**
Presiding Justice