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[G.R. No. 117577. December 1, 1995]

ALEJANDRO B. TY AND MVR PICTURE TUBE, INC., *petitioners, vs.* THE HON. AURELIO C. TRAMPE, in his capacity as Judge of the Regional Trial Court of Pasig, Metro Manila, THE HON. SECRETARY OF FINANCE, THE MUNICIPAL ASSESSOR OF PASIG AND THE MUNICIPAL TREASURER OF PASIG, *respondents.*

SYLLABUS

1. **STATUTORY CONSTRUCTION; REPEALS BY IMPLICATION NOT FAVORED; P.D. 921, NOT REPEALED BY RA 7160 (LOCAL GOVERNMENT CODE).—** Although R.A. 7160 (Local Government Code of 1991) has a repealing provision (Section 534), if the intention of the legislature was to abrogate P.D. 921, it would have included it in such repealing clause. Hence, any repeal or modification of P.D. 921 can only be possible under par. (f) of Section 534 which partakes of the nature of a general repealing provision. It is a basic rule of statutory construction that repeals by implication are not favored. An implied repeal will not be allowed unless it is convincingly and unambiguously demonstrated that the two laws are so clearly repugnant and patently inconsistent that they cannot co-exist. This is based on the rationale that the will of the legislature cannot be overturned by the judicial function of construction and interpretation. Their function is to try to harmonize, as much as possible, seeming conflicts in the laws and resolve doubts in favor of their validity and co-existence. Presidential Decree No. 921 was promulgated on 12 April 1976, with the aim of, *inter alia*, evolving "a progressive revenue raising program that will not unduly burden the tax payers x x x" in Metropolitan Manila. Hence, it provided for the "administration of local financial services

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in Metropolitan Manila" only, and for this purpose, divided the area into four Local Treasury and Assessment Districts, regulated the duties and functions of the treasurers and assessors in the cities and municipalities in said area and spelled out the process of assessing, imposing and distributing the proceeds of real estate taxes therein. Upon the other hand, Republic Act No. 7160, otherwise "known and cited as the 'Local Government Code of 1991'" took effect on 01 January 1992. It declared "genuine and meaningful local autonomy" as a policy of the state. Such policy was meant to decentralize government "powers, authority, responsibilities and resources" from the national government to the local government units "to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals." In the formulation and implementation of policies and measures on local autonomy, "(l)ocal government units may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them." From the above, it is clear that the two laws are not co-extensive and mutually inclusive in their scope and purpose. While R.A. 7160 covers almost all governmental functions delegated to local government units all over the country, P.D. 921 embraces only the Metropolitan Manila area and is limited to the administration of financial services therein, especially the assessment and collection of real estate (and some other local) taxes. Coming down to specifics, Sec. 9 of P.D. 921 requires that the schedule of values of real properties in the Metropolitan Manila area shall be prepared *jointly* by the city assessors in the districts created therein; while Sec. 212 of R.A. 7160 states that the schedule shall be prepared "by the provincial, city and municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the sanggunian concerned. x x x" It is obvious that harmony in these provisions is not only possible, but in fact desirable, necessary and consistent with the legislative intent and policy.

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2. **ADMINISTRATIVE LAW; RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTION IS WHERE CONTROVERSY INVOLVED IS ONLY QUESTION OF LAW.**— Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law. In the present case, the parties already agreed "that the issues in the petition are legal" and thus, no evidence was presented. In laying down the powers of the Local Board of Assessment Appeals, R.A. 7160 provides in Sec. 229 (b) that "(t)he proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts x x x." It follows that appeals to this Board may be fruitful only where questions of fact are involved. Again, the protest contemplated under Sec. 252 of R.A. 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of *any* increase.

3. **STATUTORY CONSTRUCTION; QUESTION OF CONSTITUTIONALITY; RULE.**— The constitutionality of a law, regulation, ordinance or act will not be resolved by courts if the controversy can be, as in this case it has been, settled on other grounds. In the recent case of *Macasiano vs. National Housing Authority*, this Court declared: "It is a rule firmly entrenched in our jurisprudence that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case, i.e., the issue of constitutionality must be the very *lis mota* presented. To reiterate, the essential

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requisites for a successful judicial inquiry into the constitutionality of a law are: (a) the existence of an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, (b) the constitutional question must be raised by a proper party, (c) the constitutional question must be raised at the earliest opportunity, and (d) *the resolution of the constitutional question must be necessary to the decision of the case.*" In view of the foregoing ruling, the question may be asked: what happens to real estate tax payments already made prior to its promulgation and finality? Under the law, "the taxpayer may file a written claim for refund or credit for taxes and interests x x x."

APPEARANCES OF COUNSEL

Medel, Macam, Del Rosario, Collado & Polines for petitioners.

Chuchi D.S. Tan for respondents Pasig Municipal Treasurer and Municipal Assessors.

The Solicitor General for respondents.

DECISION

PANGANIBAN, *J.*:

ARE THE INCREASED REAL ESTATE TAXES imposed by and being collected in the Municipality (now City) of Pasig, effective from the year 1994, valid and legal? This is the question brought before this Court for resolution.

The Parties

Petitioner Alejandro B. Ty is a resident of and registered owner of lands and buildings in the Municipality (now City) of Pasig, while petitioner MVR Picture Tube, Inc. is a corporation duly organized and existing under Philippine

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laws and is likewise a registered owner of lands and buildings in said Municipality.[1]

Respondent Aurelio C. Trampe is being sued in his capacity as presiding judge of Branch 163, Regional Trial Court of the National Capital Judicial Region, sitting in Pasig, whose Decision dated 14 July 1994 and Order dated 30 September 1994 in Special Civil Action No. 629 (entitled "Alejandro B. Ty and MVR Picture Tube, Inc. *vs.* The Hon. Secretary of Finance, et al.") are sought to be set aside. Respondent Secretary of Finance is impleaded as the government officer who approved the Schedule of Market Values used as basis for the new tax assessments being enforced by respondents Municipal Assessor and Municipal Treasurer of Pasig and the legality of which is being questioned in this petition.[2]

The Antecedent Facts

On 06 January 1994, respondent Assessor sent a notice of assessment respecting certain real properties of petitioners located in Pasig, Metro Manila. In a letter dated 18 March 1994, petitioners through counsel "request(ed) the Municipal Assessor to reconsider the subject assessments."[3]

Not satisfied, petitioners on 29 March 1994 filed with the Regional Trial Court of the National Capital Judicial Region, Branch 163, presided over by respondent Judge, a Petition for Prohibition with prayer for a restraining order and/or writ of preliminary injunction to declare null and void the new tax assessments and to enjoin the collection of real estate taxes based on said assessments. In a Decision[4] dated 14 July 1994, respondent Judge denied the petition "for lack of merit" in the following disposition:

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[1] Pars. 1.1 and 1.2. Petition: *rollo*, p. 15.

[2] Pars. 1.3 and 1.4. Petition; *rollo*, pp. 15-16.

[3] Annex "A", Petition: *rollo*, pp. 49-53.

[4] *Rollo*, pp. 68-76.

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"WHEREFORE, foregoing premises considered, petitioners' prayer to declare unconstitutional the schedule of market values as prepared by the Municipal Assessor of Pasig, Metro Manila, and to enjoin permanently the Municipal Treasurer of Pasig, Metro Manila, from collecting the real property taxes based thereof (sic) is hereby DENIED for lack of merit. Cost (sic) *de oficio*."

Subsequently, petitioners' Motion for Reconsideration was also denied by respondent Judge in an Order[5] dated 30 September 1994.

Rebuffed by said Decision and Order, petitioners filed this present Petition for Review directly before this Court, raising pure questions of law and assigning the following errors:

"The Court *a quo* gravely erred in holding that Presidential Decree No. 921 was expressly repealed by R.A. 7160 and that said presidential decree including its Implementing Rules (P.D. 464) went down to the statutes' graveyard together with the other decision(s) of the Supreme Court affecting the same.

"The Court *a quo* while holding that the new tax assessments have tremendously increased ranging from 418.8% to 570%, gravely erred in blaming petitioners for their failure to exhaust administrative remedies provided for by law.

"The Court *a quo* blatantly erred in not declaring the confiscatory and oppressive nature of the assessments as illegal, void *ab initio* and unconstitutional constituting a deprivation of property without due process of law."[6]

In a resolution dated 21 November 1994, this Court, without giving due course to the petition, required respondents to comment thereon. Respondents Municipal Treasurer and Municipal Assessor, through counsel, filed their Comment on 19 December 1994, and respondent Secretary of Finance, through the Solicitor General, submitted his on 11 May

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[5] *Rollo*, pp. 77-80.

[6] *Rollo*, p. 18.

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1995. Petitioners filed their Reply to the Comment of respondent Assessor and Treasurer 06 January 1995, and their Reply to that of the respondent Secretary on 18 May 1995. After careful deliberation on the above pleadings, the Court resolved to give due course to the petition, and, inasmuch as the issues are relatively simple, the Court dispensed with requiring the parties to submit further memoranda and instead decided to consider the respondents' respective Comments as their answers and memoranda. Thus the case is now considered submitted for resolution.

The Issues

The issues brought by the parties for decision by this Court are:

1. Whether Republic Act No. 7160, otherwise known as the Local Government Code of 1991, repealed the provisions of Presidential Decree No. 921;

2. Whether petitioners are required to exhaust administrative remedies prior to seeking judicial relief; and

3. Whether the new tax assessments are oppressive and confiscatory, and therefore unconstitutional.

In disposing of the above issues against petitioners, the court *a quo* ruled that the schedule of market values and the assessments based thereon prepared *solely* by respondent assessor are valid and legal, they having been prepared in accordance with the provisions of the Local Government Code of 1991 (R.A. 7160). It held also that said Code had effectively repealed the previous law on the matter, P.D. 921, which required, in the preparation of said schedule, *joint* action by all the city and municipal assessors in the Metropolitan Manila area. The lower court also faulted petitioners with failure to exhaust administrative remedies provided under Sections 226 and 252 of R.A. 7160. Finally, it found the questioned assessments consistent with the

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"tremendously increased . . . price of real estate anywhere in the country."[7]

Stated the court:

"This Court is inclined to agree with the view of defendants that R.A. 7160 in its repealing clause provide (sic) that Presidential Decree Nos. x x x 464 x x x are hereby repealed and rendered of no force and effect. Hence said presidential decrees including their implementing rules went down to the statutes' graveyard together with the decisions of the Supreme Court on cases effecting (sic) the same.

"This Court is also in accord with respondents (sic) view that petitioners failed to avail of either Section 226 of R.A. 7160, that is by appealing the assessment of their properties to the Board of Assessment Appeal within sixty (60) days from the date of receipt of the written Notice of Assessment, and if it is true that petitioner (sic) as alleged in their pleadings was not afforded the opportunity to appeal to the board of assessment appeal, then they could have availed of the provisions of Section 252, of the same R.A. 7160 by paying the real estate tax under protest. Because of petitioners (sic) failure to avail of either Sections 226 or 252 of R.A. 7160, they failed to exhaust administratives (sic) remedies provided for by law before bringing the case to Court. (Buayan Cattle Co., Inc. *vs.* Quintillan, 128 SCRA 276) Therefore the filing of this case before this Court is premature, the same not falling under the exception because the issue involved is not a question of law but of fact (Valmonte *vs.* Belmonte. Jr., 170 SCRA 256).

"Petitioners also alleged that the New Tax Assessments are not only oppressive and confiscatory but also destructive in view of the tremendous increase in its valuation, from P855,360.00 to P4,121,280.00 a marked increase of 418.8% of one of its properties,

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[7] In their Comment, however, respondent Assessor and Treasurer admitted that the "new assessments sent to petitioners on January 26, 1994 seemed to be excessive" even as they justified the same by saying that "no assessments were made since 1983" (*rollo*, p. 224). Indeed, the undisputed percentages of increases ranging as high as 833% (*rollo*, p. 26) may appear to be exorbitant.

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while the other, from P857,600.00 to P4,374,410.00, an increased (sic) of 510%. This Court agree (sic) with petitioners (sic) observation, but the reality (sic) the price of real property anywhere in the country tremendously increased. This is shown in the Real Estate Monitor of Econotic Incorporated (copy attached with the memorandum of respondents). For example real properties in Pasig in 1991 located at the Ortigas Commercial Complex command (sic) a price of P42,000.00 per square meter which price is supported by a case filed before this Court (civil case no. 64506, Jesus Fajardo, et al. *vs.* Ortigas and Co.) for Recovery (sic) of agents (sic) commission. The property subject of the sale which was also located at the Ortigas Commercial Complex at Pasig, Metro Manila was sold to a Taiwanese at P42,000.00 per square meter. It is therefore not surprising that the assessment of real properties in Pasig has increased tremendously. Had petitioners first exhausted administrative remedies they would have realized the fact that prices of real estate has (sic) tremendously increased and would have known the reason/reasons why."[8]

In its Order dated 30 September 1994 denying the Motion for Reconsideration, the court *a quo* ruled:

"This Court despite petitioners' exhaustive and thorough research and discussion of the point in issue, is still inclined to sustain the view that P.D. 921 was impliedly repealed by R.A. 7160. P.D. 921 to the mind of this Court is an implementing law of P.D. 464, Sections 3, 6, 9, 12 and 13 of said P.D. provide how certain provisions of P.D. 464 shall be implemented. Since P.D. 464 was expressly repealed by R.A. 7160, P.D. 921 must necessarily be considered repealed, otherwise, what should Sections 3,6, 9, 12 and 13 of P.D. 921 implement? And, had the law makers intended to have said P.D. 921 remain valid and enforceable they would have provided so in R.A. 7160. Since there is none, P.D. 921 must be considered repealed."[9]

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[8] *Rollo*, pp. 75-76.

[9] *Rollo*, p. 79.

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Re: The First Issue:

Repeal of P.D. 921?

To resolve the first issue, it is necessary to revisit the following provisions of law:

1. Section 15 of P.D. No. 464, promulgated on 20 May 1974, otherwise known as the Real Property Tax Code:

"SEC. 15. Preparation of Schedule of Values.— Before any general revision of property assessments is made, as provided in this Code, there shall be prepared for the province or city a Schedule of Market Value for the different classes of real property therein situated in such form and detail as shall be prescribed by the Secretary of Finance.

"Said schedule, together with an abstract of the data (on) which it is based, shall be submitted to the Secretary of Finance for review not later than the thirty-first day of December immediately preceding the calendar year the general revision of assessments shall be undertaken. The Secretary of Finance shall have ninety days from the date of receipt within which to review said schedule to determine whether it conforms with the provisions of this Code."

2. Subsequently, on 12 April 1976, P.D. 921 was promulgated, which in Section 9 thereof, states:

"SEC. 9. Preparation of Schedule of Values for Real Property within the Metropolitan Area. The Schedule of Values that will serve as the basis for the appraisal and assessment for taxation purposes of real properties located within the Metropolitan Area shall be prepared jointly by the City Assessors of the Districts created under Section one hereof, with the City Assessor of Manila acting as Chairman, in accordance with the pertinent provisions of Presidential Decree No. 464, as amended, otherwise known as the Real Property Tax Code, and the implementing rules and regulations thereof issued by the Secretary of Finance."

3. Section One of P.D. 921, referred to above, provides:

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"SEC. 1. Division of Metropolitan Manila into Local Treasury and Assessment Districts. For purposes of effective fiscal management, Metropolitan Manila is hereby divided into the following Local Treasury and Assessment Districts:

First District	- Manila
Second District	- Quezon City, Pasig, Marikina, Mandaluyong and San Juan
Third District	- Caloocan City, Malabon, Navotas and Valenzuela
Fourth District	- Pasay City, Makati, Paranaque, Muntinlupa, Las Pinas, Pateros and Taguig

"Manila, Quezon City, Caloocan City and Pasay City shall be the respective Centers of the aforesaid Treasury and Assessment Districts."

4. On 01 January 1992, Republic Act No. 7160, otherwise known as the Local Government Code of 1991, took effect. Section 212 of said law is quoted as follows:

"SEC. 212. Preparation of Schedule of Fair Market Values.— Before any general revision of property assessment is made pursuant to the provisions of this Title, there shall be prepared a schedule of fair market values by the provincial. city and the municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the sanggunian concerned. The schedule of fair market values shall be published in a newspaper of general circulation in the province, city or municipality concerned, or in the absence thereof, shall be posted in the provincial capitol, city or municipal hall and in two other conspicuous public place therein."

5. The repealing clause of R.A. 7160 found in Section 534 thereof is hereby reproduced as follows:

"SEC. 534. Repealing Clause.

(a) x x x

(b) x x x

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(c) x x x; and Presidential Decree Nos. 381, 436, *464*, 477, 626, 632,752, and 1136 are *hereby repealed and rendered of no force and effect.*

x x x x x x x x x

(f) All general and special laws, acts, city charter, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly." (italics supplied)

It is obvious from the above provisions of R.A. 7160, specifically Sec. 534, that P.D. 921 was NOT EXPRESSLY repealed by said statute. Thus, the question is: Was P.D. 921 IMPLIEDLY repealed by R.A. 7160?

Petitioners contend that, contrary to the aforequoted Decision of the lower court, "whether the assessment is made before or after the effectivity of R.A. 7160, the observance of, and compliance with, the explicit requirement of P.D. 921 is strict and mandatory either" because P.D. 921 was not impliedly repealed by R.A. 7160 and is therefore still the applicable statute, or because the Supreme Court, in three related cases[10] promulgated on 16 December 1993 — after the Local Government Code of 1991 already took effect — ruled that a schedule of market values and the corresponding assessments based thereon "prepared *solely* by the city assessor x x x failed to comply with the explicit requirement (of collegial and joint action by all the assessors in the Metropolitan Manila area under P.D. 921) x x x and are on that account illegal and void."

On the other hand, respondents aver that Section 9 of P.D. 921 and Section 212 of R.A. 7160 are clearly and unequivocally

[10] Ismael A. Mathay. Jr. *vs.* Victor Macalincag, et al., G.R. No. 97618; Rufino S. Javier *vs.* Victor Macalincag. et al., G.R. No. 97760, and Consuelo Puyat-Reyes *vs.* Secretary of Finance, et al., G.R. No. 102319, 16 December 1993, 228 SCRA 519.

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incompatible because they dwell on the same subject matter, namely, the preparation of a schedule of values for real property within the Metropolitan Manila Area. Under P.D. 921, the schedule shall be prepared *jointly* by the city assessors of the District, while, under R.A. 7160, such schedule shall be prepared "by the provincial, city and municipal assessors of the municipalities within the Metropolitan Manila area x x x." Furthermore, they claim that "Section 9 (of P.D. 921) merely supplement(ed) Section 15 of P.D. 464 in so far as the preparation of the schedule of values in Metro Manila (is concerned)." Thus, "with the express repeal of P.D. 464 x x x P.D. 921 x x x can not therefore exist independently on its own." They also argue that although the aforecited Supreme Court decision was promulgated after R.A. 7160 took effect, "the assessment of the Municipal Assessors in those three (3) cited cases were assessed in 1990 prior to the effectivity of the Code." Hence, the doctrine in said cases cannot be applied to those prepared in 1994 under R.A. 7160.

We rule for petitioners.

R.A. 7160 has a repealing provision (Section 534) and, if the intention of the legislature was to abrogate P.D. 921, it would have included it in such repealing clause, as it did in expressly rendering of no force and effect several other presidential decrees. Hence, any repeal or modification of P.D. 921 can only be possible under par. (f) of said Section 534, as follows:

"(f) All general and special laws, acts, city charter, decrees, executive orders, proclamations and administrative regulations, part or parts thereof which are inconsistent with any of the provisions of the Code are hereby repealed or modified accordingly."

The foregoing partakes of the nature of a general repealing provision. It is a basic rule of statutory construction that repeals by implication are not favored. An implied repeal will not be allowed unless it is convincingly and unambiguously

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demonstrated that the two laws are so clearly repugnant and patently inconsistent that they cannot co-exist. This is based on the rationale that the will of the legislature cannot be overturned by the judicial function of construction and interpretation. Courts cannot take the place of Congress in repealing statutes. Their function is to try to harmonize, as much as possible, seeming conflicts in the laws and resolve doubts in favor of their validity and co-existence.

In *Villegas v. Subido*[11] the issue raised before the Court was whether the Decentralization Act had the effect of repealing what was specifically ordained in the Charter of the City of Manila. Under the Charter, it was provided in its Section 22 that "The President of the Philippines with the consent of the Commission on Appointments shall appoint . . . the City Treasurer and his Assistant." Under the Decentralization Act, it was provided that "All other employees, except teachers paid out of provincial, city or municipal general funds and other local funds shall . . . be appointed by the provincial governor, city or municipal mayor upon recommendation of the head of office concerned."

The Court, in holding that there was no implied repeal in this case,[12] said:

"x x x It has been the constant holding of this Court that repeals by implication are not favored and will not be so declared unless it be manifest that the legislature so intended. Such a doctrine goes as far back as United States *v.* Reyes, a 1908 decision (10 Phil. 423. Cf. U.S. *v.* Academia, 10 Phil. 431 [1908]). It is necessary then before such a repeal is deemed to exist that it be shown that the statutes or statutory provisions deal with the same subject matter and that the latter be inconsistent with the former. (Cf. Calderon *v.* Provincia del Santisimo Rosario, 28 Phil. 164 [1914]). There must be a showing of repugnancy clear and convincing in

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[11] 41 SCRA 190 [1971].

[12] *Id.*, at pp. 196-198.

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character. The language used in the latter statute must be such as to render it irreconcilable with what has been formerly enacted. An inconsistency that falls short of that standard does not suffice. What is needed is a manifest indication of the legislative purpose to repeal. [citing numerous cases]

"More specifically, a subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifest. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act. This principle has likewise been consistently applied in decisions of this Court from Manila Railroad Co. *v.* Rafferty (40 Phil. 224), decided as far back as 1919. A citation from an opinion of Justice Tuason is illuminating. Thus: 'From another angle the presumption against repeal is stronger. A special law is not regarded as having been amended or repealed by a general law unless the intent to repeal or alter is manifest. *Generalia specialibus non derogant.* And this is true although the terms of the general act are broad enough to include the matter in the special statute. * * * At any rate, in the event harmony between provisions of this type in the same law or in two laws is impossible, the specific provision controls unless the statute, considered in its entirety, indicates a contrary intention upon the part of the legislature. * * * A general law is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class, while a special act is one which relates to particular persons or things of a class.' (citing Valera *v.* Tuason, 80 Phil. 823, 827-828 [1948].)"

In the relatively recent case of *Mecano vs. Commission on Audit*,[13] the Court *en banc* had occasion to reiterate and to reinforce the rule against implied repeals, as follows:

"Repeal by implication proceeds on the premise that where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention

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[13] 216 SCRA 500 (11 December 1992) at 505-506.

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must be given effect. Hence, before there can be a repeal, there must be a clear showing on the part of the law maker that the intent in enacting the new law was to abrogate the old one. The intention to repeal must be clear and manifest; otherwise, at least, as a general rule, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue so far as the two acts are the same from the time of the first enactment.

"There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.

"Implied repeal by irreconcilable inconsistency take place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is that one law cannot be enforced without nullifying the other."

In the same vein, but in different words, this Court ruled in *Gordon vs. Veridiano*[14]:

"Courts of justice, when confronted with apparently conflicting statutes, should endeavor to reconcile the same instead of declaring outright the invalidity of one as against the other. Such alacrity should be avoided. The wise policy is for the judge to harmonize them if this is possible, bearing in mind that they are equally the handiwork of the same legislature, and so give effect to both while at the same time also according due respect to a coordinate department of the government. It is this policy the Court will apply in arriving at the interpretation of the laws above-cited and the conclusions that should follow therefrom."

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[14] 167 SCRA 51 (November 8, 1988) at 58-59. See also, among others, Bocobo *vs.* Estanislao, 72 SCRA 520 [1916]; Lechoco *vs.* Civil Aeronautics Board, 43 SCRA 670 [1972]; Valera *vs.* Tuason, 80 Phil. 623 [1948].

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In the instant case, and using the Courts' standard for implied repeal in *Mecano*, we compared the two laws.

Presidential Decree No. 921 was promulgated on 12 April 1976, with the aim of, *inter alia*, evolving "a progressive revenue raising program that will not unduly burden the tax payers x x x"[15] in Metropolitan Manila. Hence, it provided for the "administration of local financial services in Metropolitan Manila" only, and for this purpose, divided the area into four Local Treasury and Assessment Districts, regulated the duties and functions of the treasurers and assessors in the cities and municipalities in said area and spelled out the process of assessing, imposing and distributing the proceeds of real estate taxes therein.

Upon the other hand, Republic Act No. 7160, otherwise "known and cited as the 'Local Government Code of 1991'"[16] took effect on 01 January 1992.[17] It declared "genuine and meaningful local autonomy" as a policy of the state. Such policy was meant to decentralize government "powers, authority, responsibilities and resources" from the national government to the local government units "to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals."[18] In the formulation and implementation of policies and measures on local autonomy, "(l)ocal government units may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them."[19]

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[15] See second "Whereas" clause in the Preamble, P.D. 921.

[16] Sec. 1, R.A. 7160.

[17] Sec. 536, R.A. 7160.

[18] Sec. 2, R.A. 7160.

[19] Sec. 3(f), RA. 7160.

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From the above, it is clear that the two laws are not co-extensive and mutually inclusive in their scope and purpose. While R.A. 7160 covers almost all governmental functions delegated to local government units all over the country, P.D. 921 embraces only the Metropolitan Manila area and is limited to the administration of financial services therein, especially the assessment and collection of real estate (and some other local) taxes.

Coming down to specifics, Sec. 9 of P.D. 921 requires that the schedule of values of real properties in the Metropolitan Manila area shall be prepared *jointly* by the city assessors in the districts created therein; while Sec. 212 of R.A. 7160 states that the schedule shall be prepared "by the provincial, city and municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the sanggunian concerned. x x x"

It is obvious that harmony in these provisions is not only possible, but in fact desirable, necessary and consistent with the legislative intent and policy. By reading together and harmonizing these two provisions, we arrive at the following steps in the preparation of the said schedule, as follows:

1. The assessor in each municipality or city in the Metropolitan Manila area shall prepare his/her proposed schedule of values, in accordance with Sec. 212, R.A. 7160.

2. Then, the Local Treasury and Assessment District shall meet, per Sec. 9, P.D. 921. In the instant case, that district shall be composed of the assessors in Quezon City, Pasig, Marikina, Mandaluyong and San Juan, pursuant to Sec. 1 of said P.D. In this meeting, the different assessors shall compare their individual assessments, discuss and thereafter jointly agree and

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produce a schedule of values for their district, taking into account the preamble of said P.D. that they should evolve "a progressive revenue raising program that will not unduly burden the taxpayers."

3. The schedule jointly agreed upon by the assessors shall then be published in a newspaper of general circulation and submitted to the sanggunian concerned for enactment by ordinance, per Sec. 212, R.A. 7160.

By this harmonization, both the preamble of P.D. 921 decreeing that the real estate taxes shall "not unduly burden the taxpayer" and the "operative principle of decentralization" provided under Sec. 3, R.A. 7160 encouraging local government units to "consolidate or coordinate their efforts, services and resources" shall be fulfilled. Indeed, the essence of joint local action for common good so cherished in the Local Government Code finds concrete expression in this harmonization.

How about respondents' claim that, with the express repeal of P.D. 464, P.D. 921 — being merely a "supplement" of said P.D. — cannot "exist independently on its own"? Quite the contrary is true. By harmonizing P.D. 921 with R.A. 7160, we have just demonstrated that it can exist outside of P.D. 464, as a support, supplement and extension of R.A. 7160, which for this purpose, has replaced P.D. 464.

Since it is now clear that P.D. 921 is still good law, it is equally clear that this Court's ruling in the Mathay/Javier/ Puyat-Reyes cases (*supra*) is still the prevailing and applicable doctrine. And, applying the said ruling in the present case, it is likewise clear that the schedule of values prepared *solely* by the respondent municipal assessor is illegal and void.

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Re: The Second Issue:

Exhaustion of Administrative Remedies

We now come to the second issue. The provisions of Sections 226 and 252 of R.A. 7160, being material to this issue, are set forth below:

"Sec. 226. *Local Board of Assessment Appeals.*— Any owner person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

"Sec. 252. *Payment under Protest.*— (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code."

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Respondents argue that this case is premature because petitioners neither appealed the questioned assessments on their properties to the Board of Assessment Appeal, pursuant to Sec. 226, nor paid the taxes under protest, per Sec. 252.

We do not agree. Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law.[20] In the present case, the parties, even during the proceedings in the lower court on 11 April 1994, already agreed "that the issues in the petition are legal,"[21] and thus, no evidence was presented in said court.

In laying down the powers of the Local Board of Assessment Appeals, R.A. 7160 provides in Sec. 229 (b) that "(t)he proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts x x x". It follows that appeals to this Board may be fruitful only where questions of fact are involved. Again, the protest contemplated under Sec. 252 of R.A. 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the

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[20] Cf. Bagatsing *vs.* Ramirez, 74 SCRA 306 [1976]; Brett *vs.* IAC, 191 SCRA 687, 27 November 1990; Sunville Timber Products, Inc. *vs.* Alfonso G. Abad, 206 SCRA 482 [1992]; Corona *vs.* CA, 214 SCRA 378 [1992], citing Quisumbing *vs.* Gumban, 193 SCRA 520 [1991]; Carino, et al. *vs.* Agricultural Credit and Cooperative Financing Administration, et al., 18 SCRA 183 [1966]; Rocamora *vs.* RTC - Cebu (Branch VIII), 167 SCRA 615 [1988]; Caltex Phils., Inc. *vs.* Palomar, L-19650, 29 September 1966, 18 SCRA 247.

[21] Decision, p. 5; *rollo*, p. 72.

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assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of *any* increase.

Finally, it will be noted that in the consolidated cases of Mathay/Javier/Puyat-Reyes cited earlier, the Supreme Court referred the petitions (which similarly questioned the schedules of market values prepared solely by the respective assessors in the local government units concerned) to the Board of Assessment Appeal, not for the latter to exercise its appellate jurisdiction, but rather to act only as a fact-finding commission. Said the Court[22] thru Chief Justice Andres R. Narvasa:

"On November 5, 1991, the Court issued a Resolution clarifying its earlier one of May 16, 1991. It pointed out that the authority of the Central Board of Assessment Appeals 'to take cognizance of the factual issues raised in these two cases by virtue of the referral by this Court in the exercise of its extraordinary or certiorari jurisdiction should not be confused with its appellate jurisdiction over appealed assessment cases under Section 36 of P.D. 464 otherwise known as the Real Property Tax Code. The Board is not acting in its appellate jurisdiction in the instant cases, but rather, it is acting as a Court-appointed fact-finding commission to assist the Court in resolving the factual issues raised in G.R. Nos. 97618 and 97760.'"

In other words. the Court gave due course to the petitions therein in spite of the fact that the petitioners had not, *a priori*, exhausted administrative remedies by filing an appeal before said Board. Because there were factual issues raised in the Mathay, et al. cases, the Supreme Court constituted the Central Board of Assessment Appeals as a fact finding body to assist the Court in resolving said factual issues. But in the instant proceedings, there are no such factual issues. Therefore, there is no reason to require petitioners to exhaust the administrative remedies provided in R.A. 7160, nor to mandate a referral by this Court to said Board.

[22] *Supra*, at p. 523.

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Re: The Third Issue:

Constitutionality of the Assessments

Having already definitively disposed of the case through the resolution of the foregoing two issues, we find no more need to pass upon the third. It is axiomatic that the constitutionality of a law, regulation, ordinance or act will not be resolved by courts if the controversy can be, as in this case it has been, settled on other grounds. In the recent case of *Macasiano vs. National Housing Authority*,[23] this Court declared:

"It is a rule firmly entrenched in our jurisprudence that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case, i.e., the issue of constitutionality must be the very *lis mota* presented. To reiterate, the essential requisites for a successful judicial inquiry into the constitutionality of a law are: (a) the existence of an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, (b) the constitutional question must be raised by a proper party, (c) the constitutional question must be raised at the earliest opportunity, and (d) *the resolution of the constitutional question must be necessary to the decision of the case*." (Italics supplied)

The aforequoted decision in *Macasiano* merely reiterated the ruling in *Laurel vs. Garcia*,[24] where this Court held:

"The Court does not ordinarily pass upon constitutional questions unless these questions are properly raised in appropriate cases and their resolution is necessary for the determination of the case (People *v.* Vera, 65 Phil. 56 [1937]). *The Court will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other ground such as the application of a statute or general law* (Siler *v.* Louisville

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[23] 224 SCRA 236 [1993], at p. 242.

[24] 187 SCRA 797 [1990], at p. 813.

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and Nashville R. Co., 213 U.S. 175, [1909], Railroad Commission *v.* Pullman Co., 312 U.S. 496 [1941])."[25] (Italics supplied)

In view of the foregoing ruling, the question may be asked: what happens to real estate tax payments already made prior to its promulgation and finality? Under the law,[26] "the taxpayer may file a written claim for refund or credit for taxes and interests x x x."

Finally, this Tribunal would be remiss in its duty as guardian of the judicial branch if we let pass unnoticed the ease by which the respondent Judge consigned "to the statutes' graveyard" a legislative enactment "together with the (three) decisions of the Supreme Court" promulgated jointly and unanimously en banc. An elementary regard for the sacredness of laws and the stability of judicial doctrines laid down by superior authority should have constrained him to be more circumspect in rendering his decision and to spell out carefully and precisely the reasons for his decision to invalidate such acts, instead of imperiously decreeing an implied repeal. He knows or should have known the legal precedents against implied repeals. Respondent Judge, in his decision, did not even make an attempt to try to reconcile or harmonize the laws involved. Instead, he just unceremoniously swept them and this Court's decisions into the dustbin of "judicial history."

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[25] See also Dumlao *vs.* COMELEC, 95 SCRA 392 [1980]; National Economic Protectionism Association *vs.* Ongpin, 171 SCRA 657 [1989]; Association of Small Landowners in the Philippines, Inc. *vs.* Secretary of Agrarian Reform, 175 SCRA 343 [1989]; Garcia *vs.* Executive Secretary, 204 SCRA 516 [1991].

[26] Sec. 253. *Repayment of Excessive Collections.* When an assessment of basic real property tax, or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment." (R.A. 7160).

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In his future acts and decisions, he is admonished to be more judicious in setting aside established laws, doctrines and precedents.

WHEREFORE, judgment is hereby rendered REVERSING and SETTING ASIDE the questioned Decision and Order of respondent Judge, DECLARING as null and void the questioned Schedule of Market Values for properties in Pasig City prepared by respondent Assessor, as well as the corresponding assessments and real estate tax increases based thereon; and ENJOINING the respondent Treasurer from collecting the real estate tax increases made on the basis of said Schedule and assessments. No costs.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, and *Hermosisima, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 118509. December 1, 1995]

LIMKETKAI SONS MILLING, INC., *petitioner, vs.* COURT OF APPEALS, BANK OF THE PHILIPPINE ISLANDS and NATIONAL BOOK STORE, *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; PHASES AND PERFECTION; CASE AT BAR.—** The phases that a contract goes through may be summarized as follows: a. preparation, conception or generation, which is the period of negotiation and bargaining, ending at the moment of agreement of the