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[G.R. No. 154126. October 11, 2005]

ALLIED BANKING CORPORATION AS TRUSTEE FOR THE TRUST FUND OF COLLEGE ASSURANCE PLAN PHILIPPINES, INC. (CAP), *petitioner, vs.* **THE QUEZON CITY GOVERNMENT, THE QUEZON CITY TREASURER, THE QUEZON CITY ASSESSOR AND THE CITY MAYOR OF QUEZON CITY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; ADMINISTRATIVE REMEDIES MUST FIRST BE EXHAUSTED BEFORE RESORT TO JUDICIAL ACTION CAN PROSPER; EXCEPTION.— 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. Nevertheless, while cases raising purely legal questions are excepted from the rule requiring exhaustion of administrative remedies before a party may resort to the courts, petitioner, in the case at bar, does not raise just pure questions of law. Its cause of action requires the determination of *the amount of real property tax paid under protest* and the *amount of attorney's fees.* These issues are essentially questions of fact which preclude this Court from reviewing the same.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE COURT *A QUO* ARE CONCLUSIVE UPON THE SUPREME COURT; EXCEPTIONS.— Raising questions of fact is moreover inappropriate in an appeal by *certiorari* under Rule 45 of the Rules of Court where only questions of law may be reviewed. It is axiomatic that the Supreme Court is not a trier of facts and the factual findings of the court *a quo* are conclusive upon it, except: (1) where the conclusion is a finding grounded entirely on speculation, surmise and

Supreme Court E-Library

conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; and (4) where the judgment is based on a misapprehension of facts, and the findings of fact of the trial court are premised on the absence of evidence and are contradicted by evidence on record.

3. ID.; COURTS; SHOULD NOT RESOLVE THE CONSTITUTIONALITY OF A LAW IF THE CONTROVERSY CAN BE SETTLED ON OTHER GROUNDS. — As a rule, the courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds.

4. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL REVIEW; REQUISITES.— Where questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are complied: *First*, there must be before the Court an actual case calling for the exercise of judicial review. *Second*, the question before the Court must be ripe for adjudication. *Third*, the person challenging the validity of the act must have standing to challenge. *Fourth*, the question of constitutionality must have been raised at the earliest opportunity, and *lastly*, the issue of constitutionality must be the very *lis mota* of the case.

5. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; REAL PROPERTY TAXATION; APPRAISAL OF REAL PROPERTY; REAL PROPERTIES SHALL BE APPRAISED AT THE CURRENT AND FAIR MARKET VALUE PREVAILING IN THE LOCALITY WHERE THE PROPERTY IS SITUATED AND CLASSIFIED FOR ASSESSMENT PURPOSES ON THE BASIS OF ITS ACTUAL USE.— [R]eal properties shall be appraised at the current and fair market value prevailing in the locality where the property is situated and classified for assessment purposes on the basis of its actual use. "Fair market value" is the price at which a property may be sold by a seller who is not compelled to sell and bought by a buyer who is not compelled to buy, taking into consideration all uses to which the property is adapted and might in reason be applied. The criterion established by the statute contemplates a hypothetical sale. Hence, the buyers need not be actual and existing purchasers. xxx Using the consideration appearing in the deed of conveyance

Supreme Court E-Library

to assess or appraise real properties is not only illegal since "the appraisal, assessment, levy and collection of real property tax shall not be let to any private person," but it will completely destroy the fundamental principle in real property taxation – that real property shall be classified, valued and assessed on the basis of its *actual use* regardless of where located, whoever owns it, and whoever uses it. Necessarily, allowing the parties to a private sale to dictate the fair market value of the property will dispense with the distinctions of actual use stated in the Code and in the regulations.

6. ID.; ID.; ID.; ID.; ID.; ID.; APPROACHES IN ESTIMATING THE FAIR MARKET VALUE AS SUGGESTED IN LOCAL ASSESSMENT REGULATIONS NO. 1-92.— As this Court stressed in *Reyes v. Almanzor*, assessors, in fixing the value of real property, have to consider all the circumstances and elements of value, and must exercise prudent discretion in reaching conclusions. In this regard, Local Assessment Regulations No. 1-92 establishes the guidelines to assist assessors in classifying, appraising and assessing real property. Local Assessment Regulations No. 1-92 suggests three approaches in estimating the fair market value, namely: (1) the sales analysis or market data approach; (2) the income capitalization approach; and (3) the replacement or reproduction cost approach. Under the sales analysis approach, the price paid in actual market transactions is considered by taking into account valid sales data accumulated from among the various sources stated in Sections 202, 203, 208, 209, 210, 211 and 213 of the Code. In the income capitalization approach, the value of an income-producing property is no more than the return derived from it. An analysis of the income produced is necessary in order to estimate the sum which might be invested in the purchase of the property. The reproduction cost approach, on the other hand, is a factual approach used exclusively in appraising man-made improvements such as buildings and other structures, based on such data as materials and labor costs to reproduce a new replica of the improvement. The assessor uses any or all of these approaches in analyzing the data gathered to arrive at the estimated fair market value to be included in the ordinance containing the schedule of fair market values.

Supreme Court E-Library

7. ID.; ID.; ID.; LOCAL GOVERNMENT UNITS; AN ORDINANCE THAT CONTRAVENES ANY STATUTE IS *ULTRA VIRES* AND VOID; CASE AT BAR.— [T]his Court holds that the proviso directing that the real property tax be based on the actual amount reflected in the deed of conveyance or the prevailing BIR zonal value is invalid not only because it mandates an exclusive rule in determining the fair market value but more so because it departs from the established procedures stated in the Local Assessment Regulations No. 1-92 and unduly interferes with the duties statutorily placed upon the local assessor by completely dispensing with his analysis and discretion which the Code and the regulations require to be exercised. An ordinance that contravenes any statute is *ultra vires* and void.

8. ID.; ID.; ID.; ID.; ORDINANCES; A *PROVISO* MAY BE STRICKEN DOWN FOR BEING CONTRARY TO PUBLIC POLICY AND FOR RESTRAINING TRADE; CASE AT BAR.— Still another consequences of the proviso is to provide a chilling effect on real property owners or administrators to *enter freely into contracts* reflecting the increasing value of real properties in accordance with prevailing market conditions. While the Local Government Code provides that the assessment of real property shall not be increased oftener than once every three (3) years, the questioned part of the proviso subjects the real property to a tax based on the actual amount appearing on the deed of conveyance or the current approved zonal valuation of the Bureau of Internal Revenue prevailing at the time of sale, cession, transfer and conveyance, whichever is higher. As such, any subsequent sale during the three-year period will result in a real property tax higher than the tax assessed at the last prior conveyance within the same period. To save on taxes, real property owners or administrators are forced to hold on to the property until after the said three-year period has lapsed. Should they nonetheless decide to sell within the said three-year period, they are compelled to dispose the property at a price not exceeding that obtained from the last prior conveyance in order to avoid a higher tax assessment. In these two scenarios, real property owners are effectively prevented from obtaining the best price possible for their properties and *unduly hampers the equitable distribution of wealth*. While the state may legitimately decide

Supreme Court E-Library

to structure its tax system to discourage rapid turnover in ownership of real properties, such state interest must be expressly stated in the executing statute or it can at least be gleaned from its provisions. In the case at bar, there is nothing in the Local Government Code, the implementing rules and regulations, the local assessment regulations, the Quezon City Charter, the Quezon City Revenue Code of 1993 and the "Whereas" clauses of the 1995 Ordinance from which this Court can draw, at the very least, an intimation of this state interest. As such, the proviso must be stricken down for being *contrary to public policy and for restraining trade.*

APPEARANCES OF COUNSEL

Ponciano Gonzales, Jr. and *Benigno G. Par* for petitioner.
The City Attorney for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

From the Resolution[1] of April 10, 2002 issued by Branch 225 of the Regional Trial Court (RTC) of Quezon City dismissing the petition for prohibition and declaratory relief[2] of Allied Banking Corporation (petitioner), the present appeal by *certiorari* was lodged.

On December 19, 1995, the Quezon City government enacted City Ordinance No. 357, Series of 1995 (the ordinance),[3] Section 3 of which reads:

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[1] *Rollo* at 35-39.

[2] *Id.* at 42-60.

[3] Entitled "An Ordinance Approving the Schedule of Fair Market Values for Land, Buildings and Other Structures Situated in Quezon City Jointly Prepared by the City Assessors of the Four (4) Local Treasury and AssessmentDistricts Pursuant to Section 9 of P.D. 921 in Relation to the Provisions of the Local Government Code, R.A. 7160, as Basis for the General Revision of Real Property Assessment."

Supreme Court E-Library

Section 3. The City Assessor shall undertake a general revision of real property assessments using as basis the newly approved schedule specified in Sections 1 and 2 hereof. He shall apply the new assessment level of 15% for residential and 40% for commercial and industrial classification, respectively as prescribed in Section 8 (a) of the 1993 Quezon City Revenue Code to determine the assessed value of the land. Provided; however, that *parcels of land sold, ceded, transferred and conveyed for remuneratory consideration after the effectivity of this revision shall be subject to real estate* **tax based on the actual amount reflected in the deed of conveyance or the current approved zonal valuation of the Bureau of Internal Revenue prevailing at the time of sale, cession, transfer and conveyance, whichever is higher,** *as evidenced by the certificate of payment of the capital gains tax issued therefor*.[4] (Emphasis and italics supplied)

On July 1, 1998, petitioner, as trustee for College Assurance Plan of the Philippines, Inc., purchased from Liwanag C. Natividad *et al.* a 1,000 square meter parcel of land located along Aurora Boulevard, Quezon City in the amount of ₱38,000,000.00.[5]

Prior to the sale, Natividad *et al.* had been paying the total amount of ₱85,050.00[6] as annual real property tax based on the property's *fair market value of ₱4,500,000.00* and *assessed value of ₱1,800,000.00* under Tax Declaration No. D-102-03778.[7]

After its acquisition of the property, petitioner was, in accordance with Section 3 of the ordinance, required to pay ₱102,600.00 as quarterly real estate tax (or ₱410,400.00 annually) under Tax Declaration No. D-102-03780 which pegged the market value of the property at ₱38,000,000.00 — the consideration

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[4] *Rollo* at 7. Petitioner failed to attach a certified true copy of the ordinance.

[5] *Id.* at 64-66.

[6] *Id.* at 46.

[7] *Id.* at 63.

Supreme Court E-Library

appearing in the Deed of Absolute Sale, and its assessed value at ₱15,200,000.00.[8]

Petitioner paid the quarterly real estate tax for the property from the 1st quarter of 1999 up to the 3rd quarter of 2000. Its tax payments for the 2nd, 3rd, and 4th quarter of 1999, and 1st and 2nd quarter of 2000 were, however, made under protest.[9]

In its written protest[10] with the City Treasurer, petitioner assailed Section 3 of the ordinance as null and void, it contending that it is violative of the equal protection and uniformity of taxation clauses of the Constitution.[11] Petitioner, moreover, contended that the proviso is unjust, excessive, oppressive, unreasonable, confiscatory and contrary to Section 130 of the Local Government Code which provides:

> SECTION 130. *Fundamental Principles*. — The following fundamental principles shall govern the exercise of the taxing and revenue-raising powers of local government units:
>
> (a) Taxation shall be uniform in each local government unit;
>
> (b) Taxes, fees, charges and other impositions shall:
>
> (1) be equitable and based as far as practicable on the taxpayer's ability to pay;
>
> (2) be levied and collected only for public purposes;
>
> (3) not be unjust, excessive, oppressive, or confiscatory;
>
> (4) not be contrary to law, public policy, national economic policy, or in restraint of trade;
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> x x x x x x x x x

Petitioner, through its counsel, later sent a March 24, 2000 demand letter to the Quezon City Treasurer's Office seeking

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[8] *Id*. at 67.

[9] *Id*. at 68-73.

[10] *Id*. at 74-85.

[11] CONST. Art. VI, Sec. 28 (1), *viz*:

Section 28. (1). The rule of taxation shall be uniform and equitable. x x x

Supreme Court E-Library

a *refund* of the real estate taxes it erroneously collected from it.[12] The letter was referred for appropriate action[13] to the City Assessor who, by letter dated May 7, 2000, denied the demand for refund on the ground that the ordinance is presumed valid and legal unless otherwise declared by a court of competent jurisdiction.[14]

Petitioner thereupon filed on August 11, 2000 a petition for prohibition and declaratory relief before the Quezon City RTC for the declaration of nullity of Section 3 of the ordinance; the enjoining of respondents — Quezon City Treasurer, Quezon City Assessor, and City Mayor of Quezon City — from further implementing the ordinance; for the Quezon City Treasurer to be ordered to refund the amount of ₱633,150.00 representing the real property tax erroneously collected and paid under protest; and for respondents to pay attorney's fees in the amount of ₱1,000,000.00 and costs of the suit.[15]

In support of its thesis, petitioner contended that the re-assessment under the third sentence of Section 3 of the ordinance for purposes of real estate taxation of a property's fair market value where it is sold, ceded, transferred or conveyed for remuneratory consideration is null and void as it is an invalid classification of real properties which are transferred, ceded or conveyed and those which are not, the latter remaining to be valued and assessed in accordance with the general revisions of assessments of real properties under the first sentence of Section 3.[16]

Petitioner additionally contended that the proviso of Section 3 of the ordinance which allows re-assessment every time the property is transferred, ceded or conveyed violates Sections

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[12] *Rollo* at 86-87.

[13] *Id*. at 88-89.

[14] *Id*. at 92.

[15] *Id*. at 42-60.

[16] *Id*. at 50.

Supreme Court E-Library

219[17] and 220[18] of the Local Government Code which provide that the assessment of real property shall *not be increased oftener than once every three (3) years* except in case of new improvements substantially increasing the value of said property or of any change in its actual use.[19]

Before respondents could file any responsive pleading or on March 6, 2001, respondent Quezon City Government enacted Ordinance No. SP-1032, S-2001[20] which repealed the assailed proviso in Section 3 of the 1995 Ordinance. The repealing ordinance which took effect upon its approval on March 28, 2001 reads in part:

"WHEREAS, the implementation of the second (2nd) sentence of Section 3 of the Ordinance creates a situation whereby owners of newly acquired land for remuneratory consideration beginning January 1, 1996 and forward will have to pay higher taxes than its adjoining/adjacent lot or lots in the adjoining blocks, or nearby lots within its immediate vicinity which have remained undisturbed, not having been sold, ceded, transferred, and/or conveyed;

WHEREAS, the owners of the newly acquired property are complaining/protesting the validity/legality of the second (2nd) sentence

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[17] SECTION 219. *General Revision of Assessments and Property Classification.* — The provincial, city or municipal assessor shall undertake a general revision of real property assessments within two (2) years after the effectivity of this Code and every three (3) years thereafter.

[18] Section 220. *Valuation of Real Property*. — In cases where (a) real property is declared and listed for taxation purposes for the first time; (b) there is an ongoing general revision of property classification and assessment; or (c) a request is made by the person in whose name the property is declared, the provincial, city or municipal assessor or his duly authorized deputy shall, in accordance with the provisions of this Chapter, make a classification, appraisal and assessment of the real property listed and described in the declaration irrespective of any previous assessment or taxpayer's valuation thereon: *Provided, however*, That the assessment of real property shall not be increased oftener than once every three (3) years except in case of new improvements substantially increasing the value of said property or of any change in its actual use.

[19] *Rollo* at 54.

[20] *Id.* at 103.

Supreme Court E-Library

of Section 3 of the ordinance for being either arbitrary, unjust, excessive, oppressive, and/or contrary to law;

WHEREAS, Section 5 Article X of the Philippine Constitution provides that: '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 g*uidelines 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 government' (Italics supplied);

WHEREAS, the guidelines and limitations imposed on the local government units in the exercise of their taxing powers have been expressly stipulated by Congress when it enacted Section 130 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 x x x;

WHEREAS, these fundamental principles of taxation find support and affirmation in the following applicable cases decided by the Court of Tax Appeals (sic), on similar cases which held that:

1. An increase in the valuation of land due to sale and transfer of such property was arbitrary. *Uniformity in taxation means that all kinds of property of the same class shall be taxed at the same rate.* (*Churchhill vs. Concepcion,* 34 Phil. 969; *Eastern Theatrical Co. vs. Alfonso,* 83 Phil. 852) x x x.

2. The law requires the real property shall be assessed at its true and full value, or cash value, or fair market value. But in determining or fixing the fair market value of property for tax purposes it is essential that the rules of uniformity be observed. *More important tha[n] the obligation to seek the fair market value of property is the obligation of the assessor to see to it that the "rule of taxation shall be uniform," for this a (sic) rule which is guaranteed by the Constitution. A taxpayer should not be made to pay more taxes on his property while owners of surrounding properties, under the same circumstance pay less.*

WHEREAS, it is clear from the foregoing premises that the second (2nd) sentence of the Ordinance, fixing the realty tax based on the actual amount reflected in the deed of conveyance or the current approved zonal valuation x x x is violative of, and repugnant to, the uniformity rule of taxation;

Supreme Court E-Library

WHEREAS, in view of the above considerations there appear to be merit and validity to the complaints/protests of tax payers, a re-examination and repeal of the entire second sentence of Section 3 of the Ordinance is in order."

Petitioner subsequently moved to declare respondents in default[21] for failure to file a responsive pleading within the period, as extended. Before the motion could be heard,[22] however, respondents moved to dismiss the petition,[23] averring that the passage of the repealing ordinance had rendered the petition moot and academic.

Petitioner opposed the motion, it alleging that while its action for the declaration of nullity of the *proviso* was rendered moot and academic by its repeal, its claim for refund and attorney's fees had not been mooted, and the trial court still had to determine if Section 3 of the ordinance "is null and void *ab initio* and perforce, may not be enforced during the intervening period from the time of its enactment until the time of its repeal."[24]

Respondents maintained, however, that the assailed proviso remained in full force and effect until the date of its repeal, based on the rule that a statute is construed prospectively unless the legislative intent was to give it retrospective application.[25] And they called attention to the provision in Section 2 of the repealing ordinance that "[it] shall take effect upon its approval," hence, clearly showing that the local legislative body was to grant it prospective application.[26]

As to the claim for refund, respondents averred that it was premature for the trial court to take cognizance thereof as petitioner had an administrative remedy.[27]

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[21] Records at 68-70.

[22] *Id*. at 71.

[23] *Id*. at 72-75.

[24] *Id*. at 107-108.

[25] CIVIL CODE, ART. 4. Laws shall have no retroactive effect, unless the contrary is provided.

[26] *Rollo* at 114-115. *Vide Rollo* 105.

[27] *Id*. at 116.

Supreme Court E-Library

By Resolution of April 10, 2002, the trial court granted respondents' motion to dismiss in this wise:

> There is no need for this Court to resolve whether the subject Ordinance is null and void as the same was already *declared to be violative of, and repugnant to the "uniformity rule" on taxation by the Quezon City Council itself* thru its pronouncements in Quezon City Ordinance No. 1032, Series of 2001 x x x.
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> x x x x x x x x x
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> *As to petitioner's claim for refund,* since an administrative remedy is available for refund of taxes illegally and erroneously collected and petitioner has not yet availed of it, *the Court shall not take cognizance of this issue considering the rule on "Exhaustion of Administrative Remedy."*[28] (Italics supplied)

Its Motion for Reconsideration[29] having been denied,[30] petitioner comes before this Court on appeal by *certiorari* under Rule 45 on the following issues:

A

WHETHER OR NOT THE TRIAL COURT ERRED IN DISMISSING THE INSTANT CASE FOR FAILURE OF THE PETITIONER TO EXHAUST ADMINISTRATIVE REMEDIES.

B

WHETHER OR NOT SECTION 3, QUEZON CITY ORDINANCE NO. 357, SERIES OF 1995, WHICH WAS ABROGATED FOR BEING UNCONSTITUTIONAL CAN BE THE BASIS OF COLLECTING REAL ESTATE TAXES PRIOR TO ITS REPEAL.[31]

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.[32]

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[28] *Id*. at 37-38.

[29] *Id*. at 124-133.

[30] *Id*. at 40-41.

[31] *Id*. at 15.

[32] *Ty v. Trampe*, 250 SCRA 500, 518 (1995).

Supreme Court E-Library

Nevertheless, while cases raising purely legal questions are excepted from the rule requiring exhaustion of administrative remedies before a party may resort to the courts, petitioner, in the case at bar, does not raise just pure questions of law. Its cause of action requires the determination of **the amount of real property tax paid under protest** and the **amount of attorney's fees**. These issues are essentially questions of fact which preclude this Court from reviewing the same.[33]

Since the procedure for obtaining a refund of real property taxes is provided under Sections 252,[34] 226,[35] 229,[36] 230[37] and

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[33] *Ibid*.; *Vide* also *PNB v. Romillo*, 139 SCRA 320, (1985) where we held that the determination of whether an appeal involves only questions of law or both questions of law and fact is best left to the appellate court.

[34] SECTION 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 II, Book II of this Code.

[35] SECTION 226. *Local Board of Assessment Appeals*. — Any owner or 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 provincial 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.

[36] SECTION 229. *Action by the Local Board of Assessment Appeals*. — (a) The Board shall decide the appeal within one hundred

Supreme Court E-Library

twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the power to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena *duces tecum*. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory.

[37] SECTION 230. *Central Board of Assessment Appeals*. — The Central Board of Assessment Appeals shall be composed of a chairman, and two (2) members to be appointed by the President, who shall serve for a term of seven (7) years, without reappointment. Of those first appointed, the chairman shall hold office for seven (7) years, one member for five (5) years, and the other member for three (3) years. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any member be appointed or designated in a temporary or acting capacity. The chairman and the members of the Board shall be Filipino citizens, at least forty (40) years old at the time of their appointment, and members of the Bar or Certified Public Accountants for at least ten (10) years immediately preceding their appointment. The chairman of the Board of Assessment Appeals shall have the salary grade equivalent to the rank of Director III under the Salary Standardization Law exclusive of allowances and other emoluments. The members of the Board shall have the salary grade equivalent to the rank of Director II under the Salary Standardization Law exclusive of allowances and other emoluments. The Board shall have appellate jurisdiction over all assessment cases decided by the Local Board of Assessment Appeals.

There shall be Hearing Officers to be appointed by the Central Board of Assessment Appeals pursuant to civil service laws, rules and regulations, one each for Luzon, Visayas and Mindanao, who shall hold office in Manila,

Supreme Court E-Library

231[38] of the Local Government Code, petitioner's action for prohibition in the RTC was premature as it had a plain, speedy and adequate remedy of appeal in the ordinary course of law.[39] As such, the trial court correctly dismissed its action on the ground that it failed to exhaust the administrative remedies stated above.[40]

Raising questions of fact is moreover inappropriate in an appeal by *certiorari* under Rule 45 of the Rules of Court where only questions of law may be reviewed.[41] It is axiomatic that the Supreme Court is not a trier of facts[42] and the factual findings of the court *a quo* are conclusive upon it, except: (1) where the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; and (4) where the judgment is based on a misapprehension of facts,

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Cebu City and Cagayan de Oro City, respectively, and who shall serve for a term of six (6) years, without reappointment until their successors have been appointed and qualified. The Hearing Officers shall have the same qualifications as that of the Judges of the Municipal Trial Courts.

The Central Board Assessment Appeals, in the performance of its powers and duties, may establish and organize staffs, offices, units, prescribe the titles, functions and duties of their members and adopt its own rules and regulations.

Unless otherwise provided by law, the annual appropriations for the Central Board of Assessment Appeals shall be included in the budget of the Department of Finance in the corresponding General Appropriations Act.

[38] SECTION 231. *Effect of Appeal on the Payment of Real Property Tax*. — Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.

[39] Rule 65, Section 1, Rules of Court.

[40] *Manila Electric Company v. Barlis,* 357 SCRA 832, 843 (2001).

[41] Rule 45, Section 1, Rules of Court.

[42] *Macapagal v. Court of Appeals, et al.,/Silverio v. Court of Appeals, et al.,* 297 SCRA 429 (1998).

Supreme Court E-Library

and the findings of fact of the trial court are premised on the absence of evidence and are contradicted by evidence on record.[43]

From a considered scrutiny of the records of the case, this Court finds that petitioner has shown no cause for this Court to apply any of the foregoing exceptions.

Petitioner has not put squarely in issue the constitutionality of the proviso in Section 3 of the ordinance. It merely alleges that the said proviso can not be the basis for collecting real estate taxes at any given time, the *Sangguniang Panlungsod* of Quezon City not having intended to impose such taxes in the first place. As such the repealing ordinance should be given retroactive effect.

As a rule, the courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds.[44]

Where questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are complied: *First*, there must be before the Court an actual case calling for the exercise of judicial review. *Second*, the question before the Court must be ripe for adjudication. *Third*, the person challenging the validity of the act must have standing to challenge. *Fourth*, the question of constitutionality must have been raised at the earliest opportunity, and *lastly*, the issue of constitutionality must be the very *lis mota* of the case.[45]

Considering that there are factual issues still waiting to be threshed out at the level of the administrative agency, there is no actual case calling for the exercise of judicial review. In addition, the requisite that the constitutionality of the assailed proviso in question be the very *lis mota* of the case is absent.

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[43] *Pareño v. Sandiganbayan*, 256 SCRA 242, 265 (1996).

[44] *Ty v. Trampe, supra*, note 32 at 520.

[45] *Board of Optometry v. Colet*, 260 SCRA 88, 103 (1996) citing *Garcia v. Executive Secretary*, 204 SCRA 516, 522 (1991); *Santos v. Northwest Orient Airlines*, 210 SCRA 256, 261 (1992).

Supreme Court E-Library

Thus, this Court refrains from passing on the constitutionality of the proviso in Section 3 of the 1995 Ordinance.

The factual issues which petitioner interjected in its petition aside, the only crucial legal query in this case is the validity of the proviso fixing the appraised value of property at the stated consideration at which the property was last sold.

This Court holds that the proviso in question is *invalid* as it adopts a method of assessment or appraisal of real property contrary to the Local Government Code, its Implementing Rules and Regulations and the Local Assessment Regulations No. 1-92[46] issued by the Department of Finance.[47]

Under these immediately stated authorities, real properties shall be appraised at the current and fair market value prevailing in the locality where the property is situated[48] and classified for assessment purposes on the basis of its actual use.[49]

"Fair market value" is the price at which a property may be sold by a seller who is not compelled to sell and bought by a buyer who is not compelled to buy,[50] taking into consideration all uses to which the property is adapted and might in reason be applied. The criterion established by the statute contemplates a hypothetical sale. Hence, the buyers need not be actual and existing purchasers.[51]

As this Court stressed in *Reyes v. Almanzor*,[52] assessors, in fixing the value of real property, have to consider all the circumstances and elements of value, and must exercise prudent

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[46] Dated October 6, 1992.

[47] Pursuant to the authority granted by Rep. Act No. 7160 (1991), Section 201.

[48] Rep. Act No. 7160 (1991), Sec. 201.

[49] Rep. Act No. 7160 (1991), Sec. 198 (b).

[50] Rep. Act No. 7160 (1991), Sec. 198 (l).

[51] *Army and Navy Club, Manila v. Trinidad,* 44 Phil. 383 at 387.

[52] 196 SCRA 322, 327 (1991).

Supreme Court E-Library

discretion in reaching conclusions.[53] In this regard, Local Assessment Regulations No. 1-92[54] establishes the guidelines to assist assessors in classifying, appraising and assessing real property.

Local Assessment Regulations No. 1-92 suggests three approaches in estimating the fair market value, namely: (1) the sales analysis or market data approach; (2) the income capitalization approach; and (3) the replacement or reproduction cost approach.[55]

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[53] *Army and Navy Club, Manila v. Trinidad, supra*, note 51.

[54] Dated October 6, 1992.

[55] Section 21. *Approaches Used to Estimate Values* — As discussed in Section 34 hereof, to estimate value, three approaches may be used in the construction of the schedule of fair market values. Sales Analysis Approach (also called Market Data Approach), the Income Capitalization Approach, and the Replacement or Reproduction Cost Approach.

A. Under the Sales Analysis Approach, the price pain in actual market transactions is considered. It requires the accumulation of valid sales data. Such data can be secured from the office of the Registrar of Deeds and notaries public, who are required under Section 278 of the Code to furnish the provincial, city or municipal assessors with copies of all contracts, conveying, leasing, or mortgaging of real property, received or acknowledged before them. Other evidences of market values to augment sales data re: bids, offers to sell, opinions of informed real estate appraisers, brokers, salesmen, dealers or bank officials. Values declared by property owners or administrators embodied in sworn statements filed pursuant to Section 202 of the Code fully evaluated, may also be considered as additional source of information of Market Data Analysis.

In the absence or unavailability of valid sales, data, price indices of real property situated in the different provinces, cities and municipalities, compiled in the National Statistics Office and the Economic Research Division of the Central Bank of the Philippines, may be used as primary basis in computing the fair market value that will be incorporated in the schedule of market values.

1. *Analysis of Sales Transactions* — The elements that enter into sales transactions should be analyzed thoroughly, to determine the relationship between the amount of consideration contained therein and the current value of subject property. Only sales transactions which meet more or less the following criteria shall be considered for the sales analysis:

(a) The date of the transaction must be reasonably near the general assessment date. Sales transactions for the current year or preceding

Supreme Court E-Library

Under the sales analysis approach, the price paid in actual market transactions is considered by taking into account valid

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year, if adequate, would also serve as a good basis for studies on trends of market values.

If the data derived therefrom are inadequate, studies may extend to preceding year, but in no case shall it be for more than three (3) years from the general re-assessment date.

(b) Type of conveyance representing a normal transaction is one which envisions willing, able and well-informed, buyers and sellers. Quitclaims, transfers between relatives, inter-related corporations and the like, should not be considered.

(c) The amount of consideration reflects a strong presumption of the fair market value of the property involved.

2. *Abstraction Method* — Where sales cover land and improvements, a method called abstraction method is used to estimate value of land. The value of the improvement is first estimated pursuant to Section 210 of the Code and later deducted from the total sales of the property to derive the land price which, when divided by the area of the land, result in the estimated price per hectare or per square meter. For this process to have validity, as in other techniques for estimating value, it has to be applied to sales of similar real properties so that a range of value may be prepared as basis for studying fair market value for purposes of construction of the schedule of market values.

B. *Income Capitalization Approach* — Is a direct approach to estimate the value of property. It is based on the theory that the value of an income producing property is no more than the return derived from it. It requires an analysis of the income produced by a property in order to estimate the sum which might be invested in the purchase of the property. A detailed financial study must be made of the property. Gross annual income is either determined from actual figures or is estimated. Annual expense figures are obtained from the owner. The income, operating expenses and fixed charges of the subject property are analyzed and the expenses derived thereof are then subtracted from the gross income. The resultant net income capitalized at a rate which the investor of the property can expect as reasonable return or interest prevailing in the locality. The capitalized value of the income represents the present value of the property.

Income method may be utilized to check results derived from sales analysis approach in the case of rental or income producing property.

C. *Reproduction Cost (New) Approach* — This is a factual approach used exclusively in appraising man-made improvements such as buildings and other structures. This method depends on guides and standards, based on such data as materials and labor costs.

Supreme Court E-Library

sales data accumulated from among the various sources stated in Sections 202, 203, 208, 209, 210, 211 and 213 of the Code.[56]

The "reproduction or replacement cost approach" makes use of a value estimate of reproducing a new replica property within the same or closely similar materials and labor costs. Unit base construction cost is developed on a per square meter or per cubic meter basis for typical buildings or structures. The unit cost is multiplied by the ground area or volume, as the case may be, of the subject structure to derive its total reproduction or replacement cost, allowance for depreciation is deducted to arrive at the depreciated cost of subject property.

(1) *Quantitative Analysis Method* — The schedule of unit base construction cost for buildings shall be established by the quantitative analysis method of the reproduction cost (new) approach. A base unit cost for each type and sub-type of typical buildings in the province or city or municipality shall be established.

By this method, a detailed inventory of all materials and labor that went into the finished building is made.

The first step in this method is collection or preparation of plans and specifications for adopted typical (sample) buildings, representing each type. Data on cost of construction materials prevailing in the city or province or municipality shall then be gathered and listed. Labor cost and others that contribute to the construction cost may be estimated by proper consultation with building contractors, engineers, architects and labor agencies.

From the plans and specifications, materials and labor quantities are then computed for all parts of the structures. The materials cost shall be determined by applying the price for building materials computed from the material quantities that went with finished buildings. The amount added to the estimated labor cost and miscellaneous expenses, results in the total cost of the subject building. The base unit cost shall be then determined by dividing this total cost by average area in square meters of the subject structure.

[56] SECTION 202. *Declaration of real Property by the Owner or Administrator.* — It shall be the duty of all persons, natural or juridical, owning or administering real property, including the improvements therein, within a city or municipality, or their duly authorized representative, to prepare, or cause to be prepared, and file with the provincial, city or municipal assessor, a sworn statement declaring the true value of their property, whether previously declared or undeclared, taxable or exempt, which shall be the current and fair market value of the property, as determined by the declarant. Such declaration shall contain a description of the property sufficient in detail to enable the assessor or his deputy to identify the same for assessment purposes. The sworn declaration of real property herein referred to shall be filed with the assessor concerned once every three (3) years during the

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In the income capitalization approach, the value of an income-producing property is no more than the return derived from it.

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period from January first (1st) to June thirtieth (30th) commencing with the calendar year 1992.

SECTION 203. *Duty of Person Acquiring Real Property or Making Improvement Thereon.* — It shall also be the duty of any person, or his authorized representative, acquiring at any time real property in any municipality or city or making any improvement on real property, to prepare, or cause to be prepared, and file with the provincial, city or municipal assessor, a sworn statement declaring the true value of subject property, within sixty (60) days after the acquisition of such property or upon completion or occupancy of the improvement, whichever comes earlier.

SECTION 208. *Notification of Transfer of Real Property Ownership.* — Any person who shall transfer real property ownership to another shall notify the provincial, city or municipal assessor concerned within sixty (60) days from the date of such transfer. The notification shall include the mode of transfer, the description of the property alienated, the name and address of the transferee.

SECTION 209. *Duty of Registrar of Deeds to Appraise Assessor of Real Property Listed in Registry.* — (a) To ascertain whether or not any real property entered in the Registry of Property has escaped discovery and listing for the purpose of taxation, the Registrar of Deeds shall prepare and submit to the provincial, city or municipal assessor, within six (6) months from the date of effectivity of this Code and every year thereafter, an abstract of his registry, which shall include brief but sufficient description of the real properties entered therein, their present owners, and the dates of their most recent transfer or alienation accompanied by copies of corresponding deeds of sale, donation, or partition or other forms of alienation.

(b) It shall also be the duty of the Registrar of Deeds to require every person who shall present for registration a document of transfer, alienation, or encumbrance of real property to accompany the same with a certificate to the effect that the real property subject of the transfer, alienation, or encumbrance, as the case may be, has been fully paid of all real property taxes due thereon. Failure to provide such certificate shall be a valid cause for the Registrar of Deeds to refuse the registration of the document.

SECTION 210. *Duty of Official Issuing Building Permit or Certificate of Registration of Machinery to Transmit Copy to Assessor.* — Any public official or employee who may now or hereafter be required by law or regulation to issue to any person a permit for the construction, addition, repair, or renovation of a building, or permanent improvement on land, or a certificate of registration for any machinery, including machines, mechanical contrivances, and apparatus attached or affixed on land or to another real property, shall transmit a copy of such permit or certificate within thirty

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An analysis of the income produced is necessary in order to estimate the sum which might be invested in the purchase of the property.

The reproduction cost approach, on the other hand, is a factual approach used exclusively in appraising man-made improvements such as buildings and other structures, based on such data as materials and labor costs to reproduce a new replica of the improvement.

The assessor uses any or all of these approaches in analyzing the data gathered to arrive at the estimated fair market value to be included in the ordinance containing the schedule of fair market values.

Given these different approaches to guide the assessor, it can readily be seen that the Code did not intend to have a rigid rule for the valuation of property, which is affected by a multitude of circumstances which no rule could foresee or provide for. Thus, what a thing has cost is no singular and infallible criterion of its market value.[57]

Accordingly, this Court holds that the proviso directing that the real property tax be based on the actual amount reflected

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(30) days of its issuance, to the assessor of the province, city or municipality where the property is situated.

SECTION 211. *Duty of Geodetic Engineers to Furnish Copy of Plans to Assessor.* — It shall be the duty of all geodetic engineers, public or private, to furnish free of charge to the assessor of the province, city or municipality where the land is located with a white or blue print copy of each of all approved original or subdivision plans or maps of surveys executed by them within thirty (30) days from receipt of such plans from the Lands Management Bureau, the Land Registration Authority, or the Housing and Land Use Regulatory Board, as the case may be.

SECTION 213. *Authority of Assessor to Take Evidence.* — For the purpose of obtaining information on which to base the market value of any real property, the assessor of the province, city or municipality or his deputy may summon the owners of the properties to be affected or persons having legal interest therein and witnesses, administer oaths, and take deposition concerning the property, its ownership, amount, nature, and value.

[57] *Vide Army and Navy Club, Manila v. Trinidad, supra*, note 51 at 385.

Supreme Court E-Library

in the deed of conveyance or the prevailing BIR zonal value is invalid not only because it mandates an exclusive rule in determining the fair market value but more so because it departs from the established procedures stated in the Local Assessment Regulations No. 1-92 and unduly interferes with the duties statutorily placed upon the local assessor[58] by completely dispensing with his analysis and discretion which the Code and the regulations require to be exercised. An ordinance that contravenes any statute is *ultra vires* and void.[59]

Further, it is noted that there is nothing in the Charter of Quezon City[60] and the Quezon City Revenue Code of 1993[61] that authorize public respondents to appraise property at the consideration stated in the deed of conveyance.

Using the consideration appearing in the deed of conveyance to assess or appraise real properties is not only illegal since "the appraisal, assessment, levy and collection of real property tax shall not be let to any private person,"[62] but it will completely destroy the fundamental principle in real property taxation — that real property shall be classified, valued and assessed on the basis of its *actual use* regardless of where located, whoever owns it, and whoever uses it.[63] Necessarily, allowing the parties

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[58] *Vide* also Local Assessment Regulations No. 1-92 (1992), Section 19. *Duty of the Provincial/City/Municipal Assessor* — It is the duty of all provincial and city assessors, and municipal assessors of the municipalities within the Metropolitan Manila Area to prepare of cause to be prepared a schedule of market values as the basis for the appraisal and assessment of lands, buildings and other improvements situated in their respective jurisdictions within one (1) year after the effectivity of the Code and every three (3) years thereafter; and

Market values for real property situated within the province shall be prepared by the provincial assessors who shall be assisted by the municipal assessors of municipalities within his jurisdiction.

[59] *Vide Magtajas v. Pryce Properties Corp., Inc.*, 234 SCRA 255, at 268 and 274.

[60] Rep. Act No. 537 (1950), as amended.

[61] City Ordinance No. SP-91, S-93.

[62] Rep. Act. No. 7160, Sec. 198 (d).

[63] *Id.*, Secs. 198 (b) and 217.

Supreme Court E-Library

to a private sale to dictate the fair market value of the property will dispense with the distinctions of actual use stated in the Code and in the regulations.

The invalidity of the assessment or appraisal system adopted by the proviso is not cured even if the proviso mandates the comparison of the stated consideration as against the prevailing BIR zonal value, whichever is higher, because an integral part of that system still permits valuing real property in disregard of its "actual use."

In the same vein, there is also nothing in the Code or the regulations showing the congressional intent to require an immediate adjustment of taxes on the basis of the latest market developments as, in fact, real property assessments may be revised and/or increased only once every three (3) years.[64] Consequently, the real property tax burden should not be interpreted to include those beyond what the Code or the regulations expressly and clearly state.

Still another consequence of the proviso is to provide a chilling effect on real property owners or administrators to *enter freely into contracts* reflecting the increasing value of real properties in accordance with prevailing market conditions. While the Local Government Code provides that the assessment of real property shall not be increased oftener than once every three (3) years,[65] the questioned part of the proviso subjects the real property to a tax based on the actual amount appearing on the deed of conveyance or the current approved zonal valuation of the Bureau of Internal Revenue prevailing at the time of sale, cession, transfer and conveyance, whichever is higher. As such, any subsequent sale during the three-year period will result in a real property tax higher than the tax assessed at the last prior conveyance within the same period. To save on taxes, real property owners or administrators are forced to hold on to the property until after the said three-year period has lapsed. Should they nonetheless decide to sell within the said three-year period,

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[64] *Id*., Secs. 219 and 220, *supra*, notes 17 & 18.

[65] *Id*., Sec. 220.

Supreme Court E-Library

they are compelled to dispose the property at a price not exceeding that obtained from the last prior conveyance in order to avoid a higher tax assessment. In these two scenarios, real property owners are effectively prevented from obtaining the best price possible for their properties and *unduly hampers the equitable distribution of wealth.*

While the state may legitimately decide to structure its tax system to discourage rapid turnover in ownership of real properties, such state interest must be expressly stated in the executing statute or it can at least be gleaned from its provisions.

In the case at bar, there is nothing in the Local Government Code, the implementing rules and regulations, the local assessment regulations, the Quezon City Charter, the Quezon City Revenue Code of 1993 and the "Whereas" clauses of the 1995 Ordinance from which this Court can draw, at the very least, an intimation of this state interest. As such, the proviso must be stricken down for being *contrary to public policy and for restraining trade.*[66]

In fine, public respondent Quezon City Government exceeded its statutory authority when it enacted the proviso in question. The provision is thus null and void *ab initio* for being *ultra vires* and for contravening the provisions of the Local Government Code, its implementing regulations and the Local Assessment Regulations No. 1-92. As such, it acquired no legal effect and conferred no rights from its inception.

A word on the applicability of the doctrine in this decision. It applies only in the determination of real estate tax payable by owners or administrators of real property.

In light of the foregoing disquisitions, addressing the issue of retroactivity of the repealing ordinance is rendered unnecessary.

WHEREFORE, the petition is hereby *GRANTED*. The assailed portion of the provisions of Section 3 of Quezon City Ordinance No. 357, Series of 1995 is hereby declared invalid.

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[66] *Id.*, Sec. 130 (4).

Supreme Court E-Library

Petitioner's claim for refund, however, must be lodged with the Local Board of Assessment Appeals, if it is not barred by the statute of limitations.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and *Garcia, JJ.,* concur.

Carpio, J., I concur. The assailed ordinance violates the statutory prohibition against increases in assessments oftener than 3 years.

FIRST DIVISION

[G.R. No. 155279. October 11, 2005]

MICRO SALES OPERATION NETWORK and WILLY BENDOL, *petitioners, vs.* **THE NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), LARRY HERMOSA, LEONARDO G. DE CASTRO and RAMIL BASINILLO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION; THE REQUIREMENT REGARDING VERIFICATION OF A PLEADING IS NOT JURISDICTIONAL.— The requirement regarding verification of a pleading is not jurisdictional. Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective.