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Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Fernando and *Teehankee, JJ.*, concur.

Concepcion, C.J., and *Ruiz Castro, J.*, are on leave.

Capistrano, J., did not take part.

Orders set aside.

[G.R. No. L-24813. April 28, 1969]

DR. HERMENEGILDO SERAFICA, plaintiff-appellant, *vs.* THE TREASURER OF ORMOC CITY, THE MUNICIPAL BOARD OF ORMOC CITY, HON. ESTEBAN C. CONEJOS, as Mayor of Ormoc City and ORMOC CITY, defendants-appellees.

SYLLABUS

1. TAXATION; SALES TAX; VALIDITY OF CITY ORDINANCE IMPOSING SALES TAX ON LUMBER; DOUBLE TAXATION NOT PROHIBITED.— A city ordinance imposing a tax on the sale of lumber cannot be declared null and void on the ground that "the ordinance in question imposes in effect double taxation because the business of lumber yard is already regulated under the Charter and the sale of lumber is 'a mere incident of the business of lumber yard.' " Suffice it to say that regulation and taxation are two different things, the first being an exercise of police power, whereas the latter is not, apart from the fact that double taxation is not prohibited in the Philippines.

2. ID.; ID.; ID.; PRESUMPTION OF VALIDITY STANDS IN THE ABSENCE OF PROOF THAT TAX IN QUESTION IS OPPRESSIVE.— Where the validity of the tax imposed on the sale of lumber is assailed on the ground that it is "unfair, unjust, arbitrary, unreasonable, oppressive and contrary to the principles of taxation" but there is no proof of the fact that the tax in question is imposed regardless of the class of lumber sold although there are several categories thereof commanding different prices, nor of the prices corresponding to each category, the Court has no means to ascertain the accuracy of the unfairness of the tax and must, accordingly, rely upon the presumption that the ordinance is valid unless and until the contrary has been duly established.

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3. ID.; ID.; ID.; HOLDING OF PUBLIC HEARING IN THE ENACTMENT OF TAX ORDINANCE; NON-COMPLIANCE WITH SUGGESTION DOES NOT AFFECT VALIDITY OF TAX ORDINANCE.— Provincial Circular No. 24 of the Department of Finance, dated March 31, 1960, suggesting that, "in the enactment of tax ordinances . . . under the Local Autonomy Act, . . . where practicable, public hearing be held wherein the views of the public . . . may be heard," is a mere suggestion, compliance with which is not obligatory, so that failure to act in accordance therewith can not and does not affect the validity of the tax ordinance.

4. ID.; ID.; ID.; PROHIBITION ON THE IMPOSITION OF TAXES ON FOREST PRODUCTS DOES NOT APPLY TO TAX ON SALE THEREOF.— The limitation in Sec. 2 of R.A. No. 2264 as amended providing that "no city, municipality or municipal district may levy or impose . . . (a) Taxes on forest products or forest concessions" has no application to the case at bar wherein the validity of a sales tax on lumber is being questioned. The tax in question is being imposed not upon lumber, but upon its sale. Said tax is not levied upon the lumber in the sawmill and does not become due until after the lumber has been sold.

5. ID.; ID.; ID.; PROHIBITION ON THE IMPOSITION OF A SALES TAX LIMITED TO MUNICIPALITIES AND MUNICIPAL DISTRICTS, CITIES NOT INCLUDED.— The proviso in Sec. 2 of R.A. No. 2264 as amended prohibiting the imposition of "any percentage tax on sales or other taxes in any form based thereon," is an injunction directed exclusively to "municipalities and municipal districts" and does not apply to cities.

APPEARANCES OF COUNSEL

Cleto P. Evangelista for plaintiff-appellant.
Ramon O. De Veyra for defendants-appellees.

DECISION

CONCEPCION, *C.J.*:

Direct appeal from a decision of the Court of First Instance of Leyte dismissing plaintiff's complaint, without pronouncement as to costs.

Plaintiff, Dr. Hermenegildo Serafica, seeks a declaration of nullity of Ordinance No. 13, Series of 1964, of Ormoc City,

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imposing a "tax of five pesos (₱5.00) for every one thousand (1,000) board feet of lumber sold at Ormoc City by any person, partnership, firm, association, corporation, or entities," pursuant to which the Treasurer of said City levied on and collected from said plaintiff, as owner of the Serafica Sawmill, the aggregate sum of ₱1,837.84, as tax on 367, 568 board feet of lumber sold, in said City, during the third quarter of 1964. After appropriate proceedings, the lower court rendered judgment upholding the validity of said ordinance and denying the relief prayed for by Dr. Serafica. Hence, this appeal by the latter.

The contested ordinance reads:

"ORDINANCE NO. 13

"AN ORDINANCE IMPOSING A TAX OF FIVE PESOS (₱5.00) FOR EVERY ONE THOUSAND BOARD FEET OF LUMBER SOLD AT ORMOC CITY AND FOR OTHER PURPOSES

"BE IT ORDAINED, by authority of the Municipal Board of Ormoc City, Philippines, pursuant to the provisions of Republic Act 179, as amended by RA 429, otherwise known as the Charter of Ormoc City, That:

"Section 1. *City tax.*— There shall be paid to the City Treasurer a city tax of five pesos (₱5.00) for every one thousand (1,000) board feet of lumber sold at Ormoc City by any person, partnership, firm, association, corporation or entity.

"Section 2. *Time and manner of payment and penalty for delinquency.*— The city tax herein prescribed shall be payable without penalty within twenty (20) days after the close of every quarter for which the tax is due. Failure to pay the tax within the prescribed time shall render the taxpayer subject to a surcharge of fifty percentum (50%) for the first offense and one hundred percentum (100%) for subsequent failures to pay within the prescribed period.

"Section 3. *Payment to be rendered by taxpayer.*— The taxpayer is hereby obliged to include the tax due in every invoice issued for the sale of lumber which tax shall be submitted for payment to the City Treasurer within twenty (20) days after the close of every quarter.

"Section 4. *Inspection of taxpayer's books and records.*— For the purpose of enforcing the provisions of this Ordinance, the City Treasurer or any of his deputies specifically authorized in writing for the purpose, shall have authority to examine the books and records of any person, partnership, firm,

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association, corporation or entity subject to the tax herein imposed, PROVIDED, HOWEVER, That such examination shall be made only during regular business hours, unless the person, partnership, firm, association, corporation or entity concerned shall consent otherwise.

"Sec. 5. *Penalty for violation.*— Any violation of the provisions of this Ordinance shall be punishable by a fine of not more than five hundred (₱500.00) pesos and an imprisonment of not more than three (3) months.

"Sec. 6. *Construction of this Ordinance.*— If any part or section of this Ordinance shall be declared unconstitutional or *ultra vires,* such part or section shall not invalidate any other provision hereof.

"Sec. 7. *Effectivity.*— This Ordinance shall take effect immediately upon its approval. ENACTED, June 17, 1964.

" 'RESOLVED, FURTHER, to authorize the City Treasurer to—copies of this Ordinance for issuance to all concerned;

" 'RESOLVED, FINALLY, to furnish a copy of this resolution-ordinance each to the City Treasurer, the City Auditor, the City Fiscal, the City Judge, and all concerned;

" 'CARRIED. Six affirmative votes registered by Councilors Tugonon, Alfaro, Kierulf, Abas, Besabella, and Du; one abstention registered by Councilor Aviles.' "

. . . . . .

Plaintiff assails this ordinance as null and void upon the grounds that: (1) the Charter of Ormoc City (Republic Acts Nos. 179 and 429) authorizes the same to "regulate," but not to "tax" lumber yards; (2) the ordinance in question imposes, in effect, double taxation, because the business of lumber yard is already regulated under said Charter and the sale of lumber is "a mere incident to the business of lumber yard"; (3) the tax imposed is "unfair, unjust, arbitrary, unreasonable, oppressive and contrary to the principles of taxation"; and (4) "the public was not heard and given a chance to air its views" thereon.

With respect to the first ground, We have held in Ormoc Sugar Co. *vs.* Municipal Board of Ormoc City,[1] that the taxing power of the City of Ormoc, under Section 2 of the Local Autonomy

[1] L-24322, July 21, 1967.

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Act[2] is "broad" and "sufficiently plenary to cover everything, excepting those mentioned therein."[3] It should be noted that in said case of Ormoc Sugar Co., We upheld the validity of a *sales* tax.

As regards the second ground, suffice it to say that regulation and taxation are two different things, the first being an exercise of police power, whereas the latter is not, apart from the fact that double taxation is not prohibited in the Philippines.[4]

The third objection is premised upon the fact that the tax in question is imposed regardless of the class of lumber sold, although there are several categories thereof, commanding different prices. Plaintiff has not proven, however, or even alleged the prices corresponding to each category, so that, like the lower court, We have no means to ascertain the accuracy of the conclusions drawn by him, and must, accordingly, rely upon the presumption that the City Council had merely complied with its duty and that the ordinance is valid unless and until the contrary has been duly established.[5]

The last objection is based upon Provincial Circular No. 24 of the Department of Finance, dated March 31, 1960, *suggesting* that, "in the enactment of tax ordinances. . . under the Local Autonomy Act, . . . *where practicable,* public hearings be held wherein the views of the public . . . may be heard." This is, however, a mere suggestion, compliance with which is not obligatory, so that failure to act in accordance therewith can not and does not affect the validity of the tax ordinance.

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[2] Republic Act No. 2264, as amended by Republic Act No. 4497.

[3] City of Bacolod *v.* Gruet, L-18290, Jan. 31, 1963; Hodges *v.* Municipal Board, L-18129, Jan. 31, 1963; Hodges *v.* Municipal Board, L-18276, Jan. 12, 1967.

[4] Pepsi-Cola Bottling Co. *v.* City of Butuan, L-22814, Aug. 28, 1968; Manufacturers Life Ins. Co. *v.* Meer, 89 Phil. 351, 357; City of Baguio *v.* De Leon, L-24756, Oct. 31, 1968; Comm. of Int. Revenue *v.* Hawaiian-Phil. Co., L-16315, May 30, 1964; City of Bacolod *v.* Gruet, *supra;* Syjuco *v.* Municipality of Parañaque, L-11265, Nov. 27, 1959; City of Manila *v.* Interisland Gas Service, 99 Phil. 847, 854.

[5] Central Barrio, City of Davao *v.* City Treasurer, L-25811, April 3, 1968; Morfe *v.* Mutuc, L-20387, Jan. 31, 1968.

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Indeed, since local governments are subject, not to the control, but merely to the general supervision of the President, it is, to say the least, doubtful that the latter could have made compliance with said circular obligatory.[6]

We have not overlooked the fact that, pursuant to Sec. 2 of Republic Act No. 2264 as amended, "no city, municipality or municipal district may levy or impose . . .

. . . . . .

(e) Taxes on forest products or forest concessions."

Although lumber is a forest product, this limitation has no application to the case at bar, the tax in question being imposed, *not* upon *lumber,* but upon its *sale.* Said tax is not levied upon *the lumber* in plaintiff's sawmill and does *not* become due until after the lumber has been *sold.* Hence, the case at bar is distinguishable from Golden Ribbon Lumber Co., Inc. *vs.* City of Butuan[7] in that the ordinance involved therein provided that "every person, association or corporation operating a lumber mill and/or lumber yard within the territory of the City of Butuan shall pay to the City a tax of two-fifths (₱.004) centavo *for every board foot of lumber sawn, manufactured and/or produced.*" In short, the tax in that case was imposed upon the "lumber"—a forest product, not subject to local taxation—whether sold *or not.* Similarly, Santos Lumber Co. *vs.* City of Cebu[8] and Jos. S. Johnston & Sons *vs.* Ramon Regondola[9] cited by the plaintiff, refer to situations arising *before* the enactment of Republic Act No. 2264[10], and, hence, are inapplicable to the present case.

Neither have We overlooked the proviso in Sec. 2 of said Act prohibiting the imposition of "any percentage tax on sales or other taxes in any form based thereon," for this injunction is directed

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[6] Pelaez *v.* Auditor General, L-23825, Dec. 24, 1965; Hebron *v.* Reyes, 104 Phil. 175; Querubin *v.* Castro, L-9779, July 31, 1958.

[7] L-18534, Dec. 24, 1964.

[8] 102 Phil. 871.

[9] L-9355, Nov. 26, 1957.

[10] June 19, 1959.

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exclusively to "municipalities and municipal districts," and does not apply to cities.

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against plaintiff herein.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando and *Barredo, JJ.,* concur.

Teehankee, J., concurs in the result.

Ruiz Castro and *Capistrano, JJ.,* did not take part.

Judgment affirmed.

[G.R. No. L-25437. April 28, 1969]

IN THE MATTER OF THE CHANGE OF NAME OF YAP EK SIU, YAP EK SIU, petitioner-appellee, *vs.* REPUBLIC OF THE PHILIPPINES, oppositor-appellant.

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; PETITION FOR CHANGE OF NAME; STANDARD WHICH WOULD WARRANT CHANGE OF NAME NOT MET BY PETITIONER IN INSTANT CASE.— Where none of the proper and reasonable causes that may warrant the grant of a petition for a change of name, namely: (1) when the name is ridiculous, tainted with dishonor, or is extremely difficult to write or pronounce; (2) when the request for change is a consequence of a change of status, such as when a natural child is acknowledged or legitimated; (3) when the change is necessary to avoid confusion, has been met by petitioner, and on the contrary, such change would create embarrassment and confusion in his social and business dealings because he might be mistaken to be a Filipino when in fact and in truth he is a Chinese, the privilege of changing his name should not be granted.

2. CIVIL LAW; PERSONS AND FAMILY RELATIONS; CHANGE OF NAME, A PRIVILEGE.— Our Civil Code recognizes that a person