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(4) Further *DIRECTS* the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, to undertake the implementation of respondent Visminda Escol's choice of option under Article 448 of the Civil Code, as soon as possible.

No costs.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Peralta,* and *Abad,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 182065. October 27, 2009]

EVELYN ONGSUCO and ANTONIA SALAYA, *petitioners, vs.* **HON. MARIANO M. MALONES, both in his private and official capacity as Mayor of the Municipality of Maasin, Iloilo,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; ELUCIDATED.— After a close scrutiny of the circumstances that gave rise to this case, the Court determines that there is no need for petitioners to exhaust administrative remedies before resorting to the courts. x x x It is true that the general

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[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

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rule is that before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. However, there are several exceptions to this rule.

2. ID.; ID.; ID.; EXCEPTION; CASE AT BAR.— x x x [A] case where the issue raised is a purely legal question, well within the competence; and the jurisdiction of the court and not the administrative agency, would clearly constitute an exception. Resolving questions of law, which involve the interpretation and application of laws, constitutes essentially an exercise of judicial power that is exclusively allocated to the Supreme Court and such lower courts the Legislature may establish. In this case, the parties are not disputing any factual matter on which they still need to present evidence. The sole issue petitioners raised before the RTC in Civil Case No. 25843 was whether Municipal Ordinance No. 98-01 was valid and enforceable despite the absence, prior to its enactment, of a public hearing held in accordance with Article 276 of the Implementing Rules and Regulations of the Local Government Code. This is undoubtedly a pure question of law, within the competence and jurisdiction of the RTC to resolve.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION AND *MANDAMUS*, DISTINGUISHED.— In a petition for prohibition against any tribunal, corporation, board, or person – whether exercising judicial, quasi-judicial, or ministerial

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functions – who has acted without or in excess of jurisdiction or with grave abuse of discretion, the petitioner prays that judgment be rendered, commanding the respondent **to desist** from further proceeding in the action or matter specified in the petition. On the other hand, the remedy of mandamus lies **to compel** performance of a ministerial duty. The petitioner for such a writ should have a well-defined, clear and certain legal right to the performance of the act, and it must be the clear and imperative duty of respondent to do the act required to be done. In this case, petitioners' primary intention is to prevent respondent from implementing Municipal Ordinance No. 98-01, *i.e.*, by collecting the goodwill fees from petitioners and barring them from occupying the stalls at the municipal public market. Obviously, the writ petitioners seek is more in the nature of prohibition (commanding desistance), rather than *mandamus* (compelling performance).

4. ID.; ID.; PROHIBITION; REQUISITES.— For a writ of prohibition, the requisites are: (1) the impugned act must be that of a "tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions"; and (2) there is no plain, speedy, and adequate remedy in the ordinary course of law."

5. ID.; ID.; ID.; ID.; JUDICIAL FUNCTION AND QUASI-JUDICIAL FUNCTION, EXPLAINED.— The exercise of judicial function consists of the power to determine what the law is and what the legal rights of the parties are, and then to adjudicate upon the rights of the parties. The term quasi-judicial function applies to the action and discretion of public administrative officers or bodies that are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. In implementing Municipal Ordinance No. 98-01, respondent is not called upon to adjudicate the rights of contending parties or to exercise, in any manner, discretion of a judicial nature.

6. ID.; ID.; ID.; ID.; MINISTERIAL FUNCTION; DEFINED; RESPONDENT IN CASE AT BAR HELD PERFORMING A MINISTERIAL FUNCTION.— A ministerial function is one that an officer or tribunal performs in the context of a

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given set of facts, in a prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done. The Court holds that respondent herein is performing a ministerial function.

7. POLITICAL LAW; PUBLIC CORPORATIONS; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT TAXATION; CHARGES; DEFINED; CASE AT BAR.— Article 221(g) of the Local Government Code of 1991 defines "charges" as: Article 221. *Definition of Terms*. x x x (g) *Charges* refer to pecuniary liability, as **rents or fees** against persons or property. Evidently, the revenues of a local government unit do not consist of taxes alone, but also other fees and charges. And rentals and goodwill fees, imposed by Municipal Ordinance No. 98-01 for the occupancy of the stalls at the municipal public market, fall under the definition of charges.

8. ID.; ID.; ID.; ID.; ID.; IN ENACTING ORDINANCES WITH CHARGES, PRIOR HEARING IS NECESSARY; CASE AT BAR.— For the valid enactment of ordinances imposing charges, certain legal requisites must be met. x x x It is categorical, therefore, that a public hearing be held prior to the enactment of an ordinance levying taxes, fees, or charges; and that such public hearing be conducted as provided under Section 277 of the Implementing Rules and Regulations of the Local Government Code. There is no dispute herein that the notices sent to petitioners and other stall holders at the municipal public market were sent out on **6 August 1998**, informing them of the supposed "public hearing" to be held on **11 August 1998**. Even assuming that petitioners received their notice also on 6 August 1998, the "public hearing" was already scheduled, and actually conducted, only **five days** later, on 11 August 1998. This contravenes Article 277(b)(3) of the Implementing Rules and Regulations of the Local Government Code which requires that the public hearing be held no less than **ten days** from the time the notices were sent out, posted, or published. When the *Sangguniang Bayan* of Maasin sought to correct this procedural defect through Resolution No. 68, series of 1998, dated 18 September 1998, respondent vetoed the said resolution. The defect in the enactment of Municipal

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Ordinance No. 98 was not cured when another public hearing was held on 22 January 1999, **after** the questioned ordinance was passed by the *Sangguniang Bayan* and approved by respondent on 17 August 1998. Section 186 of the Local Government Code prescribes that the public hearing be held **prior** to the enactment by a local government unit of an ordinance levying taxes, fees, and charges. Since no public hearing had been duly conducted prior to the enactment of Municipal Ordinance No. 98-01, said ordinance is void and cannot be given any effect. Consequently, a void and ineffective ordinance could not have conferred upon respondent the jurisdiction to order petitioners' stalls at the municipal public market vacant.

APPEARANCES OF COUNSEL

Rey M. Padilla for petitioners.
City Legal Officer (Iloilo) for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated 28 November 2006, rendered by the Court of Appeals in CA-G.R. SP No. 86182, which affirmed the Decision[2] dated 15 July 2003, of the Regional Trial Court (RTC), Branch 39, of Iloilo City, in Civil Case No. 25843, dismissing the special civil action for *Mandamus*/Prohibition with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, filed by petitioners Evelyn Ongsuco and Antonia Salaya against respondent Mayor Mariano Malones of the Municipality of Maasin, Iloilo.

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[1] Penned by Associate Justice Romeo F. Barza with Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla, concurring. *Rollo*, pp. 33-46.

[2] Penned by Judge Roger B. Patricio. *Id.* at 27-32.

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Petitioners are stall holders at the Maasin Public Market, which had just been newly renovated. In a letter[3] dated 6 August 1998, the Office of the Municipal Mayor informed petitioners of a meeting scheduled on 11 August 1998 concerning the municipal public market. Revenue measures were discussed during the said meeting, including the increase in the rentals for the market stalls and the imposition of "goodwill fees" in the amount of ₱20,000.00,[4] payable every month.

On 17 August 1998, the *Sangguniang Bayan* of Maasin approved Municipal Ordinance No. 98-01, entitled "The Municipal Revised Revenue Code." The Code contained a provision for increased rentals for the stalls and the imposition of goodwill fees in the amount of ₱20,000.00 and ₱15,000.00 for stalls located on the first and second floors of the municipal public market, respectively. The same Code authorized respondent to enter into lease contracts over the said market stalls,[5] and incorporated a standard contract of lease for the stall holders at the municipal public market.

Only a month later, on 18 September 1998, the *Sangguniang Bayan* of Maasin approved Resolution No. 68, series of 1998,[6] moving to have the meeting dated 11 August 1998 declared inoperative as a public hearing, because majority of the persons affected by the imposition of the goodwill fee failed to agree to the said measure. However, Resolution No. 68, series of 1998, of the *Sangguniang Bayan* of Maasin was vetoed by respondent on 30 September 1998.[7]

After Municipal Ordinance No. 98-01 was approved on 17 August 1998, another purported public hearing was held on 22 January 1999.[8]

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[3] Records, p. 9.

[4] *Rollo*, p. 34.

[5] *Id.* at 117.

[6] Records, pp. 10-11.

[7] *Rollo*, p. 35.

[8] *Id.*

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On 9 June 1999, respondent wrote a letter to petitioners informing them that they were occupying stalls in the newly renovated municipal public market without any lease contract, as a consequence of which, the stalls were considered vacant and open for qualified and interested applicants.[9]

This prompted petitioners, together with other similarly situated stall holders at the municipal public market,[10] to file before the RTC on 25 June 1999 a Petition for Prohibition/*Mandamus*, with Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction,[11] against respondent. The Petition was docketed as Civil Case No. 25843.

Petitioners alleged that they were *bona fide* occupants of the stalls at the municipal public market, who had been religiously paying the monthly rentals for the stalls they occupied.

Petitioners argued that public hearing was mandatory in the imposition of goodwill fees. Section 186 of the Local Government Code of 1991 provides that an ordinance levying taxes, fees, or charges shall not be enacted without any prior hearing conducted for the purpose. Municipal Ordinance No. 98-01, imposing goodwill fees, is invalid on the ground that the conferences held on 11 August 1998 and 22 January 1999 could not be considered public hearings. According to Article 277(b)(3) of the Implementing Rules and Regulations of the Local Government Code:

> (3) The notice or notices shall specify the date or dates and venue of the public hearing or hearings. The initial public hearing shall be held **not earlier than ten (10) days** from the sending out of the notice or notices, or the last day of publication, or date of posting thereof, whichever is later. (Emphasis ours.)

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[9] Records, p. 444.

[10] The plaintiffs in Civil Case No. 25843 were Socorro Mondejar, Perla Velasco, Rodolfo Rosbero, Rosie Saladara, Editha Pame, and petitioners Evelyn Ongsuco and Antonia Salaya. However, only Socorro Mondejar, Rodolfo Rosbero and petitioners filed an appeal docketed as CA-G.R. SP No. 86162 with the Court of Appeals. Thereafter, only petitioners filed the present petition, docketed as G.R. No. 182065. Records, p. 2; CA *rollo*, p. 31 and *rollo*, p. 3.

[11] Records, pp. 2-7.

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The letter from the Office of the Municipal Mayor was sent to stall holders on 6 August 1998, informing the latter of the meeting to be held, as was in fact held, on 11 August 1998, only **five days** after notice.[12]

Hence, petitioners prayed that respondent be enjoined from imposing the goodwill fees pending the determination of the reasonableness thereof, and from barring petitioners from occupying the stalls at the municipal public market and continuing with the operation of their businesses.

Respondent, in answer, maintained that Municipal Ordinance No. 98-01 is valid. He reasoned that Municipal Ordinance No. 98-01 imposed goodwill fees to raise income to pay for the loan obtained by the Municipality of Maasin for the renovation of its public market. Said ordinance is not *per se* a tax or revenue measure, but involves the operation and management of an economic enterprise of the Municipality of Maasin as a local government unit; thus, there was no mandatory requirement to hold a public hearing for the enactment thereof. And, even granting that a public hearing was required, respondent insisted that public hearings take place on 11 August 1998 and 22 January 1999.

Respondent further averred that petitioners were illegally occupying the market stalls, and the only way petitioners could legitimize their occupancy of said market stalls would be to execute lease contracts with the Municipality of Maasin. While respondent admitted that petitioners had been paying rentals for their market stalls in the amount of ₱45.00 per month prior to the renovation of the municipal public market, respondent asserted that no rentals were paid or collected from petitioners ever since the renovation began.

Respondent sought from the RTC an award for moral damages in the amount of not less than ₱500,000.00, for the social humiliation and hurt feelings he suffered by reason of the unjustified filing by petitioners of Civil Case No. 25843; and an order for petitioners to vacate the renovated market stalls and

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[12] *Id.* at 232-236.

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pay reasonable rentals from the date they began to occupy said stalls until they vacate the same.[13]

The RTC subsequently rendered a Decision[14] on 15 July 2003 dismissing the Petition in Civil Case No. 25843.

The RTC found that petitioners could not avail themselves of the remedy of *mandamus* or prohibition. It reasoned that *mandamus* would not lie in this case where petitioners failed to show a clear legal right to the use of the market stalls without paying the goodwill fees imposed by the municipal government. Prohibition likewise would not apply to the present case where respondent's acts, sought to be enjoined, did not involve the exercise of judicial or quasi-judicial functions.

The RTC also dismissed the Petition in Civil Case No. 25843 on the ground of non-exhaustion of administrative remedies. Petitioners' failure to question the legality of Municipal Ordinance No. 98-01 before the Secretary of Justice, as provided under Section 187 of the Local Government Code,[15] rendered the Petition raising the very same issue before the RTC premature.

The dispositive part of the RTC Decision dated 15 July 2003 reads:

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[13] *Id.* at 24-29.

[14] *Rollo*, pp. 27-32.

[15] Section 187 of the Local Government Code provides that:

Section 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings*.—The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however*, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

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WHEREFORE, in view of all the foregoing, and finding the petition without merit, the same is, as it is hereby ordered, dismissed.[16]

On 12 August 2003, petitioners and their co-plaintiffs filed a Motion for Reconsideration.[17] The RTC denied petitioners' Motion for Reconsideration in a Resolution dated 18 June 2004.[18]

While Civil Case No. 25843 was pending, respondent filed before the 12th Municipal Circuit Trial Court (MCTC) of Cabatuan-Maasin, Iloilo City a case in behalf of the Municipality of Maasin against petitioner Evelyn Ongsuco, entitled *Municipality of Maasin v. Ongsuco*, a Complaint for Unlawful Detainer with Damages, docketed as MCTC Civil Case No. 257. On 18 June 2002, the MCTC decided in favor of the Municipality of Maasin and ordered petitioner Ongsuco to vacate the market stalls she occupied, Stall No. 1-03 and Stall No. 1-04, and to pay monthly rentals in the amount of ₱350.00 for each stall from October 2001 until she vacates the said market stalls.[19] On appeal, Branch 36 of the RTC of Maasin, Iloilo City, promulgated a Decision, dated 29 April 2003, in a case docketed as Civil Case No. 02-27229 affirming the decision of the MCTC. A Writ of Execution was issued by the MCTC on 8 December 2003.[20]

Petitioners, in their appeal before the Court of Appeals, docketed as CA-G.R. SP No. 86182, challenged the dismissal of their Petition for Prohibition/*Mandamus* docketed as Civil Case No. 25843 by the RTC. Petitioners explained that they did appeal the enactment of Municipal Ordinance No. 98-01 before the Department of Justice, but their appeal was not acted upon because of their failure to attach a copy of said municipal ordinance. Petitioners claimed that one of their fellow stall holders, Ritchelle Mondejar, wrote a letter to the Officer-in-

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[16] *Rollo*, p. 32.

[17] Records, pp. 406-422.

[18] CA *rollo*, 39-44.

[19] CA *rollo*, pp. 210-221.

[20] *Id.* at 222-223.

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Charge (OIC), Municipal Treasurer of Maasin, requesting a copy of Municipal Ordinance No. 98-01, but received no reply.[21]

In its Decision dated 28 November 2006 in CA-G.R. SP No. 86182, the Court of Appeals again ruled in respondent's favor.

The Court of Appeals declared that the "goodwill fee" was a form of revenue measure, which the Municipality of Maasin was empowered to impose under Section 186 of the Local Government Code. Petitioners failed to establish any grave abuse of discretion committed by respondent in enforcing goodwill fees.

The Court of Appeals additionally held that even if respondent acted in grave abuse of discretion, petitioners' resort to a petition for prohibition was improper, since respondent's acts in question herein did not involve the exercise of judicial, quasi-judicial, or ministerial functions, as required under Section 2, Rule 65 of the Rules of Court. Also, the filing by petitioners of the Petition for Prohibition/*Mandamus* before the RTC was premature, as they failed to exhaust administrative remedies prior thereto. The appellate court did not give any weight to petitioners' assertion that they filed an appeal challenging the legality of Municipal Ordinance No. 98-01 before the Secretary of Justice, as no proof was presented to support the same.

In the end, the Court of Appeals decreed:

> WHEREFORE, in view of the foregoing, this Court finds the instant appeal bereft of merit. The assailed decision dated July 15, 2003 as well as the subsequent resolution dated 18 June 2004 are hereby **AFFIRMED** and the instant appeal is hereby **DISMISSED.**[22]

Petitioners filed a Motion for Reconsideration[23] of the foregoing Decision, but it was denied by the Court of Appeals in a Resolution[24] dated 8 February 2008.

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[21] *Id.* at 20.

[22] *Rollo*, p. 46.

[23] *Id.* at 48-53.

[24] *Id.* at 58.

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Hence, the present Petition, where petitioners raise the following issues:

I

WHETHER OR NOT THE PETITIONERS HAVE EXHAUSTED ADMINISTRATIVE REMEDIES BEFORE FILING THE INSTANT CASE IN COURT;

II

WHETHER OR NOT EXHAUSTION OF ADMINISTRATIVE REMEDIES IS APPLICABLE IN THIS CASE; AND

III

WHETHER OR NOT THE APPELLEE MARIANO MALONES WHO WAS THEN THE MUNICIPAL MAYOR OF MAASIN, ILOILO HAS COMMITTED GRAVE ABUSE OF DISCRETION.[25]

After a close scrutiny of the circumstances that gave rise to this case, the Court determines that there is no need for petitioners to exhaust administrative remedies before resorting to the courts.

The findings of both the RTC and the Court of Appeals that petitioners' Petition for Prohibition/*Mandamus* in Civil Case No. 25843 was premature is anchored on Section 187 of the Local Government Code, which reads:

Section 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.*— The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, That **any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice** who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however*, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse

[25] *Id.* at 18.

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of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction. (Emphasis ours.)

It is true that the general rule is that before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. However, there are several exceptions to this rule.[26]

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[26] *National Irrigation Administration v. Enciso*, G.R. No. 142571, 5 May 2006, 489 SCRA 570, 577-578. The exceptions to the doctrine of exhaustion of administrative remedies are: (1) when there is a violation of due process, (2) **when the issue involved is purely a legal question**; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is *estoppel* on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot. (*Hongkong & Shanghai Banking Corporation, Ltd. v. G.G. Sportswear Manufacturing Corporation*, G.R. No. 146526, 5 May 2006, 489 SCRA 578, 585-586.)

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The rule on the exhaustion of administrative remedies is intended to preclude a court from arrogating unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence. Thus, a case where the issue raised is a purely legal question, well within the competence; and the jurisdiction of the court and not the administrative agency, would clearly constitute an exception.[27] Resolving questions of law, which involve the interpretation and application of laws, constitutes essentially an exercise of judicial power that is exclusively allocated to the Supreme Court and such lower courts the Legislature may establish.[28]

In this case, the parties are not disputing any factual matter on which they still need to present evidence. The sole issue petitioners raised before the RTC in Civil Case No. 25843 was whether Municipal Ordinance No. 98-01 was valid and enforceable despite the absence, prior to its enactment, of a public hearing held in accordance with Article 276 of the Implementing Rules and Regulations of the Local Government Code. This is undoubtedly a pure question of law, within the competence and jurisdiction of the RTC to resolve.

Paragraph 2(a) of Section 5, Article VIII of the Constitution, expressly establishes the appellate jurisdiction of this Court, and impliedly recognizes the original jurisdiction of lower courts over cases involving the constitutionality or validity of an ordinance:

> Section 5. The Supreme Court shall have the following powers:
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> x x x x x x x x x
>
> (2) Review, revise, reverse, modify or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of **lower courts** in:

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[27] *Valdez v. National Electrification Administration*, G.R. No. 148938, 12 July 2007, 527 SCRA 427, 437; *Arimao v. Taher*, G.R. No. 152651, 7 August 2006, 498 SCRA 74, 87.

[28] *Joson III v. Court of Appeals*, G.R. No. 160652, 13 February 2006, 482 SCRA 360, 372.

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(a) All cases in which the **constitutionality or validity** of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, **ordinance**, or regulation is in question. (Emphases ours.)

In *J.M. Tuason and Co., Inc. v. Court of Appeals*,[29] *Ynot v. Intermediate Appellate Court*,[30] and *Commissioner of Internal Revenue v. Santos*,[31] the Court has affirmed the jurisdiction of the RTC to resolve questions of constitutionality and validity of laws (deemed to include local ordinances) in the first instance, without deciding questions which pertain to legislative policy.

Although not raised in the Petition at bar, the Court is compelled to discuss another procedural issue, specifically, the declaration by the RTC, and affirmed by the Court of Appeals, that petitioners availed themselves of the wrong remedy in filing a Petition for Prohibition/*Mandamus* before the RTC.

Sections 2 and 3, Rule 65 of the Rules of the Rules of Court lay down under what circumstances petitions for prohibition and *mandamus* may be filed, to wit:

SEC. 2. *Petition for prohibition*. – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising **judicial, quasi-judicial or ministerial functions**, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is **no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

SEC. 3. *Petition for mandamus*. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of **an**

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[29] 113 Phil. 673, 681 (1961).

[30] 232 Phil. 615, 621 (1987).

[31] 343 Phil. 411, 427 (1997).

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act which the law specifically enjoins as a duty resulting from an office, trust, or station, or **unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled**, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (Emphases ours.)

In a petition for prohibition against any tribunal, corporation, board, or person – whether exercising judicial, quasi-judicial, or ministerial functions – who has acted without or in excess of jurisdiction or with grave abuse of discretion, the petitioner prays that judgment be rendered, commanding the respondent **to desist** from further proceeding in the action or matter specified in the petition.[32] On the other hand, the remedy of mandamus lies **to compel** performance of a ministerial duty.[33] The petitioner for such a writ should have a well-defined, clear and certain legal right to the performance of the act, and it must be the clear and imperative duty of respondent to do the act required to be done.[34]

In this case, petitioners' primary intention is to prevent respondent from implementing Municipal Ordinance No. 98-01, *i.e.*, by collecting the goodwill fees from petitioners and barring them from occupying the stalls at the municipal public market. Obviously, the writ petitioners seek is more in the nature of prohibition (commanding desistance), rather than *mandamus* (compelling performance).

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[32] *Perez v. Court of Appeals*, G.R. No. 80838, 29 November 1988, 168 SCRA 236, 243.

[33] *Heirs of Sps. Luciano and Consolacion Venturillo v. Quitain*, G.R. No. 157972, 30 October 2006, 506 SCRA 102, 110; *Cariño v. Capulong*, G.R. No. 97203, 26 May 1993, 222 SCRA 593, 602.

[34] *Social Justice Society v. Atienza, Jr.*, G.R. No. 156052, 7 March 2007, 517 SCRA 657, 664.

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For a writ of prohibition, the requisites are: (1) the impugned act must be that of a "tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions"; and (2) there is no plain, speedy, and adequate remedy in the ordinary course of law."[35]

The exercise of judicial function consists of the power to determine what the law is and what the legal rights of the parties are, and then to adjudicate upon the rights of the parties. The term quasi-judicial function applies to the action and discretion of public administrative officers or bodies that are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. In implementing Municipal Ordinance No. 98-01, respondent is not called upon to adjudicate the rights of contending parties or to exercise, in any manner, discretion of a judicial nature.

A ministerial function is one that an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done.[36]

The Court holds that respondent herein is performing a ministerial function.

It bears to emphasize that Municipal Ordinance No. 98-01 enjoys the presumption of validity, unless declared otherwise. Respondent has the duty to carry out the provisions of the ordinance under Section 444 of the Local Government Code:

Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* – (a) The Municipal mayor, as the chief executive of the municipal government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

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[35] *Rivera v. Espiritu*, 425 Phil. 169, 180 (2002).

[36] *Destileria Limtuaco & Co. Inc. v. Advertising Board of the Philippines*, G.R. No. 164242, 28 November 2008, 572 SCRA 455, 460; and *Metropolitan Bank and Trust Co. Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, 6 February 2007, 514 SCRA 346, 357.

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(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the Municipal mayor shall:

x x x x x x x x x

(2) **Enforce** all laws and **ordinances** relative to the governance of the municipality and the exercise of its corporate powers provided for under Section 22 of this Code, implement all approved policies, programs, projects, services and activities of the municipality x x x.

x x x x x x x x x

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

x x x x x x x x x

(iii) **Ensure that all taxes and other revenues of the municipality are collected**, and that municipal funds are applied in accordance with law or ordinance to the payment of expenses and settlement of obligations of the municipality; x x x. (Emphasis ours.)

Municipal Ordinance No. 98-01 imposes increased rentals and goodwill fees on stall holders at the renovated municipal public market, leaving respondent, or the municipal treasurer acting as his *alter ego*, no discretion on whether or not to collect the said rentals and fees from the stall holders, or whether or not to collect the same in the amounts fixed by the ordinance.

The Court further notes that respondent already deemed petitioners' stalls at the municipal public market vacated. Without such stalls, petitioners would be unable to conduct their businesses, thus, depriving them of their means of livelihood. It is imperative on petitioners' part to have the implementation of Municipal Ordinance No. 98-01 by respondent stopped the soonest. As this Court has established in its previous discussion, there is no more need for petitioners to exhaust administrative remedies,

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considering that the fundamental issue between them and respondent is one of law, over which the courts have competence and jurisdiction. There is no other plain, speedy, and adequate remedy for petitioners in the ordinary course of law, except to seek from the courts the issuance of a writ of prohibition commanding respondent to desist from continuing to implement what is allegedly an invalid ordinance.

This brings the Court to the substantive issue in this Petition on the validity of Municipal Ordinance No. 98-01.

Respondent maintains that the imposition of goodwill fees upon stall holders at the municipal public market is not a revenue measure that requires a prior public hearing. Rentals and other consideration for occupancy of the stalls at the municipal public market are not matters of taxation.

Respondent's argument is specious.

Article 219 of the Local Government Code provides that a local government unit exercising its power to impose taxes, fees and charges should comply with the requirements set in Rule XXX, entitled "Local Government Taxation":

> Article 219. *Power to Create Sources of Revenue.*—Consistent with the basic policy of local autonomy, each LGU shall exercise its **power to create its own sources of revenue** and to levy taxes, fees, or **charges**, subject to the provisions of this Rule. Such taxes, fees, or charges shall accrue exclusively to the LGU. (Emphasis ours.)

Article 221(g) of the Local Government Code of 1991 defines "charges" as:

> Article 221. *Definition of Terms.*
>
> x x x x x x x x x
>
> (g) *Charges* refer to pecuniary liability, as **rents or fees** against persons or property. (Emphasis ours.)

Evidently, the revenues of a local government unit do not consist of taxes alone, but also other fees and charges. And rentals and goodwill fees, imposed by Municipal Ordinance

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No. 98-01 for the occupancy of the stalls at the municipal public market, fall under the definition of charges.

For the valid enactment of ordinances imposing charges, certain legal requisites must be met. Section 186 of the Local Government Code identifies such requisites as follows:

Section 186. *Power to Levy Other Taxes, Fees or Charges*.— Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the taxes, fees or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further,* **That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose**. (Emphasis ours.)

Section 277 of the Implementing Rules and Regulations of the Local Government Code establishes in detail the procedure for the enactment of such an ordinance, relevant provisions of which are reproduced below:

Section 277. *Publication of Tax Ordinance and Revenue Measures*.—x x x.

x x x x x x x x x

(b) The conduct of public hearings shall be governed by the following procedure:

x x x x x x x x x

(2) In addition to the requirement for publication or posting, the *sanggunian* concerned shall cause the sending of **written notices** of the proposed ordinance, enclosing a copy thereof, to the interested or affected parties operating or doing business within the territorial jurisdiction of the LGU concerned.

(3) The notice or notices shall specify the date or dates and venue of the public hearing or hearings. The **initial public hearing** shall be held **not earlier than ten (10) days** from the sending out of the notice or notices, or the last day of publication, or date of posting thereof, whichever is later;

x x x x x x x x x

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(c) **No tax ordinance or revenue measure shall be enacted or approved in the absence of a public hearing duly conducted in the manner provided under this Article.** (Emphases ours.)

It is categorical, therefore, that a public hearing be held prior to the enactment of an ordinance levying taxes, fees, or charges; and that such public hearing be conducted as provided under Section 277 of the Implementing Rules and Regulations of the Local Government Code.

There is no dispute herein that the notices sent to petitioners and other stall holders at the municipal public market were sent out on **6 August 1998**, informing them of the supposed "public hearing" to be held on **11 August 1998**. Even assuming that petitioners received their notice also on 6 August 1998, the "public hearing" was already scheduled, and actually conducted, only **five days** later, on 11 August 1998. This contravenes Article 277(b)(3) of the Implementing Rules and Regulations of the Local Government Code which requires that the public hearing be held no less than **ten days** from the time the notices were sent out, posted, or published.

When the *Sangguniang Bayan* of Maasin sought to correct this procedural defect through Resolution No. 68, series of 1998, dated 18 September 1998, respondent vetoed the said resolution. Although the *Sangguniang Bayan* may have had the power to override respondent's veto,[37] it no longer did so.

The defect in the enactment of Municipal Ordinance No. 98 was not cured when another public hearing was held on 22 January 1999, **after** the questioned ordinance was passed by the *Sangguniang Bayan* and approved by respondent on 17 August 1998. Section 186 of the Local Government Code prescribes that the public hearing be held **prior** to the enactment by a local government unit of an ordinance levying taxes, fees, and charges.

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[37] Section 55(c) of the Local Government Code provides that "(t)he local chief executive may veto an ordinance or resolution only once. The *sanggunian* may override the veto of the local chief executive concerned by two-thirds (2/3) vote of all its members, thereby making the ordinance effective even without the approval of the local chief executive concerned.

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Since no public hearing had been duly conducted prior to the enactment of Municipal Ordinance No. 98-01, said ordinance is void and cannot be given any effect. Consequently, a void and ineffective ordinance could not have conferred upon respondent the jurisdiction to order petitioners' stalls at the municipal public market vacant.

IN VIEW OF THE FOREGOING, the instant Petition is *GRANTED*. The assailed Decision dated 28 November 2006 of the Court of Appeals in CA-G.R. SP No. 86182 is *REVERSED* and *SET ASIDE*. Municipal Ordinance No. 98-01 is *DECLARED* void and ineffective, and a writ of prohibition is *ISSUED* commanding the Mayor of the Municipality of Maasin, Iloilo, to permanently desist from enforcing the said ordinance. Petitioners are also *DECLARED* as lawful occupants of the market stalls they occupied at the time they filed the Petition for *Mandamus*/Prohibition docketed as Civil Case No. 25843. In the event that they were deprived of possession of the said market stalls, petitioners are entitled to recover possession of these stalls.

SO ORDERED.

Quisumbing,[*] *Carpio (Chairperson), Peralta,* and *Abad,*[**] *JJ.,* concur.

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[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

[**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.