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[G.R. No. L-41631. December 17, 1976]

HON. RAMON D. BAGATSING, as Mayor of the City of Manila; ROMAN G. GARGANTIEL, as Secretary to the Mayor; THE MARKET ADMINISTRATOR; and THE MUNICIPAL BOARD OF MANILA, *petitioners, vs.* **HON. PEDRO A. RAMIREZ, in his capacity as Presiding Judge of the Court of First Instance of Manila, Branch XXX and the FEDERATION OF MANILA MARKET VENDORS, INC.,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; STATUTES; REPEALS; PRIOR SPECIAL LAW IS NOT ORDINARILY REPEALED BY A SUBSEQUENT GENERAL LAW; EXCEPTION; CASE AT BAR.**— There is no question that the Revised Charter of the City of Manila is a *special act* since it relates only to the City of Manila, whereas the Local Tax Code is a *general law* because it applies universally to all local governments. Blackstone defines general law as a universal rule affecting the entire community and special law as one relating to particular persons or things of a class. And the rule commonly said is that a prior special law is not ordinarily repealed by a subsequent general law. The fact that one is special and the other general creates a presumption that the special is to be considered as remaining an exception of the general, one as a general law of the land, the other as the law of a particular case. However, the rule readily yields to a situation where the special statute refers to a subject in general, which the general statute treats *in particular*. The exactly is the circumstance obtaining in the case at bar. Section 17 of the Revised Charter of the City of Manila speaks of "ordinance" in general, *i.e.*, irrespective of the nature and scope thereof, *whereas*, Section 43 of the Local Tax Code relates to "ordinances levying or imposing taxes, fees or other charges" in particular. In regard, therefore, to ordinances in general, the Revised Charter of the City of Manila is doubtless dominant, but, that dominant force loses its continuity when it approaches the realm of

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"ordinances levying or imposing taxes, fees or other charges" in particular. There, the Local Tax Code controls. Here, as always, a general provision must give way to a particular provision. Special provision governs. This is especially true where the law containing the particular provision was enacted later than the one containing the general provision. The City Charter of Manila was promulgated on June 18, 1949 as against the Local Tax Code which was decreed on June 1, 1973.

2. **ADMINISTRATIVE LAW; ADMINISTRATIVE REMEDIES, EXHAUSTION OF; EXCEPTION; CASE AT BAR.**— The principle of exhaustion of administrative remedies is strongly asserted by petitioners as having been violated by private respondent in bringing a direct suit in court. This is because Section 47 of the Local Tax Code provides that any question or issue raised against the legality of any tax ordinance, or portion thereof, shall be referred for opinion to the city fiscal in the case of tax ordinance of a city. The opinion of the city fiscal is appealable to the Secretary of Justice, whose decision shall be final and executory unless contested before a competent court within thirty (30) days. But, the petition below plainly shows that the controversy between the parties is deeply rooted in a pure question of law: whether it is the Revised Charter of the City of Manila or the Local Tax Code that should govern the publication of the tax ordinance. In other words, the dispute is sharply focused on the applicability of the Revised City Charter or the Local Tax Code on the point at issue, and *not* on the legality of the imposition of the tax. Exhaustion of administrative remedies before resort to judicial bodies is not an absolute rule. It admits of exceptions. Where the question litigated upon is purely a legal one, the rule does not apply. The principle may also be disregarded when it does not provide a plain, speedy and adequate remedy. It may and should be relaxed when its application may cause great and irreparable damage.

3. **CONSTITUTIONAL LAW; LOCAL GOVERNMENTS; SHALL HAVE POWER TO CREATE ITS OWN SOURCES OF REVENUE TO LEVY TAXES; CASE AT BAR.**— It is maintained by private respondent that the subject ordinance is not a "tax ordinance," because the imposition of rentals, permit fees, tolls and other fees is not strictly a taxing power but a revenue-raising function, so that the procedure for publication under the Local Tax Code finds no application. The pretense bears

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its own marks of fallacy. Precisely, the raising of revenues is the *principal* object of taxation. Under Section 5, Article XI of the New Constitution, "Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such provisions as may be provided by law." And one of those sources of revenue is what the Local Tax Code points to in particular: "Local governments may collect fees or rentals for the occupancy or use of public markets and premises . . ." They can provide for and regulate market stands, stalls and privileges, and, also, the sale, lease or occupancy thereof. They can license, or permit the use of, lease, sell or otherwise dispose of stands, stalls or marketing privileges.

APPEARANCES OF COUNSEL

Santiago F. Alidio and Restituto R. Villanueva for petitioners.
Antonio H . Abad, Jr. for private respondent.
Federico A. Blay for petitioner for intervention.

D E C I S I O N

MARTIN, *J.*:

The chief question to be decided in this case is what law shall govern the publication of a tax ordinance enacted by the Municipal Board of Manila, the Revised City Charter (R.A. 409, as amended), which requires publication of the ordinance before its enactment and after its approval, or the Local Tax Code (P.D. No. 231), which only demands publication after approval.

On June 12, 1974, the Municipal Board of Manila enacted Ordinance No. 7522, "AN ORDINANCE REGULATING THE OPERATION OF PUBLIC MARKETS AND PRESCRIBING FEES FOR THE RENTALS OF STALLS AND PROVIDING PENALTIES FOR VIOLATION THEREOF AND FOR OTHER PURPOSES." The petitioner City Mayor, Ramon D. Bagatsing, approved the ordinance on June 15, 1974.

On February 17, 1975, respondent Federation of Manila Market Vendors, Inc. commenced Civil Case 96787 before

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the Court of First Instance of Manila, presided over by respondent Judge, seeking the declaration of nullity of Ordinance No. 7522 for the reason that (a) the publication requirement under the Revised Charter of the City of Manila has not been complied with; (b) the Market Committee was not given any participation in the enactment of the ordinance, as envisioned by Republic Act 6039; (c) Section 3 (e) of the Anti-Graft and Corrupt Practices Act has been violated; and (d) the ordinance would violate Presidential Decree No. 7 of September 30, 1972 prescribing the collection of fees and charges on livestock and animal products.

Resolving the accompanying prayer for the issuance of a writ of preliminary injunction, respondent Judge issued an order on March 1, 1975, denying the plea for failure of the respondent Federation of Manila Market Vendors, Inc. to exhaust the administrative remedies outlined in the Local Tax Code.

After due hearing on the merits, respondent Judge rendered its decision on August 29, 1975, declaring the nullity of Ordinance No. 7522 of the City of Manila on the primary ground of non-compliance with the requirement of publication under the Revised City Charter. Respondent Judge ruled:

"There is, therefore, no question that the ordinance in question was not published at all in two daily newspapers of general circulation in the City of Manila before its enactment. Neither was it published in the same manner after approval, although it was posted in the legislative hall and in all city public markets and city public libraries. There being no compliance with the mandatory requirement of publication before and after approval, the ordinance in question is invalid and, therefore, null and void."

Petitioners moved for reconsideration of the adverse decision, stressing that (a) only a post-publication is required by the Local Tax Code; and (b) private respondent failed to exhaust all administrative remedies before instituting an action in court.

On September 26, 1975, respondent Judge denied the motion.

Forthwith, petitioners brought the matter to Us through the present petition for review on *certiorari*.

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We find the petition impressed with merits.

1. The *nexus* of the present controversy is the apparent conflict between the Revised Charter of the City of Manila and the Local Tax Code on the manner of publishing a tax ordinance enacted by the Municipal Board of Manila. For, while Section 17 of the Revised Charter provides:

"*Each proposed ordinance* shall be published in two daily newspapers of general circulation in the city, and shall not be discussed or enacted by the Board until after the third day following such publication. . . . *Each approved ordinance* . . . shall be published in two daily newspapers of general circulation in the city, within ten days after its approval; and shall take effect and be in force on and after the twentieth day following its publication, if no date is fixed in the ordinance."

Section 43 of the Local Tax Code directs:

"Within ten days *after their approval,* certified true copies of all provincial, *city*, municipal and barrio *ordinances levying or imposing taxes, fees or other charges* shall be published for three consecutive days in a newspaper or publication widely circulated within the jurisdiction of the local government, or posted in the local legislative hall or premises and in two other conspicuous places within the territorial jurisdiction of the local government. In either case, copies of all provincial, city, municipal and barrio ordinances shall be furnished the treasurers of the respective component and mother units of a local government for dissemination."

In other words, while the Revised Charter of the City of Manila requires publication *before* the enactment of the ordinance *and after* the approval thereof in two daily newspapers of general circulation in the city, the Local Tax Code only prescribes for publication after the approval of "*ordinances levying or imposing taxes, fees or other charges*" either in a newspaper or publication widely circulated within the jurisdiction of the local government or by posting the ordinance in the local legislative hall or premises and in two other conspicuous places within the territorial jurisdiction of the local government. Petitioners' compliance with the Local Tax Code rather than with the Revised Charter of the City spawned this litigation.

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There is no question that the Revised Charter of the City of Manila is a *special act* since it relates only to the City of Manila, whereas the Local Tax Code is a *general law* because it applies universally to all local governments. Blackstone defines general law as a universal rule affecting the entire community and special law as one relating to particular persons or things of a class.[1] And the rule commonly said is that a prior special law is not ordinarily repealed by a subsequent general law. The fact that one is special and the other general creates a presumption that the special is to be considered as remaining an exception of the general, one as a general law of the land, the other as the law of a particular case.[2] However, the rule readily yields to a situation where the special statute refers to a subject in general, which the general statute treats *in particular.* That exactly is the circumstance obtaining in the case at bar. Section 17 of the Revised Charter of the City of Manila speaks of "ordinance" in general, *i.e.*, irrespective of the nature and scope thereof, *whereas*, Section 43 of the Local Tax Code relates to "ordinances levying or imposing taxes, fees or other charges" in particular. In regard, therefore, to ordinances in general, the Revised Charter of the City of Manila is doubtless dominant, but, that dominant force loses its continuity when it approaches the realm of "ordinances levying or imposing taxes, fees or other charges" in particular. There, the Local Tax Code controls. Here, as always, a general provision must give way to a particular provision.[3] Special provision governs.[4] This is especially true where the law containing the particular provision was enacted later than the one containing the general provision. The City Charter of Manila was promulgated on June 18, 1949 as against the Local Tax Code which was decreed on June 1, 1973. The law-making

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[1] Cooley, *The Law of Taxation*, Vol. 2, 4th ed.

[2] *Butuan Sawmill, Inc. vs. City of Butuan*, L-21516, April 29, 1966, 16 SCRA 758, citing *State v. Stoll*, 17 Wall. 425.

[3] *Lichauco & Co. v. Apostol*, 44 Phil. 145 (1922).

[4] Crawford, *Construction of Statutes*, 265, citing *U.S. v. Jackson*, 143 Fed. 783.

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power cannot be said to have intended the establishment of conflicting and hostile systems upon the same subject, or to leave in force provisions of a prior law by which the new will of the legislating power may be thwarted and overthrown. Such a result would render legislation a useless and idle ceremony, and subject the law to the reproach of uncertainty and unintelligibility.[5]

The case of *City of Manila v. Teotico*[6] is opposite. In that case, Teotico sued the City of Manila for damages arising from the injuries he suffered when he fell inside an uncovered and unlighted catchbasin or manhole on P. Burgos Avenue. The City of Manila denied liability on the basis of the City Charter (R.A. 409) exempting the City of Manila from any liability for damages or injury to persons or property arising from the failure of the city officers to enforce the provisions of the charter or any other law or ordinance, or from negligence of the City Mayor, Municipal Board, or other officers while enforcing or attempting to enforce the provisions of the charter or of any other law or ordinance. Upon the other hand, Article 2189 of the Civil Code makes cities liable for damages for the death of, or injury suffered by any persons by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. On review, the Court held the Civil Code controlling. It is true that, insofar as its territorial application is concerned, the Revised City Charter is a special law and the subject matter of the two laws, the Revised City Charter establishes a *general rule* of liability arising from negligence in general, regardless of the object thereof, whereas the Civil Code constitutes a *particular prescription* for liability due to defective streets in particular. In the same manner, the Revised Charter of the City prescribes a rule for the publication of "ordinance" *in general*, while the Local Tax Code establishes a rule for the publication of "ordinance levying or imposing taxes fees or other charges *in particular.*

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[5] See Separate Opinion of Justice Johns in Lichauco, fn. 3, citing Lewis' Sutherland Statutory Construction, at 161.

[6] L-23052, January 29, 1968, 22 SCRA 270.

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In fact, there is no rule which prohibits the repeal even by implication of a special or specific act by a general or broad one.[7] A charter provision may be impliedly modified or superseded by a later statute, and where a statute is controlling, it must be read into the charter notwithstanding any particular charter provision.[8] A subsequent general law similarly applicable to all cities prevails over any conflicting charter provision, for the reason that a charter must not be inconsistent with the general laws and public policy of the state.[9] A chartered city is not an independent sovereignty. The state remains supreme in all matters not purely local. Otherwise stated, a charter must yield to the constitution and general laws of the state, it is to have read into it that general law which governs the municipal corporation and which the corporation cannot set aside but to which it must yield. When a city adopts a charter, it in effect adopts as part of its charter general law of such character.[10]

2. The principle of exhaustion of administrative remedies is strongly asserted by petitioners as having been violated by private respondent in bringing a direct suit in court. This is because Section 47 of the Local Tax Code provides that any question or issue raised against the legality of any tax ordinance, or portion thereof, shall be referred for opinion to the city fiscal in the case of tax ordinance of a city. The opinion of the city fiscal is appealable to the Secretary of Justice, whose decision shall be final and executory unless contested before a competent court within thirty (30) days. But, the petition below plainly shows that the controversy between the parties is deeply rooted in a pure question of law: whether it is the Revised Charter of the City of Manila or the Local Tax Code that should govern the publication of the tax ordinance. In other words, the dispute is sharply focused on the applicability of the Revised City Charter

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[7] See 73 Am Jur 2d 521.

[8] McQuillin, *Municipal Corporation,* Vol. 6, 3rd ed., 223.

[9] See *Bowyer v. Camden,* 11 Atl. 137.

[10] McQuillin, *Municipal Corporation*, Vol. 6, 3rd ed., 229-230.

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or the Local Tax Code on the point at issue, and *not* on the legality of the imposition of the tax. Exhaustion of administrative remedies before resort to judicial bodies is not an absolute rule. It admits of exceptions. Where the question litigated upon is purely a legal one, the rule does not apply.[11] The principle may also be disregarded when it does not provide a plain, speedy and adequate remedy. It may and should be relaxed when its application may cause great and irreparable damage.[12]

3. It is maintained by private respondent that the subject ordinance is not a "tax ordinance," because the imposition of rentals, permit fees, tolls and other fees is not strictly a taxing power but a revenue-raising function, so that the procedure for publication under the Local Tax Code finds no application. The pretense bears its own marks of fallacy. Precisely, the raising of revenues is the *principal* object of taxation. Under Section 5, Article XI of the New Constitution, "Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such provisions as may be provided by law."[13] And one of those sources of revenue is what the Local Tax Code points to in particular: "Local governments may collect fees or rentals for the occupancy or use of public markets and premises . . ."[14] They can provide for and regulate market stands, stalls and privileges, and, also, the sale, lease or occupancy thereof. They can license, or permit the use of, lease, sell or otherwise dispose of stands, stalls or marketing privileges.[15]

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[11] *Tapales v. President and Board of Regents of the U.P.*, L-17523, March 30, 1963, 7 SCRA 553; *C.N. Hodges v. Municipal Board of the City of Iloilo*, L-18276, January 12, 1967, 19 SCRA 32-33; *Aguilar v. Valencia*, L-30396, July 30, 1971, 40 SCRA 214; *Mendoza v. SSC*, L-29189, April 11, 1972, 44 SCRA 380.

[12] *Cipriano v. Marcelino*, L-27793, February 28, 1972, 43 SCRA 291; *Del Mar v. PVA*, L-27299, June 27, 1973, 51 SCRA 346, citing cases.

[13] See *City of Bacolod v. Enriquez*, L-27408, July 25, 1975, Second Division, per Fernando, *J.*, 65 SCRA 384-85.

[14] Article 5, Section 30, Chapter II.

[15] McQuillin, *Municipal Corporations*, Vol. 7, 3rd ed., 275.

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It is a feeble attempt to argue that the ordinance violates Presidential Decree No. 7, dated September 30, 1972, insofar as it affects livestock and animal products, because the said decree prescribes the collection of other fees and charges thereon "with the exception of ante-mortem and *post-mortem* inspection fees, as well as the delivery, stockyard and slaughter fees as may be authorized by the Secretary of Agriculture and Natural Resources."[16] Clearly, even the exception clause of the decree itself permits the collection of the proper fees for livestock. And the Local Tax Code (P.D. 231, July 1, 1973) authorizes in its Section 31: "Local governments may collect fees for the slaughter of animals and the use of corrals . . ."

4. The non-participation of the Market Committee in the enactment of Ordinance No. 7522 supposedly in accordance with Republic Act No. 6039, an amendment to the City Charter of Manila, providing that "the market committee shall formulate, recommend and adopt, *subject to the ratification of the municipal board, and approval of the mayor,* policies and rules or regulation repealing or maneding existing provisions of the market code" does not infect the ordinance with any germ of invalidity.[17] The function of the committee is purely recommendatory as the underscored phrase suggests, its recommendation is without binding effect on the Municipal Board and the City Mayor. Its prior acquiescence of an intended or proposed city ordinance is not a condition *sine qua non* before the Municipal Board could enact such ordinance. The *native power* of the Municipal Board to legislate remains undisturbed even in the slightest degree. It can move in its own initiative and the Market Committee cannot demur. At most, the Market

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[16] P.D. 7 was amended by P.D. 45 on November 10, 1972, so as to allow local governments to charge the ordinary fee for the issuance of certificate of ownership and one peso for the issuance of transfer certificate for livestock.

[17] The market committee is composed of the market administrator as chairman, and a representative of each of the city treasurer, the municipal board, the Chamber of Filipino Retailers, Inc. and the Manila Market Vendors Association Inc. as members.

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Committee may serve as a legislative aide of the Municipal Board in the enactment of city ordinances affecting the city markets or, in plain words, in the gathering of the necessary data, studies and the collection of consensus for the proposal of ordinances regarding city markets. Much less could it be said that Republic Act 6039 intended to delegate to the Market Committee the adoption of regulatory measures for the operation and administration of the city markets. *Potestas delegata non delegare potest.*

5. Private respondent bewails that the market stall fees imposed in the disputed ordinance are diverted to the exclusive private use of the Asiatic Integrated Corporation since the collection of said fees had been let by the City of Manila to the said corporation in a "Management and Operating Contract." The assumption is of course saddled on erroneous premise. The fees collected do not go direct to the private coffers of the corporation. Ordinance No. 7522 was not made for the corporation but for the purpose of raising revenues for the city. That is the object it serves. The entrusting of the collection of the fees does not destroy the public purpose of the ordinance. So long as the purpose is public, it does not matter whether the agency through which the money is dispensed is public or private. The right to tax depends upon the ultimate use, purpose and object for which the fund is raised. It is not dependent on the nature or character of the person or corporation whose intermediate agency is to be used in applying it. The people may be taxed for a public purpose, although it be under the direction of an individual or private corporation.[18]

Nor can the ordinance be stricken down as violative of Section 3(e) of the Anti-Graft and Corrupt Practices Act because the increased rates of market stall fees as levied by the ordinance will necessarily inure to the unwarranted benefit and advantage of the corporation.[19] We are concerned only with the issue

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[18] Cooley, *The Law of Taxation*, Vol. 1, 394-95.

[19] Section 3 (e); causing any undue injury to any party, including the government, or giving any private party any unwarranted benefits, advantage

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whether the ordinance in question is *intra vires*. Once determined in the affirmative, the measure may not be invalidated because of consequences that may arise from its enforcement.[20]

ACCORDINGLY, the decision of the court below is hereby reversed and set aside. Ordinance No. 7522 of the City of Manila, dated June 15, 1975, is hereby held to have been validly enacted. No. costs.

SO ORDERED.

Barredo, Makasiar, Antonio, Muñoz Palma, Aquino, and *Concepcion, Jr., JJ.,* concur.

Castro, C. J., in the result.

Fernando, J., concurs but qualifies his assent as to an ordinance *intra vires* not being open to question "because of consequences that may arise from its enforcement."

Teehankee, J., reserves his vote.

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or preference in the discharge of his official administrative or judicial functions through manifest partiality evident bad faith or gross inexcusable negligence. . . ."

[20] Willoughby, *The Constitutional Law of the United States,* 668 *et seq.*