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full opportunity to thresh out the real issues and litigate their claims in a full-blown trial. Besides, respondents would not be prejudiced should the RTC proceed with the hearing on the merits, as they are not stripped of any affirmative defenses nor deprived of due process of law.[62]

WHEREFORE, the Petition is hereby **GRANTED**. The Court of Appeals Decision dated August 5, 2015 and Resolution dated January 26, 2016 in CA-G.R. CV No. 102602 are **REVERSED** and **SET ASIDE**. The Complaint filed by petitioner Joanne Kristine G. Pimentel against respondents Reynaldo Adiao, Cristy Adiao-Nierves and Christian Adiao is **REINSTATED**. The Regional Trial Court of Las Piñas City, Branch 255 is **DIRECTED** to continue with the hearing of Civil Case No. LP-13-0029 with utmost dispatch, until its termination. No costs.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr.*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 222886. October 17, 2018]

HONORABLE LEILA M. DE LIMA, in her capacity As Secretary of Justice, *petitioner, vs.* **CITY OF MANILA, represented by MAYOR JOSEPH EJERCITO ESTRADA,** *respondent.*

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[62] See *Bank of the Philippine Islands v. Dando, supra* note 46, at 565, citing *Polanco v. Cruz*, *supra* note 49, at 960.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

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SYLLABUS

1. **TAXATION; LOCAL GOVERNMENT CODE (LGC); TAX ORDINANCES OR REVENUE MEASURES; THE LOCAL GOVERNMENT CODE SETS FORTH THE APPROPRIATE PROCEDURE AND TIME LIMITATIONS THAT MUST BE FOLLOWED IN ASSAILING TAX ORDINANCES OR REVENUE MEASURES; EXPLAINED.—** The Court in *Reyes v. CA* explained that the aforementioned provision sets forth "three separate periods" that are mandatory in nature, in that compliance therewith is a prerequisite before an aggrieved party could seek relief from the courts. They are as follows: *first*, an appeal questioning the constitutionality or legality of a tax ordinance or revenue measure must be filed before the Secretary of Justice within **30 days** from effectivity thereof. *Then,* from the receipt of the decision of the Secretary of Justice, the aggrieved party has a period of **30 days** within which to file an appeal before the courts. However, when the Secretary of Justice fails to act on the appeal, after the lapse of **60 days**, a party could already proceed and seek relief in court. In *Hagonoy Market Vendor Association v. Municipality of Hagonoy*, the Court explained the importance of observing the timeframe provided for under Section 187 of the LGC and emphasized that the same is not a mere technicality that can easily be brushed aside by the parties. The Court enunciated the purpose of the said periods within the context of the nature and relevance of revenue measures and tax ordinances, x x x Simply, as the revenue measures are the source of funds that give life and support the operations of the local government, it is imperative that any question as to its validity must be resolved with utmost dispatch. Towards this end therefore, the LGC has set limits which the parties must strictly comply with.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE REMEDY OF *CERTIORARI* UNDER RULE 65 ACCORDS UPON THE COURT AN EXPANDED JURISDICTION TO CORRECT THE EXERCISE OF GOVERNMENTAL FUNCTIONS OF WHATEVER NATURE; CASE AT BAR.—** By definition, as provided for under Section 1, Rule 65 of the Rules of Court, the special civil action of *certiorari* is an extraordinary remedy that is available only upon showing that

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a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. The writ is designed to correct grave errors of jurisdiction- x x x Nonetheless, the Court clarified in *Araullo, et al. v. President Aquino III, et al.*, that the remedy of *certiorari* under Rule 65 accords upon it an expanded jurisdiction to correct the exercise of governmental functions of whatever nature, x x x Clearly therefore, the petitioner cannot claim that *certiorari* is not the proper remedy simply on the basis of the nature of the power exercised by the Secretary of Justice. When *properly* called upon by the interested or affected parties to exercise its duty under the remedy of a special civil action of *certiorari*, the Court cannot refrain as it is in fact, both its duty and obligation to determine the validity of any legislative or executive action, consistent with the republican system of checks and balances.

3. ID.; JURISDICTION; REGIONAL TRIAL COURT; THE REGIONAL TRIAL COURT CANNOT AT FIRST INSTANCE RULE UPON THE CONSTITUTIONALITY OR LEGALITY OF TAX ORDINANCES AND REVENUE MEASURES BY VIRTUE OF THE MANDATORY PROCEDURE SET FORTH UNDER SECTION 187 OF THE LOCAL GOVERNMENT CODE, WHICH VESTS UPON THE SECRETARY OF JUSTICE THE JURISDICTION OVER THE SAME.— It is settled that jurisdiction over the subject matter is conferred by law and the allegations of the complaint or in case of appeals, the nature and origin of the resolution questioned. In this regard, appellate jurisdiction over the resolution of the Secretary of Justice is determined by the nature of the power exercised by the latter under Section 187 of the LGC, pursuant to which she has issued the resolution that is subject of the petition for review *ad cautelam*. The RTC, by virtue of a specific grant by the 1987 Constitution has the jurisdiction to resolve the constitutionality of a statute, presidential decree, executive order, or administrative regulation. Nonetheless, it cannot be said that the RTC acted pursuant to such jurisdiction when it entertained the petition for review *ad cautelam*, as the issue involved therein is not directly an issue of constitutionality but whether the Secretary of Justice committed grave abuse of discretion

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in issuing the subject resolution. Otherwise stated, considering that the manner in which the RTC took cognizance of this case is not by virtue of its original but that of its appellate jurisdiction, it is not to be construed as an exercise by the RTC pursuant to the aforementioned constitutionally vested jurisdiction. At any rate, the RTC cannot at first instance, rule upon the constitutionality or legality of tax ordinances and revenue measures by virtue of the mandatory procedure set forth under Section 187 of the LGC, which vests upon the Secretary of Justice the jurisdiction over the same.

4. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AN APPEAL THROUGH A PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT IS THE PROPER REMEDY IN CASE AT BAR, SINCE THE SUBJECT MATTER OF REVIEW IS AN EXERCISE OF QUASI-JUDICIAL POWER BY THE SECRETARY OF JUSTICE, WHICH IS THE LATTER'S DECISION ON THE LEGALITY OR CONSTITUTIONALITY OF TAX ORDINANCES AND REVENUE MEASURES UNDER SECTION 187 OF THE LOCAL GOVERNMENT CODE.— As a rule, appeals from the judgment or final rulings of quasi-judicial agencies are appealable to the CA *via* petition for review under Rule 43 of the Rules of Court. While the enumeration of such agencies provided for under Section 1 of the said Rule is not exclusive, the Court had the occasion to rule in *Orosa v. Roa* that the exclusion of the Department of Justice (DOJ) from the list is a deliberate one, in consonance with the doctrine of exhaustion of administrative remedies. As a rule therefore, the Court held that "recourse from the decision of the Secretary of Justice should be to the President." In subsequent cases, however, the Court has been consistent in ruling that the remedy of a party from an adverse resolution of the Secretary of Justice is a petition for *certiorari* under Rule 65. It must be pointed out that in the foregoing, the subject matter of appeal is the decision of the Secretary of Justice evaluating a prosecutor's determination of probable cause, a function that does not involve the exercise of quasi-judicial powers by the DOJ, that is covered by appeals under Rule 43. In contrast, in the case at bar, the subject matter of review is the decision of the Secretary of Justice evaluating

the legality or constitutionality of a local revenue ordinance, an act which is quasi-judicial in nature, and therefore may be the subject of an appeal through a petition for review under Rule 43. x x x The proper venue for the foregoing actions however is the CA and not the RTC in accordance with Section 4, Rule 65 of the Rules of Court. In the consolidated cases of *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*, the Court emphasized that the "acts or omissions by quasi-judicial agencies, regardless of whether the remedy involves a Rule 43 appeal or a Rule 65 petition for *certiorari*, is cognizable by the CA."

5. **POLITICAL LAW; ADMINISTRATIVE AGENCIES; QUASI-JUDICIAL OR ADMINISTRATIVE ADJUDICATORY POWER; QUASI-JUDICIAL OR ADMINISTRATIVE ADJUDICATORY POWER IS THAT WHICH VESTS UPON THE ADMINISTRATIVE AGENCY THE AUTHORITY TO ADJUDICATE THE RIGHTS OF PERSONS BEFORE IT; EXPLAINED.—** Quasi-judicial or administrative adjudicatory power is that which vests upon the administrative agency the authority to adjudicate the rights of persons before it. It involves the power to hear and determine questions of fact and decide in accordance with the standards laid down by law issues which arise in the enforcement and administration thereof. Likewise, the performance "in a judicial manner of an act that is essentially of an executive or administrative in nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted" to the public officer or administrative agency. In the performance of judicial or quasi-judicial acts, there must be a law that gives rise to some specific rights of persons or property from which the adverse claims are rooted, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the right of the contending parties.

6. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; THREE WAYS TO COMMIT FORUM SHOPPING, ENUMERATED.—** Forum shopping can be committed in three ways: *first*, in case of *litis pendentia* or the filing of multiple cases with the same cause of action and seeking the same relief,

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in which the previous case remains pending; *second*, in case of *res judicata*, or the filing of multiple cases involving similar cause of action and relief, in which the previous case has been resolved; and *last*, in case of splitting of causes of action or the filing of multiple cases involving different reliefs although based on the same cause of action, where the ground for dismissal is either *litis pendentia* or *res judicata*. Proceeding from jurisprudential rulings, forum shopping is present when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in another, as there is a) identity of parties or where the parties represent the same interests in both actions, b) identity of rights or causes of actions, and c) identity of relief sought in the cases that are pending.

7. ID.; ID.; ID.; ID.; THE MERE PROPER EXECUTION OF A CERTIFICATE AGAINST FORUM SHOPPING DOES NOT AUTOMATICALLY ABSOLVE A PARTY WHO HAS OTHERWISE COMMITTED FORUM SHOPPING; RATIONALE.— [T]he fact that the respondent has disclosed and attached a copy of its Motion for Reconsideration does not negate actual forum shopping. This is because the essence of forum shopping is not on the non-disclosure of pending "identical" actions, but in the institution thereof. As explained by the Court in *Spouses Melo v. CA*, compliance with the rule on certification against forum shopping is "separate from, and independent of, the avoidance of forum shopping itself." Thus, the variance with respect to imposable sanctions in case of violation - "[t]he former is merely a cause for the dismissal, without prejudice, of the complaint or initiatory pleading, while the latter is a ground for summary dismissal thereof and constitutes direct contempt." Consequently, the mere proper execution of a certification against non-forum shopping does not automatically absolve a party who has otherwise committed forum shopping. Ultimately, on the issue of forum shopping, primary consideration is given as to whether the filing of these actions would result in the very evil the rule on forum shopping seeks to prevent, that is, the rendition of conflicting decisions by different tribunals.

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D E C I S I O N

A. REYES, JR., *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 139281 dated July 9, 2015, and its Resolution[3] dated January 8, 2016, denying the motion for reconsideration thereof.

The Antecedent Facts

On November 26, 2013, the City Council of Manila passed Ordinance No. 8331, entitled "*An Ordinance Enacting the 2013 Omnibus Revenue Code of the City of Manila*." It was approved by Mayor Joseph Ejercito Estrada on December 3, 2013, and thereafter published in the *Manila Times* and *Manila Standard* on December 6, 7, and 8, 2013.[4] The Ordinance took effect on December 9, 2013 and implemented by the City of Manila (respondent) on January 2, 2014.[5]

On January 6, 2014, operators of retail businesses in the City of Manila-Mandurriao Star, Inc., Metro Manila Shopping Mecca Corporation, SM Mart, Inc., Supervalue, Inc., and Super Shopping Market, Inc. (hereinafter referred to as retail business operators) filed an *Appeal* before Secretary of Justice Leila M. De Lima (petitioner). Therein, the retail business operators claimed that Section 104 of Ordinance No. 8331, which imposed percentage tax on gross sales of retailers from 1% to 3%, is unconstitutional for being violative of Section 5, Article X of

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[1] *Rollo*, pp. 3-5.

[2] Penned by Associate Justice Remedios Salazar-Fernando, with Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting, concurring; *id*. at 53-66.

[3] *Id*. at 26-29.

[4] *Id*. at 12.

[5] *Id*. at 34.

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the Constitution, and illegal for being excessive and contrary to limitations set forth under Sections 130, 186, and 191 of the Local Government Code of 1991 (LGC).[6]

Specifically, the retail business operators alleges that the respondent increased the local business tax rates from 0.20% to 3% and 1%, which is beyond the 10% limit on increase provided for under Section 191 of the LGC.[7]

Per the petitioner's Order dated February 3, 2014, the respondent filed its Comment, whereby it submits that Ordinance No. 8331 was enacted in compliance with the procedural requirements under the law and therefore has in its favor the presumption of validity. Moreover, the respondent argued that its imposition of retail tax under the Ordinance is a valid exercise of its power to impose rates which are within the limits provided for under Section 143(d), and as such, must be sustained.[8]

On April 7, 2014, the petitioner issued a Resolution[9] declaring Section 104 of Ordinance No. 8331 void for being contrary to Section 191 of the LGC, *viz.*:

> WHEREFORE, premises considered, Section 104 of Ordinance No. 8331, series of 2013, of the City of Manila is HEREBY DECLARED VOID for being contrary to Section 191 of the [LGC].
>
> SO ORDERED.[10]

In its Resolution, the petitioner explained that under the LGC, the respondent has the power to impose local business taxes and determine accordingly the rates to be levied, through the adoption of revenue ordinance. But after a revenue ordinance has been enacted, the succeeding amendments increasing the

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[6] *Id*. at 12-13.

[7] *Id*. at 13.

[8] *Id*.

[9] *Id*. at 76-85.

[10] *Id*. at 84.

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rates therein specified would have to be in accordance with the limitations set forth under Section 191 of the LGC.[11]

In the case of the respondent, the petitioner found that it has elected to exercise such power when it enacted Ordinance No. 7794 in 1993 and its amendment passed two months thereafter – Ordinance No. 7807.[12] In this light, the petitioner ratiocinated that any further amendment of the tax rates through the enactment of a new revenue ordinance would have to comply with the 10% maximum ceiling of increase under the LGC. The petitioner adjudged that the adjustment of tax rates from Ordinance Nos. 7794 and 7807 to Ordinance No. 8331 violates the said ceiling and as such is invalid.[13]

On April 24, 2014, the respondent filed a Motion for Reconsideration[14] of the petitioner's Resolution dated April 7, 2014.

Without awaiting for the petitioner's action on its Motion, the respondent filed a Petition for Review *Ad Cautelam*[15] before the Regional Trial Court (RTC) of Manila on May 15, 2014. In its petition, the respondent sought to annul the petitioner's Resolution dated April 7, 2014 for having been issued with grave abuse of discretion and to declare Section 104 of Ordinance No. 8331 as valid and enforceable.

On May 19, 2014, the RTC issued an Order[16] treating the Petition for Review *Ad Cautelam* as a petition for *certiorari* under Rule 65 of the Rules of Court.

After the parties filed their respective Comment and Reply, the RTC rendered its Decision on July 25, 2014 dismissing the petition in this wise:

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[11] *Id*. at 81.

[12] *Id*.

[13] *Id*. at 83.

[14] *Id*. at 72-74.

[15] *Id*. at 86-95.

[16] *Id*. at 98.

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WHEREFORE, premises considered, the Petition for Review Ad Cautelam is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.[17]

The Motion for Reconsideration of the Decision dated July 25, 2014 having been denied by the RTC through its Order[18] dated October 30, 2014, the respondent elevated the matter to the CA *via certiorari* on appeal.

On July 9, 2015, the CA rendered the herein assailed Decision,[19] the dispositive portion of which reads:

WHEREFORE, premises considered, the assailed Decision dated July 25, 2014 and Order dated October 30, 2014 of the RTC, Branch 7, Manila in Civil Case No. 14-131817 are hereby **SET ASIDE**. Let the case be **REMANDED** to the RTC, Branch 7, Manila to conduct further proceedings with dispatch.

SO ORDERED.[20]

In its decision, the CA held that the RTC committed reversible error in dismissing the Petition for Review *Ad Cautelam* for lack of jurisdiction, considering that the LGC does not require the prior filing of a motion for reconsideration before the Secretary of Justice nor the elevation of the case to the Office of the President.[21]

Anent the issues relating to the validity and enforceability of Section 104 of Ordinance No. 8331, the CA refused to make any ruling, finding that these matters should be first threshed out before the RTC. Considering that the RTC dismissed the Petition for Review *Ad Cautelam* solely on the basis of

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[17] *Id*. at 54.

[18] *Id*. at 99-100.

[19] *Id*. at 53-66.

[20] *Id*. at 65.

[21] *Id*. at 64.

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technicality, the CA ordered the case to be remanded for further proceedings.[22]

On January 8, 2016, the CA, acting on the petitioner's Motion for Reconsideration and the retail business operators' Motion for Partial Reconsideration, issued a Resolution,[23] as follows:

> In fine, there being no substantial argument which would warrant the modification much less the reversal of this Court's July 9, 2015 Decision, [petitioner's] Motion for Reconsideration and [retail business operators'] Motion for Partial Reconsideration are hereby **DENIED** for lack of merit.
>
> SO ORDERED.[24]

Thus, the instant petition for review on *certiorari* whereby the petitioner raises the following for the Court's consideration:

I.

THE CA COMMITTED REVERSIBLE ERROR IN RULING THAT THE RTC ERRED IN DISMISSING RESPONDENT'S PETITION FOR REVIEW *AD CAUTELAM* FOR LACK OF JURISDICTION.

1.) A petition for *certiorari* before the RTC is not the proper remedy to question a decision of the Secretary of Justice on the constitutionality of a tax ordinance.

2.) A motion for reconsideration of the assailed resolution is required before the respondent may file a petition for *certiorari* before the RTC.

II.

THE CA COMMITTED REVERSIBLE ERROR IN NOT AFFIRMING THE DISMISSAL OF RESPONDENT'S PETITION FOR REVIEW *AD CAUTELAM* ON THE GROUND OF FORUM SHOPPING. RESPONDENT FILED ITS PETITION FOR REVIEW *AD CAUTELAM*

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[22] *Id*.

[23] *Id*. at 68-71.

[24] *Id*. at 71.

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BEFORE THE RTC WHILE ITS MOTION FOR RECONSIDERATION WAS PENDING BEFORE PETITIONER.[25]

The issues raised by the petitioner are essentially procedural, namely: *first*, whether the CA erred in ruling that the RTC has the jurisdiction to resolve an appeal from the resolution of the Secretary of Justice; and *second*, whether the CA erred ruling that the respondent did not commit forum shopping.

Ruling of the Court

The petition is ***partly meritorious***.

The resolution of the first issue necessitates that the Court deal with two matters - *first*, the timeliness of the appeal, and *second*, the proper action to be filed.

The appeal before the RTC has been timely filed.

Section 187 of the LGC sets forth the appropriate procedure and time limitations that must be followed in assailing tax ordinances or revenue measures, *viz.*:

SEC. 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. (Emphasis Ours)

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[25] *Id.* at 105.

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The Court in *Reyes v. CA*[26] explained that the aforementioned provision sets forth "three separate periods" that are mandatory in nature, in that compliance therewith is a prerequisite before an aggrieved party could seek relief from the courts. They are as follows: *first*, an appeal questioning the constitutionality or legality of a tax ordinance or revenue measure must be filed before the Secretary of Justice within **30 days** from effectivity thereof. *Then*, from the receipt of the decision of the Secretary of Justice, the aggrieved party has a period of **30 days** within which to file an appeal before the courts. However, when the Secretary of Justice fails to act on the appeal, after the lapse of **60 days**, a party could already proceed and seek relief in court.[27]

In *Hagonoy Market Vendor Association v. Municipality of Hagonoy*,[28] the Court explained the importance of observing the timeframe provided for under Section 187 of the LGC and emphasized that the same is not a mere technicality that can easily be brushed aside by the parties.[29] The Court enunciated the purpose of the said periods within the context of the nature and relevance of revenue measures and tax ordinances, thus:

> Ordinance No. 28 is a revenue measure adopted by the municipality of Hagonoy to fix and collect public market stall rentals. Being its lifeblood, collection of revenues by the government is of paramount importance. The funds for the operation of its agencies and provision of basic services to its inhabitants are largely derived from its revenues and collections. Thus, it is essential that **the validity of revenue measures is not left uncertain for a considerable length of time**. Hence, the law provided a time limit for an aggrieved party to assail the legality of revenue measures and tax ordinances.[30] (Citation omitted and emphasis in the original)

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[26] 378 Phil. 232 (1999).

[27] *Id.* at 237.

[28] 426 Phil. 769 (2002).

[29] *Id.* at 778.

[30] *Id.*

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Simply, as the revenue measures are the source of funds that give life and support the operations of the local government, it is imperative that any question as to its validity must be resolved with utmost dispatch. Towards this end therefore, the LGC has set limits which the parties must strictly comply with.

Preliminarily, the Court notes that contrary to the respondent's submission in its petition for review *ad cautelam*, the appeal before the RTC could not be anchored on *inaction* as in fact, the petitioner, *acted* on the appeal. While ideally, "action upon the appeal" would mean issuance of a final disposition upon the dispute, the urgency presented by questions regarding revenue measures must be balanced with the dictates of due process and that of achieving a full ventilation of the issues presented for review. With this, the Court finds that the petitioner has *acted upon the appeal* when it issued an Order on February 3, 2014, requiring the respondent to file its Comment.

In this controversy, Ordinance No. 8331 of the respondent was passed by the City Council on November 26, 2013, and subsequently published in the *Manila Times* and *Manila Standard* on December 6, 7, and 8, 2013. Herein involved retail business operators filed an appeal questioning the constitutionality and legality of the subject ordinance before the petitioner on January 6, 2014, within the 30-day period fixed by law. The petitioner then issued her Resolution on April 7, 2014, which the respondent **received on April 15, 2014.** The respondent then **filed before the RTC a Petition for Review *Ad Cautelam* assailing the Resolution dated April 7, 2014 of the petitioner on May 15, 2014.**[31]

As the petition for review *ad cautelam* before the RTC assails the petitioner's Resolution dated April 7, 2014, the applicable period in determining the timeliness of the appeal before the RTC is 30 days from the respondent's receipt of the petitioner's resolution. With this, the appeal before the RTC has been timely filed, the action having been instituted exactly 30 days from the respondent's receipt of the petitioner's resolution.

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[31] *Rollo*, pp. 14, 35.

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The determination by the petitioner of the constitutionality or legality of the subject ordinance involves an exercise of quasi-judicial power that is the proper subject of a Special Civil Action for Certiorari cognizable by the CA.

The petitioner argues that the remedy of *certiorari* is not available as the questioned resolution does not involve an exercise of quasi-judicial function by the Secretary of Justice. The petitioner cites in support of its argument the case of *Hon. Drilon v. Mayor Lim*,[32] whereby the Court ruled that the Secretary of Justice does not exercise discretion under Section 187 of the LGC, "but merely ascertain the constitutionality or legality of the tax measure."[33]

Preliminarily, it must be stated that although denominated as "Petition for Review *Ad Cautelam*" the allegations and grounds raised in the pleading filed by the respondent before the RTC shows that it is in the nature of a special civil action for *certiorari*.[34]

The nature and the relief sought by the petitioner specifically indicates that it is within the purview of *certiorari* under Rule 65 of the Rules of Court, in that the petitioner committed *grave abuse of discretion amounting to lack or excess of jurisdiction* in rendering her Resolution dated April 7, 2014, and as such should be nullified and set aside.

By definition, as provided for under Section 1, Rule 65 of the Rules of Court, the special civil action of *certiorari* is an extraordinary remedy that is available only upon showing that a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of

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[32] 305 Phil. 146 (1994).

[33] *Rollo*, p. 38.

[34] *Id*. at 86-87, 89-90.

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jurisdiction. The writ is designed to correct grave errors of jurisdiction–

> [W]hich means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[35]

Nonetheless, the Court clarified in *Araullo, et al. v. President Aquino III, et al.*,[36] that the remedy of *certiorari* under Rule 65 accords upon it an expanded jurisdiction to correct the exercise of governmental functions of whatever nature, thus, it elucidated:

> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition **may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.** This application is expressly authorized by the text of the second paragraph of Section 1, supra.
>
> Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[37] (Emphasis and underscoring Ours)

Clearly therefore, the petitioner cannot claim that *certiorari* is not the proper remedy simply on the basis of the nature of

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[35] *Sps. Delos Santos v. Metropolitan Bank and Trust Company*, 698 Phil. 1, 16 (2012).

[36] 737 Phil. 457 (2014).

[37] *Id.* at 531.

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the power exercised by the Secretary of Justice. When *properly* called upon by the interested or affected parties to exercise its duty under the remedy of a special civil action of *certiorari*, the Court cannot refrain as it is in fact, both its duty and obligation to determine the validity of any legislative or executive action, consistent with the republican system of checks and balances.[38]

Nevertheless, as will be elaborated further, while respondent's resort to the remedy of *certiorari* is proper the same has been erroneously lodged before the RTC instead of the CA.

It is settled that jurisdiction over the subject matter is conferred by law and the allegations of the complaint or in case of appeals, the nature and origin of the resolution questioned. In this regard, appellate jurisdiction over the resolution of the Secretary of Justice is determined by the nature of the power exercised by the latter under Section 187 of the LGC, pursuant to which she has issued the resolution that is subject of the petition for review *ad cautelam*.

The RTC, by virtue of a specific grant by the 1987 Constitution has the jurisdiction to resolve the constitutionality of a statute, presidential decree, executive order, or administrative regulation.[39] Nonetheless, it cannot be said that the RTC acted pursuant to such jurisdiction when it entertained the petition for review *ad cautelam*, as the issue involved therein is not directly an issue of constitutionality but whether the Secretary of Justice committed grave abuse of discretion in issuing the subject resolution. Otherwise stated, considering that the manner in which the RTC took cognizance of this case is not by virtue of its original but that of its appellate jurisdiction, it is not to be construed as

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[38] *Id*. See *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al*., 802 Phil. 116, 135 (2016), where the Court impliedly recognized the availability of a petition for *certiorari* for acts of administrative agencies committed with grave abuse of discretion, regardless of whether the same concerns a quasi-judicial, or quasi-legislative function, or is purely regulatory.

[39] 1987 CONSTITUTION, Article VIII, Section 5 (2a).

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an exercise by the RTC pursuant to the aforementioned constitutionally vested jurisdiction.

At any rate, the RTC cannot at first instance, rule upon the constitutionality or legality of tax ordinances and revenue measures by virtue of the mandatory procedure set forth under Section 187 of the LGC, which vests upon the Secretary of Justice the jurisdiction over the same.[40]

As a rule, appeals from the judgment or final rulings of quasi-judicial agencies are appealable to the CA *via* petition for review under Rule 43 of the Rules of Court. While the enumeration of such agencies provided for under Section 1 of the said Rule is not exclusive, the Court had the occasion to rule in *Orosa v. Roa*[41] that the exclusion of the Department of Justice (DOJ) from the list is a deliberate one, in consonance with the doctrine of exhaustion of administrative remedies.[42] As a rule therefore, the Court held that "recourse from the decision of the Secretary of Justice should be to the President."[43] In subsequent cases,[44] however, the Court has been consistent in ruling that the remedy of a party from an adverse resolution of the Secretary of Justice is a petition for *certiorari* under Rule 65.

It must be pointed out that in the foregoing, the subject matter of appeal is the decision of the Secretary of Justice evaluating a prosecutor's determination of probable cause, a function that does not involve the exercise of quasi-judicial powers by the DOJ,[45] that is covered by appeals under

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[40] *Cagayan Electric Power v. City of Cagayan De Oro*, 698 Phil. 788, 792 (2012).

[41] 527 Phil. 347 (2006).

[42] *Id*. at 353-354.

[43] *Id*.

[44] *Brgy. Dasmariñas v. Creative Play Corner School, et al.*, 655 Phil. 285, 297 (2011), citing *Levi Strauss (Phils.), Inc. v. Lim*, 593 Phil. 435, 439 (2008).

[45] *Sec. De Lima, et al. v. Reyes*, 776 Phil. 623, 634 (2016).

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Rule 43.[46] In contrast, in the case at bar, the subject matter of review is the decision of the Secretary of Justice evaluating the legality or constitutionality of a local revenue ordinance, an act which is quasi-judicial in nature, and therefore may be the subject of an appeal through a petition for review under Rule 43.

Quasi-judicial or administrative adjudicatory power is that which vests upon the administrative agency the authority to adjudicate the rights of persons before it.[47] It involves the power to hear and determine questions of fact and decide in accordance with the standards laid down by law issues which arise in the enforcement and administration thereof. Likewise, the performance "in a judicial manner of an act that is essentially of an executive or administrative in nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted" to the public officer or administrative agency.[48]

In the performance of judicial or quasi-judicial acts, there must be a law that gives rise to some specific rights of persons or property from which the adverse claims are rooted, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the right of the contending parties.[49]

Preliminarily, it must be stated that the case of *Hon. Drilon v. Mayor Lim*[50] did not squarely rule on the nature of the power exercised by the Secretary of Justice under the aforesaid provision and as such cannot be used as authority therefore. The main

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[46] **Section 1.** *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its **quasi-judicial functions**. x x x. (Emphasis Ours)

[47] *Bedol v. COMELEC*, 621 Phil. 498, 511 (2009).

[48] *The Chairman and Executive Director, Palawan Council for Sustainable Development, et al. v. Lim*, 793 Phil. 690, 698 (2016).

[49] *Ferrer, Jr. v. Mayor Bautista, et al.*, 762 Phil. 233, 244 (2015).

[50] 305 Phil. l46 (1994).

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issue in *Hon. Drilon* is the constitutionality of Section 187 of the LGC. In resolving the issue, the Court did not characterize whether the power exercised by the Secretary of Justice under the said provision of the LGC is ministerial, administrative or executive, or quasi-judicial. Rather, the Court merely dealt with whether the exercise of such discretion by the Secretary of Justice is tantamount to an exercise of the power of control over local government units (LGUs), in direct violation of the Constitutional policy granting LGUs autonomy and the power to tax. Clearly therefore, the case cannot be used as authority to make a conclusion as to the nature of the power exercised by the Secretary of Justice under Section 187 of the LGC.

Contrary to the petitioner's submission, in the instant controversy, the evaluation of the *appeal* lodged by the retail business operators involves an exercise of quasi-judicial power by the Secretary of Justice. In deciding the same, the Secretary of Justice must ascertain the existence of factual circumstances specifically, whether Section 104 of Ordinance No. 8331 was passed in accordance with the procedure and the limitations set forth by the LGC. And from there make a conclusion as to the validity and applicability of the same to the retail business operators of Manila.[51]

Considering that the subject matter of review is an exercise of quasi-judicial power by the Secretary of Justice, the latter's decision on the legality or constitutionality of tax ordinances and revenue measures under Section 187 of the LGC is a proper subject of appeal through a petition for review under Rule 43.[52]

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[51] *Tabigue, et al. v. International Copra Export Corporation (INTERCO)*, 623 Phil. 866, 872-873 (2009). See *Galicto v. H.E. President Aquino III, et al.*, 683 Phil. 141, 167 (2012), whereby the Court ruled that Quasi-judicial function is "a term which applies to the actions, discretion, *etc*., of public administrative officers or bodies x x x 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."

[52] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association. Inc., et al*., *supra* note 38, at 162.

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In the same light, as aforestated, the same decision, when tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, may be elevated to the courts through a special civil action for *certiorari* under Rule 65, to correct errors of jurisdiction. The availability of a special civil action for *certiorari* under Rule 65 as a remedy is justified by the fact that the constitutionality of a governmental act, in the form of Ordinance No. 8331 by the City Council of Manila, is questioned. As in that case, the questioned act or exercise of functions are automatically regarded to have been committed with grave abuse of discretion for being acts undertaken outside the contemplation of the Constitution.[53]

The proper venue for the foregoing actions however is the CA and not the RTC in accordance with Section 4,[54] Rule 65 of the Rules of Court. In the consolidated cases of *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*,[55] the Court emphasized that the "acts or omissions by quasi-judicial agencies, regardless of whether the remedy involves a

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[53] *Id.* at 148.

[54] **Sec. 4.** *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. **If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.**

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphasis Ours)

[55] 802 Phil. 116 (2016).

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Rule 43 appeal or a Rule 65 petition for *certiorari*, is cognizable by the CA."

Simply, the CA is the court vested with ***exclusive original*** jurisdiction to entertain a petition for *certiorari* under Rule 65 of the Rules of Court questioning the acts of quasi-judicial agencies. The RTC was then correct in dismissing the petition for review *ad cautelam*, which by its nature is a petition for *certiorari*, for having been filed before the wrong court. The CA, on the other hand, erred in ordering the case to be remanded to the RTC as it has the power to take cognizance of the same.

The imposition of tax on retailers under Ordinance No. 8331 is partially invalid as it goes beyond the 10% limitation on adjustment mandated by the LGC.

With the dismissal of the petition on procedural grounds, no resolution has been made on the substantive issue of the case, namely, whether the subject revenue ordinance by the City Council of Manila is, indeed, invalid for being contrary to the limitations set forth by Section 191 of the LGC and violative of the Constitution. Considering the importance of the subject matter of this controversy and the period of time that this case has been pending, the Court finds it fitting to address this issue once and for all.

Section 143, in relation to Section 151, of the LGC allows the imposition of tax by the local government on retailers provided that the same are in accordance with the following:

SEC. 143. *Tax on Business* – The municipality may impose taxes on the following business:

a. On retailers,	
With gross sales or receipts for the Preceding calendar year of:	Rate of Tax Per Annum
₱400,000.00 or less	2%
More than ₱400,000.00	1%

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Provided, however, That Barangays shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (₱50,000.00) or less in the case of municipalities.

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Sec. 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

SEC. 191. *Authority of Local Government Units to Adjust Rates of Tax Ordinances.* – Local units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.

With the foregoing provisions, the LGC sets the minimum rate of tax that may be imposed depending on the amount of gross sales. Accordingly, local governments may impose tax provided that the same is less than, or equal to the rates therein provided. Any corresponding increase thereafter would have to comply with the frequency and rate of adjustment provided for under Section 191 of the LGC.

The Court in *Mindanao Shopping Destination Corporation, et al. v. Hon. Rodrigo R. Duterte, et al.*,[56] ruled that the application of Section 191 requires the concurrence of two elements: (1) there is a tax ordinance that already imposes a tax in accordance with the provisions of the LGC; and (2) there is a second tax ordinance that made adjustment on the tax rate fixed by the first tax ordinance.[57]

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[56] G.R. No. 211093, June 6, 2017.

[57] *Id.*

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With both of herein subject ordinances having been enacted during the effectivity of the LGC on January 1, 1992, the Court finds basis to apply the aforestated elements for the application of Section 191, which it finds to be present in the case at bar.[58]

Anent the first requirement, the respondent has already imposed a tax in accordance with the provisions of the LGC when it enacted Ordinance No. 7794 in 1993 and its amendment passed two months thereafter – Ordinance No. 7807. The amendment introduced by Section 17[59] of Ordinance No. 7807 imposes local business taxes on retailers as follows:

With gross receipts or sales for the preceding calendar year in the amount of:	Amount of Tax	
	Annually	Quarterly
Over 50,000 but less than 75,000		
₱75,000 or more but less than ₱100,000	1,485	371.25
₱100,000 or more but less than ₱150,000	1,980	495
₱150,000 or more but less than ₱200,000	2,805	701.25
₱200,000 or more but less than ₱300,000	3,630	907.5
₱300,000 or more but less than ₱400,000	4,950	1,237.5
₱400,000 or more but less than ₱500,000	6,600	1,650.00
₱500,000 or more but less than ₱750,000	9,900	2,475.00
₱750,000 or more but less than ₱1,000,000	13,200	3,300.00
₱1,000,000 up to P 2,000,000	15,000	3,750.00
₱2,000,000 up to P3,000,000	₱15,000 plus 75% of 1% in excess of ₱2,000,000	
₱3,000,000 up to ₱5,000,000	₱22,500 plus 50% of 1% in excess of ₱3,000,000	
Over ₱5,000,000	₱32,000 plus 20% of 1% in excess of ₱5,000,000	

[58] *Id.*

[59] *Rollo*, p. 80.

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Ordinance No. 7807 is the respondent's initial implementation of the tax provisions of the LGC, considering that the same has been passed after the Code's effectivity and that the imposition are within the rates therein prescribed.[60] It is of no moment that the ordinance imposes lower rates and provides for a different mode of tax application and tax base classification than what is provided for under the LGC as these aspects are matters which are within the discretion and power of the LGUs to determine and impose.

As the Court explained in *National Power Corporation v. City of Cabanatuan*,[61] the LGC, in granting powers upon LGUs the power to tax, does not dictate the tax rate to be imposed by the LGUs but merely sets the minimum or the maximum, leaving upon the respective *sanggunian* the determination of the actual rates to be imposed in accordance with their needs and capabilities.

The second element for the application of Section 191 is also met with the enactment of Ordinance No. 8331, which amended the retail tax to be imposed,[62] *viz.*:

Section 104. *Tax on retailers.* A percentage tax is hereby imposed on retailers:

GROSS SALES	**Amount of Tax**	
	Annually	Quarterly
Over 50,000 but less than Php 400,000.00	3%	.75%
Over Php 400,000.00	1%	.25%

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[60] *Cf. Mindanao Shopping Destination Corporation, et al. v. Hon. Rodrigo R. Duterte, et al.*, *supra* note 56.

[61] 449 Phil. 233 (2003).

[62] *Rollo*, p. 80.

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Since the respondent has already exercised its taxing power under the LGC with the enactment of Ordinance No. 7807, any subsequent increase would therefore have to comply with Section 191 which limits the amount of adjustment to not more than ten percent (10%) of the rates fixed under the LGC and should be no more frequent than once every five (5) years.

With the rates set by Section 143, upon tax on gross sales, the maximum *adjusted* tax rate that can be imposed after the initial implementation of the LGC,[63] taking into consideration Section 191, would be as follows:

With gross sales or receipts for the Preceding calendar year of:	Rate of Tax Per Annum
₱50,001 up to ₱400,000.00	2.20%
More than ₱400,000.00	1.10%

Clearly therefore, Ordinance No. 8331 is invalid insofar as it imposes more than the allowed adjustment for gross receipts or sales amounting to Php 50,000.00 up to Php 400,000.00.

The Court is mindful that the interval of time between the two ordinances is 20 years, Ordinance No. 7807 having been enacted in 1993, and Ordinance No. 8331 in 2013. However, this does not justify the accumulation of allowable increases and then their subsequent one-time imposition. The option to increase the tax rates under the LGC arises every five (5) years reckoned from the enactment of the ordinance sought to be adjusted. The decision of whether or not to exercise such option falls upon the LGU, through their respective *sanggunian* taking into consideration the status of each industry balanced with the needs of their respective territory.

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[63] See *Mindanao Shopping Destination Corporation, et al. v. Hon. Rodrigo R. Duterte, et al.*, *supra* note 56, where the Court stated that the interest of the LGU and the taxpayers should be balanced. And that it is but fair and reasonable that in the initial implementation of the LGC, the rates set under Section 143 should be imposed as it is only in that sense that the imposition of tax on retailers will not be considered as confiscatory or oppressive.

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In the event that the LGU fails to make such adjustment within the five (5)-year period, the option to increase the prevailing ordinance remains open until such right is exercised, at which point, the five (5)-year period of limitation starts to run again.

On the other hand, were the LGU decides to make such adjustment, the basis for the increase would be the prevailing tax rate. Foreseeing that the compounding of interest would invite fear that its eventual accumulation would become unduly burdensome, the taxpayers should be reassured of the built-in measures under the LGC to restrict the power of the LGUs in this regard.

While the LGUs are granted with a wide latitude to determine the classification, tax base, tax rate and its corresponding increase, apart from the aforestated restrictions, the taxing powers of the LGU must be exercised in accordance with fundamental principles set forth under Section 130[64] of the LGC, and is subjected to the common limitations found under

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[64] Section 130. *Fundamental Principles*.– The following fundamental principles shall govern the exercise of the taxing and other 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;

(c) The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;

(d) The revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to the disposition by, the local government unit levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; and,

(e) Each local government unit shall, as far as practicable, evolve a progressive system of taxation.

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Section 133[65] and specific restrictions under Section 186[66] of the same code. With these, the respondent is strictly reminded

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[65] Section 133. *Common Limitations on the Taxing Powers of Local Government Units.* – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;

(b) Documentary stamp tax;

(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions *mortis causa*, except as otherwise provided herein;

(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;

(e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;

(f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;

(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

(i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein;

(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;

(k) Taxes on premiums paid by way of reinsurance or retrocession;

(l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;

(m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;

(n) Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and

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of, in making subsequent adjustments of its tax ordinances or in enacting new revenue measures.

The respondent is not guilty of forum shopping.

Going now to the second and last issue in this appeal, the petitioner claims that the respondent committed forum shopping when it filed its Petition for Review *ad cautelam* before the RTC while its motion for reconsideration is still pending, thus warranting the outright dismissal of the case.

In *Chua, et al. v. Metropolitan Bank and Trust Co., et al.*,[67] the Court defined forum shopping as that which:

[E]xists when a party repeatedly avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.[68]

Forum shopping can be committed in three ways: *first*, in case of *litis pendentia* or the filing of multiple cases with the

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Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

[66] 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.

[67] 613 Phil. 143 (2009).

[68] *Id.* at 153.

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same cause of action and seeking the same relief, in which the previous case remains pending; *second*, in case of *res judicata*, or the filing of multiple cases involving similar cause of action and relief, in which the previous case has been resolved; and *last*, in case of splitting of causes of action or the filing of multiple cases involving different reliefs although based on the same cause of action, where the ground for dismissal is either *litis pendentia* or *res judicata*.[69]

Proceeding from jurisprudential rulings, forum shopping is present when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in another, as there is a) identity of parties or where the parties represent the same interests in both actions, b) identity of rights or causes of actions, and c) identity of relief sought in the cases that are pending.[70]

In the case at bar, the respondent filed a Motion for Reconsideration of the petitioner's Resolution dated April 7, 2014 on April 24, 2014. Thereafter, without awaiting the result of its motion, the respondent filed a Petition for Review *ad cautelam* before the RTC on May 15, 2014.

Nonetheless, the CA found that the respondent is not guilty of forum shopping. In so ruling, the CA gave weight to the fact that the respondent duly disclosed and even attached in its Petition for Review *ad cautelam* a copy of its Motion for Reconsideration pending before the petitioner. Moreover, the CA opined that there is no forum shopping where "the dispute is not being presented in the same manner before both fora, but through appeal or *certiorari* from one to the other."[71]

On this matter, it must be clarified that contrary to the opinion of the CA, the fact that the respondent has disclosed and attached

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[69] *Heirs of Marcelo Sotto v. Palicte*, 726 Phil. 651, 662-663 (2014), citing *Rev. Ao-as v. CA*, 524 Phil. 645, 660 (2006).

[70] *Spouses Melo v. CA*, 376 Phil. 204, 211 (1999), citing *Valencia v. CA*, 331 Phil. 590, 603 (1996).

[71] *Rollo*, p. 28.

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a copy of its Motion for Reconsideration does not negate actual forum shopping.[72] This is because the essence of forum shopping is not on the non-disclosure of pending "identical" actions, but in the institution thereof.

As explained by the Court in *Spouses Melo v. CA*,[73] compliance with the rule on certification against forum shopping is "separate from, and independent of, the avoidance of forum shopping itself."[74] Thus, the variance with respect to imposable sanctions in case of violation – "[t]he former is merely a cause for the dismissal, without prejudice, of the complaint or initiatory pleading, while the latter is a ground for summary dismissal thereof and constitutes direct contempt."[75] Consequently, the mere proper execution of a certification against non-forum shopping does not automatically absolve a party who has otherwise committed forum shopping.

Ultimately, on the issue of forum shopping, primary consideration is given as to whether the filing of these actions would result in the very evil the rule on forum shopping seeks to prevent, that is, the rendition of conflicting decisions by different tribunals.[76]

Pertinent to this controversy, this issue must be viewed in light of the requirement of *certiorari* under Rule 65 of the Rules of Court that there be no other plain, speedy, and adequate remedy in the ordinary course of law. Thus, under the attendant circumstances, the Court perceives that in determining whether the respondent is guilty of forum shopping, it must first rule whether under the premises, a motion for reconsideration before the Secretary of Justice is necessary or is an available administrative remedy under Section 187 of the LGC.

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[72] *Heirs of Marcelo Sotto v. Palicte*, *supra* note 69, at 653-654.

[73] 376 Phil. 204 (1999).

[74] *Id*. at 213-214.

[75] *Id*.

[76] *Phil. Postal Corp. v. CA, et al*., 722 Phil. 860, 877 (2013).

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A ruling that a motion for reconsideration is necessary prior to the filing of a petition for *certiorari* would mean that the petition for review *ad cautelam* has been prematurely filed, and that the Secretary of Justice maintains jurisdiction over the action. Consequently, under the same scenario, forum shopping would exist as there is a possibility of having two conflicting rulings, one from the Secretary of Justice acting on the Motion for reconsideration, and another from the RTC acting on the petition for review *ad cautelam.*

An examination of Section 187 of the LGC, which outlines the procedure in assailing tax ordinances or revenue measures, makes no mention of the remedy of a motion for reconsideration. On the contrary, a statement in the said provision "[t]hat within thirty (30) days after receipt of the decision, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction" indicates that the filing of a motion for reconsideration is superfluous, the proper remedy being the elevation of the dispute before the courts of law.

The words in foregoing provision are simple and admits no further statutory construction.[77] A motion for reconsideration before the Secretary of Justice is a remedy not available within the purview of Section 187 of the LGC. Thus, the filing of the same motion by the respondent before the petitioner in the instant case is ineffectual, as the jurisdiction over the appeal belongs to courts of competent jurisdiction. Accordingly, the respondent cannot be adjudged guilty of forum shopping.

WHEREFORE, in view of the foregoing disquisitions, the Decision dated July 9, 2015 and Resolution dated January 8, 2016 of the Court of Appeals in CA-G.R. SP No. 139281 are

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[77] See *Barcellano v. Bañas*, 673 Phil. 177, 187 (2011), where the Court reiterated the basic principles of statutory construction, *viz.*: "where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation should be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice."

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hereby **REVERSED AND SET ASIDE**, insofar as it ordered the case remanded to the Regional Trial Court for further proceedings.

In lieu thereof, judgment is hereby rendered **DECLARING** Section 104 of Ordinance No. 8331, series of 2013, **NULL** and **VOID** insofar as it imposes more than 2.20% tax rate on gross receipts on sales amounting to Php 50,000.00 up to Php 400,000.00.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Reyes, J. Jr.*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 224825. October 17, 2018]

CITY OF CAGAYAN DE ORO, *petitioner, vs.* **CAGAYAN ELECTRIC POWER & LIGHT CO., INC. (CEPALCO),** *respondent.*

SYLLABUS

1. TAXATION; LOCAL GOVERNMENT CODE (LGC); CONSISTENT WITH THE PROVISION OF THE CONSTITUTION, LGC WAS ENACTED TO GIVE EACH

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[*] Designated as additional Member per Special Order No. 2587 dated August 28, 2018.