Supreme Court E-Library

THIRD DIVISION

[G.R. No. L-36081. April 24, 1989]

PROGRESSIVE DEVELOPMENT CORPORATION, *petitioner, vs.* **QUEZON CITY,** *respondent.*

SYLLABUS

1. **TAXATION: REPUBLIC ACT NO. 2264 (LOCAL AUTONOMY ACT); LOCAL GOVERNMENT UNITS; GRANTED BROAD TAXING POWER.** — It is now settled that Republic Act No. 2264 confers upon local governments broad taxing authority extending to almost "everything, excepting those which are mentioned therein," provided that the tax levied is "for public purposes, just and uniform," does not transgress any constitutional provision and is not repugnant to a controlling statute.

2. **ID.; ID.; ID.; CHARTERED CITIES AND MUNICIPALITIES GRANTED POWER TO IMPOSE TAXES AND LICENSE FEES.** — The scope of legislative authority conferred upon the Quezon City Council in respect of businesses like that of the petitioner, is comprehensive: the grant of authority is not only "[to] regulate" and "fix the license fee," but also "to tax." Section 2 of Republic Act No. 2264, as amended, otherwise known as the Local Autonomy Act, provides that: "Any provision of law to the contrary notwithstanding, *all chartered cities*, municipalities and municipal districts *shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities*, municipalities or municipal districts by requiring them to secure licenses at rates fixed by the municipal board or city council of the city, the municipal council of the municipality, or the municipal district council of the municipal district; to collect fees and charges for service rendered by the city, municipality or municipal district; to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation being conducted within the city, municipality or municipal district and otherwise to levy for public purposes just and uniform taxes licenses or fees: x x x"

Supreme Court E-Library

3. ID.; ID.; ID.; TAX IMPOSED UNDER CITY ORDINANCE NO. 9236, NOT A TAX ON INCOME BUT A LICENSE FEE FOR REGULATION OF BUSINESS. — The "Farmers Market & Shopping Center" was built by virtue of Resolution No. 7350 passed on 30 January 1967 by respondents' local legislative body authorizing petitioner to establish and operate a market with a permit to sell fresh meat, fish, poultry and other foodstuffs. The same resolution imposed upon petitioner, as a condition for continuous operation, the obligation to "abide by and comply with the ordinances, rules and regulations prescribed for the establishment, operation and maintenance of markets in Quezon City." The "Farmers' Market and Shopping Center" being a public market in the sense of a market open to and inviting the patronage of the general public, even though privately owned, petitioner's operation thereof required a license issued by the respondent City, the issuance of which, applying the standards set forth above, was done principally in the exercise of the respondent's police power. The operation of a privately owned market is, as correctly noted by the Solicitor General, equivalent to or quite the same as the operation of a government-owned market; both are established for the rendition of service to the general public, which warrants close supervision and control by the respondent City, for the protection of the health of the public by insuring, *e.g.*, the maintenance of sanitary and hygienic conditions in the market, compliance of all food stuffs sold therein with applicable food and drug and related standards, for the prevention of fraud and imposition upon the buying public, and so forth. We believe and so hold that the five percent (5%) tax imposed in Ordinance No. 9236 constitutes, not a *tax on income*, not a *city* income tax (as distinguished from the *national* income tax imposed by the National Internal Revenue Code) within the meaning of Section 2 (g) of the Local Autonomy Act, but rather a license tax or fee for the regulation of the business in which the petitioner is engaged.

4. ID.; ID.; ID.; TAX ORDINANCE PRESUMED REASONABLE AND VALID. — While it is true that the amount imposed by the questioned ordinances may be considered in determining whether the exaction is really one for revenue or prohibition, instead of one of regulation under the police power, it nevertheless will be presumed to be reasonable. Local governments are allowed wide discretion in determining the rates of imposable license fees even in cases of purely police power

Supreme Court E-Library

measures, in the absence of proof as to particular municipal conditions and the nature of the business being taxed as well as other detailed factors relevant to the issue of arbitrariness or unreasonableness of the questioned rates. Thus: "[A]n ordinance carries with it the presumption of validity. The question of reasonableness though is open to judicial inquiry. Much should be left thus to the discretion of municipal authorities. Courts will go slow in writing off an ordinance as unreasonable unless the amount is so excessive as to be prohibitory, arbitrary, unreasonable, oppressive, or confiscatory. A rule which has gained acceptance is that factors relevant to such an inquiry are the municipal conditions as a whole and the nature of the business made subject to imposition." Petitioner *has not shown that the rate of the gross receipts tax is so* unreasonably large and excessive and so grossly disproportionate to the costs of the regulatory service being performed by the respondent as to compel the Court to characterize the imposition as a revenue measure exclusively. The lower court correctly held that the gross receipts from stall rentals have been used only as a basis for computing the fees or taxes due respondent to cover the latter's administrative expenses, *i.e.*, for regulation and supervision of the sale of foodstuffs to the public. The use of the gross amount of stall rentals as basis for determining the collectible amount of license tax, does not by itself, upon the one hand, convert or render the license tax into a prohibited city tax on income. Upon the other hand, *it has not been suggested that such basis has no* reasonable relationship to the probable costs of regulation and supervision of the petitioner's kind of business. For, ordinarily, the higher the amount of stall rentals, the higher the aggregate volume of foodstuffs and related items sold in petitioner's privately owned market; and the higher the volume of goods sold in such private market, the greater the extent and frequency of inspection and supervision that may be reasonably required in the interest of the buying public. Moreover, what we started with should be recalled here: the authority conferred upon the respondent's City Council is *not* merely "to regulate" but also embraces the power "to tax" the petitioner's business.

5. ID.; LICENSE FEE AND TAX, DISTINGUISHED. — The term "tax" frequently applies to all kinds of exactions of monies which become public funds. It is often loosely used to include levies for revenue as well as levies for regulatory purposes such that

Supreme Court E-Library

license fees are frequently called taxes although *license fee* is a legal concept distinguishable from *tax*: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. Thus, if the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax. To be considered a license fee, the imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; the imposition must also bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well. When an activity, occupation or profession is of such a character that inspection or supervision by public officials is reasonably necessary for the safeguarding and furtherance of public health, morals and safety, or the general welfare, the legislature may provide that such inspection or supervision or other form of regulation shall be carried out at the expense of the persons engaged in such occupation or performing such activity, and that no one shall engage in the occupation or carry out the activity until a fee or charge sufficient to cover the cost of the inspection or supervision has been paid. Accordingly, a charge of a fixed sum which bears no relation at all to the cost of inspection and regulation may be held to be a tax rather than an exercise of the police power.

6. **ID.; LOCAL GOVERNMENT UNITS; NO INHERENT POWER TO TAX.** — As a general rule, there must be a statutory grant for a local government unit to impose lawfully a gross receipts tax, that unit not having the inherent power of taxation. The rule, however, finds no application in the instant case where what is involved is an exercise of, principally, the regulatory power of the respondent City and where that regulatory power is expressly accompanied by the taxing power.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Jalandoni, Herrera, Del Castillo & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

FELICIANO, *J.*:

On 24 December 1969, the City Council of respondent Quezon City adopted Ordinance No. 7997, Series of 1969, otherwise known as the Market Code of Quezon City, Section 3 of which provided:

"Sec. 3. *Supervision Fee. — Privately owned and operated public markets* shall submit monthly to the Treasurer's Office, a certified list of stallholders showing the amount of stall fees or rentals paid daily by each stallholder, x x x and *shall pay 10% of the gross receipts from stall rentals* to the City, x x x, *as supervision fee. Failure* to submit said list and *to pay* the corresponding amount within the period herein prescribed *shall subject the operator to* the penalties provided in this Code x x x including *revocation of permit to operate.* x x x."[1]

The Market Code was thereafter amended by Ordinance No. 9236, Series of 1972, on 23 March 1972, which reads:

SECTION 1. *There is hereby imposed a five percent (5%) tax on gross receipts on rentals* or lease of space *in privately-owned public markets in Quezon City.*

x x x x x x x x x

SECTION 3. For the effective implementation of this Ordinance, owners of privately owned public markets shall submit x x x a monthly certified list of stallholders of lessees of space in their markets showing x x x:

a. name of stallholder or lessee;

b. amount of rental;

---

[1] *Rollo*, p. 102; Italics supplied.

Supreme Court E-Library

c. period of lease, indicating therein whether the same is on a daily, monthly or yearly basis.

xxx xxx xxx

SECTION 4. x x x *In case of consistent failure to pay the percentage tax for three (3) consecutive months, the City shall revoke the permit of the privately-owned market* to operate and/or take any other appropriate action or remedy allowed by law for the collection of the overdue percentage tax and surcharge.

xxx xxx xxx."[2]

On 15 July 1972, petitioner Progressive Development Corporation, owner and operator of a public market known as the "Farmers Market & Shopping Center" filed a Petition for Prohibition with Preliminary Injunction against respondent before the then Court of First Instance of Rizal on the ground that the supervision fee or license tax imposed by the above-mentioned ordinances is in reality a tax on income which respondent may not impose, the same being expressly prohibited by Republic Act No. 2264, as amended.

In its Answer, respondent, through the City Fiscal, contended that it had authority to enact the questioned ordinances, maintaining that the tax on gross receipts imposed therein is not a tax on income. The Solicitor General also filed an Answer arguing that petitioner, not having paid the ten percent (10%) supervision fee prescribed by Ordinance No. 7997, had no personality to question, and was estopped from questioning, its validity; that the tax on gross receipts was not a tax on income but one imposed for the enjoyment of the privilege to engage in a particular trade or business which was within the power of respondent to impose.

In its Supplemental Petition of 23 September 1972, petitioner alleged having paid under protest the five percent (5%) tax under Ordinance No. 9236 for the months of June to September 1972. Two (2) days later, on 25 September 1972, petitioner moved for judgment on the pleadings, alleging that the material facts had been admitted by the parties.

---

[2] Records on Appeal, pp. 14-15; Italics supplied.

Supreme Court E-Library

On 21 October 1972, the lower court dismissed the petition, ruling[3] that the questioned imposition is not a tax on income, but rather a privilege tax or license fee which local governments, like respondent, are empowered to impose and collect.

Having failed to obtain reconsideration of said decision, petitioner came to us on the present Petition for Review.

The only issue to be resolved here is whether the tax imposed by respondent on gross receipts of stall rentals is properly characterized as partaking of the nature of an income tax or, alternatively, of a license fee.

We begin with the fact that Section 12, Article III of Republic Act No. 537, otherwise known as the Revised Charter of Quezon City, authorizes the City Council:

"x x x x x x x x x

(b) To provide for the levy and collection of taxes and other city revenues and apply the same to the payment of city expenses in accordance with appropriations.

(c) *To tax, fix the license fee, and regulate the business of* the following:

x x x *preparation and sale of meat, poultry, fish, game, butter, cheese, lard, vegetables, bread and other provisions.*"[4]

The scope of legislative authority conferred upon the Quezon City Council in respect of businesses like that of the petitioner, is comprehensive: the grant of authority is not only "[to] regulate" and "fix the license fee," but also "to tax."[5]

---

[3] *Ibid.*, pp. 58-68.

[4] 46 *Official Gazette* 4732 (1950); Italics supplied. Certain portions of the Charter had been amended by R.A. 5541, 65 *Official Gazette*, p. 7126 (1968). The amendatory law, however, did not introduce any change to the portion quoted above.

[5] See, in this connection, *Pacific Commercial Co. v. Romualdez, et al.*, 49 Phil. 917 (1927).

Supreme Court E-Library

Moreover, Section 2 of Republic Act No. 2264, as amended, otherwise known as the Local Autonomy Act, provides that:

"Any provision of law to the contrary notwithstanding, *all chartered cities, municipalities* and municipal districts *shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities*, municipalities or municipal districts by requiring them to secure licenses at rates fixed by the municipal board or city council of the city, the municipal council of the municipality, or the municipal district council of the municipal district; to collect fees and charges for service rendered by the city, municipality or municipal district; to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation being conducted within the city, municipality or municipal district and otherwise to levy for public purposes just and uniform taxes licenses or fees: x x x"[6]

It is now settled that Republic Act No. 2264 confers upon local governments broad taxing authority extending to almost "everything, excepting those which are mentioned therein," provided that the tax levied is "for public purposes, just and uniform," does not transgress any constitutional provision and is not repugnant to a controlling statute.[7] Both the Local Autonomy Act and the Charter of respondent clearly show that respondent is authorized to fix the license fee collectible from and regulate the business of petitioner as operator of a privately-owned public market.

Petitioner, however, insists that the "supervision fee" collected from rentals, being a return from capital invested in the construction of the Farmers Market, practically operates as a tax on income, one of those expressly excepted from respondent's

---

[6] Section 2 of R.A. 2264 has been amended by R.A. 4497, 62 *Official Gazette*, p. 8616 (1966); Italics supplied. R.A 2264 was further amended by P.D. No. 145, 69 *Official Gazette*, p. 2418 (1973), which however did not affect the abovequoted portion.

[7] *Nin Bay Mining Co. v. Municipality of Roxas*, 14 SCRA 660 (1965); See also *C.N. Hodges v. Municipal Board of the City of Iloilo, et al.*, 19 SCRA 28 (1967); and *Villanueva v. City of Iloilo*, 26 SCRA 578 (1968).

Supreme Court E-Library

taxing authority, and thus beyond the latter's competence. Petitioner cites the same Section 2 of the Local Autonomy Act which goes on to state:[8]

"x x x Provided, however, *That no city*, municipality or municipal district *may levy* or impose any of the following:

xxx xxx xxx

(g) *Taxes on income* of any kind whatsoever'";

The term "tax" frequently applies to all kinds of exactions of monies which become public funds. It is often loosely used to include levies for revenue as well as levies for regulatory purposes such that license fees are frequently called taxes although *license fee* is a legal concept distinguishable from *tax*: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues.[9] Thus, if the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax.[10]

To be considered a license fee, the imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; the imposition must also bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well.[11] When an activity, occupation or

---

[8] *Supra*, note 6; italics supplied.

[9] *Compañia General de Tabacos de Filipinas v. City of Manila*, 118 Phil. 383; 8 SCRA 370 (1963); *Pacific Commercial Co. v. Romualdez*, 49 Phil. 917 (1927).

[10] *Manila Electric Company v. El Auditor General y La Comision de Servicios Publicos*, 73 Phil. 133 (1941); *Republic v. Philippine Rabbit Bus Lines*, 32 SCRA 215 (1970).

[11] *City of Iloilo v. Villanueva*, 105 Phil. 337 (1959).

Supreme Court E-Library

profession is of such a character that inspection or supervision by public officials is reasonably necessary for the safeguarding and furtherance of public health, morals and safety, or the general welfare, the legislature may provide that such inspection or supervision or other form of regulation shall be carried out at the expense of the persons engaged in such occupation or performing such activity, and that no one shall engage in the occupation or carry out the activity until a fee or charge sufficient to cover the cost of the inspection or supervision has been paid.[12] Accordingly, a charge of a fixed sum which bears no relation at all to the cost of inspection and regulation may be held to be a tax rather than an exercise of the police power.[13]

In the case at bar, the "Farmers Market & Shopping Center" was built by virtue of Resolution No. 7350 passed on 30 January 1967 by respondents' local legislative body authorizing petitioner to establish and operate a market with a permit to sell fresh meat, fish, poultry and other foodstuffs.[14] The same resolution imposed upon petitioner, as a condition for continuous operation, the obligation to "abide by and comply with the ordinances, rules and regulations prescribed for the establishment, operation and maintenance of markets in Quezon City."[15]

The "Farmers' Market and Shopping Center" being a public market in the sense of a market open to and inviting the patronage of the general public, even though privately owned, petitioner's operation thereof required a license issued by the respondent City, the issuance of which, applying the standards set forth above, was done principally in the exercise of the respondent's police power.[16] The operation of a privately owned market is, as correctly noted by the Solicitor General, equivalent to or quite

---

[12] *Manila Electric Company vs. El Auditor General y la Comisión de Servicios Publicos, supra*, at 134-135.

[13] *Serafin Saldaña v. City of Iloilo*, 104 Phil. 28. (1958).

[14] Record on Appeal, p. 10.

[15] *Ibid.*

[16] In *City of Jacksonville, et al. v. Ledwith*, 7 So. at 892 [1890]; 26 Fla. 163, it was held that a permit to establish a market was:

Supreme Court E-Library

the same as the operation of a government-owned market; both are established for the rendition of service to the general public, which warrants close supervision and control by the respondent City,[17] for the protection of the health of the public by insuring, *e.g.*, the maintenance of sanitary and hygienic conditions in the market, compliance of all food stuffs sold therein with applicable food and drug and related standards, for the prevention of fraud and imposition upon the buying public, and so forth.

We believe and so hold that the five percent (5%) tax imposed in Ordinance No. 9236 constitutes, not a *tax on income*, not a *city* income tax (as distinguished from the *national* income tax imposed by the National Internal Revenue Code) within the meaning of Section 2 (g) of the Local Autonomy Act, but rather a license tax or fee for the regulation of the business in which the petitioner is engaged. While it is true that the amount imposed by the questioned ordinances may be considered in determining whether the exaction is really one for revenue or prohibition, instead of one of regulation under the police power,[18] it nevertheless will be presumed to be reasonable. Local governments are allowed wide discretion in determining the rates of imposable license fees even in cases of purely police power measures, in the absence of proof as to particular municipal conditions and the nature of the business being taxed as well as other detailed factors relevant to the issue of arbitrariness or unreasonableness of the questioned rates.[19] Thus:

"from the nature of a market, a license. It is a permit to do something which could not be done before without such permit, and hence is the grant of a license x x x. [T]he power to establish markets is within the police power, and [thus is] x x x the power to charge, as a police regulation, a fee for the permit or license for selling meats or vegetables therein, x x x. The fee, however, is not a tax for revenue, but a charge under the police power, and its amount is to be controlled by the principles governing in such cases."

[17] Brief for the Respondent, pp. 6-7; *Rollo*, p. 172.

[18] *E.g.*, *Calalang v. Lorenzo and Villar*, 97 Phil. 212 (1955).

[19] *Procter & Gamble PMC v. Municipality of Jagna*, 94 SCRA 894 (1979); *Northern Phil. Tobacco Co. v. Municipality of Agoo*, 31 SCRA 304 (1970); and *San Miguel Brewery, Inc. v. City of Cebu*, 43 SCRA 275 (1972).

Supreme Court E-Library

"[A]n ordinance carries with it the presumption of validity. The question of reasonableness though is open to judicial inquiry. Much should be left thus to the discretion of municipal authorities. Courts will go slow in writing off an ordinance as unreasonable unless the amount is so excessive as to be prohibitory, arbitrary, unreasonable, oppressive, or confiscatory. A rule which has gained acceptance is that factors relevant to such an inquiry are the municipal conditions as a whole and the nature of the business made subject to imposition."[20]

Petitioner has not shown that the rate of the gross receipts tax is so unreasonably large and excessive and so grossly disproportionate to the costs of the regulatory service being performed by the respondent as to compel the Court to characterize the imposition as a revenue measure exclusively. The lower court correctly held that the gross receipts from stall rentals have been used only as a basis for computing the fees or taxes due respondent to cover the latter's administrative expenses, *i.e.*, for regulation and supervision of the sale of foodstuffs to the public. The use of the gross amount of stall rentals as basis for determining the collectible amount of license tax, does not by itself, upon the one hand, convert or render the license tax into a prohibited city tax on income. Upon the other hand, it has not been suggested that such basis has no reasonable relationship to the probable costs of regulation and supervision of the petitioner's kind of business. For, ordinarily, the higher the amount of stall rentals, the higher the aggregate volume of foodstuffs and related items sold in petitioner's privately

---

[20] *Victorias Milling Co., Inc. v. Municipality of Victorias, Negros Occidental*, 25 SCRA 192 at 205 (1968), citing *9 McQuillin Municipal Corporations*, 3rd ed., at 65.

In *Atkins v. Philips*, 8 So. at 431 (1890); 26 Fla. 281, the Supreme Court of Florida held:

"The amount of the fee might in some cases be so large as to suggest x x x, considering the character or the business to which it was applied, that it was in fact a tax for revenue; but [not in this case] considering the nature of the subject before us, — the sale of fresh meats, dressed poultry, and fish, x x x. [which] require[s], for the protection of the health of the community, daily inspection and supervision, x x x."

Supreme Court E-Library

owned market; and the higher the volume of goods sold in such private market, the greater the extent and frequency of inspection and supervision that may be reasonably required in the interest of the buying public. Moreover, what we started with should be recalled here: the authority conferred upon the respondent's City Council is *not* merely "to regulate" but also embraces the power "to tax" the petitioner's business.

Finally, petitioner argues that respondent is without power to impose a gross receipts tax for revenue purposes absent an express grant from the national government. As a general rule, there must be a statutory grant for a local government unit to impose lawfully a gross receipts tax, that unit not having the inherent power of taxation.[21] The rule, however, finds no application in the instant case where what is involved is an exercise of, principally, the regulatory power of the respondent City and where that regulatory power is expressly accompanied by the taxing power.

ACCORDINGLY, the Decision of the then Court of First Instance of Rizal, Quezon City, Branch 18, is hereby *AFFIRMED* and the Court Resolved to *DENY* the Petition for lack of merit.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and *Cortes, JJ.*, concur.

---

[21] *City of Ozamis v. Lumapas,* 65 SCRA 33 (1975).