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FIRST DIVISION

[G.R. No. 166651. December 9, 2005]

REPUBLIC OF THE PHILIPPINES (represented by the DEPARTMENT OF ENERGY [DOE] and the PHILIPPINE NATIONAL OIL COMPANY-ENERGY DEVELOPMENT CORPORATION [PNOC-EDCI]), *petitioner, vs.* **CITY OF KIDAPAWAN, KIDAPAWAN CITY ASSESSOR and KIDAPAWAN CITY TREASURER,** *respondents.*

SYLLABUS

1. **TAXATION; POWER OF TAXATION; THE POWER TO TAX AND TO GRANT TAX EXEMPTIONS IS VESTED IN CONGRESS AND TO SOME EXTENT IN THE LOCAL LEGISLATIVE BODIES.**— The power to tax and to grant tax exemptions is vested in the Congress and, to a certain extent, in the local legislative bodies. Under Section 28 (4), Article VI of the Constitution, no law granting any tax exemption shall be passed without the concurrence of a majority of all Members of Congress. Thus the exemption provided in the service contract cannot be given effect because the DOE representing the government in the execution of the contract, has no authority to grant the same. Moreover, the Local Government Code specifically enumerates the entities exempt from real property taxation and PNOC-EDC is not one of them.

2. **ID.; ID.; TAX EXEMPTIONS ARE CONSTRUED *STRICTISSIMI JURIS* AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY; APPLICATION IN CASE AT BAR.**— Taxes are what we pay for civilized society, or are the lifeblood of the nation. The law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. PNOC-EDC

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has not proven that it is entitled to exemption from the payment of real property tax.

3. **ID.; ID.; TAX DELINQUENCIES; REMEDIES FOR THE COLLECTION OF REAL PROPERTY TAXES.**— However, we agree with PNOC-EDC that its machineries, equipment, buildings and other infrastructures found in MAGRA cannot be levied upon and sold at public auction to satisfy the alleged tax delinquency, because the warrant of levy shows that MAGRA is the only delinquent real property subject to tax. Respondents have two remedies for the collection of real property tax: (1) by administrative action through levy on real property; and (2) by judicial action. Under Sections 257 and 258 of the LGC, the basic real property tax constitutes as a lien on the property subject to the tax which may be levied upon through the issuance of a warrant. The local government unit concerned may also enforce the collection of the basic real property tax by civil action in any court of competent jurisdiction.

4. **ID.; ID.; ID.; ID.; WHEN CIVIL ACTION IS THE ONLY AVAILABLE REMEDY FOR COLLECTING TAX DELINQUENCIES; RATIONALE.**— Respondent levied on a portion of the MAGRA to satisfy the tax delinquency of PNOC-EDC. However, the land being levied is classified as inalienable. It is owned by the government and thus, cannot be sold at public auction. Likewise, the machineries, equipment and other infrastructures in the MAGRA cannot be levied and sold at public auction because it is not the property that is subject to the tax. The personal liability for the tax delinquency, is generally on whoever is the owner of the real property at the time the tax accrues; where, however, the tax liability is imposed on the beneficial use of the real property such as those owned but leased to private persons or entities by the government, or when the assessment is made on the basis of the actual use thereof the personal liability is on any person who has such beneficial or actual use and the time of the accrual of the tax. In the case at bar, PNOC-EDC is the beneficial user, however, since respondents cannot avail of the administrative remedy through levy, they can only enforce the collection of real property tax through civil action.

5. **ID.; ID.; ID.; ID.; EXHAUSTION OF ADMINISTRATIVE REMEDIES; APPLICATION IN CASE AT BAR.**— It is well-

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settled in *System Plus Computer College of Caloocan City v. Local Government of Caloocan City* that all administrative remedies must be exhausted before availing of the judicial remedies. Thus: The petitioner cannot bypass the authority of the concerned administrative agencies and directly seek redress from the courts even on the pretext of raising a supposedly pure question of law without violating the doctrine of exhaustion of administrative remedies. Hence, when the law provides for remedies against the action of an administrative board, body, or officer, as in the case at bar, relief to the courts can be made only after exhausting all remedies provided therein. Otherwise stated, before seeking the intervention of the courts, it is a precondition that petitioner should first avail of all the means afforded by the administrative processes. If PNOC-EDC was not satisfied with the assessment of its property, it should have appealed to the Local Board of Assessment Appeals within 60 days from receipt of the written notice of assessment. Instead, it waited until the issuance of a warrant of levy before it filed a petition for injunction in the regional trial court, which was not in accordance with the remedies provided in the LGC.

APPEARANCES OF COUNSEL

City Legal Officer for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari*[1] assails the September 8, 2004 Decision[2] and the January 10, 2005 Order[3] of the Regional Trial Court of Kidapawan City, Cotabato, Branch 17, in Civil Case No. 2003-14. The trial court held that the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) is not exempt from payment of real property taxes over the Mt. Apo Geothermal Reservation Area (MAGRA); enjoined the sale by public auction of the MAGRA; but allowed

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[1] *Rollo*, pp. 8-68.

[2] *Id.* at pp. 69-84. Penned by Judge Francis E. Palmones, Jr.

[3] *Id.* at pp. 85-94.

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respondents to proceed with the sale of the existing improvements thereon.

In order to reduce the country's dependence on imported energy supplies and accelerate the development of geothermal resources, then President Ferdinand E. Marcos issued Presidential Decree (PD) No. 1442[4] which allowed the government to enter into service contracts for financial, technical, management or other forms of assistance with qualified domestic and foreign entities, for the exploration, development, exploitation, or utilization of the country's geothermal resources.

On January 30, 1992, then President Corazon C. Aquino issued Proclamation No. 853[5] which excluded certain portions of the land embraced in the Mt. Apo National Park and declared the same as geothermal reservation under the administration of the PNOC, now referred to as the MAGRA.

On March 24, 1992, the government through the Office of Energy Affairs (now Department of Energy, DOE) entered into a service contract[6] with PNOC-EDC, a government owned or controlled corporation created and existing under the Corporation Code,[7] to exclusively conduct geothermal operations within the MAGRA. Under the contract, the PNOC-EDC would furnish the necessary services, technology and financing for the geothermal operations subject to the direct supervision of the DOE. Thereafter, PNOC-EDC built a 104-megawatt power

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[4] AN ACT TO PROMOTE THE EXPLORATION AND DEVELOPMENT OF GEOTHERMAL RESOURCES.

[5] EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 59 DATED 9 MAY 1936 WHICH RESERVED THE MT. APO NATIONAL PARK SITUATED IN THE PROVINCES OF COTABATO AND DAVAO, A CERTAIN PORTION OF THE LAND EMBRACED THEREIN AND DECLARING THE SAME AS A GEOTHERMAL RESERVATION.

[6] *Rollo*, pp. 119-134.

[7] *Id.* at 70.

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plant within the MAGRA which produces electricity through turbines using steam extracted from the MAGRA as fuel.[8]

Subsequently, the City Treasurer of Kidapawan, Cotabato notified PNOC-EDC of its tax delinquency after which, he issued a warrant of levy on the 701-hectare MAGRA[9] for failure to pay real property taxes, covering the tax period from 1993-2002. Thereafter, he sent a notice of sale of delinquent real property to PNOC-EDC declaring that delinquent real property will be sold through public auction.[10]

PNOC-EDC thus filed a petition for prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order[11] which sought to enjoin the respondents from issuing assessments or notice of delinquency and from proceeding with the public auction of the Geothermal Reservation Area.

On May 14, 2003, the Regional Trial Court of Kidapawan City, Branch 23, issued an Order[12] directing respondents to desist from proceeding with the public auction on the ground that the same is part of the public domain and thus inalienable. The order was reiterated on June 3, 2003, and the respondents were again directed to desist from enforcing the warrant of levy and from selling at public auction the subject property until the case is finally resolved or upon further order.[13]

On September 8, 2004, the Regional Trial Court rendered a Decision, the dispositive portion of which states:

WHEREFORE, IN VIEW OF THE FOREGOING DISCUSSIONS and CONSIDERATIONS, this Court Holds that PNOC-EDC is not exempt

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[8] *Id.* at 14.

[9] *Id.* at 150.

[10] *Id.* at 151.

[11] *Id.* at 152-162.

[12] *Id.* at 163-164. Penned by Judge Rogelio R. Narisma.

[13] *Id.* at 166.

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from the payment of real property taxes over the Mt. Apo Geothermal Area as Section 6.2 of the Contract could not be the basis of the exemption being ineffectual and for the failure of PNOC-EDC to prove by a preponderance of evidence that it is not the 'beneficial user' of the subject property. For which reason, there is no legal impediment for the respondents to make such assessment, to find PNOC-EDC liable and to accordingly exact payment for the said tax delinquency in accordance with law.

Respondents however cannot sell on public auction any part of, or the entire, Mt. Apo Geothermal Area being exempt from such sale by reason of its nature and character.

Respondents may proceed with the auction on the existing improvements such as but not limited to buildings, infrastructures, machineries and the likes in accordance with law.

The Writ of Preliminary Injunction earlier issued by this Court, being no longer necessary is dissolve and/or set aside.

No pronouncement as to costs.

SO ORDERED.[14]

The trial court found that PNOC-EDC is not exempt from paying the real property taxes and that the MAGRA is part of the Mt. Apo National Park which has not been re-classified as alienable agricultural land. Thus, it could not be sold at public auction. However, the trial court ordered that the improvements on the subject land, not being in the nature of public dominion, may be validly levied and sold at public auction to satisfy the payment of realty tax delinquencies.

PNOC-EDC's motion for reconsideration was denied, hence, this petition.

The issues for resolution are: (1) whether PNOC-EDC is the beneficial user of the MAGRA; (2) whether Republic Act (RA) No. 7160 or the Local Government Code (LGC) withdrew the exemption under the service contract; (3) if PNOC-EDC is liable

[14] *Id.* at 83-84.

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to pay the real property taxes, whether the machineries, equipment, buildings and other infrastructures found in MAGRA may be levied; and (4) whether the assessment has become final and executory.

PNOC-EDC avers that under Section 234, paragraph (a) of the LGC, MAGRA, which is a real property owned by the government, can only be subjected to real property tax if its beneficial use is transferred to a taxable person. Citing Sections 1.2, 6.1(d) and 6.3 of the service contract, and Section 1 of PD 1442, it argues that PNOC-EDC is not liable to pay the real property tax since the beneficial use of MAGRA was retained by the government.

On the other hand, respondents assert that PNOC-EDC is a taxable entity because it is not a political subdivision or a government owned or controlled corporation which is exempt from taxes under its charter. They maintain that under the service contract, the PNOC-EDC retains absolute control of the operations and is thus the beneficial user of the property.

Respondents quote with approval the decision of the trial court which stated that PNOC-EDC not only receives 40% of the net share, but the provisions of the service contract likewise indicated that PNOC-EDC is the beneficial user. They aver that PNOC-EDC has control over the actual conduct of the geothermal operations, while the government through the DOE has supervision only.

The petition is partly meritorious.

PNOC-EDC is a government owned or controlled corporation conferred by law with corporate powers. Under its charter, no tax exemptions were granted. Even if PNOC-EDC was awarded exemptions in its charter, the same were withdrawn by the LGC. Thus, there is no need to deliberate on whether PNOC-EDC is a taxable entity but on whether it is an entity exempt from paying real property tax.

The exemption claimed by PNOC-EDC hinges on Section 234, paragraph (a) of the LGC which reads:

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SECTION 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

The above provision exempts from real property taxation properties of the government, provided the beneficial use of the property was not transferred to a taxable person. Conversely, if the beneficial use has been transferred to a taxable entity, such as PNOC-EDC, then the real property owned by the government, which in this case is the MAGRA, is subject to real property tax. At this point, it is well to note that in real estate taxation, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.[15]

Under the service contract entered into by the government and PNOC-EDC, the latter is both the beneficial and actual user of the MAGRA. The relevant provisions of the contract read, to wit:

1.2 The CONTRACTOR [in this case, the PNOC-EDC] shall at all times be subject to the direct supervision of the OEA (now DOE) and is hereby appointed and constituted as the exclusive party to conduct geothermal operations. The OEA shall have the right to require the CONTRACTOR to perform any or all obligations under this Contract.

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2.8 *Geothermal Operations* shall include exploration, development and production. . . .

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[15] *Testate Estate of Concordia T. Lim v. City of Manila*, G.R. No. 90639, February 21, 1990, 182 SCRA 482, 486.

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Production is the set of activities which involve the actual extraction of geothermal fluid for commercial utilization.

. . . . . .

2.15 *Gross Value* is the amount realized from the sale of geothermal resources and its by-product at a contracted price and such other income which arises from any geothermal operation.

2.16 *Net Value* means the gross value less the operating expenses reimbursed pursuant to Section 7.2.

. . . . . .

2.20 *Operating Expenses* means the total expenditures incurred by the CONTRACTOR both within and without the Philippines in geothermal operations pursuant to this contract and determined in accordance with the Accounting Procedure attached hereto and made part thereof as of Annex "B".

. . . . . .

4.1 On or before the end of the third Contract Year, the CONTRACTOR shall surrender twenty five (25%) percent of the initial Contract Area.

4.2 On or before the end of the fifth Contract Year and if the contract is extended pursuant to Section 3.1 for another two years, the CONTRACTOR shall surrender an additional area equal to twenty five (25%) percent of the initial Contract Area.

. . . . . .

7.2 In each year, the CONTRACTOR will recover from Gross Value, an amount equal to all Operating Expenses as defined in Section 2.20;

Provided, that the amount so recovered shall not exceed ninety percent (90%) of the Gross Value in any year;

Provided, further, that if in any year the Operating Expenses exceed ninety (90%) percent of the Gross Value, or there is no Gross Value, then the unreimbursed expenses shall be recovered from the Gross Value in the succeeding years.

7.3 The CONTRACTOR will retain an amount equal to its fee of forty (40%) percent of the Net Value as defined in Section 2.16.

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. . . . . .

8.1 The GOVERNMENT shall assume and pay on behalf of CONTRACTOR all income taxes payable to the Republic of the Philippines based on income or profit derived from geothermal operations. It is understood, however, that such income tax payment shall come from the Government Share of sixty percent (60%) of the Net Value.

8.2 . . . . . .

In computing the Taxable Net Income the CONTRACTOR shall be allowed to deduct Operating Expenses recovered pursuant to Section 7.2 above.

. . . . . .

8.4 The OEA upon payment by it of the CONTRACTOR's income taxes shall procure an official receipt in the name of the CONTRACTOR. The official receipt evidencing payment shall be supplied by the OEA to the CONTRACTOR.[16]

It is clear from the above-cited provisions that the PNOC-EDC is the beneficial user of the MAGRA and is thus liable to pay the real property tax assessments. PNOC-EDC exclusively conducts geothermal operations in the area for commercial utilization. It retains a profit in the amount of 40% of the net value of the amount realized from the sale of geothermal resources. It is even allowed to charge its operating expenses from the gross value of the sales.

The provisions of the service contract also show that it is the PNOC-EDC which actually utilizes the MAGRA. Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof[17] In fact, under the provisions of the service contract, PNOC-EDC must surrender possession of 25% of the MAGRA to the government after the 3rd year and another 25% on the 5th year, if the contract is extended.

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[16] *Rollo*, pp. 119-134.

[17] Sec. 199, par. b, Local Government Code.

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Likewise, although it is the government which actually pays the income taxes, the contract nonetheless specifically provided that the payment is for and in behalf of PNOC-EDC and is chargeable against the 60% share of the government in the net profits derived by the PNOC-EDC arising from the geothermal operation. In reality, the PNOC-EDC is the actual payee while the government is only its agent in the payment of the income taxes. In fact, the official receipt is being issued in the name of PNOC-EDC.

Anent the second issue, PNOC-EDC avers that the LGC which took effect on January 1, 1992 did not withdraw the exemption provided under Section 6.2, paragraph (a) of the service contract which was executed on March 24, 1992. Thus, the withdrawal of the exemption was only for those previously or presently enjoying the privilege as of January 1, 1992.

We hold otherwise. The power to tax and to grant tax exemptions is vested in the Congress and, to a certain extent, in the local legislative bodies.[18] Under Section 28(4), Article VI of the Constitution, no law granting any tax exemption shall be passed without the concurrence of a majority of all Members of Congress. Thus the exemption provided in the service contract cannot be given effect because the DOE, representing the government in the execution of the contract, has no authority to grant the same.

Moreover, the Local Government Code specifically enumerates the entities exempt from real property taxation[19] and PNOC-EDC is not one of them.

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[18] *Chavez v. PCGG*, 360 Phil. 133, 171 (1998).

[19] SECTION 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or controlled

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Taxes are what we pay for civilized society, or are the lifeblood of the nation. The law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[20] The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[21] PNOC-EDC has not proven that it is entitled to exemption from the payment of real property tax.

However, we agree with PNOC-EDC that its machineries, equipment, buildings and other infrastructures found in MAGRA cannot be levied upon and sold at public auction to satisfy the alleged tax delinquency because the warrant of levy shows that MAGRA is the only delinquent real property subject to tax. Respondents have two remedies for the collection of real property tax: (1) by administrative action through levy on real property; and (2) by judicial action.[22] Under Sections 257[23] and

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corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.

[20] *MCIAA v. Marcos*, 330 Phil. 392, 405 (1996).

[21] *Sea-Land Service, Inc. v. Court of Appeals,* G.R. No. 122605, April 30, 2001, 357 SCRA 441, 444.

[22] Sec. 256, Local Government Code.

[23] SECTION 257. *Local Government's Lien.* – The basic real property tax and any other tax levied under this Title constitutes a lien on the property subject to tax, superior to all liens, charges or encumbrances in favor of any person, irrespective of the owner or possessor thereof, enforceable by administrative or judicial action, and may only be extinguished upon payment of the tax and the related interests and expenses.

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258[24] of the LGC, the basic real property tax constitutes as a lien on the property subject to the tax which may be levied upon through the issuance of a warrant. The local government unit concerned may also enforce the collection of the basic real property tax by civil action in any court of competent jurisdiction.[25]

Respondents levied on a portion of the MAGRA to satisfy the tax delinquency of PNOC-EDC. However, the land being levied is classified as inalienable. It is owned by the government and thus, cannot be sold at public auction. Likewise, the machineries, equipment and other infrastructures in the MAGRA cannot be levied and sold at public auction because it is not the property that is subject to the tax.

The personal liability for the tax delinquency, is generally on whoever is the owner of the real property at the time the tax accrues; where, however, the tax liability is imposed on the beneficial use of the real property such as those owned but leased to private persons or entities by the government, or when the assessment is made on the basis of the actual use thereof, the personal liability is on any person who has such beneficial or actual use at the time of the accrual of the tax.[26]

In the case at bar, PNOC-EDC is the beneficial user, however, since respondents cannot avail of the administrative remedy through levy, they can only enforce the collection of real property tax through civil action.

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[24] SECTION 258. *Levy on Real Property.* – After the expiration of the time required to pay the basic real property tax or any other tax levied under this Title, real property subject to such tax may be levied upon through the issuance of a warrant on or before, or simultaneously with, the institution of the civil action for the collection of the delinquent tax. . . .

[25] Sec. 266, Local Government Code.

[26] Vitug, Jose C. and Acosta, Ernesto D., *Tax Law and Jurisprudence* [2000 ed.], p. 490.

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PNOC-EDC also claims that the real property tax assessment is not yet final and executory. It avers that prior resort to administrative remedies before seeking judicial remedies is not necessary considering that the issue raised is purely a question of law. Consequently, it need not appeal the assessment to the Local Board of Assessment Appeals or to the Central Board of Assessment Appeals as provided under Sections 226[27] and 229[28] of the LGC.

We disagree. It is well-settled in *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City*[29] that all administrative remedies must be exhausted before availing of the judicial remedies. Thus:

The petitioner cannot bypass the authority of the concerned administrative agencies and directly seek redress from the courts even on the pretext of raising a supposedly pure question of law without violating the doctrine of exhaustion of administrative remedies. Hence, when the law provides for remedies against the action of an administrative board, body, or officer, as in the case at bar, relief to

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[27] SECTION 226. *Local Board of Assessment Appeals.* – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

[28] SECTION 229. *Action by the Local Board of Assessment Appeals.* –

(a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. ...

. . . . . .

(C)... The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory.

[29] G.R. No. 146382, August 7, 2003, 408 SCRA 494, 499.

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the courts can be made only after exhausting all remedies provided therein. Otherwise stated, before seeking the intervention of the courts, it is a precondition that petitioner should first avail of all the means afforded by the administrative processes.

If PNOC-EDC was not satisfied with the assessment of its property, it should have appealed to the Local Board of Assessment Appeals within 60 days from receipt of the written notice of assessment. Instead, it waited until the issuance of a warrant of levy before it filed a petition for injunction in the regional trial court, which was not in accordance with the remedies provided in the LGC.

WHEREFORE, the petition is *PARTIALLY GRANTED.* The September 8, 2004 Decision and the January 10, 2005 Order of the Regional Trial Court of Kidapawan City, Branch 17, in Civil Case No. 2003-14, are *AFFIRMED* insofar as it declared PNOC-EDC liable to pay the real property tax accruing from its use of the MAGRA. Respondents however are *DIRECTED* to refrain from levying on the buildings, infrastructures and machineries of PNOC-EDC to satisfy the payment of the real property tax delinquency.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.