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SECOND DIVISION

[G.R. No. 150763. July 2, 2004]

RURAL BANK OF MAKATI, INC., ESTEBAN S. SILVA and MAGDALENA V. LANDICHO, *petitioners, vs.* **MUNICIPALITY OF MAKATI and ATTY. VICTOR A. L. VALERO,** *respondents.*

SYNOPSIS

Petitioner Rural Bank was charged in two Informations: for non-payment of mayor's permit, and for non-payment of annual business tax. While the cases were pending, respondent municipality ordered the closure of the bank, prompting petitioner to pay under protest the sum of ₱82,408.66 .

Whether petitioner bank was liable to pay the business taxes and mayor's permit fees imposed by the municipality, the Court ruled in the positive. By virtue of EO No. 93 withdrawing all taxes and duty incentives provided under RA No. 720 as amended by RA No. 4106 to rural banks, petitioner could no longer claim any exemption from payment of business taxes and permit fees. Whether the closure of the bank was valid, the Court ruled in the negative as closure was not provided as one remedy to enforce payment of delinquent taxes and fees. It violated petitioner's right to due process. Whether the bank was entitled to damages, the Court ruled in the negative. Moral damages cannot be granted to corporations and hence there was no basis to award exemplary damages.

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT UNITS; POWER OF TAXATION; PAYMENT OF BUSINESS TAXES AND PERMIT FEES OF RURAL BANKS; EXEMPTION UNDER RA 720 AS AMENDED BY RA 4106 WITHDRAWN UNDER EO NO. 93.— Section 14 of Rep. Act No. 720, as amended by Republic Act No. 4106, approved on July 19, 1964, had exempted rural banks with net assets not exceeding one million pesos (₱1,000,000) from the payment of all taxes, charges and fees. The records show that as of December 29, 1986,

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petitioner bank's net assets amounted only to ₱745,432.29 or below the one million ceiling provided for in Section 14 of the old Rural Banking Act. Hence, under Rep. Act No. 720, petitioner bank could claim to be exempt from payment of all taxes, charges and fees under the aforementioned provision. However, on December 17, 1986, Executive Order No. 93 was issued by then President Corazon Aquino, withdrawing all tax and duty incentives with certain exceptions. Notably, not included among the exceptions were those granted to rural banks under Rep. Act No. 720. With the passage of said law, petitioner could no longer claim any exemption from payment of business taxes and permit fees.

2. REMEDIAL LAW; EVIDENCE; FINDINGS OF THE COURT OF APPEALS, RESPECTED. — Factual findings of the Court of Appeals, which are supported on record, are binding and conclusive upon this Court. As repeatedly held, such findings will not be disturbed unless they are palpably unsupported by the evidence on record or unless the judgment itself is based on misapprehension of facts. Moreover, in a petition for review, only questions of law are properly raised. On this score, the refund sought by petitioners could not be entertained much less granted.

3. POLITICAL LAW; LOCAL GOVERNMENT UNITS; GENERAL WELFARE CLAUSE; POLICE POWER; VALIDLY EXERCISED IN CLOSURE OF BANK. — Indeed the Local Government Code of 1991 was not yet in effect when the municipality ordered petitioner bank's closure on July 31, 1991. However, the general welfare clause invoked by the Court of Appeals is not found on the provisions of said law alone. Even under the old Local Government Code (Batas Pambansa Blg. 337) which was then in effect, a general welfare clause was provided for in Section 7 thereof. Municipal corporations are agencies of the State for the promotion and maintenance of local self-government and as such are endowed with police powers in order to effectively accomplish and carry out the declared objects of their creation. The authority of a local government unit to exercise police power under a general welfare clause is not a recent development. This was already provided for as early as the Administrative Code of 1917. Since then it has been reenacted and implemented by new statutes on the matter. Thus, the closure of the bank was a valid exercise

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of police power pursuant to the general welfare clause contained in and restated by B.P. Blg. 337, which was then the law governing local government units. No reversible error arises in this instance insofar as the validity of respondent municipality's exercise of police power for the general welfare is concerned.

4. ID.; ID.; ID.; GENERAL LEGISLATIVE POWER; MAKING OF ORDINANCES IMPOSING LICENSES AND REQUIRING PERMITS FOR BUSINESS ESTABLISHMENT.— The general welfare clause has two branches. The first, known as the *general legislative power*, authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second, known as the *police power proper*, authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property. In the present case, the ordinances imposing licenses and requiring permits for any business establishment, for purposes of regulation enacted by the municipal council of Makati, fall within the purview of the first branch of the general welfare clause.

5. ID.; ID.; POWER OF TAXATION; EXERCISED IN THE IMPOSITION OF ANNUAL BUSINESS TAX.— The ordinance of the municipality imposing the annual business tax is part of the power of taxation vested upon local governments as provided for under Section 8 of B.P. Blg. 337, to wit: Sec. 8. *Authority to Create Sources of Revenue.* — (1) Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such limitations as may be provided by law.

6. ID.; ID.; IMPLEMENTATION OF ORDINANCES VESTED IN THE MUNICIPAL MAYOR.— Implementation of the ordinances is vested in the municipal mayor, who is the chief executive of the municipality as provided for under the Local Government Code. Consequently, the municipal mayor, as chief executive, was clothed with authority to create a Special Task Force headed by respondent Atty. Victor A.L. Valero to enforce and implement said ordinances and resolutions and to file appropriate charges and prosecute violators.

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7. ID.; ID.;LOCAL TAX CODE; REMEDIES TO ENFORCE PAYMENT OF DELINQUENT TAXES OR FEES DOES NOT INCLUDE CLOSURE OF BANK.— On the issue of the closure of the bank, we find that the bank was not engaged in any illegal or immoral activities to warrant its outright closure. The appropriate remedies to enforce payment of delinquent taxes or fees are provided for in Section 62 of the Local Tax Code. Said Section 62 did not provide for closure. Moreover, the order of closure violated petitioner's right to due process, considering that the records show that the bank exercised good faith and presented what it thought was a valid and legal justification for not paying the required taxes and fees. The violation of a municipal ordinance does not empower a municipal mayor to avail of extrajudicial remedies. It should have observed due process before ordering the bank's closure.

8. CIVIL LAW; DAMAGES; MORAL DAMAGES CANNOT BE AWARDED TO CORPORATIONS.—The bank is not entitled to any damages. The award of moral damages cannot be granted to a corporation, it being an artificial person that exists only in legal contemplation and cannot, therefore, experience physical suffering and mental anguish, which can be experienced only by one having a nervous system.

9. ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES, NOT PROPER. — There being no moral damages, exemplary damages could not be awarded also. As to attorney's fees, aside from lack of adequate support and proof on the matter, these fees are not recoverable as a matter of right but depend on the sound discretion of the courts.

10. ID.; ID.; NOT PROPER WHERE ALLEGED MALICE FOR IMPLEADING A PARTY NOT PRESENT. — Under the circumstances of this case, the award of damages to Atty. Valero is also baseless. We cannot ascribe any illegal motive or malice to the bank for impleading Atty. Valero as an officer of respondent municipality. The bank filed the case against respondent municipality in the honest belief that it is exempt from paying taxes and fees. Since Atty. Valero was the official charged with the implementation of the ordinances of respondent municipality, he was rightly impleaded as a necessary party in the case.

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APPEARANCES OF COUNSEL

Ariel M. Los Baños for petitioners.
Paciano B. Balita for private respondent.
Raymundo s. Defante, Jr. for respondent City of Manila.

D E C I S I O N

QUISUMBING, *J.*:

In its decision[1] dated July 17, 2001, in CA-G.R. CV No. 58214, the Court of Appeals affirmed the decision[2] dated October 22, 1996 of the Regional Trial Court of Makati City, Branch 134, in Civil Case No. 91-2866 dismissing petitioners' complaint for recovery of a sum of money and damages. Petitioners now assail said CA decision as well as the Resolution[3] dated November 9, 2001, which denied their Motion for Reconsideration.

The facts are as follows:

Sometime in August 1990, Atty. Victor A.L. Valero, then the municipal attorney of the Municipality of Makati, upon request of the municipal treasurer, went to the Rural Bank of Makati to inquire about the bank's payments of taxes and fees to the municipality. He was informed, however, by petitioner Magdalena V. Landicho, corporate secretary of the bank, that the bank was exempt from paying taxes under Republic Act No. 720, as amended.[4]

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[1] *Rollo*, pp. 34-43. Penned by Associate Justice Presbitero J. Velasco, Jr., with Associate Justices Bienvenido L. Reyes, and Juan Q. Enriquez, Jr. concurring.

[2] CA *Rollo*, pp. 51-A-57.

[3] *Rollo*, p. 60.

[4] Republic Act No. 720. Entitled "An Act Providing For The Creation, Organization And Operation Of Rural Banks, And For Other Purposes."

SEC. 14. of said law reads: "All rural banks created and organized under the provisions of this Act with net assets not exceeding one million pesos, excluding the counterpart capital subscribed and paid in by the Government under Sections seven and eight of this Act, shall be exempt from

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On November 19, 1990, the municipality lodged a complaint with the Prosecutor's Office, charging petitioners Esteban S. Silva, president and general manager of the bank and Magdalena V. Landicho for violation of Section 21(a), Chapter II, Article 3 in relation to Sections 105 and 169 of the Metropolitan Tax Code.

On April 5, 1991, an Information docketed as Criminal Case No. 140208, for violation of Municipal Ordinance Nos. 122 and 39 for non-payment of the mayor's permit fee, was filed with the Metropolitan Trial Court (MeTC) of Makati against petitioners. Another Information, docketed as Criminal Case No. 140209, for non-payment of annual business tax, in violation of Metro Manila Commission Ordinance No. 82-03, Section 21(a), Chapter II, Article 3, was likewise filed with the MeTC.

While said cases were pending with the municipal court, respondent municipality ordered the closure of the bank. This prompted petitioners to pay, under protest, the mayor's permit fee and the annual fixed tax in the amount of ₱82,408.66.

On October 18, 1991, petitioners filed with the RTC of Makati a Complaint for Sum of Money and Damages, docketed as Civil Case No. 91-2866. Petitioners alleged that they were constrained to pay the amount of ₱82,408.66 because of the closure order, issued despite the pendency of Criminal Cases Nos. 140208-09 and the lack of any notice or assessment of the fees to be paid. They averred that the collection of the taxes/fees was oppressive, arbitrary, unjust and illegal. Additionally, they alleged that respondent Atty. Valero had no power to enforce laws and ordinances, thus his action in enforcing the collection of the permit fees and business taxes was *ultra vires*. Petitioners claimed that the bank lost expected earnings

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the payment of all taxes, charges and fees of whatever nature and description: *Provided, however*, That when the net assets of a rural bank exceed one million pesos, the taxes, charges and fees shall be levied in the proportion that such excess bears to the said net assets: *Provided, finally*, That when the net assets of a rural bank exceed three million pesos, it shall pay taxes, fees and charges like any other bank."

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in the amount of ₱19,778. Petitioners then assailed the municipal ordinances of Makati as invalid for want of the requisite publication.

In its Answer, respondent municipality asserted that petitioners' payment of ₱82,408.66 was for a legal obligation because the payment of the mayor's permit fee as well as the municipal business license was required of all business concerns. According to respondent, said requirement was in furtherance of the police power of the municipality to regulate businesses.

For his part, Atty. Valero filed an Answer claiming that there was no coercion committed by the municipality, that payment was a legal obligation of the bank, and that its claim of exemption had no legal basis. He further alleged that petitioners' action was clearly intended to harass and humiliate him and as counterclaim, he asked for moral and other damages.

On October 22, 1996, the RTC decided Civil Case No. 91-2866 as follows:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered dismissing the complaint.
>
> On the counterclaim, the plaintiffs are hereby ordered jointly and severally to pay to defendant Victor Valero the sum of ₱200,000.00 as moral damages and the amount of ₱50,000.00 as attorney's fees.
>
> The counterclaim of defendant Municipality is dismissed.
>
> Cost against the plaintiffs.
>
> SO ORDERED.[5]

In finding for respondents, the RTC ruled that the bank was engaged in business as a rural bank. Hence, it should secure the necessary permit and business license, as well as pay the corresponding charges and fees. It found that the municipality had authority to impose licenses and permit fees on persons engaging in business, under its police power embodied under the general welfare clause. Also, the RTC declared unmeritorious

[5] Records, p. 377.

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petitioners' claim for exemption under Rep. Act No. 720 since said exemption had been withdrawn by Executive Order No. 93[6] and the Rural Bank Act of 1992.[7] These statutes no longer exempted rural banks from paying corporate income taxes and local taxes, fees and charges. It also found petitioners' claim of lack of publication of MMC Ordinance Nos. 82-03 and Municipal Ordinance No. 122 to be mere allegations unsupported by clear and convincing evidence.

In awarding damages to Atty. Valero, the RTC found that he had been maliciously impleaded as defendant. It noted that Atty. Valero, as a municipal legal officer, was tasked to enforce municipal ordinances. In short, he was merely an agent of the local chief executive and should not be faulted for performing his assigned task.

Petitioners seasonably moved for reconsideration, but this was denied by the RTC in its Order dated January 10, 1997.[8]

Petitioners appealed to the Court of Appeals in CA-G.R. CV No. 58214. The appellate court sustained the lower court in this wise:

> WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED *in toto.*
>
> SO ORDERED.[9]

The Court of Appeals found the order of closure of the bank valid and justified since the bank was operating without any permit and without having paid the requisite permit fee. Thus,

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[6] E.O. No. 93. Entitled "*Withdrawing All Tax and Duty Incentives, Subject to Certain Exceptions, Expanding the Powers of the Fiscal Incentives Review Board, and For Other Purposes.*" Section 1 of said Executive Order states in part: "The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn — . . ."

[7] Republic Act No. 7353. AN ACT PROVIDING FOR THE CREATION, ORGANIZATION AND OPERATION OF RURAL BANKS, AND FOR OTHER PURPOSES.

[8] Records, p. 398.

[9] *Rollo*, p. 42.

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declared the Court of Appeals, "it is not merely a matter of enforcement and collection of fees, as the appellants would have it, but a violation of the municipality's authority to regulate the businesses operating within its territory."[10]

The appellate court also brushed aside petitioners' claim that the general welfare clause is limited only to legislative action. It declared that the exercise of police power by the municipality was mandated by the general welfare clause, which authorizes the local government units to enact ordinances, not only to carry into effect and discharge such duties as are conferred upon them by law, but also those for the good of the municipality and its inhabitants. This mandate includes the regulation of useful occupations and enterprises.

Petitioner moved for reconsideration, but the appellate court in its Resolution[11] of November 9, 2001 denied the same.

Hence, this instant petition alleging that the Honorable Court of Appeals seriously erred in:

1) ... HOLDING THAT THE CLOSURE BY THE APPELLEE, VICTOR VALERO, OF THE APPELLANT BANK WAS A LEGITIMATE EXERCISE OF POLICE POWER BY THE MUNICIPALITY OF MAKATI;

2) ... NOT CONSIDERING THE FACT THAT MAKATI ORDINANCE 122 REQUIRING MAYOR'S PERMIT FOR OPERATION OF AN ESTABLISHMENT AND MMC ORDINANCE NO. 82-03 WERE ADMITTED AS NOT PUBLISHED AS REQUIRED IN *TAÑADA, ET AL.*, vs. *TUVERA*, NO. L-63915, DECEMBER 29, 1986 AND THAT NO TAX ASSESSMENT WAS PRESENTED TO THE BANK;

3) ... AWARDING MORAL DAMAGES TO APPELLEE VICTOR VALERO IN THE AMOUNT OF ₱200,000.00 AND ATTORNEY'S FEES IN THE SUM OF ₱50,000.00;

4) ... NOT AWARDING TO THE APPELLANT BANK, THE AMOUNT OF ₱57,854.00 REPRESENTING THE AMOUNT

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[10] *Id*. at 39.

[11] *Id*. at 60.

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UNJUSTLY AND ILLEGALLY COLLECTED FROM THE APPELLANT BANK;

5) ... NOT AWARDING THE AMOUNT OF P10,413.75 YEARLY REPRESENTING THE UNREALIZED PROFIT WHICH THE APPELLANT BANK IS BEING DEPRIVED OF IN THE USE OF THE AFORESAID AMOUNT PLUS LEGAL INTEREST ALLOWED IN JUDGMENT FROM THE TIME OF THE EXTRAJUDICIAL DEMAND. (DEMAND LETTER, DATED OCTOBER 4, 1991, EXHIBIT "O" FOR THE APPELLANTS);

6) ... NOT GRANTING TO APPELLANTS ESTEBAN S. SILVA AND MAGDALENA LANDICHO MORAL DAMAGES IN THE AMOUNT OF ₱15,000.00;

7) ... NOT AWARDING TO APPELLANTS, ₱1,000,000.00 EXEMPLARY DAMAGES; 25% OF THE APPELLANTS CLAIM AS AND FOR ATTORNEYS' FEE AND COSTS OF SUIT.[12]

Essentially, the following are the relevant issues for our resolution:

1. Whether or not petitioner bank is liable to pay the business taxes and mayor's permit fees imposed by respondent;

2. Whether or not the closure of petitioner bank is valid;

3. Whether or not petitioners are entitled to an award of unrealized profit and damages;

4. Whether or not respondent Atty. Victor Valero is entitled to damages.

On the *first issue*, petitioner bank claims that of the ₱82,408.66 it paid under protest, it is actually liable only for the amount of ₱24,154, representing taxes, fees and charges due beginning 1987, or after the issuance of E.O. No. 93. Prior to said year, it was exempt from paying any taxes, fees, and charges by virtue of Rep. Act No. 720.

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[12] *Id*. at 9-10.

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We find the bank's claim for refund untenable now.

Section 14 of Rep. Act No. 720, as amended by Republic Act No. 4106,[13] approved on July 19, 1964, had exempted rural banks with net assets not exceeding one million pesos (₱1,000,000) from the payment of all taxes, charges and fees. The records show that as of December 29, 1986, petitioner bank's net assets amounted only to ₱745,432.29[14] or below the one million ceiling provided for in Section 14 of the old Rural Banking Act. Hence, under Rep. Act No. 720, petitioner bank could claim to be exempt from payment of all taxes, charges and fees under the aforementioned provision.

However, on December 17, 1986, Executive Order No. 93 was issued by then President Corazon Aquino, withdrawing all tax and duty incentives with certain exceptions. Notably, not included among the exceptions were those granted to rural banks under Rep. Act No. 720. With the passage of said law, petitioner could no longer claim any exemption from payment of business taxes and permit fees.

Now, as to the refund of ₱57,854 claimed by petitioners allegedly because of overpayment of taxes and fees, we note that petitioners have not adequately substantiated their claim. As found by the Court of Appeals:

> As to the computation of the payable fees, the plaintiffs-appellants claim an overpayment and pray for a refund. It is not clearly shown from their argument that such overpayment exists. And from their initial complaint, they even asked for the refund of the whole ₱82,408.66 paid, which complaint was instituted in 1991. They claim having paid the fees and charges due since 1991, which is irrelevant, since the ₱82,408.66 was paid for the period before 1991, and thus no deduction can be made for payments after that period. It is not clear where their computation of ₱57,854.00 owed them came from, and lacking solid support, their prayer for a partial refund must fail.

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[13] An Act to Further Amend Section Fourteen of Republic Act Numbered Seven Hundred Twenty, As Amended, Otherwise known as Rural Banks' Act.

[14] Records, p. 251; Statement of Condition, p. 2.

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Plaintiffs-appellants have failed to show that the payment of fees and charges even covered the period before their exemption was withdrawn.[15]

Factual findings of the Court of Appeals, which are supported on record, are binding and conclusive upon this Court. As repeatedly held, such findings will not be disturbed unless they are palpably unsupported by the evidence on record or unless the judgment itself is based on misapprehension of facts.[16] Moreover, in a petition for review, only questions of law are properly raised. On this score, the refund sought by petitioners could not be entertained much less granted.

Anent the *second issue*, petitioner bank claims that the closure of respondent bank was an improper exercise of police power because a municipal corporation has no inherent but only delegated police power, which must be exercised not by the municipal mayor but by the municipal council through the enactment of ordinances. It also assailed the Court of Appeals for invoking the General Welfare Clause embodied in Section 16[17] of the Local Government Code of 1991, which took effect in 1992,[18]

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[15] *Rollo*, p. 41.

[16] *Austria v. Court of Appeals*, G.R. No. 133323, 9 March 2000, 327 SCRA 668, 674.

[17] SEC. 16. *General Welfare*. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[18] SEC. 536. *Effectivity Clause*. — This Code shall take effect on January first, nineteen hundred and ninety-two, unless otherwise provided herein, after its complete publication in at least one (1) newspaper of general circulation.

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when the closure of the bank was actually done on July 31, 1991.

Indeed the Local Government Code of 1991 was not yet in effect when the municipality ordered petitioner bank's closure on July 31, 1991. However, the general welfare clause invoked by the Court of Appeals is not found on the provisions of said law alone. Even under the old Local Government Code (Batas Pambansa Blg. 337)[19] which was then in effect, a general welfare clause was provided for in Section 7 thereof. Municipal corporations are agencies of the State for the promotion and maintenance of local self-government and as such are endowed with police powers in order to effectively accomplish and carry out the declared objects of their creation.[20] The authority of a local government unit to exercise police power under a general welfare clause is not a recent development. This was already provided for as early as the Administrative Code of 1917.[21] Since then it has been reenacted and implemented by new statutes on the matter. Thus, the closure of the bank was a valid exercise of police power pursuant to the general welfare clause contained in and restated by B.P. Blg. 337, which was then the law governing local government units. No reversible error arises in this instance insofar as the validity of respondent municipality's exercise of police power for the general welfare is concerned.

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[19] B.P. Blg. 337, Sec. 7. *Governmental Powers in General.* — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary and proper for governance such as to promote health and safety, enhance prosperity, improve morals, and maintain peace and order in the local government unit, and preserve the comfort and convenience of the inhabitants therein.

[20] *Tatel v. Municipality of Virac*, G.R. No. 40243, 11 March 1992, 207 SCRA 157, 160.

[21] SEC. 2238. *General power of council to enact ordinances and make regulations.* — The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of the property therein.

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The general welfare clause has two branches. The first, known as the *general legislative power*, authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second, known as the *police power proper*, authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property.[22]

In the present case, the ordinances imposing licenses and requiring permits for any business establishment, for purposes of regulation enacted by the municipal council of Makati, fall within the purview of the first branch of the general welfare clause. Moreover, the ordinance of the municipality imposing the annual business tax is part of the power of taxation vested upon local governments as provided for under Section 8 of B.P. Blg. 337,[23] to wit:

> Sec. 8. *Authority to Create Sources of Revenue*. — (1) Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such limitations as may be provided by law.
>
> ... ...

Implementation of these ordinances is vested in the municipal mayor, who is the chief executive of the municipality as provided for under the Local Government Code, to wit:

> Sec. 141. *Powers and Duties.* —
>
> (1) The mayor shall be the chief executive of the municipal government and shall exercise such powers, duties and functions as provided in this Code and other laws.
>
> (2) He shall:
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> ... ...

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[22] See *RUPERTO G. MARTIN, PUBLIC CORPORATIONS* 165 (1971 Ed.)

[23] Now Section 18 of the Local Government Code of 1991.

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> (k) **Grant licenses and permits** in accordance with existing laws or municipal ordinances and **revoke** them for violation of the conditions upon which they have been granted;
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> ... ...
>
> (o) *Enforce laws, municipal ordinances and resolutions* and issue necessary orders for their faithful and proper enforcement and execution;
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> (p) **Ensure that all taxes and other revenues of the municipality are collected**, and that municipal funds are spent in accordance with law, ordinances and regulations;
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> ... ...
>
> (t) Cause to be instituted judicial proceedings in connection with the violation of ordinances, for the collection of taxes, fees and charges, and for the recovery of property and funds of the municipality, and otherwise to protect the interest of the municipality;[24] (Italics supplied)
>
> ... ...

Consequently, the municipal mayor, as chief executive, was clothed with authority to create a Special Task Force headed by respondent Atty. Victor A.L. Valero to enforce and implement said ordinances and resolutions and to file appropriate charges and prosecute violators.[25] Respondent Valero could hardly be faulted for performing his official duties under the cited circumstances.

Petitioners contend that MMC Ordinance No. 82-03 and Municipal Ordinance No. 122 are void for lack of publication. This again raises a factual issue, which this Court may not look into. As repeatedly held, this Court is not a trier of facts.[26] Besides, both the Court of Appeals and the trial court found lack of sufficient evidence on this point to support petitioners' claim, thus:

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[24] Section 141, B.P. Blg. 337, Local Government Code.

[25] Records, pp. 321-323.

[26] *Tan v. Mendez, Jr.*, G.R. No. 138669, 6 June 2002, 383 SCRA 202, 211.

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And finally the matter of the lack of publication is once again alleged by the plaintiffs-appellants, claiming that the matter was skirted by the trial court. This argument must fail, in the light of the trial court's squarely finding lack of evidence to support the allegation of the plaintiffs-appellants. We quote from the trial court's decision:

> The contention that MMC Ordinance No. 82-03 and Municipal Ordinance No. 122 of Makati are void as they were not publishced (sic) is untenable. The mere allegation of the plaintiff is not sufficient to declare said ordinances void. The plaintiffs failed to adduce clear, convincing and competent evidence to prove said Ordinances void. Moreover, in this jurisdiction, an ordinance is presumed to be valid unless declared otherwise by a Court in an appropriate proceeding where the validity of the ordinance is directly put in issue.[27]

On the issue of the closure of the bank, we find that the bank was not engaged in any illegal or immoral activities to warrant its outright closure. The appropriate remedies to enforce payment of delinquent taxes or fees are provided for in Section 62 of the Local Tax Code, to wit:

> SEC. 62. *Civil Remedies.* — The civil remedies available to enforce payment of delinquent taxes shall be by distraint of personal property, and by legal action. Either of these remedies or both simultaneously may be pursued at the discretion of the proper authority.
>
> The payment of other revenues accruing to local governments shall be enforced by legal action.[28]

Said Section 62 did not provide for closure. Moreover, the order of closure violated petitioner's right to due process, considering that the records show that the bank exercised good faith and presented what it thought was a valid and legal justification for not paying the required taxes and fees. The violation of a municipal ordinance does not empower a municipal mayor to

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[27] *Rollo*, pp. 41-42.

[28] Section 62, P.D. No. 231, as amended, also known as the "Local Tax Code."

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avail of extrajudicial remedies.[29] It should have observed due process before ordering the bank's closure.

Finally, on the issue of damages, we agree with both the trial and the appellate courts that the bank is not entitled to any damages. The award of moral damages cannot be granted to a corporation, it being an artificial person that exists only in legal contemplation and cannot, therefore, experience physical suffering and mental anguish, which can be experienced only by one having a nervous system.[30] There is also no sufficient basis for the award of exemplary damages. There being no moral damages, exemplary damages could not be awarded also. As to attorney's fees, aside from lack of adequate support and proof on the matter, these fees are not recoverable as a matter of right but depend on the sound discretion of the courts.[31]

Under the circumstances of this case, the award of damages to Atty. Valero is also baseless. We cannot ascribe any illegal motive or malice to the bank for impleading Atty. Valero as an officer of respondent municipality. The bank filed the case against respondent municipality in the honest belief that it is exempt from paying taxes and fees. Since Atty. Valero was the official charged with the implementation of the ordinances of respondent municipality, he was rightly impleaded as a necessary party in the case.

WHEREFORE, the assailed Decision dated July 17, 2001, of the Court of Appeals in CA-G.R. CV No. 58214 is *AFFIRMED* with *MODIFICATIONS*, so that (1) the order denying any claim for refunds and fees allegedly overpaid by the bank, as well as the denial of any award for damages and unrealized profits, is hereby *SUSTAINED*; (2) the order decreeing the closure of petitioner bank is *SET ASIDE*; and (3) the award of moral damages

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[29] *Estate of Gregoria Francisco v. Court of Appeals*, G.R. No. 95279, 25 July 1991, 199 SCRA 595, 600.

[30] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, G.R. No. 128690, 21 January 1999, 301 SCRA 572, 602-603.

[31] Article 2233, Civil Code of the Philippines.

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and attorney's fees to Atty. Victor A.L. Valero is *DELETED*. No pronouncement as to costs.

SO ORDERED.

Puno (Chairman), *Callejo, Sr.*, and *Tinga, JJ.*, concur.

Austria-Martinez, J., on leave.

SECOND DIVISION

[G.R. No. 151135. July 2, 2004]

CONTEX CORPORATION, *petitioner, vs.* **HON. COMMISSIONER OF INTERNAL REVENUE,** *respondent*.

SYNOPSIS

Petitioner Corporation was a Subic Bay Freeport Enterprise registered with the Subic Bay Metropolitan Authority (SBMA) pursuant to RA No. 7227. As such, it was exempt from all local and national internal revenue taxes. Further, petitioner was a non-VAT taxpayer registered with the Bureau of Internal Revenue (BIR). From January 1, 1997 to December 31, 1998, where petitioner purchased various supplies for its business, the suppliers shifted unto petitioner the 10% VAT on the purchased items. Whether petitioner was VAT exempt and thus entitled to tax refund, the Court ruled that only VAT-Registered entities can claim Input VAT Credit/Refund. That while it was true that petitioner should not have been liable for the VAT inadvertently passed on it by its supplier since the transaction was a zero-rated sale on the part of the supplier, the petitioner was not the proper party to claim the VAT refund. It was the petitioner's supplier who may claim an Input VAT credit with no corresponding Output VAT passed on to the petitioner. Thus, it was the petitioner's suppliers who should