Supreme Court E-Library

(g) Section 12 on warrantless real-time traffic data surveillance.

I dissent with the majority in its finding that Section 4(c)(3) on Unsolicited Commercial Advertising is unconstitutional.

I vote to dismiss the rest of the constitutional challenges against the other provisions in Republic Act No. 10175 as raised in the consolidated petitions for not being justiciable in the absence of an actual case or controversy.

EN BANC

[G.R. No. 204429. February 18, 2014]

SMART COMMUNICATIONS, INC., *petitioner, vs.* **MUNICIPALITY OF MALVAR, BATANGAS,** *respondent.*

SYLLABUS

1. TAXATION; COURT OF TAX APPEALS; THE COURT OF TAX APPEALS IS VESTED WITH THE EXCLUSIVE APPELLATE JURISDICTION OVER DECISIONS, ORDERS AND RESOLUTIONS OF THE REGIONAL TRIAL COURTS IN LOCAL TAX CASES; SUSTAINED.— Jurisdiction is conferred by law. Republic Act No. 1125, as amended by Republic Act No. 9282, created the Court of Tax Appeals. Section 7, paragraph (a), sub-paragraph (3) of the law vests the CTA with the exclusive appellate jurisdiction over "decisions, orders or resolutions of the Regional Trial Courts in local **tax** cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction."

2. POLITICAL LAW; LOCAL GOVERNMENTS; LOCAL GOVERNMENT CODE (LGC); EACH LGU SHALL HAVE THE POWER TO CREATE ITS OWN SOURCES OF

Supreme Court E-Library

REVENUES AND TO LEVY TAXES, FEES, AND CHARGES; LIMITATION.— Section 5, Article X of the 1987 Constitution provides that "[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government." Consistent with this constitutional mandate, the LGC grants the taxing powers to each local government unit. Specifically, Section 142 of the LGC grants municipalities the power to levy taxes, fees, and charges not otherwise levied by provinces. Section 143 of the LGC provides for the scale of taxes on business that may be imposed by municipalities while Section 147 of the same law provides for the fees and charges that may be imposed by municipalities on business and occupation. The LGC defines the term "charges" as referring to pecuniary liability, as rents or fees against persons or property, while the term "fee" means "a charge fixed by law or ordinance for the regulation or inspection of a business or activity."

3. ID.; ID.; ID.; MUNICIPAL ORDINANCE NO. 18 OF MALVAR, BATANGAS; THE MAIN PURPOSE OF THE MUNICIPAL ORDINANCE IS TO REGULATE CERTAIN CONSTRUCTION ACTIVITIES WHICH ARE PRIMARILY REGULATORY IN NATURE AND NOT PRIMARILY REVENUE-RAISING, THUS, THE FEES IMPOSED ARE NOT TAXES.— In this case, the Municipality issued Ordinance No. 18, which is entitled "An Ordinance ***Regulating*** the Establishment of Special Projects," to ***regulate*** the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus, and provide for the correction, condemnation or removal of the same when found to be dangerous, defective or otherwise hazardous to the welfare of the inhabitant[s]." It was also envisioned to address the foreseen "environmental depredation" to be brought about by these "special projects" to the Municipality. Pursuant to these objectives, the Municipality imposed fees on various structures, which included telecommunications towers. As clearly stated in its whereas clauses, the primary purpose of Ordinance No. 18 is to regulate the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph

Supreme Court E-Library

and telephone wires, conduits, meters and other apparatus" listed therein, which included Smart's telecommunications tower. Clearly, the purpose of the assailed Ordinance is to regulate the enumerated activities particularly related to the construction and maintenance of various structures. The fees in Ordinance No. 18 are not impositions on the building or structure itself; rather, they are impositions on the activity subject of government regulation, such as the installation and construction of the structures. Since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects, which included "cell sites" or telecommunications towers, the fees imposed in Ordinance No. 18 are ***primarily regulatory in nature, and not primarily revenue-raising***. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Thus, the fees imposed in Ordinance No. 18 are not taxes.

4. ID.; ID.; ID.; TO STRIKE DOWN A LAW OR ORDINANCE, THE PETITIONER HAS THE BURDEN TO PROVE A CLEAR AND EQUIVOCAL BREACH OF THE CONSTITUTION; NOT ESTABLISHED IN CASE AT BAR.— On the constitutionality issue, Smart merely pleaded for the declaration of unconstitutionality of Ordinance No. 18 in the Prayer of the Petition, without any argument or evidence to support its plea. Nowhere in the body of the Petition was this issue specifically raised and discussed. Significantly, Smart failed to cite any constitutional provision allegedly violated by respondent when it issued Ordinance No. 18. Settled is the rule that every law, in this case an ordinance, is presumed valid. To strike down a law as unconstitutional, Smart has the burden to prove a clear and unequivocal breach of the Constitution, which Smart miserably failed to do.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Office for Legal Services (Batangas) for respondent.

Supreme Court E-Library

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] challenges the 26 June 2012 Decision[2] and 13 November 2012 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc*. The CTA *En Banc* affirmed the 17 December 2010 Decision[4] and 7 April 2011 Resolution[5] of the CTA First Division, which in turn affirmed the 2 December 2008 Decision[6] and 21 May 2009 Order[7] of the Regional Trial Court of Tanauan City, Batangas, Branch 6. The trial court declared void the assessment imposed by respondent Municipality of Malvar, Batangas against petitioner Smart Communications, Inc. for its telecommunications tower for 2001 to July 2003 and directed respondent to assess petitioner only for the period starting 1 October 2003.

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[1] Under Rule 45 of the Rules of Court. *Rollo*, pp. 3-45.

[2] *Id*. at 51-63. Penned by Associate Justice Olga Palanca-Enriquez, concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas.

[3] *Id*. at 64-66. Penned by Associate Justice Olga Palanca-Enriquez, concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas.

[4] *Id*. at 111-137. Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Presiding Justice Ernesto D. Acosta and Erlinda P. Uy.

[5] *Id*. at 138-140. Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Presiding Justice Ernesto D. Acosta and Erlinda P. Uy.

[6] *Id*. at 248-252. Penned by Judge Arcadio I. Manigbas.

[7] *Id*. at 271-272.

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The Facts

Petitioner Smart Communications, Inc. (Smart) is a domestic corporation engaged in the business of providing telecommunications services to the general public while respondent Municipality of Malvar, Batangas (Municipality) is a local government unit created by law.

In the course of its business, Smart constructed a telecommunications tower within the territorial jurisdiction of the Municipality. The construction of the tower was for the purpose of receiving and transmitting cellular communications within the covered area.

On 30 July 2003, the Municipality passed Ordinance No. 18, series of 2003, entitled "An Ordinance Regulating the Establishment of Special Projects."

On 24 August 2004, Smart received from the Permit and Licensing Division of the Office of the Mayor of the Municipality an assessment letter with a schedule of payment for the total amount of ₱389,950.00 for Smart's telecommunications tower. The letter reads as follows:

> This is to formally submit to your good office your schedule of payments in the Municipal Treasury of the Local Government Unit of Malvar, province of Batangas which corresponds to the tower of your company built in the premises of the municipality, to wit:
>
> | | | |
> |---|---|---|
> | TOTAL PROJECT COST: | PHP 11,000,000.00 | |
> | For the Year 2001-2003 | | |
> | 50% of 1% of the total project cost | Php55,000.00 | |
> | Add: 45% surcharge | 24,750.00 | |
> | | Php79,750.00 | |
> | Multiply by 3 yrs. (2001, 2002, 2003) | | Php239,250.00 |
> | For the year 2004 | | |
> | 1% of the total project cost | Php110,000.00 | |
> | 37% surcharge | 40,700.00 | |
> | | | Php150,700.00 |
> | | TOTAL | Php389,950.00 |

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Hoping that you will give this matter your preferential attention.[8]

Due to the alleged arrears in the payment of the assessment, the Municipality also caused the posting of a closure notice on the telecommunications tower.

On 9 September 2004, Smart filed a protest, claiming lack of due process in the issuance of the assessment and closure notice. In the same protest, Smart challenged the validity of Ordinance No. 18 on which the assessment was based.

In a letter dated 28 September 2004, the Municipality denied Smart's protest.

On 17 November 2004, Smart filed with Regional Trial Court of Tanauan City, Batangas, Branch 6, an "Appeal/Petition" assailing the validity of Ordinance No. 18. The case was docketed as SP Civil Case No. 04-11-1920.

On 2 December 2008, the trial court rendered a Decision partly granting Smart's Appeal/Petition. The trial court confined its resolution of the case to the validity of the assessment, and did not rule on the legality of Ordinance No. 18. The trial court held that the assessment covering the period from 2001 to July 2003 was void since Ordinance No. 18 was approved only on 30 July 2003. However, the trial court declared valid the assessment starting 1 October 2003, citing Article 4 of the Civil Code of the Philippines,[9] in relation to the provisions of Ordinance No. 18 and Section 166 of Republic Act No. 7160 or the Local Government Code of 1991 (LGC).[10] The dispositive portion of the trial court's Decision reads:

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[8] *Id.* at 164.

[9] Article 4. Laws shall have no retroactive effect, unless the contrary is provided.

[10] SECTION 166. *Accrual of Tax*. – Unless otherwise provided in this Code, all local taxes, fees, and charges shall accrue on the first (1st) day of January of each year. However, new taxes, fees or charges, or changes in the rates thereof, shall accrue on the first (1st) day of the quarter next following the effectivity of the ordinance imposing such new levies or rates.

Supreme Court E-Library

WHEREFORE, in light of the foregoing, the Petition is partly GRANTED. The assessment dated August 24, 2004 against petitioner is hereby declared null and void insofar as the assessment made from year 2001 to July 2003 and respondent is hereby prohibited from assessing and collecting, from petitioner, fees during the said period and the Municipal Government of Malvar, Batangas is directed to assess Smart Communications, Inc. only for the period starting October 1, 2003.

No costs.

SO ORDERED.[11]

The trial court denied the motion for reconsideration in its Order of 21 May 2009.

On 8 July 2009, Smart filed a petition for review with the CTA First Division, docketed as CTA AC No. 58.

On 17 December 2010, the CTA First Division denied the petition for review. The dispositive portion of the decision reads:

WHEREFORE, the Petition for Review is hereby DENIED, for lack of merit. Accordingly, the assailed Decision dated December 2, 2008 and the Order dated May 21, 2009 of Branch 6 of the Regional Trial Court of Tanauan City, Batangas in SP. Civil Case No. 04-11-1920 entitled "*Smart Communications, Inc. vs. Municipality of Malvar, Batangas*" are AFFIRMED.

SO ORDERED.[12]

On 7 April 2011, the CTA First Division issued a Resolution denying the motion for reconsideration.

Smart filed a petition for review with the CTA *En Banc*, which affirmed the CTA First Division's decision and resolution. The dispositive portion of the CTA *En Banc*'s 26 June 2012 decision reads:

WHEREFORE, premises considered, the present Petition for Review is hereby DISMISSED for lack of merit.

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[11] *Rollo*, p. 252.

[12] *Id.* at 136.

Supreme Court E-Library

Accordingly, the assailed Decision dated December 17, 2010 and Resolution dated April 7, 2011 are hereby AFFIRMED.

SO ORDERED.[13]

The CTA *En Banc* denied the motion for reconsideration.

Hence, this petition.

The Ruling of the CTA *En Banc*

The CTA *En Banc* dismissed the petition on the ground of lack of jurisdiction. The CTA *En Banc* declared that it is a court of special jurisdiction and as such, it can take cognizance only of such matters as are clearly within its jurisdiction. Citing Section 7(a), paragraph 3, of Republic Act No. 9282, the CTA *En Banc* held that the CTA has exclusive appellate jurisdiction to review on appeal, decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally resolved by them in the exercise of their original or appellate jurisdiction. However, the same provision does not confer on the CTA jurisdiction to resolve cases where the constitutionality of a law or rule is challenged.

The Issues

The petition raises the following arguments:

1. The [CTA *En Banc* Decision and Resolution] should be reversed and set aside for being contrary to law and jurisprudence considering that the CTA *En Banc* should have exercised its jurisdiction and declared the Ordinance as illegal.

2. The [CTA *En Banc* Decision and Resolution] should be reversed and set aside for being contrary to law and jurisprudence considering that the doctrine of exhaustion of administrative remedies does not apply in [this case].

3. The [CTA *En Banc* Decision and Resolution] should be reversed and set aside for being contrary to law and jurisprudence considering that the respondent has no authority to impose the so-called "fees" on the basis of the void ordinance.[14]

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[13] *Id.* at 62.

[14] *Id.* at 20-21.

Supreme Court E-Library

The Ruling of the Court

The Court denies the petition.

On whether the CTA has jurisdiction over the present case

Smart contends that the CTA erred in dismissing the case for lack of jurisdiction. Smart maintains that the CTA has jurisdiction over the present case considering the "unique" factual circumstances involved.

The CTA refuses to take cognizance of this case since it challenges the constitutionality of Ordinance No. 18, which is outside the province of the CTA.

Jurisdiction is conferred by law. Republic Act No. 1125, as amended by Republic Act No. 9282, created the Court of Tax Appeals. Section 7, paragraph (a), sub-paragraph (3)[15] of the law vests the CTA with the exclusive appellate jurisdiction over "decisions, orders or resolutions of the Regional Trial Courts in local **tax** cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction."

The question now is whether the trial court resolved a local tax case in order to fall within the ambit of the CTA's appellate jurisdiction This question, in turn, depends ultimately on whether the fees imposed under Ordinance No. 18 are in fact taxes.

Smart argues that the "fees" in Ordinance No. 18 are actually taxes since they are not regulatory, but revenue-raising. Citing *Philippine Airlines, Inc. v. Edu*,[16] Smart contends that the designation of "fees" in Ordinance No. 18 is not controlling.

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[15] Sec. 7. Jurisdiction.– The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x x x x

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

x x x x x x x x x

[16] 247 Phil. 283 (1988).

Supreme Court E-Library

The Court finds that the fees imposed under Ordinance No. 18 are not taxes.

Section 5, Article X of the 1987 Constitution provides that "[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government."

Consistent with this constitutional mandate, the LGC grants the taxing powers to each local government unit. Specifically, Section 142 of the LGC grants municipalities the power to levy taxes, fees, and charges not otherwise levied by provinces. Section 143 of the LGC provides for the scale of taxes on business that may be imposed by municipalities[17] while Section

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[17] Section 143. *Tax on Business.*– The municipality may impose taxes on the following businesses:

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:

x x x x x x x x x

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

x x x x x x x x x

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsection (a), (b) and (d) of this Section:

(1) Rice and corn;

(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;

(3) Cooking oil and cooking gas;

(4) Laundry soap, detergents, and medicine;

(5) Agricultural implements, equipment and post-harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;

Supreme Court E-Library

147[18] of the same law provides for the fees and charges that may be imposed by municipalities on business and occupation.

The LGC defines the term "charges" as referring to pecuniary liability, as rents or fees against persons or property, while the term "fee" means "a charge fixed by law or ordinance for the regulation or inspection of a business or activity."[19]

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(6) Poultry feeds and other animal feeds;

(7) School supplies; and

(8) Cement.

(d) On retailers.

x x x x x x x x x

Provided, however, That *barangay*s shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (₱50,000.00) or less, in the case of cities, and Thirty thousand pesos (₱30,000.00) or less, in the case of municipalities.

(e) On contractors and other independent contractors, in accordance with the following schedule:

x x x x x x x x x

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (₱50.00) per peddler annually.

(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.

[18] Section 147. *Fees and Charges.* – The municipality may impose and collect such reasonable fees and charges on business and occupation and, except as reserved to the province in Section 139 of this Code, on the practice of any profession or calling, commensurate with the cost of regulation, inspection and licensing before any person may engage in such business or occupation, or practice such profession or calling.

[19] Section 131. *Definition of Terms.* – When used in this Title, the term:

Supreme Court E-Library

In this case, the Municipality issued Ordinance No. 18, which is entitled "An Ordinance ***Regulating*** the Establishment of Special Projects," to ***regulate*** the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus, and provide for the correction, condemnation or removal of the same when found to be dangerous, defective or otherwise hazardous to the welfare of the inhabitant[s]."[20] It was also envisioned to address the foreseen "environmental depredation" to be brought about by these "special projects" to the Municipality.[21] Pursuant to these objectives, the Municipality imposed fees on various structures, which included telecommunications towers.

As clearly stated in its whereas clauses, the primary purpose of Ordinance No. 18 is to regulate the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus" listed therein, which included Smart's telecommunications tower. Clearly, the purpose of the assailed Ordinance is to regulate the enumerated activities particularly related to the construction and maintenance of various structures. The fees in Ordinance No. 18 are not impositions on the building or structure itself; rather, they are impositions on the activity subject of government regulation, such as the installation and construction of the structures.[22]

Since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects,

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x x x x x x x x x

(g) "Charges" refers to pecuniary liability, as rents or fees against persons or property;

x x x x x x x x x

(l) "Fee" means a charge fixed by law or ordinance for the regulation or inspection of a business or activity;

x x x x x x x x x

[20] *Rollo*, p. 165.

[21] *Id.*

[22] See *Angeles University Foundation v. City of Angeles*, G.R. No. 189999, 27 June 2012, 675 SCRA 359, 373.

Supreme Court E-Library

which included "cell sites" or telecommunications towers, the fees imposed in Ordinance No. 18 are ***primarily regulatory in nature, and not primarily revenue-raising***. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Thus, the fees imposed in Ordinance No. 18 are not taxes.

In *Progressive Development Corporation v. Quezon City*,[23] the Court declared that "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."

In *Victorias Milling Co., Inc. v. Municipality of Victorias*,[24] the Court reiterated that the purpose and effect of the imposition determine whether it is a tax or a fee, and that the lack of any standards for such imposition gives the presumption that the same is a tax.

> We accordingly say that the designation given by the municipal authorities does not decide whether the imposition is properly a license tax or a license fee. The determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance. Thus, "[w]hen no police inspection, supervision, or regulation is provided, nor any standard set for the applicant to establish, or that he agrees to attain or maintain, but any and all persons engaged in the business designated, without qualification or hindrance, may come, and a license on payment of the stipulated sum will issue, to do business, subject to no prescribed rule of conduct and under no guardian eye, but according to the unrestrained judgment or fancy of the applicant and licensee, the presumption is strong that the power of taxation, and not the police power, is being exercised."

Contrary to Smart's contention, Ordinance No. 18 expressly provides for the standards which Smart must satisfy prior to

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[23] 254 Phil. 635, 643 (1989). See also *City of Iloilo v. Villanueva,* 105 Phil. 337 (1959).

[24] 134 Phil. 180, 189-190 (1968).

Supreme Court E-Library

the issuance of the specified permits, clearly indicating that the fees are regulatory in nature. These requirements are as follows:

SECTION 5. Requirements and Procedures in Securing Preliminary Development Permit.

The following documents shall be submitted to the SB Secretary in triplicate:

a) zoning clearance
b) Vicinity Map
c) Site Plan
d) Evidence of ownership
e) Certificate true copy of NTC Provisional Authority in case of Cellsites, telephone or telegraph line, ERB in case of gasoline station, power plant, and other concerned national agencies
f) Conversion order from DAR is located within agricultural zone.
g) Radiation Protection Evaluation.
h) Written consent from subdivision association or the residence of the area concerned if the special projects is located within the residential zone.
i) Barangay Council Resolution endorsing the special projects.

SECTION 6. Requirement for Final Development Permit – Upon the expiration of 180 days and the proponents of special projects shall apply for final [development permit] and they are require[d] to submit the following:
a) evaluation from the committee where the Vice Mayor refers the special project
b) Certification that all local fees have been paid.

Considering that the fees in Ordinance No. 18 are not in the nature of local taxes, and Smart is questioning the constitutionality of the ordinance, the CTA correctly dismissed the petition for lack of jurisdiction. Likewise, Section 187 of the LGC,[25] which

[25] Section 187. *Procedure for Approval and Effectivity of Tax, Ordinances and Revenue Measures; Mandatory Public Hearings.* — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from

Supreme Court E-Library

outlines the procedure for questioning the constitutionality of a tax ordinance, is inapplicable, rendering unnecessary the resolution of the issue on non-exhaustion of administrative remedies.

On whether the imposition of the fees in Ordinance No. 18 is ultra vires

Smart argues that the Municipality exceeded its power to impose taxes and fees as provided in Book II, Title One, Chapter 2, Article II of the LGC. Smart maintains that the mayor's permit fees in Ordinance No. 18 (equivalent to 1% of the project cost) are not among those expressly enumerated in the LGC.

As discussed, the fees in Ordinance No.18 are not taxes. Logically, the imposition does not appear in the enumeration of taxes under Section 143 of the LGC.

Moreover, even if the fees do not appear in Section 143 or any other provision in the LGC, the Municipality is empowered to impose taxes, fees and charges, not specifically enumerated in the LGC or taxed under the Tax Code or other applicable law. Section 186 of the LGC, granting local government units wide latitude in imposing fees, expressly provides:

Section 186. *Power To Levy Other Taxes, Fees or Charges.* — Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: Provided, further, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

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the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

Supreme Court E-Library

Smart further argues that the Municipality is encroaching on the regulatory powers of the National Telecommunications Commission (NTC). Smart cites Section 5(g) of Republic Act No. 7925 which provides that the National Telecommunications Commission (NTC), in the exercise of its regulatory powers, shall impose such fees and charges as may be necessary to cover reasonable costs and expenses for the regulation and supervision of the operations of telecommunications entities. Thus, Smart alleges that the regulation of telecommunications entities and all aspects of its operations is specifically lodged by law on the NTC.

To repeat, Ordinance No. 18 aims to regulate the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus" within the Municipality. The fees are not imposed to regulate the administrative, technical, financial, or marketing operations of telecommunications entities, such as Smart's; rather, to regulate the installation and maintenance of physical structures – Smart's cell sites or telecommunications tower. The regulation of the installation and maintenance of such physical structures is an exercise of the police power of the Municipality. Clearly, the Municipality does not encroach on NTC's regulatory powers.

The Court likewise rejects Smart's contention that the power to fix the fees for the issuance of development permits and locational clearances is exercised by the Housing and Land Use Regulatory Board (HLURB). Suffice it to state that the HLURB itself recognizes the local government units' power to collect fees related to land use and development. Significantly, the HLURB issued locational guidelines governing telecommunications infrastructure. Guideline No. VI relates to the collection of locational clearance fees either by the HLURB or the concerned local government unit, to wit:

VI. Fees

The Housing and Land Use Regulatory Board in the performance of its functions shall collect the locational clearance fee based on the revised schedule of fees under the special use project as per

Supreme Court E-Library

Resolution No. 622, series of 1998 or by the concerned LGUs subject to EO 72.[26]

On whether Ordinance No. 18 is valid and constitutional

Smart contends that Ordinance No. 18 violates Sections 130(b)(3)[27] and 186 of the LGC since the fees are unjust, excessive, oppressive and confiscatory. Aside from this bare allegation, Smart did not present any evidence substantiating its claims. In *Victorias Milling Co., Inc. v. Municipality of Victorias*,[28] the Court rejected the argument that the fees imposed by respondent therein are excessive for lack of evidence supporting such claim, to wit:

> An 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 prohibitive, 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.
>
> Plaintiff, has however not sufficiently proven that, taking these factors together, the license taxes are unreasonable. The presumption of validity subsists. For, plaintiff has limited itself to insisting that the amounts levied exceed the cost of regulation and the municipality has adequate funds for the alleged purposes as evidenced by the municipality's cash surplus for the fiscal year ending 1956.

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[26] http://hlurb.gov.ph/wp-content/uploads/laws-issuances/policies/CellSite.pdf (last visited on 4 February 2014).

[27] SECTION 130. *Fundamental Principles*. – The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:

x x x x x x x x x

(b) Taxes, fees, charges and other impositions shall:

x x x x x x x x x

(3) not be unjust, excessive, oppressive, or confiscatory;

[28] *Supra* note 24, at 194.

Supreme Court E-Library

On the constitutionality issue, Smart merely pleaded for the declaration of unconstitutionality of Ordinance No. 18 in the Prayer of the Petition, without any argument or evidence to support its plea. Nowhere in the body of the Petition was this issue specifically raised and discussed. Significantly, Smart failed to cite any constitutional provision allegedly violated by respondent when it issued Ordinance No. 18.

Settled is the rule that every law, in this case an ordinance, is presumed valid. To strike down a law as unconstitutional, Smart has the burden to prove a clear and unequivocal breach of the Constitution, which Smart miserably failed to do. In *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*,[29] the Court held, thus:

> To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.

WHEREFORE, the Court DENIES the petition.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Brion, J., on leave.

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[29] G.R. No. 164987, 24 April 2012, 670 SCRA 373, 386-387.