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SECOND DIVISION

[G.R. No. 162015. March 6, 2006]

THE CITY GOVERNMENT OF QUEZON CITY, AND THE CITY TREASURER OF QUEZON CITY, DR. VICTOR B. ENRIGA, *petitioners, vs.* BAYAN TELECOMMUNICATIONS, INC., *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; PETITION THEREFOR PROPER WHEN APPEAL, ALTHOUGH AVAILABLE, IS NOT A SPEEDY AND ADEQUATE REMEDY EXEMPLIFIED IN CASE AT BAR.— With the reality that Bayantel's real properties were already levied upon on account of its nonpayment of real estate taxes thereon, the Court agrees with Bayantel that an appeal to the LBAA is not a speedy and adequate remedy within the context of the aforequoted Section 2 of Rule 65. This is not to mention of the auction sale of said properties already scheduled on July 30, 2002. Moreover, one of the recognized exceptions to the exhaustion-of-administrative remedies rule is when, as here, only legal issues are to be resolved. In fact, the Court, cognizant of the nature of the questions presently involved, gave due course to the instant petition. As the Court has said in *Ty vs. Trampe*: x x x. Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law. x x x. Lest it be overlooked, an appeal to the LBAA, to be properly considered, required prior payment under protest of the amount of ₱43,878,208.18, a figure which, in the light of the then prevailing Asian financial crisis, may have been difficult to raise up. Given this reality, an appeal to the LBAA may not be considered as a plain, speedy and adequate remedy. It is thus understandable why Bayantel opted to withdraw its earlier appeal with the LBAA and, instead, filed its petition for prohibition with urgent application for injunctive relief in *Civil Case No. Q-02-47292*. The remedy availed of by Bayantel under Section 2, Rule 65 of the Rules of Court must be upheld.

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2. TAXATION; TAXES; PROPERTY TAX; ALL REALTIES WHICH ARE ACTUALLY, DIRECTLY AND EXCLUSIVELY USED IN THE OPERATION OF FRANCHISEE'S BUSINESS ARE EXEMPTED THEREFROM; JUSTIFIED. — To the mind of the Court, Section 14 of Rep. Act No. 3259 effectively works to grant or delegate to local governments of Congress' inherent power to tax the franchisee's properties belonging to the second group of properties indicated above, that is, all properties which "exclusive of this franchise," are not actually and directly used in the pursuit of its franchise. As may be recalled, the taxing power of local governments under both the 1935 and the 1973 Constitutions solely depended upon an *enabling law.* Absent such enabling law, local government units were without authority to impose and collect taxes on real properties within their respective territorial jurisdiction. While Section 14 of Rep. Act No. 3259 may be validly viewed as an implied delegation of power to tax, the delegation under that provision, as couched, is limited to impositions over properties of the franchisee which are not actually, directly and exclusively used in the pursuit of its franchise. Necessarily, other properties of Bayantel directly used in the pursuit of its business are beyond the pale of the delegated taxing power of local governments. In a very real sense, therefore, real properties of Bayantel, save those *exclusive of its franchise*, are subject to realty taxes. Ultimately, therefore, the inevitable result was that all realties which are actually, directly and exclusively used in the operation of its franchise are "exempted" from any property tax. Bayantel's franchise being national in character, the "exemption" thus granted under Section 14 of Rep. Act No. 3259 applies to all its real or personal properties found anywhere within the Philippine archipelago.

3. ID.; LOCAL TAXATION; POWER OF LOCAL GOVERNMENT UNITS TO TAX IS STILL LIMITED UNDER THE 1987 CONSTITUTION; RATIONALE. — While the system of local government taxation has changed with the onset of the 1987 Constitution, the power of local government units to tax is still limited. As we explained in *Mactan Cebu International Airport Authority*: The power to tax is primarily vested in the Congress; however, *in our* jurisdiction, *it may be exercised by local legislative bodies, no longer merely be virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution.* Under the latter,

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the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy. Clearly then, while a new slant on the subject of local taxation now prevails in the sense that the former doctrine of local government units' delegated power to tax had been *effectively modified* with Article X, Section 5 of the 1987 Constitution now in place, the basic doctrine on local taxation remains essentially the same. For as the Court stressed in *Mactan*, *"the power to tax is [still] primarily vested in the Congress."* For sure, *in Philippine Long Distance telephone Company, Inc. (PLDT) vs. City of Davao,* this Court has upheld the power of Congress to grant exemptions over the power of local government units to impose taxes. There, the Court wrote: Indeed, *the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions* to certain persons, pursuant to a declared national policy. The legal effect of the constitutional grant to local governments simply means that in interpreting statutory provisions on municipal taxing powers, doubts must be resolved in favor of municipal corporations. Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel's former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase "*exclusive of this franchise*" which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that "the grantee, its successors or assigns shall be liable to pay the same taxes on their real state, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay." The Court views this subsequent piece of legislation as an *express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power,* all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuant of its franchise.

APPEARANCES OF COUNSEL

The Quezon City Attorney for petitioners.
De Mesa Zabalero & Partners for respondent.

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DECISION

GARCIA, *J.*:

Before the Court, on *pure questions of law,* is this petition for review on *certiorari* under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Regional Trial Court (RTC) of Quezon City, Branch 227, in its *Civil Case No. Q-02-47292*, to wit:

1) *Decision*[1] *dated June 6, 2003,* declaring respondent Bayan Telecommunications, Inc. exempt from real estate taxation on its real properties located in Quezon City; and

2) *Order*[2] *dated December 30, 2003,* denying petitioners' motion for reconsideration.

The facts:

Respondent Bayan Telecommunications, Inc.[3] (Bayantel) is a legislative franchise holder under Republic Act (Rep. Act) No. 3259[4] to establish and operate radio stations for domestic telecommunications, radiophone, broadcasting and telecasting.

Of relevance to this controversy is the tax provision of Rep. Act No. 3259, embodied in Section 14 thereof, which reads:

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[1] Penned by then Judge Vicente Q. Roxas, now Associate Justice of the Court of Appeals; Rollo, pp. 46-71.

[2] *Rollo*, p. 72.

[3] Formerly named International Communications Corporation.

[4] *"An Act Granting the International Communications Corporation a Franchise to Establish Radio Stations for Domestic Telecommunications, Radiophone, Broadcasting and Telecasting."* Approved on June 17, 1961.

This franchise was later extended with the enactment of Republic Act No. 4905 on June 17, 1967, stating that: *"SEC. 4. This franchise shall continue for a period of twenty-five years from the date the first of said stations shall be placed in operation, and is granted upon the express condition that the same shall be void unless the construction of said station be begun within two years from the date of the approval of this amendatory Act and be completed within four years from said date."*

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SECTION 14. (*a*) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, ***exclusive of the franchise***, as other persons or corporations are now or hereafter may be required by law to pay. (*b*) The grantee shall further pay to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and one-half *per centum* of all gross receipts from the business transacted under this franchise by the said grantee (Emphasis supplied).

On *January 1, 1992*, Rep. Act No. 7160, otherwise known as the *"Local Government Code of 1991"* (LGC), took effect. Section 232 of the Code grants local government units within the Metro Manila Area the power to levy tax on real properties, thus:

SEC. 232 – *Power to Levy Real Property Tax.* – A province or city or a municipality within the Metropolitan Manila Area may levy an annual *ad valorem tax* on real property such as land, building, machinery and other improvements not hereinafter specifically exempted.

Complementing the aforequoted provision is the second paragraph of Section 234 of the same Code which withdrew any exemption from realty tax heretofore granted to or enjoyed by all persons, natural or juridical, to wit:

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

xxx xxx xxx

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

On July 20, 1992, barely few months after the LGC took effect, Congress enacted Rep. Act No. 7633, amending Bayantel's original franchise. The amendatory law (Rep. Act No. 7633) contained the following tax provision:

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SEC. 11. The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, ***exclusive of this franchise,*** as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof. *Provided*, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code ... xxx. [Italics and emphasis supplied]

It is undisputed that within the territorial boundary of Quezon City, Bayantel owned several real properties on which it maintained various telecommunications facilities. These real properties, as hereunder described, are covered by the following tax declarations:

(a) Tax Declaration Nos. D-096-04071, D-096-04074, D-096-04072 and D-096-04073 pertaining to Bayantel's Head Office and Operations Center in Roosevelt St., San Francisco del Monte, Quezon City allegedly the nerve center of petitioner's telecommunications franchise operations, said Operation Center housing mainly petitioner's Network Operations Group and switching, transmission and related equipment;

(b) Tax Declaration Nos. D-124-01013, D-124-00939, D-124-00920 and D-124-00941 covering Bayantel's land, building and equipment in Maginhawa St., Barangay East Teacher's Village, Quezon City which houses telecommunications facilities; and

(c) Tax Declaration Nos. D-011-10809, D-011-10810, D-011-10811, and D-011-11540 referring to Bayantel's Exchange Center located in Proj. 8, Brgy. Bahay Toro, Tandang Sora, Quezon City which houses the Network Operations Group and cover switching, transmission and other related equipment.

In 1993, the government of Quezon City, pursuant to the taxing power vested on local government units by Section 5, Article X of the 1987 Constitution, *infra*, in relation to Section 232 of the LGC, *supra,* enacted City Ordinance No. SP-91, S-93, otherwise known as the *Quezon City Revenue Code*

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(QCRC),[5] imposing, under Section 5 thereof, a real property tax on all real properties in Quezon City, and, reiterating in its Section 6, the withdrawal of exemption from real property tax under Section 234 of the LGC, *supra.* Furthermore, much like the LGC, the QCRC, under its Section 230, withdrew tax exemption privileges in general, as follows:

> SEC. 230 – *Withdrawal of Tax Exemption Privileges.* – Unless otherwise provided in this Code, *tax exemptions* or incentives *granted to, or presently enjoyed by all persons, whether natural or juridical,* including government owned or controlled corporations, except local water districts, cooperatives duly registered under RA 6938, non-stock and non-profit hospitals and educational institutions, business enterprises certified by the Board of Investments (BOI) as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively, ... *are hereby withdrawn effective upon approval of this Code* (Italics supplied).

Conformably with the City's *Revenue Code*, new tax declarations for Bayantel's real properties in Quezon City were issued by the City Assessor and were received by Bayantel on August 13, 1998, except one (Tax Declaration No. 124-01013) which was received on July 14, 1999.

Meanwhile, on March 16, 1995, Rep. Act No. 7925,[6] otherwise known as the "*Public Telecommunications Policy Act of the Philippines,*" envisaged to level the playing field among telecommunications companies, took effect. Section 23 of the Act provides:

> SEC. 23. *Equality of Treatment in the Telecommunications Industry.* – Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall *ipso facto* become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: *Provided*, however, That the

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[5] This took effect on July 1, 1993.

[6] Entitled *"An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunication Services."*

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foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise.

On January 7, 1999, Bayantel wrote the office of the City Assessor seeking the exclusion of its real properties in the city from the roll of taxable real properties. With its request having been denied, Bayantel interposed an appeal with the Local Board of Assessment Appeals (LBAA). And, evidently on its firm belief of its exempt status, Bayantel did not pay the real property taxes assessed against it by the Quezon City government.

On account thereof, the Quezon City Treasurer sent out notices of delinquency for the total amount of ₱43,878,208.18, followed by the issuance of several warrants of levy against Bayantel's properties preparatory to their sale at a public auction set on July 30, 2002.

Threatened with the imminent loss of its properties, Bayantel immediately withdrew its appeal with the LBAA and instead filed with the RTC of Quezon City a petition for prohibition with an urgent application for a temporary restraining order (TRO) and/or writ of preliminary injunction, thereat docketed as *Civil Case No. Q-02-47292,* which was raffled to Branch 227 of the court.

On July 29, 2002, or in the eve of the public auction scheduled the following day, the lower court issued a TRO, followed, after due hearing, by a writ of preliminary injunction *via* its order of August 20, 2002.

And, having heard the parties on the merits, the same court came out with its challenged Decision of June 6, 2003, the dispositive portion of which reads:

WHEREFORE, premises considered, pursuant to the enabling franchise under Section 11 of Republic Act No. 7633, the real estate properties and buildings of petitioner [now, respondent Bayantel] which have been admitted to be used in the operation of petitioner's franchise described in the following tax declarations are hereby DECLARED exempt from real estate taxation:

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(1) Tax Declaration No. D-096-04071 –
(2) Tax Declaration No. D-096-04074 –
(3) Tax Declaration No. D-124-01013 –
(4) Tax Declaration No. D-011-10810 –
(5) Tax Declaration No. D-011-10811 –
(6) Tax Declaration No. D-011-10809 –
(7) Tax Declaration No. D-124-00941 –
(8) Tax Declaration No. D-124-00940 –
(9) Tax Declaration No. D-124-00939 –
(10) Tax Declaration No. D-096-04072 –
(11) Tax Declaration No. D-096-04073 –
(12) Tax Declaration No. D-011-11540 –

The preliminary prohibitory injunction issued in the August 20, 2002 Order of this Court is hereby made permanent. Since this is a resolution of a purely legal issue, there is no pronouncement as to costs.

SO ORDERED.

Their motion for reconsideration having been denied by the court in its Order dated December 30, 2003, petitioners elevated the case directly to this Court on *pure questions of law*, ascribing to the lower court the following errors:

I. [I]n declaring the real properties of respondent exempt from real property taxes notwithstanding the fact that the tax exemption granted to Bayantel in its original franchise had been withdrawn by the [LGC] and that the said exemption was not restored by the enactment of RA 7633.

II. [In] declaring the real properties of respondent exempt from real property taxes notwithstanding the enactment of the [QCRC] which withdrew the tax exemption which may have been granted by RA 7633.

III. [In] declaring the real properties of respondent exempt from real property taxes notwithstanding the vague and ambiguous grant of tax exemption provided under Section 11 of RA 7633.

IV. [In] declaring the real properties of respondent exempt from real property taxes notwithstanding the fact that [it] had failed to exhaust administrative remedies in its claim for real property tax exemption. (Words in bracket added.)

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As we see it, the errors assigned may ultimately be reduced to two (2) basic issues, namely:

1. Whether or not Bayantel's real properties in Quezon City are exempt from real property taxes under its legislative franchise; and
2. Whether or not Bayantel is required to exhaust administrative remedies before seeking judicial relief with the trial court.

We shall first address the second issue, the same being procedural in nature.

Petitioners argue that Bayantel had failed to avail itself of the administrative remedies provided for under the LGC, adding that the trial court erred in giving due course to Bayantel's petition for prohibition. To petitioners, the appeal mechanics under the LGC constitute Bayantel's plain and speedy remedy in this case.

The Court does not agree.

Petitions for prohibition are governed by the following provision of Rule 65 of the Rules of Court:

> SEC. 2. *Petition for prohibition.* – When the proceedings of any tribunal, ... are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise, granting such incidental reliefs as law and justice may require.

With the reality that Bayantel's real properties were already levied upon on account of its nonpayment of real estate taxes thereon, the Court agrees with Bayantel that an appeal to the LBAA is not a speedy and adequate remedy within the context of the aforequoted Section 2 of Rule 65. This is not to mention of the auction sale of said properties already scheduled on July 30, 2002.

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Moreover, one of the recognized exceptions to the exhaustion-of-administrative remedies rule is when, as here, only legal issues are to be resolved. In fact, the Court, cognizant of the nature of the questions presently involved, gave due course to the instant petition. As the Court has said in *Ty vs. Trampe*:[7]

> xxx. Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law. xxx.

Lest it be overlooked, an appeal to the LBAA, to be properly considered, required prior payment under protest of the amount of ₱43,878,208.18, a figure which, in the light of the then prevailing Asian financial crisis, may have been difficult to raise up. Given this reality, an appeal to the LBAA may not be considered as a plain, speedy and adequate remedy. It is thus understandable why Bayantel opted to withdraw its earlier appeal with the LBAA and, instead, filed its petition for prohibition with urgent application for injunctive relief in *Civil Case No. Q-02-47292*. The remedy availed of by Bayantel under Section 2, Rule 65 of the Rules of Court must be upheld.

This brings the Court to the more weighty question of whether or not Bayantel's real properties in Quezon City are, under its franchise, exempt from real property tax.

The lower court resolved the issue in the affirmative, basically owing to the phrase "exclusive of this franchise" found in Section 11 of Bayantel's amended franchise, Rep. Act No. 7633. To petitioners, however, the language of Section 11 of Rep. Act No. 7633 is neither clear nor unequivocal. The elaborate and extensive discussion devoted by the trial court on the meaning and import of said phrase, they add, suggests as much. It is petitioners' thesis that Bayantel was in no time given any *express exemption* from the payment of real property tax under its amendatory franchise.

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[7] 250 SCRA 500 (1995).

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There seems to be no issue as to Bayantel's exemption from real estate taxes by virtue of the term "exclusive of the franchise" qualifying the phrase "same taxes on its real estate, buildings and personal property," found in Section 14, *supra*, of its franchise, Rep. Act No. 3259, as originally granted.

The legislative intent expressed in the phrase "exclusive of this franchise" cannot be construed other than distinguishing between two (2) sets of properties, be they real or personal, owned by the franchisee, namely, (a) those actually, directly and exclusively used in its radio or telecommunications business, and (b) those properties which are not so used. It is worthy to note that the properties subject of the present controversy are only those which are admittedly falling under the first category.

To the mind of the Court, Section 14 of Rep. Act No. 3259 effectively works to grant or delegate to local governments of Congress' inherent power to tax the franchisee's properties belonging to the second group of properties indicated above, that is, all properties which, "exclusive of this franchise," are not actually and directly used in the pursuit of its franchise. As may be recalled, the taxing power of local governments under both the 1935 and the 1973 Constitutions solely depended upon an *enabling law*. Absent such enabling law, local government units were without authority to impose and collect taxes on real properties within their respective territorial jurisdictions. While Section 14 of Rep. Act No. 3259 may be validly viewed as an implied delegation of power to tax, the delegation under that provision, as couched, is limited to impositions over properties of the franchisee which are not actually, directly and exclusively used in the pursuit of its franchise. Necessarily, other properties of Bayantel directly used in the pursuit of its business are beyond the pale of the delegated taxing power of local governments. In a very real sense, therefore, real properties of Bayantel, save those *exclusive of its franchise,* are subject to realty taxes. Ultimately, therefore, the inevitable result was that all realties which are actually, directly and

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exclusively used in the operation of its franchise are "exempted" from any property tax.

Bayantel's franchise being national in character, the "exemption" thus granted under Section 14 of Rep. Act No. 3259 applies to all its real or personal properties found anywhere within the Philippine archipelago.

However, with the LGC's taking effect on January 1, 1992, Bayantel's "exemption" from real estate taxes for properties of whatever kind located within the Metro Manila area was, by force of Section 234 of the Code, *supra,* expressly withdrawn. But, not long thereafter, however, or on July 20, 1992, Congress passed Rep. Act No. 7633 amending Bayantel's original franchise. Worthy of note is that Section 11 of Rep. Act No. 7633 is a virtual reenacment of the tax provision, *i.e.*, Section 14, *supra,* of Bayantel's original franchise under Rep. Act No. 3259. Stated otherwise, Section 14 of Rep. Act No. 3259 which was deemed impliedly repealed by Section 234 of the LGC was expressly revived under Section 14 of Rep. Act No. 7633. In concrete terms, the realty tax exemption heretofore enjoyed by Bayantel under its original franchise, but subsequently withdrawn by force of Section 234 of the LGC, has been restored by Section 14 of Rep. Act No. 7633.

The Court has taken stock of the fact that by virtue of Section 5, Article X of the 1987 Constitution,[8] local governments are empowered to levy taxes. And pursuant to this constitutional empowerment, juxtaposed with Section 232[9] of the LGC, the

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[8] Sec. 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes ... subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. xxx. *Mactan Cebu International Airport Authority vs. Marcos*, 261 SCRA 667 (1996), per then Associate Justice, now retired Chief Justice Hilario G. Davide, Jr., *ponente.*

[9] SEC. 232. *Power to Levy Real Property Tax.* – A province or city or municipality within the Metropolitan Manila Area may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.

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Quezon City government enacted in 1993 its local *Revenue Code*, imposing real property tax on all real properties found within its territorial jurisdiction. And as earlier stated, the City's *Revenue Code,* just like the LGC, expressly withdrew, under Section 230 thereof, *supra,* all tax exemption privileges in general.

This thus raises the question of whether or not the City's *Revenue Code* pursuant to which the city treasurer of Quezon City levied real property taxes against Bayantel's real properties located within the City effectively withdrew the tax exemption enjoyed by Bayantel under its franchise, as amended.

Bayantel answers the poser in the negative arguing that once again it is *only "liable to pay the same taxes, as any other persons or corporations on all its real or personal properties,* ***exclusive of its franchise.***"

Bayantel's posture is well-taken. While the system of local government taxation has changed with the onset of the 1987 Constitution, the power of local government units to tax is still limited. As we explained in *Mactan Cebu International Airport Authority:*[10]

> The power to tax is primarily vested in the Congress; however, in our jurisdiction, *it may be exercised by local legislative bodies, no longer merely be virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution.* Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy. (at p. 680; Italics supplied.)

Clearly then, while a new slant on the subject of local taxation now prevails in the sense that the former doctrine of local government units' delegated power to tax had been *effectively modified* with Article X, Section 5 of the 1987 Constitution now in place, the basic doctrine on local taxation remains

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[10] See Footnote #8, *supra.*

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essentially the same. For as the Court stressed in *Mactan*, *"the power to tax is [still] primarily vested in the Congress."*

This new perspective is best articulated by Fr. Joaquin G. Bernas, S.J., himself a Commissioner of the 1986 Constitutional Commission which crafted the 1987 Constitution, thus:

> What is the effect of Section 5 on the fiscal position of municipal corporations? *Section 5 does not change the doctrine that municipal corporations do not possess inherent powers of taxation. What it does is to confer municipal corporations a general power to levy taxes and otherwise create sources of revenue.* They no longer have to wait for a statutory grant of these powers. The power of the legislative authority relative to the fiscal powers of local governments has been reduced to the authority to impose limitations on municipal powers. Moreover, these limitations must be "consistent with the basic policy of local autonomy." *The important legal effect of Section 5 is thus to reverse the principle that doubts are resolved against municipal corporations.* Henceforth, in interpreting statutory provisions on municipal fiscal powers, doubts will be resolved in favor of municipal corporations. It is understood, however, that taxes imposed by local government must be for a public purpose, uniform within a locality, must not be confiscatory, and must be within the jurisdiction of the local unit to pass.[11] (Italics supplied).

In net effect, the controversy presently before the Court involves, at bottom, a clash between the inherent taxing power of the legislature, which necessarily includes the power to exempt, and the local government's delegated power to tax under the aegis of the 1987 Constitution.

Now to go back to the Quezon City *Revenue Code* which imposed real estate taxes on all real properties within the city's territory and removed exemptions theretofore "previously granted to, or presently enjoyed by all persons,

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[11] Bernas, *The Constitution of the Republic of the Philippines, a Commentary,* Vol. 11, 1988 ed., p. 381.

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whether natural or juridical ...,"[12] there can really be no dispute that the power of the Quezon City Government to tax is limited by Section 232 of the LGC which expressly provides that *"a province or city or municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement* ***not hereinafter specifically exempted.*** *"* Under this law, the Legislature highlighted its power to thereafter exempt certain realties from the taxing power of local government units. An interpretation denying Congress such power to exempt would reduce the phrase *"not hereinafter specifically exempted"* as a pure jargon, without meaning whatsoever. Needless to state, such absurd situation is unacceptable.

For sure, in *Philippine Long Distance Telephone Company, Inc. (PLDT) vs. City of Davao*,[13] this Court has upheld the power of Congress to grant exemptions over the power of local government units to impose taxes. There, the Court wrote:

> Indeed, *the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions* to certain persons, pursuant to a declared national policy. The legal effect of the constitutional grant to local governments simply means that in interpreting statutory provisions on municipal taxing powers, doubts must be resolved in favor of municipal corporations. (Italics supplied.)

As we see it, then, the issue in this case no longer dwells on whether Congress has the power to exempt Bayantel's properties from realty taxes by its enactment of Rep. Act No. 7633 which amended Bayantel's original franchise. *The more decisive question turns on whether Congress actually did exempt Bayantel's properties at all by virtue of Section 11 of Rep. Act No. 7633.*

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[12] Section 6, Quezon City Revenue Code, quoted in Petitioners' Memorandum; *Rollo*, p. 323.

[13] 363 SCRA 522 (2001), per Associate Justice Vicente V. Mendoza, *ponente.*

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Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel's former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase ***"exclusive of this franchise"*** which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that "the grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay." The Court views this subsequent piece of legislation as an *express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power,* all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuit of its franchise.

WHEREFORE, the petition is *DENIED.*

No pronouncement as to costs.

SO ORDERED.

Puno (Chairperson), Sandoval-Gutierrez, Corona, and *Azcuna, JJ.,* concur.