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SO ORDERED.

*Barredo (Chairman), Concepcion, Fernandez,* and *De Castro, JJ.,* concur.

*Abad Santos, J.,* is on leave.

*Fernandez, J.,* was designated to sit in the Second Division.

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SECOND DIVISION

[G.R. No. L-49336. August 31, 1981]

THE PROVINCE OF ABRA, represented by LADISLAO ANCHETA, Provincial Assessor, petitioner, *vs.* HONORABLE HAROLD M. HERNANDO, in his capacity as Presiding Judge of Branch I, Court of First Instance Abra; THE ROMAN CATHOLIC BISHOP OF BANGUED, INC., represented by Bishop Odilo Etspueler and Reverend Felipe Flores, respondents.

SYNOPSIS

The Provincial Assessor of Abra levied a tax assessment on the properties of respondent Roman Catholic Bishop of Bangued. The latter filed a petition for declaratory relief on the ground that it is exempted from payment of real estate taxes, its properties being actually, directly and exclusively used for religious or charitable purposes as sources of support for the bishop, the parish priest and his helpers. Petitioner filed a motion to dismiss but the same was denied. After conducting a summary hearing, respondent Judge granted the exemption without hearing the side of petitioner. Hence, this present petition for certiorari and mandamus alleging denial of procedural due process.

The Supreme Court held that petitioner was right in seeking necessary proof as the law frowns on exemptions from taxation. The failure of respondent judge to accord a hearing therefor was in violation of the constitutional command of procedural due process.

Petition granted.

SYLLABUS

1. CONSTITUTIONAL LAW; FREEDOM OF RELIGION; TAX EXEMPTION OF CHURCH PROPERTIES; PRESENT

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REQUIREMENT OF ACTUAL EXCLUSIVE AND DIRECT USE OF PROPERTY FOR CHARITABLE AND RELIGIOUS PURPOSES.— Under Article VI, Section 22, paragraph 3 of the 1935 Constitution: "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, building, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation." The present Constitution (Article VIII, Section 17, paragraph 3) added "charitable institutions, mosques, and non-profit cemeteries" and required that for the exemption of "lands, buildings, and improvements," they should not only be "exclusively" but also "actually" and "directly" used for religious or charitable purposes. The Constitution is worded differently. The change should not be ignored. It must be duly taken into consideration.

2. ID.; ID.; ID.; ID.; TAX EXEMPTIONS, STRICTLY CONSTRUED.— There must be proof of the actual and direct use of the lands, buildings, and improvements for religious or charitable purposes to be exempt from taxation. According to Commissioner of Internal Revenue *v.* Guerrero, L-20812, September 22, 1967, "From 1906, in Catholic Church *v.* Hastings to 1966, in Esso Standard Eastern Inc. *v.* Acting Commissioner of Customs, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris.*"

3. ID.; ID.; ID.; PROOF TO DEMONSTRATE EXEMPTION; ABSENCE OF HEARING, VIOLATIVE OF PROCEDURAL DUE PROCESS.— Where respondent judge accepted at its face the allegation of private respondent that certain parcels of land owned by it are used "actually, directly and exclusively" as sources of support of the parish priest and his helpers and also of the Bishop; denied petitioner's motion to dismiss; and rendered a summary judgment granting such exemption without even hearing the side of petitioner, it clearly appears that respondent judge failed to abide by the constitutional command of procedural due process.

APPEARANCES OF COUNSEL

*Sergio V. Paredes* for petitioner.
*Felix B. Claustro* for respondent.

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## DECISION

FERNANDO, *C.J.*:

On the face of this certiorari and mandamus petition filed by the Province of Abra,[1] it clearly appears that the actuation of respondent Judge Harold M. Hernando of the Court of First Instance of Abra left much to be desired. First, there was a denial of a motion to dismiss[2] an action for declaratory relief by private respondent Roman Catholic Bishop of Bangued desirous of being exempted from a real estate tax followed by a summary judgment[3] granting such exemption, without even hearing the side of petitioner. In the rather vigorous language of the Acting Provincial Fiscal, as counsel for petitioner, respondent Judge "virtually ignored the pertinent provisions of the Rules of Court; . . . wantonly violated the rights of petitioner to due process, by giving due course to the petition of private respondent for declaratory relief, and thereafter without allowing petitioner to answer and without any hearing, adjudged the case; all in total disregard of basic laws of procedure and basic provisions of due process in the constitution, thereby indicating a failure to grasp and understand the law, which goes into the competence of the Honorable Presiding Judge."[4]

It was the submission of counsel that an action for declaratory relief would be proper only before a breach or violation of any statute, executive order or regulation.[5] Moreover, there being a tax assessment made by the Provincial Assessor on the properties of respondent Roman Catholic Bishop, petitioner failed to exhaust the administrative remedies available under Presidential Decree

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[1] In the suit it was represented by the Provincial Assessor, Ladislao Ancheta.

[2] Petition, par. 7, Annex F.

[3] *Ibid,* par. 10, Annex J.

[4] *Ibid,* par. 13.

[5] According to Rule 64, Section 1 of the Rules of Court: "Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, or ordinance, may,before breach or violation thereof, bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder."

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No. 464 before filing such court action. Further, it was pointed out to respondent Judge that he failed to abide by the pertinent provision of such Presidential Decree which provides as follows: "No court shall entertain any suit assailing the validity of a tax assessed under this Code until the taxpayer, shall have paid, under protest, the tax assessed against him nor shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of taxes, or of failure to perform their duties within this time herein specified for their performance unless such irregularities, informalities or failure shall have impaired the substantial rights of the taxpayers; nor shall any court declare any portion of the tax assessed under the provisions of this Code invalid except upon condition that the taxpayer shall pay the just amount of the tax, as determined by the court in the pending proceeding."[6]

When asked to comment, respondent Judge began with the allegation that there "is no question that the real properties sought to be taxed by the Province of Abra are properties of the respondent Roman Catholic Bishop of Bangued, Inc."[7] The very next sentence assumed the very point it asked when he categorically stated: "Likewise, there is no dispute that the properties including their produce *are actually, directly and exclusively used by the Roman Catholic Bishop of Bangued, Inc. for religious or charitable purposes.*"[8] For him then: "The proper remedy of the petitioner is appeal and not this special civil action."[9] A more exhaustive comment was submitted by private respondent Roman Catholic Bishop of Bangued, Inc. It was, however, unable to lessen the force of the objection raised by petitioner Province of Abra, especially the due process aspect.

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[6] Section 64, Presidential Decree No. 464 (1974).

[7] Comment, par. 1. He made mention of the fact that it was represented by Bishop Odilo Etspueler and Reverend Felipe Flores, private respondents.

[8] *Ibid,* par. 2. (underlining by respondent Judge)

[9] *Ibid,* 3.

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It is to be admitted that his opposition to the petition, pressed with vigor, ostensibly finds a semblance of support from the authorities cited. It is thus impressed with a scholarly aspect. It suffers, however, from the grave infirmity of stating that only a pure question of law is presented when a claim for exemption is made.

The petition must be granted.

1. Respondent Judge would not have erred so grievously had he merely compared the provisions of the present Constitution with that appearing in the 1935 Charter on the tax exemption of "lands, buildings, and improvements." There is a marked difference. Under the 1935 Constitution: "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation."[10] The present Constitution added "charitable institutions, mosques, and non-profit cemeteries" and required that for the exemption of "lands, buildings, and improvements," they should not only be "exclusively" but also "actually" and "directly" used for religious or charitable purposes.[11] The Constitution is worded differently. The change should not be ignored. It must be duly taken into consideration. Reliance on past decisions would have sufficed were the words "actually" as well as "directly" not added. There must be proof therefore of the *actual* and *direct* use of the lands, buildings, and improvements for religious or charitable purposes to be exempt from taxation. According to Commissioner of Internal Revenue *v.* Guerrero:[12] "From 1906, in Catholic Church *v.* Hastings to 1966, in Esso Standard Eastern, Inc. *v.* Acting Commissioner of

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[10] Article VI, Section 22, par. (3) of the 1935 Constitution.

[11] According to Article VIII, Section 17, par. (3) of the present Constitution: "Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, and non-profit cemeteries, and all lands, buildings, and improvements actually, directly, and exclusively used for religious or charitable purposes shall be exempt from taxation."

[12] L-20812, September 22, 1967, 21 SCRA 180.

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Customs, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris.*"[13] In Manila Electric Company *v.* Vera,[14] a 1975 decision, such principle was reiterated, reference being made to Republic Flour Mills, Inc. *v.* Commissioner of Internal Revenue;[15] Commissioner of Customs *v.* Philippine Acetylene Co. & CTA;[16] and Davao Light and Power Co., Inc. *v.* Commissioner of Customs.[17]

2. Petitioner Province of Abra is therefore fully justified in invoking the protection of procedural due process. If there is any case where proof is necessary to demonstrate that there is compliance with the constitutional provision that allows an exemption, this is it. Instead, respondent Judge accepted at its face the allegation of private respondent. All that was alleged in the petition for declaratory relief filed by private respondents, after mentioning certain parcels of land owned by it, are that they are used "actually, directly and exclusively" as sources of support of the parish priest and his helpers and also of private respondent Bishop.[18] In the motion to dismiss filed on behalf of petitioner Province of Abra, the objection was based primarily on the lack of jurisdiction, as the validity of a tax assessment may be questioned before the Local Board of Assessment Appeals and not with a court. There was also mention of a lack of a cause of action, but only because, in its view, declaratory relief is not proper, as there had been

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[13] *Ibid.* 183. Catholic Church *v.* Hastings is reported in 5 Phil. 701 and Esso Standard Eastern, Inc. *v.* Acting Commissioner of Customs, L-21841, October 28, 1966, in 18 SCRA 488. The footnote mentioned 8 additional cases.

[14] L-29987, October 22, 1975, 67 SCRA 351.

[15] L-25602, February 18, 1970, 31 SCRA 520.

[16] L-22443, May 29, 1971, 39 SCRA 71.

[17] L-28902, March 29, 1972, 44 SCRA 122.

[18] Petition, Annex A, par. 7.

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breach or violation of the right of government to assess and collect taxes on such property. It clearly appears, therefore, that in failing to accord a hearing to petitioner Province of Abra and deciding the case immediately in favor of private respondent, respondent Judge failed to abide by the constitutional command of procedural due process.

WHEREFORE, the petition is granted and the resolution of June 19, 1978 is set aside. Respondent Judge, or who ever is acting on his behalf, is ordered to hear the case on the merit. No costs.

*Barredo, Concepcion, Jr.* and *De Castro, JJ.*, concur.

*Aquino, J.*, concurs in the result. The trial court should resolve the jurisdictional issue raised by the provincial assessor.

*Abad Santos, J.*, is on official leave.

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SECOND DIVISION

[G.R. No. 50688. August 31, 1981]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee *vs.* JAIME PINGKIAN, et al., accused, FELIX PINGKIAN, defendant-appellant.

SYNOPSIS

The victim was walking on the road leading to his residence at about 10:00 o'clock in the evening when he was stabbed to death. The sole eyewitness of the incident, Victorio Cena whose house stood next to that of the victim, testified that he saw appellant hiding behind a coconut tree, and the three other accused, whom he did not recognize, hiding behind the banana plants, awaiting the approach of the victim, and that he saw appellant come out in the open and stab the victim on the chest. Cena and his wife further testified that appellant went up their house with a bolo dripping with blood that dropped on their sleeping mat and threatened them not to make any move or say a word on the incident. In his bid for acquittal, appellant assailed the credibility of the testimony of Cena who was able to identify him but not the three other accused and claimed that he and his co-accused were in a dance that evening. The Circuit Criminal Court of Misamis Oriental convicted appellant of Murder and sentenced him to life imprisonment while the other accused were acquitted on ground of reasonable doubt.