Republic of the Philippines
Supreme Court
Manila

EN BANC

JOSE J. FERRER, JR.,
Petitioner,

- *versus* -

CITY MAYOR HERBERT BAUTISTA, CITY COUNCIL OF QUEZON CITY, CITY TREASURER OF QUEZON CITY, and CITY ASSESSOR OF QUEZON CITY,
Respondents.

x----------x

G.R. No. 210551

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,*
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,*
PERLAS-BERNABE,
LEONEN, and
JARDELEZA, *JJ.*

Promulgated:

June 30, 2015

x----------x

DECISION

PERALTA, *J.*:

Before this Court is a petition for *certiorari* under Rule 65 of the Rules of Court with prayer for the issuance of a temporary restraining order (*TRO*) seeking to declare unconstitutional and illegal Ordinance Nos. SP-2095, S-2011 and SP-2235, S-2013 on the Socialized Housing Tax and Garbage Fee, respectively, which are being imposed by the respondents.

---

* On leave.

The Case

On October 17, 2011,[1] respondent Quezon City Council enacted **Ordinance No. SP-2095, S-2011,**[2] or the *Socialized Housing Tax of Quezon City*, Section 3 of which provides:

> SECTION 3. IMPOSITION. A special assessment equivalent to one-half percent (0.5%) on the assessed value of land in excess of One Hundred Thousand Pesos (Php100,000.00) shall be collected by the City Treasurer which shall accrue to the Socialized Housing Programs of the Quezon City Government. The special assessment shall accrue to the General Fund under a special account to be established for the purpose.

Effective for five (5) years, the Socialized Housing Tax (*SHT*) shall be utilized by the Quezon City Government for the following projects: (a) land purchase/land banking; (b) improvement of current/existing socialized housing facilities; (c) land development; (d) construction of core houses, sanitary cores, medium-rise buildings and other similar structures; and (e) financing of public-private partnership agreement of the Quezon City Government and National Housing Authority (*NHA*) with the private sector.[3] Under certain conditions, a tax credit shall be enjoyed by taxpayers regularly paying the special assessment:

> SECTION 7. TAX CREDIT. Taxpayers dutifully paying the special assessment tax as imposed by this ordinance shall enjoy a tax credit. The tax credit may be availed of only after five (5) years of continue[d] payment. Further, the taxpayer availing this tax credit must be a taxpayer in good standing as certified by the City Treasurer and City Assessor.
>
> The tax credit to be granted shall be equivalent to the total amount of the special assessment paid by the property owner, which shall be given as follows:
>
> 1. 6th year - 20%
> 2. 7th year - 20%
> 3. 8th year - 20%
> 4. 9th year - 20%
> 5. 10h year - 20%

---

1 *Rollo*, p. 18.

2 *AN ORDINANCE FURTHER AMENDING THE QUEZON CITY REVENUE CODE, AS AMENDED, TO IMPOSE AN ADDITIONAL ONE-HALF PERCENT (0.5%) TAX ON ASSESSED VALUE OF ALL LANDS IN QUEZON CITY EXCEEDING ONE HUNDRED THOUSAND PESOS (₱100,000.00) WHICH SHALL ACCRUE TO THE SOCIALIZED HOUSING PROGRAM OF THE CITY GOVERNMENT AS PROVIDED FOR UNDER SECTION 43 OF REPUBLIC ACT NO. 7279, OTHERWISE KNOWN AS THE URBAN DEVELOPMENT AND HOUSING ACT (UDHA) OF 1992 AND LOCAL FINANCE CIRCULAR NO. 1-97 OF THE DEPARTMENT OF FINANCE.*

3 Secs. 4 and 6. (*Rollo*, pp. 16-17)

> Furthermore, only the registered owners may avail of the tax credit and may not be continued by the subsequent property owners even if they are buyers in good faith, heirs or possessor of a right in whatever legal capacity over the subject property.[4]

On the other hand, **Ordinance No. SP-2235, S-2013**[5] was enacted on December 16, 2013 and took effect ten days after when it was approved by respondent City Mayor.[6] The proceeds collected from the garbage fees on residential properties shall be deposited solely and exclusively in an earmarked special account under the general fund to be utilized for garbage collections.[7] Section 1 of the Ordinance set forth the schedule and manner for the collection of garbage fees:

> SECTION 1. The City Government of Quezon City in conformity with and in relation to Republic Act No. 7160, otherwise known as the Local Government Code of 1991 HEREBY IMPOSES THE FOLLOWING SCHEDULE AND MANNER FOR THE ANNUAL COLLECTION OF GARBAGE FEES, AS FOLLOWS:
>
> On all domestic households in Quezon City;

LAND AREA	IMPOSABLE FEE
Less than 200 sq. m.	PHP 100.00
201 sq. m. – 500 sq. m.	PHP 200.00
501 sq. m. – 1,000 sq. m.	PHP 300.00
1,001 sq. m. – 1,500 sq. m.	PHP 400.00
1,501 sq. m. – 2,000 sq. m. or more	PHP 500.00

> On all condominium unit and socialized housing projects/units in Quezon City;

FLOOR AREA	IMPOSABLE FEE
Less than 40 sq. m.	PHP25.00
41 sq. m. – 60 sq. m.	PHP50.00
61 sq. m. – 100 sq. m.	PHP75.00
101 sq. m. – 150 sq. m.	PHP100.00
151 sq. m. – 200 sq. [m.] or more	PHP200.00

> On high-rise Condominium Units
>
> a) High-rise Condominium – The Homeowners Association of high-rise condominiums shall pay the annual garbage fee on the total size of the entire condominium and socialized Housing Unit and an additional garbage fee shall be collected based on area occupied for every unit already sold or being amortized.

---

4 Sec. 7. (*Id*. at 17-18)

5 *AN ORDINANCE IMPOSING AN ANNUAL GARBAGE FEE ON ALL DOMESTIC HOUSEHOLDS AND PROVIDING PENALTY FOR NON-COMPLIANCE THEREOF*.

6 *Rollo*, pp. 23, 33.

7 Sec. 4. (*Id*. at 22)

> b) High-rise apartment units – Owners of high-rise apartment units shall pay the annual garbage fee on the total lot size of the entire apartment and an additional garbage fee based on the schedule prescribed herein for every unit occupied.

The collection of the garbage fee shall accrue on the first day of January and shall be paid simultaneously with the payment of the real property tax, but not later than the first quarter installment.[8] In case a household owner refuses to pay, a penalty of 25% of the garbage fee due, plus an interest of 2% per month or a fraction thereof, shall be charged.[9]

Petitioner alleges that he is a registered co-owner of a 371-square-meter residential property in Quezon City which is covered by Transfer Certificate of Title (*TCT*) No. 216288, and that, on January 7, 2014, he paid his realty tax which already included the garbage fee in the sum of Php100.00.[10]

The instant petition was filed on January 17, 2014. We issued a TRO on February 5, 2014, which enjoined the enforcement of Ordinance Nos. SP-2095 and SP-2235 and required respondents to comment on the petition without necessarily giving due course thereto.[11]

Respondents filed their Comment[12] with urgent motion to dissolve the TRO on February 17, 2014. Thereafter, petitioner filed a Reply and a Memorandum on March 3, 2014 and September 8, 2014, respectively.

Procedural Matters

A. Propriety of a Petition for Certiorari

Respondents are of the view that this petition for *certiorari* is improper since they are not tribunals, boards or officers exercising judicial or quasi-judicial functions. Petitioner, however, counters that in enacting Ordinance Nos. SP-2095 and SP-2235, the Quezon City Council exercised quasi-judicial function because the ordinances ruled against the property owners who must pay the SHT and the garbage fee, exacting from them funds for basic essential public services that they should not be held liable. Even if a Rule 65 petition is improper, petitioner still asserts that this

---

8 Sec. 2. (*Id*.)
9 Sec. 3. (*Id*.)
10 *Id.* at 3-4; 10-11.
11 *Id.* at 25.
12 *Id*. at 28-48.

Court, in a number of cases like in *Rosario v. Court of Appeals*,[13] has taken cognizance of an improper remedy in the interest of justice.

We agree that respondents neither acted in any judicial or quasi-judicial capacity nor arrogated unto themselves any judicial or quasi-judicial prerogatives.

> A respondent is said to be exercising *judicial function* where he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties.
>
> *Quasi-judicial function*, on the other hand, is "a term which applies to the actions, discretion, *etc*., of public administrative officers or bodies … required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature."
>
> Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the respective rights of the contending parties.[14]

For a writ of *certiorari* to issue, the following requisites must concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. The enactment by the Quezon City Council of the assailed ordinances was done in the exercise of its ***legislative***, not judicial or quasi-judicial, function. Under Republic Act (R.A.) No. 7160, or the *Local Government Code of 1991* (*LGC*), local legislative power shall be exercised by the *Sangguniang Panlungsod* for the city.[15] Said law likewise is specific in providing that the power to impose a tax, fee, or charge, or to generate revenue shall be exercised by the *sanggunian* of the local government unit concerned through an appropriate ordinance.[16]

Also, although the instant petition is styled as a petition for *certiorari*, it essentially seeks to declare the unconstitutionality and illegality of the questioned ordinances. It, thus, partakes of the nature of a petition for

---

13 G.R. No. 89554, July 10, 1992, 211 SCRA 384.
14 *Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529, 540-541 (2004).
15 See Secs. 48, 457 (a), and 458 (a).
16 Sec. 132.

declaratory relief over which this Court has only appellate, not original, jurisdiction.[17]

Despite these, a petition for declaratory relief may be treated as one for prohibition or mandamus, over which We exercise original jurisdiction, in cases with far-reaching implications or one which raises transcendental issues or questions that need to be resolved for the public good.[18] The judicial policy is that this Court will entertain direct resort to it when the redress sought cannot be obtained in the proper courts or when exceptional and compelling circumstances warrant availment of a remedy within and calling for the exercise of Our primary jurisdiction.[19]

Section 2, Rule 65 of the Rules of Court lay down under what circumstances a petition for prohibition may be filed:

> SEC. 2. *Petition for prohibition*. - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, 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 proceeding in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

In a petition for prohibition against any tribunal, corporation, board, or person – whether exercising judicial, quasi-judicial, or ministerial functions – who has acted without or in excess of jurisdiction or with grave abuse of discretion, the petitioner prays that judgment be rendered, commanding the respondents to desist from further proceeding in the action or matter specified in the petition. In this case, petitioner's primary intention is to prevent respondents from implementing Ordinance Nos. SP-2095 and SP-2235. Obviously, the writ being sought is in the nature of a prohibition, commanding desistance.

We consider that respondents City Mayor, City Treasurer, and City Assessor are performing ***ministerial*** functions. A ministerial function is one that an officer or tribunal performs in the context of a given set of facts, in a

---

17 CONSTITUTION, Art. VIII, Sec. 5 (2) (a).

18 *Social Justice Society (SJS) Officers et al. v. Lim*, G.R. No. 187836, November 25, 2014; *Rayos v. City of Manila*, G.R. No. 196063, December 14, 2011, 662 SCRA 684, 690-691; *Diaz v. Secretary of Finance*, G.R. No. 193007, July 19, 2011, 654 SCRA 96, 109; and *Ortega v. Quezon City Gov't.*, 506 Phil. 373, 380 (2005).

19 *Liga ng mga Barangay National v. City Mayor of Manila, supra* note 14, at 543 and *Ortega v. Quezon City Gov't., supra*, at 381.

prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done.[20] Respondent Mayor, as chief executive of the city government, exercises such powers and performs such duties and functions as provided for by the LGC and other laws.[21] Particularly, he has the duty to ensure that all taxes and other revenues of the city are collected, and that city funds are applied to the payment of expenses and settlement of obligations of the city, in accordance with law or ordinance.[22] On the other hand, under the LGC, all local taxes, fees, and charges shall be collected by the provincial, city, municipal, or barangay treasurer, or their duly-authorized deputies, while the assessor shall take charge, among others, of ensuring that all laws and policies governing the appraisal and assessment of real properties for taxation purposes are properly executed.[23] Anent the SHT, the Department of Finance (*DOF*) Local Finance Circular No. 1-97, dated April 16, 1997, is more specific:

> 6.3 The Assessor's office of the Identified LGU shall:
>
> a. immediately undertake an inventory of lands within its jurisdiction which shall be subject to the levy of the Social Housing Tax (SHT) by the local sanggunian concerned;
> b. inform the affected registered owners of the effectivity of the SHT; a list of the lands and registered owners shall also be posted in 3 conspicuous places in the city/municipality;
> c. furnish the Treasurer's office and the local sanggunian concerned of the list of lands affected;
>
> 6.4 The Treasurer's office shall:
>
> a. collect the Social Housing Tax on top of the Real Property Tax, SEF Tax and other special assessments;
> b. report to the DOF, thru the Bureau of Local Government Finance, and the Mayor's office the monthly collections on Social Housing Tax (SHT). An annual report should likewise be submitted to the HUDCC on the total revenues raised during the year pursuant to Sec. 43, R.A. 7279 and the manner in which the same was disbursed.

Petitioner has adduced special and important reasons as to why direct recourse to Us should be allowed. Aside from presenting a novel question of law, this case calls for immediate resolution since the challenged ordinances adversely affect the property interests of all paying constituents of Quezon City. As well, this petition serves as a test case for the guidance of other local government units (*LGUs*). Indeed, the petition at bar is of transcendental importance warranting a relaxation of the doctrine of

---

20 *Ongsuco, et al. vs. Hon. Malones*, 619 Phil. 492, 508 (2009).
21 Sec. 455 (a).
22 Sec. 455 (b) (3) (iii).
23 Secs. 170 and 472 (b) (1).

hierarchy of courts. In *Social Justice Society (SJS) Officers, et al. v. Lim*,[24] the Court cited the case of *Senator Jaworski v. Phil. Amusement & Gaming Corp.*,[25] where We ratiocinated:

> Granting *arguendo* that the present action cannot be properly treated as a petition for prohibition, **the transcendental importance of the issues involved in this case warrants that we set aside the technical defects and take primary jurisdiction over the petition at bar**. x x x **This is in accordance with the well-entrenched principle that rules of procedure are not inflexible tools designed to hinder or delay, but to facilitate and promote the administration of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate, rather than promote substantial justice, must always be eschewed.**[26]

B. Locus Standi of Petitioner

Respondents challenge petitioner's legal standing to file this case on the ground that, in relation to Section 3 of Ordinance No. SP-2095, petitioner failed to allege his ownership of a property that has an assessed value of more than Php100,000.00 and, with respect to Ordinance No. SP-2335, by what standing or personality he filed the case to nullify the same. According to respondents, the petition is not a class suit, and that, for not having specifically alleged that petitioner filed the case as a taxpayer, it could only be surmised whether he is a party-in-interest who stands to be directly benefited or injured by the judgment in this case.

> It is a general rule that every action must be prosecuted or defended in the name of the real party-in-interest, who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.
>
> Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest." "To qualify a person to be a real party-in-interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced."[27]

---

24 *Supra* note 18.
25 464 Phil. 375 (2004).
26 *Senator Jaworski v. PAGCOR, supra*, at 385. (Emphasis ours)
27 *Miñoza v. Hon. Lopez, et al.*, 664 Phil. 115, 123 (2011).

"Legal standing" or *locus standi* calls for more than just a generalized grievance.[28] The concept has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.[29] The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[30]

A party challenging the constitutionality of a law, act, or statute must show "not only that the law is invalid, but also that he has sustained or is in immediate, or imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way." It must be shown that he has been, or is about to be, denied some right or privilege to which he is lawfully entitled, or that he is about to be subjected to some burdens or penalties by reason of the statute complained of.[31]

Tested by the foregoing, petitioner in this case clearly has legal standing to file the petition. He is a real party-in-interest to assail the constitutionality and legality of Ordinance Nos. SP-2095 and SP-2235 because respondents did not dispute that he is a registered co-owner of a residential property in Quezon City and that he paid property tax which already included the SHT and the garbage fee. He has substantial right to seek a refund of the payments he made and to stop future imposition. While he is a lone petitioner, his cause of action to declare the validity of the subject ordinances is substantial and of paramount interest to similarly situated property owners in Quezon City.

C. Litis Pendentia

Respondents move for the dismissal of this petition on the ground of *litis pendentia*. They claim that, as early as February 22, 2012, a case entitled *Alliance of Quezon City Homeowners, Inc., et al., v. Hon. Herbert Bautista, et al.*, docketed as Civil Case No. Q-12-7-820, has been pending in the Quezon City Regional Trial Court, Branch 104, which assails the legality of Ordinance No. SP-2095. Relying on *City of Makati, et al. v. Municipality (now City) of Taguig, et al.*,[32] respondents assert that there is substantial identity of parties between the two cases because petitioner herein and

---

28 *Chamber of Real Estate and Builders' Ass'ns, Inc. v. Energy Regulatory Commission (ERC), et al.*, 638 Phil. 542, 554 (2010).

29 *Public Interest Center, Inc. v. Judge Roxas*, 542 Phil. 443,456 (2007).

30 *Id*. at 456.

31 *Disomangcop v. Sec. Datumanong*, 486 Phil. 398, 425-426 (2004).

32 578 Phil. 773 (2008).

plaintiffs in the civil case filed their respective cases as taxpayers of Quezon City.

For petitioner, however, respondents' contention is untenable since he is not a party in *Alliance* and does not even have the remotest identity or association with the plaintiffs in said civil case. Moreover, respondents' arguments would deprive this Court of its jurisdiction to determine the constitutionality of laws under Section 5, Article VIII of the 1987 Constitution.[33]

Litis pendentia is a Latin term which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*.[34] While it is normally connected with the control which the court has on a property involved in a suit during the continuance proceedings, it is more interposed as a ground for the dismissal of a civil action pending in court.[35] In *Film Development Council of the Philippines v. SM Prime Holdings, Inc.*,[36] We elucidated:

> *Litis pendentia*, as a ground for the dismissal of a civil action, refers to a situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suit and authorizes a court to dismiss a case *motu proprio.*
>
> x x x x
>
> The requisites in order that an action may be dismissed on the ground of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.
>
> x x x x

---

33 Section 5. The Supreme Court shall have the following powers:
x x x x
(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
x x x x

34 *Benavidez v. Salvador*, G.R. No. 173331, December 11, 2013, 712 SCRA, 238, 248.

35 *Subic Telecommunications Co., Inc. v. Subic Bay Metropolitan Authority, et al.*, 618 Phil. 480, 493 (2009).

36 G.R. No. 197937, April 3, 2013, 695 SCRA 175.

> The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits.
>
> Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other.
>
> The determination of whether there is an identity of causes of action for purposes of *litis pendentia* is inextricably linked with that of *res judicata*, each constituting an element of the other. In either case, both relate to the sound practice of including, in a single litigation, the disposition of all issues relating to a cause of action that is before a court.[37]

There is substantial identity of the parties when there is a community of interest between a party in the first case and a party in the second case albeit the latter was not impleaded in the first case.[38] Moreover, the fact that the positions of the parties are reversed, *i.e.*, the plaintiffs in the first case are the defendants in the second case or vice-versa, does not negate the identity of parties for purposes of determining whether the case is dismissible on the ground of *litis pendentia*.[39]

In this case, it is notable that respondents failed to attach any pleading connected with the alleged civil case pending before the Quezon City trial court. Granting that there is substantial identity of parties between said case and this petition, dismissal on the ground of *litis pendentia* still cannot be had in view of the absence of the second and third requisites. There is no way for Us to determine whether both cases are based on the same set of facts that require the presentation of the same evidence. Even if founded on the same set of facts, the rights asserted and reliefs prayed for could be different. Moreover, there is no basis to rule that the two cases are intimately related and/or intertwined with one another such that the judgment that may be rendered in one, regardless of which party would be successful, would amount to *res judicata* in the other.

---

37 *Film Development Council of the Philippines v. SM Prime Holdings, Inc.*, *supra*, at 185-188.

38 *Solidbank Union v. Metropolitan Bank and Trust Company*, G.R. No. 153799, September 17, 2012, 680 SCRA 629, 668.

39 *Brown-Araneta v. Araneta*, G.R. No. 190814, October 9, 2013, 707 SCRA 222, 246.

D. Failure to Exhaust Administrative Remedies

Respondents contend that petitioner failed to exhaust administrative remedies for his non-compliance with Section 187 of the LGC, which mandates:

> 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 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.

The provision, the constitutionality of which was sustained in *Drilon v. Lim*,[40] has been construed as mandatory[41] considering that –

> A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that protests over tax ordinances are required to be done within certain time frames. x x x.[42]

The obligatory nature of Section 187 was underscored in *Hagonoy Market Vendor Asso. v. Municipality of Hagonoy*:[43]

> x x x [T]he timeframe fixed by law for parties to avail of their legal remedies before competent courts is not a "mere technicality" that can be easily brushed aside. *The periods stated in Section 187 of the Local Government Code are mandatory.* x x x Being its lifeblood, collection of revenues by the government is of paramount importance. The funds for the

---

40 G.R. No. 112497, August 4, 1994, 235 SCRA 135.

41 *Reyes v. Court of Appeals*, 378 Phil. 232 (1999). See also subsequent case of *Figuerres v. Court of Appeals*, 364 Phil. 683 (1999).

42 *Reyes v. Court of Appeals*, *supra*, at 238, and *Jardine Davies Insurance Brokers, Inc. v. Hon. Aliposa*, 446 Phil. 243, 254-255 (2003).

43 *Hagonoy Market Vendor Asso. v. Municipality of Hagonoy*, 426 Phil. 769 (2002).

> operation of its agencies and provision of basic services to its inhabitants are largely derived from its revenues and collections. Thus, it is essential that *the validity of revenue measures is not left uncertain for a considerable length of time*. Hence, the law provided a time limit for an aggrieved party to assail the legality of revenue measures and tax ordinances."[44]

Despite these cases, the Court, in *Ongsuco, et al. v. Hon. Malones*,[45] held that there was no need for petitioners therein to exhaust administrative remedies before resorting to the courts, considering that there was only a pure question of law, the parties did not dispute any factual matter on which they had to present evidence. Likewise, in *Cagayan Electric Power and Light Co., Inc. v. City of Cagayan de Oro*,[46] We relaxed the application of the rules in view of the more substantive matters. For the same reasons, this petition is an exception to the general rule.

Substantive Issues

Petitioner asserts that the protection of real properties from informal settlers and the collection of garbage are basic and essential duties and functions of the Quezon City Government. By imposing the SHT and the garbage fee, the latter has shown a penchant and pattern to collect taxes to pay for public services that could be covered by its revenues from taxes imposed on property, idle land, business, transfer, amusement, *etc.*, as well as the Internal Revenue Allotment (*IRA*) from the National Government. For petitioner, it is noteworthy that respondents did not raise the issue that the Quezon City Government is in dire financial state and desperately needs money to fund housing for informal settlers and to pay for garbage collection. In fact, it has not denied that its revenue collection in 2012 is in the sum of ₱13.69 billion.

Moreover, the imposition of the SHT and the garbage fee cannot be justified by the Quezon City Government as an exercise of its power to create sources of income under Section 5, Article X of the 1987 Constitution.[47] According to petitioner, the constitutional provision is not a *carte blanche* for the LGU to tax everything under its territorial and political jurisdiction as the provision itself admits of guidelines and limitations.

---

44 *Id*. at 778.

45 *Supra* note 20.

46 G.R. No. 191761, November 14, 2012, 685 SCRA 609.

47 Sec. 5. Each 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 governments.

Petitioner further claims that the annual property tax is an *ad valorem* tax, a percentage of the assessed value of the property, which is subject to revision every three (3) years in order to reflect an increase in the market value of the property. The SHT and the garbage fee are actually increases in the property tax which are not based on the assessed value of the property or its reassessment every three years; hence, in violation of Sections 232 and 233 of the LGC.[48]

For their part, respondents relied on the presumption in favor of the constitutionality of Ordinance Nos. SP-2095 and SP-2235, invoking *Victorias Milling Co., Inc. v. Municipality of Victorias, etc.,*[49] *People v. Siton, et al.,*[50] and *Hon. Ermita v. Hon. Aldecoa-Delorino*.[51] They argue that the burden of establishing the invalidity of an ordinance rests heavily upon the party challenging its constitutionality. They insist that the questioned ordinances are proper exercises of police power similar to *Telecom. & Broadcast Attys. of the Phils., Inc. v. COMELEC*[52] and *Social Justice Society (SJS), et al. v. Hon. Atienza, Jr.*[53] and that their enactment finds basis in the social justice principle enshrined in Section 9,[54] Article II of the 1987 Constitution.

As to the issue of publication, respondents argue that where the law provides for its own effectivity, publication in the Official Gazette is not necessary so long as it is not punitive in character, citing *Balbuna, et al. v. Hon. Secretary of Education, et al.*[55] and *Askay v. Cosalan*.[56] Thus, Ordinance No. SP-2095 took effect after its publication, while Ordinance No. SP-2235 became effective after its approval on December 26, 2013.

Additionally, the parties articulate the following positions:

---

48 SECTION 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 improvement not hereinafter specifically exempted.

SECTION 233. *Rates of Levy.* – A province or city or a municipality within the Metropolitan Manila Area shall fix a uniform rate of basic real property tax applicable to their respective localities as follows:

(a) In the case of a province, at the rate not exceeding one percent (1%) of the assessed value of real property; and

(b) In the case of a city or a municipality within the Metropolitan Manila Area, at the rate not exceeding two percent (2%) of the assessed value of real property.

49 134 Phil. 180 (1968).

50 616 Phil. 449 (2009).

51 666 Phil. 122 (2011).

52 352 Phil. 153 (1998).

53 568 Phil. 658 (2008).

54 Section 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

55 110 Phil. 150 (1960).

56 46 Phil. 179 (1924).

On the Socialized Housing Tax

Respondents emphasize that the SHT is pursuant to the social justice principle found in Sections 1 and 2, Article XIII[57] of the 1987 Constitution and Sections 2 (a)[58] and 43[59] of R.A. No. 7279, or the *"Urban Development and Housing Act of 1992* (*UDHA*).

Relying on *Manila Race Horse Trainers Assn., Inc. v. De La Fuente,*[60] and *Victorias Milling Co., Inc. v. Municipality of Victorias, etc.*,[61] respondents assert that Ordinance No. SP-2095 applies equally to all real property owners without discrimination. There is no way that the ordinance could violate the equal protection clause because real property owners and informal settlers do not belong to the same class.

Ordinance No. SP-2095 is also not oppressive since the tax rate being imposed is consistent with the UDHA. While the law authorizes LGUs to collect SHT on properties with an assessed value of more than ₱50,000.00, the questioned ordinance only covers properties with an assessed value exceeding ₱100,000.00. As well, the ordinance provides for a tax credit equivalent to the total amount of the special assessment paid by the property owner beginning in the sixth (6th) year of the effectivity of the ordinance.

On the contrary, petitioner claims that the collection of the SHT is tantamount to a penalty imposed on real property owners due to the failure of respondent Quezon City Mayor and Council to perform their duty to secure and protect real property owners from informal settlers, thereby burdening them with the expenses to provide funds for housing. For petitioner, the SHT cannot be viewed as a "charity" from real property owners since it is forced, not voluntary.

---

57 Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Section 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

58 Sec. 2. *Declaration of State Policy and Program Objectives.* – It shall be the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program, hereinafter referred to as the Program, which shall:

(a) Uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas by making available to them decent housing at affordable cost, basic services, and employment opportunities[.] x x x

59 Sec. 43. *Socialized Housing Tax.* – Consistent with the constitutional principle that the ownership and enjoyment of property bear a social function and to raise funds for the Program, all local government units are hereby authorized to impose an additional one-half percent (0.5%) tax on the assessed value of all lands in urban areas in excess of Fifty thousand pesos (₱50,000).

60 88 Phil. 60 (1951).

61 *Supra* note 49.

Also, petitioner argues that the collection of the SHT is a kind of class legislation that violates the right of property owners to equal protection of the laws since it favors informal settlers who occupy property not their own and pay no taxes over law-abiding real property owners who pay income and realty taxes.

Petitioner further contends that respondents' characterization of the SHT as "nothing more than an advance payment on the real property tax" has no statutory basis. Allegedly, property tax cannot be collected before it is due because, under the LGC, chartered cities are authorized to impose property tax based on the assessed value and the general revision of assessment that is made every three (3) years.

As to the rationale of SHT stated in Ordinance No. SP-2095, which, in turn, was based on Section 43 of the UDHA, petitioner asserts that there is no specific provision in the 1987 Constitution stating that the ownership and enjoyment of property bear a social function. And even if there is, it is seriously doubtful and far-fetched that the principle means that property owners should provide funds for the housing of informal settlers and for home site development. Social justice and police power, petitioner believes, does not mean imposing a tax on one, or that one has to give up something, for the benefit of another. At best, the principle that property ownership and enjoyment bear a social function is but a reiteration of the Civil Law principle that property should not be enjoyed and abused to the injury of other properties and the community, and that the use of the property may be restricted by police power, the exercise of which is not involved in this case.

Finally, petitioner alleges that *6 Bistekvilles* will be constructed out of the SHT collected. *Bistek* is the monicker of respondent City Mayor. The *Bistekvilles* makes it clear, therefore, that politicians will take the credit for the tax imposed on real property owners.

On the Garbage Fee

Respondents claim that Ordinance No. S-2235, which is an exercise of police power, collects on the average from every household a garbage fee in the meager amount of thirty-three (33) centavos per day compared with the sum of ₱1,659.83 that the Quezon City Government annually spends for every household for garbage collection and waste management.[62]

In addition, there is no double taxation because the ordinance involves a fee. Even assuming that the garbage fee is a tax, the same cannot be a

---

62 *Rollo*, p. 37.

direct duplicate tax as it is imposed on a different subject matter and is of a different kind or character. Based on *Villanueva, et al. v. City of Iloilo*[63] and *Victorias Milling Co., Inc. v. Municipality of Victorias, etc.*,[64] there is no "taxing twice" because the real property tax is imposed on ownership based on its assessed value, while the garbage fee is required on the domestic household. The only reference to the property is the determination of the applicable rate and the facility of collection.

Petitioner argues, however, that Ordinance No. S-2235 cannot be justified as an exercise of police power. The cases of *Calalang v. Williams*,[65] *Patalinghug v. Court of Appeals*,[66] and *Social Justice Society (SJS), et al. v. Hon. Atienza, Jr.*,[67] which were cited by respondents, are inapplicable since the assailed ordinance is a revenue measure and does not regulate the disposal or other aspect of garbage.

The subject ordinance, for petitioner, is discriminatory as it collects garbage fee only from domestic households and not from restaurants, food courts, fast food chains, and other commercial dining places that spew garbage much more than residential property owners.

Petitioner likewise contends that the imposition of garbage fee is tantamount to double taxation because garbage collection is a basic and essential public service that should be paid out from property tax, business tax, transfer tax, amusement tax, community tax certificate, other taxes, and the IRA of the Quezon City Government. To bolster the claim, he states that the revenue collection of the Quezon City Government reached Php13.69 billion in 2012. A small portion of said amount could be spent for garbage collection and other essential services.

It is further noted that the Quezon City Government already collects garbage fee under Section 47[68] of R.A. No. 9003, or the *Ecological Solid Waste Management Act of 2000*, which authorizes LGUs to impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a solid waste management plan, and that LGUs have access to the Solid

---

63 135 Phil. 572 (1968).

64 *Supra* note 49.

65 70 Phil. 726 (1940).

66 G.R. No. 104786, January 27, 1994, 229 SCRA 554.

67 *Supra* note 53.

68 Section 47. *Authority to Collect Solid Waste Management Fees.* – The local government unit shall impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a solid waste management plan prepared pursuant to this Act. The fees shall be based on the following minimum factors:

(a) types of solid waste;

(b) amount/volume of waste; and

(c) distance of the transfer station to the waste management facility.

The fees shall be used to pay the actual costs incurred by the LGU in collecting the local fees. In determining the amounts of the fees, an LGU shall include only those costs directly related to the adoption and implementation of the plan and the setting and collection of the local fees.

Waste Management (*SWM)* Fund created under Section 46[69] of the same law. Also, according to petitioner, it is evident that Ordinance No. S-2235 is inconsistent with R.A. No. 9003 for while the law encourages segregation, composting, and recycling of waste, the ordinance only emphasizes the collection and payment of garbage fee; while the law calls for an active involvement of the barangay in the collection, segregation, and recycling of garbage, the ordinance skips such mandate.

Lastly, in challenging the ordinance, petitioner avers that the garbage fee was collected even if the required publication of its approval had not yet elapsed. He notes that on January 7, 2014, he paid his realty tax which already included the garbage fee.

The Court's Ruling

Respondents correctly argued that an ordinance, as in every law, is presumed valid.

> 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.[70]

---

[69] Section 46. *Solid Waste Management Fund.* – There is hereby created, as a special account in the National Treasury, a Solid Waste Management Fund to be administered by the Commission. Such fund shall be sourced from the following:

(a) Fines and penalties imposed, proceeds of permits and licenses issued by the Department under this Act, donations, endowments, grants and contributions from domestic and foreign sources; and

(b) Amounts specifically appropriated for the Fund under the annual General Appropriations Act.

The Fund shall be used to finance the following:

(1) products, facilities, technologies and processes to enhance proper solid waste management;

(2) awards and incentives;

(3) research programs;

(4) information, education, communication and monitoring activities;

(5) technical assistance; and

(6) capability building activities.

LGUs are entitled to avail of the Fund on the basis of their approved solid waste management plan. Specific criteria for the availment of the Fund shall be prepared by the Commission.

The fines collected under Sec. 49 shall be allocated to the LGU where the fined prohibited acts are committed in order to finance the solid waste management of said LGU. Such allocation shall be based on a sharing scheme between the Fund and the LGU concerned.

In no case, however, shall the Fund be used for the creation of positions or payment of salaries and wages.

[70] *Victorias Milling Co., Inc. v. Municipality of Victorias, etc., supra* note 49, at 194, as cited in *Progressive Development Corporation v. Quezon City*, 254 Phil. 635, 646 (1989). and *Smart Communications, Inc. v. Municipality of Malvar, Batangas*, G.R. No. 204429, February 18, 2014, 716 SCRA 677, 695.

For an ordinance to be valid though, it must not only be within the corporate powers of the LGU to enact and must be passed according to the procedure prescribed by law, it should also conform to the following requirements: (1) not contrary to the Constitution or any statute; (2) not unfair or oppressive; (3) not partial or discriminatory; (4) not prohibit but may regulate trade; (5) general and consistent with public policy; and (6) not unreasonable.[71] As jurisprudence indicates, the tests are divided into the formal (*i.e.*, whether the ordinance was enacted within the corporate powers of the LGU and whether it was passed in accordance with the procedure prescribed by law), and the substantive (*i.e.*, involving inherent merit, like the conformity of the ordinance with the limitations under the Constitution and the statutes, as well as with the requirements of fairness and reason, and its consistency with public policy).[72]

An ordinance must pass muster under the test of constitutionality and the test of consistency with the prevailing laws.[73] If not, it is void.[74] Ordinance should uphold the principle of the supremacy of the Constitution.[75] As to conformity with existing statutes, *Batangas CATV, Inc. v. Court of Appeals*[76] has this to say:

> It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law. In the language of Justice Isagani Cruz (ret.), this Court, in *Magtajas vs. Pryce Properties Corp., Inc.,* ruled that:
>
> > The rationale of the requirement that the ordinances should not contravene a statute is obvious. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in

---

71 *Legaspi v. City of Cebu*, G.R. No. 159110, December 10, 2013, 711 SCRA 771, 784-785; *White Light Corp., et al. v. City of Manila*, 596 Phil. 444, 459 (2009); *Social Justice Society (SJS), et al. v. Hon. Atienza, Jr., supra* note 53, at 699-700; and See *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 307-308 (2005).

72 *Legaspi v. City of Cebu*, *supra*, at 785.

73 *City of Manila v. Hon. Laguio, Jr., supra* note 71, at 308.

74 *Tan v. Pereña*, 492 Phil. 200, 221 (2005).

75 *City of Manila v. Hon. Laguio, Jr., supra* note 71, at 308.

76 482 Phil. 544 (2004).

> the first place, and negate by mere ordinance the mandate of the statute.
>
> Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on the right so far as to the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.
>
> This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. *By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.*[77]

LGUs must be reminded that they merely form part of the whole; that the policy of ensuring the autonomy of local governments was never intended by the drafters of the 1987 Constitution to create an *imperium in imperio* and install an intra-sovereign political subdivision independent of a single sovereign state.[78] "[M]unicipal corporations are bodies politic and corporate, created not only as local units of local self-government, but as governmental agencies of the state. The legislature, by establishing a municipal corporation, does not divest the State of any of its sovereignty; absolve itself from its right and duty to administer the public affairs of the entire state; or divest itself of any power over the inhabitants of the district which it possesses before the charter was granted."[79]

LGUs are able to legislate only by virtue of a valid delegation of legislative power from the national legislature; they are mere agents vested with what is called the power of subordinate legislation.[80] "Congress enacted the LGC as the implementing law for the delegation to the various LGUs of the State's great powers, namely: the police power, the power of eminent domain, and the power of taxation. The LGC was fashioned to delineate the

---

77 *Batangas CATV, Inc. v. Court of Appeals*, *supra*, at 564-565. *Social Justice Society (SJS), et al. v. Hon. Atienza, Jr.*, *supra* note 53, at 710-711.

78 *Batangas CATV, Inc. v. Court of Appeals*, *supra* not 76, at 571.

79 *Id*. at 570.

80 *City of Manila v. Hon. Laguio, Jr.*, *supra* note 71, at 337.

specific parameters and limitations to be complied with by each LGU in the exercise of these delegated powers with the view of making each LGU a fully functioning subdivision of the State subject to the constitutional and statutory limitations."[81]

Specifically, with regard to the power of taxation, it is indubitably the most effective instrument to raise needed revenues in financing and supporting myriad activities of the LGUs for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people.[82] As this Court opined in *National Power Corp. v. City of Cabanatuan*:[83]

> In recent years, the increasing social challenges of the times expanded the scope of state activity, and taxation has become a tool to realize social justice and the equitable distribution of wealth, economic progress and the protection of local industries as well as public welfare and similar objectives. Taxation assumes even greater significance with the ratification of the 1987 Constitution. Thenceforth, the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges pursuant to Article X, Section 5 of the 1987 Constitution, *viz*:
>
> > "Section 5. Each Local Government unit shall have the power to create its own sources of revenue, 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 governments."
>
> This paradigm shift results from the realization that genuine development can be achieved only by strengthening local autonomy and promoting decentralization of governance. For a long time, the country's highly centralized government structure has bred a culture of dependence among local government leaders upon the national leadership. It has also "dampened the spirit of initiative, innovation and imaginative resilience in matters of local development on the part of local government leaders." The only way to shatter this culture of dependence is to give the LGUs a wider role in the delivery of basic services, and confer them sufficient powers to generate their own sources for the purpose. To achieve this goal, Section 3 of Article X of the 1987 Constitution mandates Congress to enact a local government code that will, *consistent with the basic policy of local autonomy*, set the guidelines and limitations to this grant of taxing powers x x x[84]

---

81 *Legaspi v. City of Cebu*, *supra* note 71, at 785.
82 *National Power Corp. v. City of Cabanatuan*, 449 Phil. 233, 261 (2003).
83 *Id*.
84 *Id.* at 247-249.

Fairly recently, We also stated in *Pelizloy Realty Corporation v. Province of Benguet*[85] that:

> The rule governing the taxing power of provinces, cities, municipalities and barangays is summarized in *Icard v. City Council of Baguio*:
>
> > It is settled that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality, cannot assume it. And the power when granted is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions – all these – have no place in the interpretation of the taxing power of a municipal corporation. [Underscoring supplied]
> >
> > x x x x
> >
> > Per Section 5, Article X of the 1987 Constitution, "the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges." Nevertheless, such authority is "subject to such guidelines and limitations as the Congress may provide."
>
> In conformity with Section 3, Article X of the 1987 Constitution, Congress enacted Republic Act No. 7160, otherwise known as the Local Government Code of 1991. Book II of the LGC governs local taxation and fiscal matters.[86]

Indeed, LGUs have no inherent power to tax except to the extent that such power might be *delegated* to them either by the basic law or by the statute.[87] "Under the now prevailing *Constitution*, where there is neither a grant nor a prohibition by *statute*, the tax power must be deemed to exist although Congress may provide statutory limitations and guidelines. The basic *rationale* for the current rule is to safeguard the viability and self-sufficiency of local government units by directly granting them general and broad tax powers. Nevertheless, the fundamental law did not intend the delegation to be absolute and unconditional; the constitutional objective obviously is to ensure that, while the local government units are being strengthened and made more autonomous, the legislature must still see to it that (a) the taxpayer will not be over-burdened or saddled with multiple and unreasonable impositions; (b) each local government unit will have its fair share of available resources; (c) the resources of the national government

---

85 G.R. No. 183137, April 10, 2013, 695 SCRA 491.

86 *Pelizloy Realty Corporation v. Province of Benguet, supra,* at 500-501.

87 *MERALCO v. Province of Laguna*, 366 Phil. 428, 433 (1999).

will not be unduly disturbed; and (d) local taxation will be fair, uniform, and just."[88]

Subject to the provisions of the LGC and consistent with the basic policy of local autonomy, every LGU is now empowered and authorized to create its own sources of revenue and to levy taxes, fees, and charges which shall accrue exclusively to the local government unit as well as to apply its resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their governmental or proprietary powers and functions.[89] The relevant provisions of the LGC which establish the parameters of the taxing power of the LGUs are as follows:

> SECTION 130. *Fundamental Principles.* – The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:
>
> (a) Taxation shall be uniform in each local government unit;
> (b) Taxes, fees, charges and other impositions shall:
>
> > (1) be equitable and based as far as practicable on the taxpayer's ability to pay;
> > (2) be levied and collected only for public purposes;
> > (3) not be unjust, excessive, oppressive, or confiscatory;
> > (4) not be contrary to law, public policy, national economic policy, or in restraint of trade;
> > (c) The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;
> > (d) The revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to the disposition by, the local government unit levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; and,
> > (e) Each local government unit shall, as far as practicable, evolve a progressive system of taxation.
>
> SECTION 133. *Common Limitations on the Taxing Powers of Local Government Units.* – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> > (a) Income tax, except when levied on banks and other financial institutions;
> > (b) Documentary stamp tax;
> > (c) Taxes on estates, inheritance, gifts, legacies and other acquisitions *mortis causa*, except as otherwise provided herein;
> > (d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves

---

88 *Id*. at 434-435.

89 See LGC, Secs. 18 and 129.

> constructed and maintained by the local government unit concerned;
> (e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;
> (f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;
> (g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;
> (h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;
> (i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein;
> (j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;
> (k) Taxes on premiums paid by way of reinsurance or retrocession;
> (l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;
> (m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;
> (n) Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and
> (o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

SECTION 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

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.

On the Socialized Housing Tax

Contrary to petitioner's submission, the 1987 Constitution explicitly espouses the view that the use of property bears a social function and that all economic agents shall contribute to the common good.[90] The Court already recognized this in *Social Justice Society (SJS), et al. v. Hon. Atienza, Jr.*:[91]

> Property has not only an individual function, insofar as it has to provide for the needs of the owner, but also a social function insofar as it has to provide for the needs of the other members of society. The principle is this:
>
> > Police power proceeds from the principle that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the right of the community. Rights of property, like all other social and conventional rights, are subject to reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient.[92]

Police power, which flows from the recognition that *salus populi est suprema lex* (the welfare of the people is the supreme law), is the plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people.[93] Property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government in the exercise of police power. [94] In this jurisdiction, it is well-entrenched that taxation may be made the implement of the state's police power.[95]

---

90 1987 CONSTITUTION, Art. XII, Sec. 6.

91 *Supra* note 53.

92 *Social Justice Society (SJS), et al. v. Hon. Atienza, Jr.*, *supra* note 53, at 707.

93 *Id.* at 700-701.

94 *Id.* at 703.

95 See *Rep. of the Phils. v. Judge Caguioa*, 562 Phil. 187 (2007) (withdrawal of the tax exemption on cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the freeports under R.A. No. 9334); *Southern Cross Cement Corporation v. Philippine Cement Manufacturers Corporation*, 503 Phil. 485 (2005) (imposition of general safeguard measures); *Republic of the Philippines v. COCOFED et al.*, 423 Phil. 735 (2001) (on the Coconut Consumer Stabilization Fund or coconut levy funds under P.D. No. 276); *Caltex Philippines, Inc. v. Commission on Audit*, G.R. No. 92585, May 8, 1992, 208 SCRA 726

Ordinance No. SP-2095 imposes a Socialized Housing Tax equivalent to 0.5% on the assessed value of land in excess of Php100,000.00. This special assessment is the same tax referred to in R.A. No. 7279 or the UDHA.[96] The SHT is one of the sources of funds for urban development and housing program.[97] Section 43 of the law provides:

> Sec. 43. *Socialized Housing Tax*. – Consistent with the constitutional principle that the ownership and enjoyment of property bear a social function and to raise funds for the Program, all local government units are hereby authorized to impose an additional one-half percent (0.5%) tax on the assessed value of all lands in urban areas in excess of Fifty thousand pesos (₱50,000.00).

The rationale of the SHT is found in the preambular clauses of the subject ordinance, to wit:

> *WHEREAS*, the imposition of additional tax is intended to provide the City Government with sufficient funds to initiate, implement and undertake Socialized Housing Projects and other related preliminary activities;
>
> *WHEREAS*, the imposition of 0.5% tax will benefit the Socialized Housing Programs and Projects of the City Government, specifically the marginalized sector through the acquisition of properties for human settlements;
>
> *WHEREAS*, the removal of the urban blight will definitely increase fair market value of properties in the city[.]

The above-quoted are consistent with the UDHA, which the LGUs are charged to implement in their respective localities in coordination with the Housing and Urban Development Coordinating Council, the national housing agencies, the Presidential Commission for the Urban Poor, the private sector, and other non-government organizations.[98] It is the declared policy of the State to undertake a comprehensive and continuing urban development and housing program that shall, among others, uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas, and provide for the rational use and development of urban land in order to bring about, among others, reduction in urban

---

(on the Oil Price Stabilization Fund under P.D. No. 1956, as amended); *Gaston v. Republic Planters Bank*, 242 Phil. 377 (1988) (stabilization fees to accrue to a Development and Stabilization Fund under P.D. No. 388); *Philippine Airlines, Inc. v. Commissioner Edu*, 247 Phil. 283 (1988) (motor vehicle registration fees under R.A. No. 4136); *Tio v. Videogram Regulatory Board*, 235 Phil. 198 (1987) (tax on sale, lease or disposition of videograms under P.D. No. 1987); *Republic of the Philippines v. Bacolod-Murcia Milling Co.*, 124 Phil. 27 (1966) (special assessment for the Sugar Research and Stabilization Fund under R.A. No. 632);and *Lutz v. Araneta*, 98 Phil. 148 (1955) (levy on owners or persons in control of lands devoted to the cultivation of sugar cane and ceded to others for a consideration in favor of the Sugar Adjustment and Stabilization Fund under Commonwealth Act 567).

96 Approved on March 24, 1992.

97 See Sec. 42.

98 Sec. 39.

dysfunctions, particularly those that adversely affect public health, safety and ecology, and access to land and housing by the underprivileged and homeless citizens.[99] Urban renewal and resettlement shall include the rehabilitation and development of blighted and slum areas[100] and the resettlement of program beneficiaries in accordance with the provisions of the UDHA.[101]

Under the UDHA, socialized housing[102] shall be the primary strategy in providing shelter for the underprivileged and homeless.[103] The LGU or the NHA, in cooperation with the private developers and concerned agencies, shall provide socialized housing or resettlement areas with basic services and facilities such as potable water, power and electricity, and an adequate power distribution system, sewerage facilities, and an efficient and adequate solid waste disposal system; and access to primary roads and transportation facilities.[104] The provisions for health, education, communications, security, recreation, relief and welfare shall also be planned and be given priority for implementation by the LGU and concerned agencies in cooperation with the private sector and the beneficiaries themselves.[105]

Moreover, within two years from the effectivity of the UDHA, the LGUs, in coordination with the NHA, are directed to implement the relocation and resettlement of persons living in danger areas such as *esteros*, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places like sidewalks, roads, parks, and playgrounds.[106] In coordination with the NHA, the LGUs shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of the affected families.[107]

Clearly, the SHT charged by the Quezon City Government is a tax which is within its power to impose. Aside from the specific authority vested by Section 43 of the UDHA, cities are allowed to exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities which include, among others, programs and projects

---

99 Sec. 2.

100 "Blighted lands" refers to the areas where the structures are dilapidated, obsolete and unsanitary, tending to depreciate the value of the land and prevent normal development and use of the area. (Sec. 3 [c])

101 Sec. 26.

102 "Socialized housing" refers to housing programs and projects covering houses and lots or homelots only undertaken by the Government or the private sector for the underprivileged and homeless citizens which shall include sites and services development, long-term financing, liberalized terms on interest payments, and such other benefits in accordance with the provisions of R.A. No. 7279. (Sec. 3 [r])

103 Sec. 15.

104 Sec. 21.

105 Sec. 21.

106 Sec. 29.

107 Sec. 29.

for low-cost housing and other mass dwellings.[108] The collections made accrue to its socialized housing programs and projects. The tax is not a pure exercise of taxing power or merely to raise revenue; it is levied with a regulatory purpose. The levy is primarily in the exercise of the police power for the general welfare of the entire city. It is greatly imbued with public interest. Removing slum areas in Quezon City is not only beneficial to the underprivileged and homeless constituents but advantageous to the real property owners as well. The situation will improve the value of the their property investments, fully enjoying the same in view of an orderly, secure, and safe community, and will enhance the quality of life of the poor, making them law-abiding constituents and better consumers of business products.

Though broad and far-reaching, police power is subordinate to constitutional limitations and is subject to the requirement that its exercise must be reasonable and for the public good.[109] In the words of *City of Manila v. Hon. Laguio, Jr.*:[110]

> The police power granted to local government units must always be exercised with utmost observance of the rights of the people to due process and equal protection of the law. Such power cannot be exercised whimsically, arbitrarily or despotically as its exercise is subject to a qualification, limitation or restriction demanded by the respect and regard due to the prescription of the fundamental law, particularly those forming part of the Bill of Rights. Individual rights, it bears emphasis, may be adversely affected only to the extent that may fairly be required by the legitimate demands of public interest or public welfare. Due process requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty and property.
>
> x x x x
>
> To successfully invoke the exercise of police power as the rationale for the enactment of the *Ordinance*, and to free it from the imputation of constitutional infirmity, not only must it appear that the interests of the public generally, as distinguished from those of a particular class, require an interference with private rights, but the means adopted must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. It must be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work. A reasonable relation must exist between the purposes of the police measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded.

---

108 LGC, Sec. 17 (b) (4), in relation to (b) (3) (viii).

109 *City of Manila v. Hon. Laguio, Jr., supra* note 71, at 308.

110 *Supra* note 71.

> Lacking a concurrence of these two requisites, the police measure shall be struck down as an arbitrary intrusion into private rights – a violation of the due process clause.[111]

As with the State, LGUs may be considered as having properly exercised their police power only if there is a lawful subject and a lawful method or, to be precise, if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.[112]

In this case, petitioner argues that the SHT is a penalty imposed on real property owners because it burdens them with expenses to provide funds for the housing of informal settlers, and that it is a class legislation since it favors the latter who occupy properties which is not their own and pay no taxes.

We disagree.

Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[113] The guarantee means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances.[114] Similar subjects should not be treated differently so as to give undue favor to some and unjustly discriminate against others.[115] The law may, therefore, treat and regulate one class differently from another class provided there are real and substantial differences to distinguish one class from another.[116]

An ordinance based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law. The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class.[117]

---

111 *City of Manila v. Hon. Laguio, Jr., supra* note 71, at 312-313; See also *White Light Corp., et al. v. City of Manila*, *supra* note 71, at 467.

112 *Social Justice Society (SJS), et al. v. Hon. Atienza, supra* note 53, at 702.

113 *City of Manila v. Hon. Laguio, Jr., supra* note 71, at 326.

114 *Id.*

115 *Id.*

116 *Social Justice Society (SJS), et al. v. Hon. Atienza, Jr., supra* note 53, at 708.

117 *Id.,* See also *City of Manila v. Hon. Laguio, Jr., supra* note 71, at 328.

For the purpose of undertaking a comprehensive and continuing urban development and housing program, the disparities between a real property owner and an informal settler as two distinct classes are too obvious and need not be discussed at length. The differentiation conforms to the practical dictates of justice and equity and is not discriminatory within the meaning of the Constitution. Notably, the public purpose of a tax may legally exist even if the motive which impelled the legislature to impose the tax was to favor one over another.[118] It is inherent in the power to tax that a State is free to select the subjects of taxation.[119] Inequities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation.[120]

Further, the reasonableness of Ordinance No. SP-2095 cannot be disputed. It is not confiscatory or oppressive since the tax being imposed therein is below what the UDHA actually allows. As pointed out by respondents, while the law authorizes LGUs to collect SHT on lands with an assessed value of more than ₱50,000.00, the questioned ordinance only covers lands with an assessed value exceeding ₱100,000.00. Even better, on certain conditions, the ordinance grants a tax credit equivalent to the total amount of the special assessment paid beginning in the sixth (6^{th}) year of its effectivity. Far from being obnoxious, the provisions of the subject ordinance are fair and just.

On the Garbage Fee

In the United States of America, it has been held that the authority of a municipality to regulate garbage falls within its police power to protect public health, safety, and welfare.[121] As opined, the purposes and policy underpinnings of the police power to regulate the collection and disposal of solid waste are: (1) to preserve and protect the public health and welfare as well as the environment by minimizing or eliminating a source of disease and preventing and abating nuisances; and (2) to defray costs and ensure financial stability of the system for the benefit of the entire community, with the sum of all charges marshalled and designed to pay for the expense of a systemic refuse disposal scheme.[122]

Ordinances regulating waste removal carry a strong presumption of validity.[123] Not surprisingly, the overwhelming majority of U.S. cases

---

118 See *Tio v. Videogram Regulatory Board*, 235 Phil. 198, 206 (1987).

119 *Id*.

120 *Id*. at 206.

121 See *Ennis v. City of Ray*, 595 N.W. 2d 305 (1999) and *Village of Winside v. Jackson*, 553 N.W. 2d 476 (1996).

122 See *Jacobson v. Solid Waste Agency of Northwest Nebraska (SWANN)*, 653 N.W. 2d 482 (2002); *Ennis v. City of Ray*, *supra;* and *City of Hobbs v. Chesport, Ltd.*, 76 N.M. 609 (1966).

123 *Ennis v. City of Ray*, *supra.*

addressing a city's authority to impose mandatory garbage service and fees have upheld the ordinances against constitutional and statutory challenges.[124]

A municipality has an affirmative duty to supervise and control the collection of garbage within its corporate limits.[125] The LGC specifically assigns the responsibility of regulation and oversight of solid waste to local governing bodies because the Legislature determined that such bodies were in the best position to develop efficient waste management programs.[126] To impose on local governments the responsibility to regulate solid waste but not grant them the authority necessary to fulfill the same would lead to an absurd result."[127] As held in one U.S. case:

> x x x When a municipality has general authority to regulate a particular subject matter, the manner and means of exercising those powers, where not specifically prescribed by the legislature, are left to the discretion of the municipal authorities. x x x Leaving the manner of exercising municipal powers to the discretion of municipal authorities "implies a range of reasonableness within which a municipality's exercise of discretion will not be interfered with or upset by the judiciary."[128]

In this jurisdiction, pursuant to Section 16 of the LGC and in the proper exercise of its corporate powers under Section 22 of the same, the *Sangguniang Panlungsod* of Quezon City, like other local legislative bodies, is empowered to enact ordinances, approve resolutions, and appropriate funds for the general welfare of the city and its inhabitants.[129] Section 16 of the LGC provides:

> SECTION 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.

---

124 *Id.*
125 *Jacobson v. Solid Waste Agency of Northwest Nebraska (SWANN), supra* note 122.
126 See *id.*
127 *Jacobson v. Solid Waste Agency of Northwest Nebraska (SWANN), supra* note 122.
128 *Ennis v. City of Ray, supra* note 121.
129 LGC, Sec. 458.

The general welfare clause is the delegation in statutory form of the police power of the State to LGUs.[130] The provisions related thereto are liberally interpreted to give more powers to LGUs in accelerating economic development and upgrading the quality of life for the people in the community.[131] Wide discretion is vested on the legislative authority to determine not only what the interests of the public require but also what measures are necessary for the protection of such interests since the *Sanggunian* is in the best position to determine the needs of its constituents.[132]

One of the operative principles of decentralization is that, subject to the provisions of the LGC and national policies, the LGUs shall share with the national government the responsibility in the management and maintenance of ecological balance within their territorial jurisdiction.[133] In this regard, cities are allowed to exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities which include, among others, solid waste disposal system or environmental management system and services or facilities related to general hygiene and sanitation.[134] R.A. No. 9003, or the *Ecological Solid Waste Management Act of 2000,*[135] affirms this authority as it expresses that the LGUs shall be primarily responsible for the implementation and enforcement of its provisions within their respective jurisdictions while establishing a cooperative effort among the national government, other local government units, non-government organizations, and the private sector.[136]

Necessarily, LGUs are statutorily sanctioned to impose and collect such reasonable fees and charges for services rendered.[137] "Charges" refer to pecuniary liability, as rents or fees against persons or property, while "Fee" means a charge fixed by law or ordinance for the regulation or inspection of a business or activity.[138]

The fee imposed for garbage collections under Ordinance No. SP-2235 is a charge fixed for the regulation of an activity. The basis for this could be discerned from the foreword of said Ordinance, to wit:

---

130 *Batangas CATV, Inc. v. Court of Appeals*, *supra* note 76, at 561.
131 LGC, Sec. 5 (c).
132 See *Social Justice Society (SJS), et al. v. Hon. Atienza, Jr.*, *supra* note 53, at 703.
133 LGC, Sec. 3 (i).
134 LGC, Sec. 17 (b) (4), in relation to (b) (2) (vi).
135 Approved on January 26, 2001.
136 LGC, Secs. 2 (g) and 10.
137 LGC, Sec. 153.
138 LGC, Sec. 131 (g) and (l).

> *WHEREAS*, Quezon City being the largest and premiere city in the Philippines in terms of population and urban geographical areas, apart from being competent and efficient in the delivery of public service, apparently requires a big budgetary allocation in order to address the problems relative and connected to the prompt and efficient delivery of basic services such as the effective system of waste management, public information programs on proper garbage and proper waste disposal, including the imposition of waste regulatory measures;
>
> *WHEREAS*, to help augment the funds to be spent for the city's waste management system, the City Government through the *Sangguniang Panlungsod* deems it necessary to impose a schedule of reasonable fees or charges for the garbage collection services for residential (domestic household) that it renders to the public.

Certainly, as opposed to petitioner's opinion, the garbage fee is not a tax. In *Smart Communications, Inc. v. Municipality of Malvar, Batangas*,[139] the Court had the occasion to distinguish these two concepts:

> In *Progressive Development Corporation v. Quezon City*, 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*, 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."

In Georgia, U.S.A., assessments for garbage collection services have been consistently treated as a fee and not a tax.[140] In another U.S. case,[141] the garbage fee was considered as a "service charge" rather than a tax as it was

---

139 *Supra* note 70, at 690-691.

140 *Monticello, Ltd. v. City of Atlanta*, 499 S.E. 2d 157 (1998).

141 *Martin v. City of Trussville*, 376 So. 2d 1089 (1979).

actually a fee for a service given by the city which had previously been provided at no cost to its citizens.

Hence, not being a tax, the contention that the garbage fee under Ordinance No. SP-2235 violates the rule on double taxation[142] must necessarily fail.

Nonetheless, although a special charge, tax, or assessment may be imposed by a municipal corporation, it must be reasonably commensurate to the cost of providing the garbage service.[143] To pass judicial scrutiny, a regulatory fee must not produce revenue in excess of the cost of the regulation because such fee will be construed as an illegal tax when the revenue generated by the regulation exceeds the cost of the regulation.[144]

Petitioner argues that the Quezon City Government already collects garbage fee under Section 47 of R.A. No. 9003, which authorizes LGUs to impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a solid waste management plan, and that it has access to the SWM Fund under Section 46 of the same law. Moreover, Ordinance No. S-2235 is inconsistent with R.A. No. 9003, because the ordinance emphasizes the collection and payment of garbage fee with no concern for segregation, composting and recycling of wastes. It also skips the mandate of the law calling for the active involvement of the barangay in the collection, segregation, and recycling of garbage.

We now turn to the pertinent provisions of R.A. No. 9003.

Under R.A. No. 9003, it is the declared policy of the State to adopt a systematic, comprehensive and ecological solid waste management program which shall, among others, ensure the proper segregation, collection, transport, storage, treatment and disposal of solid waste through the formulation and adoption of the best environmental practices in ecological waste management.[145] The law provides that segregation and collection of solid waste shall be conducted at the *barangay* level, specifically for biodegradable, compostable and reusable wastes, while the collection of non-recyclable materials and special wastes shall be the responsibility of the municipality or city.[146] Mandatory segregation of solid wastes shall

---

142 "In order to constitute double taxation in the objectionable or prohibited sense the same property must be taxed twice when it should be taxed but once; both taxes must be imposed on the same property or subject-matter, for the same purpose, by the same State, Government, or taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax." (*Villanueva, et al. v. City of Iloilo, supra* note 63, at 588.

143 See *Ennis v. City of Ray*, *supra* note 121; and *Town of Eclectic v. Mays*, 547 So. 2d 96 (1989).

144 See *Iroquois Properties v. City of East Lansing*, 408 N.W. 2d 495 (1987).

145 Sec. 2 (a) and (d).

146 Sec. 10.

primarily be conducted at the source, to include household, institutional, industrial, commercial and agricultural sources.[147] *Segregation at source* refers to a solid waste management practice of separating, at the point of origin, different materials found in solid waste in order to promote recycling and re-use of resources and to reduce the volume of waste for collection and disposal.[148] Based on Rule XVII of the Department of Environment and Natural Resources (*DENR*) Administrative Order No. 2001-34, Series of 2001,[149] which is the Implementing Rules and Regulations (*IRR*) of R.A. No. 9003, *barangays* shall be responsible for the collection, segregation, and recycling of biodegradable, recyclable, compostable and reusable wastes.[150] For the purpose, a Materials Recovery Facility (*MRF*), which shall receive biodegradable wastes for composting and mixed non-biodegradable wastes for final segregation, re-use and recycling, is to be established in every barangay or cluster of barangays.[151]

According to R.A. 9003, an LGU, through its local solid waste management board, is mandated by law to prepare a 10-year solid waste management plan consistent with the National Solid Waste Management Framework.[152] The plan shall be for the re-use, recycling and composting of wastes generated in its jurisdiction; ensure the efficient management of solid waste generated within its jurisdiction; and place primary emphasis on implementation of all feasible re-use, recycling, and composting programs while identifying the amount of landfill and transformation capacity that will be needed for solid waste which cannot be re-used, recycled, or composted.[153] One of the components of the solid waste management plan is source reduction:

> (e) Source reduction – The source reduction component shall include a program and implementation schedule which shows the methods by which the LGU will, in combination with the recycling and composting components, reduce a sufficient amount of solid waste disposed of in accordance with the diversion requirements of Section 20.
>
> The source reduction component shall describe the following:
>
> (1) strategies in reducing the volume of solid waste generated at source;
> (2) measures for implementing such strategies and the resources necessary to carry out such activities;
> (3) other appropriate waste reduction technologies that may also be considered, provided that such technologies conform with the standards set pursuant to this Act;

147 Sec. 21.
148 Sec. 3 (jj).
149 Adopted in December 20, 2001.
150 Rule XI, Sec. 1.
151 *Id.*
152 Republic Act No. 9003 (2001), Sec. 16.
153 *Id.*

> (4) the types of wastes to be reduced pursuant to Section 15 of this Act;
> (5) the methods that the LGU will use to determine the categories of solid wastes to be diverted from disposal at a disposal facility through re-use, recycling and composting; and
> (6) new facilities and of expansion of existing facilities which will be needed to implement re-use, recycling and composting.
>
> The LGU source reduction component shall include the evaluation and identification of rate structures and fees for the purpose of reducing the amount of waste generated, and other source reduction strategies, including but not limited to, programs and economic incentives provided under Sec. 45 of this Act to reduce the use of non-recyclable materials, replace disposable materials and products with reusable materials and products, reduce packaging, and increase the efficiency of the use of paper, cardboard, glass, metal, and other materials. The waste reduction activities of the community shall also take into account, among others, local capability, economic viability, technical requirements, social concerns, disposition of residual waste and environmental impact: *Provided*, That, projection of future facilities needed and estimated cost shall be incorporated in the plan. x x x[154]

The solid waste management plan shall also include an implementation schedule for solid waste diversion:

> SEC. 20. *Establishing Mandatory Solid Waste Diversion.* – Each LGU plan shall include an implementation schedule which shows that within five (5) years after the effectivity of this Act, the LGU shall divert at least 25% of all solid waste from waste disposal facilities through re-use, recycling, and composting activities and other resource recovery activities: *Provided*, That the waste diversion goals shall be increased every three (3) years thereafter: *Provided, further,* That nothing in this Section prohibits a local government unit from implementing re-use, recycling, and composting activities designed to exceed the goal.

The baseline for the twenty-five percent (25%) shall be derived from the waste characterization result[155] that each LGU is mandated to undertake.[156]

---

154 Sec. 17.

155 Sec. 17 of R.A. No. 9003 provides:

SEC. 17. *The Components of the Local Government Solid Waste Management Plan.* – The solid waste management plan shall include, but not limited to, the following components:

x x x x

(b) Waste characterization – For the initial source reduction and recycling element of a local waste management plan, the LGU waste characterization component shall identify the constituent materials which comprise the solid waste generated within the jurisdiction of the LGU. The information shall be representative of the solid waste generated and disposed of within that area. The constituent materials shall be identified by volume, percentage in weight or its volumetric equivalent, material type, and source of generation which includes residential, commercial, industrial, governmental, or other sources. Future

In accordance with Section 46 of R.A. No. 9003, the LGUs are entitled to avail of the SWM Fund on the basis of their approved solid waste management plan. Aside from this, they may also impose SWM Fees under Section 47 of the law, which states:

> SEC. 47. *Authority to Collect Solid Waste Management Fees* – The local government unit shall impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a solid waste management plan prepared pursuant to this Act. The fees shall be based on the following minimum factors:
>
> (a) types of solid waste;
> (b) amount/volume of waste; and
> (c) distance of the transfer station to the waste management facility.
>
> The fees shall be used to pay the actual costs incurred by the LGU in collecting the local fees. In determining the amounts of the fees, an LGU shall include only those costs directly related to the adoption and implementation of the plan and the setting and collection of the local fees.

Rule XVII of the IRR of R.A. No. 9003 sets forth the details:

> Section 1. *Power to Collect Solid Waste Management Fees*. – The Local SWM Board/Local SWM Cluster Board shall impose fees on the SWM services provided for by the LGU and/or any authorized organization or unit. In determining the amounts of the fees, a Local SWM Board/Local SWM Cluster Board shall include only those costs directly related to the adoption and implementation of the SWM Plan and the setting and collection of the local fees. This power to impose fees may be ceded to the private sector and civil society groups which have been duly accredited by the Local SWM Board/Local SWM Cluster Board; provided, the SWM fees shall be covered by a Contract or Memorandum of Agreement between the respective board and the private sector or civil society group.
>
> The fees shall pay for the costs of preparing, adopting and implementing a SWM Plan prepared pursuant to the Act. Further, the fees shall also be used to pay the actual costs incurred in collecting the local fees and for project sustainability.
>
> Section 2. *Basis of SWM Service Fees*
>
> Reasonable SWM service fees shall be computed based on but not limited to the following minimum factors:
>
> a) Types of solid waste to include special waste
> b) amount/volume of waste
> c) distance of the transfer station to the waste management facility
> d) capacity or type of LGU constituency

---

revisions of waste characterization studies shall identify the constituent materials which comprise the solid waste disposed of at permitted disposal facilities.

x x x x

[156] See DENR Administrative Order No. 2001-34, Rule VII, Sec. 7.

> e) cost of construction
> f) cost of management
> g) type of technology
>
> Section 3. *Collection of Fees*. – Fees may be collected corresponding to the following levels:
>
> > a) Barangay – The Barangay may impose fees for collection and segregation of biodegradable, compostable and reusable wastes from households, commerce, other sources of domestic wastes, and for the use of Barangay MRFs. The computation of the fees shall be established by the respective SWM boards. The manner of collection of the fees shall be dependent on the style of administration of respective Barangay Councils. However, all transactions shall follow the Commission on Audit rules on collection of fees.
> >
> > b) Municipality – The municipal and city councils may impose fees on the barangay MRFs for the collection and transport of non-recyclable and special wastes and for the disposal of these into the sanitary landfill. The level and procedure for exacting fees shall be defined by the Local SWM Board/Local SWM Cluster Board and supported by LGU ordinances, however, payments shall be consistent with the accounting system of government.
> >
> > c) Private Sector/Civil Society Group – On the basis of the stipulations of contract or Memorandum of Agreement, the private sector or civil society group shall impose fees for collection, transport and tipping in their SLFs. Receipts and invoices shall be issued to the paying public or to the government.

From the afore-quoted provisions, it is clear that the authority of a municipality or city to impose fees is limited to the collection and transport of **non-recyclable and special wastes** and for the disposal of these into the sanitary landfill. Barangays, on the other hand, have the authority to impose fees for the collection and segregation of **biodegradable, compostable and reusable wastes** from households, commerce, other sources of domestic wastes, and for the use of barangay MRFs. This is but consistent with Section 10 of R.A. No. 9003 directing that segregation and collection of biodegradable, compostable and reusable wastes shall be conducted at the barangay level, while the collection of non-recyclable materials and special wastes shall be the responsibility of the municipality or city.

In this case, the alleged bases of Ordinance No. S-2235 in imposing the garbage fee is the volume of waste currently generated by each person in Quezon City, which purportedly stands at 0.66 kilogram per day, and the increasing trend of waste generation for the past three years.[157] Respondents did not elaborate any further. The figure presented does not reflect the

---

157 *Rollo*, p. 50.

specific types of wastes generated – whether residential, market, commercial, industrial, construction/demolition, street waste, agricultural, agro-industrial, institutional, etc. It is reasonable, therefore, for the Court to presume that such amount pertains to the totality of wastes, without any distinction, generated by Quezon City constituents. To reiterate, however, the authority of a municipality or city to impose fees extends only to those related to the collection and transport of ***non-recyclable*** and ***special*** wastes.

Granting, for the sake of argument, that the 0.66 kilogram of solid waste per day refers only to non-recyclable and special wastes, still, We cannot sustain the validity of Ordinance No. S-2235. It violates the equal protection clause of the Constitution and the provisions of the LGC that an ordinance must be equitable and based as far as practicable on the taxpayer's ability to pay, and not unjust, excessive, oppressive, confiscatory.[158]

In the subject ordinance, the rates of the imposable fee depend on land or floor area and whether the payee is an occupant of a lot, condominium, social housing project or apartment. For easy reference, the relevant provision is again quoted below:

> On all domestic households in Quezon City;
>
> | LAND AREA | IMPOSABLE FEE |
> |---|---|
> | Less than 200 sq. m. | PHP 100.00 |
> | 201 sq. m. – 500 sq. m. | PHP 200.00 |
> | 501 sq. m. – 1,000 sq. m. | PHP 300.00 |
> | 1,001 sq. m. – 1,500 sq. m. | PHP 400.00 |
> | 1,501 sq. m. – 2,000 sq. m. or more | PHP 500.00 |
>
> On all condominium unit and socialized housing projects/units in Quezon City;
>
> | FLOOR AREA | IMPOSABLE FEE |
> |---|---|
> | Less than 40 sq. m. | PHP25.00 |
> | 41 sq. m. – 60 sq. m. | PHP50.00 |
> | 61 sq. m. – 100 sq. m. | PHP75.00 |
> | 101 sq. m. – 150 sq. m. | PHP100.00 |
> | 151 sq. m. – 200 sq. [m.] or more | PHP200.00 |
>
> On high-rise Condominium Units
>
> a) High-rise Condominium – The Homeowners Association of high rise condominiums shall pay the annual garbage fee on the total size of the entire condominium and socialized Housing Unit and an additional garbage fee shall be collected based on area occupied for every unit already sold or being amortized.

---

158 LGC, Secs. 130 and 186.

> b) High-rise apartment units – Owners of high-rise apartment units shall pay the annual garbage fee on the total lot size of the entire apartment and an additional garbage fee based on the schedule prescribed herein for every unit occupied.

For the purpose of garbage collection, there is, in fact, no substantial distinction between an occupant of a lot, on one hand, and an occupant of a unit in a condominium, socialized housing project or apartment, on the other hand. Most likely, garbage output produced by these types of occupants is uniform and does not vary to a large degree; thus, a similar schedule of fee is both just and equitable.[159]

The rates being charged by the ordinance are unjust and inequitable: a resident of a 200 sq. m. unit in a condominium or socialized housing project has to pay twice the amount than a resident of a lot similar in size; unlike unit occupants, all occupants of a lot with an area of 200 sq. m. and less have to pay a fixed rate of Php100.00; and the same amount of garbage fee is imposed regardless of whether the resident is from a condominium or from a socialized housing project.

Indeed, the classifications under Ordinance No. S-2235 are not germane to its declared purpose of "promoting shared responsibility with the residents to attack their common mindless attitude in over-consuming the present resources and in generating waste."[160] Instead of simplistically categorizing the payee into land or floor occupant of a lot or unit of a condominium, socialized housing project or apartment, respondent City Council should have considered factors that could truly measure the amount of wastes generated and the appropriate fee for its collection. Factors include, among others, household age and size, accessibility to waste collection, population density of the barangay or district, capacity to pay, and actual occupancy of the property. R.A. No. 9003 may also be looked into for guidance. Under said law, SWM service fees may be computed based on minimum factors such as types of solid waste to include special waste, amount/volume of waste, distance of the transfer station to the waste management facility, capacity or type of LGU constituency, cost of construction, cost of management, and type of technology. With respect to utility rates set by municipalities, a municipality has the right to classify consumers under reasonable classifications based upon factors such as the cost of service, the purpose for which the service or the product is received, the quantity or the amount received, the different character of the service furnished, the time of its use or any other matter which presents a substantial difference as a ground of distinction.[161]

---

159 See *City of New Smyrna Beach v. Fish*, 384 So. 2d. 1272 (1980).

160 *Rollo*, p. 51.

161 *City of New Smyrna Beach v. Fish*, *supra* note 159.

> [A] lack of uniformity in the rate charged is not necessarily unlawful discrimination. The establishment of classifications and the charging of different rates for the several classes is not unreasonable and does not violate the requirements of equality and uniformity. Discrimination to be unlawful must draw an unfair line or strike an unfair balance between those in like circumstances having equal rights and privileges. Discrimination with respect to rates charged does not vitiate unless it is arbitrary and without a reasonable fact basis or justification.[162]

On top of an unreasonable classification, the penalty clause of Ordinance No. SP-2235, which states:

> SECTION 3. *Penalty Clause* – A penalty of 25% of the garbage fee due plus an interest of 2% per month or a fraction thereof (interest) shall be charged against a household owner who refuses to pay the garbage fee herein imposed.

lacks the limitation required by Section 168 of the LGC, which provides:

> SECTION 168. *Surcharges and Penalties on Unpaid Taxes, Fees, or Charges.* – The *sanggunian* may impose a surcharge not exceeding twenty-five (25%) of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding two percent (2%) per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but **in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months.** (Emphasis supplied)

Finally, on the issue of publication of the two challenged ordinances.

Petitioner argues that the garbage fee was collected even if the required publication of its approval had not yet elapsed. He notes that he paid his realty tax on January 7, 2014 which already included the garbage fee. Respondents counter that if the law provides for its own effectivity, publication in the Official Gazette is not necessary so long as it is not penal in nature. Allegedly, Ordinance No. SP-2095 took effect after its publication while Ordinance No. SP-2235 became effective after its approval on December 26, 2013.

The pertinent provisions of the LGC state:

> SECTION 59. *Effectivity of Ordinances or Resolutions.* – (a) **Unless otherwise stated in the ordinance** or the resolution approving the local development plan and public investment program, **the same shall take effect after ten (10) days from the date a copy thereof is posted** in a bulletin board at the entrance of the provincial capitol or city, municipal,

---

162 *Id*.

> or barangay hall, as the case may be, and in at least two (2) other conspicuous places in the local government unit concerned.
>
> (b) The secretary to the sanggunian concerned shall cause the posting of an ordinance or resolution in the bulletin board at the entrance of the provincial capitol and the city, municipal, or barangay hall in at least two (2) conspicuous places in the local government unit concerned not later than five (5) days after approval thereof.
>
> The text of the ordinance or resolution shall be disseminated and posted in Filipino or English and in the language or dialect understood by the majority of the people in the local government unit concerned, and the secretary to the sanggunian shall record such fact in a book kept for the purpose, stating the dates of approval and posting.
>
> (c) The gist of all ordinances with penal sanctions shall be published in a newspaper of general circulation within the province where the local legislative body concerned belongs. In the absence of any newspaper of general circulation within the province, posting of such ordinances shall be made in all municipalities and cities of the province where the sanggunian of origin is situated.
>
> (d) In the case of highly urbanized and independent component cities, the main features of the ordinance or resolution duly enacted or adopted shall, **in addition to being posted, be published once in a local newspaper of general circulation within the city: Provided, That in the absence thereof the ordinance or resolution shall be published in any newspaper of general circulation.**
>
> SECTION 188. *Publication of Tax Ordinances and Revenue Measures.* – **Within ten (10) days after their approval**, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures shall be **published in full for three (3) consecutive days in a newspaper of local circulation**: Provided, however, That in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places. (Emphasis supplied)

On October 17, 2011, respondent Quezon City Council enacted Ordinance No. SP-2095, which provides that it would take effect after its publication in a newspaper of general circulation.[163] On the other hand, Ordinance No. SP-2235, which was passed by the City Council on December 16, 2013, provides that it would be effective upon its approval.[164] Ten (10) days after its enactment, or on December 26, 2013, respondent City Mayor approved the same.[165]

The case records are bereft of any evidence to prove petitioner's negative allegation that respondents did not comply with the posting and

---

163 Sec. 9.
164 Sec. 10.
165 *Rollo*, p. 23.

publication requirements of the law. Thus, We are constrained not to give credit to his unsupported claim.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The constitutionality and legality of Ordinance No. SP-2095, S-2011, or the *"Socialized Housing Tax of Quezon City,"* is **SUSTAINED** for being consistent with Section 43 of Republic Act No. 7279. On the other hand, Ordinance No. SP-2235, S-2013, which collects an annual garbage fee on all domestic households in Quezon City, is hereby declared as **UNCONSTITUTIONAL AND ILLEGAL**. Respondents are **DIRECTED** to **REFUND** with reasonable dispatch the sums of money collected relative to its enforcement.

The temporary restraining order issued by the Court on February 5, 2014 is **LIFTED** with respect to Ordinance No. SP-2095. In contrast, respondents are **PERMANENTLY ENJOINED** from taking any further action to enforce Ordinance No. SP. 2235.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

On leave
PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On leave
ARTURO D. BRION
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

On leave
BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice