

the present petition for certiorari and mandamus, asking that the said order be annulled as having been issued without jurisdiction, and that a writ issue commanding the judge below to lift the stay of execution.

Courts of first instance in detainer cases are authorized to grant execution upon appellant's failure to deposit the monthly rents on time during the pendency of the appeal. But this Court has already ruled that execution may be denied where the delay in making the deposit was due to fraud, error or excusable negligence. (*Bantug vs. Roxas*, 73 Phil. 13; *Gunaan vs. Rodas*, 44 Off. Gaz., 4927; *Yu Phi Khim vs. Amparo*, 47 Off. Gaz., Supp. 12, 98). In the present case, the deposit was late, but the lower court has excused the delay as being due to an honest belief that the supersedeas bond covered both past and future rents — as therein expressly stipulated — and that, after all, appellant's right to remain in office and enjoy its emoluments, including free quarters, was still pending determination in the Court of Industrial Relations. The lower court, in our opinion, acted with justice and equity and only followed the precedent established in the cases above cited when it rendered the resolution herein complained of.

Pending decision on this petition for certiorari and mandamus, counsel for the company, on March 18, 1952, filed a supplemental pleading, complaining that on the 3rd of that month the lower court had denied another motion for execution based on Valencia's failure to deposit the rental for January of that year. It appears from the order of denial that the lower court considered the new motion for execution as involving the same question as those which gave rise to the present case and which were denied because of "unique or exceptional circumstances" that, in its opinion, made suspension of execution "more in consonance with justice and equity," for which reason the court again had to deny immediate execution" at least, until Supreme Court has passed upon the questioned orders." Now that a decision has come down from the Court of Industrial Relations ordering Valencia's reinstatement, and with the certiorari case (*G. R. No. L-6158*) for the review of that decision already heard, we are not disposed to interfere with the exercise of discretion which the lower court has made in the last order complained of for the maintenance of a *status quo*.

Wherefore, the petition for certiorari and mandamus is denied, with costs against the petitioner.

Paras, Pablo, Benzon, Padilla, Tuason, Montemayor; Jugo; Bautista Angelo and Labrador, J.J., concur.

XX

Angeles S. Santos, petitioner-appellant vs. Paterio Aquino et al, respondents-appellees, G. R. No. L-5101, November 28, 1953.

1. CIVIL PROCEDURE; DECLARATORY RELIEF; ORDINANCE NOT AMBIGUOUS OR DOUBTFUL.—There can be no action for declaratory relief, where the terms of the ordinances assailed are not ambiguous or of doubtful meaning which require a construction thereof by the Court.
2. IDEM; IDEM; RELIEF MUST BE ASKED BEFORE VIOLATION OF THE ORDINANCE.—Granting that the validity or legality of the ordinance may be drawn in question in action for declaratory relief, such relief must be asked before a violation of the ordinance be committed (Section 2, Rule 66, Rules of Court). When this action was brought on 12 May 1949, payment of the municipal license taxes imposed by both ordinances, the tax rate of the last having been reduced by the Department of Finance, was already due, and the prayer of the petition shows that the petitioner had not paid them. In those circumstances the petitioner cannot bring an action for declaratory relief.
3. IDEM; IDEM; REAL PARTY IN INTEREST.—The petitioner, does not aver nor does he testify that he is the owner or part owner of "Cine Concepcion." He alleges that he is only the manager thereof. For that reason he is not an interested party. He has no interest in the theater known as "Cine Concepcion" which may be affected by the municipal ordinances in question and for that reason he is not entitled to bring this

action either for declaratory relief or for prohibition, which apparently is the purpose of the action as may be gleaned from the prayer of the petition. The rule that actions must be brought in the name of the real party in interest (Section 2, Rule 3, Rules of Court) applies to actions brought under Rule 66 for declaratory relief. (1 C.J.S. 1074-1049.) The fact that he is the manager of the theater does not make him a real party in interest.

4. PUBLIC CORPORATIONS; MUNICIPAL COUNCIL EMPLOYED TO ADOPT ORDINANCES IMPOSING TAXES WHICH ARE NOT EXCESSIVE, UNJUST, OPPRESSIVE OR CONFISCATORY.—Under Com. Act No. 472 the Municipal Council of Malabon is authorized and empowered to adopt the ordinances in question, and there being no showing, as its evidence does not show, that the rate of the municipal taxes therein provided is excessive, unjust, oppressive and confiscatory, their validity and legality must be upheld. The rate of the taxes in both ordinances, to wit: P1,000 a year for "Class A cinematographs having orchestra, balcony and lodge seats" in Ordinance No. 61, series, of 1946, (Approved by the Department of Finance on 11 June 1947. So the tax for 1947 to be collected was P180 plus 50% of the original tax, or P90, or a total of P270), and P2,000 for each theater or cinematograph with gross annual receipts amounting to P130,000 or more in Ordinance 10, series, of 1947, (Approved by the Department of Finance at a reduced rate on 3 November 1948. So the tax for 1948 was that imposed by Ordinance No. 61, series of 1946, approved on 11 June 1947, as reduced and approved by the Department of Finance on 3 November 1948), under which the "Cine Concepcion" falls, is not excessive but fair and just.
5. IDEM; IDEM; MUNICIPAL COUNCILS NOT CONSTITUTIONAL BODIES.—Municipal councils are not constitutional bodies but creatures of the Congress. The latter may even abolish or replace them with other government instrumentalities. *Arsenio Paez* for appellant.

Acting Provincial Fiscal of Pasig, Rizal Irineo V. Bernardo for appellees.

DECISION

PADILLA, J.:

This action purports to obtain a declaratory relief but the prayer of the petition seeks to have Ordinance No. 61, series of 1946, and Ordinance No. 10, series of 1947, of the Municipality of Malabon, Province of Rizal, declared null and void; to prevent the collection of surcharges and penalties for failure to pay the taxes imposed by the ordinances referred to, except for such failure from and after the taxpayer shall have been served with the notice of the effectivity of the ordinances; and to enjoin the respondents, their agents and all other persons acting for and in their behalf from enforcing the ordinances referred to and from making any collection thereunder. Further, petitioner prays for such other remedy and relief as may be deemed just and equitable and asks that costs be taxed against the respondents.

The petitioner is the manager of a theater known as "Cine Concepcion," located and operated in the Municipality of Malabon, Province of Rizal, and the respondents are the Municipal Mayor, the Municipal Council and the Municipal Treasurer, of Malabon. The petitioner avers that Ordinance No. 61, series of 1946, adopted by the Municipal Council of Malabon on 8 December 1946, imposes a license tax of P1,000 per annum on the said theater in addition to a license tax on all tickets sold in theaters and cinemas in Malabon, pursuant to Ordinance No. 61, the same series; that prior to 8 December 1946 the municipal license tax paid by the petitioner on "Cine Concepcion" was P180, pursuant to Ordinance No. 9, series of 1945; that on 6 December 1947, the Municipal Council of Malabon adopted Ordinance No. 10, series of 1947, imposing a graduated municipal license tax on theaters and cinematographs from P200 to P9,000 per annum; that the ordinance was submitted for approval to the Department of Finance, which reduced the rate of taxes provided therein, and the ordinance with the reduced rate of taxes was approved on 3 November 1948; that notice of reduction of the tax rate and approval by the Department of Finance of said graduated municipal license

tax provided for in said Ordinance No. 10, as reduced, was served on the petitioner on 12 February 1949 when the respondent Municipal Treasurer presented a bill for collection thereof; that Ordinance No. 61, series of 1946, is *ultra vires* and repugnant to the provisions of the Constitution on taxation; that its approval was not in accordance with law; that Ordinance No. 10, series of 1947, is also null and void, because the Department of Finance that approved it acted in excess and against the powers granted it by law, and is unjust, oppressive and confiscatory; and that the adoption of both ordinances was the result of persecution of the petitioner by the respondents because from 20 July 1946 to 8 December 1947, or within a period of less than one and a half years, the Municipal Council of Malabon adopted four ordinances increasing the taxes on cinematographs and theaters and imposing a penalty of 20% surcharge for late payment.

A motion to dismiss was filed by the Assistant Provincial Fiscal of Rizal, but upon suggestion of the Court at the hearing thereof, the respondents were prevailed upon to file their answer.

In their answer the respondents allege that both ordinances adopted by the Municipal Council of Malabon are not *ultra vires*, the same not being under any of the exceptions provided for in section 3 of Com. Act No. 472; that the ordinances were adopted pursuant to the policy enunciated by the Secretary of the Interior in a circular issued on 20 June 1946 which in substance suggested and urged the municipal councils to increase their revenues and not to rely on the National Government which was not in a position to render any help and to make such increase dependent upon the taxpayer's ability to pay; that both ordinances assailed by the petitioner had been submitted to, and approved by, the Department of Finance, as required by section 4 of Com. Act No. 472, and took effect on 1 January 1947 and 1 January 1948, respectively; that the petitioner had filed a protest with the Secretary of Finance against such increase of taxes, as fixed by the municipal ordinances in question but the Department of Finance although reducing the amount of taxes imposed in Ordinance No. 10, series of 1947; and changing the date of effectivity of both ordinances, upheld the legality thereof; and that the petitioner brought this action for declaratory relief with the evident purpose of evading payment of the unpaid balance of taxes due from the "Cine Concepcion." By way of special defense the respondents allege that the petition does not state facts sufficient to constitute a cause of action; that the Court has no jurisdiction over the subject matter of the petition for declaratory relief; that the petitioner should have paid under protest the taxes imposed by the ordinances in question on "Cine Concepcion" and after payment thereof should bring an action under section 1579 of the Revised Administrative Code; that this being an action for declaratory relief, the Provincial Fiscal of Rizal should have been notified thereof but the petitioner failed to do so; that the petition does not join all the necessary parties and, therefore, a judgment rendered in the case will not terminate the uncertainty or the controversy that is sought to be settled and determined.

After hearing the Court rendered judgment holding that the ordinances in question are valid and constitutional and dismissing the petition with costs against the petitioner. The latter has appealed.

This is not an action for declaratory relief, because the terms of the ordinances assailed are not ambiguous or of doubtful meaning which require a construction thereof by the Court. And granting that the validity or legality of an ordinance may be drawn in question in an action for declaratory relief, such relief must be asked before a violation of the ordinance be committed. (1) When this action was brought on 12 May 1949, payment of the municipal license taxes imposed by both ordinances, the tax rate of the last having been reduced by the Department of Finance, was already due, and the prayer of the petition shows that the petitioner had not paid them. In those circumstances the petitioner cannot bring an action for declaratory relief.

Angeles S. Santos, the petitioner, does not aver nor does he testify that he is the owner or part owner of "Cine Concepcion."

He alleges that he is only the manager thereof. For that reason he is not an interested party. He has no interest in the theater known as "Cine Concepcion" which may be affected by the municipal ordinances in question and for that reason he is not entitled to bring this action either for declaratory relief or for prohibition, which apparently is the purpose of the action as may be gleaned from the prayer of the petition. The rule that actions must be brought in the name of the real party in interest (2) applies to actions brought under Rule 66 for declaratory relief. (3) The fact that he is the manager of the theatre does not make him a real party in interest. (4)

Nevertheless, laying aside these procedural defects, we are of the opinion and so hold that under Com. Act No. 472 the Municipal Council of Malabon is authorized and empowered to adopt the ordinances in question, and there being no showing, as the evidence does not show, that the rate of the municipal taxes therein provided is excessive, unjust, oppressive and confiscatory, their validity and legality must be upheld. The rate of the taxes in both ordinances, to wit: P1,000 a year for "Class A Cinematographs having orchestra, balcony and lodge seats" in Ordinance No. 61, series of 1946, (5) and P2,000 for each theater or cinematograph with gross annual receipts amounting to P130,000 or more in Ordinance No. 10, series of 1947, (6) under which the "Cine Concepcion" falls, is not excessive but fair and just. It is far from being oppressive and confiscatory. Pursuant to said Commonwealth Act if the increase of the municipal tax is more than 50% over the previous ones already in existence, the Municipal Council adopting such increase must submit it for approval to the Department of Finance which, although it cannot increase it, may reduce it and may approve it as reduced, or may disapprove it. It is contended that as only municipal councils are authorized by law to adopt ordinances, after the reduction by the Department of Finance of the tax rate imposed in Ordinance No. 10, series of 1947, duly adopted by the Municipal Council of Malabon, the latter should adopt another ordinance accepting or fixing the rate tax as reduced by the Department of Finance. The contention is without merit because the rate of taxes imposed on theaters or cinematographs in Ordinance No. 10, series of 1947, was the only one reduced by the Department of Finance and the reduction was for the benefit of the taxpayer as it was very much lower than the rate fixed by the Municipal Council. The authority and discretion to fix the amount of the tax was exercised by the Municipal Council of Malabon when it fixed the same at P9,000 a year. Certainly, the Municipal Council of Malabon that fixed the tax at P9,000 a year also approved the tax at P2,000 a year, this being very much less than that fixed in the ordinance. The power and discretion exercised by the Municipal Council of Malabon when it fixed the tax at P9,000 a year must be deemed to have been exercised also by it when the Department of Finance reduced it to P2,000 a year, for the greater includes the lesser. The adoption of another ordinance fixing the tax at P2,000 a year would be an idle ceremony and waste of time. Moreover, it must be borne in mind that municipal councils are not constitutional bodies but creatures of the Congress. The latter may even abolish or replace them with other government instrumentalities. Commonwealth Act No. 472 grants to the Department of Finance the authority to disapprove, implied in the power to approve, an ordinance imposing a tax which is more than 50% of the existing tax, or to reduce it, also implied in the same power. This, of course, is to forestall abuse of power by the municipal councils. If the Congress has granted to the Department of Finance the power to reduce such tax, implied in the power to approve or disapprove, there seems to be no cogent reason for requiring the municipal council concerned to adopt another ordinance fixing the tax as reduced by the Department of Finance. Therefore, the action of the Department of Finance in approving Ordinance No. 10, series of 1947, at a reduced rate, is not in excess of the powers granted it by law. The evidence does not show that the adoption of the ordinances in question by the Municipal Council of Malabon was the result of persecution of the petitioner.

The judgment appealed from is affirmed, with costs against the appellant.

(Continued on page 85)