100 Phil. 303

[G.R. No. L-9023. November 13, 1956]

BISLIG BAY LUMBER COMPANY. INC., PLAINTIFF AND APPELLEE, VS. THE PROVINCIAL GOVERNMENT OP SURIGAO, DEFENDANT AND APPELLANT.

D E C I S I O N

BAUTISTA ANGELO, J.:

Bislig Bay Lumber Co., Inc. is a timber concessionaire of a portion of public forest located in the provinces of Agusan and Surigao. With a view to developing and exploiting its concession, the company constructed at its expense a road from the barrio Mangagoy into the area of the concession in Surigao, with a length of approximately 5.3 kilometers, a portion of which, or about 580 linear meters, is on a private property of the company. The expenses incurred by the company in the construction of said road amounted to P113,370, upon which the provincial assessor of Surigao assessed a tax in the amount of P669.33.

Of this amount, the sum of P595.92 corresponds to the road constructed within the area of the concession. This was paid under protest Later, the company filed an action for its refund in the Court of First Instance of Manila alleging that the road is not subject to tax. Defendant filed a motion to dismiss on two grounds (1) that the venue is improperly laid, and (2) that the complaint states no -cause of action; but this motion was denied. Thereafter, defendant filed its answer invoking the same defenses it set up in its motions to dismiss. In the meantime, Congress approved Republic Act No. 1125 creating the Court of Tax Appeals, whereupon plaintiff moved that the case be forwarded to the latter court as required by said Act. This motion however, was denied and, after due trial, the court rendered decision ordering defendant to refund to plaintiff the amount claimed in the ‘complaint This is an appeal from said decision.

The first error assigned refers to the jurisdiction of the lower court. It is contended that since the present case involves an assessment of land tax the determination of which comes under the exclusive jurisdiction of the Court of Tax Appeals under Republic Act No. 1125,

the lower court erred in assuming jurisdiction over the case.

It is true that under section 22 of said Act the only cases that are required to be certified and remanded to the Court of Tax Appeals which upon its approval are pending determination before a court of first instance are apparently confined to those involving disputed assessment of internal revenue taxes or custom duties, and the present case admittedly refers to an assessment of land tax, but it does not mean that because of that apparent omission or oversight the instant case should not be remanded to the Court of Tax Appeals, for in interpreting the context of the section above adverted to we should hot ignore section 7 of the same act which defines the extent and scope of the jurisdiction of said court. As we have held in a recent case, "section 22 of Republic Act No. 1125 should be interpreted in such a manner as to make it harmonize with section 7 of the same Act and that the primordial purpose behind the approval of said Act by Congress is to give to the Court of Tax Appeals exclusive appellate jurisdiction 'over all tax, customs, and real estate assessment cases through out the Philippines and to hear and decide them as soon as possible'" (Ollada *vs*. The Court of Tax Appeals, 99 Phil., 604). Considering this interpretation of the law, it logically follows that the lower court did not act properly in denying the motion to remand the instant case to the Court of Tax Appeals.

Considering, however, that it would be more expeditious to decide this case now than to remand it to the Court of Tax Appeals because, even if this course is taken, it may ultimately be appealed to this court, we will now proceed to discuss the case on the merits.

The Tax in question has been assessed under section 2 of Commonwealth Act No. 470 which provides:

> "Sec. 2. *Incidence of real property tax;*.—Except in chartered cities, there shall be levied, assessed, and collected, an annual ad-valorem tax on real property, including land, buildings, machinery, and other improvements not hereinafter specifically exempted."

Note that said section authorizes the levy of real tax not only on lands, buildings, or machinery that may be erected thereon, but also on any other improvements, and considering the road constructed by appellee on the timber concession granted to it as an improvement, appellant assessed the tax now in dispute upon the authority of the above provision of the law.

It is the theory of appellant that, inasmuch as the road was constructed by appellee for its own use and benefit it is subject to real tax even if it was constructed on a public land. On the other hand, it is the theory of appellee that said road is exempt from real tax because (1) the road belongs to the national government by right of accession, (2) the road cannot be removed or separated from the land on which it is constructed an dso it is part and parcel of the public land, and (3), according to the evidence, the road was built not only for the use and benefit of appellee but also of the public in general.

We are inclined to uphold the theory of appellee. In the first place, it cannot be disputed that the ownership of the road that was constructed by appellee belongs to the government by right accession not only because it is inherently incorporated or attached to the timber land leased to appellee but also because upon the expiration of the concession, said road would ultimately pass to the national government (Articles 440 and 445, new Civil Code; Toba-tabo *vs*. Molero, 22 Phil., 418). In the second place, while the road was constructed by appellee primarily for its use and benefit, the privilege is not exclusive, for, under the lease contract entered into by the appellee and the government and by public in by the general. Thus, under said lease contract, appellee cannot prevent the use of portions, of the concession for homesteading purposes (clause 12). It is also in duty bound to allow the free use of forest products within the concession for the personal use of individuals residing in or within the vicinity of the land (clause 13). The government has reserved the right to set aside communal forest for the use of the inhabitants of the region, and to set forest reserves for public uses (clause 14). It can also grant licenses covering any portion of the territory for the cutting and extraction of timber to be used in public works, for mining purposes, or for the construction of railway lines (clause 15). And, if it so desires, it can provide for logging railroad, cable ways timber chute os slide, telephone lines, pumping stations log landings, and other rights of way for the use of forest licensees, concessionaires, permittees, or other lessees (clause 26). In other words, the government has practically reserved the rights to use the road to promote its varied activities. Since, as above shown, the road in question cannot be considered as an improvement which belongs to appellee, although in part is for its benefit, it is clear that the same cannot be the subject of assessment within the meaning of section 2 of Commonwealth Act No. 470.

We are not oblivious of the fact that the present assessment was made by appellant on the strength of an opinion rendered by the Secretary of Justice, but we find that the same is. predicated on authorities which are not in point, for they refer to improvements that belong to the lessee although constructed on lands belonging to the government. It is well settled that a real tax, being a burden upon the capital, should be paid by the owner of the land and

not by a usufructuary (Mercado *vs*. Rizal, 67 Phil., 608; Article 597, new Civil Code). Appellee is but a partial usufructuary of the road in question.

Wherefore, the decision appealed from is affirmed, without costs.

Paras, C. J, Padilla, Montemayor, Labrador, Reyes, J. B. L., Endencia and *Felix. JJ.*, concur.

Date created: October 13, 2014