

102 Phil. 395

[ G. R. No. L-9061. November 18, 1957 ]

**RICARDO VELAYO, PETITIONER AND APPELLANT, VS. FERNANDO ORDOVEZA, ET AL., RESPONDENTS AND APPELLEES.**

**D E C I S I O N**

**CONCEPCION, J.:**

After publication of the corresponding notice, on October 29, 1949, the City Treasurer of Manila sold, at public auction, to Ricardo Velayo—whose address is Gapan, Nueva Ecija—for the sum of P185.95, representing the amount due by way of unpaid real estate taxes, for the years 1948 and 1949, plus penalty and costs, on the property described in said notice as follows:

“LAND containing an area of 99.40 SQUARE METERS, more or less, with improvements thereon, located at 813 Lepanto, Sampaloc, Manila, and designated as Lot 16, Block 35, Assessment No. 3305 in the list of taxable properties for the district of Sampaloc.”

The property located at said address—813 Lepanto, Sampaloc, Manila—is covered by Transfer Certificate of Title No- 79178 for the City of Manila, in the name of Fernando, Ramon, Annie, Beatriz and Isabelita, all surnamed Ordoveza, who had bought it sometime before 1948. However, said certificate of title contains the following description:

“L. A PARCEL OF LAND (Lot No. 20 of Block No. 4002 of the Cadastral Survey of the City of Manila, situated in the District of Sampaloc. Bounded on the NE. by Lot No. 22 of Block No. 4002; on the SE. by Lot No. 21 of Block No. 4002; on the SW. by Lot No. 18 of Block No. 4002; and on the NW. by Lot No. 14 of Block No. 4002. \* \* \* \* containing an area of NINETY FOUR SQUARE METERS AND EIGHTY SQUARE DECIMETERS (94.80), more or less. \* \* \*.”

“2. A PARCEL OF LAND (Lot No. 21 of Block No. 4002 of the Cadastral Survey of the City of Manila), situated in the NW. line of Calle Lepanto, District of Sampaloc. Rounded on the NP3. by Lot No. 23 of Block No. 4002; on the SE. by Calle Lepanto; on the SW. by Lot No. 19 of Block No. 4002; and on the NW. by Lot No. 20 of Block No. 4002. \* \* \* containing an area of TWO SQUARE METERS AND THIRTY SQUARE DECIMETERS (2.30), more Or less. • • \*.”

When Fernando Ordoveza tried to pay the real estate tax thereon on November 20, 1950, a clerk in the office of the City Treasurer advised him of the sale aforementioned. On the same date, Ordoveza wrote to Velayo the letter, Exhibit A, offering to reimburse the amount paid by him with 15 per cent interest thereon. Instead of answering this letter, Velayo secured from the City Treasurer the corresponding certificate of sale, dated December 4, 1950. Upon Velayo's failure to reply, Fernando Ordoveza wrote to the City Treasurer, on December 11, 1950, the letter, Exhibit B, stating that he (Ordoveza) was surprised to hear about the sale, for he had not received any previous notice thereof or read in the newspapers about the public auction to be held in connection therewith, and enclosing a money order for P300.72, to cover the taxes due, plus interest and costs, with the request that said sum be accepted by way of redemption of the property in question. Four (4) days later, or on December 15, 1950, Velayo caused the certificate of sale in his favor to be filed with the Register of Deeds of Manila.

On December 19, 1950, this officer replied to Ordoveza's letter, Exhibit B, with the information that the sum of P300.72 enclosed therewith had been accepted merely by way of deposit, upon the ground that the period to redeem the property had expired on October 29, 1950, and that it was, therefore, up to the Ordovezas, either to seek an extra-judicial settlement with Velayo, or to assail the validity of the tax sale (Exhibit 3).

On January 17, 1951, the Register of Deeds of Manila demanded from the Ordovezas the production of the owner's duplicate of said Transfer Certificate of Title No. 79178, for annotation of the memorandum relative to the certificate of sale above referred to. The record does not show whether this demand was heeded or not. Meanwhile, or on November 12, 1951, the City Treasurer executed the corresponding deed of sale (Exhibit C) to Velayo.

On November 10, 1954, Velayo filed in the Cadastral Case of the Court of First Instance of Manila in which the registration of the property in dispute was effected, a petition stating

that he had bought said Lot 16, Block 35 of the City of Manila, on October 29, 1949, for tax delinquency; that said property had not been redeemed on or before October 29, 1950; that the deed of sale in his favor was executed by the city treasurer on November 12, 1951; that the property thus conveyed to him is, also, known as Lots Nos. 20 and 21, Block No. 4002, of the Cadastral Survey of the City of Manila, which are more particularly described in Transfer Certificate of Title No. 79178 of said City; and that the corresponding certificate of title had not, as yet, been issued to him, and praying that the Register of Deeds of Manila be ordered to register said deed of sale, that Transfer Certificate of Title No. 79178 be cancelled and that a certificate of title be issued in the name of said petitioner, Ricardo Velayo.

The Ordovezas opposed this petition, upon the ground, among others, that the description in said deed of sale is different from the description appearing in Transfer Certificate of Title No. 79178; that the property in question, which had been supposedly sold for P185.92 is assessed at P4,910; that Velayo had refrained from filing the certificate of sale with the register of deeds until over a year after the sale, with the obvious purpose of preventing redemption on or before October 29, 1950; and that prior to the registration of said certificate of sale, the Ordovezas had already paid to the City Treasurer the amount due by way of real-estate taxes, with 15 per cent interest thereon, plus the taxes for 1950; and that the officer charged by law with the duty of giving notice of the contemplated sale of properties for tax delinquency and of executing the corresponding deed of sale is the City Assessors, not the City Treasurer, and praying that Velayo's petition be denied and that the memorandum, in Transfer Certificate of Title No. 79178, of the sale in his favor, be ordered cancelled.

After appropriate proceedings, on February 22, 1955, the Court of First Instance of Manila sustained the last ground of said opposition and, accordingly, denied Velayo's petition. The case is now before Us on appeal taken by Ricardo Velayo.

We find no merit in the appeal. Section 65 of Republic Act No. 409 explicitly provides that:

"Fifteen days after the (real estate) tax shall become delinquent the *city assessor and collector* shall prepare and sign a certified copy of the records of his office showing the persons delinquent in payment of their taxes and the amount of tax and penalty respectively due from them. He may thereupon proceed to seize personal property of each delinquent not exempt \* \* \* and \* \*

\* to sell at public auction, either at the main entrance of the City Hall or at the place where such property is seized. \*\*\* so much of the same as shall satisfy the tax, penalty and costs \* \* \*” (parenthetical words and italics supplied.)

In addition thereto, “*the city assessor and collector, may*”—pursuant to section 69 of said Act— “advertise the real estate of the delinquent for sale \*\*\*.”

\*\*\* At any time before the day fixed for the sale, the taxpayer may discontinue all proceedings by paying the taxes, penalties, and costs to the *city assessor and collector* If he does not do so, the sale shall proceed and shall be held either at the main entrance of the City Hall or on the premises to be sold, *as the city assessor and collector* may determine. Within five days after the sale the *city assessor and collector* shall make return of the proceedings and spread it in his records. The purchaser at the sale shall receive a certificate *from the city assessor and collector* from his records showing the proceeding’s of the sale, describing’ the property sold, \*\*\*.” (Italics supplied.)

However, according to section 70 of said Act’.

Within one year from the date of sale the delinquent taxpayer, or anyone for him, shall have the right of paying *to the city assessor and collector* the amount of the public taxes, penalties, and cost together with interest \* \* \* at the rate of fifteen *per centum per annum*. \* \* \*; and such payment shall entitle the person paying to the delivery of the certificate issued to the purchaser and a certificate *from the city assessor and collector* that he has thus redeemed the real estate and *the city assessor and collector* shall forthwith pay over to the purchaser the amount by which such real estate has thus redeemed \*\*\* (Italics supplied.)

Again, sections 71 and 72 of said Act read:

“In case the taxpayer shall not redeem the real property sold \* \* \* within one year from the date of the sale, *the city assessor and collector* shall \* \* \* execute a deed in form and effect sufficient to convey to the purchaser so

much of the real estate against which the taxes have been assessed as has been sold \* \* \*." (Section 71; italics supplied.)

"In case there is no bidder at the public sale of such realty who offers a sum sufficient to pay the taxes, penalties, and cost, *the city assessor and collector* shall declare the real estate forfeited to the city, and shall make, within two days thereafter, a return of his proceedings and the forfeiture, which shall be spread upon the records of his office." (Section 72; italics supplied.)

The foregoing provisions are clear, explicit and unequivocal. The *city assessor and collector* is the officer charged with the function of distraining personal property for the collection of delinquent real estate taxes. *It is he* who shall "advertise the real estate of the delinquent for sale." In order to suspend the same, payment of said taxes should be made *to him* prior thereto. The sale, if not suspended, shall be made under *his* authority. The proceedings relative to the sale shall be spread in the records of the *city assessor*. The certificate of the sale is to be issued by him. Redemption may be made by payment *to him*, within one year. A certificate of redemption, if effected, shall be issued by the *city assessor*. It is *he* who shall, in such event, refund the corresponding amount to the buyer at the tax sale. He, *too*, shall execute the deed of sale in favor of said buyer, in the absence of redemption. Lastly, it is he who "shall declare the real estate forfeited to the city," in case there is no bidder at the public sale.

In the case at bar, the notice of sale at public auction was given, and the sale was made, *by the city treasurer*, who, likewise, executed the certificate of sale and, later on, the deed of sale, although he had no authority therefor. Accordingly, said notice, sale, certificate and deed are insufficient to divest the Ordovezas of their title to the property in question.

It is urged, however, that the term "city assessor and collector" in the aforementioned sections 65, 69, 70, 71 and 72 of Republic Act No. 409, refers to the City Treasurer, because:

(a) Section 52 of said Act provides that the City Treasurer "shall perform in and for the city the duties imposed by law or regulation upon provincial treasurers," who, pursuant to Commonwealth Act No. 470, are in charge of the proceedings relative to the sale of property for the collection of real estate tax delinquencies; and

(b) Section 73 of Republic Act No. 409 provides, that “within one year from the date” of the forfeiture of the property to the city of Manila—in case there is no bidder at the public sale of said property—

“\* \* \* the taxpayer, or anyone for him may redeem said realty as above provided in cases where the same is sold. But, if the realty is not thus redeemed within the year, the forfeiture shall become absolute and the *city treasurer* shall execute a deed, *similar in form and having the same effect as the deed required to be, made by him in case of a sale*, conveying the real estate to the city. The deed shall be recorded as required by law for other real estate titles and shall then be forwarded to the mayor for notation and return to the *city treasurer* who shall file the same and enter it in his records of city property”, (Italics supplied.)

Appellant stresses the statement in this provision to the effect that, if the property forfeited to the city is not redeemed, “the city treasurer shall execute a deed, similar in form and having the same effect as the deed *required to be made by him, in case of sale*, conveying the real estate to the city.” Based upon this sentence, it is urged that the deed of sale mentioned in section 71 must be understood as “required to be made,” therefore, by the “city treasurer,” not “the city assessor and collector.”

As regards the first argument, suffice it to say that section 52 of Republic Act No. 409, imposes upon the city treasurer the duties vested upon provincial treasurers, “unless otherwise specifically provided by law or regulations” and that sections 65, 69, 70, 71 and 72 of said Republic Act No. 409 specifically provide otherwise.

With respect to the second argument, it should be noted that the aforementioned provisions of said Act form part of Article XII thereof, which is entitled “Department of Assessment,” and were meant, consequently, to govern the functions of the city assessor. Again, said sections 65 and 69 to 72 are a substantial reproduction of sections 2494 and 2498 to 2501 of the Revised Administrative Code, or the former Charter of the City of Manila, which likewise vested the functions under consideration in the “city assessor and collector.” Thus, Republic Act No. 409 merely maintained the provisions of the old law, insofar as said sections 65 and 69 to 72 are concerned. Indeed, the last paragraphs of section 53 states:

“Whenever the words ‘city assessor and collector’ occur in this Article in relation to any matter pertaining to assessment, or property falling under such department, the same shall be deemed to mean the city assessor, *and all the duties and powers heretofore devolving upon such officer shall hereafter be performed and exercised by the city assessor.*” (Italics supplied.)

Although not indispensable to the disposition of this appeal, we cannot overlook the fact that the notice of sale published, in connection with the case at bar referred to a “land containing an area of 99.40 square meters, more or less \* \* \* designated as Lot 16, Block 35” of the City of Manila, whereas the property of the Ordovezas, covered by Transfer Certificate of Title No. 79178, is described therein as Lots Nos. 20 and 21 of Block No. 4002 of the Cadastral Survey of said City, with an area of 94.80 and 2.30 square meters, more or less, respectively. Although both documents name Lepanto street and give the same house number, the difference in the number of the block (the notice said Block 35 and the property of the Ordovezas is in Block 4002) and in that of the lot (the notice mentioned only one [1] lot, bearing No. 16, whereas Transfer Certificate of Title No. 79178 covers two [2] lots, bearing Nos. 20 and 21)—apart from the difference in area—are such as to have a confusing or misleading effect. The injurious consequences of such variance becomes more manifest when we consider that the lots of the Ordovezas are registered under the Torrens System and that its owners are, consequently, justified in relying upon the description given in their certificate of title as the one officially identifying said property. In other words, it is hardly possible to sanction the tax sale of a property with a description distinct and different from that which appears in its certificate of title, without impairing the full faith and credence which the same is meant to command and, hence, without effecting the essence of the Torrens Systems. This suggest the advisability or need of adopting means and ways tending to insure that the records of the assessment for purpose of real estate tax on registered properties contain a description thereof which dovetails with that of the records of the corresponding registration proceedings. Thus, instead of being merely a formality, which often does not really give the notice demanded by the requirements of due process, the advertisement of tax sales prescribed by law would furnished substantially the information and warning it is meant to convey to, among others, the owner and delinquent taxpayer, in order that he may either make payment before the sale, and thus suspend the same, or redeem his property within the statutory period.

Wherefore, without prejudice to appellant’s right to recover the price by him paid for the property in dispute, the order appealed from should be, as it is hereby, affirmed, and the Register of Deeds of Manila is directed to cancel the ‘memorandum, appearing’ on Transfer

Certificate of Title No. 79178, of the sale made to appellant Ricardo Velayo, with cost against the latter. It is so ordered.

*Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Felix, JJ., concur.*

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Date created: October 14, 2014