

102 Phil. 875

[G. R. No. L-10776. January 23, 1958]

**MELITON HERRERA, PETITIONER, VS. THE AUDITOR GENERAL OF THE
REPUBLIC OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

MONTEMAYOR, J.:

This is a petition for review of the decision of the Auditor General denying the claim of petitioner Meliton Herrera, in relation to his small parcel in Quezon City, taken by the Government in widening the Banlat, Pasong Tamo Road, situated in barrio Banlat, Caloocan, Rizal, later converted into Tandang Sora Avenue, now within Quezon City. The undisputed facts in the case pieced together make up a long and rather sad story of how a poor landowner and taxpayer since 1934 up to the present time sought simple justice from his Government and failed.

The land in question is Lot No. 1120, covered by Transfer Certificate of Title No. 28207 of the Office of the Register of Deeds for the Province of Rizal, formerly 374-L of the Piedad Estate. About the year 1934, the Pasong Tamo Road in Caloocan, bordering this lot was widened to convert said road into the Tandang Sora Avenue, the whole area later incorporated into the chartered Quezon City. Petitioner Herrera, owner of the lot, readily gave up the possession of his land for the use of the Government and the public as an avenue, naturally expecting the Government to buy it and pay him a fair price. Since that time, he had continuously and patiently been asking the Government for settlement and payment, even attaching to his claim his owner's Transfer Certificate of Title. No action was taken on his claim and apparently, even his title was lost for him by the Government during the war; so, in further prosecution of his claim, he had to apply and pay for a copy of said lost title from the Office of the Register of Deeds.

On June 13, 1951, he addressed a letter to the District Engineer of Pasig, Rizal, renewing his claim and calling attention to the importance of settling the case because he had been

compelled all these years to continue paying the land tax for the lot. The District Engineer in his first indorsement of July 23, 1951 to the City Engineer of Quezon City, called attention to the claim of Herrera, saying that his office had investigated the case and found that before the creation of Quezon City, no payment had been made for the lot that was taken for road purposes since 1934, and that since there was no transfer of said lot to the Government, Herrera will continue paying the taxes thereon. Apparently, no further action was taken on Herrera's claim, so he engaged the services of a lawyer, Atty. Enrique O. Chan, who on July 12, 1955, wrote a letter to the City Engineer of Quezon City, among other things saying that the "situation is quite inequitable because Mr. Herrera is also still paying for the taxes on the property and your city has been using the same without paying either its price or any reasonable rental."

On July 29, 1955, Quezon City Engineer Anastasio A. Agan wrote to Atty. Chan, disclaiming any anomalous situation from the standpoint of Quezon City, for the reason that when the area was incorporated into Quezon City in 1948, the Tandang Sora Avenue, formerly Pasong Tamo Road, was already in existence, and that he did not know how and when said lot was acquired by the Government, for lack of supporting papers or documents available regarding its negotiations, but inasmuch as Herrera also received the consequential benefits from the existence of the road, he was offering in payment of the lot its assessed value as a reasonable price, and that if this offer was acceptable to Atty. Chan's client (Herrera), to inform his office so that he could make proper representation with the authorities concerned.

On August 2, 1955, Atty. Chan wrote to City Engineer Agan informing him that after consultation with his client, the latter was accepting said offer. Evidently, on the basis of said acceptance, City Engineer Agan wrote to the Commissioner of Public Highways on August 4, 1955, informing him of the claim of Herrera, that acting upon said claim, he had offered to pay Herrera its present assessed value of P1,230, which offer was accepted by Herrera, and expressing the belief that the present assessed value was justified, "considering the period the Government had occupied and made use of the land thereby depriving the owner of the benefit that might have been derived therefrom, and the present high market value of the lots in the immediate vicinity, and recommending that the amount of P1,250 needed to cover cost, registration, documentary stamps, etc., be allotted, and the required authority, secured for payment."

Commissioner of Public Highways Rodolfo Maslog on August 15, 1955, by first indorsement, wrote to the Quezon City Engineer, requesting further information, and by second

indorsement of October 15, 1955, City Engineer Agan informed him, among other things, that the owner Herrera was up-to-date in the payment of the taxes on the lot.

Quezon City Mayor N. S. Amoranto, entertaining doubts as to the validity of Herrera's claim from the standpoint of prescription, wrote to the City Attorney of Quezon City on February 7, 1956, asking for advice. By first indorsement of February; 17, 1956, City Attorney Pedro A. Revilla wrote to Quezon City Mayor, informing him that the lot in question was still in the name of Meliton Herrera under Transfer Certificate of Title No. 28207, and expressing the opinion that there could be no prescription, because the land still belonged to Herrera; that if the lot had already been transferred to Quezon City and registered in its name, and Herrera had failed to make a claim for the price thereof, then the claim for payment would be subject to prescription, which was not the case, and he ended with the statement:

“Upon the other hand, there appears to be an agreement already reached as to the value of the land to be paid to the owner. *Fair play and equity demands that the owner be paid what is justly due him.* But before payment, Meliton Herrera should be made to execute a deed of conveyance in favor of the Republic of the Philippines, the Tandang Sora Ave. being a national road. The deed of conveyance should then be registered with the Office of the Register of Deeds of Quezon City so that Transfer Certificate of Title No. 28207 in the name of Meliton Herrera be cancelled and a new certificate of title issued in the name of the Republic of the Philippines.” (Italics supplied.)

By second indorsement of February 21, 1956, City Mayor Amoranto referred to Quezon City Engineer the opinion and recommendation of the City Attorney, at the same time requesting that the matter be given immediate action, considering that the claim had long been pending settlement. On March 1, 1956, the City Engineer referred the papers to the Commissioner of Public Highways, reiterating his recommendation contained in his letter to the Commissioner of August 4, 1955. By fourth indorsement of March 6, 1956, Commissioner Maslog returned the papers to the City Engineer, informing him “that payment for the sum of money to the owner has already prescribed as per the opinion of the Auditor General in the parallel case of Mr. Facundo Esquivel on July 10, 1951, and in the case of Telesfora Jaen, Petitioner, vs. Manuel Agregado, Respondent, 97 Phil., 990 which was decided by the Supreme Court on September 28, 1955, it appearing that the herein claim should have been paid 22 years ago.”

By fifth indorsement of April 2, 1956, City Engineer Agan referred the case to the Auditor General, asking for an opinion as to whether or not "properties covered by Torrens Title can be lost by prescription", it appearing that the land in question had never been registered in favor of the Government. By sixth indorsement of April 27, 1956, Auditor General M. Agregado returned the case to the City Engineer of Quezon City, inclosing copies of his opinion of July 10, 1951, in the case of Facundo Esquivel, and the decision of the Supreme Court in the case of Telesfora Jaen vs. The Auditor General "which may be applied to the herein claim of Mr. Herrera".

On June 4, 1956, Atty. Chan wrote to the Auditor General, on behalf of his client Herrera, seeking reconsideration of the Auditor's opinion expressed in his sixth indorsement of April 27, 1956, alleging that the cases of Facundo Esquivel and Telesfora Jaen were quite different from that of Herrera, for the reason that the facts were essentially different; that in the first two cases, there were deeds of transfer made and executed by the owners in favor of the Government, and that all that remained to be done there was the payment of the purchase price, whereas, in the case of Herrera, no deed of transfer was ever executed, and so the land was still registered in Herrera's name; and that furthermore, no agreement as to the price of the lot involved was reached until 1952 (should be 1955). Upon the Auditor's denial of Atty. Chan's petition for reconsideration, the present petition for review was filed with this Court.

After a review of the case, we are satisfied that law and equity are both against the Government and in favor of the petitioner. That there had never been any agreement as to the price which the Government was to pay for Herrera's lot occupied b!y, it for road purposes since 1934, much less a sale of it to the Government by Herrera, there is absolutely no question. Herrera's title to the lot until now remains clean. Had there been a sale of the lot to the Government, Herrera's title would have been cancelled and a new one issued in favor of the Government. And as to payment, it is a matter of public knowledge that the Auditor's Office is very particular about disbursing Government funds for any land acquired by it, always insisting that the title to the same be clear, and that the corresponding transfer or conveyance be first duly made. Both the District Engineer and the City Attorney believe and admit that Herrera had not been paid for his lot, and that what is more, he is still the legal owner of it, and that there had not even been any agreement between Herrera and the Government as to the price. That was the reason why the City Engineer had to fix the price and make an offer to pay the same as late as 1955. One more proof that the owner of the lot in question is still Herrera and not the Government, is that the latter has continued to collect and insisted in collecting the annual real estate taxes for

the lot, up to the present time, and Herrera had religiously paid said taxes.

Had Herrera sold his lot to the Government in 1934, and the sale duly registered, and that all that remained to be done was to pay the price, then the theory of the Government about prescription might yet find support, but even under said theory, the Government, through the Quezon City Engineer had as late as 1955 acknowledged the financial obligation of the Government, and even offered to pay it, and what is more, the offer was duly accepted by Herrera, thereby constituting a contract, and a renewal of the obligation.

On claims in favor of the Government, the latter almost invariably invokes the principle that prescription does not run against it; but evidently, that same Government does not hesitate to invoke the same rule of prescription in claims against it by its citizens, which attitude does not appear to be entirely fair.

Here before us is a case of a law abiding citizen and taxpayer who as far back as 1934, realizing the need of the Government of his lot for road purposes, instead of compelling said Government to resort to expropriation proceedings, readily and in all ingenuousness allowed the Government to immediately occupy it. In his implicit trust in his Government, he did not even bother to require it to make a judicial deposit of the approximate value of his land, not even to make an offer of a price it would pay for it. But since then, he has continuously asked for the payment of said fair price as a condition precedent to his conveyance and sale of the property. But the Government neglected to make an offer, much less make payment, then evidently forgot all about it, and now it flatly refuses to pay, evidently forgetting that it had also neglected to secure a conveyance of the property, so that Herrera, as already stated, is still the owner of the same. In other words, there has never been a sale by Herrera to the Government. To legalize its possession of the lot, the Government must buy it from Herrera and pay him reasonable compensation. The very Constitution enjoins it. As already said, the Government, through the City Engineer, has made an offer of an amount, not of the lot's value in the open market, but only of its assessed value, which as everyone knows, is usually much below its real value. Herrera either tired of waiting for payment, or in a spirit of cooperation with his Government, agreed to the amount of said assessed value as the purchase price, and formally accepted the offer in 1955, and yet that same Government apparently ignoring all these facts and repudiating its offer, refuses to make payment, at the same time insisting to collect and actually collecting the real estate taxes for land which it had been occupying all these years. What we have just narrated and described does not make and form a pretty and edifying spectacle which could be presented to the citizens and taxpayers for their contemplation

and inspiration. The only bright spots in the otherwise somber picture are the attitude and actions taken by the District Engineer, the Quezon City Engineer, and the City Attorney, who after due investigation, up- held the valid claim of Herrera, and recommended that he be paid just compensation. There is nothing that can more speedily and effectively embitter a citizen and taxpayer against his Government and alienate his faith in it, than an injustice and unfair dealing like the present case.

In view of the foregoing, granting the petition for review, and overruling the opinion of the Auditor General, the Government is hereby directed to pay to Herrera the price of Lot No. 1120 in the amount of P1,230, upon Herrera's executing the corresponding conveyance in favor of the Government who is to pay for all the expenses, incident to the execution of the deed of conveyance, registration, etc. We do not order it, but the Government would do well to also pay to Herrera the interests of this amount since the year 1934, when it took possession of the land and occupied it without paying rental therefor, and to return to him all the land taxes paid by Herrera on the lot since that time, which may well be regarded as having been illegally collected, all this to atone in some measure for all the injustice and grievous wrong done to an unfortunate, civil spirited citizen and taxpayer, who all these long years has been, as it were, standing at the door of the Government, with patience and perseverance, asking and pleading for simple justice, but up to now, all in vain. If the Government will further undertake to pay the cost of the printing of Herrera's appeal brief and a reasonable amount for attorney's fees, say, in the amount of P300, the atonement of the Government might yet be complete. No costs.

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