

CEBU PORTLAND CEMENT COMPANY, PLAINTIFF-APPELLANT, VS. MUNICIPALITY OF NAGA, CEBU, ET AL., DEFENDANTS-APPELLEES.*G.R. Nos. L-24116-17. August 22, 1968*

Ponente: FERNANDO, J.

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In two separate actions, plaintiff-appellant Cebu Portland Cement Company sought to test the validity of the distraint and thereafter the sale at public auction by the principal defendant-appellee, Municipality of Naga, Cebu, of 100,000 bags of cement for the purpose of satisfying its alleged deficiency in the payment of the municipal license tax for 1960, municipal license tax for 1961 as well as the penalty, all in the total sum of P204,300.00. The lower court rendered a joint decision sustaining the validity of the action taken by defendant-appellee Municipality of Naga. The case is now before us on appeal. We affirm.

According to the appealed decision: "From all the evidence, mostly documentary, adduced during the hearing the following facts have been established. The efforts of the defendant Treasurer to collect from the plaintiff the municipal license tax imposed by Amended Ordinance No. 21, Series of 1959 on cement factories located within the Municipality of Naga, Cebu, have met with rebuff time and again. The demands made on the taxpayer * * * have not been entirely successful. Finally, the defendant Treasurer decided on June 26, 1961 to avail of the Civil reme-dies provided for under Section 2304 of the Revised Administrative Code and gave the plaintiff a period of ten days from receipt thereof with-in which to settle the account, computed as follows * * *: Deficiency Municipal License Tax for 1960 - P80,250.00; Municipal License Tax for 1961 - P90,000. 00; and 20% Penalty - P34,050.00, stating in exasperation. 'This is our last recourse as we had exhausted all efforts for an amicable solution of our problem.'"[1]

It was further shown: "On July 6, 1961, at 11:00 A.M., the defendant Treasurer notified the Plant Manager of the plaintiff that he was 'distraining 100,000 bags of Apo cement in satisfaction of your delinquency in municipal license taxes in the total amount of P204,300.00' * * *. This notice was received by the acting officer in charge of the plaintiff's plant, Vicente T. Garaygay, according to his own admission. At first, he was not in accord with the said letter, asking the defendant Treasurer for time to study the same, but in the afternoon he [acknowledged the] distraint * * *."[2]

As was noted in the decision, the defendant Treasurer in turn "signed the receipt for goods, articles or effects seized under authority of Section 2304 of the Revised Administrative Code, certi-fying that he has constructively distrained on July 6, 1961 from the Cebu Portland Cement Company at its plant at Tina-an, Naga, Cebu, 100,000 bags of Apo cement in tanks, and that 'the said articles or goods will be sold at public auction to the highest bidder on July 27, 1961, and the proceeds thereof will be utilized in part satisfaction of the account of the said company in municipal licenses and penalties in the total amount of P204,300.00 due the municipality of Naga-Province of Cebu' * * *."[3]

The lower court likewise found as a fact, that on the same day, July. 6, 1961, the municipal treasurer posted the

notice of sale to the effect that pursuant to the provisions of Section 2305 of the Revised Administrative Code, he would sell at public auction for cash to the highest bidder at the main entrance of the municipal building of the Municipality of Naga, Province of Cebu, Philippines on the 27th day of July, 1961, at 9 o'clock in the morning, the property seized and distrained or levied upon from the Cebu Portland Cement Company in satisfaction of the municipal license taxes and penalties in the amount of P204,300.00, specifying that what was to be sold was 100,000 bags of Apo cement.[4] No sale, as thus announced, was held on July 27, 1961. It was likewise stated in the appealed decision that there was stipulation by the parties to this effect: "1. The auction sale took place on January 30, 1962, * * *." [5]

In this appeal from the above joint decision, plaintiff-appellant Cebu Portland Cement Company upholds the view that the distraint of the 100,000 bags of cement as well as the sale at public auction thereafter made ran counter to the law. As earlier noted, we do not see it that way.

1. On the validity of the distraint – In the first two errors assigned, plaintiff-appellant submits as illegal the distraint of 100,000 bags of cement made on July 6, 1961. Its contention is premised on the fact that in the letter of defendant-appellee dated June 26, 1961, requiring plaintiff-appellant to settle its account of P204,300.00, it was given a period of 10 days from receipt within which it could pay, failure to do so being the occasion for the distraint of its property. It is now alleged that the 10-day period of grace was not allowed to lapse, the distraint having taken place on July 6, 1961.

It suffices to answer such a contention by referring to the explicit language of the law. According to the Revised Administrative Code: "The remedy by distraint shall proceed as follows: Upon the failure of the person owing any municipal tax or revenue to pay the same, at the time required, the municipal treasurer may seize and distraint any personal property belonging to such person or any property subject to the tax lien, in sufficient quantity to satisfy the tax or charge in question, together with any increment thereto incident to delinquency, and the expenses of the distraint." [6]

The clear and explicit language of the law leaves no room for doubt. The municipal treasurer "may seize and distraint any personal property" of the individual or entity subject to the tax upon failure "to pay the same, at the time required * * *." There was such a failure on the part of plaintiff-appellant to pay the municipal tax at the time required. The power of the municipal treasurer in accordance with the above provision therefore came into play.

Whatever might have been set forth in the letter of the municipal treasurer could not change or amend the law. It has to be enforced as written. That was what the lower court did. What was done then cannot be rightfully looked upon as a failure to abide by what the statutory provision requires. Time and time again, it has been repeatedly declared by this Court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. That was that occurred in this case.[7]

2. On the validity of the auction sale – The validity of the auction sale held on January 30, 1962 is challenged in the next two errors assigned as allegedly committed by the lower court. Plaintiff-appellant's argument is predicated on the fact that it was not until January 16, 1962 that it was notified that the public auction sale was to take place on January 29, 1962. It is its view that under the Revised Administrative Code[8] the sale of the distrained property cannot take place "less than twenty days after notice to the owner or possessor of the property [distrained] * * * and the publication or posting of such notice."

Why such a contention could not prosper is explained clearly by the lower court in the appealed decision. Thus: "With respect to the claim that the auction sale held on January 30, 1962 pursuant to the distraint was null and void for being contrary to law because not more than twenty days have elapsed from the date of notice, it is believed that the defendant Municipality of Naga and Municipal Treasurer of Naga have substantially complied

with the requirements provided for by Section 2305 of the Revised Administrative Code. From the time that the plaintiff was first notified of the distraint on July 6, 1961 up to the date of the sale on January 30, 1962, certainly, more than twenty days have elapsed. If the sale did not take place, as advertised, on July 27, 1961, but only on January 30, 1962, it was due to the requests for deferment made by the plaintiff which unduly delayed the proceedings for collection of the tax, and the said taxpayer should not be allowed now to complain that the required period has not yet elapsed when the intention of the tax collector was already well publicized for many months." [9] The reasonableness of the above observation of the lower court cannot be disputed. Under the circum-stances, the allegation that there was no observance of the twenty-day period hardly carries conviction.

The point is further made that the auction sale took place not on January 29, 1962, as stated in the notice of sale, but on the next day, January 30, 1962. According to plaintiff-appellant: "On this score alone, the sale * * *, was illegal as it was not made on the time stated in the notice." [10]

There is no basis to sustain such a plea as the finding of the lower court is otherwise. Thus: "On January 16, 1962, the defendant Treasurer informed Garaygay that he would cause the readvertisement for sale at public auction of the 100,000 bags of Apo cement which were under constructive distraint * * *. On January 19, 1962, the said defendant issued the corresponding notice of sale, which fixed January 30, 1962, at 10:00 AM., as the date of sale, posting the said notice in public places and delivering copies thereof to the interested parties in the previous notice, * * *. Ultimately, the bidding was conducted on that day, January 30, 1962, with the representatives of the Provincial Auditor and Provincial Treasurer present. Only two bidders submitted sealed bids. After the bidding, the defendant-Treasurer informed the plaintiff that an award was given to the winning bidder, * * *. [11]

This being a direct appeal to us, plaintiff-appellant must be deemed to have accepted as conclusive what the lower court found as established by the evidence, only questions of law being brought to us for review. It is the established rule that when a party appeals directly to this Court, he is deemed to have waived the right to dispute any finding of fact made by the court below. [12]

WHEREFORE, the decision of the lower court dated July 23, 1964, is affirmed in toto. With costs against plaintiff-appellant.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] Decision of July 23, 1964 of the lower court, Record on Appeal, pp. 166-167.

[2] Ibid, pp. 167-168.

[3] Ibid, pp. 169-170.

[4] Ibid, pp. 170-171.

[5] Ibid, p. 172.

[6] Section 2304, Act No. 2711 as amended.

[7] Cf. Lizarraga Hermanos v. Yap Tico, 24 Phil. 504 (1913); People v. Mapa, G.R. No. L-22301, August 30, 1967; Pacific Oxygen and Acetylene Co. v. Central Bank, G.R. No. L-21881, March 1, 1968; Dequito v. Lopez. G.R. No. L-27757, March 28, 1968.

[8] "Sec. 2305. Proceedings subsequent to seizure. - The officer levying the distraint shall make or cause to be made an account of the goods or effects distrained, a copy of which signed by himself shall be left either with the owner or person from whose possession such goods or effects were taken, or at the dwelling or place of business

of such person and with some one of suitable age and discretion, to which list shall be added a statement of the sum demanded and note of the time and place of sale; and the said officer shall forthwith cause a notification to be exhibited in not less than two public places in the municipality where the distraint is made, specifying the time and place of sale and the articles distrained. The time of sale shall not be less than twenty days after notice to the owner or possessor of the property as above specified and the publication or posting of such notice. One place for the posting of such notice shall be at the office of the mayor of the municipality in which the property is distrained. At the time and place fixed in such notice the said officer shall sell the goods, or effects, so distrained, at public auction, to the highest bidder for cash. * * *."

[9] Decision of the lower court, Record on Appeal, p. 180.

[10] Brief for Plaintiff-Appellant, p. 37.

[11] Decision of July 23, 1964 of the lower court, p. 175.

[12] Republic v. Luzon Stevedoring Corp., G.R. No. L-21749, September 29, 1967. See also Perez v. Araneta, G.R. No. L-18414, July 15, 1968 and the cases cited herein.

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