

**LUIS, BUENAVENTURA, ANTONIO AND DANIEL CASTRO,
PETITIONERS, VS. THE AUDITOR GENERAL OF THE REPUBLIC OF
THE PHILIPPINES, RESPONDENT.***G.R. No. L-22403. October 31, 1968*

Ponente: REYES, J.B.L., J.

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The petitioners Castro, heirs of the late Daniel T. Tirona of Dalahican, Cavite, sought from the authorities compensation for two lots (No. 5 of Transfer Certificate of Title No. 1709 and No. 6 of Transfer Certificate of Title No. 442) totalling 12,045 square meters, which are occupied by the National Government and form part of the national highway from Noveleta to Cavite City. This road was built as far back as 1917. At that time the land was part of that covered by Original Certificates of Title Nos. 168, 48 and 443, issued in 1916 in the name of Daniel T. Tirona, who died in 1939.

It is undisputed that no annotation in favor of the government appears at the back of the original certificates. Lot No. 5, assessed at P570.00, and Lot No. 6, assessed at P3,290.00, are covered by corresponding Tax Declarations in the name of Tirona's heirs, who have paid the real estate taxes thereon up to the present. No deed of conveyance to the Government by the registered owner or by his heirs appears to have been executed.

Sometime in 1952 (Appendix 12) the heirs complained to the District Engineer, Miguel Taña, for the non-payment of their lots occupied by the national road. Negotiations for the execution of a right of way agreement were made, but the parties could not agree on the terms. Later in 1960, the claim was submitted to the Auditor General.

The Auditor General, in a decision dated 9 March 1963, rejected the claim on the ground that (a) it is to be presumed that previous consent of the original owner had been obtained and the value of the land used was paid to him, such being the regular course of business; (b) that if no payment had been made, the claim had already prescribed. Hence, this appeal.

We find that the Auditor General's decision suffers from legal infirmities, and may not be sustained.

The presumption of regularity is not applicable, because the land having been registered under the Torrens system since 1916, no conveyance can affect it without proper recording thereof and its being entered in the office of the Register of Deeds,^[1] and annotated in the back of the Certificate of Title. Admittedly, no such entry or annotation appears. The Register of Deeds of Cavite so certifies (Record on Appeal, pages 17 and 18). This is corroborated by the fact that the portions occupied by the highway are still covered by Certificates in the name of the heirs of the original owner.

If the land was ever conveyed to the Government by way of sale, the regular course of business is for the deed of conveyance to be recorded, in which event the registered deed would show whether payment was made or not. This is ordinary usage of which the Court can take judicial cognizance. The same remarks apply if the land was

gratuitously conveyed: for by law no donation of immovable property could be valid between the parties unless made to appear in a public document,[2] and, pursuant to the Land Registration Act, such document ought, likewise, to be recorded in order to affect the land. The absence of any record of a conveyance of the land by the registered owner, therefore, rebuts the presumption relied upon in the ruling under appeal. It may be that, in fact, the conveyance was executed but not recorded. But such conduct would be abnormal and irregular, so that the burden of proving the existence of the conveyance and the payment of the price would be upon the Government.

Admittedly, the lapse of the prescriptive period would normally suffice to bar recovery. This Court, however, has recognized an exception to the rule, in those cases where the Government has taken possession of private registered lands without paying compensation. In such event, the duty to pay for the land subsists, regardless of the passage of time (*Herrera vs. Auditor General*, 102 Phil. 875; *Alfonso vs. Pasay City*, 106 Phil. 1017). In the last case mentioned, this Court decreed as follows:

"The present case finds its parallel in the recent case of *Herrera vs. Auditor General*, G. R. No. L-10776, decided by this Tribunal on January 23, 1958, where a registered owner of land in Quezon City was deprived of its possession when it was taken over by the city government for road purposes. The owner thereof made demands for the payment of his land, and although the City Attorney of Quezon City indorsed favorable action on the claim, however, the Auditor General rejected said claim on the ground of prescription. There, we held that registered lands are not subject to prescription, and that on grounds of equity, the government would pay for private property which it appropriates though for the benefit of the public, regardless of the passing of time. This Tribunal does not look with favor on the practice of the Government or any of its branches of taking away property from a private landowner, especially a registered one, without going through the legal process of expropriation or a negotiated sale and paying for said property without delay. The private owner is usually at a great and distinct disadvantage. He has against him the whole Government, central or local, that has occupied and appropriated his property summarily and arbitrarily, sometimes, if not more often, against his consent. There is no agreement as to its price or its rent. In the meantime, the landowner makes request for payment, rent, or even some understanding, patiently waiting and hoping that the Government would soon get around to hearing and granting his claim. The officials concerned may promise to consider his claim and come to an agreement as to the amount and time for compensation, but with the not infrequent government delay and red tape, and with the change in administration, specially local, the claim is pigeonholed and forgotten and the papers lost, mislaid, or even destroyed as happened during the last war. And when finally losing patience and hope, he brings a court action and hires a lawyer to represent him in the vindication of his valid claim, he faces the government represented by no less than the Solicitor General or the Provincial Fiscal or City Attorney, who blandly and with self-assurance, invoke prescription. The litigation sometimes drags on for years. In our opinion, that is neither just nor fair. When a citizen, because of this practice loses faith in the government and its readiness and willingness to pay for what it gets and appropriates, in the future said citizen would not allow the Government to even enter his property unless condemnation proceedings are first initiated, and the value of the property, as provisionally ascertained by the Court, is deposited, subject to his disposal. This would mean delay and difficulty for the Government, but all of its own making."

The applicability of the doctrine laid down in the *Herrera* and *Alfonso* cases was recognized by the Secretary of justice in his opinion of 28 December 1962, advising payment of the claim of the heirs of Miguel Malibás (Appendix 23). The Auditor General seeks to differentiate the case dealt with in said opinion from that of claimants herein by underlining the passage to the effect that "the claim may be entertained if the road in question was constructed . . . only several years after the issuance of the title". Unfortunately, the distinction is imaginary: for while the Noveleta-Cavite road was built in 1917, it is of record that the lands of the late Daniel Tirona were registered, and the original certificate thereto was issued in the previous year, 1916.

Nor is the appealed decision supported by the provisions of Republic Act 440, prescribing that the Certificates issued to landowners, as a result of the subdivision of their property, should be subject to the condition that the

lots covered by highways or roads marked on the subdivision plan "shall not be closed or disposed of, in any manner or form, without the prior approval of the Court". The reason is that the herein claimants, heirs of the late Daniel Tirona, are not closing off or disposing of lots 5 and 6, but only seek compensation for the taking of the lots designated in their certificates of title as forming part of the public highway.

Upon the facts, this Court is of the opinion that justice and equity demand that the Government should indemnify the landowners for the value of the land as of the time of the taking of the lots in question and reimburse the land taxes paid thereon since that time, the owners having been deprived of the enjoyment of the land.

The decision under appeal is, therefore, reversed, and the Government directed to pay to the claimants the assessed value of the lots in question in 1917 plus the amount of the land taxes heretofore paid by them upon the said lots. Without costs.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., on leave, did not take part.

[1] Act 496, section 50: ". . . The Act of registration shall be the operative act of affect the land, and in all cases under this Act the registration shall be made in the office of the register of deeds for the province or provinces or city where the land lies."

[2] Spanish Civil Code of 1889, Article 633, in force in 1917.

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