

THE PROVINCE OF ZAMBOANGA DEL NORTE, PLAINTIFF-APPELLEE, VS. CITY OF ZAMBOANGA, SECRETARY OF FINANCE AND COMMISSIONER OF INTERNAL REVENUE, DEFENDANTS-APPELLANTS.

G.R. No. L-24440. March 28, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Prior to its incorporation as a chartered city, the Municipality of Zamboanga used to be the provincial capital of the then Zamboanga Province. On October 12, 1936, Commonwealth Act 39 was approved converting the Municipality of Zamboanga into Zamboanga City. Sec. 50 of the Act also provided that ?

"Buildings and properties which the province shall abandon upon the transfer of the capital to another place will be acquired and paid for by the City of Zamboanga at a price to be fixed by the Auditor General."

The properties and buildings referred to consisted of 50 lots and some building constructed thereon, located in the City of Zamboanga and covered individually by Torrens certificates of title in the name of Zamboanga Province. As far as can be gleaned from the records,[1] said properties were being utilized as follows ?

No. of Lots Use

- 1 Capitol Site
- 3 School Site
- 3 Hospital Site
- 3 Leprosarium
- 1 Curuan School
- 1 Trade School
- 2 Burleigh School
- 2 High School Playground
- 9 Burleighs
- 1 Hydro-Electric Site (Magay)
- 1 San Roque
- 23 vacant

It appears that in 1945, the capital of Zamboanga Province was transferred to Dipolog.[2] Subsequently, or on

June 16, 1948, Republic Act 286 was approved creating the municipality of Molave and making it the capital of Zamboanga Province.

On May 26, 1949, the Appraisal Committee formed by the Auditor General, pursuant to Commonwealth Act 39, fixed the value of the properties and buildings in question left by Zamboanga Province in Zamboanga City at P1,294,2411.00.[3]

On June 6, 1952, Republic Act 711 was approved dividing the province of Zamboanga into two (2): Zamboanga del Norte and Zamboanga del Sur. As to how the assets and obligations of the old province were to be divided between the two new ones, Sec. 6 of the law provided:

"Upon the approval of this Act, the funds, assets and other properties and the obligations of the province of Zamboanga shall be divided equitably between the Province of Zamboanga del Norte and the Province of Zamboanga del Sur by the President of the Philippines, upon the recommendation of the Auditor General."

Pursuant thereto, the Auditor General, on January 11, 1955, apportioned the assets and obligations of the defunct Province of Zamboanga as follows: 54.39% for Zamboanga del Norte and 45.61% for Zamboanga del Sur. Zamboanga del Norte therefore became entitled to 54.39% of P1,294,244.00, the total value of the lots and buildings in question, or P704,220.05 payable by Zamboanga City.

On March 17, 1959, the Executive Secretary, by order of the President, issued a ruling[4] holding that Zamboanga del Norte had a vested right as owner (should be co-owner pro-indiviso) of the properties mentioned in Sec. 50 of Commonwealth Act 39, and is entitled to the price thereof, payable by Zamboanga City. This ruling revoked the previous Cabinet Resolution of July 13, 1951 conveying all the said 50 lots and buildings thereon to Zamboanga City for P1.00, effective as of 1945, when the provincial capital of the then Zamboanga Province was transferred to Dipolog.

The Secretary of Finance then authorized the Commissioner of Internal Revenue to deduct an amount equal to 25% of the regular internal revenue allotment for the City of Zamboanga for the quarter ending March 31, 1960, then for the quarter ending June 30, 1960, and again for the first quarter of the fiscal year 1960-1961. The deductions, all aggregating P57,373.46 was credited to the province of Zamboanga del Norte, in partial payment of the P704,220.05 due to it.

However, on June 17, 1961, Republic Act 3039 was approved amending Sec. 50 of Commonwealth Act 39 by providing that ?

"All buildings, properties and assets belonging to the former province of Zamboanga and located within the City of Zamboanga are hereby transferred, free of charge, in favor of the said City of Zamboanga." (Stressed for emphasis)

Consequently, the Secretary of Finance, on July 12, 1961, ordered the Commissioner of Internal Revenue to stop from effecting further payments to Zamboanga del Norte and to return to Zamboanga City the sum of P57,373.46 taken from it out of the internal revenue allotment of Zamboanga del Norte. Zamboanga City admits that since the enactment of Republic Act 3039, P43,030.11 of the P57,373.46 has already been returned to it.

This constrained plaintiff-appellee Zamboanga del Norte to file on March 5, 1962, a complaint entitled "Declaratory Relief with Preliminary Mandatory Injunction" in the Court of First Instance of Zamboanga del Norte against defendants-appellants Zamboanga City, the Secretary of Finance and the Commissioner of Internal Revenue. It was prayed that: (a) Republic Act 3039 be declared unconstitutional for depriving plaintiff province of property without due process and just compensation; (b) Plaintiff's rights and obligations under said law be declared; (c) The Secretary of Finance and the Internal Revenue Commissioner be enjoined from reimbursing the

sum of P57,373.46 to defendant City; and (d) The latter be ordered to continue paying the balance of P704,220.05 in quarterly installments of 25% of its internal revenue allotments.

On June 4, 1962, the lower court ordered the issuance of preliminary injunction as prayed for. After defendants filed their respective answers, trial was held. On August 12, 1963, judgment was rendered, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered declaring Republic Act No. 3039 unconstitutional in so far as it deprives plaintiff Zamboanga del Norte of its private properties, consisting of 50 parcels of land and the improvements thereon under certificates of titles (Exhibits 'A' to 'A-49') in the name of the defunct province of Zamboanga; ordering defendant City of Zamboanga to pay to the plaintiff the sum of P704,220.05, payment thereof to be deducted from its regular quarterly internal revenue allotment equivalent to 25% thereof every quarter until said amount shall have been fully paid; ordering defendant Secretary of Finance to direct defendant Commissioner of Internal Revenue to deduct 25% from the regular quarterly internal revenue allotment for defendant City of Zamboanga and to remit the same to plaintiff Zamboanga del Norte until said sum of P704,220.05 shall have been fully paid; ordering plaintiff Zamboanga del Norte to execute through its proper officials the corresponding public instrument deeding to defendant City of Zamboanga the 50 parcels of land and the improvements thereon under the certificates of title (Exhibits 'A' to 'A-49') upon payment by the latter of the aforesaid sum of P704,220.05 in full; dismissing the counterclaim of defendant City of Zamboanga; and declaring permanent the preliminary mandatory injunction issued on June 8, 1962, pursuant to the order of the Court dated June 4, 1962. No costs are assessed against the defendants.

"It is SO ORDERED."

Subsequently, but prior to the perfection of defendants' appeal, plaintiff province filed a motion to reconsider praying that Zamboanga City be ordered instead to pay the P704,220.05 in lump sum with 6% interest per annum. Over defendants' opposition, the lower court granted plaintiff province's motion.

The defendants. . . then brought the case before Us on appeal.

Brushing aside the procedural point concerning the propriety of declaratory relief filed in the lower court on the assertion that the law had already been violated and that plaintiff sought to give it coercive effect, since assuming the same to be true, the Rules anyway authorize, the conversion of the proceedings to an ordinary action,[5] We proceed to the more important and principal question of the validity of Republic Act 3039.

The validity of the law ultimately depends on the nature of the 50 lots and buildings thereon in question. For, the matter involved here is the extent of legislative control over the properties of a municipal corporation, of which a province is one. The principle itself is simple: If the property is owned by the municipality (meaning municipal corporation) in its public and governmental capacity, the property is public and Congress has absolute control over it. But if the property is owned in its private or proprietary capacity, then it is patrimonial and Congress has no absolute control. The municipality cannot be deprived of it without due process and payment of just compensation.[6]

The capacity in which the property is held is, however, dependent on the use to which it is intended and devoted. Now, which of two norms, i.e., that of the Civil Code or that obtaining under the law of Municipal Corporations, must be used in classifying the properties in question?

The Civil Code classification is embodied in its Arts. 423 and 424 which provide:

"ART. 423. The property of provinces, cities, and municipalities is divided into property for public use and patrimonial property."

"ART. 424. Property for public use, in the provinces, cities, and municipalities, consists of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.

"All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws." (Stressed for emphasis)

Applying the above cited norm, all the properties in question, except the two (2) lots used as High School playgrounds, could be considered as patrimonial properties of the former Zamboanga province. Even the capitol site, the hospital and leprosarium sites, and the school sites will be considered patrimonial for they are not for public use. They would not fall under the phrase "public works for public service" for it has been held that under the ejusdem generis rule, such public works must be for free and indiscriminate use by anyone, just like the pre-ceding enumerated properties in the first paragraph of Art. 424.[7] The playgrounds, however, would fit into this category.

This was the norm applied by the lower court. And it cannot be said that its actuation was without jurisprudential precedent for in *Municipality of Catbalogan v. Director of Lands*,[8] and in *Municipality of Tacloban v. Director of Lands*,[9] it was held that the capitol site and the school sites in municipalities constitute their patrimonial properties. This result is understandable because, unlike in the classification regarding State properties, properties for public service in the municipalities are not classified as public. Assuming then the Civil Code classification to be the chosen norm, the lower court must be affirmed except with regard to the two (2) lots used as playgrounds.

On the other hand, applying the norm obtaining under the principles constituting the law of Municipal Corporations, all those of the 50 properties in question which are devoted to public service are deemed public; the rest remain patrimonial. Under this norm, to be considered public, it is enough that the property be held and devoted for governmental purposes like local administration, public education, public health, etc.[10]

Supporting jurisprudence are found in the following cases: (1) *HINUNANGAN v. DIRECTOR OF LANDS*,[11] where it was stated that "x x x where the municipality has occupied lands distinctly for public purposes, such as for the municipal court house, the public school, the public market, or other necessary municipal building, we will, in the absence of proof to the contrary, presume a grant from the State in favor of the municipality; but, as indicated by the wording, that rule may be invoked only as to property which is used distinctly for public purposes. x x x" (2) *VIUDA DE TANTOCO v. MUNICIPAL COUNCIL OF ILOILO*[12] held that municipal properties necessary for governmental purposes are public in nature. Thus, the auto trucks used by the municipality for street sprinkling, the police patrol automobile, police stations and concrete structures with the corresponding lots used as markets were declared exempt from execution and attachment since they were not patrimonial properties. (3) *MUNICIPALITY OF BATANGAS v. CANTOS*[13] held squarely that a municipal lot which had always been devoted to school purposes is one dedicated to public use and is not patrimonial property of a municipality.

Following this classification, Republic Act 3039 is valid insofar as it affects the lots used as capitol site, school sites and its grounds, hospital and leprosarium sites and the high school playground sites - a total of 24 lots - since these were held by the former Zamboanga province in its governmental capacity and therefore are subject to the absolute control of Congress. Said lots considered as public property are the following:

TCT Number Lot Number Use

2200

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4-B

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Capitol Site

2816

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149

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School Site

3281

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1224

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Hospital Site

3282

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1226

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Hospital Site

3283

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1225

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Hospital Site

3748

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434-A-1

.....

School Site

5406

.....

171

.....

School Site

5564

.....

168

.....

High School

Playground

5567

.....

157 & 158

.....

Trade School

5583

.....

167

.....

High School

Playground

6181

(O.C.T)

.....

Curuan School

11942

.....

926

.....

Leprosarium

11943

.....

927

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Leprosarium

11944

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925

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Leprosarium

5557

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170

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Burleigh School

5562

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180

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Burleigh School

5565

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172-B

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Burleigh

5570

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171-A

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Burleigh

5571

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172-C

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Burleigh

5572

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174

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Burleigh

5573

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178

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Burleigh

5585

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171-B

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Burleigh

5586

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173

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Burleigh

5587

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172-A

.....

Burleigh

We noticed that the eight Burleigh, lots above describe are adjoining each other and in turn are between the two lots wherein the Burleigh schools are built, as per records appearing herein and in the Bureau of Lands. Hence, there is sufficient basis for holding that said eight lots constitute the appurtenant grounds of the Burleigh schools, and partake of the nature of the same.

Regarding the several buildings existing on the lots above-mentioned, the records do not disclose whether they were constructed at the expense of the former Province of Zamboanga. Considering however the fact that said buildings must have been erected even before 1936 when Commonwealth Act 39 was enacted and the further fact that provinces then had no power to authorize construction of buildings, such as those in the case at bar at their own expense,[14] it can be assumed that said buildings were erected by the National Government, using national funds. Hence, Congress could very well dispose of said buildings in the same manner that it did with the lots in question.

But even assuming that provincial funds were used, still the buildings constitute mere accessories to the lands, which are public in nature, and so, they follow the nature of said lands, i.e., public. Moreover, said buildings, though located in the city, will not be for the exclusive use and benefit of city residents for they could be availed of also by the provincial residents. The province then - and its successors-in-interest -are not really deprived of the benefits thereof.

But Republic Act 3039 cannot be applied to deprive Zamboanga del Norte of its share in the value of the rest of the 26 remaining lots which are patrimonial properties since they are not being utilized for distinctly governmental purposes. Said lots are:

TCT Number Lot Number Use

5577

.....

177

.....

Mydro, Magay

13198

.....

127-D

.....

San Roque

5569

.....

169

.....

Burleigh[15]

5558

.....

175

.....

Vacant

5559

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188

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5560

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183

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5561

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186

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5563

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191

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5566

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176

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5568

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179

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5574

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196

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5575

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181-A

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5576

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181-B

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5578

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182

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5579

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197

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5580

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195

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5581

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159-B

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5582

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194

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5584

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190

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5588

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184

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5589

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187

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189

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192

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193

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5593

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185

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7379

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4147

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Moreover, the fact that these 26 lots are registered strengthens the proposition that they are truly private in nature. On the other hand, that the 24 lots used for governmental purposes are also registered is of no significance since registration cannot convert public property to private.[16]

We are more inclined to uphold this latter view. The controversy here is more along the domains of the Law of Municipal Corporations - State vs. Province - than along that of Civil Law. Moreover, this Court is not inclined to hold that municipal property held and devoted to public service is in the same category as ordinary private property. The consequences are dire. As ordinary private properties, they can be levied upon and attached. They can even be acquired thru adverse possession - all these to the detriment of the local community. Lastly, the classification of properties other than those for public use in the municipalities as patrimonial under Art. 424 of the Civil Code is "x x x without prejudice to the provisions of special laws." For purposes of this article, the principles obtaining under the Law of Municipal Corporations can be considered as "special laws". Hence, the classification of municipal property devoted for distinctly governmental purposes as public should prevail over the Civil Code classification in this particular case.

Defendants' claim that plaintiff and its predecessor-in-interest are guilty of laches is without merit. Under Commonwealth Act 39, Sec. 50, the cause of action in favor of the defunct Zamboanga Province arose only in 1949 after the Auditor General fixed the value of the properties in question. While in 1951, the Cabinet resolved to transfer said, properties practically for free to Zamboanga City, a reconsideration thereof was seasonably sought. In 1952, the old province was dissolved. As successor-in-interest to more than half of the properties

involved, Zam-boanga del Norte was able to get a reconsideration of the Cabinet Resolution in 1959. In fact, partial payments were effected subsequently and it was only after the pass-age of Republic Act 3039 in 1961 that the present contro-versy arose. Plaintiff brought suit in 1962. All the foregoing, negative laches.

It results then that Zamboanga del Norte is still entitled to collect from the City of Zamboanga the for-mer's 54.39% share in the 26 properties which are patri-monial in nature, said share to be computed on the basis of the valuation of said 26 properties as contained in Resolution No. 7, dated March 26, 1949, of the Appraisal Committee formed by the Auditor General.

Plaintiff's share, however, cannot be paid in lump sum, except as to the P43,030.11 already returned to de-fendant City. The return of said amount to defendant was without legal basis. Republic Act 3039 took effect only on June 17, 1961 after a partial payment of P57,373.46 had already been made. Since the law did not provide for retroactivity, it could not have validly affected a com-pleted act. Hence, the amount of 743,030.11 should be im-mediate-ly returned by defendant City to plaintiff province. The remaining balance, if any, in the amount of plain-tiff's 54.39% share in the 26 lots should then be paid by defendant City in the same manner originally adopted by the Secretary of Finance and the Commissioner of Internal Revenue, and not in lump sum. Plaintiff's prayer, particularly pars. 5 and 6, read together with pars. 10 and 11 of the first cause of action recited in the complaint¹⁶ clearly shows that the relief sought was merely the conti-nuance of the quarterly payments from the internal revenue allotments of defendant City. Art. 1169 of the Civil Code on reciprocal obligations invoked by plaintiff to justify lump sum payment is inapplicable since there has been so far in legal contemplation no complete delivery of the lots in question. The titles to the registered lots are not yet in the name of defendant Zamboanga City.

WHEREFORE, the decision appealed from is hereby set aside and another judgment is hereby entered as follows:

(1) Defendant Zamboanga City is hereby ordered to return to plaintiff Zamboanga del Norte in lump sum the amount of P43,030.11 which the former took back from the latter out of the sum of P57,373.46 previously paid to the latter; and

(2) Defendants are hereby ordered to effect payments in favor of plaintiff of whatever balance remains of plain-tiff's 54.39% share in the 26 patrimonial properties, af-ter deducting therefrom the sum of P57,373.46, on the ba-sis of Resolution No. 7 dated March 26, 1949 of the Apprai-sal Committee formed by the Auditor General, by way of quarterly payments from the allotments of defendant City, in the manner originally adopted by the Secretary of Fi-nance and the Commissioner of Internal Revenue. No costs.

SO ORDERED.

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., on leave.

[1] See Record on Appeal, pp. 4-6.

[2] See Exhibit C.

[3] The Committee report itself was not submitted as evidence.

[4] Exhibit C.

[5] Rule 62, Sec. 6, Rules of Court.

[6] 2 McQuillin, Municipal Corporations, 3rd. ed., 191-196; Martin, Public Corporations, 5th ed., 31-32;

Gonzales, Law on Public Corporations, 1962 ed., 29-30, Municipality of Naguilian v. NWSA L-18452, Nov. 29, 1963.

[7] Cebu City v. NWSA, G.R. No. L-12892, Apr. 30, 1962.

[8] 17 Phil. 216.

[9] 17 Phil. 426.

[10] Martin, op. cit., supra; Gonzales, op. cit., supra.; 62 C. J.S, 437-349.

[11] 24 Phil. 124.

[12] 49 Phil. 52.

[13] 91 Phil. 514.

[14] It was only in Republic Act 2264, Sec. 3, last paragraph, that provinces, cities and municipalities were "x x x authorized to undertake and carry out any public works projects, financed by the provincial, city and municipal funds or any other fund borrowed from or advanced by private third parties x x x without the intervention of the Department of Public Works and Communications." (Stressed for emphasis) This law was approved and took effect of June 19, 1959.

[15] This could not be considered as forming part of the appurtenant grounds of the Burleigh school sites since the records here and in the Bureau of Lands show that this lot is set apart from the other Burleigh lots.

[16] Republic v. Sioson, G.R. No. L-13687, Nov. 29, 1963; Hodges v. City of Iloilo, G.R. No. L-17573, June 30, 1962.

17 Record on Appeal, pp. 8-9, 13.

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