

CITY OF MANILA, PETITIONER-APPELLEE, VS. TARLAC DEVELOPMENT CORPORATION, OPPOSITOR-APPELLANT.

G.R. No. L-24557. July 31, 1968

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

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REYES, J. B. L. J.:

The above-numbered cases are separate appeals from the order, dated 19 November 1964, of Branch IV of the Court of First Instance of Manila directing the Register of Deeds for the City of Manila to reannotate entry No. 4608/T-1635 on Transfer Certificate of Title No. 73444 issued in the name of appellant Tarlac Development Corporation (hereinafter referred to as "Tarlac", for short) and entry No. 18115/T-9332 on Transfer Certificate of Title No. 51988 issued in the name of the appellant Army and Navy Club of Manila, Inc. The third appellant is Manila Lodge No. 761, Benevolent and Protective Order of Elks of the United States, Inc. (hereinafter referred to as "BPOE", for short), which, as vendor, has privity of contract with Tarlac.

The two (2) parcels of land described and embraced in the aforesaid certificates of title were reclaimed from the Bay of Manila and given to the City of Manila by authority of Act 1360, enacted on 26 June 1905, by the Philippine Commission; Subsequently, these parcels were brought under the operation of the Land Registration Act, in the name of the City, per its Original Certificate of Title No. 1909.

On 13 July 1911, the City of Manila conveyed one of these parcels to BPOE, subject to the following conditions:

"La venta de la parcela de terreno del presente Certificado se hizo bajo estas condiciones: que dicha parcela de terreno con las mejoras levantadas en la misma estaran exentas de contribucion por un periodo de diez años desde el 20 de febrero de 1909; que la Ciudad de Manila completara el rompeolas adyacente a dicha parcela incluyendo una covertedura apropiada, tambien adyacente a la misma, y la conservara siempre en buen estado de reparacion sin gastos por parte de la entidad compradora; que dicha Ciudad de Manila no permitira que se establezca un desembarcadero publico en el rompeolas que hay en frente y cerca de dicha propiedad; y que la Ciudad de Manila tendra derecho, a su opcion, de recomprar la exprecada propiedad pare fines publicos solamente en cualquier tiempo despues de cincuenta años desde el 13 de Julio de 1911, previo pago a la entidad compradora sus sucesores, del precio de la yenta de la misma propiedad, mas el valor que entonces tengan las mejoras."

The foregoing conditions were annotated as entry No. 4608/T-1635 in the transferee's Transfer Certificate of Title Nos. 2195 and 67488.

On 20 September 1918, the City of Manila also conveyed the second parcel to the Army and Navy Club of Manila, subject to the following conditions:

"La venta, cesion o traspaso de la finca a que se contrae presente Certificado, hecha por la Ciudad de Manila a favor de la entidad "Army and Navy Club", esta sujeta a las siquientes condiciones y estipulaciones; 1.- Que expresada finca con las mejoras existentes en la misma estara exenta de contribucion por el periodo de 10 años desde la fecha en que el ingeniero de la Ciudad certifique que dicha propiedad estaria dispuesta para fines de edificacion. 2.- Que la Ciudad de Manila no permitira que se construya desembarcadero en el muro de

contension frente y contiguo a dicha finca o percale de terreno. 3. - Que esta propiedad o parcela de terreno se usara para fines de club solamente y solo por clubs de indole social o recreativa y por las personas y para los fines que aprueba el Secretario de Guerra o por el funcionario de los EE. UU. que entonces tenga el control administrativo de las Islas Filipinas que corresponda al del Secretario de Guerra. 4.- Que la Ciudad de Manila tendra de opcion de recomprar dicha parcela de terreno para fines publicos solamente en cualquier tiempo despues de 50 años desde el 20 de. Septiembre de 1918, previo pago el 'Army and Navy Club' del precio de compra de P31,168.49 mas el valor que entonces tengan las mejoras."

The, foregoing conditions were annotated as entry No. 18115/T-9332 in the club's Transfer Certificate of Title No. 9332.

The charter of the Army and Navy Club expired on 25 June 1958 and its members formed the American Club, Inc., which was later re-named as the Army and Navy Club of Manila, Inc. Transfer Certificate of Title No. 9332 was thus cancelled and replaced by Transfer Certificate of Title No. 51988 in the name of the new corporation and entry No. 18115/T-9332 was carried over to the new certificate of title.

On 14 April 1961, then Mayor Arsenio Lecson of Manila advised the BPOE that the City of Manila will exercise its right to repurchase the land covered by transfer Certificate of Title No. 2195. In June of the same year, he requested the city fiscal to institute the proper court action to compel the BPOE to reconvey the land. The city fiscal, however, believed that the City did not have any cause of action, because, in his opinion, the right of the City to reacquire the property could not extend beyond 10 years from and after the original conveyance, as provided by Article 1508 of the Civil Code.

On 15 January 1963, BPOE filed a petition for the cancellation of the right of the City to repurchase the property as annotated in Transfer Certificate of Title No. 67488 (this new number was occasioned by transfer of title from Elks Club). The Army and Navy Club also filed a similar petition on 13 April 1963. Both the petitioners invoked the opinion of the city fiscal that Manila can no longer exercise the option. Despite notice to it, the City of Manila did not appear or oppose the petitions for cancellation. The lower court granted the petitions and the Register of Deeds made the corresponding entries of cancellation.

On 9 November 1963, BPOE, supposedly a non-profit entity, sold the parcel of land that it held to Tarlac Development Corporation for P4,700,000.00, under certain conditions.

On 10 June 1964, the City of Manila filed two petitions for the reannotation of the entries that were ordered cancelled and, after hearing, the court issued the order of 19 November 1964 granting the petitions. This order is now contested in these appeals.

I - On Entry No. 4608/T-1635 (T. C. T. Nos. 2195 and 67488 and T. C. T. No. 73444):

The cardinal point of attack against the order of the court below, dated 19 November 1964, requiring reannotation of the entries ordered deleted by the previous order of 15 February 1963 on the above numbered certificates, is the alleged finality and conclusiveness of the latter order. Both the BPOE and the Tarlac Development Corporation contend that the 1963 order of deletion constitutes *res judicata*.

There are at least two reasons why this claim can not be sustained:

(a) The record before us clearly establishes that the order of deletion of the entries in question was the result of the concordant positions of the city officers and the appellant entity, BPOE (petitioner in 1963), concerning the supposed lapse of the stipulation providing for the optional reacquisition by the City of Manila of the land conveyed to the appellants, and its improvements, after fifty year from the original conveyance (in 1911) at the price stated. Both the City and the appellant in 1963 entertained the view that this stipulation was void in so far as

it exceeded the ten-year period fixed for repurchase in sales a retro by Article 1508 of the Spanish Civil Code of 1889, then in force (Now Article 1606 of the new Civil Code). This conformity of views, expressly pleaded in the petition to cancel (Record on Appeal, pages 14-18), led the City not to file any opposition to the appellant's petition for an order to delete the entry of the City's option, as annotated in their certificates of title. The court's 1963 order granting such deletion was, in fact and in law, a Judgment by consent. This is apparent from the last portion of the order. (Rec. on Appeal, p. 21).

" and further considering that it is the official opinion of the City Fiscal that the City has no cause of action against petitioner for the repurchase of said property as embodied in Opinion No. 14, Series of 1962 (Annex "B"), so that the City of Manila deemed it unnecessary to file any opposition in spite of having been furnished with a copy of the above-entitled petition, said pe-tition is hereby granted."

But the rule is clear, and it is supported by abundant authority, that a consent decree, in which the officials of a municipality assume obligations not authorized by law, is null and void (*Kelley vs. Milan*, 32 L. Ed. 77; *Slayton vs. Crittenden Country*, 284 Fed. 293; *State ex rel. St. Paul vs. Great Northern Ry Co.*, 158 N. W. 335; *St. Paul vs. Chicago, etc. Ry Co.*, 166 N. W. 335; *State ex rel. Bradway vs. De Mattos*, 152 Pac. 721; *Coolsaat vs. Veblen*, 226 N. W. 726).

Thus, the fact that, by consent of the municipal officers, an agreement or stipulation made by them has been put in the form of a judgment, in an effort to give it the force and effect of a judgment, does not cure a lack of power in the officers to make it, and if such power is lacking, the judgment as well as the stipulation is void (*St. Paul v. Chicago, St. P. M. & O. R. Co.* (1918) 139 Minn. 322, 166 N. W. 335). And it has been held that as a contract by which a city agrees with a railroad company that the city is to maintain and keep in repair a bridge over the tracks of the railroad is void as an attempt to take from the city a part of its police power to compel a railway company to construct and maintain a bridge for the purpose of carrying a street over its tracks when necessary for the public safety, of which the city cannot divest itself by contract or otherwise, such an invalid contract is not validated by a judgment consented to by the municipality, expressly stipulating that such a contract is valid and binding (*State ex rel. St. Paul v. Great Northern R. Co.* (1916) 134 Minn. 249, 158 N. W. 972; *St. Paul v. Chicago, St. P. M. & O. R. Co.* (1918) 139 Minn. 322, 166 N. W. 335).

"(8) Authority is not wanting to the effect that judgments entered against municipalities on consent of the municipal authorities are not res judicata as to the authority or power to consent, and that such want of power or authority to consent may always be shown to avoid the judgment whenever, as here, the record shows that it was entered on consent.

'Consent judgments, are in effect, merely contracts of parties, acknowledged in open court, and ordered to be recorded. As such, they bind the parties themselves thereto as fully as other judgments; but, when parties act in a representative capacity, such judgments do not bind the cestuis qua trustent, unless the trustees had authority to act; and when (as in the present case) the parties to the action, the town authorities, had, as appears above, no authority to issue the bonds, their honest belief, however great, that they had such power, would not authorize them to acquire such power, and bind the town by consenting to a judgment. It is not a question of a fraudulent judgment, but a void judgment for want of authority to consent to a decree to bind principals (the tax-payers) for whom they had no authority to create an indebtedness by consenting to a judgment any more than they would have had by issuing bonds. If authorized to create the indebtedness, either the bonds or the consent judgment would be equally an estoppel, but, as they had no such authority, neither bonds nor judgment is binding on the tax-payers.' *Union Bank of Richmond v. Oxford*, 119 N. C. 214, 226, 25 S. E. 966, 969, 34 L. R. A. 487, 490.

See, also, *Kane v. Independent School Dist.*, 82 Iowa, 5, 47 N. W. 1076; *Smith v. Broderick*, 107 Cal. 644, 40 Pac. 1033, 48 Am. St. Rep 167; *Oxford v. Union Bank of Richmond*, 96 Fed. 293, 37 C. O. A. 493.

The same rule has been applied by the Supreme Court of the United States in favor of a stockholder of a private corporation who was sued under a Kansas statute by a creditor for in order to collect a judgment rendered against a corporation. The stockholder was permitted to go behind the judgment and show a want of power in the corporation to make the contract on which the judgment rested. *Ward v. Joslin*, 186 U. S. 142, 22 Sup. Ct. 807, 46 L. Ed. 1093." (*State vs. De Mattos*, 152 Pac. Rep., pages 72 5-726)

Did the officials of the City of Manila have power and authority to agree to the deletion of the entry in appellant's certificates of title, and eliminate therefrom the right reserved to the City to repurchase the land in question "for public purposes only" at any time after 50 years from 13 July 1911, upon payment for the buyer or its successors of the original price of the sale of the land plus the value of the improvements?

This question requires a closer look at the nature of the right thus reserved to the City. Contrary to the views expressed by the appellant, the continued existence of the City's authority to reacquire the property "for public purpose only" (sic) any time after 13 July 1961 is not debatable: for such authority is nothing more than the City's right to exercise the power of eminent domain, which the City of Manila can not be deprived of. It does not arise from contract, nor can it be barred by prescription. In fact, it would exist without any reservation or stipulation at all.

The more important part in the deleted stipulation is the right of the City of Manila not to pay for the land more than the price at which it was originally sold to the BPOE in 1911, disregarding market values at the time of condemnation. The elimination of this part of the contractual reservation in favor of the City commits the latter to pay the actual market value of the land at the time of expropriation. Considering the uninterrupted rise in real estate values, it can be readily seen that by consenting to the deletion of the annotation the City of Manila was made, in effect, to donate to the BPOE, or its successor-in-interest, *Tarlac Development Corporation*, the difference between the original price at which the land was sold to the BPOE in 1911 and the market price of the land at the time the City decided to reacquire it for public purposes. It requires no argument to show that the City executive officers had no power to bind the City to a stipulation so unfavorable to its interests, and so prejudicial to its taxpayers.

"The court found, and so do we, that the city of-ficials, in consenting to the judgment were actuated by no bad motive. But the court also found, and so do we, that they so far exceeded their powers, as to taint the settlement and judgments with constructive fraud, and this, though less reprehensible, can be no less fatal to the validity of the judgment than actual fraud." (*State ex rel. Bradway vs. De Mattos*, 88 Wash. 35, 152 Pac. 721)

That neither in the petition nor in the order to delete the annotation in question is any mention or reference made to the disastrous consequences for the City of the action asked for, as above adverted to, no, to the fact that the City's right to reacquire the lot sold to the BPOE for public purposes was no other than the sovereign power of eminent domain, a power in-alienable and imprescriptible, is eloquent proof that the Court, in granting the petition to delete relied primarily, if not exclusively, on the assent thereto of the City authorities, and that the decree granting the petition to delete was nothing but a judgment by consent. Under the circumstances above discussed we have no other alternative but to declare the order of deletion null and void. Hence, it can not be considered conclusive on any subsequent proceedings.

(b) A further reason for this Court to deny the effect of *res judicata* to the 1963 order to delete from the certificates of title of the BPOE re annotation of the City's right to repurchase the property under the condition specified in the original deed of conveyance lies in the fact that proceeding under Section 112 of the Land Registration Act presuppose unanimity among the parties;^[1] hence, the said 1963 order of the Land Registration Court lacks the quality of being an adjudication on the merits of a controversy, that is in essential re-quisite of *res judicata* (Rule 39, section 49), since there was no controversy resolved by the Court. And this was never truer than in the case at

bar, where the decree of cancellation of the entry was, in fact, the result of an agreement between the parties, being a judgment by consent, as previously shown.

(c) In *Saminiada vs. Mata*, 92 Phil. 425, 431-462, this Court, following American authorities, ruled that an agreement or settlement between the parties, even if sanctioned by the decree of a court, does not give to such decree the character of *res judicata*. And this is particularly true in the present case, where the agreement concerned a question of law, to wit, the validity or invalidity in 1963 of the right reserved to the City of Manila.

Upon the other hand, it is argued on behalf of the appellant BPOE, and its transferee Tarlac Development Corporation, that the 1964 order to reannotate the former entries in their certificates of title could not be decreed in proceedings under Section 112 of Act 496 (the Land Registration Law) for lack of jurisdiction, because the proposed reannotation had been controverted by them and the jurisprudence of this Court is to the effect that lack of unanimity between the parties bars any action by the Court of Land Registration under the section aforesaid. This contention might have carried weight if the parties had not discussed and extensively argued on the merits of the petition to reannotate. Instead of confining themselves to the jurisdictional question, appellants went on to discuss the nature of the title of the City of Manila to the land composing the Luneta Extension; whether or not said lots were property of public use (or of public service), or whether it was patrimonial property of the City; and whether the 1911 contract with the City vested upon appellant BPOE a title in fee simple or merely a temporary right of usufruct over the land in question. In *Aglipay vs. Reyes*, L-12776, 23 March 1960, and *Franco, et al. vs. Monte de Piedad*, L-17610, 22 April 1963, this Supreme Court ruled that where the parties have acquiesced in submitting the issues for determination on the merit on registration proceedings under Section 112 aforesaid, and they are given full opportunity to present their respective sides of the controversy, then the Land Registration Court, being itself a court of first instance, may validly hear and determine issues otherwise litigable only in ordinary civil actions.

At any rate, since the 1963 order to cancel the entry originally annotated on the back of the certificates of title of appellant BPOE reserving the right of the City of Manila to reacquire the property after 50 years from the original conveyance to said appellant was, and is, null and void, as previously shown, such nullity should necessarily result in the re-annotation of the deleted entries on said certificates of title of the BPOE, as well as on the other transfer certificates derived therefrom, including that of the Tarlac Development Corporation, as transferee of the BPOE, subject to the right of said Development Corporation to sue for cancellation of the annotation on its own certificates (T. C. T. No. 73444 of Manila) as herein-after reserved.

II - On Entry No. 18115/T-9332 (T. C. T. Nos. 9332 and 51988):

What has been stated concerning the invalidity of the 1963 order of the Land Registration Court decreeing the cancellation of the annotation of the rights of the City of Manila on Certificates of Title Nos. 2195 and 67488 of the BPOE applies with equal force, and for the same reasons, to the order of the same court cancelling the annotations on Certificates of Title Nos. 9332 and 51988 of the Army and Navy Club of Manila, appellant in G. R. No. L-24481. The same issues were raised, and the resulting legal situation is identical. Hence the subsequent order of reannotation must also be sustained in this case.

III - Rights of the Tarlac Development Corporation:

Whether the Tarlac Development Corporation is entitled to hold the property (covered by T. C. T. No. 73444) free from the reserved rights of reacquisition of the City of Manila, on account of its claim of being a purchaser in good faith, involves essentially a question of fact. The appellee, City of Manila, has assailed the good faith of this transferee, pointing out that the Luneta Extension is a park, and, therefore, not patrimonial property of the City and that the description of the property in the certificates of Tarlac and its predecessor, BPOE, clearly

describe it as a part of the Luneta Extension, thereby placing its acquirers upon inquiry. Whether such is the fact and whether the particular lot was turned over to the City of Manila as property for public use; under what authority the City entered into the contract of 13 July 1911 if the lands were not patrimonial property of said City and other related questions are not fully elucidated in the proceedings now before us, and would be best litigated in another controversial proceeding, where Tarlac may, likewise, raise the question of its rights against its vendor, the BPOE, should it ultimately be declared that the City of Manila is still entitled to compel Tarlac to resell the property to it under the terms and conditions reserved in the original 1911 deed of sale by the City. For this purpose, the right is reserved to Tarlac Development Corporation to initiate a distinct action where its rights may be fully clarified and determined; but the reannotation order should be made effective on Tarlac's Certificate of Title No. 73444, as a preventive measure to protect the eventual rights of the City of Manila against the claims of future transferee.

FOR THE FOREGOING CONSIDERATIONS, the appealed orders of the Land Registration Court decreeing the reannotation of Entry No. 4608/T-1635 on Transfer Certificates of Title Nos. 67438 and 73144, and Entry No. 18115/T-9332 on Transfer Certificate of Title No. 51988, all of the office of the Register of Deeds of Manila, are hereby affirmed, subject only to the right reserved to the appellant, Tarlac Development Corporation, to bring another action for the clarification of its rights, as stated in the body of this opinion. Costs against the appellants.

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

[1] V. Castillo vs. Ramos, 78 Phil. 809; Miraflor vs. Leaño & Miraflor, 93 Phil. 466.

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