

THE MUNICIPALITY OF PAOAY, ILOCOS NORTE, PETITIONER, VS. TEODORO MANAOIS AND EULOGIO F. DE GUZMAN, JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, RESPONDENTS.

G.R. No. L-3485. June 30, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Teodoro Manaois having obtained a judgment against the Municipality of Paoay, Ilocos Norte in Civil Case No. 8026 of the Court of First Instance of Pangasinan, Judge De Guzman of said province issued a writ of execution against the defendant Municipality. In compliance with said writ the Provincial Sheriff of Ilocos Norte levied upon and attached the following properties:

"(1) The amount of One thousand seven hundred twelve pesos and one centavo (P1,712.01) in the , Municipal Treasury of Paoay, Ilocos Norte, representing the rental paid by Mr, Demetrio Tabije of a fishery lot belonging to the defendant municipality;

"(2) About forty fishery lots leased to thirty-five different persons by the Municipality.

On July 26, 1949, the Provincial Fiscal of Ilocos Norte in representation of the Municipality of Paoay. filed a petition in the Court of First Instance of Pangasinan asking for the dissolution of that attachment or levy of the properties above-mentioned. Judge De Guzman in his order of October 6, 1949, denied the petition for the dissolution of the attachment; a motion for reconsideration was also denied. Instead of appealing from that order the municipality of Paoay has filed the present petition for certiorari with writ of preliminary injunction, asking that the order of respondent Judge dated October 6, 1949, be reversed, and that the attachment of the properties of the municipality already mentioned be dissolved.

The petitioner goes on the theory that the properties attached by the Sheriff for purposes of execution are not subject to levy because they are properties for public use. It is therefore necessary to ascertain the nature and status of said properties and for this purpose, we have to go back a few years, specifically, to the year 1937.

It seems that the municipality of Paoay is and for many years has been operating or rather leasing fishery lots on municipal waters. These waters have been parceled out in lots, either singly or in groups and let out or rented after public bidding to the highest bidders, ordinarily, for a year, but sometimes, for a longer period of time. On April 4, 1937, the municipality of Paoay entered into a contract with one Francisco V. Duque for the lease of fishery lots 3, 4, 5, 6, 7, and 8 at a rental of P1,218.79 per annum, for a period of four years from January 1, 1937 to December 31, 1940. In 1938, the Municipal Council of Paoay approved a resolution confiscating said six fishery lots on the ground that Duque had failed to comply with the terms of the lease contract. Thereafter, the Municipality advertised the lease of its fishery lots for public bidding, including the lots above-mentioned. Teodoro Manaois being the highest bidder for said lots 3 to 8, was awarded the lease thereof as per resolution of the Municipal Council of Paoay of December 1, 1938. On January 1, 1939, Manaois paid P2,025 as rental for the said lots for the year 1939. However, when Manaois and his men tried to enter the property in order to exercise

his right as lessee and to catch fish, particularly bangos fry, he found therein Duque and his men who claimed that he (Duque) was still the lessee, and despite the appeal of Manaois to the Municipality of Paoay to put him in possession and the efforts of the Municipality to oust Duque, the latter succeeded in continuing in his possession and keeping Manaois and his men out. Manaois brought an action against the Municipality of Paoay to recover not only the sum paid by him for the lease of the fishery lots but also damages. He obtained judgment in his favor in June, 1940 in the Court of First Instance of Pangasinan, Civil Case No. 8026, which decision has long become final. The writ of execution and the attachment and levy mentioned at the beginning of this decision were issued and effected to enforce the judgment just mentioned.

There can be no question that properties for public use held by municipal corporations are not subject to levy and execution. The authorities are unanimous on this point. This Court in the case of *Viuda de Tantoco vs. Municipal Council of Iloilo*, (49 Phil. 52) after citing *Manresa*, the works of *McQuillin* and *Dillon on Municipal Corporations*, and *Corpus Juris*, held that properties for public use like brucks used for sprinkling the streets, police patrol wagons, police stations, public markets, together with the Land on which they stand are exempt from execution. Even public revenues of municipal corporations destined for the expenses of the municipality are also exempt from execution. The reason behind this exemption extended to properties for public use, and public municipal revenues is that they are held in trust for the people, intended and used for the accomplishment of the purposes for which municipal corporations are created, and that to subject said properties and public funds to execution would materially impede, even defeat and in some instances destroy said purposes.

Property however, which is patrimonial and which is held by a municipality in its proprietary capacity is treated by the great weight of authority as the private asset of the town and may be levied upon and sold under an ordinary execution. The same rule applies to municipal funds derived from patrimonial properties. For instance, it has been held that shares of stock held by a municipal corporation are subject to execution. If this is true, with more reason should income or revenue coming from these shares of stock, in the form of interest or dividends, be subject to execution? (*McQuillin on Municipal Corporations*, Vol. 3, par. 1160.)

The fishery or municipal waters of the town of Paoay, Ilocos Norte, which had been parceled out or divided into lots and later let out to private persons for fishing purposes at an annual rental are clearly not subject to execution. In the first place, they do not belong to the municipality. They may well be regarded as property of the State. What the municipality of Paoay holds is merely what may be considered the usufruct or the right to use said municipal waters, granted to it by Section 2321 of the Revised Administrative Code which reads as follows:

"Sec. 2321. Grant of fishery.—A municipal council shall have authority, for purposes of profit, to grant the exclusive privileges of fishery or right to conduct a fish-breeding ground within any definite portion, or area, of the municipal waters.

" 'Municipal waters,' as herein used, includes not only streams, lakes, and tidal water, included within the municipality, not being the subject of private ownership, but also marine waters included between two lines drawn perpendicular to the general coast line from points where the boundary lines of the municipality touch the sea at high tide, and a third line parallel with the general coast line and distant from it three marine leagues.

"Where two municipalities are so situated on opposite shores that there is less than six marine leagues of marine waters between them the third line shall be a line equally distant from the opposite shores of the respective municipalities."

Now, is this particular usufruct of the municipality of Paoay over its municipal waters, subject to execution to enforce a judgment against the town? We are not prepared to answer this question in the affirmative because there are powerful reasons against its propriety and legality. In the first place, it is not a usufruct based on or derived from an inherent right of the town. It is based merely on a grant, more or less temporary, made by the Legislature,

Take the right of fishery over the sea or marine waters bordering a certain municipality. These marine waters are ordinarily for public use, open to navigation and fishing by the people. The Legislature thru Sec. 2321 of the Administrative Code, as already stated, saw fit to grant the usufruct of said marine waters for fishery purposes, to the towns bordering said waters. Said towns have no vested rights over said marine waters. The Legislature, for reasons it may deem valid or as a matter of public policy, may, at any time, repeal or modify said section 2321 and revoke this grant to coastal towns and open these marine waters to the public. Or the Legislature may grant the usufruct or right of fishery to the provinces concerned so that said provinces may operate or administer them by leasing them to private parties.

All this only goes to prove that the municipality of Paoay is not holding this usufruct or right of fishery in a permanent or absolute manner so as to enable it to dis- to be pose of it or to allow it/taken away from it as its property through execution.

Another reason against subjecting this usufruct or right of fishery over municipal waters, to execution, is that, if this were to be allowed and this right sold on execution, the buyer, would immediately step into the shoes of the judgment-debtor municipality. Such buyer presumably, buys only the rights of the municipality. He does not buy the fishery itself nor the municipal waters because that belongs to the State. All that the buyer might do would be to let out or rent to private individuals the fishery rights over the lots into which the municipal waters had been parceled out or divided, and that is, after public bidding. This, he must do because that is the only right granted to the municipality by the Legislature, a right to be exercised in the manner provided by law, namely, to rent said fishery lots after public bidding. (See Sec. 2323 of the Administrative Code in connection with Sec. 2319 of the same Code.) Then, we shall have a situation rather anomalous to be sure, of a private individual conducting public bidding, renting to the highest bidders fishery lots over municipal waters which are property of the State, and appropriating the rentals to his own private use. The impropriety, if not illegality of such a contingency is readily apparent. But that is not all. The situation imagined implied the deprivation of a municipal corporation of a source of a substantial income, expressly provided by law. Because of all this, we hold that the right or usufruct of the town of Paoay over its municipal waters, particularly, the forty odd fishery lots included in the attachment by the Sheriff, is not subject to execution.

But we hold that the revenue or income coming from the renting of these fishery lots is certainly subject to execution. It may be profitable, if not necessary, to distinguish this kind of revenue from that derived from taxes, municipal licenses, market fees, etc. From the time that these taxes, licenses and market fees are provided for and imposed by the law, they are intended primarily and exclusively for the purpose of financing the governmental activities and functions of municipal corporations. In fact, the real estate taxes collected by a municipality do not all go to it. A portion thereof goes to the province, in the proportion provided for by law. For the same reason, municipal markets are established not only to provide a place where the people may sell and buy commodities but also to provide public revenues for the municipality. To many towns, market fees constitute the bulk of their assets and income. These revenues are fixed and definite, so much so that the annual appropriations for the expenses of the municipalities are based on these revenues. Not so with the income derived from fisheries. In the first place, the usufruct over municipal waters was granted by the Legislature merely to help or bolster up the economy of municipal governments. There are many towns in the Philippines, specially in the interior, which do not have municipal waters for fishery purposes and yet without such source of revenue, they can function, which goes to prove that this kind of revenue is not indispensable, for the performance of governmental functions. In the second place, the amount of this income is far from definite or fixed. It depends upon the amount or amounts which prospective bidders or lessees are willing to pay. If fishing on these marine waters, lakes and rivers in the municipality is good, the bids would be high and the income would be substantial. If the fish in these waters is depleted or, if for some reasons or another, fishing is not profitable, then the income would be greatly reduced. In

other words, to many municipalities engaged in this business of letting out municipal waters for fishing purposes, it is a sort of sideline, so that even without it the municipality may still continue functioning and perform its essential duties as such municipal corporations.

We call this activity of municipalities in renting municipal waters for fishing purposes as a business for the reason that the law Itself (Sec. 2321, Administrative Code already mentioned and quoted) allowed said municipalities to engage in it for profit. And it is but just that a town so engaged should pay and liquidate obligations contracted in connection with said fishing business, with the income derived therefrom.

In conclusion, we hold that the fishery lots numbering about forty in the municipality of Paoay, mentioned at the beginning of this decision are not subject to execution. For this reason, the levy and attachment made by the Provincial Sheriff of Ilocos Norte of these fishery lots is void and the order of the Court of First Instance of Pangasinan insofar as it failed to dissolve the attachment made on these lots is reversed. However, the amount of P1,712.01 in the municipal treasury of Paoay representing the rental paid by Demetrio Tabije on fishery lots let out by the municipality of Paoay is a proper subject of levy, and the attachment made thereon by the Sheriff is valid. We may add that other amounts coming or due from lessees of the forty odd fishery lots leased by the municipality to different persons may also be attached or garnished to satisfy the judgment against the municipality of Paoay.

In this connection, we wish to say that had the municipality of Paoay paid the judgment rendered against it, all this controversy and court action with all its vexation, troubles and expense would have been avoided. It will be remembered that the decision against the municipality was rendered as far back as 1940. Evidently, the municipality did not appeal from that decision. It has long become final. The Court of Pangasinan that rendered the decision saw no valid defense of the municipality to the legitimate claim of Teodoro Manaois. After the municipality had failed to place Manaois in possession of the lots leased to him, the municipality did not even offer to return or reimburse the rental paid by him. It is hard to understand the position taken by the municipality of Paoay. The courts, including this tribunal cannot condone, much less encourage, the repudiation of just obligations contracted by municipal corporations. On the contrary, the courts will extend their aid to citizens in enforcing their rights and compel payments of their valid claims against municipalities with which they entered into valid contracts. Municipal corporations are authorized by law to sue and be sued. (Sec. 2165, Rev. Adm. Code). This authority naturally carries with it all the remedies and court processes, including writs of execution and attachment against municipal corporations. While we are willing and ready to protect properties of municipalities held for public use, as well as public revenues such as taxes, from execution, we believe that other properties of such municipalities not held for public use, including funds which are not essential to the performance of their public functions, may be levied upon and sold or taken to satisfy valid claims against said municipalities. And this Tribunal will help any citizen and give him every judicial facility to enforce his valid claim, especially a court award, against municipal corporations, even to the extent of attaching and selling on execution, municipal revenues and properties not exempt from execution.

In view of the foregoing, the order of the respondent Judge of October 6, 1949, is reversed insofar as it failed to dissolve the attachment of the forty odd fishery lots. In all other respects, said order is hereby affirmed. No pronouncement as to costs.

Ozaeta, Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

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