

BENGUET CORPORATION, PETITIONER, VS. CENTRAL BOARD OF ASSESSMENT APPEALS, BOARD OF ASSESSMENT APPEALS OF ZAMBALES, PROVINCIAL ASSESSOR OF ZAMBALES, PROVINCE OF ZAMBALES, AND MUN...

G.R. No. 106041. January 29, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The realty tax assessment involved in this case amounts to P11,319,304.00. It has been imposed on the petitioner's tailings dam and the land thereunder over its protest.

The controversy arose in 1985 when the Provincial Assessor of Zambales assessed the said properties as taxable improvements. The assessment was appealed to the Board of Assessment Appeals of the Province of Zambales. On August 24, 1988, the appeal was dismissed mainly on the ground of the petitioner's "failure to pay the realty taxes that fell due during the pendency of the appeal."

The petitioner seasonably elevated the matter to the Central Board of Assessment Appeals,[1] one of the herein respondents. In its decision dated March 22, 1990, the Board reversed the dismissal of the appeal but, on the merits, agreed that "the tailings dam and the lands submerged thereunder (were) subject to realty tax."

For purposes of taxation the dam is considered as real property as it comes within the object mentioned in paragraphs (a) and (b) of Article 415 of the New Civil Code. It is a construction adhered to the soil which cannot be separated or detached without breaking the material or causing destruction on the land upon which it is attached. The immovable nature of the dam as an improvement determines its character as real property, hence taxable under Section 38 of the Real Property Tax Code. (P.D. 464).

Although the dam is partly used as an anti-pollution device, this Board cannot accede to the request for tax exemption in the absence of a law authorizing the same.

x x x

We find the appraisal on the land submerged as a result of the construction of the tailings dam, covered by Tax Declaration Nos. 002-0260 and 002-0266, to be in accordance with the Schedule of Market Values for Zambales which was reviewed and allowed for use by the Ministry (Department) of Finance in the 1981-1982 general revision. No serious attempt was made by Petitioner-Appellant Benguet Corporation to impugn its reasonableness, i.e., that the P50.00 per square meter applied by Respondent-Appellee Provincial Assessor is indeed excessive and unconscionable. Hence, we find no cause to disturb the market value applied by Respondent Appellee Provincial Assessor of Zambales on the properties of Petitioner-Appellant Benguet Corporation covered by Tax Declaration Nos. 002-0260 and 002-0266.

This petition for certiorari now seeks to reverse the above ruling.

The principal contention of the petitioner is that the tailings dam is not subject to realty tax because it is not an

"improvement" upon the land within the meaning of the Real Property Tax Code. More particularly, it is claimed -

(1) as regards the tailings dam as an "improvement":

(a) that the tailings dam has no value separate from and independent of the mine; hence, by itself it cannot be considered an improvement separately assessable;

(b) that it is an integral part of the mine;

(c) that at the end of the mining operation of the petitioner corporation in the area, the tailings dam will benefit the local community by serving as an irrigation facility;

(d) that the building of the dam has stripped the property of any commercial value as the property is submerged under water wastes from the mine;

(e) that the tailings dam is an environmental pollution control device for which petitioner must be commended rather than penalized with a realty tax assessment;

(f) that the installation and utilization of the tailings dam as a pollution control device is a requirement imposed by law;

(2) as regards the valuation of the tailing's dam and the submerged lands:

(a) that the subject properties have no market value as they cannot be sold independently of the mine;

(b) that the valuation of the tailings dam should be based on its incidental use by petitioner as a water reservoir and not on the alleged cost of construction of the dam and the annual build-up expense;

(c) that the "residual value formula" used by the Provincial Assessor and adopted by respondent CBAA is arbitrary and erroneous; and

(3) as regards the petitioner's liability for penalties for non-declaration of the tailings dam and the submerged lands for realty tax purposes:

(a) that where a tax is not paid in an honest belief that it is not due, no penalty shall be collected in addition to the basic tax;

(b) that no other mining companies in the Philippines operating a tailings dam have been made to declare the dam for realty tax purposes.

The petitioner does not dispute that the tailings dam may be considered realty within the meaning of Article 415. It insists, however, that the dam cannot be subjected to realty tax as a separate and independent property because it does not constitute an "assessable improvement" on the mine although a considerable sum may have been spent in constructing and maintaining it.

To support its theory, the petitioner cites the following cases:

1. *Municipality of Cotabato v. Santos* (105 Phil. 963), where this Court considered the dikes and gates constructed by the taxpayer in connection with a fishpond operation as integral parts of the fishpond.

2. *Bislig Bay Lumber Co. v. Provincial Government of Surigao* (100 Phil. 303), involving a road constructed by the timber concessionaire in the area, where this Court did not impose a realty tax on the road primarily for two reasons:

In the first place, it cannot be disputed that the ownership of the road that was constructed by appellee belongs to the government by right of accession not only because it is inherently incorporated or attached to the timber land x x x but also because upon the expiration of the concession said road would ultimately pass to the

national government. x x x In the second place, while the road was constructed by appellee primarily for its use and benefit, the privilege is not exclusive, for x x x appellee cannot prevent the use of portions, of the concession for homesteading purposes. It is also duty bound to allow the free use of forest products within the concession for the personal use of individuals residing in or within the vicinity of the land. x x x In other words, the government has practically reserved the rights to use the road to promote its varied activities. Since, as above shown, the road in question cannot be considered as an improvement which belongs to appellee, although in part is for its benefit, it is clear that the same cannot be the subject of assessment within the meaning of Section 2 of C.A. No. 470.

Apparently, the realty tax was not imposed not because the road was an integral part of the lumber concession but because the government had the right to use the road to promote its varied activities.

3. *Kendrick v. Twin Lakes Reservoir Co.* (144 Pacific 884), an American case, where it was declared that the reservoir dam went with and formed part of the reservoir and that the dam would be "worthless and useless except in connection with the outlet canal, and the water rights in the reservoir represent and include whatever utility or value there is in the dam and headgates."

4. *Ontario Silver Mining Co. v. Hixon* (164 Pacific 498), also the United States. This case involved drain tunnels constructed by plaintiff when it expanded its mining operations downward, resulting in a constantly increasing flow of water in the said mine. It was held that:

Whatever value they have is connected with and in fact is an integral part of the mine itself. Just as much so as any shaft which descends into the earth or an underground incline, tunnel, or drift would be which was used in connection with the mine.

On the other hand, the Solicitor General argues that the dam is an assessable improvement because it enhances the value and utility of the mine. The primary function of the dam is to receive, retain and hold the water coming from the operations of the mine, and it also enables the petitioner to impound water, which is then recycled for use in the plant.

There is also ample jurisprudence to support this view, thus:

x x x The said equipment and machinery, as appurtenances to the gas station building or shed owned by Caltex (as to which it is subject to realty tax) and which fixtures are necessary to the operation of the gas station, for without them the gas station would be useless and which have been attached or affixed permanently to the gas station site or embedded therein, are taxable improvements and machinery within the meaning of the Assessment Law and the Real Property Tax Code. (*Caltex [Phil.] Inc. v. CBAA*, 114 SCRA 296)

We hold that while the two storage tanks are not embedded in the land, they may, nevertheless, be considered as improvements on the land, enhancing its utility and rendering it useful to the oil industry. It is undeniable that the two tanks have been installed with some degree of permanence as receptacles for the considerable quantities of oil needed by MERALCO for its operations. (*Manila Electric Co. v. CBAA*, 114 SCRA 273)

The pipeline system in question is indubitably a construction adhering to the soil. It is attached to the land in such a way that it cannot be separated therefrom without dismantling the steel pipes which were welded to form the pipeline. (*MERALCO Securities Industrial Corp. v. CBAA*, 114 SCRA 261)

The tax upon the dam was properly assessed to the plaintiff as a tax upon real estate. (*Flax-Pond Water Co. v. City of Lynn*, 16 N.E. 742)

The oil tanks are structures within the statute, that they are designed and used by the owner as permanent improvement of the free hold, and that for such reasons they were properly assessed by the respondent taxing district as improvements. (*Standard Oil Co. of New Jersey v. Atlantic City*, 15 A 2d. 271)

The Real Property Tax Code does not carry a definition of "real property" and simply says that the realty tax is imposed on "real property, such as lands, buildings, machinery and other improvements affixed or attached to real property." In the absence of such a definition, we apply Article 415 of the Civil Code, the pertinent portions of which state:

ART. 415. The following are immovable property.

(1) Lands, buildings and constructions of all kinds adhered to the soil;

x x x

(3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object.

Section 2 of C.A. No. 470, otherwise known as the Assessment Law, provides that the realty tax is due "on the real property, including land, buildings, machinery and other improvements" not specifically exempted in Section 3 thereof. A reading of that section shows that the tailings dam of the petitioner does not fall under any of the classes of exempt real properties therein enumerated.

Is the tailings dam an improvement on the mine? Section 3 (k) of the Real Property Tax Code defines improvement as follows:

(k) Improvements - is a valuable addition made to property or an amelioration in its condition, amounting to more than mere repairs or replacement of waste, costing labor or capital and intended to enhance its value, beauty or utility or to adopt it for new or further purposes.

The term has also been interpreted as "artificial alterations of the physical condition of the ground that are reasonably permanent in character."^[2]

The Court notes that in the Ontario case the plaintiff admitted that the mine involved therein could not be operated without the aid of the drain tunnels, which were indispensable to the successful development and extraction of the minerals therein. This is not true in the present case.

Even without the tailings dam, the petitioner's mining operation can still be carried out because the primary function of the dam is merely to receive and retain the wastes and water coming from the mine. There is no allegation that the water coming from the dam is the sole source of water for the mining operation so as to make the dam an integral part of the mine. In fact, as a result of the construction of the dam, the petitioner can now impound and recycle water without having to spend for the building of a water reservoir. And as the petitioner itself points out, even if the petitioner's mine is shut down or ceases operation, the dam may still be used for irrigation of the surrounding areas, again unlike in the Ontario case.

As correctly observed by the CBAA, the Kendrick case is also not applicable because it involved water reservoir dams used for different purposes and for the benefit of the surrounding areas. By contrast, the tailings dam in question is being used exclusively for the benefit of the petitioner.

Curiously, the petitioner, while vigorously arguing that the tailings dam has no separate existence, just as vigorously contends that at the end of the mining operation the tailings dam will serve the local community as an irrigation facility, thereby implying that it can exist independently of the mine.

From the definitions and the cases cited above, it would appear that whether a structure constitutes an improvement so as to partake of the status of realty would depend upon the degree of permanence intended in its construction and use. The expression "permanent" as applied to an improvement does not imply that the

improvement must be used perpetually but only until the purpose to which the principal realty is devoted has been accomplished. It is sufficient that the improvement is intended to remain as long as the land to which it is annexed is still used for the said purpose.

The Court is convinced that the subject dam falls within the definition of an "improvement" because it is permanent in character and it enhances both the value and utility of petitioner's mine. Moreover, the immovable nature of the dam defines its character as real property under Article 415 of the Civil Code and thus makes it taxable under Section 38 of the Real Property Tax Code.

The Court will also reject the contention that the appraisal at P50.00 per square meter made by the Provincial Assessor is excessive and that his use of the "residual value formula" is arbitrary and erroneous.

Respondent Provincial Assessor explained the use of the "residual value formula" as follows:

A 50% residual value is applied in the computation because, while it is true that when slime fills the dike, it will then be covered by another dike or stage, the stage covered is still there and still exists and since only one face of the dike is filled, 50% of the other face is unutilized.

In sustaining this formula, the CBAA gave the following justification:

We find the appraisal on the land submerged as a result of the construction of the tailings dam, covered by Tax Declaration Nos. 002-0260 and 002-0266, to be in accordance with the Schedule of Market Values for San Marcelino, Zambales, which is fifty (50.00) pesos per square meter for third class industrial land (TSN, page 17, July 5, 1989) and Schedule of Market Values for Zambales which was reviewed and allowed for use by the Ministry (Department) of Finance in the 1981-1982 general revision. No serious attempt was made by Petitioner-Appellant Benguet Corporation to impugn its reasonableness, i.e., that the P50.00 per square meter applied by Respondent-Appellee Provincial Assessor is indeed excessive and unconscionable. Hence, we find no cause to disturb the market value applied by Respondent-Appellee Provincial Assessor of Zambales on the properties of Petitioner-Appellant Benguet Corporation covered by Tax Declaration Nos. 002-0260 and 002-0266.

It has been the long-standing policy of this Court to respect the conclusions of quasi-judicial agencies like the CBAA, which, because of the nature of its functions and its frequent exercise thereof, has developed expertise in the resolution of assessment problems. The only exception to this rule is where it is clearly shown that the administrative body has committed grave abuse of discretion calling for the intervention of this Court in the exercise of its own powers of review. There is no such showing in the case at bar.

We disagree, however, with the ruling of respondent CBAA that it cannot take cognizance of the issue of the propriety of the penalties imposed upon it, which was raised by the petitioner for the first time only on appeal. The CBAA held that this "is an entirely new matter that petitioner can take up with the Provincial Assessor (and) can be the subject of another protest before the Local Board or a negotiation with the local sanggunian x x x, and in case of an adverse decision by either the Local Board or the local sanggunian, (it can) elevate the same to this Board for appropriate action."

There is no need for this time-wasting procedure. The Court may resolve the issue in this petition instead of referring it back to the local authorities. We have studied the facts and circumstances of this case as above discussed and find that the petitioner has acted in good faith in questioning the assessment on the tailings dam and the land submerged thereunder. It is clear that it has not done so for the purpose of evading or delaying the payment of the questioned tax. Hence, we hold that the petitioner is not subject to penalty for its non-declaration of the tailings dam and the submerged lands for realty tax purposes.

WHEREFORE, the petition is **DISMISSED** for failure to show that the questioned decision of respondent Central

Board of Assessment Appeals is tainted with grave abuse of discretion except as to the imposition of penalties upon the petitioner which is hereby SET ASIDE. Costs against the petitioner. It is so ordered.

Narvasa, C.J., Gutierrez, Jr., Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.
Feliciano, J., no part.

[1] Secretary of Finance Jesus Estanislao as chairman with Secretary of Justice Franklin M. Drilon and Secretary of Local Government Luis T. Santos as members.

[2] Francisco, Philippine Mining Law, Vol. 1, 2nd Ed., p. 274.

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