

JOSE PANTOJA, PETITIONER, VS. SATURNINO DAVID, ETC., ET AL., RESPONDENTS.

G.R. No. 10765. February 28, 1961

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BENGZON, ACTING C.J.:

This is a review of the resolution of the Court of Tax Appeals dated January 7, 1956, dismissing Jose Pantoja's "petition for prohibition."

It appears that on November 16, 1939, the Collector of Internal Revenue assessed against Pantoja the sum of P4,934.28 as fixed and percentage taxes plus surcharges, upon sales allegedly made by him to Aboitiz & Co. during the years 1935 to 1938; that upon Pantoja's failure to pay, the Collector issued a warrant of distraint and levy, on February 13, 1950 which resulted in the forfeiture to the Government of certain real property of Pantoja in Danao, Cebu, for lack of bidders at the time of the scheduled sale at public auction on January 30, 1951; that on July 17, 1952, the Provincial Treasurer declaring the forfeiture to have become absolute, ordered the municipal treasurer of Danao, Cebu to get the forfeited property; that as the latter official had taken or was about to take steps to recover the land, Pantoja filed this petition for prohibition in the Cebu court of first instance charging the respondent officers with lack of jurisdiction and abuse of discretion, even as he denied liability for the internal revenue tax. He said they had given him no opportunity to be heard. He further alleged prescription of the tax liability and consequent lack of power on the part of the respondent Collector to levy and distrain his property, inviting attention to the eleven (11) years that had elapsed from the assessment in 1939 to the distraint in 1950.

The three respondents (the Collector and the two treasurers), moved to dismiss on the ground of lack of jurisdiction and of cause of action. The court of first instance after denying the motion, and the subsequent motion to reconsider, set the case for hearing on September 2, 1954.

Meanwhile, the Court of Tax Appeals was organized in June 1954. So, on July 21, 1954, upon motion of respondents, the Cebu court transferred the case to the Court of Tax Appeals pursuant to sec. 22 of Republic Act 1125.

Before the latter court, respondents presented another motion to dismiss based on the game grounds raised before the court of first instance. This time, their motion was sustained. The tax court held in its appealed resolution: (1) the petition constituted in effect an injunction proceeding, and the Revenue Code provides that no court shall have authority to restrain the collection of any internal revenue tax; (2) the remedy of the petitioner is to pay the tax and then sue to recover the amount paid; and (3) the distraint and levy amounted to collection of the tax and there was nothing left to be prohibited or enjoined.

Wherefore, Pantoja filed this request for review. We find it to be meritorious.

The power of the Court of Tax Appeals to act on petitions for the annulment of distraint orders by the Collector of Internal Revenue has been recognized by this Court in *Collector of Internal Revenue vs. Zulueta*, 100 Phil., 872; 58 Off. Gaz. 6532 and *Blaquera vs. Rodriguez*, 108, Phil., 335; 54 Off. Gaz. 8632. In the first, the reason for annulling was—like the present case—prescription of the right of the Collecting Officers to issue the warrant of

distrain. In the second, this Court reiterated the view that the Court of Tax Appeals constituted the legal forum wherein to discuss the validity of a distrain by the Collector of Internal Revenue. Again, in *Collector vs. Avevelino*, 100 Phil., 327; 53 Off. Gaz., 645, we held that proceedings to invalidate a warrant of distrain or levy did not violate the prohibition against injunctions to restrain the collection of taxes, because the proceedings were directed at the right of the Collector to collect it by distrain or levy. (See also *Castro vs. Blaquera*, 100 Phil., 981; 53 Off. Gaz. 2135.)

In view of these rulings the power and authority of the court a quo may not be denied. If and when the allegations of Pantoja are properly proved, it may and should annul the distrain on his property.

The record will be returned for further proceedings. So ordered.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes and Dizon, JJ., concur.

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