

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT AND APPELLEE, VS. ELADIO ADRIANO ET AL., OBJECTORS. CURTIS W. WHITE AND J. C. WEBSTER, APPELLANTS.**

*G. R. No. 15695. October 26, 1920*

Ponente: MALCOLM, J.

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**MALCOLM, J.:**

The question of law on which opponents White & Webster ground their appeal, as stated by them, concerns the conclusiveness of title conveyed by the Government in a sale of land for back taxes.

A statement of the case and the facts, practically admitted by all parties, upon which the legal issue rests, may be succinctly made as follows: Cadastral proceedings were initiated by the Government to settle the title to a tract of land situated in the Province of Nueva Ecija. Messrs. White and Webster laid claim to ail of cadastral lot 2748, and Yap & Borja, and Duran, asserted their rights to portions thereof. The Director of Lands opposed registration in the name of any of the claimants. It is the case of White & Webster which particularly concerns us.

On February 18, 1905, one Gervasio Diaz having failed to pay the land tax on his property containing approximately six hundred hectares, the provincial treasurer of Nueva Ecija sold it at public auction to Curtis W. White and George A. Webster, highest bidders, in the sum of P362.44. One year having elapsed without any person appearing to redeem the property, the provincial treasurer executed a deed in favor of White & Webster, appearing herein as Exhibit A, reading as follows:

Know all men by these presents:

That whereas the following described real estate, to wit: The land of Gervasio Diaz situated in the poblacion of Bongabon, Nueva Ecija, and described under No. 81, Register No. 1 in the office of the provincial treasurer of Nueva Ecija, has been duly and legally assessed at the valuation of nine thousand and 00/00 dollars (\$9,000), money of the United States, as appears by the List of Taxable Real Estate on file in the office of the secretary of the municipal board of assessors of the municipality of Bongabon, Province of Nueva Ecija, Philippine Islands;

"And whereas, by virtue of said assessment and according to the provisions of Act No. 82 of the United States Philippine Commission and the amendments thereof, taxes against said property became delinquent and were unpaid on the 1st day of August, 1904, in the sum of one hundred forty-six and 26/100 dollars (\$146.26), money of the United States, and the same remaining unpaid by the owner of said described real estate or any person for him, due notice of said assessment having been given according to the provisions of said Act No. 82 and the amendments thereof;

"And whereas, the provincial treasurer of said Province of Nueva Ecija (having been unable to find sufficient personal property of the owner of said described real estate out of which to make all the taxes assessed upon said real estate) did, within twenty days after said delinquency, and upon warrant of a certified copy of the record of such delinquency, attested by the municipal secretary of the municipality of Bongabon in said

province, advertise for sale said real estate, or so much thereof as might be necessary to satisfy all public taxes, upon said real estate, penalties and cost of sale, for a period of thirty days from and after the 12th day of January, 1905, by keeping posted a notice at the main entrance of the municipal building of the municipality of Bongabon and in a public and conspicuous place in the barrio in which said real estate is situated (and by publication of note of said sale once a week for three weeks in \* \* \* a newspaper of general circulation published at \* \* \* in said province);

"And whereas, at a public sale pursuant to said notice, held at Bongabon on the 18th day of February, 1905, at 8 o'clock a. m. at the entrance to the municipal building, in said municipality of Bongabon, the same being the hour and place of sale named in said notice, the following described premises, to wit: Terreno [land], situated in the poblacion of Bongabon, Nueva Ecija, with boundaries as follows: North, sitio 'Manarog;' east, sitio 'Platero;' south, Rio Coronel; west, sitio 'Bulsan. Area, 600 hectares we sold to Curtis W. White and George Webster and certificate issued to said Curtis W. White and George Webster stating the amount of public taxes, penalties, and interest, amounting to one hundred eighty-one and 22/100 dollars (\$181.22), money of the United States, paid by said Curtis W. White and George Webster for said premises last above described;

"And whereas, the owner of said first above described property, or anyone for him, has not within one year from the date of said sale paid to the treasurer of said Nueva Ecija Province, or his authorized deputy, the amount of said public taxes, penalties and interest thereon from the date of delinquency, or any part thereof, but has wholly failed and neglected so to do;

"Now, therefore, I have conveyed and by these presents do convey to Curtis W. White and George A. Webster, the owner and holder of said certificate of purchase, all the said premises last above described, free from all liens of any kind whatsoever.

"Witness my hand at San Isidro in said Province of Nueva Ecija, Philippine Islands, this 23d day of March, 1906.

(Sgd.) "J. B. Green,  
"Provincial Treasurer.

"UNITED STATES OF AMERICA  
"PHILIPPINE ISLANDS SS.  
PROVINCE OF NUEVA ECIIA

"Personally appeared before me J. B. Green, treasurer of the Province of Nueva Ecija, Philippine Islands, and acknowledged that he executed the foregoing instrument as his free and voluntary act, for the uses and purposes therein set forth.

"In witness whereof I have hereunto set my hand and official seal at San Isidro in said province this 24th day of March, 1906.

[SEAL.] (Sgd.) "ROMAN ROQUE,  
"Provincial Secretary."

Sometime later, George A. Webster transferred his right and interest in the land to J. C. Webster. Although some testimony was introduced, White & Webster relied absolutely upon the deed of sale above quoted, to obtain registration of the land. The judgment of the trial court, however, dismissed all the oppositions, and declared the tract to be public land.

On appeal, the contention of White & Webster is, that when the Government sold the land to them "free from all liens of any kind whatsoever," there being no allegation of fraud or irregularities, they received an absolute title in fee simple. The contention of the Government, on the other hand, is, that the only title conveyed to White &

Webster was the interest or right which the person said to be the owner might have had in the premises.

A resolution of these rival arguments is not entirely free from perplexities. Nor is it exactly clear, whatever be our ruling, that injustice will not be done. One cannot but sympathize with White & Webster who purchased the land regularly and lawfully, who then went upon it and made improvements, and who have faithfully paid the Government the corresponding taxes. Similarly, one can also understand the precarious situation of some two hundred individuals who live upon the land and who have obtained concessions from the Government by purchase, lease, or homestead.

After considerable research and study, certain controlling principles have been agreed upon as follows:

There are two distinct doctrines on the subject of what passes by the sale of property for back taxes. In many states where the tax is a charge on the land alone, where no resort in any event is contemplated against the owner or his personal estate, and where the proceeding is strictly in rem, the title conveyed by a sale for nonpayment of taxes is not merely the title of the person who had been assessed for the taxes and had neglected to pay them, but a new and paramount title to the land in fee simple absolute, created by an independent grant from the sovereign, and free from all equities and incumbrances existing prior to the sale upon the title of the previous owner. According to this view, the tax title is a breaking up of all titles, and operates not to support, but to destroy them. It is a new and perfect title emanating from the State, and not merely the sum of old titles. The second doctrine prevailing in other jurisdictions where the proceedings for the collection of taxes upon real estate are looked upon as in personam, is that the purchaser at the tax sale gets no better title than was held by the person assessed. According to this view, where the law requires the land to be listed in the name of the owner, provides for a personal demand for the tax, and, in case of default, authorizes the seizure of the personal property of the delinquent in satisfaction of the tax, and permits a sale of the land only when all other remedies have been exhausted, the title is a derivative one, and the purchaser acquires only the apparent interest, whatever it is, of the tax delinquent. (See generally 2 Cooley on Taxation, 3d ed., pp. 960-962; 26 R. C. L., pp. 401-404; 33 L. R. A., 689, notes; Turner vs. Smith [1871], 14 Wall., 553.)

Another subsidiary theory, here applicable on the supposition that Diaz, the delinquent taxpayer, had demonstrated no title to the land and that consequently, it was in the nature of public land, is, that while the title remains in the Government, public lands are not subject to taxation, and tax sales and tax deeds thereof are void. The purchaser of any such lands for delinquency in the payment of the taxes charged thereon, derives no title or right of any sort to the land so purchased. (Hussman vs. Durham [1896], 165 U. S., 144; Braxton vs. Rich [1891], 47 Fed., 178.) A case of this nature, remarkably similar in its antecedents and facts to the one before us, is that of Hall vs. Dowling ([1861], 18 Cal., 619). The action was for ejectment, to recover possession of a certain island called Hierba Buena in the Bay of San Francisco. Plaintiff claimed title, first, by prior possession in one Spear and King her predecessors; second, by virtue of a tax deed, and third, by prescription under the laws of Mexico. Plaintiff introduced in evidence at the trial a tax deed executed by the tax collector of the city and county of San Francisco for the entire island called Hierba Buena formerly Goat Island, situated in the Bay of San Francisco. The very trite decision of the Supreme Court of California on these facts was that "We cannot see that the plaintiff makes out title through the tax deed; for this seems to have been public land of the United States, and therefore could not be sold for taxes."

The exact phraseology of the particular statute would seem to determine the doctrine applicable in each jurisdiction. The Philippine law on the subject of taxation, when this tax sale occurred, was found in the Municipal Code, Act No. 82 (secs. 74-83), as amended by Act No. 1139. According to these provisions, in case of default in the payment of land taxes, the personal property of the delinquent was first seized. Taxes and penalties were thereafter enforceable against the realty and, if necessary, it could be sold to satisfy the public taxes assessed

against it. In case the taxpayer did not redeem the land sold within one year from the date of the sale, the provincial treasurer, as grantor, executed a deed conveying the land to the purchaser free from all liens of any kind whatsoever.

It is thus seen that there was no provision in the local law, such as is found in Iowa and other states, vesting in the purchaser "all the title of the former owner as well as of the State and County." (See *Hefner vs. Northwestern Mut L. Ins. Co.* [1887], 123 U. S., 747.) It is further seen that proceedings in the Philippines for the sale of land for the nonpayment of taxes were in personam. (*Valencia vs. Jimenez and Fuster* [1908], 11 Phil., 492.) The tax was not a charge upon the land alone. The authorities were first required to hunt up the owner and to make the tax out of his personal property. Only the particular interest or title of the person to whom the land is assessed was sold. As a stream cannot rise higher than its source, so the purchaser could not claim any better title than his predecessor.

The case at bar is not like that of *Denoga vs. Insular Government* ([1911], 19 Phil., 261), for there neither the Government nor any one else appeared to impugn the applicant's title.

Some of the apparent harshness of our holding will be removed when the words of Mr. Justice Brewer in *Hussman vs. Durham*, supra, are recalled, namely, "It is a familiar law that a purchaser of a tax title takes all the chances. There is no warranty on the part of the State."

It would be only just to give the claimants another opportunity to prove their title. There is an allegation in their answer that before acquiring possession of the tract, their predecessors in interest had been in possession thereof for sixty years at the very least. If White & Webster can show occupation of the six hundred hectares of land for ten years previous to July 26, 1904, they can establish their title. If they fail in such effort, it would further be only just for the Government, which once through one of its regularly appointed officers transferred the property to the claimants and, thereafter, accepted the payments of taxes from them, only now to assail the effect of its own acts, to reimburse the claimants for the amount paid by them for the land and for taxes.

It results that the judgment must be affirmed, without prejudice to the right of Curtis W. White and J. C. Webster, within a reasonable period, which we fix at one year, to present further evidence in the Court of First Instance of Nueva Ecija to establish their title to the tract of land formerly in the possession of Gervasio Diaz and whose title, whatever it may be, was transferred to them, with costs against the appellants. So ordered.

Mapa, C. J., Araullo, Avanceña and Villamor, JJ., concur.

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