

**EUSEBIO TURRECHA, PETITIONER, VS. EDUARDO SANTAROMANA,
MUNICIPAL TREASURER OF THE MUNICIPALITY OF SAN JOSE,
ANTIQUE, RESPONDENT.**

G.R. No. 15902. March 08, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is a petition to obtain the writ of mandamus to compel the respondent as treasurer of the municipality of San Jose of the Province of Antique to pay to the petitioner the sum of P200 in payment for a certain piece or parcel of land which he had theretofore sold to said municipality. The respondent demurred to the petition.

The facts are admitted. They are: That sometime prior to the presentation of the present petition the petitioner sold to the municipality of San Jose a certain piece or parcel of land for the sum of P200, and tendered an ordinary deed therefor and requested payment of the municipal treasurer. The municipal treasurer refused to pay said sum for the reason that the district auditor had ordered him not to pay the same.

The only question presented is, whether or not mandamus will lie against the municipal treasurer to compel him to pay money for land purchased by the municipality, in the face of an objection on the part of the district auditor.

Section 590 of Act No. 2711 (second Administrative Code) provides as follows:

"SEC. 590. Submission of papers relative to Government obligations.—It shall be within the power of the Insular Auditor for purposes of inspection to require the submission of the original of any order, deed, contract, or other obligation under which any payment should or might be made from Government funds, and such certificate or other evidence respecting the same as may be required; and if an authenticated copy is needed as a, n office record the same shall, upon demand, be supplied.

"In the case of deeds to property purchased by the Government, the Auditor shall require a certificate of title entered pursuant to a decree of the Court of Land Registration or other evidence satisfactory to the Governor-General that the title is in the Government."

In pursuance to the authority of said section 590, the insular Auditor promulgated the following rules and regulations:

"The rule governing the purchase of land in general, for any and all purposes, is contained in section 619 of the Administrative Code (Rev. Ed., sec. 590), which reads in part as follows:

" * * * In the case of deeds to property purchased by the Government, the Auditor shall require a certificate of title entered pursuant to a decree of the Court of Land Registration, or other evidence satisfactory to the Governor-General that the title is in the Government."

"If the land has been duly registered under the Land Registration Act, the Owner's Duplicate Certificate should be submitted to the district auditor with the voucher covering the payment.

"If the land has not been registered, it will be necessary to secure evidence that the Governor-General is satisfied that the title is in the Government. There is a well defined procedure for securing this evidence, the present rules therefor being contained in Executive Orders No. 2, series of 1906, and No. 16, series of 1907. The practice is for the office of the Executive, after examining the evidence of title, to advise the Auditor that the evidence submitted is satisfactory, or that the bond submitted to secure the Government against loss is approved. This advice is referred by the Auditor to the district auditor concerned, to be used by the latter as a basis for passing the payment." (Sec. 184, Manual of Instructions to Provincial and Municipal Treasurers, 1917, issued by the Bureau of Audits.)

From the foregoing regulations, it will be seen that the payment of money out of the municipal treasury, in satisfaction of an obligation of the character involved in the present case, is not a purely ministerial duty. When a municipality contracts an obligation such as is involved in the present case, before the money is paid the approval of the Bureau of Audits must first be obtained. That being so, the payment of money on the part of the municipal treasurer cannot be enforced by mandamus for the reason that he, under the law, has no obligation to pay the same until the approval of the Bureau of Audits is obtained.

And, moreover, in accordance with section 653 of Act No. 2711, any person aggrieved by the action or by any decision of the district auditor in the settlement of an account or claim has another remedy, which is adequate. Section 653 provides that, "Any person aggrieved by the action or by any decision of a district auditor in the settlement of an account or claim may within one year appeal to the Insular Auditor," etc.

For the foregoing reasons, therefore, the demurrer is sustained, and it is hereby ordered and decreed that a judgment be entered denying the prayer of the petition, with costs against the petitioner. So ordered.

Arellano, C. J., Torres, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

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