

JOSE DE BORJA, PETITIONER AND APPELLEE, VS. VICENTE G. GELLA, ET AL., RESPONDENTS AND APPELLANTS.

G.R.No. 18330. July 31, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Jose de Borja has been delinquent in the payment of his real estate taxes since 1958 for properties located in the City of Manila and Pasay City and has offered to pay them with two negotiable certificates of indebtedness Nos. 3064 and 3065 in the amounts of P793.40 and P717.39, aforesaid negotiable certificates, the applicants for backpay rights covered by them being respectively Rafael Vizcaya and Pablo Batario Luna.

The offers to pay real estate taxes in question were rejected by the city treasurers of both Manila and Pasay cities on the ground of their limited negotiability under Section 2, Republic Act No. 304, as amended by Republic ; Act 800, and in the case of the city treasurer of Manila on the further ground that he was ordered not to accept them by the city mayor, for which reason Borja was prompted to bring the question to the Treasurer of the Philippines who opined, among others, that the negotiable certificates cannot be accepted as payment of real estate taxes inasmuch as the law provides for their acceptance from their backpay holder only or the original applicant himself, but not his assignee. In his letter of April 29, 1960 to the Treasurer of the Philippines, however, Borja entertained hope that the certificates would be accepted for payment in view of the fact that they were already long past due and redeemable, but his hope was frustrated. So on June, 30, 1960, Borja filed an action against the treasurers of both the City of Manila and Pasay City, as well as the Treasurer of the Philippines, to compel them to execute an act which the law allegedly requires them to perform, to wit: to accept the above-mentioned certificates of indebtedness considering that they were already due and redeemable so as not to deprive him illegally of his privilege to pay his obligation to the government thru such means

Respondents in due time filed their answer setting up , the reasons for their refusal to accept the certificates, and after the requisite trial was held, the court a quo rendered t judgment the dispositive part of which reads:

"Wherefore, the treasurers of the City of Manila and Pasay City, their agents and other persons acting in their behalf are hereby enjoined from including petitioner's properties in the payment of real estate taxes, and to sell them at public auction, and respondent Treasurer of the Philippines, and the treasurers of the City of Manila and Pasay City are hereby ordered to accept petitioners Negotiable Certificates of Indebtedness Nos. 3064 and 3065 in the sums of P793.40 and P717.39 in payment of real estate taxes of his properties in the City of Manila and Pasay City, respectively, without cost."

Respondents took this appeal on purely questions of law.

Reduced to bare essentials, the 12 errors assigned by appellants may be boiled down to the following: (a) has appellee the right to apply to the payment of his real estate taxes to the governments of Manila and Pasay cities the certificates of indebtedness he holds while appellants have the correlative legal duty to accept the certificates in payment of said taxes?; (b) can compensation be invoked to extinguish appellee's estate tax liability between

the latter's obligation and the credit represented by said certificates of indebtedness?

Anent the first issue, the pertinent legal provision to be reckoned with is Section 2 of Republic Act No. 304, as amended by Republic Act No. 800, which in part reads:

"Sec. 2. The Treasurer of the Philippines shall, upon application, and within one year from the approval of this Act, and under such rules and regulations as may be promulgated by the Secretary of Finance, acknowledge and file requests for the recognition of the right to the salaries and wages as provided in section one, hereof, and notice of such acknowledgment shall be issued to the applicant which shall state the total amount of such salaries or wages due to the applicant, and certify that it shall be redeemed by the Government of the Philippines within ten years from the date of their issuance without interest: Provided, That upon application * * *, a certificate of indebtedness may be issued by the Treasurer of the Philippines covering the whole or part of the total salaries or wages the right to which has been duly acknowledged and recognized, provided that the face value of such certificate of indebtedness shall not . exceed the amount that the applicant may need for the payment of (1) obligations subsisting at the time of the approval of this Act ' for which the applicant may directly be liable to the Government or , to any of its branches or instrumentalities, or the corporations owned or controlled by the Government, or to any citizen of the Philippines, who may be willing to accept the same for such settlement; (2) his taxes; * * * And Provided, also, That any person who is not an alien, bank or other financial institution at least sixty per centum of whose capital is owned by Filipinos may, notwithstanding any provision of its charter, articles of incorporation, by-laws, or rules and regulations to the contrary, accept or discount at not more than three and one-half per centum per annum for ten years a negotiable certificate of indebtedness which shall be issued by the treasurer of the Philippines upon application by a holder of a backpay acknowledgment.

To begin with, it cannot be contended that appellants are in duty bound to accept the negotiable certificates of indebtedness held by appellee in payment of his real estate taxes for the simple reason that they were not obligations subsisting at the time of the approval of Republic Act No. 304 which took effect on June 18, 1948. It should be noted that the real estate taxes in question have reference to those due in 1958 and subsequent years. The law is explicit that in order that a certificate may be used in payment of an obligation the same must be subsisting at the time of its approval even if we hold that a tax partakes of this character. Neither can it be contended that appellee can compel the government to accept the alleged certificates of indebtedness in payment of his real estate taxes under proviso No. 2 above quoted also for the reason that in order that such payment may be allowed the tax must be owed by the applicant himself. This is the correct implication that may be drawn from the use by the law of the word "his taxes". Verily, the right to use the backpay certificate in settlement of taxes is given only to an applicant and not to any holder of any negotiable certificate to whom the law only gives the right to have it discounted by a Filipino citizen or corporation under certain limitations. Here appellee is not himself the applicant of the certificate in question. He is merely an assignee thereof, or a subsequent holder whose right is at most to have it discounted upon maturity or to negotiate it in the meantime. A fortiori it may be concluded that, not having the right to use said certificates to pay his taxes, appellee cannot compel appellants to accept them as he requests in the present petition for mandamus. As a consequence, we can not but hold that mandamus does not lie against appellants because they have in no way neglected to perform an act enjoined upon them by law as a duty, nor have they unlawfully excluded appellee from the use or enjoyment of a right to which he is entitled.[1]

We are aware of the cases[2] cited by the court a quo wherein the government banking institutions were ordered to accept the backpay certificates of petitioners in payment of their indebtedness to them, but they are not here in point because in the cases mentioned the petitioners were applicants and original holders of the corresponding back- pay certificates. Here appellee is not. With regard to the second issue, i.e. whether compensation can be invoked insofar as the two obligations are concerned, Articles 1278 and 1279 of the new Civil Code provide:

"Art. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of

each other.

"Art. 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consummable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor."

It is clear from the above legal provisions that compensation cannot be effected with regard to the two obligations in question. In the first place, the debtor insofar as the certificates of indebtedness are concerned is the Republic of the Philippines, whereas the real estate taxes owed by appellee are due to the City of Manila and Pasay City, each one of which having a distinct and separate personality from our Republic. With regard to the Certificates, the creditor is the appellee while the debtor is the Republic of the Philippines. And with regard to the taxes, the creditors are the City of Manila and Pasay City while the debtor is the appellee. It appears, therefore, that each one of the obligors concerning the two obligations is not at the same time the principal creditor of the other. It cannot also be said for certain that certificates are already due. Although on their faces the certificates issued to appellee state that they are redeemable on June 18, 1958, yet the law does not say that they are redeemable from its approval on June 18, 1958 but "within ten years from the date of issuance" of the certificates. There is no certainty, therefore, when the certificate are really redeemable with in the meaning of the law. Since the requisites for the accomplishment of legal compensation cannot be fulfilled, the latter cannot take place with regard to the two obligations as found by the court a quo.

Wherefore, the decision appealed from is reversed. The petition for mandamus is dismissed. The injunction issued against respondents-appellants is hereby lifted. No costs.

Padilla, Labrador, Concepcion,, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Section 3, Rule 67, Rules of Court; *Mendoza vs. E. C. McCullough & Co.*, 29 Phil. 465; *Olsen & Co. Herstein, et. al.*, 32 Phil. 520.

[2] *Florentino vs. PNB*, 42 O.G. 2522; *Sabalino vs. RFC*, G.R. L-11790, September 30, 1958.

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