

**MARCELINO M. FRANCISCO AND CLARA C. FRANCISCO, PLAINTIFFS
AND APPELLEES, VS. THE CITY OF DAVAO, TELESFORO ALFELOR,
CITY ASSESSOR OF DAVAO, AND SIMPLICIO MONTANO, CITY
TREASURER ...***G.R. No. 20654. December 24, 1964*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-20654/>**CONCEPCION, J.;**

This is an appeal taken by the defendants-City of Davao, its Assessor and its Treasurer-from a decision of the Court of First Instance of Davao, ordering them to refund to plaintiff Clara C. Francisco, a sum of money paid by her under protest, without pronouncement as to costs.

On July 5, 1950, the Bureau of Lands awarded to plaintiff Clara C. Francisco, as the highest bidder in an auction sale held for that purpose, Lot No. 129-A of the Santa Ana Reservation, Davao City, with an area of 410 square meters, at P2.50 per square meter, for which she had filed the corresponding application. The award gave her ten (10) years within which to pay said price, in ten (10) annual installments, which she had been paying beginning from July 1951. In 1955, while the property still belonged to the Government, the City Assessor assessed said Lot No. 129-A for real estate purposes at P8.28 a square meter. Mrs. Francisco protested against this assessment, upon the ground that it cannot be higher than the price at which it had been sold to her, but despite the pendency of her protest before the City Board of Assessment Appeals and her willingness and offer to pay taxes on the basis of the purchase price of P2.50 a square meter, the City Treasurer demanded payment of the real estate tax based upon said protested assessment. Accordingly, on May 20, 1955, Mrs. Francisco paid the sum of P47.99 under protest and then, with the assistance of her husband, commenced this action, with a prayer that said assessment be declared illegal; that the City Assessor be ordered to make his assessment in accordance with Section 115, Commonwealth Act No. 141, as amended by Republic Act No. 436; that the collection of taxes, as made by the City Treasurer, be, also, declared illegal; and that the defendants be ordered to refund the corresponding amount to the plaintiff.

In their answer, the defendants alleged that the disputed assessment is valid and that the tax collected from the Franciscos, excluding penalty or surcharges for late payment, amounted to P38.70. After due hearing, the lower court rendered a decision holding, not merely that the land in question could not be assessed for purposes of taxation at an amount higher than the price at which the plaintiffs had bought it-as contented by them-but that it was not subject at all to taxation, and, accordingly, ordering the refund of the sums paid by them under protest, without pronouncement as to costs. Hence this appeal, taken by the defendants, which is before us, no question of fact being involved therein.

In deciding this case as it did, the lower court relied upon Section 24 of the Charter of the City of Davao, Commonwealth Act No. 51, reading in part:

"There shall be a City Assessor who shall have the following general powers and duties:

"(a) He shall annually assess and value for taxation the real estates of the City, and, for this purpose, is empowered to administer any oath authorized, to be administered in the assessment of collection of taxes;

"(b) He shall make a list of all taxable real estate in the city and the names of the owners thereof, with a brief description opposite their names of the property owned by them and the cash value thereof x x x"

The provisions of Subdivision (b) of this section, pursuant to which the City Assessor "shall make a list of all taxable real property in the city and the names of the owners thereof, with a brief description opposite their names of the property owned by them and the cash value thereof"-particularly the phrases "owners thereof and "owned by them"-seem to have led the lower court to believe that the City of Davao is not allowed by its charter to tax any property except that which belongs to the taxpayer, or, private property for municipal corporations cannot impose taxes upon the national government.

It should be noted, however, that said Section 24 does not purport to define the power of taxation of Davao City. It merely enumerates the "general powers and duties" of the City Assessor, including, inter alia, the power and duty to annually assess and value for taxation the real estate of the City, without stating whether the property must be private or may, also, be public. Subdivision (b) of said Section 24 specifically imposes upon the City Assessor the duty to make a "list of all taxable real property in the City", and describes the contents of the list.

Obviously, the "names of the owners" of said taxable real estate are material to the list and, hence, required to be stated therein. It is even probable that, in drafting said Subdivision (b), the lawmakers assumed that, in general, only private property are taxable. It is equally obvious, however, that said Section 24 was meant to be no more than what it purports to be, namely, an enumeration of the "general powers and duties of the City Assessor". In other words, it was not intended to define or delimit the power of taxation of the City, which is the subject matter of Subdivisions (a), (m) and (n) of Section 14 of its Charter (Commonwealth Act No. 51).

Particularly relevant to the issue before us is said Subdivision (a), pursuant to which the City Council shall have the power "to levy and collect taxes for general and special purposes in accordance with law, including specifically the power to levy, in addition to the provincial rate, real property tax not to exceed one-half per centum x x x." What is the "law" alluded to? Insofar as the land in question is concerned, it is Section 115 of Commonwealth Act No. 141, as amended, which provides:

"All the lands granted by virtue of this Act except homestead upon which final proof has not been made and approved, shall, even though, and while the title remains in the State, be subject to the ordinary taxes, which shall be paid by the grantee beginning with the year next following the one in which the application or concession has been approved or the contract signed, as the case may be on the basis of the value fixed in such approval, concession or contract."

In fact, plaintiffs admit that said land is taxable under this provision. It was his Honor, the trial Judge, who opined that Section 24 of Commonwealth Act No. 51 provides otherwise, because the same "refers to x x x properties privately owned", whereas said Section 115 of Commonwealth Act No. 141 refers to public lands. The error in this process of reasoning stems from the fact that the lower court had read into said Section 24 the word "privately" owned and considered this section as a definition of the power of taxation of the City of Davao, which it is not. As indicated above, Section 14 (a) specifically confers upon the City Council of Davao the power "to levy and collect taxes x x x in accordance with law, including x x x real property tax x x x". As to what real property may be so taxed, the same is left to "law". Insofar as public lands granted under Commonwealth Act No. 141, the "law" is Section 115 thereof, pursuant to which said lands, "even though and while the title remains in the State", shall be the subject to the ordinary taxes x x x beginning with the year next following the one in which the x x x contract had been signed."

It is true that, pursuant to Section 26 of Commonwealth Act No. 51:

"Lands and buildings owned by the United States of America, the Government of the Philippines, the City of Davao, the Province of Davao, and burying grounds, churches, and their adjacent parsonages and convents, and lands or buildings used exclusively for religious, charitable, scientific, or educational purposes, and not for profit, shall be exempt from taxation; but such exemption shall not extend to lands or buildings held for investment, though the income therefrom be devoted to religious, charitable, scientific, or educational purposes."

However, insofar as inconsistent with Section 115 of Commonwealth Act No. 141, said Section 26 must necessarily yield thereto, not only because Commonwealth Act No. 141 is a subsequent legislation, but, also, because said Section 115 reflects a general policy of the Government with reference to public lands, in much the same way as Section 26 of Commonwealth Act No. 51 reflected the general policy of the State at the time of its enactment, which was necessarily modified by said Commonwealth Act No. 141.

For the rest, said Section 115 is explicit in that the public land in question may be taxed "on the basis of the value fixed in the contract" whereby the said land had been "granted". In the case at bar said price is P2.50 a square meter, so that its assessment for real estate purposes at P8.28 a square meter exceeds by P5.78 the amount authorized by law. Consequently, the amount collected from the plaintiffs in excess of the tax based on the purchase price of said property should be refunded to them.

We have not overlooked the fact that, it would have been better had plaintiffs pursued their claim pursuant to Republic Act No. 1125, by waiting for the decision of the City Board of Assessment Appeals, and/or taking up the matter with the Court of Tax Appeals, to seek, thereafter, if necessary, the intervention of this Court, instead of instituting this case in the Court of First Instance of Davao. We note, however, that the defendants had advanced this view in a motion to dismiss by them filed with the lower court (pp. 7-8, Record on Appeal), and that the same denied the motion (pp. 18-21, Record on Appeal), and, consequently, decided the case on the merits (pp. 25-29, Record on Appeal). The ends of justice would not be served, if we now dismissed the case-over nine (9) years after it had been initiated-and bade the plaintiffs to start all over again, following the procedure that the defendants had asked the lower court, but which the latter refused, to require. At any rate, since the legal question raised in the pleadings has reached this Court, and the assessment complained of is manifestly violative of the clear and express provision of the law, it is best that we decide said question, instead of further deferring its resolution.

WHEREFORE, the decision appealed from is hereby reversed, and another one shall be entered directing the defendants to refund to the plaintiffs the amount above referred to, without special pronouncement as to costs.

IT IS SO ORDERED.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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