

VIUDA DE TAN TOCO, PLAINTIFF AND APPELLANT, VS. THE MUNICIPAL COUNCIL OF ILOILO, DEFENDANT AND APPELLEE.

G. R. No 24950. March 25, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

It appears from the record that the widow of Tan Toco had sued the municipal council of Iloilo for the amount of P42,966.40, being the purchase price of two strips of land, one on Calle J. M. Basa consisting of 592 square meters, and the other on Calle Aldiguer consisting of 59 square meters, which the municipality of Iloilo had appropriated for widening said street. The Court of First Instance of Iloilo sentenced the said municipality to pay the plaintiff the amount so claimed, plus the interest, and the said judgment was on appeal affirmed by this court.[1]

On account of lack of funds the municipality of Iloilo was unable to pay the said judgment, wherefore plaintiff had a writ of execution issue against the property of the said municipality, by virtue of which the sheriff attached two auto trucks used for street sprinkling, one police patrol automobile, the police stations on Mabini street, and in Molo and Mandurriao and the concrete structures, with the corresponding lots, used as markets by Iloilo, Molo, and Mandurriao.

After notice of the sale of said property had been made, and a few days before the sale, the provincial fiscal of Iloilo filed a motion with the Court of First Instance praying that the attachment on the said property be dissolved, that the said attachment be declared null and void as being illegal and violative of the rights of the defendant municipality.

Plaintiff's counsel objected to the fiscal's motion but the court, by order of August 12, 1925, declared the attachment levied upon the aforementioned property of the defendant municipality null and void, thereby dissolving the said attachment.

From this order the plaintiff has appealed by bill of exceptions. The fundamental question raised by appellant in her four assignments of error is whether or not the property levied upon is exempt from execution,

The municipal law, section 2165 of the Administrative Code, provides that:

"Municipalities are political bodies corporate, and as such are endowed with the faculties of municipal corporations, to be exercised by and through their respective municipal government in conformity with law.

"It shall be competent for them, in their proper corporate name, to sue and be sued, to contract and be contracted with, to acquire and hold real and personal property for municipal purposes, and generally to exercise the powers hereinafter specified or otherwise conferred upon them by law."

For the purposes of the matter here in question, the Administrative Code does not specify the kind of property that a municipality may acquire. However, article 343 of the Civil Code divides the property of provinces and towns (municipalities) into property for public use and patrimonial property. According to article 344 of the same Code,

provincial roads and foot-path, squares, streets, fountains, and public waters, drives and public improvements of general benefit built at the expense of the said towns or provinces, are property for public use.

All other property possessed by the said towns and provinces is patrimonial and shall be subject to the provisions of the Civil Code except as provided by special laws.

Commenting upon article 344, Mr. Manresa says that "In accordance with administrative legislation" (Spanish) we must distinguish, as to the patrimonial property of the towns, "between that of common benefit and that which is private property of the town. The first differs from property for public use in that generally its enjoyment is less, as it is limited to neighbors or to a group or class thereof; and, furthermore, such use, more or less general, is not intrinsic with this kind of property, for by its very nature it may be enjoyed as though it were private property. The third group, that is, private property, is used in the name of the town or province by the entities representing it and, like any private property, giving a source of revenue."

Such distinction, however, is of little practical importance in this jurisdiction in view of the different principles underlying the functions of a municipality under the American rule. Notwithstanding this, we believe that the principle governing property of the public domain of the State is applicable to property for public use of the municipalities as said municipal property is similar in character.

The principle is that the property for public use of the State is not within the commerce of man and, consequently, is inalienable and not subject to prescription. Likewise, property for public use of the municipality is not within the commerce of man so long as it is used by the public and, consequently, said property is also inalienable.

The American Law is more explicit about this matter as expounded by McQuillin in *Municipal Corporations*, volume 3, paragraph 1160, where he says that:

"State statutes often provide that court houses, jails and other buildings owned by municipalities and the lots on which they stand shall be exempt from attachment and execution. But independent of express statutory exemption, as a general proposition, property, real and personal, held by municipal corporations, in trust for the benefit of their inhabitants, and used for public purposes, is exempt.

"For example, public buildings, school houses, streets, squares, parks, wharves, engines and engine houses, and the like, are not subject to execution. So city waterworks, and a stock of liquors carried in a town dispensary, are exempt. The reason for the exemption is obvious. Municipal corporations are created for public purposes and for the good of the citizens in their aggregate or public capacity. That they may properly discharge such public functions corporate property and revenues are essential, and to deny them these means the very purpose of their creation would be materially impeded, and in some instances practically destroy it. Respecting this subject the Supreme Court of Louisiana remarked: 'On the first view of this question there is something very repugnant to the moral sense in the idea that a municipal corporation should contract debts, and that, having no resources but the taxes which are due to it, these should not be subjected by legal process to the satisfaction of its creditors. This consideration, deduced from the principles of moral equity has only given way to the more enlarged contemplation of the great and paramount interests of public order and the principles of government.'

"It is generally held that property owned by a municipality, where not used for a public purpose but for quasi private purposes, is subject to execution on a judgment against the municipality, and may be sold. This rule applies to shares of stock owned by a municipal corporation, and the like. But the mere fact that corporate property held for public uses is being temporarily used for private purposes does not make it subject to execution.

"If municipal property exempt from execution is destroyed, the insurance money stands in lieu thereof and is also exempt.

"The members or inhabitants of a municipal corporation proper are not personally liable for the debts of the municipality, except that in the New England States the individual liability of the inhabitant is generally maintained."

In Corpus Juris, vol 23, page 355, the following is found:

"Where property of a municipal or other public corporation is sought to be subjected to execution to satisfy judgments recovered against such corporation, the question as to whether such property is leviable or not is to be determined by the usage and purposes for which it is held. The rule is that property held for public uses, such as public buildings, streets, squares, parks, promenades, wharves, landing places, fire engines, hose and hose carriages, engine houses, public markets, hospitals, cemeteries, and generally everything held for governmental purposes, is not subject to levy and sale under execution against such corporation. The rule also applies to funds in the hands of a public officer. Likewise it has been held that taxes due to a municipal corporation or county cannot be seized under execution by a creditor of such corporation. But where a municipal corporation or county owns in its proprietary, as distinguished from its public or governmental capacity, property not useful or used for a public purpose but for quasi private purposes, the general rule is that such property may be seized and sold under execution against the corporation, precisely as similar property of individuals is seized and sold. But property held for public purposes is not subject to execution merely because it is temporarily used for private purposes, although if the public use is wholly abandoned it becomes subject to execution. Whether or not property held as public property is necessary for the public use is a political, rather than a judicial question."

In the case of *City of New Orleans vs. Louisiana Construction Co., Ltd.* (140 U. S., 654; 35 Law. ed., 556), it was held that a wharf for unloading sugar and molasses, open to the public, was property for the public use of the City of New Orleans and was not subject to attachment for the payment of the debts of the said city.

In that case it was proven that the said wharf was a parcel of land adjacent to the Mississippi River where all shipments of sugar and molasses taken to New Orleans were unloaded.

That city leased the said wharf to the Louisiana Construction Company, Ltd., in order that it might erect warehouses so that the merchandise upon discharge might not be spoiled by the elements. The said company was given the privilege of charging certain fees for storing merchandise in the said warehouses and the public in general had the right to unload sugar and molasses there by paying the required fees, 10 per cent of which was turned over to the city treasury.

The United States Supreme Court on an appeal held that the wharf was public property, that it never ceased to be such in order to become private property of the city; wherefore the company could not levy execution upon the wharf in order to collect the amount of the judgment rendered in favor thereof.

In the case of *Klein vs. City of New Orleans* (98 U. S., 149; 25 Law. ed., 430), the Supreme Court of the United States held that a public wharf on the banks of the Mississippi River was public property and not subject to execution for the payment of a debt of the City of New Orleans where said wharf was located.

In this case a parcel of land adjacent to the Mississippi River, which formerly was the shore of the river and which later enlarged itself by accession, was converted into a wharf by the city for public use, who charged a certain fee for its use.

It was held that that land was public property as necessary as a public, street and was not subject to execution on account of the debts of the city. It was further held that the fees collected were also exempt from execution because they were a part of the income of the city.

In the case of *Tufexis vs. Olaguera and Municipal Council of Guinobatan* (32 Phil., 654), the question raised was

whether for the payment of a debt to a third person by the concessionaire of a public market, the said public market could be attached and sold at public auction. The Supreme Court held that:

"Even though a creditor is unquestionably entitled to recover out of his debtor's property, yet when among such property there is included the special right granted by the Government of usufruct in a building intended for a public service, and when this privilege is closely related to a service of a public character, such right of the creditor to the collection of a debt owed him by the debtor who enjoys the said special privilege of usufruct in a public market is not absolute and may be exercised only through the action of a court of justice with respect to the profits or revenue obtained under the special right of usufruct enjoyed by debtor.

"The special concession of the right of usufruct in a public market cannot be attached like any ordinary right, because that would be to permit a person who has contracted with the state or with the administrative officials thereof to conduct and manage a service of a public character, to be substituted, without the knowledge and consent of the administrative authorities, by one who took no part in the contract, thus giving rise to the possibility of the regular course of a public service being disturbed by the more or less legal action of a grantee, to the prejudice of the state and the public interests.

"The privilege or franchise granted to a private person to enjoy the usufruct of a public market cannot lawfully be attached and sold, and a creditor of such person can recover his debt only out of the income or revenue obtained by the debtor from the enjoyment or usufruct of the said privilege, in the same manner that the rights of the creditors of a railroad company can be exercised and their credit collected only out of the gross receipts remaining after deduction has been made therefrom of the operating expenses of the road. (Law of November 12, 1869, extended to the overseas provinces by the royal order of August 3, 1886.)"

For the reasons contained in the authorities above quoted we believe that this court would have reached the same conclusion if the debtor had been the municipality of Guinobatan and the public market had been levied upon by virtue of the execution.

It is evident that the movable and immovable property of a municipality, necessary for governmental purposes, may not be attached and sold for the payment of a judgment against the municipality. The supreme reason for this rule is the character of the public use to which such kind of property is devoted. The necessity for government service justifies that the property of public use of the municipality be exempt from execution just as it is necessary to exempt certain property of private individuals in accordance with section 452 of the Code of Civil Procedure.

Even the municipal income, according to the above quoted authorities, is exempt from levy and execution. In volume 1, page 467, *Municipal Corporations* by Dillon we find that:

"Municipal corporations are instituted by the supreme authority of a state for the public good. They exercise, by delegation from the legislature, a portion of the sovereign power. The main object of their creation is to act as administrative agencies for the state, and to provide for the police and local government of certain designated civil divisions of its territory. To this end they are Invested with certain governmental powers and charged with civil, political, and municipal duties. To enable them beneficially to exercise these powers and discharge these duties, they are clothed with the authority to raise revenues, chiefly by taxation, and subordinated by other modes, as by licenses, fines, and penalties. The revenue of the public corporation is the essential means by which it is enabled to perform its appointed work. Deprived of its regular and adequate supply of revenue, such a corporation is practically destroyed, and the ends of its erection thwarted. Based upon considerations of this character, it is the settled doctrine of the law that not only the public-property but also the taxes and public revenues of such corporations cannot be seized under execution against them, either in the treasury or when in transit to it. Judgments rendered for taxes, and the proceeds of such judgments in the hands of officers of the law, are not subject to execution unless so declared by statute. The doctrine of the inviolability of the public revenues by the creditor is maintained, although the corporation is in debt, and has no means of payment but the taxes which it is authorized to collect."

Another error assigned by counsel for appellant is the holding of the court a quo that the proper remedy for collecting the judgment in favor of the plaintiff was by way of mandamus.

While this question is not necessarily included in the one which is the subject of this appeal, yet we believe that the holding of the trial court, assigned as error by appellant's counsel, is true when, after a judgment is rendered against a municipality, it has no property subject to execution. This doctrine is maintained by Dillon (*Municipal Corporations*, vol. 4, par. 1507, 5th ed.) based upon the decisions of several States of the Union upholding the same principle and which are cited on page 2679 of the aforesaid work. In this sense this assignment of error, we believe, is groundless.

By virtue of all the foregoing, the judgment appealed from should be and is hereby affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] R. G. No. 22617, promulgated November 28, 1924, not reported.

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