

ASIATIC PETROLEUM CO. (P. I.), LTD., PLAINTIFF AND APPELLEE, VS. A. LLANES, PROVINCIAL TREASURER OF CEBU, DEFENDANT AND APPELLANT.*G. R. No. 25386. October 20, 1926*

Ponente: STREET, J.

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This action was instituted by the Asiatic Petroleum Co., Ltd., for the purpose of recovering from the provincial treasurer of Cebu the sum of P3,523.02, which is alleged to have been illegally exacted under protest from said company by the defendant for taxes covering the years 1923 to 1925, inclusive, upon the land known as "Shell Island" near the City of Cebu and upon certain improvements placed thereon by the plaintiff. Upon hearing the cause the trial court gave judgment in favor of the plaintiff to recover the amount claimed in the complaint, with the lawful interest from May 28, 1925, the date of the filing of the complaint. From this judgment the defendant appealed.

It appears that on August 22, 1919, the Governor-General, acting on behalf of the Government of the Philippine Islands, entered into a contract of lease with the plaintiff, the Asiatic Petroleum Co. (P. L), whereby the Government leased to said company for the term of fifty years a piece of land, having an area of one and one-half hectares, situated adjacent to the Island of Mactan, municipality of Opon, Province of Cebu, said island being at a distance of about 600 meters from the landing place of the port of Cebu. At the time of the making of the lease, the land referred to was accustomed to be covered by water at high tide; but it was needed by the lessee as a site for tanks to be used in the storage of petroleum. In order to reclaim the site and protect the improvements thereon from the sea, it was necessary for the company to build a concrete and cement foundation, protected by retaining walls of the same material.

The contract of lease recites that the lease is made pursuant to the provisions of Act No. 1654 of the Philippine Commission, as amended by Act No. 2570 of the Philippine Legislature; but an examination of the contents of Act No. 1654 shows that the lease in question was made pursuant to sections 5 and 6 of Act No. 1654, since these sections alone relate particularly to the lease of land under water. As pertinent to the discussion, we note that sections 2 to 4, inclusive, of Act No. 1654 deal with the leasing of lands that have been made or reclaimed from the sea by the Government by means of dredging or filling or otherwise; and in section 4 it is declared that all lands leased under the preceding sections of the Act and all improvements on such lands shall be subject to local taxation against the lessees, to the same extent as if such lessees were the owners of both land and improvements. The portion of the same Act which deals with the subject of the leasing of lands under water (sections 5 and 6) makes no mention of the liability of the lessee for taxes; and the lease itself contains no stipulation making the lessee liable for taxes. However, after the lessee obtained possession, the taxing authorities made an assessment against it with respect both to the land and improvements thereon for the years 1923 to 1925, inclusive, which tax had been paid by the plaintiff under protest, and for the recovery of the same, this action was instituted.

It is quite clear that the lessee is not liable for the tax assessed against it with respect to the land which is the subject of the lease. That land is the property of the Government; and section 344 of the Administrative Code especially exempts from local taxation property owned by the United States of America or by the Government of the Philippine Islands. The circumstance that the plaintiff now holds said land under a contract of lease with the Government by no means makes the plaintiff liable for the tax on the land. This point was expressly ruled by this court in *Fairchild vs. Sarmiento* (47 Phil., 485), where we held that when the Government as owner of land leases it for a fixed rental, under a contract not containing a stipulation for the payment of taxes by the lessee, such land is exempt in the hands of the lessee. This rule must be understood to apply to all property which is exempt in the hands of the Government, whether it be of a public or patrimonial nature. In this jurisdiction real property, whether consisting of land or the improvements thereon, is assessable against the owner; and in the absence of special provision no liability for the tax attaches to any other person than the owner.

We note that Act No. 1654 has been superseded by certain provisions in Act No. 2874; and in section 113 of this Act there is a general provision that all the lands granted by virtue of said Act, except homesteads, shall be subject to the ordinary taxes which shall be paid by the grantee even though the title remains in the Government. This Act was approved November 29, 1919, a little more than three months after the date when the lease now under consideration was made, but section 129 of Act No. 2874 contains a provision to the effect that it shall take effect on July 1, 1919. Upon this it is contended by the provincial fiscal of Cebu, as attorney for the Government, that Act No. 2874 should be given a retroactive effect, with the result that the lessee under this contract is made liable for the taxes upon Shell Island and improvements thereon, by virtue of said retroactive provision. This view is untenable. While it may be conceded that the Act referred to could be given a retroactive effect with respect to the administrative and curative features of the statute, it could not be given retroactive effect to the extent of impairing the obligation of an existing lease, since our Organic Law prohibits the enactment of laws impairing the obligation of contracts (Act of Congress of August 29, 1916, sec. 3).

It follows from what has been said that no error was committed by the lower court in giving judgment in favor of the plaintiff to recover the taxes paid by it under protest upon the land which is the subject of the lease.

Whether the plaintiff was liable for the tax assessed against it upon the value of the improvements which it placed upon Shell Island is a question which is governed by different considerations. In this connection we note that these improvements consist of oil tanks, wharf, warehouse, pump house, and sheds, together with an office and residence building and coolie quarters. These are not public improvements, but are of a private nature, constructed for the use of the lessee in conducting its business as a purveyor of coal oil. Said improvements belong to the lessee and will remain its property until the termination of the lease, when, under subsection (c) of section 6 of Act No. 1654, the title to the same will vest in the Government of the Philippine Islands. The fact that the improvements will thus ultimately belong to the Government in no wise alters the liability of the lessee of taxes thereon, so long as the property belongs to it. Under section 343 of the Administrative Code the tax on improvements on real property is assessable against the owner of such improvements whether he is also the owner of the land on which they are placed or not. The case not infrequently happens that the land is assessed to one person and the improvements to another; and so it should be, when the titles to the two different sorts of property are vested in different persons.

Upon examining the provisions of Act No. 1654 relative to the leasing of lands reclaimed by the Government, it will be noted that, by section 4, all lands leased under the preceding sections of the Act, "and all improvements thereon" shall be subject to local taxation. From the inclusion of improvements in said section and the omission of all reference to taxation in the sections dealing with the leasing of lands under water, an argument has been deduced to the effect that the lessee here should not be held liable for taxes on the improvements. We consider

such implication to be too weak to support the claim of exemption asserted by the lessee, even supposing that the inference drawn is in any wise legitimate. Exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right. It cannot be allowed to exist upon a vague implication such as is supposed to arise in this case from the omission from Act No. 1654 of any reference to liability for tax. The books are full of very strong expressions on this point. As was said by the Supreme Court of Tennessee in *Memphis vs. U. & P. Bank* (91 Tenn., 546, 550), "The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or statute law." Other utterances equally or more emphatic come readily to hand from the highest authority. In *Ohio Life Ins. and Trust Co. vs. Debolt* (16 Howard, 416), it was said by Chief Justice Taney, that the right of taxation will not be held to have been surrendered, "unless the intention to surrender is manifested by words too plain to be mistaken." In the case of the *Delaware Railroad Tax* (18 Wallace, 206, 226), the Supreme Court of the United States said that the surrender, when claimed, must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power. If a doubt arise as to the intent of the legislature, that doubt must be solved in favor of the State. In *Erie Railway Company vs. Commonwealth of Pennsylvania* (21 Wallace, 492, 499), Mr. Justice Hunt, speaking of exemptions, observed that a State cannot strip itself of the most essential power of taxation by doubtful words. "It cannot, by ambiguous language, be deprived of this highest attribute of sovereignty." In *Tennessee vs. Whitworth* (117 U. S., 129, 136), it was said: "In all cases of this kind the question is as to the intent of the legislature, the presumption always being against any surrender of the taxing power." In *Far rington vs. Tennessee and County of Shelby* (95 U. S., 679, 686), Mr. Justice Swayne said: " * * * When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported"

Reliance is placed in the brief of the appellee upon the case of the *City of Oakland vs. Albers Bros.' Milling Co.* (184 Pac, 868), where it was held that a dock and warehouse built by a lessee of public land are not subject to taxation as improvements. But the lease there in question contained a stipulation declaring that the dock and warehouse, when constructed by the lessee pursuant to the terms of the lease, should become and remain the property of the lessor. In the case before us the improvements upon which the assessment is now sustained certainly belong to the lessee; and, with the assent of the officials mentioned in the contract, the lessee may assign the lease, or mortgage or encumber the improvements, and its successors will have full enjoyment of both the lease and the improvements during the term of the contract. It is true, as already stated, that the improvements cannot be removed and that upon termination of the lease the improvements will become the property of the Government. This change of ownership, which can only occur at the end of the life of the lease, can in no wise affect the liability of present owners for taxes. In *Army and Navy Club vs. Trinidad* (44 Phil., 383), we held that the circumstance that at the end of a long term of years the property now owned by the Army and Navy Club is subject to an option for the purchase of the same by the city, at a very small valuation, does not affect the liability of the present owner for taxes upon the full value of, the property.

But it is also said that the irremovable nature of these improvements determines their character as realty, with the result that the improvements, like the land itself, should be held exempt. We see no necessity for thus ignoring the fact of the present ownership of the improvements by the lessee. Improvements are taxable separately in this jurisdiction and there is neither difficulty nor injustice in allowing the tax laws to operate against the owner of the improvements, while relieving it from liability for the tax on the land.

The result of the discussion is that while the lessee is not taxable in respect to the land which is the subject of the

lease, it is subject to taxation with respect to the improvements. The appealed judgment must therefore be modified by reducing the recovery to the amount paid upon the land, namely, P2,270.88; and this refund must, under section 1579 of the Administrative Code, be made without interest.

It being understood that the recovery is limited to the amount last above stated, without interest, the same is affirmed, without costs. So ordered.

Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

DISSENTING

AVANCEÑA, C. J., with whom concurs Romualdez, J.,

I dissent. If the land involved in this case is exempt from taxation by reason of being Government property, the improvements thereon must likewise be exempt, being also Government property. According to article 358 of the Civil Code, whatever is built on another's land and any improvements made thereon belong to the owner of the same. It is true that this rule is modified in regard to the usufructuary and to the lessee (articles 487 and 1573, Civil Code), who have the right to remove whatever was built and the improvements made on the land if it is possible to do so without injury to the latter. But, according to Act No. 1654, governing the lease in question, and the terms of the contract executed by the plaintiff, as lessee, the improvements on the land shall become the property of the Government at the expiration of the lease. This means that once the improvements have been made by the plaintiff it cannot dispose of them because it must conserve them for the purposes of the law and the terms of the contract and cannot remove them. According to this, the modification of the rule established in article 358 of the Civil Code does not apply in the present case by express provision of a special law and by express agreement of the parties and, consequently, said rule strictly applies here, and these improvements must be considered Government property as it is the owner of the land.

It is said, however, that as, according to the law and the contract, these improvements shall become the property of the Government at the expiration of the lease, it follows that during the lease they are the property of the lessee. This inference is not justified if it is taken into consideration that this provision of the law and this clause of the contract have for their purpose only the elimination of the sole modification of the rule established in article 358, in favor of the lessee, so as to make it strictly applicable. In fact, taking into consideration this condition of the lease, the lessee, even before the expiration of the contract, cannot be considered the owner of the improvements which he may make on the land, because he lacks one of the principal attributes of ownership, which is the power to dispose.

This must have been the intention of Act No. 1654 which, in making inapplicable, in leases of reclaimed seashore land, the exemption in favor of the Government from taxation, has made reference not only to the land but also to the improvements thereon. If these improvements made by the lessee were to be considered the property of the lessee during the lease, the law would not have referred to them inasmuch as even without this reference said improvements would be subject to taxation. For this reason, undoubtedly, it is provided in the law that the lessee of reclaimed seashore land shall pay the taxes, not on account of being the owner, but in the same manner as if he were the owner of the land and the improvements.

In other words, it is my opinion that the Government, being the owner of the land on which the improvements were made, upon which taxes are sought to be levied, and as these improvements have been made by the plaintiff, as lessee, without the right to remove them, they must be held to be Government property and are also exempt from taxation.

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