

THE CITY OF MANILA, PLAINTIFF AND APPELLANT, VS. SALVADOR ROXAS Y ELIO ET AL., DEFENDANTS. MARIA ELIO VIUDA DE ROXAS AND CU UNJIENG E HIJOS, APPELLEES.

G. R. No. 39671. June 29, 1934

Ponente: HULL, J.

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HULL, J.:

The City of Manila appeals from the orders of the Court of First Instance of Manila awarding to two private property owners whose lands were taken by expropriation proceedings, an allowance for the taxes paid to the City of Manila under protest, covering a period of time between the dispossession of the owners and the taking of title by the city.

Several questions as to procedure and fact are raised in this appeal, although they were not submitted to the trial court. Subject to a few exceptions, the rule is almost universal, and it has been repeatedly followed by this court that "questions, of whatever nature, not raised and properly preserved for review in the trial court, will not be noticed on appeal." (3 C. J., 689.)

Such questions discussed in the appeal will therefore be disregarded, and we will assume that the proceedings are regular and that the court was fully apprised as to the facts of the case before taking action.

In expropriation proceedings not only should just compensation be made, but, as well stated by Chief Justice Shaw in *Parks City of Boston* (15 Pick., 198-208):

"* * * if a pie-powder court could be called on the instant and on the spot, the true rule of justice for the public would be, to pay the compensation with one hand, whilst they apply the axe with the other; and this rule is departed from only because some time is necessary, by the forms of law, to conduct the inquiry; and this delay must be compensated by interest."

While taxes are assessed against the holder of the title (Cooley, *Taxation*, vol. II, 4th ed., p. 1215; *City of Manila Sy Quia*, G. R. No. 32474, promulgated May 22, 1930, not reported), the owner of the property is entitled to the beneficial use of his property until title changes. If pursuant to law, immediate possession may be taken, the withholding this right from the owner must be compensated for as well as the formal taking. In *In re Mayor*, etc., of City of New York (58 N. Y. Supplement, 58, 61), it is said:

"It is equally clear that, at the time of the actual appropriation of the property by the city, the owners were entitled to be relieved of all burdens incident to their ownership. Certainly it would not be 'just compensation' to take a man's land, and compel him to pay the taxes and assessments thereafter levied on the property, while at the same time withholding the purchase price. * * * Upon the city's theory, therefore, the owner must not alone be deprived of the unrestricted use of his property and of the ad interim use of his money, but he must also be compelled to pay for its police protection, and for public improvements charged against it as a benefit, during all the period of delay, for which he is in no way responsible, and which he is powerless to shorten'. It will be seen that; if this theory be correct, the owner's award would be constantly diminished by each year's

delay, until, if the period were long enough, it would be entirely wiped out. It can hardly be contended that a theory which, logically followed out, would under any possible circumstances produce such a result, affords a satisfactory basis for an award of 'just compensation.'

"* * * The owner may be allowed the unrestricted use of the premises after the taking, and the premises may be of such a character, and so situated, that the income derivable therefrom is a full equivalent for interest, taxes, and assessments. Such is the case where the property has been fully improved and rented, and where there has been no loss of tenancy or diminution of rental pending the condemnation proceedings."

As to the question of law involved, we hold that there is no error in a court's awarding, as part of the just compensation required by law, the amount of taxes and assessments paid covering the period where the original owner had merely the naked legal title. Where all benefits have been taken away, the corresponding burdens should be assumed by the State.

The orders appealed from are therefore affirmed. Costs against appellant. So ordered.

Abad Santos, Butte, Goddard, and Diaz, JJ., concur.

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