

R. R. LANDON, PLAINTIFF AND APPELLANT, VS. ALFREDO V. JACINTO, PROVINCIAL TREASURER AND EX-OFFICIO PROVINCIAL ASSESSOR OF CEBU, DEFENDANT AND APPELLANT.

G. R. No. 41253. November 28, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

This is an appeal by both parties from a decision of the Court of First Instance of Cebu, the dispositive part of which reads:

"Haciendero la computacion de lo que debera devolverse, una vez recucido el amillaramiento a tres pesos por metro cuadrado, la cantidad resultante es P1,959.60. En su consecuencia, el Juzgado condena al demandado a devolver al demandante la suma de P1,959.60. Sin expresa condena de costas."

The parties agree as to the following facts:

In 1920, in accordance with the provisions of section 351 of the Administrative Code, the municipal council of Cebu made and adopted, and the provincial board of the Province of Cebu duly approved, a general schedule of values of real property within the municipality of Cebu (Exhibit A), and that general schedule of values has continued effective and in force during all of the time from the date of its adoption down to the present (Stipulation of Facts, Exhibit X).

At the time of the adoption of the said schedule of values, the plaintiff was the owner of three parcels of land situated in the municipality of Cebu and designated as lots Nos. 391, 406 and 458 of the Banilad Friar Lands Estate, situated in the area bounded by Mango Avenue, Calles Fructuoso Ramos, Norte America, Sanciangko and Juan Luna, plaintiff's land being a relatively small portion of that area, situated near the center thereof, and having a total area of 84,592 square meters. Said parcels of land were unimproved at the time they were bought by the plaintiff and those still owned by him have no taxable or income producing improvements on them.

In accordance with the schedule of values adopted, as above stated, said parcels of land were assessed for taxation at P67,830, or that is to say, at approximately P0.80 per square meter, and the real property tax payable thereon was P589.05 per annum, being seven-eighths of one per cent of the assessed value (paragraphs 3 and 4, Exhibit X).

In 1926, the plaintiff, by a survey, caused the said parcels of land to be consolidated and subdivided into 103 separate parcels or sub-lots with a combined area of 84,592 square meters, but without otherwise improving said parcels of land. In the same year, or the two succeeding years, the plaintiff disposed of 34 of said lots, leaving to himself 69 of the same, having a total area of 52,089 square meters. The sub-lots sold by the plaintiff were thereafter declared by, and assessed in the names of, the new owners under separate tax declarations, and are not involved in this case (paragraph 4, Exhibit X). The 52,089 square meters which remained to the plaintiff was, under the schedule of values adopted and approved according to law (Exhibit A), assessed at approximately

P41,670 and the annual tax payable, at seven-eighths of one per cent of the assessed value, was P364.61; but on December 27, 1929, the defendant, as provincial assessor, on his own initiative and entirely without direction or authority from the provincial board or any other competent official or body, made what he called a "special assessment" of plaintiff's land, whereby he assessed the 52,089 square meters remaining to the plaintiff at slightly over P5 per square meter, or a total of P260,700, and the defendant as provincial treasurer required the plaintiff to pay, and the plaintiff did pay on May 29, 1930, under instant protest to avoid penalties or forfeiture, the sum of P2,262.85 as taxes on said land for the year 1930. The above stated amount is exclusive of the tax paid without protest by Consorcia Bacay on one of the sub-lots which had been sold in 1930 to her by the plaintiff. That is to say, the total amount payable, and paid under the so called "special assessment" was P2,271.03, but the plaintiff actually paid under protest only P2,262.85. The amount actually paid by the plaintiff for 1930 taxes was thus P1,901.24 more than was payable under the original lawful assessment of all the land that stood in plaintiff's name at the beginning of the year 1930. During the year 1930, the plaintiff sold others of said sub-lots, leaving to himself 59 thereof, with a total area of 47,362 square meters, assessed under the so called "special assessment" at P236,990, on which the tax, at seven-eighths of one per cent amounted to P2,073.91; and upon demand made by the defendant as provincial treasurer, and under protest, the plaintiff paid on May 29, 1931, the sum of P2,059.56, the remainder having been paid by Ernesto Sarmiento without protest, that being the tax corresponding to one of the sub-lots sold by the plaintiff to him during the first part of 1931. Under the original and lawful assessment of P0.80 per square meter, the 47,362 square meters of land would have been valued at P37,890 and the tax for the year 1931 should have been P331.53. Thus, the plaintiff has actually paid, under protest, P1,728.03 more than was payable under the original and lawful assessment for all of the land standing in his name at the beginning of 1931 (paragraph 6, Exhibit X).

During the year 1931, the plaintiff, by a subdivision survey, consolidated and subdivided, but did not otherwise improve, the remaining lots, and sold some of the subdivided lots, so that at the end of 1931 he had left 59 parcels or sub-lots with a total area of 36,632 square meters, which under said so called "special assessment" was valued at P183,300, on which the tax for the year 1932, at seven-eighths of one per cent, was P1,604.11; and upon demand made by the defendant as provincial treasurer, and under instant protest, the plaintiff paid to the defendant, on May 31 and September 29, 1932, the total sum of P1,515.27 of the amount demanded by the defendant, the remainder of the amount demanded having been paid without protest by other persons to whom plaintiff had sold some of the sub-lots during the year 1932. Under the original and lawful assessment the 36,632 square meters of land would have been valued at P29,300, and the tax payable for 1932 would have been P256.38. The plaintiff therefore actually paid for taxes in 1932 P1,258.89 more than he would have had to pay under the original lawful assessment (paragraph 7, Exhibit X).

To summarize, the plaintiff actually paid to the defendant under protest, as taxes for the years 1930, 1931 and 1932, the sums of P1,901.24, P1,728.03 and P1,258.89, or a total of P4,888.16, more than he would have been required to pay had the values of his land remained as previously fixed in accordance with the schedule of values (Exhibit A) adopted and approved in accordance with law, and which was, and still is, in force and effect.

In rendering the judgment, copied above, the trial court held, in effect, that the defendant was authorized by law to make the "special assessment" complained of, but held that the rate and amount of said special assessment were excessive and reduced the rate from P5 to P3 per square meter and ordered the defendant, as provincial treasurer, to refund to the plaintiff the sum of P1,959.60.

The plaintiff contends that the trial court erred (1) in holding that the defendant had the legal right to make a "special assessment" of plaintiff's property and in failing to find and hold that the "special assessment" of plaintiff's property made by the defendant on December 27, 1929, was unlawful and void ab initio, for lack of

power and authority on the part of the defendant to make the same; (2) in undertaking to assess, or to fix the assessment, of plaintiff's land at a rate different from that already fixed in accordance with the schedule of values adopted and approved according to law and (3) in failing to render judgment in favor of the plaintiff and against the defendant, as provincial treasurer, for the full amount of the difference between the total amount actually paid by the plaintiff as taxes for the years 1930, 1931 and 1932 and the amount he should have been required to pay under the assessment already made in accordance with the schedule of values adopted and approved according to law.

The defendant contends that the trial court erred (1) in overruling the demurrer filed by the defendant-appellant on July 14, 1932, and (2) in reducing the re-assessment made by the defendant-appellant from P5 to P3 per square meter.

The procedure for the assessment of real property values for the purpose of taxation is to be found in section 3 of the Assessment Law, sections 350, 351 and 353 of the Administrative Code. These sections have been amended and embodied in Act No. 3995 of the Philippine Legislature, but these amendments do not materially affect the questions raised in this case. The above mentioned sections read as follows:

"SEC. 350. General revision of property valuations.— When directed by the provincial board the provincial assessor shall effect a general revision of the valuations of the real property in his province or any municipality thereof and shall make a new, or revised, assessment of the same according to law. No such general revision of assessment shall be made with greater frequency than once in two years.

"SEC. 351. Preparation of general schedules of values.— Prior to directing the provincial assessor to proceed to a general revision of the assessments in any province or municipality, the provincial board shall require the municipal council of each municipality in which such revision is to be effected to prepare, in such form and detail as shall be prescribed by the Chief of the Executive Bureau, a general schedule of the values of the different classes of land for its municipality, which shall be forwarded to the provincial board for approval and such schedule, when approved by the provincial board, shall serve the assessor as basis for the valuation and assessment. Should the provincial board disapprove said schedule because it does not find it impartial, just, and equitable with respect to the other municipalities of the province, it shall return the same to the municipal council with its amendments, and if such amendments are not accepted by the municipal council, the latter shall forward them, with its arguments, in appeal to the Chief of the Executive Bureau, within thirty days after receipt thereof. If said term shall lapse without an appeal having been made, the schedule as amended by the provincial board shall govern. The decision of the Chief of the Executive Bureau, approved by the Department Head, shall be final."

"SEC. 353. Amending schedules of values.—For the correction of errors or inequalities in any schedule of values, the provincial board may, at any time, require the proper municipal council to prepare an amendment designed to remedy such errors or inequalities. Such amendments shall be subject to the same conditions as to preparation, modification, and appeal as general schedules."

The principle governing valuations and assessments is laid down in section 355, as follows:

"SEC. 355. Principle governing valuations and assessments.—All real property subject to taxation under the provisions of this chapter shall be valued and assessed for taxation at its true and full value in accordance with the schedule of values in force in the municipality wherein it is situated. So far as properly applicable such schedule shall be controlling; but where the property to be assessed is of a kind not classified in the schedule or of a kind for which a value is not therein fixed, it shall be assessed at its full and true value, independently of such schedule."

The defendant attempts to justify his action in subjecting plaintiff's land to a special assessment by alleging that he proceeded in accordance with sections 349 and 355, the latter quoted above, of the Administrative Code. The

pertinent part of section 349 reads:

"SEC. 349. Authority vested in provincial assessor.—In the performance of the duties devolving upon the provincial assessor, he shall be authorized from time to time as occasion may require, and subject to the provisions of this chapter and of any lawful regulations pursuant thereto:

* * * * *

"(e) To cancel, raise, or lower, as the case may require, the assessment of any parcel or item of real property in any municipality or of the property of any owner or owners therein whenever it appears that the existing assessment, whether originally proper or not, does not conform to the requirements of law.

"In the exercise of this power he shall eliminate from the list of taxable property all property which, being exempt, has been improperly included in the same; shall decrease the assessment where property previously assessed has suffered a permanent loss of value by reason of storm, flood, fire, or other casualty; and shall increase the assessment where taxable improvements have been made upon property subsequent to the last previous assessment."

Under the foregoing there are three things which the assessor, in proper cases, may lawfully do in respect to assessments already made, i. e., he may eliminate property from the list of taxable property, he may lower the assessment of property, or he may increase the assessment; but the cases in which he may lawfully do these things are specifically stated and prescribed. Thus, his authority to increase assessments already properly made is limited definitely to stated cases where taxable improvements have been made on land subject to the last previous assessment. As stated above, no taxable improvements have been made on the plaintiff's land in question in this case subsequent to the last previous assessment.

The defendant's reliance upon section 355 of the Administrative Code avails him nothing in this case, because that section authorizes him to proceed independently of the general schedule of values, as he has done in this case, only in those cases "where the property to be assessed is of a kind not classified in the schedule or of a kind for which a value is not therein fixed." In this case, it is not alleged nor was it proven that the plaintiff's land is of a kind not classified in the schedule of 1920 or that it is of a kind for which a value is not therein fixed.

From the admitted facts it is evident that the defendant has usurped and assumed power and authority which do not pertain to him.

It is probably true that the condition of plaintiff's property has undergone changes which have increased its value by reason of the opening of streets and the making of adjacent public and private improvements. Even so, the defendant has no authority under the law to increase the assessment upon said lands unless taxable improvements have been made thereon. This duty corresponds to the provincial board and the municipal council, either by a general revision of the schedule of values under sections 350 and 351, Administrative Code, or by an amendment of the existing schedule under section 353, and as stated above the defendant, as provincial assessor, had no lawful authority to attempt to adjust assessment by a so called "special assessment". And such special assessment is therefore null and void ab initio.

The assignments of error of the defendant-appellant are therefore overruled. The trial court erred in failing to render a judgment in favor of the plaintiff and against the defendant, as provincial treasurer, for the full amount of the difference between the total sums actually paid by the plaintiff as taxes for the years 1930, 1931 and 1932, and the total of the amounts he should have been required to pay under the assessment made in accordance with the schedule of values adopted and approved in the year 1920. The amount of that difference is P4,888.16.

The judgment of the trial court is modified and let judgment be entered in favor of the plaintiff for the sum of

P4,888.16, without costs.

Malcolm, Villa-Real, Imperial, and Butte, JJ., concur.

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