

NEW MASONIC TEMPLE ASSOCIATION, INC., PLAINTIFF AND APPELLANT, VS. VICTOR ALFONSO, TREASURER OF THE CITY OF MANILA, DEFENDANT AND APPELLEE.

G.R. No. 41583. October 18, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiff New Masonic Temple Association, Inc., from the judgment of the Court of First Instance of Manila dismissing the complaint and absolving the defendant therefrom, with costs to said plaintiff.

In support of its appeal the plaintiff assigns the following alleged errors committed by the trial court in said judgment, namely:

"1. The lower court erred in holding that decisions rendered by the Board of Tax Appeals in the exercise of its appellate jurisdiction are appealable.

"2. The lower court erred in holding that the letter of the City Assessor dated April 5, 1930 (Appendix C, stipulation of facts) constitutes a notice of appeal from the decisions of the Board of Tax Appeals in the cases involved herein.

"3. The lower court erred in not holding that even granting the validity of the decision of the Executive Bureau on September 1, 1930, and the reassessment made by the City Assessor under date of April 5, 1930, it was illegal and unjust to make them effective retroactively as of January 1, 1930.

"4. The lower court erred finally in dismissing the complaint."

The pertinent facts necessary for a resolution of the questions raised in the instant appeal are those found in the following stipulation of facts, to wit:

"1. That the defendant admits the allegations contained in paragraphs 1, 2 and 9 of the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th and 9th causes of action regarding the personal circumstances of the different parties therein mentioned, the ownership of the real estate properties described therein and the transfer or cession of the right of action of Luis Perez Samanillo, Emiliana Mortera Viuda de Calvo, Philippine-American Drug Co., Inc., Beatriz Viuda de Yriarte, Basilisa G. Viuda de Gorricho, Jose L. de Leon, Consuelo Roxas Gomez and Carmen P. de Tavera de Gonzalez, Carmen P. de Tavera, Carlos P. de Tavera, Andres Luna de Sampedro, Roberto P. de Tavera and Maria Arlete P. de Tavera in favor of the plaintiff New Masonic Temple Association, Inc.

"2. That in the year 1922, the City Assessor fixed an assessment value of P250 per square meter for all real estate properties on the Escolta, from which assessment the owners of the real estates hereinafter mentioned appealed to the Board of Tax Appeals, which said board reduced the assessment fixed by the City Assessor, as far as the properties of the real estate owners herein mentioned were concerned. As a result of the decision of the Board of Tax Appeals, the assessed values of the real estate properties described in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, and 9th causes of action were respectively the following: P388,891.52, P341,492, .P121,064.80,

P95,233.60 (for the property situated at 79 Escolta and 242 San Vicente, 4th cause of action), and P131,552.40 (for the property situated at 81-83 Escolta, 4th cause of action), P263,260.80, P167,436, P424,453.76, P214,309 and P405,363.80.

"3. That since the year 1922, the above-mentioned rates of assessment valuation and assessed values remained in force up to 1929, when the City Assessor caused to be published in the Official Gazette of November 19, 1929, a notice in both English and Spanish to owners and administrators of real estate in the City of Manila, copies of which are hereto attached and made an integral part of this Stipulation of Facts as appendices A and A-1.

"4. That on the same date, November 19, 1929, the City Assessor caused to be addressed, mailed and delivered to the real estate property owners on the Escolta mentioned in the complaint namely: (1) Mr. Luis Perez Samanillo, 1498 Oregon; (2) Mrs. Emiliana Mortera Viuda de Calvo, c/o J. Pelayo, 339 Juan Luna; (3) Philippine-American Drug Store Co., 95 Escolta; (4) Mrs. Helois Earnshaw, c/o Hogar Filipino; (5) New Masonic Temple Assn., Inc., 84-86 Escolta; (6) Heirs of Gorricho, 49 Escolta; (7) Viuda e Hijos de Pedro P. Roxas, 104 Aviles; (8) Mrs. Consuelo Roxas, 223 Concepcion; and (9) Mr. T. H. Pardo de Tavera, 49 Escolta, a written notice advising each and every one of them that the assessment valuation of their respective property has been increased resulting therefrom that the assessed value of their respective property to be enforced as basis for the collection of land taxes beginning with the year 1930 was fixed in the following amounts: P484,284.02, P425,996, P148,839.80, P118,861.10 (for the property situated on 79 Escolta and 424 San Vicente, 4th cause of action) and P160,091.40 (for the property situated at 81-83 Escolta, 4th cause of action), P312,940.80, P208,990.25, P499,041.26, P262,005 and P491,651.05. Copies of said notice are hereto attached marked as appendices B, B-1 to B-8 and made integral part hereof.

"5. That the above-mentioned property owners protested against the increase referred to in the aforementioned notices, and the City Assessor having maintained the said increase the said real estate property owners appealed from the decision of the City Assessor to the Board of Tax Appeals.

"6. That the Board of Tax Appeals sustained and upheld the contention of the above-mentioned land owners and consequently reduced the assessment value fixed by the City Assessor for the real estate properties described in the 1st, 3d, 4th, 5th, 6th, 7th, 8th and 9th causes of action, thus fixed their respective assessed value in the following amounts: P461,151.52, P309,996, P116,862.80, P93,080.35 (for the property situated at 79 Escolta and 424 San Vicente, 4th cause of action) and P141,384 (for the property situated at 81-83 Escolta, 4th cause of action), P1512,940.80, P190,382, P499,041.26, P262,005 and P436,992.55. The decision of the Board of Tax Appeals was rendered in January, 1930.

"7. That on April 5, 1930, the City Assessor submitted to the Chief, Executive Bureau, and to His Excellency, the Governor-General, the matter of the assessment valuation of lots on Calle Escolta, among them the properties mentioned in the nine causes of action stated in the complaint, as may be seen in the letter addressed by the said official to that effect which is also hereto attached and made an integral part of this Stipulation of Facts as Appendix C.

"8. That His Honor, the Mayor, forwarded the aforesaid letter of the City Assessor, to the Honorable, the Secretary of the Interior, who, in turn, referred the same to the Chief, Executive Bureau, and this latter official referred the matter back again to the Board of Tax Appeals, for comment.

"9. That the Board of Tax Appeals returned the said papers to the Chief, Executive Bureau, with the corresponding comment, as may be seen in the 4th indorsement of said board, copy of which is hereto attached and made an integral part of this Stipulation of Facts as Appendix D.

"10. That the Chief, Executive Bureau, on September 1, 1930, made a reassessment of the properties involved herein in accordance with the 5th indorsement of said official on the matter to the Honorable, the Secretary of the Interior, which is hereto attached and made an integral part of this Stipulation of Facts as Appendix E.

"11. That the owners of the real estate properties described in the nine causes of action stated in the complaint were not advised by the City Assessor nor by the Chief, Executive Bureau and of their respective offices, neither personally nor in writing no by publication, of the assessment valuation of April 5, 1930, mentioned in paragraph 7 of this Stipulation of Facts, and of the reassessment made by the Chief, Executive Bureau, mentioned in paragraph 10 of the same Stipulation of Facts. Neither was any hearing of any kind held in connection with the same.

"12. That the Honorable, the Secretary of the Interior, approved the aforesaid reassessment made by the Chief, Executive Bureau, as may be seen in the indorsement of said official, which is hereto attached and made an integral part of this Stipulation of Facts as Appendix F.

"13. That the above-mentioned papers were returned to the Board of Tax Appeals through channels, which said board on November 14, 1930, endorsed the same back to His Honor, the Mayor, with the corresponding comment, as may be seen in the endorsement of said board, copy of which is hereto attached and made an integral part of this Stipulation of Facts as Appendix G.

"14. That the Chief, Executive Bureau, in turn returned the papers to the Honorable, the Secretary of the Interior, with his comment, as may be seen in the corresponding indorsement of said bureau, copy of which is hereto attached and made an integral part of this Stipulation of Facts as Appendix H.

"15. That when the papers reached the Office of His Excellency, the Governor-General, the same were referred to the Office of the Attorney-General for an opinion, and the latter official returned the said papers to His Excellency, the Governor-General, on March 7, 1931, with comments, as may be seen in the corresponding indorsement, which is also hereto attached and made an integral part of this Stipulation of Facts as Appendix I.

"16. That the Governor-General on May 4, 1931, endorsed back the papers to the Honorable, the Secretary of the Interior approving the reassessment above referred to, as may be seen in the corresponding indorsement which is hereto attached and made an integral part of the Stipulation of Facts as Appendix J.

"17. That on June 13, 1932, the above-mentioned property owners, through their attorneys, Messrs. Camus & Delgado, addressed a letter on the matter to His Excellency, the Governor-General, a copy of which is likewise hereto attached and made an integral part of this Stipulation of Facts as Appendix K.

"18. That the said letter was referred, through channels, to the City Assessor, for comment and recommendation, and the latter official returned the said papers with the comments contained in his indorsement, copy of which is hereto attached and made an integral part of this Stipulation of Facts as Appendix L.

"19. That the different land owners mentioned in the nine different causes of action alleged in the complaint paid the land taxes corresponding to the years 1930 and 1931 for the properties respectively belonging to them, as alleged in the aforesaid nine causes of action, in the manner and for the amounts stated in the document hereto attached as Appendix M which is made an integral part hereof. The said taxes were paid at the rate of 1½ per cent per annum based on the assessment value recommended by the City Assessor to the Chief of the Executive Bureau, as shown in the figures appearing on the 4th column of the schedule attached to and made an integral part of his letter to the said official dated April 5, 1930 (Appendix C), which was adopted in toto by the Chief, Executive Bureau, in its decision dated September 1, 1930 (Appendix E.).

"20. That the parties hereby agree and stipulate to submit the above-entitled case for the decision of this Honorable Court on the Stipulation of Facts hereinabove set forth, together with the appendices thereto attached, without the necessity of the introduction of any further evidence."

The first question to be decided in the instant appeal is whether or not the assessor of the City of Manila may appeal from a decision of the board of tax appeals rendered in the exercise of its appellate jurisdiction, and

whether the Chief of the Executive Bureau may review said decision. Section 2492 of the Revised Administrative Code provides :

"Sec. 2492. Proceedings before board of tax appeals and Chief of the Executive Bureau.—The board of tax appeals shall meet on the second Monday in January of each year, shall hear all appeals duly transmitted to it, shall decide the same forthwith, and shall complete its work and adjourn on or before the thirty-first day of March of each year unless its sessions for any given year are extended to a later date by direction of the Department Head. It shall have authority to cause to be amended the listing and valuation of the property in respect to which any appeal has been perfected by order signed by the board of a majority thereof, and transmit it to the city assessor and collector, who shall amend the tax list in conformity with said order. It shall also have power to revise and correct, with the approval of the Department Head first had, any and all erroneous or unjust assessments and valuations for taxation, and make a correct and just assessment, and state the true valuation, in each case where it decides that the assessment previously made is erroneous or unjust. The list when so corrected shall be as lawful and valid for all purposes as though the assessments had been made within the time herein prescribed. Such reassessments and revaluation shall be made on due notice to the individual concerned and he shall be entitled to be heard by the board of tax appeals before any reassessment or revaluation is made. The decision of the board of tax appeals shall be final unless the Chief of the Executive Bureau forthwith declares the decision reopened for a review by him, in which case he may, with the approval of the Department Head, make such revision or revaluation as in his opinion the circumstances justify. Such decision, approved by the Governor-General, shall be final."

The law above-quoted provides that the decision of the board of tax appeals shall be final unless the Chief of the Executive Bureau forthwith declares the decision reopened for a review by him. When the decision is reopened, he may, with the approval of the department head, make such revision or revaluation as in his opinion the circumstances justify.

The appellant contends that the decision of the board of tax appeals which the Chief of the Executive Bureau is authorized to reopen and review is that rendered by it in the exercise of its power granted by said section to revise and correct, with the approval of the department head first had, any and all erroneous or unjust assessments and valuations for taxation; and not the decision rendered by it when it hears appeals taken by taxpayers from the assessment made by the assessor and collector of the City of Manila.

It will be noted that in speaking of the decision of the board of tax appeals which the Chief of the Executive Bureau may reopen and review, the law makes no distinction between the decision of the board of tax appeals when it reviews any assessment of the assessor and collector of the City of Manila appealed to it, and its decision when, on its own motion, it revises and corrects, with the prior approval of the department head, any and all erroneous or unjust assessments and valuations. The decision of the board of tax appeals on an assessment made by the assessor and collector of the City of Manila and appealed to it, as well as that rendered¹ by it when, without appeal, it reviews and corrects any unjust or erroneous assessment and valuation, is revisory in nature; because the assessment and valuation which it reviews in either case is that made by the assessor and collector of the City of Manila. There is consequently no logical reason for considering the decision, rendered by virtue of an appeal, final and not reviewable by the Chief of the Executive Bureau and that only a decision rendered without appeal may be reviewed by said important officer, whereas both decisions of the board of tax appeals are revisory of the assessment made by the assessor of the City of Manila.

As to whether the assessor of the City of Manila may appeal from a decision of the board of tax appeals rendered in the exercise of its appellate jurisdiction, there is no express authority thereof in the said section 2492, but neither is said municipal officer prohibited from calling the attention of the Chief of the Executive Bureau to said decision for the exercise of his original revisory power with the approval of the department head.

In view of the above, we reach the conclusion that, while section 2492 of the Revised Administrative Code does not authorize the assessor of the City of Manila to appeal from the decision of the board of tax appeals rendered in the exercise of its appellate jurisdiction, said officer may call the attention of the Chief of the Executive Bureau thereto, and the latter, in the exercise of the revisory power granted him by said section, may declare the reopening of said decision for a review by him.

The question has been raised whether the Chief of the Executive Bureau not having reopened the decision of the board of tax appeals in question until after the lapse of six months from the date it was rendered, there has been a violation of the provisions of section 2492 of the Revised Administrative Code requiring that the declaration reopening the decision be made forthwith.

The word "forthwith", used in the English text, and translated into the Spanish text as *inmediatamente*, of the said section 2492 of the Revised Administrative Code, has been defined in *Gunn vs. Lauder* (10 N. D., 389, 393; 87 N. W., 999), as follows:

"The term 'forthwith in statutes regulating official duties, has generally been construed as meaning that the duty is to be performed promptly, and 'with all convenient dispatch but this requirement is always modified by the circumstances and the nature of the duty to be performed.'" (26 Corpus Juris, 999, Note 48.)

In the case at bar the decision of the board of tax appeals was rendered in January, 1930. On April 5th of the same year, the assessor of the City of Manila, through the Mayor, submitted to the Chief of the Executive Bureau and to his Excellency, the Governor-General, the decision of the board of tax appeals relative to the real estate tax of the lots on Escolta Street. The Chief of the Executive Bureau endorsed said communication to the board of tax appeals for comment. On May 27, 1930, the said board, through its president, Tomas Arguelles, returned the papers with its comment to the Chief of the Executive Bureau who, after reviewing the said decision of the board of tax-appeals, upheld the assessment made by the assessor of the City of Manila and forwarded his decision to the Secretary of the Interior and to his Excellency, the Governor-General, for approval. While it does not appear why the assessor of the City of Manila did not submit the decision of the board of tax appeals to the Chief of the Executive Bureau, through the Mayor of the City of Manila, until April 5, 1930, that is, about three months thereafter, the Chief of the Executive Bureau acted diligently in pursuance of his duties and the circumstances of the case.

It is also alleged and contended that the failure to notify the taxpayers concerned in order to afford them an opportunity to be heard before reviewing the decision of the board of tax appeals rendered in their favor, deprived them of their property right without due process of law.

The aforesaid section 2492 of the Revised Administrative Code does not provide that, to review a decision of the board of tax appeals the Chief of the Executive Bureau should forthwith declare the case reopened, but only states that he should forthwith declare the decision reopened for a review by him. There is certainly a great difference between reopening a case to review the whole proceeding, and reopening a decision to be reviewed. In the first case, it is imperative that all the interested parties be reheard; while in the second, it is only necessary to examine the conclusions of fact reached by the board of tax appeals, consider its reasons therefor, and modify or reverse said decision if the said conclusions are found to be erroneous. To review a decision declared reopened, it is not necessary to rehear the interested parties. In the case at hand, the Chief of the Executive Bureau went further, as before reviewing the decision of the board of tax appeals he wanted to hear, as in fact he did hear, said board which addressed a long communication stating its reasons for reaching said decision (Exhibit D). The general rule is, that in the exercise of its revisory power, a board or officer may act on its own knowledge, unless the statute requires evidence. , (3 Cooley on Taxation, p. 2443, par. 1224.) In the case at bar the taxpayers concerned were already heard by the board of tax appeals in their appeal from the assessment made by the assessor of the City of

Manila, and it was not necessary for the Chief of the Executive Bureau, in reviewing the decision of said board of tax appeals, to rehear them in order to comply with the constitutional mandate that no person should be deprived of his property without due process of law, because, as we have said, the above quoted section 2492 of the Revised Administrative Code, in authorizing the Chief of the Executive Bureau, to forthwith declare the reopening for review of a decision, does not require that each of the interested taxpayers therein be reheard.

As to the question raised in the fourth assigned error, to the effect that the decision of the Chief of the Executive Bureau, is illegal and that, even granting its legality, it should not be enforced from January 1, 1930, but in the following year, the pertinent portion of the already cited section 2492 of the Revised Administrative Code provides:

"Sec. 2492. Proceedings before board of tax appeals and Chief of the Executive Bureau.—The board of tax appeals shall meet on the second Monday in January of each year, shall hear all appeals duly transmitted to it, shall decide the same forthwith, and shall complete its work and adjourn on or before the thirty-first day of March of each year unless its sessions for any given year are extended to a later date by direction of the Department Head. It shall have authority to cause to be amended the listing and valuation of the property in respect to which any appeal has been perfected by order signed by the board or a majority thereof, and transmit it to the city assessor and collector, who shall amend the tax list in conformity with said order. It shall also have power to revise and correct, with the approval of the Department Head first had, any and all erroneous or unjust assessments and valuations for taxation, and make a correct and just assessment, and state the true valuation, in each case where it decides that the assessment previously made is erroneous or unjust. The list when so corrected shall be as lawful and valid for all purposes as though the assessments had been made within the time herein prescribed * * *."

If, under the applicable legal provisions just quoted, the list when corrected after the period fixed in said section in conformity with the decision of the board of tax appeals rendered in the exercise either of its appellate jurisdiction, or motu proprio under its revisory jurisdiction, shall be as lawful and valid for all purposes as though the assessment had been made within the time therein prescribed, there is no reason why the decision of the Chief of the Executive Bureau, when he makes the revision, should not take effect in the same year but in that following, inasmuch as the Chief of the Executive Bureau in reviewing the assessment or valuation made by the board of tax appeals does not create a new tax but corrects only the assessment or valuation reviewed by said board of tax appeals.

The American jurisprudence on the matter is condensed in Corpus Juris, volume 61, pages 653 and 766, as follows:

"A reassessed tax is not, speaking strictly, a new tax, but is a part of the tax of the year in which it was first assessed.

* * * * *

"Reassessments must be made upon a valuation as of the year in which the property should have been taxed and as to which it has escaped taxation by reason of the erroneous assessment."

For the foregoing considerations, we are of the opinion and so hold: (1) That the assessor of the City of Manila may call the attention of the Chief of the Executive Bureau to any decision of the board of tax appeals which he believes erroneous, rendered in the exercise either of the board's appellate jurisdiction, or, motu proprio, under its revisory jurisdiction with the approval of the Chief of the Executive Bureau; (2) that the Chief of the Executive Bureau may declare the reopening of a decision of the board of tax appeals rendered in the exercise either of its appellate jurisdiction, or, motu proprio, under its revisory jurisdiction, in order to make such revision or revaluation as in his opinion the circumstances justify, and (3) that the word "forthwith", used in section 2492 of

the Revised Administrative Code to indicate the period within which the Chief of the Executive Bureau may declare the reopening of a decision of the board of tax appeals, means that promptness compatible with the circumstances of the case and with the nature of the duty to be performed.

Wherefore, finding no error in the appealed judgment, it is hereby affirmed in toto, with the costs to the appellant. So ordered.

Avanceña, C.J., Malcolm, Abad Santos, Imperial, Vickers, Butte, Goddard, and Recto, JJ., concur.

Judgment affirmed.

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