

**ROBERTO LAPERAL AND VICTORINA G. DE LAPERAL, PLAINTIFFS  
AND APPELLANTS, VS. THE CITY OF MANILA AND SABINA SIOCO  
VIUDA DE ESCALER, DEFENDANTS AND APPELLEES.**

*G.R. No. 42792. October 23, 1935*

Ponente: VILLA-REAL, J.

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**VILLA-REAL, J.:**

This is an appeal taken by the plaintiffs Roberto Laperal and Victorina G. de Laperal from a judgment of the Court of First Instance of Manila, absolving the defendants from the complaint, with costs to the plaintiffs.

In support of their appeal, the appellants assign the following alleged errors committed by the trial court in its judgment, namely:

"1. In holding that the cost of the filling made by the City of Manila upon the land in contention, is a special tax of the nature of a real estate tax, ad valorem, which constitutes a lien superior to all other preferred real rights, binding upon any person in possession of the land and upon the land itself.

"2. In holding that the claim of the City of Manila for the cost of said filling is an incumbrance included among those enumerated in section 39 of Act No. 496, which appears in the title under the clause 'subject, however, to such of the incumbrances mentioned in section 39 of said law as may be subsisting.

"3. In applying the doctrine of caveat emptor to the case at bar, and in not ordering the defendant, City of Manila, to return to the plaintiffs the sum of P8,329.52 which the latter paid under protest, and the defendant, Sabina Sioco, to pay to the City of Manila the cost of the filling in the amount of P10,335.93, plus interest and the corresponding penalties; and

"4. In not declaring section 5 of Act No. 3352 unconstitutional, in so far as it provides that the cost of filling constitutes a special tax upon the land and that the annual installments due constitute a lien upon the land which take precedence over any and all other liens which exist or may exist upon such property."

The pertinent facts necessary to resolve the questions raised in this appeal are as follows:

On September 18, 1928, the engineer of the City of Manila addressed a letter (Exhibit K) to the appellee Sabina Sioco Viuda de Escater, then the owner of the land described in transfer certificate of title No. 41622, advising her that the said land was a lowland which constituted a menace to public health and should be filled; and that if she would not have it filled, the engineer of the City of Manila would do so under the provisions of Act No. 3352.

On October 30, 1928, the said engineer received a letter (Exhibit I) from the said Sabina Sioco Viuda de Escaler wherein she consented to the filling of said land by the City of Manila in accordance with the law aforesaid.

On April 5, 1929, the filling of the land was started and on July 27, 1929, it was terminated.

On April 30, 1929, that is, 25 days after the filling was begun and about three months before its completion, the appellee Sabina Sioco Viuda de Escaler conveyed the said land to her son-in-law, Rafael Fernandez, married to

Josefa Escaler, daughter of the said appellee. In view of this transfer, the register of deeds of the City of Manila issued in the name of Rafael Fernandez, on May 9, 1929, transfer certificate of title No. 32968, wherein the following notice appears: " \* \* \* subject, however, to such incumbrances mentioned in section 39 of said law (Act No. 496) as may be subsisting, \* \* \* ."

On November 6, 1929, Rafael Fernandez executed in favor of the plaintiffs a deed (Exhibit B), whereby he mortgaged the said land to secure the payment of the sum of P80,000, with interest.

Under the provisions of the said Act No. 3352, the assessor of the City of Manila, on April 18, 1930, assessed the cost of filling at P10,335.93 as a special tax on the land in contention, payable at the rate of P1,411.51 a year for ten years from 1930 (Exhibit 1).

In view of the commencement of an insolvency proceeding against Rafael Fernandez (case No. 4009 of the Court of First Instance of Manila) his mortgage indebtedness to the plaintiffs-appellants Roberto Laperal and Victorina G. de Laperal was not paid. As a result, on April 15, 1932, the receiver of said insolvency and the said plaintiffs-appellants, the latter as mortgagees, filed with the insolvency court an agreement asking that the said receiver be authorized to dispose of the mortgaged property at a private sale for a price not less than P80,000, plus unpaid interest at the rate of 10 per cent a year and attorney's fees; and that in the event no purchaser is found within six months, the sheriff be ordered to sell the same at public auction. This stipulation was approved by the insolvency court in its order of April 18, 1932. On November 7, 1932, the sheriff sold the land at public auction to the herein plaintiffs-appellants as the highest bidders, for the amount of P92,000. As the said plaintiffs-appellants were the mortgagees, they did not pay the sale price, except the sum of P473 as sheriff's fees. This sale was approved by the insolvency court in its order of November 19, 1932 (Exhibit 2).

As the annual installments for the cost of the filling, corresponding to the years 1930, 1931, 1932, and 1933, had not been paid, the appellee City of Manila required the plaintiffs-appellants, who were then and are now the true registered owners, to pay the said installments amounting to P8,329.52. The plaintiffs-appellants paid said sum on November 9, 1933, under protest.

As a result of the said public sale, the register of deeds of the City of Manila, on December 14, 1932, issued in favor of the plaintiffs-appellants transfer certificate of title No. 41622 (Exhibit A) with the following proviso: " \* \* \* subject, however, to such incumbrances mentioned in article 39 of said law (Act No. 496) as may be subsisting, \* \* \* ."

The first question for decision in this appeal, raised in the first two design errors, is whether or not the special tax for the said filling made by the City of Manila constitutes an incumbrance which the plaintiffs-appellants, as mortgagees and purchasers at the public sale of the land filled mortgaged in their favor, are under a duty to pay notwithstanding the fact that the same was not noted on the back of the transfer certificate of title issued in favor of the mortgagor Rafael Fernandez.

The pertinent part of section 5 of Act No. 3352 reads as follows:

"SEC. 5 The proceeds of the city bonds to constitute a special revolving fund. — \* \* \* Before the first of November of each year the city Engineer shall certify to the City Assessor of Manila a list of the parcels of land filled, by virtue of this Act during the previous twelve months, and the cost corresponding to each parcel which must be reimbursed. The City Assessor shall thereupon ascertain in respect to each parcel the annual installment required to amortize the said cost with interest at six per centum per annum, during the term of reimbursement determined the Secretary of Finance: Provided, however, That the cost of filling lowlands which form part of the patrimonial property of the City of Manila or of the Insular Government shall also be advance from the special fund herein created, subject to the same condition as to reimbursements as

prescribe for private owners: Provided further, That the annual installment aforesaid which represent the cost of filling shall be assessed annually for a number of years equal to the said terms of reimbursement as a special tax against the real property filled by virtue, of this Act and all sums of amounts due from any owner or owners as a result of any action taken by virtue of the authority conferred in this Act shall be due and payable to the City Treasurer of Manila and in the same manner as the annual tax levied on real estate under the provisions of Article XI, Chapter 60, Title X, of the Administrative Code, and shall be subject to the same penalties for delinquency, and enforceable by the same remedies, as such annual tax; and all such sums and amounts, together with any such penalties incurred, shall from the date on which they were assessed constitute liens on the property against which the same were assessed and shall take precedence over any and all other liens which may exist upon such property excepting only such as may have attached as a result of the nonpayment of said annual tax."

The pertinent portion of section 39 of Act No. 496, as amended by Act No. 2011 and by section 4 of Act No. 3621, provides:

"Sec. 39. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all incumbrance except those noted on said certificate, and any of the following incumbrances which may be subsisting, namely:

\* \* \* \* \*

"Second. Taxes within two years after the same have become due and payable."

In speaking of taxes, the above-quoted legal provisions do not make any distinction between taxes of a general nature and those of a special nature, consequently, the exception found in subsection 2 of section 39 of Act No. 496 is applicable to both.

In the case of *Hongkong & Shanghai Banking Corporation vs. Rafferty* (39 Phil., 145, 151), this court, relying on the doctrine laid down in *City of Seattle vs. Kelleher* ([1904], 195 U. S., 351), said the following:

"\* \* \* in the case of real estate or special assessment taxation a man cannot get rid of his liability to a tax by buying without notice. \* \* \*"

(See also the cases of *De Jesus vs. City of Manila*, 29 Phil., 73; *Bias vs. De la Cruz and Melendres*, 37 Phil., 1; *City of Manila vs. Mitchel and Manila Railroad Co.*, 52 Phil., 138.)

The fact, therefore, that the plaintiffs-appellants had no knowledge of the existence of a special tax for filling levied upon property acquired by them at a public sale as a result of the foreclosure of the mortgage does not relieve them from the obligation to pay the taxes due and payable at the time of their acquisition, under the legal provisions just quoted and the doctrine laid down by this court in the above-cited case.

In view of the fact that the annual installments corresponding to the years 1930, 1931, 1932, and 1933 were paid only on November 9, 1933, when the plaintiffs-appellants, to avoid the summary sale of the land, paid the sum of P8,329.52 under protest, the question is, whether under the second exception above referred to, said plaintiffs-appellants were relieved from the payment of the first annual installment which was not paid within the two years after it became due and payable.

The tax for the filling of the land here in question under the provisions of the said Act No. 3352 is for the sum of P10,335.93, assessed by the assessor of the City of Manila on April 16, 1930, payable in ten annual installments of P1,411.51 each from 1930. The payment of the entire special tax in question becomes due in 1940 only. What became due and payable were the installments corresponding to the first four years into which the tax was divided to facilitate its payment.

In the payment of the ordinary land taxes, the taxpayer is given the option to make such payment in two installments, the first on June 30th of the year for which the tax is due and the second before January 1st of the following year. If the taxpayer fails to pay the tax when the first installment becomes due and payable, he becomes delinquent in the payment of the whole tax for the year and subject to the penalty provided by law (section 2493, Revised Administrative Code). If the tax is not collected within the two years after it became due and payable, the payment thereof lapses and said unpaid tax ceases to be an incumbrance on the land unless it is noted on the certificate of title.

In the instant case the delinquency in the payment of any one of the ten annual installments into which the special tax for filling was divided does not make the payment of the whole tax due and payable. Inasmuch as the total payment of the special tax in contention become<sup>©</sup> due and payable only after the payment of the last installment becomes due and payable, that is, after ten years, although each installment remains unpaid more than two years after it becomes due and payable, the payment thereof does not lapse notwithstanding the fact that it is not noted on the certificate of title of the land filled.

Therefore, while the special tax for the filling here in question falls within the second exception of section 39 of Act No. 496 to the general rule that "every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith, shall hold the same free of all incumbrance except those noted on said certificate, and any of the following incumbrances which may be subsisting," the limitation of two years found in said exception is not applicable to the special tax now before us, and, consequently, the herein plaintiffs-appellants, as the present owners of the land filled upon which the said special tax is imposed, are under a duty to pay the total amount of the said incumbrance.

As to the question of whether or not the defendant Sabina Sioco Viuda de Escaler should be ordered to pay to the City of Manila the special tax of P10,335.93 for filling, plus interest and the corresponding penalties, not being the present owner of the land filled nor at the time it was mortgaged to the plaintiffs-appellants, she cannot be made answerable therefor to the City of Manila.

In the fourth assigned error, the plaintiffs-appellants Roberto Laperal and Victorina G. de Laperal assail for the first time the constitutionality of section 5 of Act No. 3352 providing that the cost of filling constitutes a special tax on the land and that the annual installments due constitute liens on the property which shall take precedence over any and all other liens which may exist upon such property.

In the case of *Cadwallader-Gibson Lumber Co. vs. Del Rosario* (26 Phil., 192, 194), this court, speaking through Justice Moreland, said:

"\* \* \* It seems to us that, even if a constitutional question is involved, as plaintiff alleges, some foundation must be laid for its presentation to this court. \* \* \*."

And in the case of *Macondray & Co. vs. Benito and Ocampo* (p. 137, ante), the following is found:

"The question of the constitutionality of article 1454-A of the Civil Code (Act No. 4122 of the Philippine Legislature) was not raised in the trial court. The general rule seems to be that if a question affecting the constitutionality of an act is not raised by the pleadings, ordinarily it may not be raised at the trial and if not raised in the trial court, it will not be considered on appeal.

"In the case of *State ex rel. Vandiver vs. Burke*, 175 Ala., 561, 578; 57 S., 870, it was held:

"\* \* \* This court will never, on appeal, investigate or inquire into the constitutionality of statutes in civil cases, where the questions were not raised or passed upon below, unless the statute is necessary to the jurisdiction of

this court or to that of the court below.' "

For the foregoing considerations, we are of the opinion and so hold: (1) That the special tax for filling falls within the second exception of section 39 of Act No. 496, as amended by Act No. 2011 and by section 4 of Act No. 3621, to the general rule established therein that "every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all incumbrance except those noted on said certificate, and any of the following incumbrances which may be subsisting"; (2) that a mortgagee who purchases real property mortgaged to him may not avoid the payment of the special land tax due and unpaid although he has no notice of the existence of such an obligation (*Hongkong & Shanghai Banking Corporation vs. Rafferty*, 39 Phil., 145); and (3) that the question of the constitutionality of a law which has not been alleged in the complaint nor raised at the trial in the lower court, cannot be raised for the first time on appeal in this court.

Wherefore, finding no error in the appealed decision, the same is hereby affirmed in all its parts, with the costs to the appellants. So ordered.

Malcolm, Hull, Vickers, Imperial, Goddard, and Recto, JJ., concur.

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### DISSENTING

**AVANCEÑA, C.J.,**

in part: I do not agree with the majority in so far as it does not confine the obligation of the appellants for the special tax to that corresponding to the years 1930 and 1931. While this special tax amounts to P10,335.93, it is, however, divided into ten annual installments, each due and payable on a certain date and subject, in the same manner as the annual tax levied on real estate under the provisions of Article XI, Chapter 60, Title X of the Administrative Code, to the same penalties for delinquency, and enforceable by the same remedies established for the ordinary annual real-estate tax. Consequently, each annual installment of this special tax should be deemed as an independent tax for the purposes of section 39 of Act No. 496.

Judgment affirmed.

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