

CARMEN AYALA DE ROXAS, PLAINTIFF AND APPELLANT, VS. THE CITY OF MANILA, DEFENDANT AND APPELLEE.*G.R. No. 7670. March 28, 1914*

Ponente: MORELAND, J.

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Doña Carmen Ayala de Roxas, the plaintiff in this case, was in 1901, 1902, and 1903, and has since been, the owner of certain property on the Escolta numbered 98-104, which was and is known and designated on the books and tax-roll of the city of Manila as lot 3, block 35, district of Binondo. This property was assessed for taxation by the officials of the city of Manila for the years 1901 and 1902 as follows:

Land.....	P205,407.00
Improvements.....	30,000.00
Total	235,407.00

The taxes levied during these two years pursuant to the assessment were duly paid by the plaintiff.

On the 8th of January, 1903, the Philippine Commission passed an Act, No. 581, for the purpose, expressed in the title, of creating a board of tax revision to revise the assessments of real estate and improvements in the city of Manila. The board therein created, in the performance of the duty laid upon it by said Act, reassessed the plaintiff's property on April 4, 1903, fixing the value thereof at P120,534 for the land and P50,000 for the improvements, in all P170,534.

In February, 1903, plaintiff commenced the reconstruction of the improvements on said land at a cost of P25,000, and on April 4, 1903, when the commission appointed in pursuance of Act No. 581 made the reassessment of plaintiff's property, the latter was then in the act of reconstructing, altering: and making additions to the improvements on said land.

On November 3, 1903, Act No. 975 was passed authorizing and requiring the Municipal Board "in all cases in which land assessed for taxation in the city of Manila for the years 1901 and 1902 was assessed at more than fifty per centum above the assessment" for 1903, as fixed by the board of tax revision, to reduce the assessments for 1901 and 1902 to the amount fixed in the assessment for 1903, This Act then went on to provide:

"SEC. 2. In all cases in which the money has been paid upon the excessive assessment as described in section one, either for one or two years, the city tax assessor and collector shall allow the amount of such excess payment to be applied upon the taxes due for nineteen hundred and three, or some subsequent year."

It is alleged in the amended complaint, admitted by the defendant, and found as a fact by the court that on December 10, 1903, the plaintiff made inquiry as to the amount of the 1903 taxes upon the premises in question; that she was informed by the city assessor and collector that the tax for that year was P2,558.02, but that she was entitled to a refund under Act No. 975 of P2,121.80 arising from the excessive assessments of 1901 and 1902, which assessments had been revised and reduced as aforesaid by the tax revision commission appointed under Act

No. 581. The plaintiff thereupon paid the difference between P2,558.02 and P2,121.80, or P436.22, taking a receipt in full for the sum of P2,558.02, the taxes for 1903.

The refund under the statute was made by the city assessor and collector in pursuance of a resolution of the Municipal Board of the city of Manila passed on December 8, 1903, as follows:

"Whereas the city assessor and collector has submitted a statement showing all cases in which land assessed for taxation in the city of Manila for the years 1901 and 1902, was assessed at more than 50 per cent above the assessment for the year 1903, as revised by the board of tax revision; and

"Whereas, by Act No. 975, the Municipal Board is authorized and required to reduce the assessment for the years 1901 and 1902 to the amount fixed by the board of tax revision for the same land in 1903: Be it, therefore, on motion,

"Resolved, that by virtue of Act No. 975, the city assessor and collector is hereby authorized and directed to make such reductions in the assessment, and, in all cases in which the money has been paid upon such excessive assessment, to allow the amount of such excess payments to be applied on the taxes due for the year 1903, or some subsequent year."

In the statement mentioned in said resolution appears the entry of the property in question as follows:

Owner. Lot. Block. Assessed value in U.S. currency for 1901 and 1902. Revised value for 1903. Excess assessment. Excess payment.

Carmen Ayala.----- 3 35 \$102,703 \$60,237 \$42,466 \$1,060.90

On January 6, 1911, the Collector of Internal Revenue issued to the chief of the real estate division written instructions as follows:

"Referring to the attached papers regarding the decision of the Supreme Court in cases involving the interpretation of Act No. 975, I desire to have this matter again tested in the courts by collecting from a few large taxpayers the amounts refunded to them in 1903 under the interpretation of Act No. 975 by the city assessor and collector, which, according to the Supreme Court, was an erroneous interpretation. You will therefore arrange to enter on the 1903 tax rolls back taxes for the year 1903 against the properties shown on the attached list in amounts equal to the refunds granted by the city assessor and collector under Act No. 975. Notices regarding these entries should be forwarded1 to each of the taxpayers as per the attached form as soon as possible and at such time so as to enable the putting of such properties on the list for the next tax sale if payments of these back taxes are not made."

Pursuant to these instructions the following letter was sent to and received by the plaintiff:

"Subject:—Decision of the Supreme Court, re Act No. 975.

"JANUARY 11, 1911.

"Mrs. CARMEN AYALA,

"No. 154 Malacañang, Manila.

"Madam: You are informed that the Supreme Court of these Islands has, in two decisions, one in the case of Felipe Zamora against the city of Manila, and the other in the case of Jose P. Paterno against the city of Manila, held that the word 'land' as used in section 1 of Act No. 975 of the Philippine Commission includes both the land

and the, buildings thereon. As construed by the city assessor and collector the word 'land/ as used in the above-mentioned Act, did not include the improvements upon the land, and therefore the credit of P2,121.80 allowed by the city assessor and collector on the tax lists for the year 1903 as a partial payment of the tax on your property located at Nos. 98-104 Escolta, known as lot 3, block 35, district of Binondo, was erroneously applied according to the construction of the said Act by the Supreme Court in the cases above stated, since the total value of the property in question, as per assessment in 1901 and 1902, was not 50 per cent more than the value fixed by the board of tax revision, although the value of the land was 50 per cent more for 1901 and 1902 than that fixed by the board of tax revision.

"By direction of the Municipal Board of Manila, approved by His Excellency, the Governor-General, the amount above stated which has been applied as a partial payment of your real estate tax for 1903 has been entered on the tax lists for 1903 and is a lien upon the said property, which can only be removed by the payment of the proper amount.

"By authority contained in a resolution adopted by the Municipal Board on December 10, 1910, the payment of the said sum, which is a delinquent tax for 1903, will be accepted without penalty if made within twenty days from the date this communication is received by you.

"Very respectfully,

(Sgd.) "ELLIS CROMWELL,

'Collector of Internal Revenue,

"Ex Officio City Assessor and Collector."

To clear her property of this alleged encumbrance and to prevent the collector from carrying into effect his threat to sell the property at public sale, plaintiff, under protest, paid to the city assessor and collector the P2,121.80 demanded, which sum is now in special deposit in the Insular Treasury awaiting the outcome of this action.

This action was begun by the plaintiff to recover the said amount paid as aforesaid. The learned trial court dismissed the complaint on the merits and this appeal is taken from that judgment.

The defendant states its position in this controversy as follows:

"From the figures set forth above, relating to plaintiff's property, it appears that the land alone was assessed during 1901 and 1902 at more than 50 per cent, in fact 70 per cent, above the valuation fixed for 1903, but that the land and improvements together were assessed during 1901 and 1902 at less than 50 per cent, in fact, only 38 per cent, above the valuation fixed for 1903. Consequently, if the word 'land' as used in Act No. 975 were to be construed as 'land only' then plaintiff was entitled to a refund of a certain amount of excess paid, but if by 'land' the legislature contemplated 'land and improvements' or 'real estate in general' then the plaintiff was not entitled to any refund. The city assessor and collector erroneously adopted the former construction as the correct one and estimated that the proper amount of refund of the excess payment by the plaintiff for the years 1901 and 1902, as provided in Act No. 975, would be the sum of P2,121.80. * * *

"Subsequent to this payment, however, the Supreme Court decided in the case of Felipe Zamora vs. City of Manila (7 Phil. Rep., 584) that the word 'land' as used in Act No. 975 should not be construed in a limited sense but that it was intended by the legislature to include not only the land as such but also the improvements thereon. The city assessor and collector, by direction of the municipal board approved by the Governor-General, then addressed a letter to the plaintiff explaining the mistake of the collector made in 1903, and stating that this amount of P2,121.80 had been entered upon the tax lists for 1903, and that it was a lien upon her property only to be removed by payment of the proper amount, which if paid within a certain time

would be received without penalty. This the plaintiff then paid to the city assessor under protest and now brings this action for the recovery back of the P2,121.80 so paid."

From what has been said, it is clear that the basic contention of the city is that the city assessor and collector erroneously, and, therefore, unlawfully, refunded to the plaintiff herein, when she paid her tax in 1903, the sum of P2,121.80, and that, having so wrongly and unlawfully refunded the said amount, the city is entitled to recover from the plaintiff that sum by the process, as the city council called it, of putting it on the tax lists for 1903. The reason for claiming that this sum was unlawfully and erroneously refunded is that the word "land," as used in Act No. 975, was held by the Supreme Court in the case of *Zamora vs. City of Manila* (7 Phil. Rep., 584).. to include the word "improvements," and that this Act requiring also, prior to the right to refund in any given case, that the assessments for the years 1901 and 1902 should be more than 50 per cent higher than was the assessment of the same property in 1903, the basis on which the right rests does not exist, for, while the land itself was assessed in 1901 and 1902 about 70 per cent higher than it was in 1903, the improvements upon the land were assessed almost twice as high in 1903 as in 1901 and 1902, and while a rebate might be allowed upon the assessment on the land if it had not been held by the Supreme Court to include improvements, no rebate can, in fact, be allowed, because the assessments of the land and improvements, under the decision referred to, must be taken, that is, added, together; and that being the case, the assessments of both land and improvements for the years 1901 and 1902 were not, when added together, 50 per cent higher than the total of the two was in 1903. As a necessary result, says the city, the refund was improper.

This contention may be answered in two ways. In the first place, section 46 of Act No. 183 provides that "it shall be the duty of every owner of real estate in the city of Manila to prepare or cause to be prepared a statement of the amount of land and the improvements thereon which he owns." This statement must be filed with the city assessor and collector and from it, primarily, he makes up the list of the taxable real estate in the city. Under the system established by this Act and by the practice which was adopted and has been consistently followed under it, the improvements are assessed separately from the land even though both may be owned by the same person. This was the way the assessment was made in 1901, 1902, and 1903, and it is the manner in which assessments have been made since that time. This was the condition of assessments when the remedial Act referred to was passed and presents the situation which the commission had before it. This being so, it might with propriety be contended that an owner of land might have been entitled to the refund provided for in Act No. 975 with respect to the land itself although he would not have been with respect to the improvements. The fact that the Supreme Court held, in the case referred to, that, under the statute, land included improvements, does not necessarily mean that the contention of the city is correct that the assessment for both land and improvements as made in 1901 and 1902 should have been added together and the sum of the two compared with the total assessments for land and improvements as made in 1903 before it could be determined whether the taxpayer was entitled to a refund. In the case referred to the plaintiff, as guardian for his minor children, brought suit against the city of Manila to recover the excess taxes paid to the city under the assessments of 1901 and 1902. The assessments for that year were, land P7,700, and house P8,000. In 1903 the assessment was, land P4,476, and house P5,000. The plaintiff claimed a right to the refund on both the land and the house but the department of assessments and collections of the city allowed it on the land only, denying the benefits of the Act with regard to the improvements upon the theory that the Act referred to land only. This court held in that case that, inasmuch as the statute was remedial, the plaintiff was entitled, under the liberal construction given to that kind of statute, to a refund not only as to the taxes on the land but also as to those on the improvements. In that case the assessments were treated separately, the one relating to the land and the other to the improvements, each one standing upon its own footing, the plaintiff evidently being permitted to claim her right as to each apart from the other.

In the second place, it may be said, in answer to the city's contention that there was no reassessment made in 1903

of the improvements assessed in 1901 and 1902, and that, therefore, there was no basis from which it could be determined whether the improvements were assessed higher in 1901 and 1902 than they were in 1903 or vice versa. When the assessment was made by the commission in 1903 the taxpayer was engaged in making very extensive improvements upon the premises, to a large extent rebuilding the buildings already thereon. It is undisputed that she was adding at least P25,000 worth of repairs to the premises at that time. It is very probable that, in making the assessment, the commission took into consideration these improvements and added their value to the improvements as they were assessed in 1901 and 1902. This appears to be so not only from the fact that it was at that time impracticable to assess the improvements as they existed in 1901 and 1902, but also from the fact that the assessed valuation of the improvements in 1903 was almost double what it was in 1901 and 1902. This latter fact is significant for the reason that the assessments in 1901 and 1902 were almost universally excessive—so much so in fact that it led the Legislature in 1903, as we have seen, to pass a special Act for a reassessment of city property and the refunding of money paid as taxes under the excessive assessments of those years. This being the case, it would be but fair to assume that, if the improvements as assessed in 1901 and 1902 had been assessed in 1903, the value thereof would have been largely reduced. As a matter of fact, however, due undoubtedly to the extensive improvements that were then being made, the assessment of the improvements in 1903 was almost double that in 1901 and 1902.

We believe it, therefore, a necessary conclusion that the city erred in adding the assessment of the improvements as made in 1903 to the land assessment of that year in order to determine whether or not the plaintiff was entitled to the refund in question. As we have already intimated, the improvements as assessed in 1901 and 1902 no longer existed when the assessment of 1903 was made, and that, in reality and as matter of fact, no assessment was made in 1903 of the improvements assessed in 1901 and 1902. As a necessary result, we have no basis from which we may compare the assessment of the improvements of 1903 with those of 1901 and 1902. If the plaintiff can gain nothing from this fact, she certainly should lose nothing from it. The land assessed in 1901 and 1902 was the same land assessed in 1903 and upon that land alone she was entitled to the refund of P2,121.80, which was made to her when she paid her taxes in 1903. If the improvements had been assessed in 1903 the same as they were in 1901 and 1902, then the total of the assessments for 1901 and 1902 would have been more than 50 per cent higher than the total as assessed in 1903. It was only the addition in 1903 of about P20,000 to the assessed valuation of the improvements made in 1901 and 1902 that, even under the theory of the city, removed the plaintiff's claim from the provisions of the statute, the total assessments in 1901 and 1902, under that theory, not being 50 per cent more than the total assessment in 1903. It is clear, therefore, that plaintiff was entitled to the refund with respect to her 1903 taxes, that the refund was duly authorized by a resolution of the municipal board, and that she received it as a credit upon her taxes pursuant to that resolution.

It is our opinion, therefore, that the taxes for 1903 were duly paid and the lien thereof fully discharged, and that the demand made by the defendant upon plaintiff that she again pay the taxes for that year was without authority of law and unenforceable. Such demand placed upon the plaintiff no duty except that of selecting a legal method of contesting the validity of defendant's claims. She selected the method of paying the sum demanded, under protest, and beginning an action to recover it, following the procedure prescribed in ordinary tax cases. In doing that she was entirely justified, it appearing that the city claimed that the taxes for 1903 had not been paid, that they were a lien upon the plaintiff's property, and that, if they were not paid, proceedings would be taken to seize and sell said lands by virtue thereof; and, particularly in view of that provision of the tax law which requires that, before the validity of a tax can be attacked or a decision obtained therein in the courts, the tax must be paid under protest and an action begun for its recovery. It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy. The rule being established that, apart from special circumstances, he cannot interfere by injunction with the state's collection of its revenues, an action at law to recover back what he has paid

is the alternative left. Of course, we are speaking of those cases where the state is put to an action where the citizen refuses to pay. In these latter he can interpose his objections by way of defense, but when, as is common, the state has a more summary remedy, such as distress, and the party indicates by protest that he is yielding to what he cannot prevent, courts have been a little too slow to recognize the implied duress under which the payment is made. But even if the state is driven to an action, if at the same time the citizen is put at a serious disadvantage in the assertion of his legal rights by defense in the suit, justice may require that he should be at liberty to avoid those disadvantages by paying promptly and bringing suit on his side. He is entitled to assert his supposed rights on reasonably equal terms. (*Atchison etc. Ry. Co. vs. O'Connor*, 223 U. S., 280.)

The judgment appealed from is reversed, and the cause is remanded to the Court of First Instance whence it came with instructions to enter a judgment in favor of the plaintiff and against the defendant for the sum of P2,121.80 with interest thereon from the 26th day of January, 1911. No costs in this instance.

Arellano, C. J., Carson, Trent, and Araullo, JJ., concur.

Judgment reversed and cause remanded with instructions.

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