

JOSE B. TIONGCO, REPRESENTING THE MINORS JOSEPHINE, ALEXANDRIA, JONATHAN, CARMELA, BERNARDINE AND MELLANAY, ALL SURNAMED TIONGCO, PETITIONER, VS. PHILIPPINE VETERANS BANK, BACOL...

G.R. No. 82782. August 05, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

May a public sale of real property held for the collection and satisfaction of a tax delinquency be attacked collaterally and may it be subsequently nullified in a proceeding where the taxing authority is not a party?

These are the core issues in this case.

From the decision of the respondent Court (Thirteenth Division) in C.A.-G.R. CV No. 12463 promulgated on 22 March 1988[1] and the pleadings of the parties, this Court finds the following factual and procedural antecedents sufficiently established:

As security for a loan of P290,000.00, Alicia Arnaldo, married to Fernando Arnaldo, mortgaged to the respondent Philippine Veterans Bank (PVB) three (3) lots, one of which is located along Lopez Jaena St., Jaro, Iloilo City, and is more particularly described in Transfer Certificate of Title (TCT) No. T-42479 in the Office of the Register of Deeds of Iloilo City.

Arnaldo was delinquent in the payment of the real estate taxes on these lots. On 15 December 1982, the City Treasurer of Iloilo City sold the said lots at a public auction for the satisfaction of the delinquent real estate taxes thereon. Herein petitioner, in representation of his children, was the highest bidder and was issued the corresponding Certificate of Sale of Delinquent Property To Purchaser. In respect of the lot covered by TCT No. T-42979, he registered the aforementioned Certificate the following day in the Office of the Register of Deeds of Iloilo; the appropriate annotation was forthwith made at the back of the original copy of TCT No. T-42479. Since there was no redemption made by the taxpayer Alicia Arnaldo, the Treasurer of Iloilo City executed on 4 January 1984 a Final Bill of Sale in favor of petitioner's wards, which was registered in the Office of the Register of Deeds on 5 March 1984; an annotation was then made at the back of the original copy of TCT No. T-42479. His letter of 10 April 1984 to PVB demanding delivery of the owner's duplicate copy of TCT No. T-42479 having been unheeded, petitioner filed with the Regional Trial Court of Iloilo, Branch 30 (hereinafter, RTC) a petition, docketed as Cadastral Case No. 6, to require PVB to surrender said certificate of title to him. In its Answer, PVB denied the allegations in the petition, averred that it was not served with a notice of the auction sale and a copy of the final bill of sale and that petitioner, who was aware of the mortgage, may be likened to a buyer in bad faith; it then set up the defenses that the sale of the property was irregular and that the right of petitioner over the property as a purchaser may be respected only upon the release of the mortgage. PVB did not appear, despite notice, at the hearing of the petition on 12 March 1985. Petitioner was allowed to present, his evidence ex-parte.

On 27 March 1985, the RTC, through Judge Jesus V. Ramos, handed down a Decision granting the petition, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered:

1. Ordering the respondent, Philippine Veterans Bank to surrender TCT No. T-42979, covering Lot No. 665-C-4 situated at Lopez Jaena St., Jaro, Iloilo City, to the herein petitioner without prejudice, however, to the right of the respondent bank to pursue all his (sic) lawful remedies to impeach or annul the proceedings under the tax sale in a separate appropriate action; and
2. Ordering the Register of Deeds of Iloilo City to cancel the said Certificate of Title and to issue a new Certificate of Title over Lot No. 665-C-4 located at Lopez Jaena St., Jaro, Iloilo City in the name of the herein named minors petitioners (sic)."

A copy of this Decision was received by PVB on 8 April 1985.

Also, on 8 October 1984, petitioner filed with the said RTC, in the same Cadastral Case No. 6, a petition to require the spouses Ricardo Arnaldo and Henrietta Arnaldo, successors-in-interest of Alicia Arnaldo and Fernando Arnaldo, to surrender Certificates of Title Nos. T-42481 and T-42482 covering the following lots sold at the tax sale: Cadastral Lot No. 4, Pcs 5577 of 3811 and 3813, and Assessor's Lot No. 4, Pcs 5577, Block No. 182 of 3811, respectively. Petitioner claimed that said spouses were in possession of the certificates. The RTC granted the petition in its Order of 17 January 1985. Upon its finality, petitioner filed a motion for execution, which the RTC granted in its Order of 9 April 1985; the dispositive portion reads:

"WHEREFORE, premises considered, finding the motion meritorious, in view of the failure of the respondents to comply with the Order of this Court to surrender or deliver the aforementioned owner's duplicate copies of title, the court hereby decrees as null and void the aforementioned duplicate copies of TCT No. T-42481 and T-42482 at present in possession of the respondents Arnaldo and hereby orders the Register of Deeds of Iloilo City to cancel the aforesaid Certificates of Title and issue new Certificates of Title in the name (sic) of the minors-petitioners, Josephine, Alexandria, Jonathan, Carmela, Bernardino and Mellanay, all surnamed Tiongco. Such new certificates and/or duplicates thereof shall contain a memoranda (sic) of the annulment of the outstanding duplicates."

It is not quite clear from the records why the petition was filed against Ricardo and Henrietta Arnaldo when the lots, as petitioner himself admits in his Reply to the Comment,[2] were also mortgaged to PVB, which was, therefore, presumed to be in possession of the owner's duplicate copies of the certificates of title.

On 30 April 1985, petitioner filed an ex-parte motion for a supplemental order directing that the new certificates of title to be issued to him be free from all liens and encumbrances; said motion was denied in the Order of 17 May 1985. In the meantime, three (3) new certificates of title for the three (3) lots were issued to the petitioner. On 30 June 1985, petitioner filed a motion to reconsider the Order of 17 May 1985, which the RTC granted in the Order of 19 July 1985, the dispositive portion of which provides:

"WHEREFORE, finding merit in the motion, the Court hereby directs the Register of Deeds of Iloilo City to cancel Transfer Certificate of Title Nos. T-69045, T-69046 and T-69047 issued to petitioner Tiongco and in lieu thereof to issue to him new Transfer Certificates of Title without the annotation of the encumbrances in favor of the Philippine Veterans Bank and solely retain as encumbrances thereof the right of way which appears at the back of Transfer Certificates of Title Nos. T-69045 and T-69046, upon payment of all corresponding fees therefor."

On 9 August 1985, PVB filed a motion for the reconsideration of the aforesaid Order, to which petitioner filed an Opposition.

On 24 July 1986, the RTC issued an Order granting the motion for reconsideration and setting aside the Order of 19 July 1985 "to afford the respondent bank full opportunity to ventilate their (sic) opposition to the motion for reconsideration of the petitioner dated April 30, 1986, and set the same for hearing on August 8, 1986 at 8:30 in the morning."

Thereafter, on 9 September 1986, the RTC issued the following order:

"WHEREFORE, premises considered, the Court hereby orders the Register of Deeds of Iloilo City to cancel Transfer Certificates of Title Nos. T-6945, T-6946 and T-6947 [should be T-69045, T-69046 and T-69047] issued to petitioner Tiongco and in lieu thereof to issue to him new certificates of title without the annotation of encumbrances in favor of the Philippine Veterans Bank which are hereby cancelled, and solely retain as encumbrance thereof the right of way which appears at the back of the aforementioned three (3) certificates of title upon payment of the corresponding legal fees thereto."

Respondent PVB immediately appealed from the said Order to the respondent Court of Appeals imputing to the RTC the commission of the following errors:

- "1. x x x in holding that the encumbrance in favor of the appellant annotated prior to the tax sale can now be cancelled after the expiration of the redemption period because of the superiority of the tax lien.
2. x x x in not considering the failure of the government to cancel the encumbrance or lien annotated on the certificate of title as provided under P.D. 464 an act which the appellee could not now seek to exercise, the same being an exclusive or absolute right of the government and x x x.
3. x x x in not considering the fact that the amount sought to be collected by the city government for tax delinquency against the property was grossly inadequate or unconscionable compared to the amount of the appellant's lien over the subject property based on mortgage contract, so as to be deprived of its right thereto."

The appeal was docketed as C.A.-G.R. CV No. 12463. In its Decision promulgated on 22 March 1988, respondent Court resolved the appeal in favor of PVB. The dispositive portion thereof reads:

"WHEREFORE, the judgment of March 27, 1985, Order of July 19, 1985, and that of September 9, 1986 are hereby set aside; the auction sale of subject property on December 15, 1982 and all the proceedings, papers and titles resulting therefrom and/or by reason thereof, are all annulled and declared of no legal force and effect; and the petition of petitioner in Cadastral Case No. 6 is hereby DISMISSED for want of merit. Costs against petitioner-appellee."

This disposition proceeds from the respondent Court's findings and conclusion that: (a) for want of the requisite personal notice to the mortgagee, the PVB, the auction sale of the property in question conducted on 15 December 1982 was a "complete nullity"; the notice by publication of the auction sale did not suffice to invest it with validity because the sale of land for collection and payment of delinquent taxes and penalties due the government is one in personam, not in rem, as held in *Lopez vs. Director of Lands*,^[3] *Valencia vs. Jimenez*^[4] and *Camo vs. Riosa Boyco*;^[5] (b) The property was sold for a scandalously low amount; it is shocking to the conscience that the lot was sold to petitioner for the measly sum of P2,871.00 which corresponds to the delinquent taxes to be recovered; considering that there is a subsisting mortgage obligation of P290,000.00, plus interest, annotated on the title, the auction sale was the product of an illicit machination and actionable collusion between city officials of Iloilo City who had a hand in the irregular, nay, criminal transaction, and the purchaser of the subject property; (c) As regards the issue of whether the mortgage lien is inferior to the tax lien, the rule on the matter does not justify the cancellation of any lien duly annotated on the certificate of title of the subject property upon the disposition thereof in a tax sale; the purchaser at a tax sale gets no better title under his deed than that held by the person assessed. The respondent Court then concluded:

"Here, to repeat; not (sic) only was respondent appellant [PVB] not duly served with the required personal notice of the tax delinquency involved and the public auction sale of subject property; it was completely ignored thereafter and, therefore, was not afforded a chance to attack and challenge such detestable happening nor (sic) an opportunity to pay the tax liability at stake or to redeem the property, in order to save and protect its monetary exposure thereon of a tremendous amount. Verily, absent a criminal intent to defraud respondent appellant, if given a chance it would have readily paid the tax delinquencies of P2,871.00, instead of losing its investment of perhaps more than half a million pesos in subject property. No further discussion is needed to sustain this thesis. It is too obvious and logical to necessitate any elaboration. In fact, the principle of *Res ipsa loquitur* (the thing speaks for itself) is applicable under the premises. And why not? when (sic) an investment of a government operated bank amounting to hundreds of thousands of pesos in a city property worth around the aforesaid amount of the mortgage debt thereon was given away in a highly irregular and ill-managed auction sale for the shockingly low price of P2, 871.00. Can (sic) such proceeding be explained and justified? Impossible."

Hence, this petition for certiorari under Rule 45 of the Rules of Court, which urges this Court to set aside the aforesaid decision because respondent Court erred:

- "1. In setting aside the judgment of the trial court dated March 27, 1985 x x x which had already become final and executory since May 4, 1985, without any appeal or motion for reconsideration having been taken therefrom;
2. In setting aside the order of the trial court dated July 19, 1985, when this very same order was also set aside by no other than the trial court itself in its order of July 24, 1986 x x x;
3. In setting aside (in toto) the order of the lower court dated September 9, 1986, which includes two other lots which are not subject of the petition against the Philippine Veterans Bank which deals only with Lot No. 665-C-4 located at Lopez Jaena St., Jaro, Iloilo City with an area of 220 square meters;
4. In ordering the annulment of the tax sale of December 15, 1982 which was approved by the trial court in its final judgment of March 27, 1985, and where no action for its impeachment or annulment has been commenced by the Philippine Veterans Bank; x x x;
5. In dismissing the petition in Cadastral Case No. 6 'for want of merit', x x x;
6. In unjustly accusing your petitioner of 'criminal intent to defraud' x x x and 'illicit, machination and actionable collusion between your petitioner or his representatives and the city officials of Iloilo x x x as though it were a trial court or had any evidence before it.' x x x."

After private respondent PVB filed its Comment on the petition as required in the Resolution of 9 May 1988, and the petitioner, his Reply thereto as required in the Resolution of 31 August 1988, this Court, in its Resolution of 7 December 1988, gave due course to the petition and required the parties to submit their respective Memoranda, which they subsequently complied with.

The petition is meritorious.

1. Respondent Court cannot nullify the sale of the property in question made during the public auction. The instant case originated in the Regional Trial Court as a mere petition to require PVB, the mortgagee, to surrender the owner's duplicate copy of TCT No. T-42479 to petitioner on behalf of his children who were the purchasers of the lot covered by said certificate of title at the tax sale, after the registered owner failed to redeem the property and the PVB refused to deliver said TCT to petitioner, and to request for the issuance of a new one in the name of said purchasers. This is authorized under Section 75 of the Property Registration Decree[6] which reads:

"SECTION 75. Application for a new certificate upon expiration of redemption period. -- Upon the expiration

of the time, if any, allowed by law for redemption after registered land has been sold on execution, or taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings."

In relation thereto, Section 107 thereof provides:

"SECTION 107. Surrender of withheld duplicate certificates. -- Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate."

It is, of course, understood that any lien annotated on the previous certificate of title, which subsists despite the execution sale or a sale for the enforcement of other liens, must be incorporated into or carried over to the new transfer certificate of title. This is especially true in the case of a real estate mortgage because pursuant to Article 2126 of the Civil Code, it "directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted." It is inseparable from the property mortgaged, as it is a right in rem -- a lien on the property whoever its owner may be. It subsists notwithstanding a change in ownership; in short, the personality of the owner is disregarded. Thus, all subsequent purchasers must respect the mortgage, whether the transfer to them be with or without the consent of the mortgagee, for such mortgage, until discharged, follows the property.[7]

After a new title is issued in the name of the wards of petitioner or the petitioner himself in representation of such wards, the subsisting mortgage in favor of the PVB must be annotated at the back thereof. Section 59 of the Property Registration Decree provides:

"SECTION 59. Carry over of encumbrances. -- If, at the time of any transfer, subsisting encumbrances or annotations appear in the registration book, they shall be carried over and stated in the new certificate or certificates, except so far as they may be simultaneously released or discharged."

Consequently, since the so-called Decision of 27 March 1985 did not contain, and correctly so, a specific directive that the mortgage encumbrance in favor of PVB be cancelled or that it not be carried over to the new title to be issued to petitioner's wards, it was not necessary for the PVB to move for its reconsideration or appeal therefrom because it was the duty of the Register of Deeds to carry it over to the new title. At that stage of the proceedings, PVB's right as mortgagee suffered no injury or impairment. The injury or impairment became indubitable only when the RTC issued the Order of 19 July 1985 -- which was, however set aside in the Order of 24 July 1986 -- and the Order of 9 September 1986, wherein for no justifiable reason whatsoever, and acting with palpable arbitrariness and clearly in obvious disregard of the above principles concerning real estate mortgages and the aforementioned Section 59, it directed the issuance of new certificates of title for the three (3) lots in favor of the petitioner's wards "without the annotation of the encumbrances in favor of the Philippine Veterans Bank, which are hereby cancelled."

No party disputes the fact that the mortgage debt in favor of PVB was neither paid nor satisfied and that the mortgage in its favor has not been released, discharged or extinguished. It is from this Order that PVB properly interposed an appeal. Doubtless, the appeal was seasonably filed; moreover, petitioner's insistence that the Order of 27 March 1985 had long become firm, final and unappealable, and the private respondent's postulation to the contrary on the sole ground that it never became so because on 30 April 1985, petitioner filed an ex-parte motion for a supplemental order directing that the new titles to be issued must be without the mortgage encumbrance, are groundless, if not totally misplaced.

The proceedings before the RTC in the petition for the surrender of TCT Nos. T-42479 and T-42482 were conducted in accordance with Sections 75 and 107 of the Property Registration Decree and were filed in the original case in which the decrees of registration were entered pursuant to the last paragraph of Section 108 thereof which reads:

"All petitions or motions filed under this section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree of registration was entered."

This being the case, such proceedings were summary in nature and did not confer upon the RTC, sitting as a land registration court, the power to decide upon the validity of the tax sale.

In *Bareng vs. Shintoist Shrine and Japanese Charity Bureau*,^[8] which involves Sections 111 and 112 of the Land Registration Act, substantially similar to Sections 107 and 108, respectively, of the Property Registration Decree, this Court ruled:

"Anyway, proceedings undertaken pursuant to Section 111, as those under Section 112, are summary in nature. They are inadequate for the litigation of issues properly pertaining to civil actions. (*Tomada vs. Tomada*, G.R. No. L-21887, July 30, 1969, 28 SCRA 1028; *Santos vs. Cruz*, 52 SCRA 330.) In other words, controversial questions, such as questions concerning the ownership of registered property (*Tomada vs. Tomada*, supra), questions of lapse of period to register of deeds (sic) (*Mendoza vs. Abrera*, 105 Phil. 611), or any question where the issues involved have become controversial (*Register of Deeds of Iloilo vs. C.N. Hodges*, G.R. No. L-18178, January 31, 1963, 7 SCRA 149) cannot be threshed out in such proceedings. Where therefore, controversial issues are raised in proceedings brought under, Section 111 or Section 112, it is the duty of the court sitting as a cadastral court or land registration court to dismiss the petition and the proper recourse open for the parties would be to bring up the said questions in an ordinary civil action, or in the proceeding where the incident properly belongs (*Hu. Chon Sunpongco vs. Heirs of Nicolas Ronquillo*, G.R. No. L-27040, December 19, 1970, 36 SCRA 395) albeit, in *Ruiz vs. Paquio*, it was held that if the oppositor does not question the jurisdiction of the court and allows these substantive issues to be tried and decided by it, its decision can no longer be attacked in any subsequent proceeding."

It was precisely for this reason that the RTC, in its Order of 27 March 1985, reserved to PVB the right "to pursue all his (sic) lawful remedies to impeach or annul the proceedings under the tax sale in a separate appropriate action." At least, up to that point, the RTC was aware of the limitations of its power in the proceedings.

Since the RTC did not even have the jurisdiction to decide the issue of the validity of the sale which, by the way, could only be properly raised by the registered owner-mortgagor and not by the PVB, and which such registered owner-mortgagor did not raise at all, respondent Court committed grave abuse of discretion amounting to lack of jurisdiction in setting aside the auction sale conducted by the Treasurer of Iloilo City on 15 December 1982 and annulling all the proceedings, papers and titles resulting therefrom or by reason thereof.

Worse, respondent court entirely forgot that the City of Iloilo and the City Treasurer were not parties to the petition for the surrender of TCT No. T-42479 and the other petition for the surrender of TCT Nos. T-42481 and

T-42482. Both the City of Iloilo, as the taxing authority which exercised its right to collect a tax delinquency and satisfy the same through a public sale of the taxpayer's property, and the City Treasurer who conducted the sale and executed the Certificate of Sale and the Final Bill of Sale are indispensable parties in any action involving the validity of the sale. Thus, in annulling the Sale in question, respondent Court denied both the City of Iloilo and the City Treasurer due process of law, even as it also denied petitioner's wards their right to be reimbursed for what they, through the petitioner, paid the City of Iloilo. This grave abuse of discretion was unnecessarily compounded when the respondent Court condemned them, without hearing, for alleged irregularities and criminal culpability. Indeed, the respondent Court went a bit too far. In all probability, it was simply overwhelmed and shocked by the "scandalously low" purchase price. Here again, the respondent Court chose to disregard two (2) crucial facts: (a) the owner-mortgagor, Alicia Arnaldo, or her successors-in-interest, did not even question the sale, and (b) the lots were mortgaged to PVB for P290, 000.00. Only the owner--mortgagor may question the alleged scandalously low amount paid by the purchaser at the tax sale. Clearly, neither she nor her successors-in-interest had voiced out, even faintly, any complaint. At any rate, the rule is well-settled that "while in ordinary sales for reasons of equity a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere, such does not follow when the law gives to the owner the right to redeem, as when a sale is made at public auction, upon the theory that the lesser the price the easier it is for the owner to effect redemption." [9]

Then too, petitioner purchased the property fully cognizant of the risk that he could eventually lose it in a foreclosure sale conducted to satisfy the mortgage, unless he was prepared to P290, 000.00 more, with interests due them, as well as the other charges and penalties which the contract of mortgage or the promissory note secured by it has stipulated, without any hope of seeking reimbursement from the mortgagor.

2. Besides, even granting for the sake of argument that the validity of the tax sale may be properly inquired into by the respondent Court, it nevertheless erred in holding that PVB was entitled, as a matter of right, to a personal service of notice of the auction sale, considering that per *Lopez vs. Director of Lands*, [10] such a proceeding is in personam and not in rem. There is no quarrel with this doctrine; respondent Court just applied it erroneously in this case.

Whether personal notice to the mortgagee is required for the auction sale of the mortgaged land for the collection and satisfaction of the real estate taxes due thereon depends upon the applicable law. In this case, it is the charter of the City of Iloilo, C.A. No. 158 as amended, which must be looked into. Under Section 48 thereof, notice of the public auction shall be posted at the main entrance of the City Hall and at the municipal buildings of the province and published in a newspaper of general circulation in the city. A copy of the notice shall also be sent immediately by registered mail to the delinquent taxpayer at the latter's home address, if the treasurer should know such address. Nowhere does it provide for personal notice to a registered lienholder such as a mortgagee. The reason why no personal notice is required is too obvious. The sale does not operate to cancel or extinguish the pre-existing lien.

A careful reading of *Lopez vs. Director of Lands* [11] would have easily disclosed that what was nullified in said case, for lack of notice to the mortgagee, the Director of the Bureau of Lands, was the order of the court, issued on the basis of a petition for the cancellation of the mortgage lien, directing the issuance of a new certificate of title in favor of the purchaser at the tax sale "free from all liens of any kind whatsoever" pursuant to Section 2500 of Act No. 2711, thereby canceling the mortgage encumbrance in favor of the mortgagee annotated in the previous certificate of title.

Section 2500 of Act No. 2711 [12] had been reproduced, with very slight modifications which do not affect the substance, in Section 51 of the Charter of Iloilo City:

"SECTION 51. Execution of final sale. -- In case the taxpayer shall not redeem the property sold as herein provided within one year from the date of sale, and the purchaser shall then have paid the total purchase price, the city treasurer, as grantor, shall execute a deed in form and effect sufficient to convey to the purchaser so much of the real estate against which the taxes have been assessed as has been sold, free from all liens of any kind whatsoever. x x x"

Because of the lack of notice to the mortgagee in the said petition for the issuance of a new certificate of title, free from all liens of any kind whatsoever, this Court set aside the challenged order. Said this Court therein:

"While it is true that Section 2500 of Act No. 2711 provides that, in case the taxpayer shall not redeem the realty sold for the payment of delinquent taxes within one year from the date of the sale, the city assessor and collector shall execute a deed, in form and effect sufficient to convey to the purchaser so much of the real estate, against which the taxes have been assessed, as has been sold, free from all liens of any kind whatsoever, the Legislature certainly did not intend that persons who hold a lien against such land should be deprived thereof without a notice and an opportunity to be heard before their lien could be nullified. No rule is better established, under the due process of law provision of the organic law of the land, than the one which requires notice and an opportunity to be heard before any citizen of the state can be deprived of his rights. That is the rule, whether the action is in personam or in rem, with the exception that in an action in rem substituted service may be had. (*Pennoyer vs. Neff*, 95 U.S. 714; *Kilbourn vs. Thompson*, 103 U.S. 168)."

It ordered, however, that the new certificate of title be issued to the purchaser "with an annotation of the mortgage lien held by the appellant" Director of the Bureau of Lands.

Clearly then, said case is not an authority for the nullification of the tax sale in question, but for the restoration of the mortgage annotation, or its being carried over to the new certificates of title.

It would have been entirely different if it was the owner of the land who was not notified of the sale. Lack of notice to him would vitiate the sale. Thus, interpreting Section 35 of C.A. No. 470, the Assessment Law, this Court, in *Cabrera vs. Provincial Treasurer of Tayabas*,^[13] held that lack of notice to the delinquent taxpayer vitiates the auction sale. Also, in *Serfino vs. Court of Appeals*,^[14] this Court gave its "stamp of approval on the x x x ruling of the respondent court" that in auction sales of property for tax delinquency, notice to the delinquent landowners and to the public in general is an essential and indispensable requirement of law, the non-fulfillment of which vitiates the same.

3. Petitioner is correct in stating that respondent Court erred in annulling the Order of the trial court of 19 July 1985 because it had been, in fact, set aside and reconsidered by the said court in the Order of 24 July 1986.

4. There is no need to dismiss the petitions in Cadastral Case No. 6. For, indeed, in the light of the foregoing disquisitions that the mortgage in favor of PVB was not affected by the tax sale and that the validity of such sale was not properly raised therein, new certificates of titles in favor of petitioner's children may be validly issued under Sections 75 and 107 of the Property Registration Decree, subject of course to the mortgage in favor of PVB.

WHEREFORE, the petition is GRANTED. The Decision of the respondent Court in C.A.-G.R. CV No. 12463, promulgated on 22 March 1988, and the Orders of Branch 30 of the Regional Trial Court of Iloilo of 9 September 1986 are hereby SET ASIDE.

The mortgage in favor of the Philippine Veterans Bank shall be annotated on the corresponding new certificates of title issued to petitioner's children pursuant to the Decision of 27 March 1985 and the Order of 9 April 1985 of the said Regional Trial Court in Cadastral Case No. 6 in lieu of the previous ones where such mortgage was annotated. For this purpose, the petitioner is directed to surrender such new certificates of title to the Register of Deeds of Iloilo City who is hereby directed to make such annotations upon payment by the Philippine Veterans

Bank of the required fees.

No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Annex "A" of Petition; per Associate Justice Fidel P. Purisima, concurred in by Associate Justices Segundino C. Chua and Nicolas P. Lapeña, Jr.

[2] Rollo, 51.

[3] 47 Phil. 23 [1924].

[4] 11 Phil. 492 [1908].

[5] 29 Phil. 437 [1915].

[6] P.D. No. 1529.

[7] Philippine National Bank vs. Mallorca, 21 SCRA 694 [1967], citing ALTAVAS, The Law of Mortgages in the Philippine Islands, 1924 ed., 2; PEÑA, Registration of Land Titles and Deeds, 1961 ed., 225; and TOLENTINO, A., Civil Code of the Philippines Annotated, vol. V, 1962 ed., 477. See also Ganzon vs. Hon. Inserto, 123 SCRA 713 [1983], and DBP vs. NLRC, 183 SCRA 328 [1990].

[8] 83 SCRA 418 [1978].

[9] Velasques vs. Coronel, 5 SCRA 985 [1962]; see also Barrozo vs. Macaraeg, 83 Phil. 378 [1949]; Vda. de Gordon vs. Court of Appeals, 109 SCRA 388 [1981]; Francia vs. Intermediate Appellate Court, 162 SCRA 753 [1988]; Gomez vs. Gealone, G.R. No. 58281, 13 November 1991.

[10] 47 Phil. 23 [1924].

[11] Supra.

[12] The Revised Administrative Code of 1917.

[13] 75 Phil. 780 [1946].

[14] 154 SCRA 19 [1987].

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