

## **HYDRO RESOURCES CONTRACTORS CORPORATION, PETITIONER, VS. THE COURT OF APPEALS, THE PROVINCIAL GOVERNMENT OF ISABELA, THE MUNICIPALITY OF RAMON, ISABELA AND THE NATIONAL IRRIGATI...**

*G.R. No. 85714. November 29, 1991*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

This is a petition for certiorari, treated as a petition for review on certiorari of the decision\* of the Court of Appeals, dated 30 October 1987, in CA-G.R. SP Case No. 09196, affirming the Order dated 6 August 1983 of the Regional Trial Court of Echague, Isabela, Branch 24, in CV No. XXIV-0106 (re-docketed as Civil Case No. 0093, before the Regional Trial Court, Santiago, Isabela, Branch XXI).\*\*

Public respondent National Irrigation Administration (or "NIA") and petitioner Hydro Resources Contractors Corporation (or "Hydro") entered into a contract whereby the latter undertook to construct for the former the Magat River Multi-Purpose Project situated at Ramon, Isabela.[1]

In June 1982, the Provincial Government of Isabela, its provincial treasurer, the Municipality of Ramon, Isabela, and its assistant treasurer, as plaintiffs, filed a civil case against herein petitioner Hydro, docketed as Civil Case No. XXIV-0106, with the Regional Trial Court of Echague, Isabela, Branch 24, for collection of taxes over certain real properties which Hydro allegedly acquired, possessed and used in connection with the construction of the said Magat River Multi-Purpose Project.[2]

After hearing, the Regional Trial Court, Echague, Br. 24, on 6 August 1983, issued an order in favor of the plaintiffs, finding defendant Hydro (now petitioner) liable to pay realty taxes over the properties it had constructed in connection with the Magat River Multi-Purpose Project, but that the amount thereof was to be determined in further proceedings of the court a quo, dispositive part of which order reads:

"WHEREFORE, in the light of the foregoing considerations, the court finds and so rules that under the pertinent provisions of Presidential Decree No. 464, as amended, the defendant, Hydro Resources Contractors Corporation, is liable to the payment of realty taxes over the real properties it constructed relative to the prosecution of the Magat River Multi-Purpose Project (MRMP) at Barangay Aguinaldo, Ramon, Isabela.

"Accordingly, it is hereby ordered that further proceedings shall be held to determine the amount of real property taxes to be paid by the defendant corporation to the plaintiffs in accordance with this Order and to receive evidence on the questions of facts raised by the former.

"However, by reason of the fact that pursuant to Administrative Order No. 7, dated February 11, 1983, of the Honorable Supreme Court, implementing the provisions of Section 18 of Batas Pambansa Blg. 129, cases which arise in the Municipality of Ramon, Isabela, among other municipalities, now fall within the administrative jurisdiction of the newly-created Regional Trial Court, Branch XXI, Santiago, Isabela and it appearing that this case is a proper case for transfer to said Branch XXI since its venue is the Municipality of

Ramon, let the record of this case, consisting of 70 pages, be dropped from the civil docket of this Court and the same be forwarded to the Regional Trial Court, Branch XXI; Santiago Isabela for further proceedings. x x x" (Underscoring supplied)[3]

Civil Case No. XXIV-0106 was thereafter transferred to the Regional Trial Court, Branch XXI, of Santiago, Isabela, and re-docketed as Civil Case No. 0093.

On 4 November 1983, now before the Regional Trial Court of Santiago, Isabela, Br. XXI, Hydro through counsel filed a motion for leave to file third-party complaint, dated 21 October 1983, against NIA, attaching to the motion the proposed third-party complaint (for reimbursement from the NIA); and a motion to admit amended answer, accompanying the same with the proposed amended answer.[4] On the same date (4 November 1983), the Regional Trial Court, Santiago, Isabela admitted Hydro's third-party complaint; however, as to its motion for leave to file amended answer, plaintiffs were given ten (10) days to file their opposition and Hydro was also given ten (10) days from receipt of such opposition to file its reply.[5]

On 12 December 1983, before the court a quo could resolve Hydro's motion for leave to file amended answer, plaintiffs filed their reply to Hydro's amended answer.[6] NIA also filed its answer to Hydro's third-party complaint.[7]

In an order of 7 February 1984, the court a quo then ordered the parties to file their respective memorandum, in this wise:

"After several arguments made by counsels, three issues were submitted, namely:

1. Whether or not the Order of this Court dated 6 August 1983 was abandoned by the filing of the Amended Answer by the defendant;
2. Whether the Hydro Resources or the NIA is the beneficial user of the land under question and therefore the beneficial user will pay the taxes; and
3. Whether it is proper for the plaintiff to avoid multiplicity of suit, to amend its complaint and plead thereto the amount of P338,750.00 which was not included in the original complaint but was included in the third party complaint against the third party defendant.

This Court directed counsels of the parties to file their memoranda in support of their respective position simultaneously within thirty (30) days from today, after which the court, with or without the said memoranda will resolve the issues aforecited." (underscoring supplied)[8]

The parties did not file their memoranda except Hydro which complied.[9] On 20 May 1985, the court a quo ruled that the order dated 6 August 1983 (issued by the Regional Trial Court, Echague, Isabela) was final and executory, disposing that:

"WHEREFORE, the Court hereby rules the Order of this Court dated August 6, 1983 to be final and executory. The Orders of the Court dated October 14, 1983[10] and November 4, 1983, being devoid of legal basis are hereby SET aside and the Third-party Complaint dated October 21, 1983 filed against the National Irrigation Administration is hereby DISMISSED." (Underscoring supplied)[11]

On 14 October 1985, the court a quo denied Hydro's motion for reconsideration of the order dated 20 May 1985:[12]

"WHEREFORE, for lack of merit, defendant and third-party plaintiff's motion for reconsideration is hereby Denied.

"Defendant and third-party plaintiff is granted a period of twenty (20) days from receipt of this order within

which to file whatever pleading it may deem appropriate under the circumstances."

On 15 January 1986, Hydro filed with the Supreme Court a Petition, docketed G.R. No. 72849,[13] which (petition) was referred by this Court (First Division) to the Court of Appeals for proper action and disposition. In a resolution dated 21 May 1986[14] said petition was re-docketed in the Court of Appeals as CA-G.R. SP No. 09196.

On 30 October 1987, the Court of Appeals rendered a decision (now assailed) denying (dismissing) the petition, dispositive portion of which reads:

"WHEREFORE, the writ of certiorari prayed for by petitioner is denied; and the court a quo is hereby ordered to receive evidence only for the purpose of determining the amount of realty taxes which petitioner was adjudged liable to pay respondents Provincial Government of Isabela and Municipality of Ramon, Isabela, pursuant to the order dated August 6, 1983 issued by the Regional Trial Court, Branch XXIV, Echague, Isabela in Civil Case No. XXIV-0106, where said respondents were the plaintiffs and petitioner was the defendant, prior to the transfer of the case to the Regional Trial Court, Branch XIV (sic), Santiago Isabela, and there re-docketed as Civil Case No. Br. XIV-0093, the same being the court and case a quo in this petition. Costs against petitioner."[15]

On 2 November 1988, the Court of Appeals denied petitioner's motion for reconsideration of the said decision. Hence, the present petition for review, raising the following issues:

"I. Whether or not the appellate court has acted without or in excess of its jurisdiction or with grave abuse of discretion in not finding that the order issued by the court a quo on August 6, 1983 is merely interlocutory and/or provisional in character and could not be considered as a final determination of the merits of Civil Case No. 0093.

II. Whether or not the appellate court has acted without or in excess of its jurisdiction or with grave abuse of discretion in not finding that the said order of August 6, 1983 was abandoned or set aside through the issuance of the order of November 4, 1983 which admitted herein petitioner's third-party complaint against respondent NIA.

III. Whether or not the appellate court has acted without or in excess of its jurisdiction or with grave abuse of discretion in not finding that the court a quo, in issuing the order of May 20, 1985 went beyond the issues presented by the parties, which act is legally impermissible, irregular and invalid."[16]

We grant the petition.

Both the petitioner and the respondents agree that the main issue in the case at bar is whether or not the assailed order of the court a quo, dated 6 August 1983, is interlocutory in nature or a final judgment.

It is to be observed that while the complaint in the case at bar is admittedly one for collection of realty taxes over certain real properties,[17] filed against the petitioner, the complaint, however, does not allege the amount of taxes which the plaintiffs seek to collect from petitioner.[18] There is thus a need to determine the effect of such failure of the complaint to state the aforesaid amount vis-a-vis plaintiffs' cause of action. Although this issue is not raised in the present petition, it is basic that the Court can review matters not assigned as an error in the appeal.[19]

We hold that the complaint at bar has failed to state the ultimate facts,[20] which failure is violative of Section 3, Rule 17 of the Rules of Court.[21]

As admitted by the respondents, this case is one for collection of realty taxes. Section 82 of Presidential Decree No. 464 (Real Property Tax Code) states that "the delinquent real property tax shall constitute a lawful indebtedness of the taxpayer to the province or city." Under P.D. 464, the process of collecting real property taxes

involves the acts or methods of appraisal and assessment of the real property subject to tax;<sup>[22]</sup> the imposition of real property tax<sup>[23]</sup> and the collection thereof.<sup>[24]</sup>

The amount of taxes sought to be collected is therefore determinable, yet, the complaint at bar did not plead the same. In the order of the court a quo, dated 7 February 1984, one of the issues submitted was whether it was proper for the plaintiffs to amend their complaint and plead therein the amount of tax sought to be collected.<sup>[25]</sup> But this issue was deemed abandoned when the court a quo issued an order dated 20 May 1985, which held that the order dated 6 August 1983 was final and executory.

As in any case for collection of a sum of money, stating the amount of tax sought to be collected in a complaint for collection of realty taxes is part of the ultimate facts constituting the plaintiff's cause of action, as provided under Section 3, Rule 6 of the Rules of Court, *supra*. In the instant case, there is failure to state in the complaint the ultimate facts because the amount of tax sought to be collected is not pleaded or alleged.

It can not be overlooked that the subject matter<sup>[26]</sup> of the complaint filed before the court a quo is the amount of the real estate taxes to be collected. Section 82 of P.D. 464 provides that the collection of delinquent real property taxes may be enforced in any court of competent jurisdiction. In the present case, as the complaint did not plead the amount of tax intended to be collected, how could the court a quo ascertain, in the first place, in relation to the amount of the demand, whether it was the proper forum to try the case?<sup>[27]</sup> The fact that the third party complaint filed by petitioner-defendant against the National Irrigation Administration pleaded the amount of P338,750.00 as reimbursable to it by the latter, is of no moment now, as the said third-party complaint was also ordered dismissed in the order of 20 May 1985.<sup>[28]</sup> Hence, it can be said that the complaint (in chief) was never amended.

While it may be true that petitioner-defendant did not move to question the failure of the complaint to plead the amount of tax sought to be collected, the court a quo, upon its own motion, may dismiss the complaint for failure of the plaintiffs to comply with Section 3, Rule 6 of the Rules of Court in relation to Section 3, Rule 17 thereof<sup>[29]</sup> which provides that the action may be dismissed for failure to comply with the rules. This dismissal the court a quo did not order.

The complaint being fatally defective, the questioned order, dated 6 August 1983, which derived its life from the said complaint, is also without effect. But assuming *arguendo* that the filing of the complaint at bar complied with the rules thereby making the order of 6 August 1983 valid, the nature of said order is interlocutory. It is not a final judgment.

The dispositive part of said order states that petitioner-defendant is liable for the payment of real property taxes, but, it adds, further proceedings shall be held to determine the amount of real property taxes to be paid by petitioner-defendant. Furthermore, the same order of 6 August 1983 states:

"The defendant corporation also invoked the ground of no cause of action in asking for the dismissal of the complaint. In so doing, it adopted the stand that it was denied due process by the fact that the notice of assessment was never served upon it nor was it furnished copies of any Tax Declarations Nos. 03-2101 to 03-2113 mentioned in the fifth paragraph of the complaint and by the fact that it was never served of any notice of delinquency in the payment of real property tax nor was there any demand made upon it for payment thereof. To the Court, these are matters or questions of facts which necessitate presentation of evidence to prove or disprove them. At this stage of the proceedings, the Court can not resolve them one way or the other." (Underscoring supplied.)" (Rollo, p. 12)

As held in *De la Cruz vs. Paras*,<sup>[30]</sup> a court order is final in character if it puts an end to the particular matter resolved or settles definitely the matter therein disposed of, such that no further questions can come before the court except the execution of the order; that on the other hand, a court order is merely interlocutory in character if

it is provisional and leaves substantial proceeding to be had in connection with its subject.

Clearly, the order of 6 August 1983 is interlocutory. We fail to see how it could or did put an end to the controversy when the court a quo still had to determine the amount of realty taxes to be collected by plaintiffs from petitioner-defendant, and to make findings of fact on certain issues, which could still affect the very liability to pay such taxes.

WHEREFORE, petition is GRANTED; the decision of the Court of Appeals, dated 30 October 1987 in CA-G.R. SP. No. 09196 is hereby SET ASIDE, and a new one entered ordering the complaint in Civil Case No. 0093 before the Regional Trial Court of Santiago, Isabela, Branch XXI, DISMISSED, without prejudice. Without pronouncement as to costs.

**SO ORDERED.**

Paras and Regalado, JJ., concur.

Melencio-Herrera, (Chairman), J., see separate opinion.

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\* Penned by Associate Justice Jesus M. Elbinias; concurred in by Justices Fidel P. Purisima, and Emeterio C. Cui.

\*\* Rollo, p. 36

[1] Rollo, p. 3

[2] Rollo, pp. 4 and 27

[3] Rollo, pp. 27, 45, 118

[4] Rollo, p. 28

[5] Rollo, p. 28

[6] Rollo, p. 28

[7] Rollo, p. 6

[8] Rollo, p. 29

[9] Rollo, p. 29

[10] There is no such order in the records.

[11] Rollo, pp. 29-30

[12] Rollo, pp. 8 and 30

[13] Rollo, pp. 8 and 46

[14] The resolution of the Supreme Court, dated 21 May 1986, in G.R. No. 72859, entitled "Hydro Resources Contractor Corporation vs. Hon. Basilio R. Ramiscal, etc., et al." reads as follows: "x x x The Court Resolved: x x x (c) to REFER this case to the Intermediate Appellate Court for proper disposition and determination." (see records of G.R. No. 72849)

[15] Rollo, p. 36

[16] Rollo, p. 9

[17] Rollo, p. 27

[18] Rollo, p. 29

[19] Ortigas, Jr. vs. Lufthansa German Airlines, G.R. NO. 28773, June 30, 1975, 64 SCRA 610

[20] "SEC. 3, Rule 6 of the Rules of Court provides: Complaint. - The complaint is a concise statement of the ultimate facts constituting the plaintiff's cause or causes of action. It shall specify the relief sought, but it may add a general prayer for such further or other relief as may be deemed just or equitable. The names and residences of the parties plaintiff and defendant must be stated in the complaint."

[21] "SEC. 3, Rule 17 of the Rules of Court provides: Failure to prosecute. - If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court."

[22] Chapter II of P.D. 464 entitled "Appraisal and Assessment of Real Property"; Section 3(d) thereof defines appraisal as "the act or process of determining the value of a property as of a specific date for a specific purpose"; whereas Section 3(e) defines assessment as "the act or process of determining the value of a property, or proportion thereof, subject to tax, including the discovery, listing and appraisal of properties".

[23] Chapter IV of P.D. 464. Sections 38 and 39 thereof deal with the subject of the real property tax, and the rates of the levy to wit:

"SEC. 38. Incidence of Real Property Tax. - There shall be levied, assessed and collected in all provinces, cities and municipalities an annual ad valorem tax on real property, such as land, buildings, machinery and other improvements affixed or attached to real property not hereinafter specifically exempted.

"SEC. 39. Rates of Levy - The provincial, city or municipal board or council shall fix a uniform rate of real property tax applicable to their respective localities as follows:

x x x"

[24] Chapter VI of P.D. 464

[25] Decision of Court of Appeals, Rollo, p. 29

[26] The subject matter of an action is the matter or thing from which the dispute has arisen (Filipinas Investment vs. IAC, G.R. Nos. 66059-60, 4 December 1989, 179 SCRA 728)

[27] Section 19 of Batas Pambansa Blg. 129 provides that the Regional Trial Court shall exercise exclusive original jurisdiction in all cases in which the demand amounts to more than P20,000.00.

[28] Rollo, pp. 29-30

[29] Supra.

[30] G.R. No. L-41053, February 27, 1976, 69 SCRA 556

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Hydro Resources Contractors Corp vs Court of Appeals : 85714 : November 21, 1991 : J. Melencio-Herrera : Second Division : Separate Opinion 200 6 pt 6 pt 0 3

Separate opinion

**MELENCIO-HERRERRA, J.:**

I concur with the legal aspects of the majority opinion particularly with the conclusion that the Complaint is defective as it failed to state ultimate facts.

However, considering that (1) the case has proceeded to trial and judgment with no objection having been interposed by petitioner-defendant to the absence of specification regarding the amount of taxes; (2) petitioner-defendant has been adjudged liable for the payment of realty taxes by the Regional Trial Court of Echague, Isabela, Branch 24, on 6 August 1983, which judgment has been affirmed by the Court of Appeals in CA-G.R. SP No. 09196; (3) the dismissal of the case without prejudice would only result in multiplicity of suits and the prolongation of the controversy, which has been pending since 1982, it is my view that the judgment of the Court of Appeals "ordering the reception of evidence only for the purpose of determining the amount of realty taxes which petitioner was adjudged liable to pay respondents" should be affirmed. The practicality of the situation justifies a departure from the strict mandate of procedural rules.

The Order of the Regional Trial Court of Echague, Isabela, Branch 24, dismissing the Third-Party Complaint should also be set aside and the said Complaint reinstated. The determination of the liability of the NIA to reimburse HYDRO for whatever taxes the latter would pay to respondents could then be included in the proceedings to be conducted by the Regional Trial Court of Santiago, Isabela, as decreed by the Court of Appeals.

The foregoing procedure would settle all issues in one and the same case and obviate the need for another litigation with its corresponding inherent delays.

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