

**TESTATE ESTATE OF CONCORDIA T. LIM, PLAINTIFF-APPELLANT,
VS. CITY OF MANILA, JESUS I. CALLEJA, IN HIS CAPACITY AS CITY
TREASURER OF MANILA, NICOLAS CATIL, IN HIS CAPACITY AS CL...**

G.R. No. 90639, February 21, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Manila, Branch 29 dismissing a complaint for a "sum of money and/or recovery of real estate taxes paid under protest" which was certified and elevated to this Court by the Court of Appeals as a case involving pure questions of law.

On February 13, 1969, the late Concordia Lim obtained a real estate loan from the defendant-appellee Government Service Insurance System (GSIS) in the amount of P875,488.54, secured by a mortgage constituted on two (2) parcels of land formerly covered by Transfer Certificates of Title Nos. 64075 and 63076 (later changed to TCT Nos. 125718 and 125719) registered in Manila with a three-story building thereon and located on No. 810 Nicanor Reyes St. (formerly Morayta), Sampaloc, Manila. When Lim failed to pay the loan, the mortgage was extrajudicially foreclosed and the subject properties sold at public auction. The GSIS, being the highest bidder, bought the properties. Upon Lim's failure to exercise her right of redemption, the titles to the properties were consolidated in favor of the GSIS in 1977.

However, pursuant to Resolution No. 188 of the Board of Trustees of the GSIS dated March 29, 1979, the estate of Lim, through Ernestina Crisologo Jose (the administratrix) was allowed to repurchase the foreclosed properties. On April 11, 1979, a Deed of Absolute Sale was executed. (Exhibit B, Table of Exhibits, pp. 3-5)

The defendant City Treasurer of Manila required the plaintiff-appellant to pay the real estate taxes due on the properties for the years 1977, 1978 and the first quarter of 1979 in the amount of P67,960.39, before the titles could be transferred to the plaintiff-appellant. The latter paid the amount under protest.

On July 11, 1979, the plaintiff-appellant's counsel sent a demand letter requesting the GSIS to reimburse the taxes paid under protest. The GSIS refused.

On September 5, 1979, a demand letter was sent to the City Treasurer of Manila to refund the amount but the latter also refused.

On March 14, 1980, the plaintiff filed an action before the trial court for a sum of money for the refund or reimbursement of the real estate taxes paid under protest.

During the pendency of the case, the plaintiff-appellant admitted that the foreclosed properties had been sold, through the administratrix, to another person. (2nd par. of Plaintiff's Manifestation dated December 21, 1981, Records, p. 105; TSN, March 4, 1982, p. 37)

After trial, the lower court dismissed the complaint for lack of jurisdiction. It ruled that the case involves a

protested action of the City Assessor which should have been filed before the Local Board of Assessment Appeals of Manila (citing Section 30 of the Real Property Tax Code [P.D. No. 464]) in line with the principle that all administrative remedies must first be exhausted. The lower court also cited by way of obiter dictum, the case of *City of Baguio v. Busuego*, 100 SCRA 116 (1980) wherein this Court ruled that while the GSIS may be exempt from the payment of real estate tax, the exemption does not cover properties the beneficial use of which was granted to other taxable persons. This ruling supports the lower court's view that the tax had attached to the subject properties for the years 1977, 1978 and first quarter of 1979. The lower court further stated that the plaintiff-appellant had assumed liability for the real estate taxes because of the provision in the Deed of Sale with the GSIS that: "any and all the taxes, x x x relative to the execution and/or implementation of this Deed, x x x shall be for the account of and paid by the VENDEE" (Exhibit B, Table of Exhibits, p. 5)

Hence, this appeal raising several issues that can be summed up into the following: (1) whether or not the trial court has jurisdiction over the action for refund of real estate taxes paid under protest; (2) whether or not plaintiff appellant has the right to recover; and (3) whether or not the plaintiff-appellant has personality to sue.

The plaintiff-appellant argues that the lower court has jurisdiction over a complaint for refund as well as for reimbursement of the real estate taxes erroneously collected by the City of Manila from it and paid under protest.

The records show that the subject properties were leased to other persons during the time when GSIS held their titles, as was the case during the ownership of the late Concordia Lim.

However, the real estate taxes later assessed on the said properties for the years 1977, 1978 and the first quarter of 1979 were charged against the plaintiff-appellant even if the latter was not the beneficial user of the parcels of land.

In real estate taxation, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner. (Sections 3(a) and 19 of P.D. No. 464; *Province of Nueva Ecija v. Imperial Mining Co., Inc.*, 118 SCR 632 [1982]). Raising doubts on the validity of the imposition and collection of the real property tax for the designated periods before the title to the properties may be transferred, the plaintiff-appellant paid under protest. This step was taken in accordance with the provisions of Section 62 of P.D. No. 464, which states:

"Sec. 62. Payment under protest. — (a) When a taxpayer desires for any reason to pay his tax under protest, he shall indicate the amount or portion thereof he is contesting and such protest shall be annotated on the tax receipts by writing thereon the words 'paid under protest.' Verbal protests shall be confirmed in writing, with a statement of the ground, therefor, within thirty days. The tax may be paid under protest, and in such case it shall be the duty of the Provincial, City or Municipal Treasurers to annotate the ground or grounds therefor on the receipt.

(b) In case of payments made under protest, the amount or portion of the tax contested shall be held in trust by the treasurer and the difference shall be treated as revenue.

(c) In the event that the protest is finally decided in favor of the government, the amount or portion of the tax held in trust by the treasurer shall accrue to the revenue account, but if the protest shall be decided finally in favor of the protestant, the amount or portion of the tax protested against may either be refunded to the protestant or applied as tax credit to any other existing or future tax liability of the said protestant." (Italics Supplied)

The Court rules that the plaintiff-appellant correctly filed the action for refund/reimbursement with the lower court as it is the courts which have jurisdiction to try cases involving the right to recover sums of money.

Section 30 of the Real Property Tax Code is not applicable because what is questioned is the imposition of the tax assessed and who should shoulder the burden of the tax. There is no dispute over the amount assessed on the properties for tax purposes. Section 30 pertains to the administrative act of listing and valuation of the property for purposes of real estate taxation. It provides:

"Section 30. Local Board of Assessment Appeals — Any owner who is not satisfied with the action of the provincial or city assessor in the assessment of his property may, within sixty days from the date of receipt by him of the written notice of assessment as provided in this Code, appeal to the Board of Assessment Appeals of the province or city, by filing with it a petition under oath using the form prescribed for the purpose, together with copies of the tax declarations and such affidavit or documents submitted in support of the appeal."

In further support of the conclusion that the lower court has jurisdiction to try the instant case, we note Section 64 of the Real Property Tax Code which provides that a "court shall entertain a suit assailing the validity of a tax assessed" after the taxpayer shall have paid under protest.

The issue on the existence or non-existence of the appellant's right to recover the amounts paid hinges on the basic question of the validity of the tax imposition. If the imposition is valid and in accordance with law, then there is no right to recover. Otherwise, the amounts paid must be refunded by the respondent City Treasurer of Manila acting in his official capacity. (Sec. 62 [c], PD 464)

The opinion of the lower court that the ruling in *City of Baguio v. Busuego*, supra justifies the imposition of the tax on plaintiff-appellant is erroneous. The facts in that case are different from those in the case at bar. It was shown that Busuego purchased, by way of installments, a parcel of land and building within a housing project of the GSIS. In a Contract to Sell with the GSIS, he agreed to: (1) the delivery of the possession of the properties to him pending the full payment of the price although the title remained with the GSIS; and (2) his liability to pay and shoulder all taxes and assessments on the lot and building or improvements thereon during the term of the contract to sell.

Despite the tax exemption enjoyed by the GSIS, the realty tax liability imposed on the purchaser was held to be valid on the basis of the contractual obligation that he entered into and the fact that beneficial use had been given to him.

The instant case does not present a similar contractual stipulation. The contract here which is alleged to include the condition that the buyer shall shoulder the taxes is a Contract of Sale. In the Busuego case, there was merely a Contract to Sell for the duration of which the party who shall be liable for the taxes about to be due is the buyer as per agreement. In the case at bar, what was assumed by the vendee was the liability for taxes and other expenses "relative to the execution and/or implementation" of the Deed of Absolute Sale "including among others, documentation, documentary and science stamps, expenses for registration and transfer of titles x x x." This clause was stipulated for the purpose of clarifying which of the parties should bear the costs of execution and implementation of the sale and to comply with Article 1487 of the Civil Code which states:

"ART. 1487 — The expenses for the execution and registration of the sale shall be borne by the vendor, unless there is a stipulation to the contrary."

Moreover, the taxes mentioned in the clause here refer to those necessary to the completion of the sale and accruing after the making of such sale on April 11, 1990 such as documentary stamp tax and capital gains tax.

In the Busuego case, the assumption by the vendee of the liability for real estate taxes prospectively due was in harmony with the tax policy that the user of the property bears the tax. In the instant case, the interpretation that the plaintiff-appellant assumed a liability for overdue real estate taxes for the periods prior to the contract of sale

is incongruent with the said policy because there was no immediate transfer of possession of the properties previous to full payment of the repurchase price.

The facts of the case constrain us to rule that the plaintiff-appellant is not liable to pay the real property tax due for the years 1977, 1978 and first quarter of 1979. The clause in the Deed of Sale cannot be interpreted to include taxes for the periods prior to April 11, 1979, the date of repurchase.

To impose the real property tax on the estate which was neither the owner nor the beneficial user of the property during the designated periods would not only be contrary to law but also unjust. If plaintiff-appellant intended to assume the liability for realty taxes for the prior periods, the contract should have specifically stated "real estate taxes" due for the years 1977, 1978 and first quarter of 1979. The payments made by the plaintiff-appellant cannot be construed to be an admission of a tax liability since they were paid under protest and were done only in compliance with one of the requirements for the consummation of the sale as directed by the City Treasurer of Manila.

Hence, the tax assessed and collected from the plaintiff-appellants is not valid and a refund by the City government is in order.

The Court rules, however, that the plaintiff-appellant is not entitled to a reimbursement from the respondent GSIS because: (1) the GSIS is exempt from payment of the real property tax under Sec. 33 of the Revised Charter of the GSIS; and (2) the tax should be based on "actual use" of the property. Section 40 of the Real Property Tax Code supports the view that not even the GSIS is liable to pay real property tax on public land leased to other persons. Section 40 provides:

"Sec. 40. Exemptions from Real Property Tax. — The exemption shall be as follows:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions and any government owned corporation so exempt by its charter: Provided, however, That this exemption shall not apply to real property of the abovenamed entities the beneficial use of which has been granted, for consideration or otherwise, to a taxable person."

In fact, if there is anyone liable the law and applicable jurisprudence point to the lessees of land owned by the government-owned and controlled corporation. (*Province of Nueva Ecija v. Imperial Mining Co., Inc.*, supra) In this case, the Court can only declare the non-liability of the plaintiff-appellant and the existence of a right to a refund. We cannot rule on the liability of the lessees whose identities are not even clear because they were never impleaded.

The contention of the plaintiff-appellant that the respondent GSIS is liable to reimburse the tax because the latter allegedly failed to exercise its claim to the tax-exemption privilege is without merit. The exemption is explicitly granted by law and need not be applied for.

Regarding the issue on the existence of the personality to sue, the plaintiff-appellant asserts that since it was the one which paid under protest the amount of P67,960.39 as real property tax, then it is the real party in interest to sue for refund.

The lower court, noting the transfer of the title to the properties to a third person, ruled that assuming arguendo that there is a right to seek recovery, the subsequent sale "must have included the tax" and "as such all the credits including the taxes that were paid was (sic) transferred already to the buyer." It ruled that plaintiff-appellant had no personality to sue and the right of action must be between the subsequent buyer and the plaintiff-appellant. The Court finds that the above ruling and the facts on which it is based are not sufficiently supported by the records of the case. The evidence merely shows an admission of a subsequent sale of the properties by the

plaintiff-appellant, nothing more.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment appealed from is hereby REVERSED and SET ASIDE. The defendants appellees City of Manila, the City Treasurer and City Assessor of Manila are hereby ordered to refund to the TESTATE ESTATE OF CONCORDIA LIM, through administratrix ERNESTINA CRISOLOGO-JOSE, the amount of P67,960.39 as real estate taxes paid under protest.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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