

VERGO D. TUFEXIS, PLAINTIFF AND APPELLANT, VS. FRANCISCO OLAGUERA AND THE MUNICIPAL COUNCIL OF GUINOBATAN, REPRESENTED BY ITS PRESIDENT, AGAPITO PAULATE, DEFENDANTS AND APPELLEES.

G.R. No. 9865. December 24, 1915

Ponente: TORRES, J.

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TORRES, J.:

Counsel for plaintiff, in his written petition of May 13, 1913, prayed the Court of First Instance of Albay to declare that his client was entitled to the possession and use of the land referred to in the complaint in conformity with the terms of the Government concession (Exhibit A), of which he claimed to be the sole and lawful owner; that the defendants be ordered to remove from the said land all the stores, sheds, billiard tables, and other obstructions thereon, so that plaintiff might reconstruct the public market building on the said land in accordance with the provisions of the said concession, and that they be ordered to pay jointly and severally to the plaintiff, as damages, the sum of P250 per month from March 1, 1912, until the date on which the land be vacated, and to pay the legal costs and expenses of the suit.

After the complaint had been answered by counsel for the defendant Francisco Olaguera, who prayed that his client be absolved therefrom, with the costs against the plaintiff, the provincial fiscal, in the name and representation of the municipality of Guinobatan, demurred on the ground that plaintiff lacked the personality to institute the action and further alleged that the complaint did not set forth sufficient facts to constitute a cause of action.

By an order of August 25, 1913, the court sustained the demurrer filed by the defendant municipality of Guinobatan, allowed plaintiff ten days in which to amend his complaint, and notified him that unless he did so within that period the action would be dismissed.

Counsel for plaintiff, by a writing of the 27th of the said month, set forth: That he objected to the above ruling as he believed it erroneous and contrary to law; that he did not desire to amend his complaint, wherefore, in accordance with the provisions of section 101 of the Code of Civil Procedure, the court should render such judgment in the case as the law might warrant, and his exception to the said ruling should be entered on the record. By an order of September 1, 1913, the court, overruling the motion made by the defendant Olaguera, dismissed the complaint filed by the plaintiff, Vergo D. Tufexis, against the municipal council of Guinobatan on the ground that plaintiff had not amended his complaint. Plaintiff's counsel, when notified of this ruling, excepted thereto and moved for a rehearing and a new trial. This motion was overruled, whereupon the plaintiff excepted and filed the proper bill of exceptions.

In the complaint filed by counsel for Vergo D. Tufexis, it was alleged that on September 30, 1911, plaintiff acquired at a public sale held in execution of a judgment rendered against Ricardo Pardo y Pujol, a piece of property situated in the municipality of Guinobatan, consisting of a frame building of strong materials with a

galvanized-iron roof, erected on a parcel of land belonging to that municipality and intended for a public market; that plaintiff also acquired at the sale all the right, interest, title, and participation in the said property that appertained or might appertain to Pardo y Pujol; that the said building was constructed by virtue of a concession granted by the former Spanish government to Ricardo Pardo y Cabanas, father of the judgment debtor, who, by a public instrument of July 31, 1912, renounced his right to redeem the said property and conveyed it to plaintiff, together with all his rights therein, the instrument of grant, Exhibit A, being attached to the complaint as a part thereof; that on January 2, 1912, the said building was totally destroyed by an accidental fire; that subsequent to the date just mentioned and for several months thereafter the municipal council of Guinobatan carried on negotiations with plaintiff for the purchase of his rights in the said concession; that these negotiations could not be brought to a conclusion because the municipal council had acted therein deceitfully, fraudulently, and in bad faith and for the sole purpose of beguiling, deceiving, and prejudicing plaintiff in order to prevent him from exercising his right to reconstruct the burned market building and utilize it in accordance with the terms of the said concession; that the defendant municipal council, without plaintiff's consent and in connivance with the other defendant, Francisco Olaguera, had authorized the latter unlawfully to take possession of all the land from March 1, 1912, in violation of plaintiff's rights; that the said Olaguera occupied the same with booths or stores for the sale of groceries and other merchandise, for billiard tables, and other analogous uses and derived unlawful gain from the revenues and rents produced by the said buildings; that plaintiff was entitled to the possession of the said land in accordance with the concession, which was in full force and effect and belonged to plaintiff; that plaintiff proposed to construct another public market building on the same land, but that the defendants had prevented him from using the land and reconstructing thereon the said public market building, and refused to recognize plaintiff's right and to vacate the land that had been occupied by the burned edifice.

The provincial fiscal alleged as a ground for the demurrer that in no part of the instrument of concession did it appear that the privilege granted to Ricardo Pardo y Cabanas had likewise been granted to his successors or assignees, and that therefore such rights and actions as might have appertained to the assignee, Pardo y Cabanas, could not be conveyed to nor could they be acquired by any other person; that it was alleged in the complaint that the building was completely destroyed by fire on January 2, 1912, and that if plaintiff's right to the possession of the land was conditioned by the existence thereon of the said market building, such right had terminated by the disappearance of the building, inasmuch as plaintiff's right of action for the possession of the land was a corollary of the existence or nonexistence of the market building, and upon the disappearance of the latter the land had reverted to the control of its owner; that pursuant to the terms of the said concession, the land belonging to the municipality was granted for the purpose of constructing thereon a market, and as this market had disappeared plaintiff would need a new concession, if it could be obtained, in order to be entitled to the possession of the land and to construct a new building; that by plaintiff's acquiring the right, title and interest of Ricardo Pardo y Pujol in the land he could not be understood to have also acquired such right and interest in the building intended for a public market, for the purchase of the building refers only to the edifice itself and it never could be understood that plaintiff acquired any right in the concession, which was never sold to him, as the complaint contains no allegation whatever that he purchased or acquired such right; that a personal privilege like the said concession is only temporary and is extinguished at the death of the grantee, unless otherwise provided in the grant; and that, from the lack of an allegation in the complaint that plaintiff legally purchased or acquired the right in the said concession, it was evident that the complaint did not allege sufficient facts to constitute a cause of action and was fatally defective.

The question presented in the case at bar consists of whether a building of strong materials, erected by the said debtor's father, Ricardo Pardo y Cabanas, on land belonging to the municipality of Guinobatan and intended for a public market, by virtue of a concession granted on August 4, 1884, under the conditions therein imposed upon the

grantee, could be attached and sold for the payment of a certain debt owed by Ricardo Pardo y Pujol to a third person who had obtained a final judgment.

In deciding this question it is indispensable to determine what rights were acquired by Pardo y Pujol's father by virtue of the said concession granted to him by the Spanish Government, in the building erected by him on a parcel of land belonging to the municipality of Guinobatan. The concession referred to contains, among other provisions, the following:

"ARTICLE 1. There is hereby granted to Mr. Ricardo Pardo y Cabanas the parcel of land in the pueblo of Guinobatan, a prolongation of another parcel belonging to him, situated between the store and house of the Chinaman Valentin Garcia and that of Mr. Roco, following the line of Calle Real or Calzada de Albay and that of Calle del Carmen, up to and as far as the square that is to be laid out in the said pueblo.

"ART. 2. On the said land the petitioner shall construct a public market building, with a galvanized-iron roof, in accordance with the plan submitted to this office on the 13th of last May and which was approved by his Excellency the Governor-General in conformity with the changes recommended by the advisory board of the consulting board of public works; and these changes are those hereinafter specified.

"ART. 3. The said Mr. Pardo is granted the right to enjoy the revenue derived from the floor space of the market for the period of forty years, since the revenue from such floor space appertains to the grantee of the said service. By floor space is meant the right to shelter or retail merchandise in the market belonging to the grantee.

"ART. 4. On the expiration of the said period both the land aforementioned and the building thereon constructed shall be the property of the Government and the building shall be delivered to it in good condition.

"ART. 5. It shall be obligatory for every vendor to sell his goods in the said market, which shall be the only one in the said pueblo.

"ART. 7. The said authority shall put Mr. Pardo in possession of the land affected by this concession, and the proper proceedings in connection therewith shall be had in the presence of the chief engineer of public works of the said district and the headmen of the pueblo.

"ART. 8. Mr. Pardo shall inform this office of the date of the commencement of the work of construction, and the work shall be inspected by the public works officials residing in Albay; the building when completed shall be examined and accepted by the chief engineer of the district of Nueva Caceres or by the deputy to whom the latter may delegate this duty: all with the knowledge of the office of the inspector of public works."

The land on which the building was erected and which is referred to in the foregoing articles, contained in the franchise granted by the Government of the former sovereignty, belongs to the municipality of Guinobatan. Although the building was constructed at the expense and with the money of the grantee, Ricardo Pardo y Cabanas, it is, nevertheless, the property of the state or of the said municipality, and was temporarily transferred to the grantee, Pardo y Cabanas, in order that he might enjoy the usufruct of its floor space for forty years, but on the termination of this period the said right of usufruct was to cease and the building was to belong finally and absolutely to the state or the municipality in representation thereof.

For these reasons, then, there is no question that the building and the land on which it was erected, since they did not belong to the grantee, Pardo y Cabanas, nor do they belong to his son and heir, Ricardo Pardo y Pujol, could not be attached or sold for the payment of a debt contracted by the latter.

The concession granted by the former Spanish Government is personal and transferable only by inheritance, and in no manner could it be conveyed as a special personal privilege to another and a third person unless he were an hereditary successor of the grantee, Pardo y Cabanas, without the knowledge and consent of the administrative

authorities under whose control the special right of usufruct in the floor space of the said market building was enjoyed and exercised.

Even though it is unquestionable that the creditor has a right to collect the money due him, out of his debtor's property, yet when among such property is included the right of usufruct in a public-service building and this right is closely related to a service of a public character, the right that lies in behalf of the creditor for the collection of a debt from the person who enjoys the said special privilege of right of usufruct in the floor space of a building intended for a public market is not absolute and may be exercised only through the action of a court of justice with respect to the profits or revenues obtained under the special right of usufruct granted to the debtor.

Ricardo Pardo y Pujol, as the successor and heir of the grantee, Ricardo Pardo y Cabanas, is bound to pay his debts and his property can be attached on petition of his creditors. However, his personal privilege of usufruct in the floor space of the public market building of Guinobatan cannot be attached like any ordinary right, because that would mean that a person who has contracted with the state or with the Governmental authorities to furnish a service of a public character would be substituted, without the knowledge and consent of the authorities, for another person who took no part in the contract, and that the regular course of a public service would be disturbed by the more or less legal action of the creditors of a grantee, to the prejudice of the state and the public interests.

It is indeed true that the building, which for many years served as a public market in the pueblo of Guinobatan, was erected out of the private funds of the grantee, Pardo y Cabanas, and at first sight it seems natural that the latter, who paid the cost of the construction of the building, should be its owner. However, judging from the agreement between him and the Government authorities, he was granted the right of usufruct in the floor space of the said building in order that, during the period of forty years, he might reimburse himself for and collect the value of the building constructed by him; and it must be believed that Pardo y Cabanas, before executing the contract with the Government for the purpose of obtaining the right of usufruct granted to him and before accepting the contract, thought over its conditions deliberately and maturely and felt sure that he would profit thereby, that is, that he would reimburse himself for the value of the building he erected, and obtain interest on the investment and other advantages by enjoying the usufruct for the space of forty long years, as in fact even after his death this right continued to be enjoyed by his son, Ricardo Pardo y Pujol. Therefore, the said privilege conferred on the grantee by the Spanish Government on August 4, 1884, was neither onerous nor prejudicial to him or his heir, but on the contrary was beneficial to them.

So, if neither the land nor the building in question belongs to Pardo y Pujol, it is evident that they could not be attached or sold at public auction to satisfy his debt and, consequently, the attachment and sale of the said Government property executed on petition of the creditor of the said Pardo y Pujol are notoriously illegal, null and void, and the acquisition of the property by plaintiff confers upon him no right whatever based on the said concession.

In the decision in the case of *Lopez vs. Alvarez* (9 Phil. Rep., 28) the principle was asserted that:

In attachments of all kinds it is an essential condition that the thing which is attached shall be the property of the debtor, and from no provision of the Mortgage Law can any conclusion be drawn which shall be contrary to this principle.

This same principle was set up in the decision of the case of *Alvaran vs. Marquez* (11 Phil. Rep., 263).

It having been demonstrated by the foregoing reasons that the building constructed on land of the municipality of Guinobatan for a public market could not be attached and sold as the result of a debt contracted by Ricardo Pardo y Pujol in favor of a third person, we shall now proceed to examine whether an attachment would lie of the special

right, granted by the former Spanish Government to the said debtor's father, of usufruct in the floor space of the said market and right to collect the revenues therefrom for the period of forty years, counted from the date of the granting of the said right.

Without the consent of the proper administrative official, a grantee, or one charged with conducting a public service such as the market of the municipality of Guinobatan, cannot be permitted to be substituted by any other person, though this latter be a creditor of the usufructuary grantee. Hence, we hold that the attachment of the right of usufruct in the said building and of collecting the revenue obtained from the floor space of the said public market of Guinobatan, was illegal, because, were this right susceptible of attachment, a third person, as a creditor or a purchaser, might exercise such right, notwithstanding his personal status, instead of the grantee contractor. This theory does not bar the creditor from collecting the money owed him by the grantee, inasmuch as he has the right to petition the courts to allow him through proper legal proceedings to collect his money out of the revenues produced by the usufruct conferred by the Government on the grantee of the said service.

The concession obtained by Ricardo Pardo y Pujol's father on August 4, 1884, is a true contract executed between the government of the former sovereignty and the grantee, Pardo y Cabanas, and therefore the stipulations made by and between the contracting parties, the obligation to which that contract may have given rise, and the consequences that may have been entailed by the contract, all come within the scope of the civil law which guarantees the rights of the contracting parties.

Although in our opinion the said concession is somewhat of the nature of a franchise, yet we do not think that the provisions of sections 56 to 61 of Act No. 1459 are applicable to the case at bar, for these sections refer to a franchise granted to a corporation, while the concession given by the former Spanish Government was granted to a private party and not to a corporation or judicial entity. Therefore, though under the said Act a franchise is subject to attachment, the Act contains no express provision whatever which authorizes the attachment and sale of a right or franchise specially granted to a private party under the conditions in which the concession in question was granted. The substitution of a third person instead of the one who obtained such an administrative concession must be explicitly authorized by the proper official of the administrative branch of the Government in order that the substitute may exercise the right so granted.

In the case of Ricardo y Pujol, the grantee of the usufruct of the floor space in the said market building in Guinobatan, his creditor, in order to obtain the payment of his credit, could have applied to the courts for an attachment of the revenues or proceeds collected by his said debtor by virtue of the said concession; but it was in no wise proper to attach and sell the right granted by the public administration to operate and enjoy the usufruct of the floor space of the said public market.

Although there is no similarity between the management of a public market and that of a railroad company, yet for the reason that the operation of the one as well as the other is of public interest, when a creditor of such a company sues to collect a debt it would be improper to attach the stationary equipment and rolling stock of the railroad—only the gross receipts of the business over and above the amount required for its operation could be touched. This same legal principle holds in the case where the grantee of a market is a debtor and his property is attached on petition of his creditor. The receipts of the market may be attached, but not the right to operate and conduct the service, which is of a public character.

In fact, article 1448 of the Ley de Enjuiciamiento Civil, cited in this decision, not as a law now in force, but for the purpose of setting out a principle of law, prohibits the levy of attachments on railroads opened to public service, and on the stations, stores, shops, lands, works and buildings necessary for their operation, or on the locomotives, rails and other material intended for the operation of the line. When execution is levied on such

railroad companies, the proceedings are governed by the provisions of the Law of November 12, 1869, extended by a royal order of August 3, 1886, to the overseas provinces. This law prescribes among other things that attachments may be levied and executed only on the gross receipts remaining after the necessary operating expenses have been deducted.

In harmony with this legal provision, the supreme court of the State of Nebraska, in which State there is no law whatever that authorizes the attachment and sale of a bridge belonging to a corporation, in the case of the Overton Bridge Co. vs. Means (33 Neb., 857) laid down the principle that such a bridge and the rights of the corporation therein could not be sold to satisfy a judgment against the corporation for the reason that:

"The property of corporations which are closed as public agencies, such as railroad and bridge companies, which is essential to the exercise of their corporate franchise, and the discharge of the duties they have assumed toward the general public, cannot, without statutory authority, be sold to satisfy a common law judgment."

It cites decisions of several states, and also, in the decision referred to, cited Morawetz on Private Corporations, section 1125, and held that after attachment of the property not necessary to enable the corporation to perform its duties to the public, the only remedy remaining to a judgment creditor was to obtain the appointment of a receiver and a sequestration of the company's earnings.

The supreme court of Alabama, in deciding a similar case (Gardner vs. Mobile & Northwestern R. R. Co., 102 Ala., 635, 645), affirmed the same principle and said:

"The only remedy of a judgment creditor is to obtain the appointment of & receiver and the sequestration of its income or earnings."

It is to be noted that section 56 of Act No. 1459, which permits the sale under execution of a corporation's franchise, is in no wise applicable to the case at bar, for the reason that, since this Act was promulgated on March 1, 1906, it could not and cannot affect the laws, decrees, and orders of the Spanish government in conformity with which the administrative concession, Exhibit A, was granted to Pardo y Cabañas.

The operation of a railroad is of public interest, and concerns both the public and the state, even though the superintendence and management thereof be conducted by a private company. Therefore, the property of a railroad, either its rolling stock or permanent equipment, is not subject to attachment and sale, and the rights of the creditors of the operating company may be exercised for the collection of their credit only of the gross receipts after the operation of the railroad is insured from its own income.

This decision is based on the provisions of the aforesaid law and the premise that the usufruct of the floor space of the public market of Guinobatan, granted to Ricardo Pardo y Pujol's father was not subject to attachment on account of its being of a public character, but still the latter's creditor could have applied for a writ of execution and laid an attachment on the proceeds obtained from the operation of the market, which proceeds or income could have been collected by a receiver and intervener.

This, however, was not done, but on the creditor's petition the public market building, which was not his debtor's property, together with all the right, interest, title and participation which the latter had or might have had therein, was attached and sold; and as plaintiff was unable to acquire any right or title in such property illegally sold and illegally acquired by him at public auction or in the usufruct of the floor space of the building, it is unquestionable that he lacks the personality to claim possession of the land that belongs to the municipality or the enjoyment and exercise of the right conferred by the aforesaid administrative concession, which was and is inalienable on account of its being a personal right. For the same reason, plaintiff has no right to reconstruct the burned building

on the land where it formerly stood.

The only right to which the creditor was entitled was to petition for the attachment of the income and proceeds obtained from the use of the floor space of the market; but he did not avail himself of this right, nor were the receipts therefrom attached, nor were they adjudicated either to the creditor or to the plaintiff Tufexis. Therefore, the order of dismissal appealed from is in accordance with law and the merits of the case, and likewise the errors assigned thereto have been duly refuted by the reasons set forth herein.

For the foregoing considerations, we hereby affirm the said order of dismissal, with the costs against the appellant. So ordered.

Arellano, C.J., Moreland, and Araullo, JJ., concur.

Johnson, J., concurs in the result.

Order affirmed; case dismissed.

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