

**DOMINADOR RAYMUNDO, PETITIONER AND APPELLANT, VS.
LUNETA MOTOR CO., ET AL., RESPONDENTS AND APPELLEES.***G.R. Nos. 39902, 39903. November 29, 1933*

Ponente: MALCOLM, J.

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The question squarely raised in these two cases concerns the forced sales of certificates of public convenience held by public service operators and the liability to execution of such certificates.

Breaking into the narration of the facts at the proper point, we find Nicanor de Guzman, signing as Guzco Transit, purchasing trucks from the Luneta Motor Co. and to pay for them executing a series of promissory notes guaranteed by a chattel mortgage on several trucks. On failure of De Guzman or Guzco Transit to pay the promissory notes, suit was brought in the Court of First Instance of Manila for the collection of the amount outstanding and unpaid. When the complaint was presented, a writ of attachment was obtained against the properties of the Guzco Transit, and as a consequence garnishment was served on the Secretary of the Public Service Commission attaching the right, title, and participation of the Guzco Transit in the certificates of public convenience issued in cases Nos. 25635, 23914, and 24255 covering the bus transportation lines between Manila and Cardona, Rizal, and between Manila and Pililla, Rizal. These certificates were ordered sold by the Court of First Instance of Manila, and in fact the certificates of public convenience Nos. 25635 and 23914 were sold to the Luneta Motor Co. as the highest bidder. The approval of the sheriff's sale was prayed for before the Public Service Commission, and is one of the cases under review.

Going back a moment, it is necessary to insert in the statement of facts¹ that on July 16, 1932, or nine days after the certificates were attached by the Luneta Motor Co., the same certificates, together with certificate No. 25951 and several trucks, were sold by De Guzman for the Guzco Transit to Dominador Raymundo. The approval of this sale was sought from the Public Service Commission, and is the other case now under review. On the two cases being heard together, the commission in its decision approved the sale at public auction in favor of the Luneta Motor Co., and disapproved the sale made to Dominador Raymundo, reserving to Raymundo the right to present another petition for the approval of the sale of certificate of public convenience No. 25951 which was not included in the sale in favor of the Luneta Motor Co.

Sweeping incidental matters to one side, the prime question need not be complicated by determining if a sale of a certificate of public convenience without any equipment may be the object of execution and garnishment sale, for this is a matter of policy to be determined by the Public Service Commission, and it appears that sales of certificates of public convenience without equipment have been approved by the commission. Also it is evident that the articles of incorporation of the Luneta Motor Co. are broad enough in scope to authorize the company, if it so desires, to engage in the autotruck business, and if not, there would be nothing to preclude the company from transferring the certificates to a third party with the approval of the Public Service Commission. Further, the nature of the partnership which may have been entered into by Nicanor de Guzman and Agapito C. Correa cannot now be discussed, considering that the promissory notes were signed Guzco Transit, by Nicanor de Guzman, and

considering that the judgment against Guzco Transit in the Court of First Instance of Manila has become final. Finally, the dismissal in case No. 33033 pertaining to certificate No. 25951 was without prejudice, and the appellees disclaim any interest in this certificate. Therefore, the question to be decided on this appeal is, which of the two sales, the one at public auction by virtue of an attachment, or the voluntary sale made after the property had been levied upon, should prevail, and a decision on this question is dependent on a decision relative to the liability to execution of certificates of public convenience.

The Public Service Law, Act No. 3108, as amended, authorizes certificates of public convenience to be secured by public service operators from the Public Service Commission. (Sec. 15 [i].) A certificate of public convenience granted to the owner or operator of public service motor vehicles, it has been held, grants a right in the nature of a limited franchise. (*Public Utilities Commission vs. Garviloch* [1919], 54 Utah, 406.)

The Code of Civil Procedure establishes the general rule that "property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution." (Sec. 450.) The statutory exemptions do not include franchises or certificates of public convenience. (Sec. 452.) The word "property" as used in section 450 of the Code of Civil Procedure comprehends every species of title, inchoate or complete, legal or equitable. The test by which to determine whether or not property can be attached and sold upon execution is whether the judgment debtor has such a beneficial interest therein that he can sell or otherwise dispose of it for value. (*Reyes vs. Grey* [1911], 21 Phil., 73.)

It will be noted that the Public Service Law and the Code of Civil Procedure are silent on the question at issue, that is, silent in the sense of not containing specific provisions on the right to attach certificates of public convenience. The same attitude was not assumed in the enactment of Act No. 667, section 10, as amended, which gave authority for the mortgage and sale under foreclosure proceedings of franchises granted by provincial and municipal governments. A similar tendency was evident in the Corporation Law, for in section 56 and following thereof express provisions were made for the sale on execution of franchises of the designated classes and of the property used in connection with them. Should the legislative intention thus evidenced be taken as meaning that the generality of the language used by the Code of Civil Procedure was too vague to permit of forced sales of franchises and certificates of public convenience, or notwithstanding the provisions to be found in these special laws, is the language of the Code of Civil Procedure broad enough to include certificates of public convenience? We lean to the latter proposition, and will now proceed to elucidate our viewpoint.

The test to be applied was announced by our Supreme Court in *Reyes vs. Grey*, supra, and there is nothing in *Tufexis vs. Olaguera* and *Municipal Council of Guinobatan* ([1915], 32 Phil., 654), cited by appellant, which sanctions a contrary test. That rule it will be recalled tested the liability of property to execution by determining if the interest of the judgment debtor in the same can be sold or conveyed to another in any way. Now the Public Service Law permits the Public Service Commission to approve the sale, alienation, mortgaging, encumbering, or leasing of property, franchises, privileges, or rights or any part thereof (sec. 16 [h]), and in practice the purchase and sale of certificates of public convenience has been permitted by the Public Service Commission. If the holder of a certificate of public convenience can sell it voluntarily, there is no valid reason why the same certificate cannot be taken and sold involuntarily pursuant to court process.

If this was all that there was to the case, we might hesitate to approve attachments of certificates of public convenience. But there is more. Certificates of public convenience have come to have considerable material value. They are valuable assets. In many cases the certificates are the cornerstones on which are builded the business of bus transportation. The United States Supreme Court considers a franchise granted in consideration of the performance of public service as constituting property within the protection of the Fourteenth Amendment to the

United States Constitution. (Frost vs. Corporation Commission of Oklahoma [1929], 278 U. S., 515.) If the holder of the certificate of public convenience can thus be protected in his constitutional rights, we see no reason why the certificate of public convenience should not assume corresponding responsibilities and be susceptible as property or an interest therein of being liable to execution. In at least one State, the certificate of the railroad commission permitting the operation of a bus line has been held to be included in the term "property" in the broad sense of the term. If this is true, the certificate under our law, considered as a species of property, would be liable to execution. (Willis vs. Buck [1928], 81 Mont., 472.)

As has been intimated herein before, a practice has grown up in the Public Service Commission of permitting the alienation of certificates of public convenience and in so doing approval has been given to the sale through foreclosure proceedings of the certificates of public convenience to third parties. The very decision in the two cases before us is an illustration of this practice. The same tendency is to be noted in the lower courts. As an example in the instant record, there is a previous foreclosure of a mortgage apparently uncontested. Not only this, but tacit approval to the attachment of certificates of public convenience either through chattel mortgages or court writs has been given by this court. (Orlanes & Banaag Transportation Co. vs. Public Service Commission [1932], 57 Phil., 634; Manila Electric Company vs. Orlanes & Banaag Transportation Co. [1933], 57 Phil., 805; Nos. 39525 and 39531, Red Line Transportation Co. vs. Rural Transit Co. and Bachrach Motor Co., November 17, 1933.[1])

When the motion of the plaintiff praying that the certificates of public convenience granted by the Public Service Commission which were attached be sold at public auction and the answer opposing the granting of the motion on the ground that franchises can not be the subject of attachment and sale by garnishment came before the Court of First Instance of Manila, the presiding Judge, Anacleto Diaz, promulgated an order which sustained the right of the plaintiff to attachment and garnishment. That order gains particular force because a later judgment by consent was taken and no appeal was attempted to this court. It is true that the sale further required the approval of the Public Service Commission, but the Public Service Commission respected the decision of the court and so we have the concurrence of the court and the commission on this question. In the order in first instance appears the following well considered language:

"It remains to be determined whether, under the law, certificates of public convenience are liable to attachment and seizure by legal process. The law is silent as to this matter. It can not be denied that such franchises are valuable. They are subject to being sold for a consideration as much as any other property. They are even more valuable than ordinary properties, taking into consideration that they are not granted to every one who applies for them but only to those who undertake to furnish satisfactory and convenient service to the public. It may also be said that dealers in motor vehicles even extend credit to owners of such certificates or franchises. The law permits the seizure by means of a writ of attachment not only of chattels but also of shares and credits. While these franchises may be said to be of intangible character, they are however of value and are considered properties which can be seized through legal process.

"For all the foregoing, the court is of the opinion that the plaintiff is entitled to the remedy it prays for in its motion which is hereby granted."

The ruling of the Supreme Court on the question raised by the record and the assignments of error is this: Certificates of public convenience secured by public service operators are liable to execution, and the Public Service Commission is authorized to approve the transfer of the certificates of public convenience to the execution creditor. As a consequence, the decision brought on review will be affirmed, with costs against the appellant.

Avanceña, C. J., Villa-Real, Hull, and Imperial, JJ., concur.

[1] Page 976, post.

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