

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**VIUDA E HIJOS DE PEDRO P. ROXAS,
*Plaintiffs-Appellees,***

-versus-

**G.R. No. L-12182
March 27, 1918**

**JAMES RAFFERTY, Collector of
Internal Revenue, Ex-Officio City
Assessor and Collector of Manila,
*Defendant-Appellant.***

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D E C I S I O N

MALCOLM, J.:

This appeal presents the question of whether or not taxes can be collected on the Roxas Building in the city of Manila for the year 1915.

FACTS.

Plaintiffs own a parcel of land located on the Escolta in the city of Manila. In the latter part of 1913, the improvements on this land demolished, and the construction of a reinforced concrete building was begun. No taxes on the improvements were lived or paid for the year 1914. Accepting the findings of facts by the trial court, the Roxas

Building in December, 1914, when the city assessor and collector attempted to assess it for taxation still lacked the pavement of the entrances, the floors of some of the stores, the dividing partitions between the stores, the dividing partitions between the greater part of the rooms in the upper stories, sanitary installation, on the elevators, electrical installation, the roof of the building, the concrete covering and towers of the elevator shaft, and the doors and windows of many rooms. It was finished all respects on February 15, 1915.

The city assessor and collector of Manila, under date of December 1, 1914, requiring them to declare the new improvements for assessment for the year 1915. Prior to this, in November, the city assessor and collector had the building inspected and had assessed the new improvements for taxation for 1915 at P300,000. On January 20, 1915, plaintiffs were notified of this assessment. Plaintiffs paid the amount of the taxes, which amounted to P3,000, under protest, on June 30, 1915. Suit was begun in the Court of First Instance of Manila to recover this sum with interest at the legal rate from the date of payment. The court, the Honorable Simplicio del Rosario, found with plaintiffs without express finding as to costs. Defendant, by the city attorney of Manila, appealed, making five assignment of error, which we combine for purposes of convenience into three issues.

LEGAL ISSUES.

1. Jurisdiction. — The first assignment of error, concerning the jurisdiction of the lower court, presents a question of primary importance, for obviously if the lower court had no right to take cognizance of this case, we should not burden ourselves with the consideration of its merits. This question, appellee emphasizes, is argued for the first time on appeal. In the trial court, defendant appeared, demurred, and answered without assailing jurisdiction. However, as jurisdiction is the power of a court to act at all, we should even now resolve the question. Objection for want of jurisdiction may be raised for the first time on appeal.

The local law, as elsewhere, provides an administrative procedure for the assessment of realty. An assessor to fix the value of the property in the first instance, and a board of tax appeals to review the action of the assessor in the second instance are constituted. Proceeding before

this board for relief against excessive and irregular taxation. Here must the aggrieved party go for the correction of errors in assessments. Administrative remedies must be exhausted before resort can be had to the courts. It is a condition precedent to the exercise of the taxpayer's right of action in a court of justice that previous and timely effort shall have been made on his part to have the board of tax appeals correct an alleged error while the matter was yet in their hands and under their control. Even when the courts assume jurisdiction, they will not presume to interfere with the intelligent exercise of the judgment of men specially trained in appraising property. (See *Stanley vs. Supervisors of Albany* [1887], U.S., 535.)

This is hardly our case. We do not have before us merely a dispute as to an excessive or unequal assessment. The assessment is claimed to be wholly void. The contention is that the assessor has attempted to levy a tax upon property, which is by law exempt, and that in this attempt the assessor has violated the provisions of law which exist for the protection of the taxpayer. Not the correctness of the assessment, but the legality of the assessment is involved. The rule of taxation is that where the tax is illegal, the taxpayers may bring an action directly in the courts to recover back the tax. (*Roman Catholic Church vs. Hastings and City of Manila* [1906], 5 Phil., 701, citing 2 *Cooley on Taxation*, 3rd ed, p. 1382, and *Stanley vs. Supervisors of Albany*, supra.) This court has taken cognizance of questions concerning assessments of and improvements on realty in a number of cases. (See *Fernandez vs. Shearer* [1911], 19 Phil., 75; *Ayala de Roxas vs. City of Manila* [1914], 27 Phil., 336; *Young Men's Christian Association of Manila vs. Collector of Internal Revenue* [1916], 33 Phil. Rep., 217.)

The distinction is between a void and an erroneous tax. The first identifies the existing situation and gives jurisdiction to the courts.

The situation in its simplest terms may be described as follows: The citizen is forced to pay the alleged tax. As will hereafter appear, he had no appropriate opportunity to present his grievance to the board of tax appeals. He did all that was required by protesting at the time of paying the tax. The citizen can therefore in turn be permitted to bring suit to recover the amount which he claims was unlawfully collected. Appeal to the board of tax appeals is not a necessary

prerequisite. Nor is the decision of the assessor as to right to tax property of such a judicial or discretionary character as to be free from collateral attack. When the state (here the city of Manila) makes the assessment, and when the citizen pays the tax under protests, the state and the state and the on reasonably equal terms. The power of the state and the remedy of the citizen are and should be reciprocal. It is for the courts to arbitrate the controversy between the state and the citizen.

The Court of First Instance of the city of Manila had jurisdiction over this suit and the Supreme Court of the Philippine Islands now possesses similar appellate jurisdiction.

2. Legality of assessment. — The second, third, and fourth assignments of error concern the point of when an improvement can be said to be completed within the meaning of the Manila Charter. We feel it unnecessary to decide this question for even more basic in aspect is the point raised by the fifth assignment of error concerning the legality of the assessment, particularly as relating to notification. The exact situation can be more vividly pictured by quoting the provisions of the law and then applying these provisions to the facts.

The Manila Chapter provides: “It shall be the duty of each person who at any time acquires real estate in the city, and of any person who constructs or adds to any improvement on real estate owned by him within the city, to prepare and present to the city assessor and collector, within a period of sixty days next succeeding the completion of such acquisition, construction or addition, as sworn declaration setting forth the value of the real estate acquired or the improvement constructed or addition made by him and containing a description of such property sufficient to enable the city assessor and collector readily to identify the same. . . .”(Section 2484, Administrative Code of 1917.) Plaintiffs were under obligation to present a declaration of their improvements within sixty days succeeding completion, i.e. on or before April 15, 1915. Under an attempted assessment in November and December, 1914, the plaintiffs had and could have had no opportunity to comply with the law.

The Charter continues: “The city assessor and collector shall, during the first fifteen days of December of each year, add to his list of

taxable real estate in the city the value of the improvements placed upon such property during the preceding year, and any property which is taxable and which has theretofore escaped taxation.”

(Sec. 2487, Administrative Code of 1917.) Between December 1 and December 15, 1915, the city assessor and collector was under the obligation of adding the improvement on the Roxas property to the assessment list. Between December 1 and December 15, 1914, the city assessor and collector could not prematurely and by anticipation perform this duty on improvements not yet completed. There may be doubt as to the exact meaning which should be given to the words “during the preceding year.” The common sense construction would be that the phrase includes December of the previous year and the current year up to December. The city assessor and collector perforce could not in 1914 levy a tax on incomplete improvements made during the current year, when the statute only authorized him to make such levy upon completed improvements made during the year.

The Charter continues: “He (the city assessor and collector) shall give notice by publication for ten days prior to December first in two newspapers of general circulation published in the city, one printed in English and one in Spanish, that he will be present in his office for that purpose on said days, and he shall further notify in writing each person the amount of whose tax will be changed by such action or such proposed change, by delivering or mailing such notification to such person or his authorized agent at the last known address of such owner or agent in the Philippine Islands some time in the month of November.” (Sec. 2487, Administrative Code of 1917.) And finally the Charter provides that, “No court shall entertain any suit assailing the validity of a tax assessed under this article until the taxpayer shall have paid, under protest, the taxes assessed against him, or shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings for the officers charged with the assessment or collection of the taxes, or of a failure to perform their duties within the times herein specified for their performance, unless such irregularities, informalities, or failures shall have impaired the substantial rights of the taxpayer; nor shall any court declare any tax assessed under the provisions of this article invalid except upon condition that the taxpayer shall pay the just amount of his tax as determined by the court in the pending proceeding.” (Sec. 2504,

Administrative Code of 1917.) It is general rule that those provisions of a statute for the security of the citizen or to insure that equality of taxation, or for certainty as to the nature and amount of each person's tax, are mandatory; but those designed merely for the information or direction of officers or to secure methodical and systematic modes of proceedings are merely directory. In the language of the United States Supreme Court, "When the regulations prescribed are intended for the protection of the citizen and to prevent a sacrifice of his property, and by a disregard of which his right might be, and generally would be, injuriously affected, they are not directory but mandatory." (French vs. Edwards [1871], 13 Wall., 506.) Sometimes statutes requiring the assessor to notify the taxpayer have been held merely directory. But in the majority of jurisdictions this requirement is held to be mandatory, so that the assessor cannot make a valid assessment unless he has given proper notice. (37 Cyc., pp. 988, 991, citing cases.) Applied to our facts, the assessor should notified the plaintiffs during November, 1915. His attempted notification on December 25, 1914, was not given during the time fixed by statute and was no more than a reminder to plaintiffs to present a sworn declaration of the value of the new improvements on their property. In this instance there was no such substantial compliance with the law as amounts to due process of law.

There was no legal assessment of the Roxas Building for the year 1915.

3. Interest. — To narrow our discussion and to avoid misunderstanding, let us set down after principles which every one knows. The United States of America, a State of the American Union, and the Government of the Philippine Islands cannot be sued without their consent. Whether interest could be adjudged to a taxpayer against any of these entities, is beside our question. But what is of moment is that the city of Manila is not sovereign but is a public corporation with certain delegated powers, including that of suing and being sued.

Turning to the American authorities, which are controlling, we find the following: The basic case is *Erskine vs. Van Arsdale* ([1872], 15 Wall., 68-75). Suit was brought against a collecting officer to recover back certain taxes claimed to be exempt under a Federal statute.

Interest was added to the judgment for the plaintiff. The United States Supreme Court, through the Chief Justice, said that, "Where an illegal tax has been collected, the citizen who has paid it, and has been obliged to bring suit against the collector, is, we think, entitled to interest in the event of recovery, from the time of the illegal exaction. "This case should not be confused with the others which hold that the United States cannot be subjected to the payment of interest unless there be an authorized engagement to pay it or a statute permitting its recovery. (*Angaria vs. Bayard* [1888] 127 U. S., 251; *United States vs. State of North Carolina* [1890], 136 U. S., 211; *National Home for Disabled Volunteer Soldiers vs. Parrish* [1912], 229 U. s., 494.) The distinction appears to be between suits to recover moneys illegally exacted as taxes and paid under protest, brought against collectors, although the judgment is not to be paid by the collector but directly from the Treasury, and suits against the United State. A late decision of the United States Supreme Court (*National Home for Disabled Volunteer Soldier vs. Parnish*, supra), which reviews the previous cases, held that the National Home of Disabled Volunteer Soldiers was not exempt from the payment of interest on judgment for the recovery of taxes. The court said that the exemption in favor of the United States "has never as yet been applied to subordinate governmental agencies."

Some States hold that a municipal corporation is not liable for interest unless so required by special contract or by statute. In others States, however, it is held that notwithstanding a municipal corporation has delegated to it certain powers of government, it is to be regarded as a private person with respect to its contracts, which are to be considered in the same manner and with a like effect as those of natural persons. (See 15 R. C. L., 18.) Even where the stricter rule is observed, as in Illinois, it is nevertheless settled that a municipal corporation which wrongfully exacts money and holds the same without just claim or right is liable for interest thereon. (*City of Chicago vs. N. W. Mutual Ins. Co.* [1905], 218 Ill., 40. See also *In re O'Berry* [1904], 179 N. Y., 285.) Laches on the part of the plaintiff would, of course, defeat the right to recover interest. (*Redfield vs. Ystefera Iron Co.* [1884], 110 U. S., 174.)

The city of Manila, a public corporation, even in the absence of statute, is liable to pay interest at the legal rate, from the date of exaction, on the amount of taxes illegally collected.

CONCLUSION.

In conclusion, as an authority which is on all fours with the prominent issues before us, we invite attention to the decision of a United States Circuit Court, in *Power River Cattle Co. vs. Board of Commissioners of Custer County* ([1891], 45 Fed., 323). The Revised Statutes of Montana provided that the assessor shall demand of each taxpayer in the district a list of his personal property and on his refusing to give it, the assessor shall list his property on information and belief. The assessor listed the property of the defendant without demanding a list from the taxpayer. The court held that the taxpayer may recover the illegal taxes paid under compulsion and is not required to apply to the board of equalization for an abatement. The court, finally, adjudged legal interest on the sum illegally exacted from the date collection was made.

We think the court below took the correct view of the case, and, while resolving the appeal on somewhat different grounds, believe that the judgment should stand. Accordingly, the judgment is affirmed, without special finding as to costs. So ordered.

Arellano, C.J., Torres, Carson, Araullo, Street, and Avanceña, JJ., concur.