

## SECOND DIVISION

[ G.R. No. 212246, June 22, 2015 ]

**OFELIA GAMILLA, PETITIONER, VS. BURGUNDY REALTY CORPORATION, RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the November 26, 2012 Decision<sup>[1]</sup> and the April 22, 2014 Resolution<sup>[2]</sup> of the Court of Appeals (CA), in CA-G.R. CV No. 95594, which reversed and set aside the June 23, 2010 Decision<sup>[3]</sup> of the Regional Trial Court, Branch 221, Quezon City (RTC), in LRC Case No. Q-23701 (07), entitled "*In Re: Petition for the Cancellation of Certificate of Title No. 5708 and the Issuance of a New Certificate of Title in Lieu thereof.*"

*The Antecedents:*

Respondent Burgundy Realty Corporation (*BRC*) was the registered owner of a condominium unit with a total floor area of thirty (30) square meters, covered by Condominium Certificate of Title (*CCT*) No. 5708, located at B. Gonzales, Loyola Heights, Diliman, Quezon City (*subject property*).

On May 10, 2005, the City Treasurer of Quezon City (*City Treasurer*) sent a Statement of Delinquency<sup>[4]</sup> informing *BRC* that the real estate tax on the subject property amounting to P36,323.38 had not been paid and requiring it to pay the said amount within 10 days from receipt, otherwise, the said office would take the necessary legal action to enforce its collection.

On July 28, 2005, the City Treasurer sent the Final Notice of Delinquency<sup>[5]</sup> to *BRC* as the real estate tax on the subject property remained unpaid and had been included in the list of delinquent real properties. The City Treasurer reiterated its demand that the real estate taxes be paid within five (5) days from receipt.

Thereafter, the Warrant of Levy<sup>[6]</sup> was issued by the City Treasurer on the subject property

and caused its inscription and annotation on Tax Declaration No. D-056-08799.<sup>[7]</sup> The Notice of Levy was then annotated on CCT No. 5708 and registered with the Register of Deeds (RD).<sup>[8]</sup>

The Notice of Sale of Delinquent Real Property was thereafter published in Manila Standard Today on September 5, 2005<sup>[9]</sup> and September 12, 2005,<sup>[10]</sup> and in Manila Bulletin on September 11, 2005.<sup>[11]</sup> The Notice, written in English and Filipino, was also posted for two (2) consecutive weeks at the main entrance of the Quezon City Hall and in public and conspicuous places and marketplaces in the Barangay where the subject property was located.

On September 15, 2005, the public auction was conducted and petitioner Ofelia Gamilla (*Gamilla*) was declared the highest bidder. On September 30, 2005, a certificate of sale was issued in her favor. Subsequently, the City Treasurer caused the annotation of the certificate of sale with the RD.

After one year, the City Treasurer executed the Final Bill of Sale in favor of Gamilla, who caused its annotation on CCT No. 5708 with the RD.

Subsequently, Gamilla filed a petition for the cancellation of CCT No. 5708 with the RTC praying for the issuance of a new CCT.

BRC opposed the petition contending that the auction sale failed to comply with the requirements of Section 176 of Republic Act (R.A.) No. 7160 otherwise known as the Local Government Code of 1991, and prayed that the auction sale be declared null and void. BRC averred that there was no notice of levy made on the subject property and that the statement of delinquency addressed to BRC was not the notice required by law. BRC further denied having received the final notice of delinquency issued by the City Treasurer.

In her Comment,<sup>[12]</sup> Gamilla countered that the opposition of BRC should not be entertained for its failure to observe the requirements under Section 267<sup>[13]</sup> of R.A. No. 7160 among which was the deposit of the amount for which the property was sold plus interest from the date of sale up to the institution of the action before the court.

Consequently, in its Order,<sup>[14]</sup> dated November 10, 2008, the RTC directed BRC to deposit with the court the amount for which the real property was sold as mandated by Section 267 of R.A. No. 7160.

BRC then filed a motion for clarification with alternative motion for extension to deposit the amount of purchase.<sup>[15]</sup>

In the Order,<sup>[16]</sup> dated May 22, 2009, the RTC granted the motion for clarification declaring the Opposition of the BRC as an action contemplated under Section 267 of R.A.

No. 7160 and directed BRC to make the necessary deposit within thirty (30) days.

On November 27, 2009, for its failure to comply with the November 10, 2008 and May 22, 2009 Orders of the Court, BRC was declared in default and its opposition to the petition was expunged from the records. All the government agencies concerned which failed to file an opposition to the petition despite notice were likewise declared in general default. Hence, Gamilla was allowed to present evidence *ex parte*.

On June 23, 2010, the RTC rendered a decision in favor of Gamilla. The RTC found no irregularity in both the procedural and substantive requirements of the auction sale. Considering that BRC failed to redeem the property after one (1) year, the trial court ordered the cancellation of CCT No. 5708 and the issuance of a new one in Gamilla's name. The dispositive portion reads:

WHEREFORE, in view of the foregoing, owner's duplicate copy of CCT No. 5708 is ordered annulled and the Register of Deeds of Quezon City is directed to issue a new Condominium Certificate of Title in lieu thereof in the name of herein petitioner. Such new condominium certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

SO ORDERED.<sup>[17]</sup>

Aggrieved, BRC elevated the matter to the CA.

In its assailed decision, the CA *reversed* and *set aside* the RTC decision. The CA wrote that the auction sale was tainted with irregularity as no notice of delinquency and warrant of levy was given to BRC. The CA explained that the allegation of Gamilla that a certain Eleonor Rulo (*Rulo*) received the Statement of Delinquency; and Arlene Tayag (*Tayag*), the Final Notice of Delinquency and Warrant of Levy, for and on behalf of BRC, was unsubstantiated because no evidence was presented to prove that these persons were authorized representatives or administrators of BRC.

Gamilla filed a motion for reconsideration but it was denied in the assailed CA resolution.

Hence, this petition.

### **GROUND IN SUPPORT OF THE PETITION**

- 1. THE COURT OF APPEALS GRAVELY ERRED IN ENTERTAINING AND GRANTING RESPONDENT'S APPEAL IN VIOLATION OF SECTION 267 OF REPUBLIC ACT NO. 7160.**
- 2. THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY AND IN DISREGARDING THE LEGAL "PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY" WITHOUT CLEAR AND CONVINCING EVIDENCE TO**

## OVERTURN SUCH PRESUMPTION.

### 3. THE COURT OF APPEALS ERRED IN APPLYING THE HOLDING IN TAN V. BANTEGUI AND IN FAILING TO APPLY SEC. 52 OF P.D. NO. 1529 AND APPLICABLE JURISPRUDENCE.

[18]

In her petition, Gamilla argues that the CA should not have taken cognizance of BRC's petition because of its failure to deposit the amount for which the real property was sold pursuant to Section 267 of R.A. No. 7160. Gamilla asserted that the condition under Section 267 was a jurisdictional requirement that should have been complied with before an action assailing the validity of the public auction could be entertained.

Gamilla further stated that the presumption of regularity in the performance of official duty that the City Treasurer sent, by personal delivery, the Statement of Delinquency, the Final Notice of Delinquency and the Warrant to Levy, to BRC, which were received by Rulo and Tayag, was a conclusive presumption that could not be overturned by mere denial.

In its Comment/Opposition,<sup>[19]</sup> BRC reiterated its opposition before the RTC that the auction sale was void *ab initio* because of procedural lapses as it failed to comply with the requirements mandated under Sections 176 and 178 of R.A. No. 7160.

The issues for resolution are: (1) whether or not the CA was correct in taking cognizant of the case despite failure of BRC to comply with Section 267 of R.A. No. 7160; and (2) whether or not the auction sale of the subject property should be annulled in view of the failure of the City Treasurer to send a notice of delinquency to BRC.

### The Court's Ruling

The petition is meritorious.

On the first issue, the CA erred in taking cognizance of the case. Section 267 of R.A. No. 7160 explicitly provides that a court shall not entertain any action assailing the validity or sale at public auction of real property *unless* the taxpayer deposits with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. This condition is a jurisdictional requirement, the nonpayment of which warrants the dismissal of the action.

<sup>[20]</sup> Considering that BRC did not make such deposit, the RTC should not have acted on the opposition of BRC. Section 267 reads:

Section 267. Action Assailing Validity of Tax Sale. - No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title **until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of**

**the institution of the action.** The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Neither shall any court declare a sale at public auction invalid by reason or irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

[Emphases Supplied]

On the second issue regarding the notice of delinquency, Sections 176 and 178 of R.A. No. 7160 provide:

Section 176. Levy on Real Property. - After the expiration of the time required to pay the delinquent tax, fee, or charge, real property may be levied on before, simultaneously, or after the distraint of personal property belonging to the delinquent taxpayer. To this end, the provincial, city or municipal treasurer, as the case may be, shall prepare a duly authenticated certificate showing the name of the taxpayer and the amount of the tax, fee, or charge, and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines. Levy shall be effected by writing upon said certificate the description of the property upon which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the assessor and the Register of Deeds of the province or city where the property is located who shall annotate the levy on the tax declaration and certificate of title of the property, respectively, and the delinquent taxpayer or, if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or if there be none, to the occupant of the property in question.

In case the levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the taxpayer is not sufficient to satisfy his delinquency, the provincial, city or municipal treasurer, as the case may be, shall within thirty (30) days after execution of the distraint, proceed with the levy on the taxpayer's real property.

A report on any levy shall, within ten (10) days after receipt of the warrant, be submitted by the levying officer to the sanggunian concerned.

x x x x

Section 178. Advertisement and Sale. - Within thirty (30) days after the levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the claim and cost of sale; and such advertisement shall cover a period of at least thirty (30) days. It shall be effected by posting a notice at the main entrance of the

municipal building or city hall, and in a public and conspicuous place in the barangay where the real property is located, and by publication once a week for three (3) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall contain the amount of taxes, fees or charges, and penalties due thereon, and the time and place of sale, the name of the taxpayer against whom the taxes, fees, or charges are levied, and a short description of the property to be sold. At any time before the date fixed for the sale, the taxpayer may stay the proceedings by paying the taxes, fees, charges, penalties and interests. If he fails to do so, the sale shall proceed and shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as determined by the local treasurer conducting the sale and specified in the notice of sale.

Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the sanggunian concerned, and which shall form part of his records. After consultation with the sanggunian, the local treasurer shall make and deliver to the purchaser a certificate of sale, showing the proceeding of the sale, describing the property sold, stating the name of the purchaser and setting out the exact amount of all taxes, fees, charges, and related surcharges, interests, or penalties: Provided, however, That any excess in the proceeds of the sale over the claim and cost of sales shall be turned over to the owner of the property.

The local treasurer may, by ordinance duly approved, advance an amount sufficient to defray the costs of collection by means of the remedies provided for in this Title, including the preservation or transportation in case of personal property, and the advertisement and subsequent sale, in cases of personal and real property including improvements thereon.

Evidently, it is incumbent upon the City Treasurer to convey the notice of delinquency to the taxpayer.<sup>[21]</sup> The strict adherence to the notice requirement in tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce such laws.<sup>[22]</sup>

In the present case, a perusal of the records would show that BRC was properly notified of its tax delinquency and of the proceedings relative to the auction sale; hence, its right as a taxpayer and the owner of the subject property was adequately protected.

The records bear out that the statement of delinquency was sent to BRC stating that the realty tax on the subject property had not been paid from years 1997 to 2004 and including the computation of the amount of the taxes due and penalties. BRC, in fact, acknowledged the receipt of this statement of delinquency in its opposition before the RTC. It, however, contended that such statement was not the notice required by law.

The argument is not tenable. Though the statement of delinquency was not captioned as "Notice of Delinquency," its contents nonetheless sufficiently informed BRC of its deficiency in real property taxes and the penalty with a reminder to settle its tax obligation immediately in order to avoid legal inconvenience. Furthermore, aside from this statement of delinquency, the City Treasurer sent to BRC, through personal service, the Final Notice of Delinquency, dated July 28, 2005. In the said notice, BRC was again reminded of its unpaid realty taxes and penalties and was informed that the subject property was included in the list of delinquent real properties and was scheduled for auction on September 15, 2005. This final notice was followed by the Warrant of Levy, both of which were received by Tayag.

**WHEREFORE**, the petition is **GRANTED**. The November 26, 2012 Decision and the April 22, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 95594 are **REVERSED** and **SET ASIDE**. The June 23, 2010 Decision of the Regional Trial Court, Branch 221, Quezon City in LRC Case No. Q-23701(07) is **REINSTATED**.

**SO ORDERED.**

*Carpio, (Chairperson), Del Castillo, Perez,<sup>\*</sup> and Jardeleza,<sup>\*\*</sup> JJ., concur.*

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<sup>\*</sup> Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 2067, dated June 22, 2015.

<sup>\*\*</sup> Designated Acting Member in lieu of Associate Justice Marvic M.V.F. Leonen, per Special Order No. 2056, dated June 10, 2015.

[1] *Rollo*, pp. 39-47. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr., concurring.

[2] *Id.* at 48-49.

[3] *Records*, pp. 229-231.

[4] *Id.* at 208.

[5] *Id.* at 209.

[6] *Id.* at 210.

[7] *Id.* at 207.

[8] Id. at 205-206.

[9] Id. at 201-202; Affidavit of Publication, id at 212.

[10] Id. at 204; Affidavit of Publication, id. at 214.

[11] Id. at 203, Affidavit of Publication, id. at 213.

[12] Id. at 74-83.

[13] Section 267. Action Assailing Validity of Tax Sale. - No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Neither shall any court declare a sale at public auction invalid by reason or irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

[14] Records, p. 89.

[15] Id. at 92-95.

[16] Id. at 112-113.

[17] Id. at 231.

[18] *Rollo*, p.18.

[19] Id. at 115-121.

[20] *National Housing Authority v. Iloilo City*, 584 Phil. 604, 610 (2008).

[21] *Talusan v. Tayag*, 408 Phil. 373, 388 (2001).

[22] *City Treasurer of Quezon City v. Court of Appeals*, 347 Phil. 752, 767 (1997), citing *Serfino v. Court of Appeals*, 238 Phil. 17, 25 (1987).



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