

## SECOND DIVISION

[ G.R. No. 172267, August 20, 2008 ]

**NATIONAL HOUSING AUTHORITY, PETITIONER, VS. ILOILO CITY, AS REPRESENTED BY ITS MAYOR, HON. JERRY TREÑAS, ILOILO CITY TREASURER CATHERINE TINGSON, AND ROSALINA FRANCISCO, RESPONDENTS.**

### DECISION

**TINGA, J.:**

The National Housing Authority (NHA) assails the Decision<sup>[1]</sup> of the Court of Appeals dated 22 March 2006 which declared it not exempt from posting a deposit as a jurisdictional requisite before the court can take cognizance of cases filed by it questioning the validity of a sale of real property at public auction.

The following undisputed facts are narrated by the appellate court:

On July 19, 2002, the National Housing Authority (NHA, for brevity) filed a Complaint for *"Annulment of the Auction Sale conducted on December 7 & 8, 1998 by the Iloilo City Treasurer and the Subsequent Certificate of Re-Purchase Executed in Favor of a Third Party"* against Iloilo City, as represented by its Mayor Jerry Treñas, Iloilo City Treasurer Catherine Tingson and Rosalina Francisco. The case was subsequently docketed as Civil Case No. 02-27241.

For nonpayment of realty taxes, defendants auctioned off plaintiff NHA's Lot No. 1150-A [of the subdivision plan Psd-29811, being a portion of Lot No. 1150 of the Cadastral Survey of Iloilo, situated at Barangay Monica, City of Iloilo] covered by TCT No. T-76179. Such auction sale was allegedly done without notice to plaintiff NHA as the registered owner thereof, in addition to the fact that the latter is a tax-exempt agency of the government. There being no private individual who offered to bid for the property, the defendant City of Iloilo bought the same per Certificate of Sale under its name. After the one-year redemption period expired, such defendant executed a Final Bill of Sale in its favor. Subsequently, defendant Rosalina Francisco purchased the land. As a result, plaintiff's TCT was cancelled, and a new TCT No. T-107295 was issued in the name of defendant Francisco.

Defendants filed separate Motions to Dismiss based on the same grounds, particularly: lack of jurisdiction and forum shopping. According to them, the lower court did not acquire jurisdiction for failure of plaintiff to comply with the deposit mandated under Section 267, R.A. 7160, to wit:

*Sec. 267. Acting Assailing Validity of Tax Sale.--No court shall entertain any action assailing the validity of 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 (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 of 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.

Also, defendants asserted that the Complaint violated the non-forum shopping requirement, there being a similar case between the same parties, involving the same subject matter, cause of action and issues, docketed as Civil Case No. 22090 before Branch 34 of Iloilo RTC. In fact, said case has been dismissed on the ground of non-compliance with the deposit requirement under Sec. 267, R.A. 7160, per Order dated July 5, 2002, thus:

WHEREFORE, Civil Case No. 22090 is hereby dismissed.

Acting favorably upon defendants' Motion to Dismiss, the court *a quo* dismissed plaintiff's Complaint per the herein assailed Order dated February 26, 2004, to wit:

*WHEREFORE, for failure of the plaintiff National Housing Authority to comply with the afore-quoted provision of Section 267, R.A. 7160, the deposit not being a tax, fee or charge covered by P.D. 2013 and R.A. 7279 and compliance therewith being a condition precedent to take cognizance of said complaint these Motions to Dismiss collectively, is [sic] granted.*

We hereby order that the Dismissal of the complaint dated 05 June 2000 filed with Us on 19 July 2002 is with prejudice.<sup>[2]</sup>

The Court of Appeals affirmed the order of the trial court.

In this Petition for Review on Certiorari<sup>[3]</sup> dated 16 May 2006, NHA asserts that under several statutes--namely Presidential Decree (P.D.) No. 1922, P.D. No. 2013 and Republic Act (R.A.) No. 7279--it is exempt from the payment of any and all fees and taxes of any kind, whether local or general. As such, the provision in Section 267 of R.A. No. 7160 requiring the "taxpayer" to deposit with the court the amount equivalent to the value for which the real property was sold, together with the interest of two percent (2%) per month from the date of sale to the time of institution of the action, before the court may entertain an action assailing the validity of any sale at public auction of real property or rights therein, should allegedly not apply to NHA. Assuming that it is indeed required to make a deposit, NHA avers that a deposit is not necessary in view of the fact that the government is always presumed to be solvent.

In its Comment<sup>[4]</sup> dated 7 February 2007, respondent Iloilo City maintains that NHA is required to make a deposit as a jurisdictional requisite before the court can assume jurisdiction over the suit. It claims that NHA cannot take refuge in its theory that it is exempt from making a deposit because it is not a taxpayer and is, within the contemplation of the 2<sup>nd</sup> paragraph of Article 267 of R.A. No. 7160, merely a juridical person having legal interest in the subject property.

Rosalina Francisco, who is impleaded in the petition because she repurchased the subject property from respondent Iloilo City, filed a Comment/Opposition<sup>[5]</sup> dated 21 February 2007, insisting that NHA's failure to make a deposit rendered its action jurisdictionally infirm.

In its Consolidated Reply<sup>[6]</sup> dated 26 September 2007, NHA avers that it is not required to make the deposit not only because it is a tax-exempt entity, but more importantly because the government is always presumed to be solvent. It also reiterates the irregularities in the conduct of the delinquency sale, such as the fact that it was not served a copy of the warrant of levy, which allegedly necessitate a review of the case.

There is no doubt that as assiduously pointed out in its petition, NHA is a tax-exempt entity, having been given that status by several laws. However, whether its tax-exempt status vests it with immunity as well from the deposit requirement under Section 267 of R.A. No. 7160 is the issue we are faced with in this case.

The disputed provision on which the spotlight now beams down is rather unsophisticated:

*Sec. 267. Action Assailing Validity of Tax Sale.*--No court shall entertain any action assailing the validity of 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 of 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.

As is apparent from a reading of the foregoing provision, a deposit equivalent to the amount of the sale at public auction plus two percent (2%) interest per month from the date of the sale to the time the court action is instituted is a condition--a "prerequisite," to borrow the term used by the acknowledged father of the Local Government Code<sup>[7]</sup> -- which must be satisfied before the court can entertain any action assailing the validity of the public auction sale. The law, in plain and unequivocal language, prevents the court from entertaining a suit unless a deposit is made. This is evident from the use of the word "shall" in the first sentence of Section 267. Otherwise stated, the deposit is a jurisdictional requirement the nonpayment of which warrants the failure of the action.

The deposit requirement, to be sure, is not a tax measure. As expressed in Section 267 itself, the amount deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid; otherwise, it shall be returned to the depositor. The deposit, equivalent to the value for which the real property was sold plus interest, is essentially meant to reimburse the purchaser of the amount he had paid at the auction sale should the court declare the sale invalid.

Clearly, the deposit precondition is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price no matter the final outcome of the suit to nullify the tax sale. Thus, the requirement is not applicable if the plaintiff is the government or any of its agencies as it is

presumed to be solvent,<sup>[8]</sup> and more so where the tax exempt status of such plaintiff as basis of the suit is acknowledged. In this case, NHA is indisputably a tax-exempt entity whose exemption covers real property taxes and so its property should not even be subjected to any delinquency sale. Perforce, the bond mandated in Section 267, whose purpose it is to ensure the collection of the tax delinquency should not be required of NHA before it can bring suit assailing the validity of the auction sale.

Note should be taken that NHA had consistently insisted on the nullity of the proceedings undertaken by respondent Iloilo City which eventually led to the public auction sale of its property. Since, as had been resolved, NHA is liable neither for real property taxes nor for the bond requirement in Section 267, it necessarily follows that any public auction sale involving property owned by NHA would be null and void and any suit filed by the latter questioning such sale should not be dismissed for failure to pay the bond.

NHA cannot be declared delinquent in the payment of real property tax obligations which, by reason of its tax-exempt status, cannot even accrue in the first place. Nonetheless,

because respondent Iloilo City filed a motion to dismiss NHA's Complaint dated 5 June 2002 based on Section 267 and not an answer, it is both proper and prudent to remand the case to the trial court in order to afford respondent Iloilo City full opportunity to be heard on the matters raised in the complaint.

As a final note, a case involving the same defendants and cause of action, docketed as Civil Case No. 22090 before the Regional Trial Court of Iloilo City, Branch 34, had already been previously dismissed for failure to comply with the deposit requirement deemed by the court to be a condition precedent for the filing of that suit.<sup>[9]</sup> This previous case, however, hardly counts for forum-shopping precisely because it is no longer pending. There is forum-shopping where a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending.<sup>[10]</sup> Furthermore, the order of dismissal was clearly based on a mere technicality. Since no judgment on the merits was rendered after consideration of the evidence or stipulation submitted by the parties at the trial of that case, it falls short of one of the essential requisites of *res judicata* that the judgment be one on the merits.<sup>[11]</sup>

WHEREFORE, the Petition is GRANTED. The Decision of the Court of Appeals dated 22 March 2006 is REVERSED and SET ASIDE. The case is REMANDED to the Regional Trial Court of Iloilo City, Branch 33, which is DIRECTED to resume proceedings in Civil Case No. 02-27241 in accordance with this Decision. No pronouncement as to costs.

SO ORDERED.

*Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., concur.*

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<sup>[1]</sup> *Rollo*, pp. 6-12; penned by Executive Justice Arsenio J. Magpale and concurred in by Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr.

<sup>[2]</sup> *Id.* at 7-8.

<sup>[3]</sup> *Id.* at 15-28.

<sup>[4]</sup> *Id.* at 71-78.

<sup>[5]</sup> *Id.* at 80-82.

<sup>[6]</sup> *Id.* at 94-100.

<sup>[7]</sup> PIMENTEL, AQUILINO, JR., THE LOCAL GOVERNMENT CODE REVISITED,

2007 Ed., p. 465.

[8] *Sps. Badillo v. Hon. Tayag*, 448 Phil. 606 (2003).

[9] Records, pp. 23-24; Order dated 5 July 2002.

[10] *City of Caloocan v. Court of Appeals*, G.R. No. 145004, May 3, 2006, 489 SCRA 45, 55.

[11] *Barranco v. Commission on the Settlement of Land Problems*, G.R. No. 168990, 16 June 2006, 491 SCRA 222, 230.