



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ROSALIA T. CABALLERO,

Petitioner,

-versus-

LAVERNE REALTY &
DEVELOPMENT CORPORATION,
VIVIAN P. RAZOTE,*
TREASURER OF LAS PIÑAS CITY
and REGISTRAR OF DEEDS OF
LAS PIÑAS CITY,

Respondents.

G.R. No. 244017

Present:

CAGUIOA, J., *Chairperson*,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, JJ.

Promulgated:

August 30, 2023

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court assailing the Decision² dated July 10, 2018 and Resolution³ dated January 8, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 107400. The CA affirmed the Decision⁴ dated April 18, 2016 issued by the Regional Trial Court of Las Piñas City, Branch 255 (RTC) in Civil Case No. CV-LP 14-0087. Both the CA and the RTC dismissed petitioner Rosalia T. Caballero's (Caballero) Complaint⁵ for nullification of tax delinquency sale for lack of merit.

Facts and Antecedent Proceedings

As found by both lower courts, respondent Vivian P. Razote (Razote) is the registered owner of a parcel of land located in Las Piñas City, which is

* "Razaote" in some parts of the *rollo*.

¹ *Rollo*, pp. 3–20.

² *Id.* at 23–33. Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Rosmari D. Carandang and Elihu A. Ybañez.

³ *Id.* at 36–37. Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Elihu A. Ybañez and Pablito A. Perez.

⁴ *Id.* at 271–275. Penned by Presiding Judge Emily Reyes Alino-Geluz.

⁵ *Id.* at 76–82.

covered by Transfer Certificate of Title (TCT) No. T-102490.⁶ In December 2011, the City Treasurer of Las Piñas City sent to Razote, through registered mail, a Final Demand Letter to pay her real property tax delinquencies on the property from 2009 to 2011 in the total amount of ₱12,047.78, inclusive of interest.⁷ On January 7, 2012, the City Treasurer issued a Notice of Levy on the subject property,⁸ which was later annotated on TCT No. T-102490.⁹

On February 27, 2012, the City Treasurer held a tax delinquency sale where Laverne Realty & Development Corporation (Laverne) was declared as the winning bidder for the total amount of ₱16,197.41.¹⁰ The City Treasurer subsequently issued to Laverne the corresponding Certificate of Sale,¹¹ which was also annotated on TCT No. T-102490.¹² Afterwards, the City Treasurer sent to Razote, through registered mail, several letters dated November 5, 2012, December 6, 2012, and January 2, 2013, reminding her that her right to redeem the property would expire on February 27, 2013.¹³

On March 7, 2013, the City Treasurer issued Razote a Notice of Deed of Conveyance, informing her that her right to redeem had already expired and that the property would be conveyed in favor of Laverne.¹⁴ Thus, on January 16, 2014, the City Treasurer executed a Deed of Conveyance over the property in favor of Laverne.¹⁵

However, on September 30, 2014, petitioner Caballero filed with the RTC of Las Piñas City a Complaint for nullification of the real property tax delinquency sale against respondents Laverne, Razote, City Treasurer, and the Registrar of Deeds of Las Piñas City.¹⁶ Caballero claimed that she had purchased the property from Razote back in 2008 for ₱4,118,100.00, as evidenced by an unnotarized Deed of Absolute Sale (DOAS) which she failed to register with the Registry of Deeds.¹⁷ She argued that the tax delinquency sale was invalid because she was deprived of her right to participate in the delinquency sale given that: (i) the Notice of Levy was not received by either Razote or her; and (ii) the City Treasurer's Notice of Deed of Conveyance and letter reminders regarding the redemption period were served only on the property developer.¹⁸ Caballero also claimed that Laverne unjustly enriched itself considering that it only paid ₱16,197.41 for the property whose fair market value was at ₱4,000,000.00.¹⁹ While the case was pending, Caballero

⁶ *Id.* at 24, CA Decision.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 307, Manifestation/Comment and Compliance filed by the Register of Deeds of Las Piñas City dated December 4, 2019 (Manifestation/Comment filed by the Register of Deeds).

¹⁰ *Id.* at 24, CA Decision.

¹¹ *Id.*

¹² *Id.* at 307, Manifestation/Comment filed by the Register of Deeds.

¹³ *Id.* at 24, CA Decision.

¹⁴ *Id.* at 24–25.

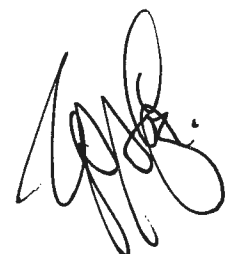
¹⁵ *Id.* at 25.

¹⁶ *Id.* at 25–28.

¹⁷ *Id.* at 25.

¹⁸ *Id.*

¹⁹ *Id.*



caused the annotation of the corresponding notice of *lis pendens* on TCT No. T-102490²⁰ and deposited to the RTC the amount of ₱26,239.80, as required by Section 267 of the Local Government Code of 1991 (LGC).²¹

On the other hand, the City Treasurer argued that the sale between Razote and Caballero was not binding on it because it had no knowledge of the same and it was not notarized and registered.²² Moreover, Caballero failed to exercise her right of redemption.²³ The City Treasurer denied Razote's supposed non-receipt of the notices and letters, and pointed out that it even served the same on the property developer, as the property was a vacant lot within the developer's control.²⁴

For its part, Laverne invoked the presumption of regularity in the City Treasurer's performance of its functions, and argued that the tax declarant of record was duly notified of the delinquency, the impending public auction sale, and the redemption period, but still failed to take the legal steps to free herself from tax liabilities.²⁵ Since neither the property owner nor any interested party redeemed the property within one year from the sale, the tax delinquency sale in its favor became final.²⁶ Lastly, Caballero cannot expect the City Treasurer to provide her with notices relative to the tax delinquency sale considering her admission that she neither transferred the title in her own name nor annotated the DOAS on TCT No. T-102490.²⁷

Attempts to personally serve summons on Razote failed because she moved out without leaving any forwarding address.²⁸ Despite service of summons by publication, she still failed to appear.²⁹ Thus, she was declared in default.³⁰ Eventually, Caballero was allowed to present evidence *ex parte* in view of Laverne's failure to appear during the Judicial Dispute Resolution.³¹

In 2016, the RTC dismissed the Complaint for failure of Caballero to prove her entitlement to her claims.³² The RTC ruled that the City Treasurer could not be expected to notify Caballero of the tax delinquency proceedings because she neither registered the sale nor notified the City Treasurer of her purchase.³³ Moreover, it found Caballero negligent for failing to pay the real property taxes from the time she bought the property in 2008 until its auction

²⁰ *Id.* at 307–308, Manifestation/Comment filed by the Register of Deeds.

²¹ *Id.* at 107–108, Caballero's Manifestation dated November 14, 2014; Republic Act No. 7160, October 10, 1991.

²² *Rollo*, p. 26, CA Decision.

²³ *Id.*

²⁴ *Id.* at 25–26.

²⁵ *Id.* at 26.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 27–28.

³³ *Id.*



in 2012, and for failing to register the DOAS with the Register of Deeds.³⁴ Caballero sought reconsideration which the RTC denied.³⁵

The CA affirmed the RTC Decision, holding that Caballero failed to establish any invalidity or irregularity in the tax delinquency sale.³⁶ Under Section 258 of the LGC, the warrant of levy must be mailed to or served upon the delinquent owner or person having legal interest therein, or in case they are out of the country or cannot be located, to the administrator or occupant of the property.³⁷ In this case, the City Treasurer duly complied with the same by sending its letters and notices to Razote's last known address by registered mail.³⁸ The CA rejected Caballero's claim of being entitled to the same notice under Section 258, considering that she never registered the DOAS or informed the City Treasurer of the sale.³⁹ Caballero sought reconsideration which the CA denied.⁴⁰

Hence, this Rule 45 Petition.

In its March 4, 2019 Resolution,⁴¹ the Court required the respondents to file their respective comments. However, the copy sent by registered mail to Atty. Maria Theresita Patula (Atty. Patula), Laverne's counsel of record, was returned unserved for the reason "MOVED OUT."⁴² Upon the Court's directive, the Integrated Bar of the Philippines provided the Court with Atty. Patula's office and home addresses⁴³ where copies of the Resolution were sent anew. However, the same were again returned unserved by the postmaster for the reason "MOVED OUT."⁴⁴ The Court thus sent a copy of the Resolution to Laverne and required it to provide the address of Atty. Patula.⁴⁵ However, Laverne refused to receive the Resolution.⁴⁶ Accordingly, Laverne is deemed to have waived its right to comment on the Petition.

On the other hand, the Register of Deeds requested that it be excused from participating in the case as it was merely a nominal party.⁴⁷ The City Treasurer did not file any comment despite notice.⁴⁸

³⁴ *Id.* at 28.

³⁵ *Id.*

³⁶ *Id.* at 29–31.

³⁷ *Id.* at 30.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 36–37, CA Resolution.

⁴¹ *Id.* at 290–291.

⁴² *Id.* at 295, Return of the Postmaster.

⁴³ *Id.* at 306, Letter of the Integrated Bar of the Philippines dated October 1, 2019.

⁴⁴ *Id.* at 318 & 323, Returns of the Postmaster.

⁴⁵ *Id.* at 325–326, Notice of Resolution dated October 13, 2021.

⁴⁶ *Id.* at 331, Postmaster's letter.

⁴⁷ *Id.* at 307–309, Manifestation/Comment and Compliance dated December 4, 2019.

⁴⁸ *Id.* at 290–291, Notice of Resolution dated March 4, 2019.



Issue

The main issue to be resolved is whether or not the CA was correct in affirming the dismissal of Caballero's Complaint for nullification of the tax delinquency sale.

The Court's Ruling

The instant Petition is meritorious.

Caballero has standing to question the tax delinquency sale

At the outset, the Court rules that although Caballero is not the delinquent registered owner of the subject property, she is nonetheless a real party-in-interest who may assail the tax delinquency sale. In *Alvarado v. Ayala Land, Inc., et al.*,⁴⁹ the Court ruled that Section 267 of the LGC grants the right to question a delinquency sale not only to the delinquent owner, but also to any person having legal interest in the property and whose substantive rights have been impaired. Thus:


Petitioner's basic premise that only the owners of properties subjected to tax delinquency sales may file actions assailing the validity of tax sales is misguided. Section 267 of the Local Government Code constrains the invalidation of tax delinquency sales in two (2) respects:

Section 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.

The first paragraph pertains to the condition precedent of a deposit. The second paragraph limits the invalidation of tax delinquency sales on the basis of "irregularities or informalities in the proceedings." Section 267 permits such invalidations only when "substantive rights ... have been impaired." These substantive rights may pertain to "the delinquent owner of the real property or the person having legal interest therein." Stated

⁴⁹ 818 Phil. 595 (2017).



otherwise, a person having legal interest over such property, even a non-owner, may bring an action under Section 267, for as long as his or her substantive rights have been impaired. The right to file an action under Section 267 is not barred merely on account of a plaintiff's not being the owner of the property sold.⁵⁰ (*Italics in the original*)

The Court recognized in *Salva v. Magpile*⁵¹ (*Salva*) that a tax delinquency sale “derogates or impinges on property rights and due process. Thus, the steps prescribed by law are mandatory and must be strictly followed; if not, the sale of the real property is invalid and does not make its purchaser the new owner.”⁵²

Given that Caballero is a prior purchaser of the property, her property rights over the same would undoubtedly be impaired by an invalid tax delinquency sale that purports to transfer ownership to Laverne. This impairment is akin to a deprivation of property without due process of law.⁵³ Therefore, the Court rules that she has sufficient legal interest in the subject property to question the validity of the tax delinquency sales.

The requirements for a valid tax delinquency sale were not complied with

On the merits, Caballero claims that the tax delinquency sale involving the subject land is void because of non-compliance with Section 258 of the LGC.⁵⁴ She faults the CA for holding that Section 258 was complied with even though Razote did not actually receive the Warrant of Levy sent to her by registered mail.⁵⁵

The Court agrees that Section 258 was not complied with.

Section 258 requires the warrant of levy to be mailed to or served upon the delinquent owner of the real property or person having legal interest therein, or in case he or she is out of the country or cannot be located, upon the administrator or occupant of the property. Thus:

SECTION 258. *Levy on Real Property.* – After the expiration of the time required to pay the basic real property tax or any other tax levied under this Title, real property subject to such tax may be levied upon through the issuance of a warrant on or before, or simultaneously with, the institution of the civil action for the collection of the delinquent tax. The provincial or city treasurer, or a treasurer of a municipality within the Metropolitan Manila Area, as the case may be, when issuing a warrant of levy shall prepare a duly authenticated certificate showing the name of the delinquent

⁵⁰ *Id.* at 619–620.

⁵¹ 820 Phil. 803 (2017).

⁵² *Id.* at 821–822; citations omitted.

⁵³ CONSTITUTION, Art. III, Sec. 1. *See also Corporate Strategies Development Corp., et al. v. Agojo*, 747 Phil. 607 (2014) and *Salva v. Magpile*, *supra* note 51.

⁵⁴ *Rollo*, pp. 9–13, Petition.

⁵⁵ *Id.* at 8.



owner of the property or person having legal interest therein, the description of the property, the amount of the tax due and the interest thereon. The warrant shall operate with the force of a legal execution throughout the province, city or a municipality within the Metropolitan Manila Area. **The warrant shall be mailed to or served upon the delinquent owner of the real property or person having legal interest therein, or in case he [or she] is out of the country or cannot be located, the administrator or occupant of the property.** At the same time, written notice of the levy with the attached warrant shall be mailed to or served upon the assessor and the Registrar of Deeds of the province, city or municipality within the Metropolitan Manila Area where the property is located, who shall annotate the levy on the tax declaration and certificate of title of the property, respectively.

The levying officer shall submit a report on the levy to the *sanggunian* concerned within ten (10) days after receipt of the warrant by the owner of the property or person having legal interest therein.
(Emphasis supplied)

Contrary to the ruling of the CA, the Court has previously held that Section 258 requires that **actual notice** must be given to either the delinquent owner, or the administrator, or occupant of the property.⁵⁶

In determining whether a proceeding requires that actual notice be given to the defendant, the Court is guided by the character of the proceedings (*i.e.*, whether it is *in personam*, *quasi in rem*, or *in rem*), which is determined by its purpose⁵⁷ and by the language of the applicable statute.⁵⁸

In the early case of *Government of the Philippine Islands v. Adriano*,⁵⁹ the land therein was auctioned for non-payment of real property tax under the Municipal Code⁶⁰ (1901) to the highest bidder. However, it later appeared that the tax delinquent owner had no title to the property in the first place, and therefore, the property was presumed to be public land. The main issue that confronted the Court was whether the purchaser at the auction acquired ownership of the property. The Court ruled in the negative. According to the Court, if under the applicable tax statute, **the tax is a charge on the land alone and does not provide any resort against the owner**, then the tax collection proceeding was *in rem*, and the purchaser would acquire a new and paramount title to the land, and not just the title of the delinquent owner. On the other hand, if the tax law requires the land to be listed in the name of the owner, provides a personal demand for the tax, and permits a sale of real property only after the exhaustion of other remedies, then the proceeding is *in personam*, and the purchaser at auction would only acquire the title, if any, of the delinquent owner. In that case, the Court found that the tax delinquency sales under the Municipal Code were *in personam* because the tax was not

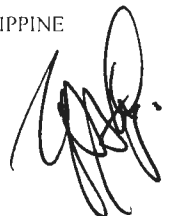
⁵⁶ *Corporate Strategies Development Corp., et al. v. Agojo*, *supra* note 53 at 621, citing *Spouses Tan v. Bantegui*, 510 Phil. 434 (2005).

⁵⁷ *Domagas v. Jensen*, 489 Phil. 631, 641 (2005).

⁵⁸ *Government of the Philippine Islands v. Adriano*, 41 Phil. 112, 118–119 (1920).

⁵⁹ *Id.*

⁶⁰ Act No. 82, A GENERAL ACT FOR THE ORGANIZATION OF MUNICIPAL GOVERNMENTS IN THE PHILIPPINE ISLANDS, January 31, 1901.



imposed on the land alone, but also on the delinquent owner whose personal property must first be seized before the subject real property can be auctioned. Thus:

There are two distinct doctrines on the subject of what passes by the sale of property for back taxes. In many states where the tax is a charge on the land alone, where no resort in any event is contemplated against the owner or his [or her] personal estate, and where the proceeding is strictly *in rem*, the title conveyed by a sale for nonpayment of taxes is not merely the title of the person who had been assessed for the taxes and had neglected to pay them, but a new and paramount title to the land in fee simple absolute, created by an independent grant from the sovereign, and free from all equities and incumbrances existing prior to the sale upon the title of the previous owner. According to this view, the tax title is a breaking up of all titles, and operates not to support, but to destroy them. It is a new and perfect title emanating from the State, and not merely the sum of old titles. The second doctrine prevailing in other jurisdictions where the proceedings for the collection of taxes upon real estate are looked upon as *in personam*, is that the purchaser at the tax sale gets no better title than was held by the person assessed. According to this view, where the law requires the land to be listed in the name of the owner, provides for a personal demand for the tax, and, in case of default, authorizes the seizure of the personal property of the delinquent in satisfaction of the tax, and permits a sale of the land only when all other remedies have been exhausted, the title is a derivative one, and the purchaser acquires only the apparent interest, whatever it is, of the tax delinquent. (See generally 2 Cooley on Taxation, 3d ed., pp. 960-962; 26 R. C. L., pp. 401-404; 33 L. R. A., 689, notes; *Turner vs. Smith* [1871], 14 Wall., 553.)

....

The exact phraseology of the particular statute would seem to determine the doctrine applicable in each jurisdiction. The Philippine law on the subject of taxation, when this tax sale occurred, was found in the Municipal Code, Act No. 82 (secs. 74-83), as amended by Act No. 1139. According to these provisions, in case of default in the payment of land taxes, the personal property of the delinquent was first seized. Taxes and penalties were thereafter enforceable against the realty and, if necessary, it could be sold to satisfy the public taxes assessed against it. In case the taxpayer did not redeem the land sold within one year from the date of the sale, the provincial treasurer, as grantor, executed a deed conveying the land to the purchaser free from all liens of any kind whatsoever.

It is thus seen that there was no provision in the local law, such as is found in Iowa and other states, vesting in the purchaser "all the title of the former owner *as well as of the State and County*." (See *Hefner vs. Northwestern Mut. L. Ins. Co.* [1887], 123 U. S., 747.) **It is further seen that proceedings in the Philippines for the sale of land for the nonpayment of taxes were *in personam*.** (*Valencia vs. Jimenez and Fuster* [1908], 11 Phil., 492.) **The tax was not a charge upon the land alone. The authorities were first required to hunt up the owner and to make the tax out of his personal property.** Only the particular interest or title of the person to whom the land is assessed was sold. As a stream cannot

rise higher than its source, so the purchaser could not claim any better title than his predecessor.⁶¹ (Emphasis supplied, italics in the original)

In *Pantaleon, et al. v. Santos, et al.*,⁶² real property was auctioned due to non-payment of real property taxes under the Provincial Assessment Law⁶³ (1939). It later appeared that the property was co-owned by two persons, but only one of them was named as the owner in the tax declaration covering the property. The main issue was whether the auction sale also affected the one-half share of the undeclared but registered owner of the property. The Court ruled in the negative. Contrasting the Provincial Assessment Law with the Revised Charter of Manila, the Court held that tax delinquency sales under the Provincial Assessment Law were *in personam* because the said law did not contain any provision that would indicate that the proceedings will bind the real estate and **all the persons having an interest therein, whether notified or not of the proceedings**. Thus:

That the proceedings for the sale of delinquent real estate under the Provincial Assessment Law are *in personam* can be inferred from a comparison thereof with the corresponding provisions of the Revised Charter of the City of Manila, Republic Act No. 409. Section 56 imposes a duty upon any person acquiring real estate or constructing thereon to prepare a declaration thereof, for purposes of assessment, and the assessment then made is made “**valid and binding on all persons interested.**” Section 57 provides that if an owner fails to make a return or declaration and the assessor is unable to discover the owner, the latter shall nevertheless list the same for taxation, and charge the tax against the true owner, if known, and if unknown **against an unknown owner**. Section 58 requires the assessor to list and value property not already listed and charge against the owner thereof the taxes due and past due. Section 68 provides that taxes and penalties assessed against realty shall constitute a lien thereon, superior to all others.

....

Section 69 provides that advertisements for the sale of real estate shall be published in a newspaper of general circulation in the city. It also provides that it is not essential for the validity of the sale at public auction that distraint of personal property of the delinquent be proceeded with, the distraint being merely cumulative. Section 71 provides that the tax deed to be issued upon the sale conveys to the purchaser so much as has been sold, “**free from all liens of any kind whatsoever.**”

The above indicated provisions of the Revised Charter of the City of Manila are not found or included in the Provincial Assessment Law. **Had it been the intention of the law to make the proceedings for the sale of delinquent real estate in the provinces *in rem*, as in the City of Manila, the above provisions, which indicate that the proceedings bind the real estate and all the persons having an interest therein, whether notified or not of the proceedings, would have been inserted in the Provincial Assessment Law.** Under the provisions as they are, the

⁶¹ *Government of the Philippine Islands v. Adriano*, *supra* note 58, at 117–119.

⁶² 101 Phil. 1001 (1957).

⁶³ Commonwealth Act No. 470, ASSESSMENT LAW, June 16, 1939.



proceedings for the sale of real estate for delinquency in the provinces must be held to be *in personam*.

As the proceedings in the case at bar are not proceedings *in rem* but merely *in personam*, it follows as a necessary consequence that the rights of the registered but undeclared owners were not affected by the proceedings in the sale for delinquency.⁶⁴ (Emphasis supplied)

In *Spouses Tan v. Bantegui*⁶⁵ (*Spouses Tan*) and *Talusan v. Tayag*,⁶⁶ the Court ruled that tax delinquency sales under the Real Property Tax Code⁶⁷ (1974) were *in personam* proceedings that required prior actual notice to the delinquent taxpayer, in addition to the requirements of advertisement and publication. Notably, Section 73 of the said law required that: (i) a notice of the tax delinquency and the intended auction of the real property should be mailed to or personally served on the delinquent owner; and (ii) the person serving the notice should file with the provincial or city treasurer a return of the proof of service under oath. The Court's pronouncement in *Spouses Tan* is instructive:

The auction sale of real property for the collection of delinquent taxes is *in personam*, not *in rem*. Although sufficient in proceedings *in rem* like land registration, mere notice by publication will not satisfy the requirements of proceedings *in personam*. “[P]ublication of the notice of delinquency [will] not suffice, considering that the procedure in tax sales is *in personam*.” It is still incumbent upon the city treasurer to send the notice directly to the taxpayer — the registered owner of the property — in order to protect the latter's interests. Although preceded by proper advertisement and publication, an auction sale is void absent an actual notice to a delinquent taxpayer.

The sale of land “for tax delinquency is in derogation of property rights and due process[;] the prescribed steps must be followed strictly.” In the present case, notices either of delinquency or of sale were not given to the delinquent taxpayer. Those notices are mandatory, and failure to issue them invalidates a sale.⁶⁸ (Citations omitted)

The relevant provisions of the Real Property Tax Code⁶⁹ were substantially carried over to the LGC⁷⁰ — the prevailing real property tax law applicable in the present case. In *Salva*, the Court ruled that actual notice of the warrant of levy to the delinquent owner is required because tax delinquency sales under the said law are *in personam* in nature and because Section 258 of the LGC implicitly requires such actual notice. Thus:

⁶⁴ *Pantaleon, et al. v. Santos, et al.*, *supra* note 62, at 1007–1008.

⁶⁵ *Supra* note 56.

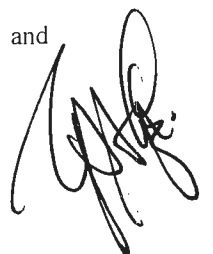
⁶⁶ 408 Phil. 373 (2001).

⁶⁷ P.D. No. 464, ENACTING A REAL PROPERTY TAX CODE, May 20, 1974.

⁶⁸ *Spouses Tan v. Bantegui*, *supra* note 56, at 446.

⁶⁹ Section 65 discusses notice of delinquency in the payment of real property tax, and Section 73 discusses advertisement of sale of real property at public auction.

⁷⁰ See Section 254 which discusses notice of delinquency in the payment of the real property tax, and Section 258 which discusses levy on real property.



Further, Salva did not adduce evidence to show that Magpile received the warrant of levy. That the delinquent taxpayer must be actually notified of such warrant is implied from Section 258, which explicitly directs the levying officer to “submit a report on the levy to the *sanggunian* concerned within ten (10) days after receipt of the warrant by the owner of the property or person having legal interest therein.” Contrary to the opinion of the RTC, “[it] is essential that there be an actual notice to the delinquent taxpayer, otherwise, the sale is null and void although preceded by proper advertisement or publication. This proceeds from the principle of administrative proceedings for the sale of private lands for non-payment of taxes being *in personam*.”⁷¹ (Underscoring in the original)

From the foregoing, it is evident that tax delinquency sales under the LGC are *in personam* proceedings. Thus, actual notice of the warrant of levy should be given to the delinquent owner before his or her property is auctioned at a tax delinquency sale.

In the present case, nothing on record shows that the delinquent owner, Razote, was actually notified of the Warrant of Levy sent to her by registered mail. Significantly, the Officer-in-Charge of the Real Property Tax Division of the Treasurer’s Office of Las Piñas City testified that even the Final Demand Letter, Reminder Letters, and Clarification Letter sent by the City Treasurer to her through registered mail were not received by anyone.⁷² Indeed, as noted by the CA, summons could not even be served on Razote because she supposedly moved out of her residential address in Makati years ago.⁷³

There is also no showing that actual notice of the Warrant of Levy was received by any occupant or administrator of the property. Notably, Caballero admitted that the November 5, 2012 and January 2, 2013 Reminder Letters of the City Treasurer were received by Brittany Corporation, the developer of the property.⁷⁴ However, there is no showing that Brittany Corporation is the occupant or administrator of the subject property. At any rate, the Reminder Letters are different from the warrant of levy required by Section 258 to be actually received by the delinquent owner, or the occupant, or administrator of the property. Clearly, Section 258 was not complied with.

Aside from Section 258, it does not appear that the other requirements of the LGC had been complied with.

Section 254 requires that: (i) the notice of delinquency shall be posted at the main hall and in a publicly accessible and conspicuous place in each barangay of the local government unit concerned; and (ii) it shall also be

⁷¹ *Salva v. Magpile*, *supra* note 51, at 821, citing *Corporate Strategies Development Corp., et al v. Agojo*, *supra* note 53 and *Spouses Tan v. Bantegui*, *supra* note 56.

⁷² *See rollo*, p. 170, Judicial Affidavit of Agnes A. Quizon; *id.* at 152, Registry Return of the Postmaster for the Final Demand Letter; *id.* at 153–154, Registry Returns of the Postmaster for the Reminder Letters; and *id.* at 155, Registry Return of the Postmaster for the Clarification Letter.

⁷³ *Id.* at 26, CA Decision.

⁷⁴ *Id.* at 78, Complaint.

published once a week for two consecutive weeks, in a newspaper of general circulation in the province, city, or municipality.

In addition to the service of the warrant of levy to the delinquent owner, the person having legal interest therein, or the administrator or occupant of the property, Section 258 further requires that: (i) the written notice of the levy with the attached warrant of levy should be mailed to or served upon the assessor and the Registrar of Deeds of the province, city, or municipality within the Metropolitan Manila Area where the property is located, who shall annotate the levy on the tax declaration and certificate of title of the property, respectively; and (ii) the levying officer should submit a report of the levy to the *sanggunian* concerned within 10 days from receipt of the warrant of levy by the owner of the property or the person having legal interest therein.

Section 260 also mandates that within 30 days after service of the warrant of 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 tax delinquency and expenses of sale. Such advertisement shall be effected by posting a notice at the main entrance of the provincial, city, or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and by publication once a week for two weeks in a newspaper of general circulation in the province, city, or municipality where the property is located.

Again, no evidence was adduced to prove compliance with these other requirements. It is settled that “the burden to prove compliance with the validity of the proceedings leading up to the tax delinquency sale is incumbent upon the buyer or the winning bidder,”⁷⁵ which in this case is Laverne. This is because a tax delinquency sale is in derogation of the property and due process rights of the owner.⁷⁶ The Court’s pronouncement in *Salva* is apt:

The public auction of land to satisfy delinquency in the payment of real estate tax derogates or impinges on property rights and due process. Thus, the steps prescribed by law are mandatory and must be strictly followed; if not, the sale of the real property is invalid and does not make its purchaser the new owner. Strict adherence to the statutes governing 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 the laws.⁷⁷ (Citations omitted)

Unfortunately, Laverne waived its right to present evidence in view of its repeated, unjustified failure to attend the Judicial Dispute Resolution proceedings.⁷⁸ In view of Laverne’s failure to discharge its burden of proving compliance with the LGC’s requirements for the valid conduct of a tax delinquency sale, the Court holds that the assailed tax delinquency sale is void.

⁷⁵ *Corporate Strategies Development Corp., et al. v. Agojo*, *supra* note 53, at 620.

⁷⁶ *Id.*

⁷⁷ *Salva v. Magpile*, *supra* note 51, at 821–822.

⁷⁸ *Rollo*, p. 126, RTC’s Order dated December 10, 2015.



The Court recognizes the difficulty in serving actual notice of the warrant of levy to delinquent taxpayers, especially where, as in this case, the taxpayer has already moved out of her registered address. Nonetheless, the local treasurers are not without a remedy. They may file a civil action for collection under Section 266⁷⁹ of the LGC and utilize the modes of service of summons provided under Sections 16⁸⁰ and 17,⁸¹ Rule 14 of the Amended Rules of Civil Procedure,⁸² together with the provisional remedy of preliminary attachment, as applicable.⁸³

The Court's nullification of the tax delinquency sale is understood to be without prejudice to Las Piñas City's right to collect any unpaid real property taxes which may have accrued during the pendency of this case. Moreover, the Court cannot grant Caballero's prayer for the issuance of a new TCT in her name.⁸⁴ Caballero's DOAS, being unnotarized, is not yet a registrable document under Section 112⁸⁵ of Presidential Decree (P.D.) No.

⁷⁹ SECTION 266. *Collection of Real Property Tax Through the Courts.* – The local government unit concerned may enforce the collection of the basic real property tax or any other tax levied under this Title by civil action in any court of competent jurisdiction. The civil action shall be filed by the local treasurer within the period prescribed in Section 270 of this Code.

⁸⁰ SECTION 16. *Service upon Defendant Whose Identity or Whereabouts are Unknown.* – In any action where the defendant is designated as an unknown owner, or the like, or whenever his or her whereabouts are unknown and cannot be ascertained by diligent inquiry, within ninety (90) calendar days from the commencement of the action, service may, by leave of court, be effected upon him or her by publication in a newspaper of general circulation and in such places and for such time as the court may order.

Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) calendar days after notice, within which the defendant must answer. (14a)

⁸¹ SECTION 17. *Extraterritorial Service.* – When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 6; or as provided for in international conventions to which the Philippines is a party; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) calendar days after notice, within which the defendant must answer. (15a)

⁸² A.M. No. 19-10-20-SC, 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, October 15, 2019.

⁸³ Rule 57, Section 1 of the Amended Rules of Civil Procedure provides:

SECTION 1. *Grounds Upon Which Attachment May Issue.* – At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

.....

(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication. (1a)

⁸⁴ *Rollo*, p. 15, Petition.

⁸⁵ SECTION 112. *Forms in Conveyancing.* – The Commissioner of Land Registration shall prepare convenient blank forms as may be necessary to help facilitate the proceedings in land registration and shall take charge of the printing of land title forms.

Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered or unregistered land, executed in accordance with law **in the form of public instruments shall be registrable**: *Provided*, that, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall be acknowledged to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment. Where the instrument so acknowledged consists of two or more pages including the page whereon

1529.⁸⁶ Once the DOAS is notarized, she must first pay all the appropriate taxes on the sale,⁸⁷ present to the Registry of Deeds the DOAS and Razote's owner's duplicate certificate of title,⁸⁸ and then pay the registration fee and other applicable fees,⁸⁹ before the DOAS is registered by the Registry of Deeds and a new title is issued in her name.⁹⁰

Section 267 applies

To recall, the City Treasurer issued to Razote a Final Demand Letter⁹¹ dated December 7, 2011 demanding the payment of her real property tax delinquencies on the property from 2009 to 2011 in the amount of ₱12,047.78, which is broken down as follows:

Real property tax	₱7,878.00
Penalty	₱4,169.78
Total	₱12,047.78 ⁹²

At the auction sale held on February 27, 2012, Laverne purchased the subject property for the total amount of ₱16,197.41, broken down as follows:

Real property tax	₱10,281.40
Penalties	₱4,443.52
Cost of Sale	₱1,472.49
Total	₱16,197.41 ⁹³

On November 12, 2014, Caballero deposited to the RTC the amount of ₱26,239.80⁹⁴ which, pursuant to Section 267 of the LGC, represents the amount paid by Laverne plus interest of two percent (2%) per month from the date of the sale up to the filing of her Complaint as follows:

acknowledgment is written, each page of the copy which is to be registered in the office of the Register of Deeds, or if registration is not contemplated, each page of the copy to be kept by the notary public, except the page where the signatures already appear at the foot of the instrument, shall be signed on the left margin thereof by the person or persons executing the instrument and their witnesses, and all the pages sealed with the notarial seal, and this fact as well as the number of pages shall be stated in the acknowledgment. Where the instrument acknowledged relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number thereof shall likewise be set forth in said acknowledgment. (Emphasis supplied)

⁸⁶ PROPERTY REGISTRATION DECREE, June 11, 1978.

⁸⁷ R.A. No. 8424, Sec. 58(E).

⁸⁸ P.D. No. 1529, Sec. 53.

⁸⁹ *Id.*, Sec. 111(C).

⁹⁰ *Id.*, Sec. 57.

⁹¹ *Rollo*, p. 147.

⁹² *Id.*

⁹³ *Id.* at 64, Certificate of Sale.

⁹⁴ *Id.* at 107–108, Caballero's Manifestation dated November 14, 2014.

Amount paid by Laverne	₱16,197.41
Two percent (2%) Interest x 31 months	₱10,042.39 (323.95 x 10,042.39)
Total	₱26,239.80

With the Court's declaration of the nullity of the tax delinquency sale, what then becomes of these payments?

Paramount to the resolution of this issue is the proper interpretation and application of Section 267 of the LGC, as its applicability or non-applicability will determine the effects of the Court's nullification of the tax delinquency sale. Section 267 provides:

SECTION 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. (Emphasis supplied)

As seen above, Section 267 provides that in any action assailing the validity of a tax sale for non-payment of delinquent real property taxes, the taxpayer must first deposit in court the amount paid by the purchaser at auction, plus interest at the rate of two percent (2%) per month, or twenty-four percent (24%) *per annum*. If the sale is later declared invalid, the amount deposited shall be paid to the purchaser at the auction. Otherwise, if the sale is declared valid, it shall be returned to the taxpayer.

The purpose of the deposit was explained by the Court in *National Housing Authority v. Iloilo City, et al.*⁹⁵ (*National Housing Authority*) in this wise:

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 [or she] had paid at the auction sale should the court declare the sale invalid.

⁹⁵ 584 Phil. 604 (2008).

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.⁹⁶

In *City Government of Tagaytay v. Judge Guerrero, et al.*,⁹⁷ (*City Government of Tagaytay*) Tagaytay City held a tax delinquency sale where it auctioned two properties for non-payment of real property taxes. The taxpayer assailed the tax sale on the ground that the properties were outside the territorial boundaries of Tagaytay City, as they were earlier transferred to the Province of Batangas. One of the issues that reached the Court was whether the trial court had jurisdiction to annul the tax sale in view of the taxpayer's failure to make the deposit required by Section 83 of the Real Property Tax Code (the precursor of Section 267 of the LGC). The Court ruled that Section 83 did not apply because the tax sale was not merely voidable, but void, considering that the properties were situated outside the territorial jurisdiction of Tagaytay City. Thus:

Petitioners likewise make reference to Section 83 of P.D. No. 464 to assail the jurisdiction of the RTC in entertaining the petition for the annulment of the auction sale of the contested properties. They aver that compliance with Section 83 of P.D. No. 464 is a jurisdictional requirement that must be complied with before a court may take cognizance of a case assailing the validity of a tax sale of real estate. The said Section reads:

Section 83. Suits assailing validity of tax sale. No court shall entertain any suit assailing the validity of a tax sale of real estate under this Chapter until the taxpayer shall have paid into court the amount for which the real property was sold, together with interests of twenty per centum per annum upon that sum from the date of sale to the time of instituting suit. The money so paid into court shall belong to the purchaser at the tax sale if the deed is declared invalid, but shall be returned to the depositor if the action fails.

However, this provision may only be used in a **voidable tax sale**. When the sale is void **because the property subjected to real estate tax is not situated within the jurisdiction of the taxing authority, the provision cannot be invoked**. In this case, there is already a final and executory decision by the Supreme Court in G.R. No. 106812 that the properties are situated outside the territorial jurisdiction of the City of Tagaytay. Thus, there was no basis for the collection of the real estate tax.⁹⁸ (Emphasis supplied)

In *National Housing Authority*, the local government auctioned off the property of the National Housing Authority (NHA) for non-payment of delinquent real property taxes. The NHA questioned the sale, alleging that it was not liable for the real property tax to begin with since it was tax-exempt. One of the issues raised was whether the NHA was required to make the

⁹⁶ *Id.* at 611.

⁹⁷ 616 Phil. 28 (2009).

⁹⁸ *Id.* at 51.



deposit required by Section 267 of the LGC. The Court ruled in the negative. It held that since the purpose of the deposit is to “guarantee the satisfaction of the tax delinquency,” it should not apply when the plaintiff is the government or any of its agencies, who are presumed solvent, especially when the tax-exempt status of the plaintiff is acknowledged. Significantly, the Court further ruled that since the NHA was tax-exempt, any tax sale of its properties would be void and any suit filed by the NHA questioning such sale should not be subject to the deposit requirement. Thus:

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.⁹⁹

In *Beaumont Holdings Corporation v. Atty. Reyes, et al.*,¹⁰⁰ (*Beaumont Holdings Corp.*) the taxpayer assailed the tax delinquency sale of its properties on the ground that it had already previously paid the real property taxes demanded by the local government unit. The main issue that was brought before the Court was whether the trial court and the CA correctly dismissed the complaint for failure of the taxpayer to pay the deposit required by Section 267. The Court ruled that Section 267 does not apply because it appeared that there was no tax delinquency to begin with. Moreover, it would be oppressive to require the taxpayer to comply with Section 267, when the deposit would amount to 49 to 76 times the tax demanded by the local government unit. Thus:

Indeed, the ratio behind the deposit requirement as succinctly espoused in *NHA* is to ensure and guarantee the collection and satisfaction of the tax delinquency.

In the present case, the very issue raised in the Petition is the invalidity of the auction sales on the ground that the subject properties are not tax delinquent. On the assumption that the subject two lots are not tax delinquent, then there is no need for the deposit requirement under Section 267 because the realty taxes due on the subject two lots have already been paid and there are no tax delinquencies to be collected or satisfied.

The unfairness of the deposit requirement as it is applied in this case is clear.

....

⁹⁹ *National Housing Authority v. Iloilo City, et al.*, *supra* note 95, at 611.

¹⁰⁰ 815 Phil. 584 (2017).



For the first property, ... the required deposit is a staggering ₱11,042,436.80 or 49 times the tax delinquency, penalty and costs of sale.

For the second property, ... the required deposit under Section 267 is a more staggering amount of ₱16,962,437.60 or 76 times the tax delinquency, penalty and costs of sale.

....

As illustrated above, Section 267 can indeed provide a lucrative business – a disguised legislated “usury” law. The guaranteed return to the highest bidder for his [or her] investment is not small, by any measure. In real terms, Litonjua’s investment had earned more than ₱10.5 million in two and a half years.

The required deposit under **Section 267 becomes jurisdictional only if there is no dispute that the real property is tax delinquent**. In that instance, the deposit will serve its intended purpose. However, where the property sold at a public auction sale is not tax delinquent, then the envisioned purpose becomes irrelevant, if not oppressive.¹⁰¹ (Emphasis and italics supplied, underscoring omitted)

Proceeding from the foregoing, it is apparent that Section 267 should not be sweepingly applied to any suit that questions the validity of a tax delinquency sale. Rather, the same should be considered on a case-to-case basis.

After considering the foregoing authorities, the Court holds that Section 267 applies in the present case. None of the special circumstances present in the aforementioned cases are present here. Unlike in *City Government of Tagaytay* and *National Housing Authority*, there is no dispute that Razote and the subject property are subject to the real property tax imposed by Las Piñas City. In *Beaumont Holdings Corp.*, the Court refused to apply Section 267 because the real property tax appeared to have already been paid, and because applying the provision would be unconscionable given the large amounts of interest involved (*i.e.*, around ₱10,400,000.00). In contrast, Caballero does not claim that the real property taxes on the subject property were previously paid. Moreover, applying Section 267 here would result in an interest of only ₱10,042.39. This amount cannot be said to be oppressive in the same way as those involved in *Beaumont Holdings Corp.* All told, Section 267 applies in this case and, pursuant thereto, the deposit of ₱26,239.80 should be released to Laverne.

WHEREFORE, the Petition is **GRANTED**. The July 10, 2018 Decision and January 8, 2019 Resolution of the Court of Appeals in CA-G.R. CV No. 107400 are hereby **REVERSED** and **SET ASIDE**. The February 27, 2012 tax delinquency sale covering the property registered under TCT No. T-102490 is hereby declared **VOID**.

¹⁰¹ *Id.* at 597–599.

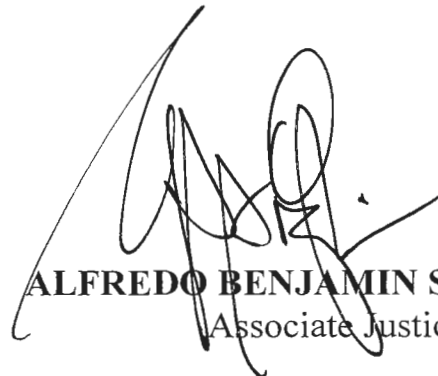


Accordingly, the following are also declared **VOID**: (i) the Notice of Levy with attached Warrant of Levy dated January 7, 2012; (ii) the Certificate of Sale in favor of respondent Laverne Realty & Development Corporation dated February 27, 2012; (iii) the Notice of Deed of Conveyance dated March 7, 2013; and (iv) the Deed of Conveyance dated January 16, 2014. The Registrar of Deeds of Las Piñas City is directed to **CANCEL** any annotation of the foregoing documents on TCT No. T-102490.

Pursuant to Section 267 of the Local Government Code, the Regional Trial Court of Las Piñas City, Branch 255, is directed to **RELEASE** to Laverne Realty & Development Corporation the amount of ₱26,239.80 previously deposited by Rosalia T. Caballero.

The foregoing is without prejudice to Las Piñas City's right to avail itself of all the remedies available to it for the collection of any unpaid real estate tax on the subject property which may have accrued during the pendency of this case.

SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



HENRI JEAN PAUL B. INTING
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

See Separate Opinion



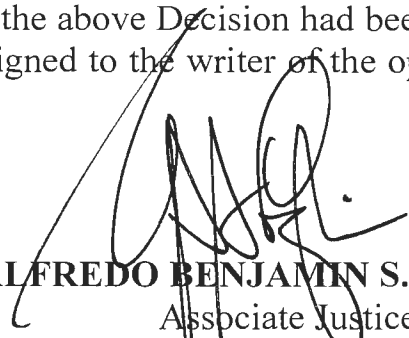
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice

THIRD DIVISION

G.R. No. 244017 – ROSALIA T. CABALLERO, Petitioner v. LAVERNE REALTY & DEVELOPMENT CORPORATION, VIVIAN P. RAZOTE, TREASURER OF LAS PIÑAS CITY AND REGISTRAR OF DEEDS OF LAS PIÑAS CITY, Respondent.

Promulgated:

August 30, 2023

~~M. DCB-H~~

x-----x

SEPARATE OPINION

DIMAAMPAO, J.:

“The people of a State, therefore, give to their Government a right of taxing themselves and their property, and as the exigencies of Government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator and on the influence of the constituent over their representative to guard them against its abuse.”¹

I render this opinion in light of the foregoing truism. It becomes ever imperative that the Court reaffirms that the power to tax, including all incidents pertinent thereto, resides **solely** with the Legislature as the collective representative of the people against whom such taxes are levied. Particularly in this instance, where the subject tax is one delegated to the local governments to promote their fiscal autonomy.

On the main, I concur with the disposition of this case. Undoubtedly, the delinquency sale should be voided for respondent Treasurer’s failure to strictly comply with the procedural requirements under Republic Act No. 7160,² or the Local Government Code of 1991. I recognize that the present wording of the statute, and prevailing jurisprudence supports the *ponencia*’s conclusion. Nevertheless, I would humbly suggest that perhaps there is a gap in the law, specifically as to Section 258, that ought to be referred to Congress for remedial legislation.

I expound.

Section 258 of the Local Government Code reads:

SECTION 258. Levy on Real Property.— After the expiration of the time required to pay the basic real property tax or any other tax levied under this Title, real property subject to such tax may be levied upon through the issuance of a warrant on or before, or simultaneously with, the institution of

¹ *McCulloch v. Maryland*, 17 U.S. 316, 428 (1819).

² AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991, approved on October 10, 1991.

the civil action for the collection of the delinquent tax. The provincial or city treasurer, or a treasurer of a municipality within the Metropolitan Manila Area, as the case may be, when issuing a warrant of levy shall prepare a duly authenticated certificate showing the name of the delinquent owner of the property or person having legal interest therein, the description of the property, the amount of the tax due and the interest thereon. The warrant shall operate with the force of a legal execution throughout the province, city or a municipality within the Metropolitan Manila Area. **The warrant shall be mailed to or served upon the delinquent owner of the real property or person having legal interest therein, or in case he is out of the country or cannot be located, the administrator or occupant of the property.** At the same time, written notice of the levy with the attached warrant shall be mailed to or served upon the assessor and the Registrar of Deeds of the province, city or municipality within the Metropolitan Manila Area where the property is located, who shall annotate the levy on the tax declaration and certificate of title of the property, respectively.

The levying officer shall submit a report on the levy to the sanggunian concerned within ten (10) days after receipt of the warrant by the owner of the property or person having legal interest therein. (Emphasis supplied)

The potential issue I am concerned with is how the Legislature actually intended the phrase: “[t]he warrant shall be mailed to or served upon the delinquent owner of the real property or person having legal interest therein, or in case he is out of the country or cannot be located, the administrator or occupant of the property.”

As pointed out by the *ponencia*, the Court has consistently interpreted the foregoing provision as requiring **actual notice** be given to the registered owner of the warrant of levy on the subject property. This doctrine was recognized in *Cruz v. City of Makati*,³ *Solco v. Megaworld Corp.*,⁴ *Salva v. Magpile*,⁵ *Corporate Strategies Development Corp. v. Agojo*,⁶ *Genato Investments, Inc. v. Barrientos*,⁷ and *Mercado v. Valley Mountain Mines Exploration, Inc.*,⁸ which were all decided after the enactment of the Local Government Code.

In *Cruz*, *Solco*, and *Corporate Strategies Development Corp.*, there was no proof at all that the local government units even attempted to give notice of the warrants to the delinquent taxpayers. Whereas in *Salva* and *Genato Investments, Inc.*, the treasurers therein, whether intentionally or unintentionally, sent the warrants to the wrong addresses. In *Mercado*, the doctrine that actual notice is due to the registered owner was reiterated but the

³ G.R. No. 210894, September 12, 2018.

⁴ G.R. No. 213669, March 5, 2018.

⁵ G.R. No. 220440, November 8, 2017.

⁶ G.R. No. 208740, 747 Phil. 607-626 (2014).

⁷ G.R. No. 207443, July 23, 2014.

⁸ G.R. Nos. 141019, 164281 & 185781, 677 Phil. 13-56 (2011).

Court held that therein petitioners were not entitled to said notice as they failed to prove that they were the registered owners of the property.

Evidently, none of the foregoing cases quite encapsulates the factual circumstances of the present case wherein the City Treasurer of Las Piñas City sent several demand letters, notices of delinquency, and the eventual warrant of levy to the registered owner's last known address by registered mail.⁹ Having failed to locate the registered owner, the Treasurer even attempted to notify the developer of the property.¹⁰ Despite the foregoing, the *ponencia* held that there was no compliance with Section 258 as there was no proof that the warrant of levy was “actually received by the delinquent owner, or the occupant, or administrator of the property.”¹¹

However, should the provision be read so strictly that no substantial compliance thereof is availing? Ineluctably, the word “actual notice” is not found in the text of the law itself. In fact, it merely states that the warrant must be **mailed to or served upon** the delinquent owner or person having legal interest therein. It also includes a secondary directive in case the owner is out of the country or cannot be found, which is to mail to or serve upon the administrator or occupant of the property the warrant of levy. Reading it plainly, it appears that the provision itself accepts notice of warrants being mailed, without necessarily ensuring receipt by the delinquent owner. Nevertheless, this has not been the Court's reading of the provision even in its precursor form as Section 78¹² of Act No. 82,¹³ or the Municipal Code, as amended by Act No. 1139.¹⁴ As extensively discussed by the *ponencia*, this is

⁹ Resolution, p. 10.

¹⁰ *Id.*

¹¹ *Id.*

¹² SECTION 78. In addition to the procedure prescribed in section seventy-five, the provincial treasurer or his deputy may, upon the warrant of the certified record required in section seventy-five, within twenty days after delinquency, advertise the real estate of the delinquent for sale, or so much thereof as may be necessary to satisfy all public taxes upon said property as above, and costs of sale, for a period of thirty days. The advertisement shall be by posting a notice at the main entrance of the municipal building and in a public and conspicuous place in the barrio in which the real estate lies, and by publication once a week for three weeks in a newspaper of general circulation published in said province, if any there be. The advertisement shall contain a statement of the amount of the taxes and penalties so due and the time and place of sale, the name of the taxpayer against whom the taxes are levied, and a short description of the land to be sold. At any time before the day fixed for the sale the taxpayer may discontinue all proceedings by paying the taxes, penalties, and interest to the provincial treasurer or his deputy. If he does not do so the sale shall proceed and shall be held either at the main entrance of the municipal building or on the premises to be sold, as the provincial treasurer or his deputy may determine. Within five days after the sale the provincial treasurer or his deputy shall make return of the proceedings and spread it on his records, which shall be attested by the municipal secretary. The purchaser at the sale shall receive a certificate from the provincial treasurer or his deputy, from his record, showing the proceedings of the sale, describing the property sold, stating the name of the purchaser and setting out the exact amount of all public taxes, penalties and interest.

¹³ A GENERAL ACT FOR THE ORGANIZATION OF MUNICIPAL GOVERNMENTS IN THE PHILIPPINE ISLANDS, approved on January 31, 1901.

¹⁴ AN ACT SO AMENDING SECTION SEVENTY-EIGHT OF ACT NUMBERED EIGHTY-TWO, ENTITLED, THE MUNICIPAL CODE, AS TO MAKE IT UNNECESSARY TO SEARCH FOR THE PERSONAL PROPERTY OF A DELINQUENT TAXPAYER BEFORE PROCEEDING AGAINST HIS REAL ESTATE FOR THE COLLECTION OF TAXES, approved on May 2, 1904.

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due to the nature of delinquent sales as being a derogation of landowner's property and due process rights, as well as a recognition that such proceedings are treated as *in personam* in this jurisdiction,¹⁵ as held in the early cases of *Valencia y Orus v. Jimenez y Mijares*,¹⁶ and *Government of the Philippine Islands v. Adriano*.¹⁷

I offer no serious dissent to those underlying principles. Indeed, the very fact that the Local Government Code included a secondary directive in case the registered owner is out of the country or cannot be located supports the plausible intention that the Legislature wanted actual notice to be received by delinquent taxpayers. But this is more logical reasoning and deduction, rather than established fact.

In the same vein, the Court's declaration in *Salva*,¹⁸ that "the delinquent taxpayer must be actually notified of such warrant **is implied from Section 258**, which explicitly directs the levying officer to 'submit a report on the levy to the sanggunian concerned within ten (10) days after receipt of the warrant by the owner of the property or person having legal interest therein,'"¹⁹ is merely a product of analysis. After all, the second paragraph requiring report "after receipt of the warrant," may also contemplate constructive receipt such as when the warrant is sent by registered mail, without necessarily ensuring actual receipt.

Put simply, the gap I foresee is when the owner cannot be located and there is no discernible occupant or administrator to the property, which may have been the situation in the present case.

I laud the *ponencia*'s suggestion that the local treasurers "may file a civil action for collection under Section 266 of the LGC and utilize the modes of service of summons provided under Sections 16 and 17, Rule 14 of the Amended Rules of Civil Procedure, together with the provisional remedy of preliminary attachment, as applicable", in instances where the taxpayer has already moved out of their registered address. This alternative is inspired and is a viable workaround should amendatory/clarificatory legislation not be forthcoming.²⁰

Still, it may not be necessary if the Legislature, in the first place, did not intend for Section 258 to operate so strictly as to foreclose registered mail at the last known address as sufficient notice, regardless of whether the

¹⁵ Resolution, p. 5.

¹⁶ G.R. No. 4406, October 23, 1908, 11 Phil. 492-503.

¹⁷ G.R. No. 15695, October 26, 1920, 41 Phil. 112-120.

¹⁸ Supra note 5.

¹⁹ Emphasis supplied.

²⁰ Resolution, p. 12.

taxpayer actually receives the same, when there is no apparent occupant or administrator to be given substitute notice.

In fact, this manner of implementing warrants of levy was validated by the Court during the effectivity of Presidential Decree No. 464,²¹ or the Real Property Tax Code.

The precursor of Section 258 of the Local Government Code is Section 73 of the Real Property Tax Code –

SECTION 73. Advertisement of Sale of Real Property at Public Auction. — After the expiration of the year for which the tax is due, the provincial or city treasurer shall advertise the sale at public auction of the entire delinquent real property, except real property mentioned in subsection (a) of Section forty hereof, to satisfy all the taxes and penalties due and the costs of sale. Such advertisement shall be made by posting a notice for three consecutive weeks at the main entrance of the provincial building and of all municipal buildings in the province, or at the main entrance of the city or municipal hall in the case of cities, and in a public and conspicuous place in barrio or district wherein the property is situated, in English, Spanish and the local dialect commonly used, and by announcement at least three market days at the market by crier, and, in the discretion of the provincial or city treasurer, by publication once a week for three consecutive weeks in a newspaper of general circulation published in the province or city.

The notice, publication, and announcement by crier shall state the amount of the taxes, penalties and costs of sale; the date, hour, and place of sale, the name of the taxpayer against whom the tax was assessed; and the kind or nature of property and, if land, its approximate areas, lot number, and location stating the street and block number, district or barrio, municipality and the province or city where the property to be sold is situated.

Copy of the notice shall forthwith be sent either by registered mail or by messenger, or through the barrio captain, to the delinquent taxpayer, at his address as shown in the tax rolls or property tax record cards of the municipality or city where the property is located, or at his residence, if known to said treasurer or barrio captain: Provided, however, That a return of the proof of service under oath shall be filed by the person making the service with the provincial or city treasurer concerned. (Emphasis supplied)

In the case of *Aquino v. Quezon City*,²² the Court held in no uncertain terms that, “[p]lainly, Section 73 gives the treasurer the option of where to send the notice of sale. In giving the treasurer the option, **nowhere in the wordings is there an indication of a requirement that notice must actually be received by the intended recipient.** Compliance by the treasurer is limited

²¹ ENACTING A REAL PROPERTY TAX CODE, enacted on May 20, 1974.

²² G.R. Nos. 137534 & 138624, 529 Phil. 486-502 (2006).

to strictly following the provisions of the statute: he may send it at the address of the delinquent taxpayer as shown in the tax rolls or tax records or to the residence if known by him or the barrio captain.”²³

It should be stressed that Section 73 of the Real Property Tax Code also included a return to be filed on the “proof of service,” similar to the directive under the second paragraph of Section 258 of the Local Government Code. Concededly, the key difference between Section 73 and Section 258 is that the former does not contain an additional directive to notify the occupant or administrator in the absence of the registered owner, unlike the latter. However, it does serve to accentuate the point that what constitutes sufficient notice largely resides in the letter of the law and the intent of Congress, as all incidents of taxation, even this procedural aspect, are legislative in nature.

All in all, my caution proceeds from the concern that by insisting on actual notice at all times, even when it may not be feasible or practicable, the Court may no longer be breathing life into the law and may be substituting the wisdom of the lawmakers with our own, especially when considered against one of the clear policies advanced by the Local Government Code, which is to give the local government units “the power to create and broaden their own sources of revenue”.²⁴

It is thus my humble suggestion that a copy of this well-written Decision, be furnished to both the House of Representatives and the Senate, for their determination whether remedial legislation is necessary as the Court did in *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*²⁵


JAPAR B. DIMAAMPAO
Associate Justice

²³ Id. Emphasis supplied.

²⁴ Section 3 (d) of the Local Government Code.

²⁵ G.R. No. 226592, July 27, 2021.