

### 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.”<sup>1</sup>

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,<sup>2</sup> 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

<sup>1</sup> *McCulloch v. Maryland*, 17 U.S. 316, 428 (1819).

<sup>2</sup> 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*,<sup>3</sup> *Solco v. Megaworld Corp.*,<sup>4</sup> *Salva v. Magpile*,<sup>5</sup> *Corporate Strategies Development Corp. v. Agojo*,<sup>6</sup> *Genato Investments, Inc. v. Barrientos*,<sup>7</sup> and *Mercado v. Valley Mountain Mines Exploration, Inc.*,<sup>8</sup> 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

<sup>3</sup> G.R. No. 210894, September 12, 2018.

<sup>4</sup> G.R. No. 213669, March 5, 2018.

<sup>5</sup> G.R. No. 220440, November 8, 2017.

<sup>6</sup> G.R. No. 208740, 747 Phil. 607-626 (2014).

<sup>7</sup> G.R. No. 207443, July 23, 2014.

<sup>8</sup> 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.<sup>9</sup> Having failed to locate the registered owner, the Treasurer even attempted to notify the developer of the property.<sup>10</sup> 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.”<sup>11</sup>

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 78<sup>12</sup> of Act No. 82,<sup>13</sup> or the Municipal Code, as amended by Act No. 1139.<sup>14</sup> As extensively discussed by the *ponencia*, this is

---

<sup>9</sup> Resolution, p. 10.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 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.

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

<sup>14</sup> 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.

9

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,<sup>15</sup> as held in the early cases of *Valencia y Orus v. Jimenez y Mijares*,<sup>16</sup> and *Government of the Philippine Islands v. Adriano*.<sup>17</sup>

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*,<sup>18</sup> 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,'"<sup>19</sup> 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.<sup>20</sup>

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

---

<sup>15</sup> Resolution, p. 5.

<sup>16</sup> G.R. No. 4406, October 23, 1908, 11 Phil. 492-503.

<sup>17</sup> G.R. No. 15695, October 26, 1920, 41 Phil. 112-120.

<sup>18</sup> Supra note 5.

<sup>19</sup> Emphasis supplied.

<sup>20</sup> 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,<sup>21</sup> 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*,<sup>22</sup> 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

<sup>21</sup> ENACTING A REAL PROPERTY TAX CODE, enacted on May 20, 1974.

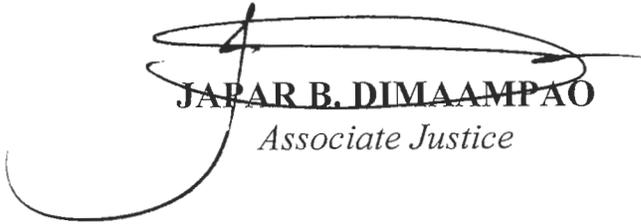
<sup>22</sup> G.R. Nos. 137534 & 138624, 529 Phil. 486-502 (2006).

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.”<sup>23</sup>

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”.<sup>24</sup>

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.*<sup>25</sup>

  
**JAPAR B. DIMAAMPAO**  
*Associate Justice*

---

<sup>23</sup> Id. Emphasis supplied.

<sup>24</sup> Section 3 (d) of the Local Government Code.

<sup>25</sup> G.R. No. 226592, July 27, 2021.