

## SECOND DIVISION

[ G.R. No. 180200, November 25, 2013 ]

**DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC.,  
PETITIONER, VS. JESSIE E. CANTOS, RESPONDENT.**

### DECISION

**DEL CASTILLO, J.:**

“It is of the utmost importance x x x that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public.”<sup>[1]</sup>

This Petition for Review on *Certiorari*<sup>[2]</sup> assails the July 24, 2007 Decision<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 29009 which affirmed the July 7, 2003 Decision<sup>[4]</sup> of the Regional Trial Court (RTC), Branch XI, Balayan, Batangas in Civil Case No. 4051 dismissing petitioner Digital Telecommunications, Philippines, Inc.’s (petitioner) Petition for Indirect Contempt/Prohibition against respondent Jessie E. Cantos (respondent) as Provincial Treasurer of Batangas. Also assailed is the October 11, 2007 CA Resolution<sup>[5]</sup> denying petitioner’s Motion for Reconsideration.

#### ***Factual Antecedents***

By virtue of Republic Act (RA) No. 7678,<sup>[6]</sup> petitioner was granted a legislative franchise to install, operate and maintain telecommunications systems throughout the Philippines on February 17, 1994.

Upon seeking the renewal of its Mayor’s Permit to operate and provide telecommunications service in Balayan, Batangas, petitioner was informed by then Mayor Benjamin E. Martinez, Jr. that its business operation would be restrained should it fail to pay the assessed real property taxes on or before October 5, 1998. And as petitioner failed to pay, the Chief of the Permit and License Division of Balayan, Batangas, Mr. Francisco P. Martinez, issued on October 6, 1998 a Cease and Desist Order enjoining petitioner from further operating its business.

Petitioner thus promptly filed a case for Annulment of the Cease and Desist Order before the RTC of Balayan, Batangas against the Mayor and the Chief of the Permit and License Division. The case was docketed as Civil Case No. 3514 and raffled to Branch IX of said court.

In a Decision<sup>[7]</sup> dated July 15, 1999, Branch IX ruled in favor of petitioner and declared that the issuance of the Cease and Desist Order was without legal basis. It held that the enjoinder of petitioner’s business operation is not one of the remedies available to enforce collection of real property taxes under existing laws.

The RTC also ruled that petitioner is only liable to pay real property taxes on properties not used in connection with the operation of its franchise. In arriving at such conclusion, the RTC relied on Section 5 of RA 7678, which provides that:

*Sec. 5. Tax Provisions.* - **The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.** In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; *provided*, that the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Boldfacing and underscoring supplied)

and construed the phrase "exclusive of this franchise" in the first sentence as limiting petitioner's exemption from paying real property tax only to properties used in furtherance of its legislative franchise to provide telecommunications services.

The dispositive portion of Branch IX's Decision reads:

WHEREFORE, the Cease and Desist Order dated October 6, 1998 is hereby declared null and void for lack of legal basis. The Court further declares that real properties of plaintiff [Digital] Telecommunications Philippines, Inc. (DIGITEL) which are used in the operation of its franchise are exempt from the payment of real property taxes, but those not used in connection thereto are subject to aforesaid taxes.

So ordered.<sup>[8]</sup>

The then Mayor attempted to set aside the above Decision by filing a Petition for *Certiorari* before the CA. But his efforts were in vain as the CA outrightly dismissed the Petition.<sup>[9]</sup> The dismissal became final and executory as shown in an Entry of Judgment dated February 2, 2000.<sup>[10]</sup>

In June 2002, respondent, in his capacity as Provincial Treasurer of the Province of Batangas, issued seven Warrants of Levy<sup>[11]</sup> certifying that several real properties of petitioner situated in the Municipalities of Ibaan, San Juan, Sto. Tomas, Cuenca, Nasugbu, Balayan, and Lemery, all in the Province of Batangas, are delinquent in the

payment of real property taxes. Hence, the properties would be advertised and sold at public auction within 30 days from petitioner's receipt of the warrants.

On July 1, 2002, petitioner wrote respondent to request the lifting of the Warrants of Levy and to refrain from proceeding with the public sale of its property located in Balayan, Batangas.<sup>[12]</sup> It invoked the final Decision in Civil Case No. 3514 decreeing petitioner's exemption from the payment of real property tax which it claimed to be binding upon respondent. But since the warrants remained unlifted, petitioner filed with the RTC a Petition for Indirect Contempt and Prohibition with prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order (TRO)<sup>[13]</sup> on July 5, 2002. The case was docketed as Civil Case No. 4051.

### ***Proceedings before the Regional Trial Court***

For his defense, respondent averred that he cannot be held liable for contempt or for having disobeyed the Decision in Civil Case No. 3514 since the same relates to an action *in personam* and, therefore, binds only the parties impleaded therein and their successors in interest.<sup>[14]</sup> He also asserted that petitioner's claim for tax exemption could not be collaterally presented and resolved in a contempt proceeding and that petitioner should have resorted instead to the remedies provided under the Local Government Code (LGC) in order to prevent the public sale of its delinquent properties.

On July 25, 2002, the RTC granted<sup>[15]</sup> petitioner's prayer for TRO. Respondent, however, manifested that when said TRO was served upon him, he had already effected the public auction of petitioner's real properties.<sup>[16]</sup> Thus, petitioner filed a Very Urgent Manifestation and Motion<sup>[17]</sup> to recall and nullify the auction sale and to order respondent and his counsel to explain why they should not be held in contempt for their blatant defiance of the TRO. It also thereafter asserted that respondent is bound by the final Decision rendered in Civil Case No. 3514 under the principle of *res judicata*.<sup>[18]</sup> It maintained that respondent has a shared interest with the defendants in Civil Case No. 3514 in that they are all interested in the levy, imposition and collection of real property tax and that the Province of Batangas, including respondent, is estopped from denying privity because of the Province's active participation in both proceedings by virtue of the representation of the same counsel. Petitioner likewise contended that the declaration in Civil Case No. 3514 that it is exempt from real property tax for properties used in the operation of its franchise is considered *in rem* and binds the property itself.

On August 14, 2002, the RTC issued an Order<sup>[19]</sup> denying petitioner's prayer for the issuance of a Writ of Preliminary Injunction. It held that the issuance of the writ prayed for had already become moot and academic since the public auction sale sought to be enjoined was already consummated. It further noted that the writ as a provisional remedy is unavailing to petitioner's case as it should have availed of the remedy provided under Section 260 of the LGC in order to stop the scheduled auction sale, that is, to pay the delinquent tax and interest due thereon under protest.

Petitioner filed a Joint Motion for Reconsideration and Motion to Declare Null and Void the Sale Conducted on July 25, 2002<sup>[20]</sup> which was, however, denied in an

Order<sup>[21]</sup> dated September 3, 2002. When petitioner elevated the denial to the CA via a Petition for *Certiorari*,<sup>[22]</sup> the same was dismissed in a Resolution<sup>[23]</sup> dated November 18, 2002.

Meanwhile, acting on petitioner's Motion for Judgment on the Pleadings,<sup>[24]</sup> the RTC rendered its Decision<sup>[25]</sup> dated July 7, 2003 dismissing petitioner's Petition for Indirect Contempt and Prohibition against respondent (Civil Case No. 4051). The RTC ruled that since respondent was not a party in Civil Case No. 3514, he had no duty to render obedience to the Decision therein. Furthermore, there being no identity of causes of action between Civil Case No. 3514 and Civil Case No. 4051, the former being an action *in personam*, the Decision in said case binds only the parties impleaded therein and their successors in interest, which do not include the respondent. The said court refused to rule on petitioner's claim for exemption from payment of realty taxes ratiocinating that any case pertaining thereto should be filed directly with the local government unit concerned.

The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the instant petition is dismissed, with costs against the petitioner.

IT IS SO ORDERED.<sup>[26]</sup>

As petitioner's Motion for Reconsideration<sup>[27]</sup> was denied by the RTC in a Resolution<sup>[28]</sup> dated September 17, 2004, it appealed to the CA.<sup>[29]</sup>

### ***Proceedings before the Court of Appeals***

In a Decision<sup>[30]</sup> dated July 24, 2007, the CA found no merit in the appeal. First, it noted that the dismissal of the case for indirect contempt by the RTC amounted to an acquittal from which an appeal is not allowed. In any case, respondent's act of issuing the warrants of levy did not constitute indirect contempt in Civil Case No. 3514 since the final Decision issued in said case was not directed against him but to the Mayor and the Chief of the Permit and License Division of Balayan, Batangas. The CA also concurred with the trial court's ruling that petitioner's claim for tax exemption could not be presented and resolved in an indirect contempt case and opined that the correct remedy is for petitioner to file an independent action for annulment of sale against the Province of Batangas and there invoke its exemption from real property taxes.

The dispositive portion of the Decision reads:

**WHEREFORE**, premises considered, the assailed Decision dated July 7, 2003 and the Resolution dated September 17, 2004, rendered by the Regional Trial Court, Branch XI, Balayan, Batangas in Civil Case No. 4051 are **AFFIRMED**.

**SO ORDERED.**<sup>[31]</sup>

Petitioner's Motion for Reconsideration<sup>[32]</sup> was denied by the CA in a Resolution<sup>[33]</sup> dated October 11, 2007.

### **Issues**

Petitioner, thence, filed this Petition on the following grounds:

(a) The Honorable Court of Appeals erred in ruling that Civil Case No. 4051 is simply a case for indirect contempt so much [so] that its dismissal by the lower court would amount to acquittal from which an appeal would not lie;

(b) The Honorable Court of Appeals erred in ruling that respondent, not being a party to Civil Case No. 3514, cannot be held in contempt for refusing to abide by the decision there[in];

(c) The Honorable Court of Appeals erred in ruling that the claim of Digital for real property tax exemption cannot be presented and resolved in the indirect contempt case; and

(d) The Honorable Court of Appeals erred in ruling that the "proper remedy is for Digital to file an independent action for annulment of sale against the Province of Batangas, invoking its exemption from payment of real property taxes."<sup>[34]</sup>

Petitioner takes exception to the CA's ruling that an appeal will not lie since the RTC Decision essentially amounts to respondent's acquittal. It posits that the CA can still take cognizance of the appeal since the same is also a Petition for Prohibition. It is well within the authority of the said court to rule on the claim for tax exemption like in the case of *The City Government of Quezon City v. Bayan Telecommunications, Inc.*<sup>[35]</sup> wherein the claim for realty tax exemption of another telecommunications company, Bayantel, was resolved through a Petition for Prohibition. Petitioner likewise insists that respondent cannot defy the final ruling in Civil Case No. 3514 and also the pronouncement of this Court in *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*<sup>[36]</sup> that petitioner is exempted from paying real property tax. Also, in consonance with said rulings, the sale by public auction of petitioner's properties is void *ab initio*, the same having been made under a mistaken premise that petitioner's properties are not exempt from realty taxes. Thus, an independent action to annul the sale of the properties, contrary to the CA's intimation, is not the proper remedy. Petitioner therefore prays for the nullification and setting aside of the auction sale conducted by respondent against its real properties.

### **Our Ruling**

The Petition has no merit.

*Respondent is not guilty of indirect contempt.*