



Republic of the Philippines
 Department of Finance
CENTRAL BOARD OF ASSESSMENT APPEALS
 7th Floor, EDPC Bldg., BSP Complex
 Roxas Boulevard, Manila

ISABEL B. SANTOS,
 Petitioner-Appellant,
CBAA CASE NO. L-122
 -versus-(LBAA CASE NO. 2011-001)

**LOCAL BOARD OF ASSESSMENT
 APPEALS OF THE CITY OF
 VALENZUELA,**

Appellee,

-and-

**GUALBERTO B. BERNAS IV, in his
 official capacity as City
 Treasurer of Valenzuela,**

Respondent-Appellee.

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DECISION

On January 27, 2012, this Board received copies of the Notice of Appeal and the Appeal (Petition) from Petitioner-Appellant Isabel B. Santos. The Petition appears to be dated "30th January 2012" and copies thereof were personally delivered to the offices of the City Treasurer, City Assessor, and the Local Board of Assessment Appeals, all of Valenzuela City, on "Jan. 27, 2012", the same day copies of the Notice of Appeal and the Petition were filed, also personally, with this Office.

The records show that on November 29, 2011, the Local Board of Assessment Appeals of the City of Valenzuela rendered a

Decision in LBAA Case No. 2011-001, the dispositive portion of which reads as follows:

"PREMISES CONSIDERED, finding Petitioner's/Appellant's petition unmeritorious, the Board hereby order, that:

"1. Tax Declaration Nos. C-017-014417 and C-017-014418 are affirmed.

"2. Petitioner is hereby ordered to pay the computed real estate taxes without interest and penalty.

"3. No pronouncement as to cost, damages and penalties.

"SO ORDERED."

By the instant Appeal, Petitioner-Appellant "seeks the reversal of the Decision of the Honorable Local Board on the following grounds and in support thereof avers:-That

"(1) THE COLLECTION OF BACK TAXES IS IRREGULAR AND ILLEGAL, THERE BEING AN ABSENCE OF NOTICE AND VALID NOTICE OF ASSESSMENT;

"(2) ASSUMING BUT ONLY FOR THE SAKE OF ARGUMENT THAT A NOTICE OR A VALID NOTICE WAS MADE PRIOR TO RE-CLASSIFICATION, ANY RE-ASSESSMENT AS A RESULT THEREOF, SHOULD OPERATE PROSPECTIVELY, NOT RETROACTIVELY;

"(3) THE PETITIONER-APPELLANT IS NOT LIABLE FOR BACK TAXES, SEC. 222 OF THE LOCAL GOVERNMENT CODE OF 1991, NOT BEING APPLICABLE TO THE INSTANT CASE;

"(4) THE SUBJECT REAL PROPERTIES CANNOT BE RECLASSIFIED FROM RESIDENTIAL TO COMMERCIAL MERELY BY ITS INCIDENTAL COMMERCIAL USE."

As narrated by Petitioner-Appellant, the "Antecedent Facts" are as follows:

"3.0 Petitioner-appellant is the co-owner of two (2) parcels of land located at Caruhatan, Valenzuela City covered by TCT Nos. 118898 and 118903, copies of which are hereto attached and made integral part (*sic*) hereof as Annexes "**B**" and "**C**". Said properties were likewise declared for real (*sic*) tax purposes as evidenced by Tax Declaration Nos. C-017-03635 and C-017-03634, copies of which are hereto attached and made integral part (*sic*) hereof as Annexes "**D**" and "**E**".

"3.1 On 21 May 2009, Petitioner-Appellant received letters dated 20 May 2009 captioned as Notice of Realty Tax Deficiency

from the Office of the City Treasurer of Valenzuela City, copies of which are hereto attached and made integral part (*sic*) hereof as Annexes **"F" and "F-1"**, informing her of alleged tax deficiencies allegedly incurred from year 1999-2009 by reason of reclassification from residential to commercial made in March 2009.

"3.2 Petitioner-appellant paid the same, under protest, and by instalment. The first instalment was on 30 June 2009 for the parcels of land covered by TCT Nos. 118898 and 118903, as evidenced by official receipt nos. VC-091900 and VC-091899, respectively, copies of which are hereto attached and made integral part (*sic*) hereof as Annexes **"G" and "H"**. On 31 July 2009, payment under protest was again had, as evidenced by official receipt nos. VC-093638 and VC-093639, copies of which are hereto attached and made integral part (*sic*) hereof as **Annexes "G-1" and "H-1"**. She made another payment on 1 September 2009, as evidenced by official receipt nos. VC-095921 and VC-095922, copies of which are hereto attached and made integral part (*sic*) hereof as **Annexes "G-2" and "H-2"**.

"3.3. In a letter dated 31 July 2009, a copy of which is hereto attached and made integral part hereof as **Annex "I"**, Petitioner-appellant wrote Honorable Gualberto B. Bernas IV, OIC-City Treasurer, Valenzuela City informing the latter that she was exercising her right to protest the re-classification and the re-assessment, and that she was seeking enlightenment on the following: (1) the basis of the re-classification; (2) the basis of the tax deficiency; and (3) the propriety and legality of the back assessment. Replying thereto, the official concerned cited in his Letter dated 3 August 2009, a copy of which is hereto attached and made integral part hereof as **Annex "J"**, the City Assessor's function "to appraise, assess and re-assess all the real properties in the local Government Unit primarily for taxation purposes", but nevertheless referred the Petitioner-appellant to the City Assessor for proper disposal of her queries.

"3.4 After she paid another instalment on 1 September 2009, one of the staff members in the Office of the City Treasurer told her that there was a mistake in the assessment of back taxes, reasoning that it was brought about by a glitch in the computer system, and consequently, there was, in fact, no tax liability. She was likewise made to believe that the amount already paid for the alleged tax deficiencies will be credited for future tax liability. On the strength of such representation, she set aside her written protest. This explains the apparent vacuum in the instalment payments from December 2009 to March 2010.

"3.5 To the Petitioner-appellant's surprise, she received a Final Notice of Realty Tax Deficiency dated 09 June 2010, in the amount of Php 269,869.02 spanning from year 1999 to 2008 for the parcel of land covered by TCT No. 118898 and in the amount of Php 158,758.18 spanning from year 1999 to 2008 for the parcel of land covered by TCT No. 118903, copies of which are hereto attached and made integral part (*sic*) hereof as **Annexes "K" and "K-1"**. A Notice of Realty Tax Deficiency dated 1 June 2010 was again received by Petitioner-appellant, copy of which is hereto attached and made integral part hereof as **Annex "L"**.

"3.6 Without any hesitation, she resumed her instalment payments, albeit under protest, as evidenced by official receipt nos. VC-143288 and VC-143287, VC-194045 and VC-194046, copies of which are hereto attached and made integral part (*sic*) hereof as **Annexes "G-3", "H-3", "G-4" and "H-4"**, respectively. The Petitioner-appellant, aside from the payments which were stamped "paid under protest", had also made payments without bearing said stamp on 29 May 2009, as evidenced by official receipt nos. VC-090931 and VC-090932, copies of which are hereto attached and made integral part (*sic*) hereof as **Annexes "G-5" and "H-5"**.

"3.7 On 2 August 2010, Petitioner-appellant filed a letter-appeal before Respondent Bermas, a copy of which is hereto attached and made integral part hereof as **Annex "M"**. Her appeal was not acted upon even after the lapse of the 60-day period provided by the Local Government Code. Hence, she elevated the matter before the Honorable Local Board via a Petition dated 30 November 2010, a copy of which is hereto attached and made integral part hereof as **Annex "N"**.

"3.8 On 29 November 2011, Honorable Local Board rendered a decision against herein Petitioner-appellant. Hence, this appeal.

"ISSUES

"I.

"WHETHER OR NOT THERE IS A VALID NOTICE OF ASSESSMENT.

"II.

"WHETHER OR NOT THE ASSESSMENT THE ASSESSMENT (*sic*) SHOULD BE APPLIED PROSPECTIVELY.

"III.

"WHETHER OR NOT THE ASSESSMENT OF BACK TAXES IS PROPER AND LEGAL.

"IV.

"WHETHER OR NOT THE SUBJECT PARCELS OF LAND MAY BE RECLASSIFIED FROM RESIDENTIAL TO COMMERCIAL OR WHETHER THE RECLASSIFICATION EXTENDS ONLY TO THE PORTION USED FOR COMMERCIAL PURPOSE."

After her Motion for Extension of Time to File Answer was approved by this Board in an Order dated July 19, 2012, the In-Charge of the City Treasurer's Office of Valenzuela City, **Rosa Irma Alcoran**, filed her Answer by registered mail which reached this Board on August 6, 2012.

During the hearing of this case before this Board on April 16, 2013, Counsel for Respondent-Appellee, Atty. Aileen Suanding, pointed out that the appeal should have included as principal respondent the City Assessor of Valenzuela and intimated that she would file a Motion to Dismiss within ten (10) days from then.

Atty. Christopher M. Mortel, Counsel for Petitioner-Appellant, asked that he be allowed to file his Comment/Opposition to that motion, within fifteen (15) days from receipt thereof, which request was granted by this Board in open session.

On April 25, 2013, this Board received from the In-Charge of Office (ICO) of the Respondent City Treasurer's Office, **ADELIA E. SORIANO**, by counsel, a Motion to Dismiss, citing the following grounds, to wit:

"I.

"THE PETITION STATES NO CAUSE OF ACTION AGAINST THE CITY TREASURER WHOSE MINISTERIAL DUTY IS TO COLLECT TAXES ASSESSED BY THE CITY ASSESSOR.

"II.

"A CONDITION PRECEDENT IS QUESTIONING THE CORRECTNESS OF THE SUBJECT ASSESSMENT HAS NOT BEEN COMPLIED WITH BY PETITIONER-APPELLANT.

"III.

"THE VALENZUELA CITY GOVERNMENT IS NOT ESTOPPED FROM FILING A MOTION TO DISMISS."

On May 17, 2013, this Board received the Opposition and/or Comment which was filed by Petitioner-Appellant through registered mail on May 2, 2013. In said Opposition and/or Comment,

Petitioner-Appellant "re-pleads her averments in her Petition and further avers: - THAT

"ISSUES

"I.

"Whether Respondent City Treasurer is barred from filing the motion to dismiss.

"II.

"Whether the Honorable Office should entertain the motion to dismiss filed by Respondent.

"III.

"Whether the Petition should be dismissed on the ground of failure to state cause of action and failure to comply with condition precedent.

"GROUNDS

"I.

"The Respondent is barred from filing the motion to dismiss considering that:

"A. The instant case is already on appeal;

"B. Respondent had already filed its answer to the Petition;

"II.

"The Honorable Office should no longer entertain the motion to dismiss filed by Respondent considering that the issues it raised have already been waived.

"III.

"The Petition should not be dismissed considering that:

"A. The City Assessor of Valenzuela voluntarily appeared before the Honorable LBAA, was duly furnished with a copy of the Appeal, and, in fact had appeared before the Honorable CBAA;

"B. Failure to implead a proper party is not a ground for dismissal; and

"C. Petitioner had complied with the condition precedent."

Petitioner-Appellant discussed the above "issues" and, in support of her "grounds", cited Rule IV, Section 4, of the CBAA

Rules, and Rule 42, Section 4, Rule 43, Section 8, Rule 16, Section 1, Rule 9, Section 1, Rule 14, Section 20, and Rule 3, Section 11, all of the Rules of Court.

The issues¹ raised by Petitioner-Appellant in the instant Appeal are as follows:

"I. WHETHER OR NOT THERE IS A VALID NOTICE OF ASSESSMENT.

"II. WHETHER OR NOT THE ASSESSMENT THE ASSESSMENT (*sic*) SHOULD BE APPLIED PROSPECTIVELY.

"III. WHETHER OR NOT THE ASSESSMENT OF BACK TAXES IS PROPER AND LEGAL.

"IV. WHETHER OR NOT THE SUBJECT PARCELS OF LAND MAY BE RECLASSIFIED FROM RESIDENTIAL TO COMMERCIAL OR WHETHER THE RECLASSIFICATION EXTENDS ONLY TO THE PORTION USED FOR COMMERCIAL PURPOSE."

The antecedents leading to the Appellant's filing of the Petition before the LBAA were as follows:

1. On 21 May 2009, Petitioner-Appellant received two (2) letters both dated 20 May 2009 and captioned as Notice of Realty Tax Deficiency² from the Office of the City Treasurer of Valenzuela City informing Petitioner-Appellant of tax deficiencies allegedly incurred from year 1999-2009 by reason of reclassification from residential to commercial made in March 2009.
2. In a letter dated 31 July 2009³, Petitioner-appellant informed the OIC-City Treasurer, Valenzuela City that Petitioner-Appellant was exercising her right to protest the re-classification and the re-assessment.
3. In his letter dated 3 August 2009⁴, the City Treasurer informed Petitioner-Appellant that "the City Assessor has the function to appraise, assess and re-assess all the real properties in the Local Government Unit for taxation purposes", but nevertheless referred the Petitioner-appellant to the City Assessor for proper disposal of her queries.
4. On 2 August 2010, Petitioner-appellant filed a letter-appeal (protest)⁵ before Respondent Bermas. It appears that a copy of

¹ Page 7, Instant Petition, p. 10, Records

² Annexes "F" and "F-1", Instant Petition, pp. 46-47, Records.

³ Annex "I", Instant Petition, p. 60, Records.

⁴ Annex "J", Instant Petition, p. 61, Records.

⁵ Annex "M", Instant Petition, pp. 65-70, Records.

said letter was received by the City Treasurer's Office on August 2, 2010 but was never acted upon by the Respondent.

5. On November 30, 2010, Petitioner-Appellant elevated the matter before the Honorable Local Board via a Petition dated 30 November 2010.⁶

The records show that the Office of the City Assessor of Valenzuela City sent by registered mail on January 27, 2009 a letter⁷ dated January 26, 2009 addressed to "BASILIO F. SANTOS, ET. AL." In that letter, the Assessor's Office informed the addressee that it was discovered that the actual use of the subject properties was "commercial" but erroneously declared as "residential" and invited the declarant to coordinate with the Assessor's Office within five (5) days from receipt of said letter or the Assessor's Office shall proceed with the re-classification and re-assessment.

Copies of Tax Declaration (TD) Nos. C-017-14417⁸ (for lot under TCT 118898) and C-017-14418⁹ (for lot under TCT 118903) show that said TDs were issued on March 03, 2009 and that taxes thereon "begins with the year 1999." The records do not disclose, any information, however, as to whether or not the taxpayer received from the assessor copies of the written notices of reassessment contemplated under Section 223 of the LGC.

The main issue of Petitioner-Appellant's letter-protest¹⁰ filed with the respondent city treasurer was the reassessment of the subject properties by reclassifying them from residential to commercial and

⁶ Annex "N", Instant Petition, pp. 71-82, Records.

⁷ Annex "12" to Respondent's Joint Comment/Opposition, p. 38, LBAA Records.

⁸ Annex "13" to Respondent's Joint Comment/Opposition, p. 58, LBAA Records.

⁹ Annex "14" to Respondent's Joint Comment/Opposition, p. 59, LBAA Records.

¹⁰ Annex "M", Instant Petition, pp. 65-70, Records.

subjecting them to back taxes pursuant to the provisions of Section 222 of the LGC.

The term "Assessment" is defined as "the act or process of determining the value of property, or portion thereof subject to tax, including the discovery, listing, classification, and appraisal of properties."¹¹ The act or process of assessment is the duty and function of the assessor.

The treasurer, on the other hand, is responsible for the collection of the real property tax and the enforcement of the remedies provided for in Title Two, Book II of the LGC.¹² To arrive at the realty tax due on an assessment of real property, the treasurer merely applies the tax rates (approved by the sanggunian concerned) to the assessed value of the property as determined by the assessor. The treasurer takes notice of the real property assessment only after the assessor furnishes the treasurer with copies of the tax declarations and the assessment roll.¹³

The subject of Petitioner-Appellant's Appeal/Petition with the LBAA¹⁴ was the Treasurer's inaction on Appellant's "letter-protest"¹⁵ dated 31 July 2009. The said appeal was based on the provisions of Section 252 of the LGC, which provides:

"SEC. 252. *Payment Under Protest.* – (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer in the

¹¹ Section 199(f), *ibid.*

¹² Section 247, R.A. 7160

¹³ Section 248, *ibid.*

¹⁴ LBAA Records, p. 1.

¹⁵ Annex "M" Instant Petition, pp. 65-70, Records.

case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

“x xx

“(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code.” (Emphasis supplied.)

Section 252, above-quoted, does not exactly lay out the “grounds” or “reasons” for which any protest may be lodged against the treasurer. It would, however, be quite improper to blame or condemn the treasurer for the actions or inactions of the assessor, which actions or inactions the treasurer has nothing to do with.

We firmly believe that the provisions of Section 252 of the Code would apply only (a) in cases where the taxpayer believes that the **assessment made by the assessor is satisfactory or correct**, but that the **treasurer’s computation of the tax due thereon is erroneous**; and (b) in cases where an assessment (made by the assessor) **had been previously declared as null and void in a final judgment by a competent authority**, but that the treasurer still insists in collecting realty taxes thereon.

As stated hereinabove, the proximate cause of Petitioner’s Appeal is the action of the Assessor of Valenzuela City in re-assessing the subject properties and re-classifying the same properties from “residential” to “commercial”. The realty taxes, as computed by the respondent treasurer, are merely the consequence or result of the assessor’s action. Clearly, therefore, the proper respondent in this appeal should have been the Assessor – not the Treasurer – of

Valenzuela City, pursuant to the provisions of Section 226 of the Code, thus:

"SEC. 226. *Local Board of Assessment Appeals.* – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal."

Petitioner-Appellant cited the provisions of Rule 3, Section 11 of the Rules of Court, where it is provided that misjoinder or non-joinder of parties is not a ground for dismissal of an action since parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just.

In his comments on the same Section 11 of Rule 3, Professor Edgardo L. Paras, said:¹⁶

"The amendment of the complaint may be done, even in the *appellate* court, to cure this defect of parties (*Quizon v. Salud*, 12 Phil. 109; *Diaz v. De la Rama*, 73 Phil. 104; *Montes v. Castro*, 105 Phil. 1302). But even this amendment is only PERMISSIVE, and if the court discovers that the **only** defendant is an **improper party**, the court may dismiss the case as to him. (See *Lorca v. Dineros*, L-10919, Feb 28, 1958)."(Emphasis supplied.)

In the said case of *Loreto Lorca vs. Jose S. Dineros*,¹⁷the Supreme Court ruled:

"The complaint should not have been dismissed, appellant argues, since the court could have included the Sheriff as party defendant, in line with Rule 3, section 11 of the Rules of Court. However, what should have been done was not "inclusion" as plaintiff asked, nor "exclusion" under said section 11. It was "substitution" of the deputy by the Sheriff. Anyway, the word "may" in said sec. 11 implies discretion of the court; and we are shown no reasons indicating abuse thereof.

¹⁶ 1 Edgardo L. Paras, *Rules of Court Annotated*, p. 112.

¹⁷G.R. L-10919, Feb. 28, 1958.

"This is not the first time an action is dismissed for the reason that the agent — instead of his principal — was made the party defendant. (See *Macias & Co. vs. Warner Barnes*, 43 Phil., 155; *Banque Generate Belgevs. Walter Bull & Co.*, 84 Phil., 164, 47 Off. Gaz., 138.)" (Emphasis supplied).

Thus, the "inclusion" or "exclusion" of proper parties to a case would apply only if the original party is itself/himself a proper party in the first place. Any decision favourable to the Petitioner-Appellant would not be enforceable against the respondent City Treasurer for the simple reason that the said treasurer could never revise or undo the reassessment in question. So, even without considering the Motion to Dismiss filed by the respondent City Treasurer, this Board would still be constrained to dismiss the instant appeal for being directed against an improper party.

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED.

SO ORDERED.

Manila, Philippines, July 29, 2013.

SIGNED
OFELIA A. MARQUEZ
Chairman

SIGNED
ROBERTO D. GEOTINA
Member

SIGNED
CAMILO L. MONTENEGRO
Member