REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

UNIVERSITY OF THE PHILIPPINES,
Petitioner,

-versus-

C.T.A. CASE No. 936

THE TREASURER-ASSESSOR, THE BOARD OF TAX APPEALS OF BASILAN CITY AND BASILAN CITY,
Respondents.

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D E C I S I O N

This is an appeal to declare null and void the realty tax assessments on the U.P. Basilan Land Grant; to recover the amount of ₱18,588.26 paid under protest by the petitioner as real estate tax; and to declare said land grant exempt from the payment of real estate tax.

The undisputed facts, as borne out by the pleadings of the parties and the evidence adduced during the trial, are:

The petitioner is a non-stock and non-profit public institution duly established under Act No. 1870, as amended, to provide advanced instruction in literature, philosophy, sciences and arts, and to give professional and technical training. It is operated and maintained mainly on funds provided for by law.

The Philippine Legislature passed Act No. 3608, ceding to the petitioner such portion or portions of the public domain not exceeding ten thousand hectares, to be held and administered as a permanent endowment for the additional support and maintenance of said institution. The control and administration of the land are vested in the Board of Regents of the University of the Philippines, subject to the limitations that the same "shall not empower said Board to sell or alienate all or any portions of these lands without the previous consent of the Philippine Legislature;" that the income, receipts, and profits derived from its administration shall form part of the general fund; and that such portion or portions of the land which are not developed, cultivated, leased, or otherwise disposed of, after the lapse of ten years from the date in which such land had been deeded, conveyed, or transferred, shall be opened for settlement and disposition in accordance with the Public Land Act.

Pursuant to the provisions of said Act No. 3608, petitioner, in 1940, took possession of about 5,000 hectares of public land located in Balactasan, Basilan City, Philippines, now known as the "U.P. Basilan Land Grant," cultivating major portions thereof into plantations dedicated to the raising of agricultural crops, such as coffee, rubber, cacao, etc. None of the income realized therefrom inured to the benefit of any private individual or person, the same having been wholly and exclusively devoted to the purposes for which the University was created.

From 1940 to 1955, the property in question was never placed in the tax list of real properties for assessment purposes, neither was it subjected to the payment of real estate tax.

In a letter, dated May 31, 1955, the respondent Assessor, for the first time, asked the petitioner to justify its claim of tax exemption on the U.P. Land Grant. Thereafter, the petitioner received a copy of Land Tax Declaration No. 7245, with a notice that the tax due thereon in the amount of ₱7,936.70 is based on the assessed value of ₱793,670.00 and that the tax commenced with the year 1956. Subsequent demands for the payment of the real estate tax in question followed. These demands were resisted. When drastic measures were threatened to enforce collection, the petitioner paid under protest the respective amounts of ₱7,936.70, ₱2,066.40, and ₱8,585.16 on July 10, 1956 and June 29, 1957.

In the meantime, the petitioner, in letters dated March 8, 1956 and January 2, 1957, respectively, requested the Secretary of Justice for opinion as to whether or not the U.P. Basilan Land Grant is exempt from the payment of real estate tax. In reply thereto, the Secretary of Justice rendered Opinion No. 252, dated December 18, 1957, holding that the property in question is tax exempt.

On the strength of this opinion, the petitioner not only refused to make further payments, but also requested the cancellation of the assessments and the refund of the amounts paid, which request was denied. And, on June 24, 1960, the City Treasurer of Basilan, demanded from petitioner the payment of the sum of ₱56,191.80 representing alleged realty taxes, plus penalties, on the land grant.

On July 14, 1960, petitioner appealed the decision of the City Assessor of Basilan to the Board of Tax Appeals (Board of Assessment Appeals), which, in Resolutions Nos. "1" and "2," all dated August 1, 1960, dismissed the appeal. Hence, the instant appeal.

The main issue raised is whether or not the petitioner is exempt from the payment of real estate tax; and if in the affirmative, whether or not this Court may order the refund of the amounts paid as realty tax and delinquency penalties thereon.

The claim for realty tax exemption is based on the provisions of Section 3, (a) of the Assessment Law (Com. Act No. 470), the pertinent portion of which states:

> "Sec. 3. Property exempt from tax.- The exemptions shall be as follows:
>
> (a) Property owned by the Republic of the Philippines, any

province, city, municipality,
or municipal district."

As above-stated, the U.P. Land Grant was received by the petitioner in pursuance of Act No. 3608. It is under the control and administration of the Board of Regents, subject to the limitation that "said control and administration shall not empower said Board to sell or alienate all or any portions of these lands without the previous consent of the Philippine Legislature." It is "to be held and administered as permanent endowment for additional support and maintenance of said institution." The limitation on the use of the land grant and the absence of the power of alienation on the part of the petitioner are highly probative of state ownership of the land grant in question.

1 Moreover, the establishment of the land grant as a permanent endowment for the support and maintenance of the petitioner, a public institution performing the governmental function of providing advanced instruction in literature, philosophy, the sciences and arts, and giving professional and technical training, has impressed upon the grant the mark of state ownership. And the doctrine of state ownership over properties belonging to or owned by public institutions of learning is recognized and upheld in American legal jurisprudence.

~~Thus~~ in the case of Walsh v. University of Texas, 169 S.W. 2d. 993, the Court of Civil Appeals of Texas held:

> "The University and the Board of Regents are institutions of the State, and neither has any existence independent of the State. The petition makes perfectly clear that there is no effort to sue the named defendant as individual. Property belonging to the University of Texas is the property of the State. York v. Alley, Tex. Cir. App. 25 S.W. 2d. 193, writ refused. x x x." (Italics supplied)

In People v. Brooks, 194 N.W. 602, the Supreme Court of Michigan said:

> "x x x While it is true that 'the Regents of the University of Michigan,' more commonly called the 'board of regents,' is a separate entity, independent of the state as to the management and control of the University and its property, it is nevertheless a department of the state government, created by the Constitution to perform state functions, and the real estate which it holds or acquires is public property belonging to the state, held by the corporation in trust for the purposes of the University, which are public purposes.
> See Auditor General vs. Regents, 83 Mich. 468, 47 N.W. 440, 10 LRA 376." (Italics supplied)

The Court of Civil Appeals of Texas opined:

> "But in either event it belongs to the state of Texas whose title is not that of a mere trustee. The state owns the land just as fully as before it was dedicated to public educational

> purposes. Theison v. Robison, 117 Tex. 489, 8 S.W. (2d(646; Smisson vs. State, 71 Tex. 222, 9 S.W. 112; Greene vs. Robison, 109 Tex. 367, 210 S.W. 498" (York vs. Alley 25 S.W. 2d 193) (Italics supplied)

Similarly, the Supreme Court of Mississippi said in Coleman, et al. v. Whipple, et al., 2 So. 2d. 566:

> "The Act of February 28, 1844, by which the University of Mississippi was created, designated certain individuals as trustees and constituted them and their successors as a body politic to be known as 'The University of Mississippi.' Such trustees were not such as are defined by the law of trusts. They were the managing board or head of the university, and then and now constitute the University of Mississippi, created by the State through its legislature which, under its act of creation (Sec. 5) retains the right to repeal the entire act; its property is owned by the State and itself. State vs. Vicksburg & N.R.R. Co., 51 Miss. 361, 365; Oklahoma, etc., College v. Willis, 6 Okl. 593, 52 P. 921, 40 L.R.A. 677; McDonald v. University of Kentucky, 225 Ky. 205, 7 S.W. 2d 1046; University v. Waltshy, 43 N.C. 257; Trustees of University of Alabama v. Winston, 5 Stew. & P., Als., 17; Dart v. Houston, 22 Ga. 506." (Italics supplied)

Finally, in People v. Barrett (46 N.E. 2d 951), the Supreme Court of Illinois held:

> "x x x Though the state has created a body corporate to control the University of Illinois, yet the state retains the power of selecting trustees, and may through other agents than the trustees, sell and dispose of the property of the insti-

> tution or change its charter as the Legislature may direct. <u>The property of the University of Illinois, though held by the board of trustees, belongs to the state</u>. People v. Board of Trustees, 283 Ill. 494, 119 N.R. 595; Spalding v. People, 172 Ill. 49, 49 N.R. 903; Board of Trustees v. Champaign County, 76 Ill. 184; Thomas v. (Board of Trustees of Illinois) Industrial University, 71 Ill. 310." (Italics supplied)

The conclusion, therefore, is that lands belonging to state institutions of learning are owned by the state.

Being state-owned, the U.P. Land Grant falls within the category of "property owned by the Republic of the Philippines" and is immuned from taxation under the provisions of Section 3(a) of the Assessment Law, for the reason that the words "Republic of the Philippines" are expressive only of the kind of agency (government) through which the mandates of the (Philippine) state are expressed and enforced.

2 // Even on the theory that the petitioner is a part of the government, we believe that the petitioner is immuned from taxation. As opined by the Secretary of Justice with whom we concur, and we quote:

> x x x x
> "On previous occasions this Office expressed the view that as 'the University of the Philippines was established to provide advanced

instruction in literature, philosophy, the sciences and arts and to give professional and technical training (sec. 2, Act No. 1870) for the purpose of effectuating a function imposed upon the Government by the Constitution,' it is a part of the Government. (Ops. Sec. of Justice, No. 297, s. 1956; see also opinion dated November 26, 1946.)

"It is a fundamental principle that the Government is exempt from the burden of its own tax. Thus, this office has held that the defunct Rural Progress Administration, a government agency which discharged functions governmental in character, was exempt from real property taxes in regard to the Buenavista Estate which it had purchased from the San Juan de Dios Hospital and Ernest Burt, and that the question whether title thereto had already been transferred to the RPA at the time was immaterial. (Ops. Sec. of Justice, No. 193 s. 1934) Similarly, as the University of the Philippines is a part of the Government, it is exempt from all taxes that otherwise would have to be paid by the grantee with respect to the land grant in question, regardless of whether or not title thereto has already been transferred to the University.

"It is also relevant to note that all moneys appropriated and donated for the operation and maintenance of the University of the Philippines are public funds. (Ops., Sec. of Justice, No. 14, s. 1954) And by Act No. 3608, above cited, 'all incomes, receipts and profits derived from the administration of these land grants shall form part of the general fund of the University of the Philippines and be subject to appropriation by the Board of Regents of said institution and devoted only for the purposes for

185

> which said University was established' (Sec. 4). Besides, by requiring the University of the Philippines to pay taxes on said land grant the Government would be merely taking money from one pocket and putting it into another; "the process adds nothing to the revenue.' (See Ops. Sec. of Justice, No. 411, s. 1955.)" (Ops. Sec. of Justice, No. 252, s. 1957)

(3) Furthermore, aside from the effect of the rule of immunity of state-owned properties from taxation, the tax-exemption of the U.P. Land Grant is implied from Section 4 of Act No. 3608 which enjoins that "All incomes, receipts, and profits derived from the administration of these land grants shall form part of the general fund of the University of the Philippines and be subject to appropriation by the Board of Regents of said institution and devoted only for the purposes for which said University was established." In other words, the statute, in bestowing the grant under review, ordains that incomes, receipts and profits therefrom be used only in the performance of the governmental function of the petitioner of providing advanced instruction in literature, philosophy, the sciences and arts, and giving professional and technical training. It forbids the diversion of any and/or portions of these incomes, receipts and profits to pur-

poses, like the payment of taxes, other than that for which the petitioner was established.

But, it is urged on behalf of the respondents that the U.P. Land Grant is subject to tax pursuant to Section 1 of Republic Act No. 104, which provides:

> "Section 1. All corporations, agencies or instrumentalities owned or controlled by the Government shall pay duties, taxes, fees and other charges upon their transaction, business, industry, sale or income as are imposed by law upon individuals, associations or corporations engaged in any taxable business, industry, or activity, except on goods or commodities imported or purchased and sold or distributed for relief purposes as may be determined by the President of the Philippines."

The contention is without merit. The taxing provisions of the afore-quoted statute apply to government-owned or controlled corporations, agencies or instrumentalities which are engaged mainly in profit making ventures. In enacting the law, Congress intended to place these government-owned or controlled corporations, agencies or instrumentalities on equal footing with individuals, associations or corporations engaged in like ventures. Therefore, Section 1 of Republic Act No. 104 does not apply to those performing governmental functions, like the petitioner University.

Furthermore, the respondents contend that the instant petition for review cannot be instituted as the petitioner has not paid real estate taxes due as of June 24, 1960 on the U.P. Land Grant in the amount of ₱47,302.70. In support of this stand, they cite Section 54 of the Assessment Law, which reads:

> "Sec. 54. Restriction upon power of court to impeach tax. No court shall entertain any suit assailing the validity of a tax assessed under this Act until the taxpayer shall have paid, under protest, the taxes assessed against him, nor shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of the taxes, or of a failure to perform their duties within the time herein specified for their performance, unless such irregularities, informalities, or failure shall have impaired the substantial rights of the taxpayer; nor shall any court declare any tax assessed under the provisions of this Act invalid except upon condition that the taxpayer shall pay the just amount of his tax, as determined by the court in the pending proceedings."

The above contention is equally not well taken. Section 7 of Republic Act 1125 authorizes the Court of Tax Appeals to exercise exclusive appellate jurisdiction to review by appeal "decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property x x x." This statute is subsequent to the Assessment Law, on the provisions of Section 54 of which respondents' objection to the institution of this appeal is founded. It does not impose any condition on the assumption by this Court of jurisdiction to review decisions of the Board of Assessment Appeals. Before its passage, the impeachment of a realty tax before a court is conditioned upon prior payment under protest of the tax. However, after its passage, the taxpayer was accorded the remedy of questioning the assessment in the Court of Tax Appeals before paying the tax. On this point, we believe that Section 7 of Republic Act No. 1125 has modified Section 54 of the Assessment Law.

Having ruled on the merits of the case favorably to the petitioner University of the Philippines, it follows that this Court may order the refund of the sums of ₱7,936.70, ₱2,066.40 and ₱8,585.16 representing real estate taxes on the U.P. Land Grant illegally collected on July 10, 1956 and June 29, 1957, respectively (Manila Electric Co. vs. Board of Assessment Appeals, et al., C.T.A. No. 358, December 29, 1958; Phil. Long Distance Telephone Co. vs. Board of Assessment Appeals of Bacolod City, et al., C.T.A. No. 300, June 29, 1957), it appearing that the instant petition for review was filed on August 25, 1960 or within six (6) years from the dates of collections (Floro vs. Phil. National Bank, et al., L-15206, August 30, 1962; Nazario & Sons vs. Central Bank, G.R. No. L-15229, April 29, 1961).

WHEREFORE, the decision of the respondent Board of Assessment Appeals of Basilan City is hereby reversed. The U. P. Basilan Land Grant is declared exempt from the payment of realty tax; the real estate tax assessments covering the same are cancelled; and the respondents Basilan City and City Treasurer are ordered to refund to the petitioner University of the Philippines the amounts of ₱7,936.70, ₱2,066.40 and ₱8,585.16, or a total of ₱18,588.26, representing realty taxes illegally collected, without special pronouncement as to costs.

SO ORDERED.

Manila, September 27, 1962.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge Roman M. Umali concurs and dissents in a separate opinion.

200

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CONCURRING AND DISSENTING OPINION

I concur in the view that petitioner is not subject to the real property tax on the parcel of land granted to it under Act No. 3608. However, I dissent with respect to that portion of the majority opinion ordering the refund to petitioner by the City Treasurer of Basilan and Basilan City of the sum of ₱18,588.26, representing real property tax paid by petitioner on said land. My opinion on this question is expressed in my dissenting opinions in Philippine Long Distance Telephone Co. v. Board of Tax Appeals of Bacolod City, C.T.A. No. 300, June 29, 1957 and Manila Electric Company v. Board of Assessment Appeals (Quezon City), C.T.A. No. 358, Dec. 29, 1958, from which I quote:

> "This is an appeal from the decision of the Board of Tax Appeals (now Board of Assessment Appeals, Sec. 21, Rep. Act No. 1125) of the City of Bacolod which sustained the decision of the City Assessor holding that the properties used in the telephone system of petitioner in Bacolod are subject to the real property tax. The decision of the City Assessor (whose duties are performed by the City Treasurer under Sec. 27(e), Com. Act No. 326) is contained in his letter of September 9, 1952 'requiring the petitioner to file for assessment and real estate tax purposes a

21

declaration based on the book value of petitioner's telephone wires, poles and other apparatus which are used in the operation of its telephone system in the said city.' (Par. 3, Petition for Review.) It was this decision of the City Assessor (City Treasurer) that was elevated to the Board of Assessment Appeals of Bacolod City and which was sustained by said Board. (Exhs. L & M-1.) Therefore, in appealing to this Court from the decision of the Board, petitioner may raise only the issue of the legality of 'requiring the petitioner to file for assessment and real estate tax purposes a declaration based on the book value of petitioner's telephone system in the said city.' This Court has no jurisdiction to consider on appeal any issue involved in any matter not raised before and passed upon by said Board.

"Even granting that the question of the legality of the collection from petitioner of the real property tax in question was raised in the appeal filed with said Board, it is believed that the Board has no power to pass upon that question. Neither the charter of Bacolod nor the Assessment Law (Com. Act No. 470) empowers the Board to pass upon the legality of the collection of real property taxes by the City Treasurer. The sole remedy of the taxpayer in such case is to institute an action for recovery in the proper Court of First Instance after complying with the requisites provided by law."

There is no disagreement among the members of this Court as to its jurisdiction in matters involving refunds of real property taxes paid. It has been held that this Court has no jurisdiction over such cases as the duty of collection of real property taxes and the power to refund the same is conferred upon provincial or city treasurers. Since such function of provincial and city treasurers are not reviewable by the Provincial or City Boards of Assessment Appeals, this Court has no power to pass upon refunds of such taxes because its jurisdiction is limited to a review upon appeal of decisions of said boards. To quote from our decision in Jose B. Gamboa v. Jaime G. Parroco, C.T.A. No. 704, July 27, 1960:

> "There appears to be some misconception as to the nature and scope of the duties and functions of provincial and city Boards of Assessment Appeals created under Commonwealth Act No. 470 and the various charters of chartered cities. Under the Assessment Law (C. A. No. 470), the sole function of provincial assessors relates to the listing and valuation of real property in their respective provinces,[1] and the only function of the provincial Board of Assessment Appeals created in each province is to review, on appeal or <u>motu proprio</u>, any action taken by the provincial assessor in regard to valuation of real property for purposes of taxation.[2] After the assessed value of a piece of real property has been determined, the same is certified to the provincial treasurer for collection of the annual real property tax[3]. The same is true in cases involving assessment of real property in chartered cities.[4]
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> "The law does not confer upon the Board of Assessment Appeals, in cases arising under the Assessment Law, the power to review any action of the provincial treasurer in matters affecting collection of real property taxes. Since the legality of the action taken by the provincial treasurer, or of his deputies (the municipal treasurers), in the performance of his duty to collect real property taxes is not subject to review by the Board of Assessment Appeals, it follows that this Court has no jurisdiction over

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1 See Secs. 7-16, Com. Act No. 470
2 See Secs. 17-19, id.
3 See Secs. 18, 21-41, id.
4 See, for instance, Secs. 53-77, R.A. No. 409 (Charter of City of Manila); Secs. 29-57, R. A. No. 327, Carter of Dumaguete City.

203

> such cases. They remain cognizable by the courts of general jurisdiction as before the enactment of Republic Act No. 1125. x x x." (See also Enrique Medina v. City Treasurer of Dumaguete, C.T.A. No. 845, Aug. 27, 1960.)

The fact that in this case the offices of City Treasurer and City Assessor of Basilan City are occupied by the same person should not affect the result. The functions of the City Treasurer, as collecting officer under the Assessment Law, are distinct and different from the functions of City Assessor, as assessment officer, so that any action of the City Treasurer as regards collection of real property taxes can not be reviewed by the City Board of Assessment Appeals even if such officer acts and signs as "City Treasurer-Assessor". (See Sections 17-19, Com. Act No. 470, otherwise known as the Assessment Law which is made applicable to the City of Basilan by section 24 of Republic Act No. 288.)

That the City Treasurer of Basilan and the City itself are made respondents in this case is of no legal consequence as the question relates to jurisdiction over the subject matter.

IN VIEW OF THE FOREGOING, I vote to deny petitioner's claim for refund.

ROMAN M. UMALI
Associate Judge

V04