REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MUNICIPAL BOARD, in Representation of the City of Cebu,
Petitioner,

versus

C. T. A. CASE NO. 851

BOARD OF ASSESSMENT APPEALS, and Agustin Jereza, for and in behalf of the University of Southern Philippines Foundation,
Respondents.

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D E C I S I O N

This is an appeal from the decision of respondent Board of Assessment Appeals of the City of Cebu, dated May 30, 1960, declaring six (6) parcels of land leased to the University of Southern Philippines Foundation exempt from realty tax.

The facts of the case are stated in our decision dated July 20, 1961, to wit:

> On February 11, 1960, Agustin Jereza, for and in behalf of the University of Southern Philippines Foundation, applied to the City Assessor of Cebu City for exemption from payment of realty taxes of the following parcels of land situated in Cebu City, said parcels of land being used exclusively for educational purposes:

Lot No.	Tax Declaration No.
495-A & 495-B	73244
339	66203
340	41158
317	21754
313	13261

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493	65827
460-A	108973
460-B	108972
342	95266
341	95265

(B.A.A. rec. p. 26.)

The City Assessor granted the application for exemption, except as to lots numbered 340, 317, 313, 460-B, 342 and 341.

Agustin Jereza appealed to the Board of Assessment Appeals of Cebu City the decision of the City Assessor with respect only to that portion denying exemption to lots numbered 340, 317, 313, 460-B, 342 and 341 (B.A.A. rec. pp. 1-4). In a decision dated May 30, 1960, the Board of Assessment Appeals reversed the decision of the City Assessor and declared lots numbered 313, 460-B, 340, 342 and 341 exempt from taxation (B.A.A. rec. pp. 44-50). However, for reasons not appearing on the face of the decision, no declaration or pronouncement was made as to lot No. 317.

Feeling itself aggrieved by the decision of the Board of Assessment Appeals, the Municipal Board of the City of Cebu, in representation of the same city, filed a petition for review before this Court on June 30, 1960.

The parties submitted the case for decision on a stipulation of facts, without presentation of further evidence. The stipulation of facts reads:

> "1. That Lots Nos. 340, 317, 313, 460-B, 341 and 342 are used exclusively for educational purposes by the University of Southern Philippines Foundation and not by the owners thereof;
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> "2. That Lot No. 340 (Tax Declaration No. 82444), with an area of 189 square meters, assessed at ₱4,730.00, owned by Agustin Jereza is leased to the University of Southern Philippines Foundation for monthly rental of

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₱50.00; that Lot No. 313 (Tax Declaration No. 106576), with an area of 377 square meters, assessed at ₱15,080, owned by Agustin Jereza, is leased to the Foundation for ₱40.00 per month; that Lot No. 341 (Tax Declaration No. 95265), with an area of 282 square meters, assessed at ₱7,050 and Lot No. 342 (Tax Declaration No. 95264), with an area of 309 square meters, assessed at ₱7,730, both owned by the heirs of Filomena Duterte, are both leased to the Foundation for ₱85.00 per month; and Lot No. 460-B (Tax Declaration No. 108972), with an area of 350 square meters, assessed at ₱12,250 and owned by Soledad D. Vda. de Sanson, is leased to the Foundation for the amount of ₱50.00 per month;

"3. That the realty taxes due on the lots above-mentioned have been paid by the above-mentioned owners up to the year 1959;

"4. That only the lots herein above-mentioned are the subject of this appeal;

"5. That Lots Nos. 343, 495 A & B, 339 and 493 have been exempted by the City Assessor from the payment of realty taxes for the period beginning 1960, except the following:

'(a) Lot No. 343 was exempted since 1948.

'(b) Lot No. 460-A was exempted in 1952, being a part of the Colon Street widening;

"6. That Lot No. 749 in the vicinity of the lots in question (See Sketch marked Exhibit B) originally belonging to Filemon Sotto and containing an area of 214 square meters was sold to Arsenio V. Madarang at ₱45.00 per square meter or the amount of ₱9,630.00 as per Deed of Absolute Sale dated April 27, 1959, certified true copy of which Deed of Sale is hereto attached and marked as Annex 'A' in this stipulation of facts;

"7. That Lot No. 390-B situated at the corner of Mabini and Colon Streets in the vicinity of the lots in question is presently leased by the owners to the Standard Vacuum Oil Company at ₱0.23 per square meter per month;

"8. That the respondent Agustin Jereza is the President of the University of Southern Philippines Foundation;

"9. That the University of Southern Philippines Foundation is a non-stock, non-profit corporation, as shown by a Certificate of Incorporation No. 15418, issued by the Securities and Exchange Commission on May 28, 1959;

"10. That the heirs of Filomena Duterte, owner of Lots Nos. 341 and 342, are Beatriz de Jereza and Soledad D. Vda. de Sanson;

"11. That Lots Nos. 495-A and B (Tax Declaration No. 106577), assessed at ₱108,800, with an area of 2,500 square meters; Lot No. 493 (Tax Declaration No. 106579), with an area of 627 square meters, assessed at ₱25,080, and Lot No. 339 (Tax Declaration No. 106578), with an area of 930 square meters, assessed at ₱37,200, all owned by Agustin Jereza, are leased to the University of Southern Philippines Foundation for nominal rents ranging from ₱1.00 to ₱5.00 per month;

"12. That some of the incorporators of the said University of Southern Philippines Foundation are Agustin Jereza, Beatriz de Jereza and Soledad D. Sanson.

x x x x"

(CTA rec. pp. 72-74.)
(See pp. 111-114, C.T.A. rec.)

Our aforesaid decision dismissed petitioner's appeal on the ground that it had no personality to appeal to this Court. Petitioner elevated our decision to the Supreme Court which on December 26, 1964, in G. R. No. L-18946, set aside our decision and remanded to us the case for further proceedings (pp. 124-128, CTA rec.).

During the hearing of the case on September 12, 1966, the parties submitted the case on the basis of their stipulation of facts (p. 136, CTA rec.).

The principal issues involved in this case are:

1. Whether or not the Board of Assessment Appeals of the City of Cebu has the power to declare real properties exempt from the payment of realty tax;

2. Whether or not the University of Southern Philippines Foundation can ask an exemption from real property tax of properties owned by private individuals, but used by the said institution exclusively for educational purposes; and

3. Whether or not lots numbered 340, 317, 313, 460-B, 342 and 341, which are leased for consideration by their owners to the University of Southern Philip-

pines Foundation and used by the latter exclusively for educational purposes are exempt from the payment of realty tax.

As regards the first issue, this Court, in a similar case and involving the same respondent Board of Assessment Appeals of the City of Cebu, held:

> Respondents first contend that under the Charter of the City of Cebu (Commonwealth Act No. 58), the Board of Assessment (Tax) Appeals has no power to exempt real properties from taxation. Under Section 50 of said Charter the City Assessor appraises all real estate for taxes purposes and prepares a list of real estate so valued which is exempt from taxation and separate list of the taxable real estate. The taxpayer aggrieved by the decision of the City Assessor may appeal the same to the Board of Assessment Appeals (Section 58). Under Section 61, the Board of Assessment Appeals is clothed with the "authority to cause to be amended the listing and valuation of the property in respect to which any appeal has been perfected by order signed by the Board or a majority thereof. x x x" Clearly, this authority involves two separate and distinct functions. The first function relates to the listing of the real properties. The second relates to the valuation thereof. The listing of properties consists of the enumeration of properties which are subject to real estate tax and properties which are exempt therefrom as prepared under Section 50. Under the authority, as afore-cited, the Board of Assessment (Tax) Appeals may cause the amendment of the list of properties by striking out from the list of properties subject to realty taxes a piece of real property and transferring the same to a list of tax-exempt properties or *vice versa*. And when it does, the Board, in effect, exercises the power to exempt real properties from the burden of realty taxes, which power is incidental, if not a necessary consequence, to the exercise by the Board of the authority to cause the amendment of the list of properties. (Southwestern Colleges, Inc. v. The City Assessor of the City of Cebu, et al., Resolution, CTA Case No. 295, April 23, 1957.)

Petitioner questions the personality of respondent University of Southern Philippines Foundation (University for short) to ask for the exemption of the lots in question from realty tax on the ground that it is not the owner, but a mere lessee of said real properties. In short, it is argued that the University is not the real party in interest to apply for the exemption.

We are of the opinion that respondent University has capacity to apply for exemption of the lots in question from realty tax. It is a cardinal rule that action must be prosecuted not only by the real party in interest, but in the name of the real party in interest, <u>and not in the name of a representative, unless this is expressly authorized by the rules or by the law</u>. (See Sec. 2, Rule 3, Rules of Court; Moran's Comments on the Rules of Court, Vol. I, p. 117, 1963 ed.) Under Section 58 of the Charter of the City of Cebu (Com. Act No. 58), now Section 59 of the Revised Charter (Rep. Act No. 3857), the Municipal Board, or any owner of real estate <u>or his authorized agent may appeal to the Board of Assessment Appeals from the decision of the City Assessor</u>. The facts and circumstances of this case show that the University had been impliedly authorized by the owners of the lots to apply for their exemption. The owners of the lots are Agustin Jereza, Mrs. Soledad D. Sanson and the heirs of Filomena Duterte. Agustin Jereza is the president of the University and one of its stockholders. The heirs of Filomena Duterte are also stockholders of the University. Although there is no showing that the owners expressly authorized the University to apply for exemption of the lots, it is very obvious that it has been impliedly authorized to apply for their exemption, because, aside from the fact that the University is the lessee, the owners of the lots are themselves stockholders of the University. Moreover, it is now too late for petitioner to question the capacity of respondent University when it could have done so before the City Assessor, and later in the Board of Assessment Appeals. It has been ruled that where the complaint failed to state a cause of action for lack of sufficient interest on the part of plaintiff and the same was not raised at all in the trial court but only on oral argument in the Court of Appeals, it must be considered waived (Reyes v. Court of Appeals, L-5618, July 31, 1954).

The last issue to be resolved by us is whether or not the lots in question are exempt from realty tax. Petitioner contends that the lots are not entitled to exemption under the Constitution because they are not devoted by their owners to educational purposes but for profit. The constitutional and statutory provisions material to this issue are:

> "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, improvements used exclusively for religious, charitable or

> educational purposes shall be exempt from taxation." (Art. VI, Sec. 22, Par. 3, Constitution of the Philippines.)
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> "Sec. 51. <u>Property exempt from realty tax</u>. - (a) Lands and buildings owned by the United States of America, the Government of the Philippine Islands, or the City of Cebu, and burying grounds, churches and their adjacent parsonages, and convents and lands or buildings used exclusively for religious, charitable, scientific, or educational purposes, and not for profit; but such exemption shall not extend to lands and buildings held for investments, though the income therefrom be devoted to religious, charitable, scientific or educational purposes." (Com. Act No. 58, Sec. 51, Charter of Cebu City.)

It is to be noted that the Assessment Law is not applicable to the City of Cebu (Sec. 2, Com. Act No. 470).

It is true that the University is the one using the lots for educational purposes and not the owners thereof. But our Constitution does not require that the user must at the same time be the owner in order to exempt the land from taxation. It is enough that the land is used exclusively for any of the exempt purposes even by persons not their owners, as in this case. This Court in resolving a similar issue held:

> The Constitution is quite clear and precise that "all lands, buildings, and improvements used <u>exclusively</u> for religious, charitable, scientific or <u>educational purposes</u> shall be exempt from taxation". From the context of the provision, we note that the sole determinative factor for exemption from realty taxes is the "use" to which the property is devoted.

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> "If the Constitution . . . provides that property 'used' for certain purposes shall be exempted, it is the use and not the ownership which determines the right to the exemption, and the owner of the property may claim the exemption, although the use is by another." (61 C.J. 401 citing: Anniston City Land Co. vs. State, 48 So. 659, 160 Ala. 253: Scott vs. Society of Russian Israelites, 81 N.W. 624, 59 Neb. 571.)

This view appears to have been adopted by our Supreme Court in the cases of Apostolic Prefect of Mountain Province vs. City Treasurer of Baguio (71 Phil. 547) and Bishop of Nueva Segovia vs. Provincial Board of Ilocos Norte (51 Phil. 352). And where "use" is the test, the ownership is immaterial. The fact that the property is not owned by the educational institution does not remove it from the influence of the exemption as long as the property is used exclusively for educational purposes.

> "Under a constitutional provision for exemption of real property used exclusively for schools, and statutory provisions for exemption of real and personal property owned and used by the person to whom assessed exclusively for schools, use for schools is sufficient to exempt real property irrespective of ownership, since use, not ownership is the determining factor. Accordingly the exemption has been allowed as to land used exclusively for school purposes even though it is leased at a profitable rent to the school district by the owner." (84 C.J.S. p. 575.)

> "If the exemption depends on the use made of the property, rather than the ownership, the title to the property is immaterial, i.e., the title need not be

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> in the user claiming exemption. In such case, it is the use, and not the ownership which determines the right to the exemption. It follows that the owner may claim the exemption although the use is by another." (II Cooley, The Law of Taxation, 1924 ed., p. 1425.)
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> (Southern Colleges, Inc. vs. City Assessor, et al., CTA Case No. 295, January 22, 1958.)

The fact that the owners of the lots derive profits by way of rentals from the University is immaterial. All that the Constitution requires is that the property be used exclusively for religious, charitable or educational purposes to be entitled to exemption regardless of whether or not profit is derived from its use. Furthermore, the additional condition "and not for profit" found in Section 51 of Commonwealth Act No. 58 cannot prevail over what is provided in the Constitution (Southwestern Colleges v. The City Assessor, supra).

Respondent University appealed that portion of the decision of the City Assessor denying exemption to six (6) lots numbered 340, 317, 313, 460-B, 342 and 341. The Board of Assessment Appeals reversed the decision of the City Assessor and declared five (5) lots numbered 340, 313, 460-B, 342 and 341 exempt from taxation. The decision did not make any pronouncement as to lot No. 317. The reason for the exemption of the 5 lots applies to lot No. 317, and we are at a loss why the dispositive portion of the decision did not include lot No. 317. We consider this omission as mere oversight. Besides, petitioner in its memorandum considered that the decision of the Board of Assessment Appeals included lot No. 317 among the exempted lots (p. 77, C.T.A. rec.).

WHEREFORE, the decision appealed from is hereby affirmed. Lots numbered 340, 317, 313, 460-B, 342 and 341 covered by Tax Declaration Nos. 41158, 21754, 13261, 108972, 95266 and 95265, respectively, of the City of Cebu, are hereby declared exempt from realty tax beginning the year 1960. Without pronouncement as to costs.

SO ORDERED.

Quezon City, January 23, 1967.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

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