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SECOND DIVISION

[G.R. No. L-39086. June 15, 1988]

ABRA VALLEY COLLEGE, INC. represented by PEDRO V. BORGONIA, *petitioner, vs.* **HON. JUAN P. AQUINO, Judge, Court of First Instance, Abra; ARMIN M. CARIAGA, Provincial Treasurer, Abra; GASPAR V. BOSQUE, Municipal Treasurer, Bangued, Abra; HEIRS OF PATERNO MILLARE,** *respondents.*

SYLLABUS

1. **TAXATION; REAL PROPERTY TAX; EXEMPTION; MEANING OF "EXCLUSIVELY USED FOR EDUCATIONAL PURPOSES."—** It must be stressed however, that while this Court allows a more liberal and non-restrictive interpretation of the phrase "exclusively used for educational purposes" as provided for in Article VI, Section 22, paragraph 3 of the 1935 Philippine Constitution, reasonable emphasis has always been made that exemption extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purposes. Otherwise stated, the use of the school building or lot for commercial purposes is neither contemplated by law, nor by jurisprudence. Thus, while the use of the second floor of the main building in the case at bar for residential purposes of the Director and his family, may find justification under the concept of incidental use, which is complimentary to the main or primary purpose — educational, the lease of the first floor thereof to the Northern Marketing Corporation cannot by any stretch of the imagination be considered incidental to the purpose of education.

2. **ID.; ID.; IF A PORTION OF THE SCHOOL BUILDING IS BEING USED FOR COMMERCIAL PURPOSES, SAID PORTION SHOULD BE SUBJECT TO REAL PROPERTY TAX.—** Under the 1935 Constitution, the trial court correctly arrived at the conclusion that the school building as well as the lot where it is built, should be taxed, not because the second floor of the same is being used by the Director and his family for residential purposes, but because the first floor thereof is being used for commercial purposes. However, since only a

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portion is used for purposes of commerce, it is only fair that half of the assessed tax be returned to the school involved.

3. **REMEDIAL LAW;CIVIL PROCEDURE; APPEAL; ISSUES NOT RAISED IN THE LOWER COURT CANNOT BE TAKEN UP FOR THE FIRST TIME ON APPEAL; EXCEPTION THEREOF APPLIED IN CASE AT BAR.—** It will be noted however that the aforementioned lease appears to have been raised for the first time in this Court. That the matter was not taken up in the trial court is really apparent in the decision of respondent Judge. No mention thereof was made in the stipulation of facts, not even in the description of the school building by the trial judge, both embodied in the decision nor as one of the issues to resolve in order to determine whether or not said property may be exempted from payment of real estate taxes. On the other hand, it is noteworthy that such fact was not disputed even after it was raised in this Court. Indeed it is axiomatic that facts not raised in the lower court cannot be taken up for the first time on appeal. Nonetheless, as an exception to the rule, this Court has held that although a factual issue is not squarely raised below, still in the interest of substantial justice, this Court is not prevented from considering a pivotal factual matter. "The Supreme Court is clothed with ample authority to review palpable errors not assigned as such if it finds that their consideration is necessary in arriving at a just decision."

APPEARANCES OF COUNSEL

Alberto V. Benesa for petitioner.

Demetrio Pre for private respondents.

D E C I S I O N

PARAS, *J.*:

This is a petition for review on *certiorari* of the decision* of the defunct Court of First Instance of Abra, Branch I, dated June 14, 1974, rendered in Civil Case No. 656, entitled "*Abra*

* Penned by the respondent Judge, Hon. Juan P. Aquino.

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Valley Junior College, Inc., represented by Pedro V. Borgonia, plaintiff vs. Armin M. Cariaga as Provincial Treasurer of Abra, Gaspar V. Bosque as Municipal Treasurer of Bangued, Abra and Paterno Millare, defendants," the decretal portion of which reads:

"IN VIEW OF ALL THE FOREGOING, the Court hereby declares:

"That the distraint seizure and sale by the Municipal Treasurer of Bangued, Abra, the Provincial Treasurer of said province against the lot and building of the Abra Valley Junior College, Inc., represented by Director Pedro Borgonia located at Bangued, Abra, is valid;

"That since the school is not exempt from paying taxes, it should therefore pay all back taxes in the amount of ₱5,140.31 and back taxes and penalties from the promulgation of this decision;

"That the amount deposited by the plaintiff in the sum of ₱6,000.00 before the trial, be confiscated to apply for the payment of the back taxes and for the redemption of the property in question, if the amount is less than ₱6,000.00, the remainder must be returned to the Director Pedro Borgonia, who represents the plaintiff herein;

"That the deposit of the Municipal Treasurer in the amount of ₱6,000.00 also before the trial must be returned to said Municipal Treasurer of Bangued, Abra;

"And finally the case is hereby ordered dismissed with costs against the plaintiff.

"SO ORDERED." (*Rollo*, pp. 22-23)

Petitioner, an educational corporation and institution of higher learning duly incorporated with the Securities and Exchange Commission in 1948, filed a complaint (Annex "1" of Answer by the respondents Heirs of Paterno Millare; *Rollo*, pp. 95-97) on July 10, 1972 in the court *a quo* to annul and declare void the "Notice of Seizure" and the "Notice of Sale" of its lot and building located at Bangued, Abra, for non-payment of real estate taxes and penalties amounting to ₱5,140.31. Said "Notice of Seizure" of the college lot and building covered by Original Certificate of Title No. Q-83 duly registered in the name of petitioner, plaintiff below, on July 6, 1972, by respondents Municipal Treasurer and Provincial Treasurer, defendants below, was issued for the satisfaction of the said taxes thereon. The

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"Notice of Sale" was caused to be served upon the petitioner by the respondent treasurers on July 8, 1972 for the sale at public auction of said college lot and building, which sale was held on the same date. Dr. Paterno Millare, then Municipal Mayor of Bangued, Abra, offered the highest bid of ₱6,000.00 which was duly accepted. The certificate of sale was correspondingly issued to him.

On August 10, 1972, the respondent Paterno Millare (now deceased) filed through counsel a motion to dismiss the complaint.

On August 23, 1972, the respondent Provincial Treasurer and Municipal Treasurer, through then Provincial Fiscal Loreto C. Roldan, filed their answer (Annex "2" of Answer by the respondents Heirs of Paterno Millare; *Rollo*, pp. 98-100) to the complaint this was followed by an amended answer (Annex "3", *ibid.*; *Rollo*, pp. 101-103) on August 31, 1972.

On September 1, 1972, the respondent Paterno Millare filed his answer (Annex "5", *ibid.*; *Rollo*, pp. 106-108).

On October 12, 1972, with the aforesaid sale of the school premises at public auction, the respondent Judge, Hon. Juan P. Aquino of the Court of First Instance of Abra, Branch I, ordered (Annex "6", *ibid.*; *Rollo*, pp. 109-110) the respondents provincial and municipal treasurers to deliver to the Clerk of Court the proceeds of the auction sale. Hence, on December 14, 1972, petitioner, through Director Borgonia, deposited with the trial court the sum of ₱6,000.00 evidenced by PNB Check No. 904369.

On April 12, 1973, the parties entered into a stipulation of facts adopted and embodied by the trial court in its questioned decision. Said Stipulations reads:

"STIPULATION OF FACTS

"COME NOW the parties, assisted by counsels, and to this Honorable Court respectfully enter into the following agreed stipulation of facts:

"1. That the personal circumstances of the parties as stated in paragraph 1 of the complaint is admitted; but the particular person of Mr. Armin M. Cariaga is to be substituted, however, by anyone

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who is actually holding the position of Provincial Treasurer of the Province of Abra;

"2. That the plaintiff Abra Valley Junior College, Inc. is the owner of the lot and buildings thereon located in Bangued, Abra under Original Certificate of Title No. 0-83;

"3. That the defendant Gaspar V. Bosque, as Municipal Treasurer of Bangued, Abra caused to be served upon the Abra Valley Junior College, Inc. a Notice of Seizure on the property of said school under Original Certificate of title No. 0-83 for the satisfaction of real property taxes thereon, amounting to ₱5,140.31; the Notice of Seizure being the one attached to the complaint as Exhibit A;

"4. That on June 8, 1972 the above properties of the Abra Valley Junior College, Inc. was sold at public auction for the satisfaction of the unpaid real property taxes thereon and the same was sold to defendant Paterno Millare who offered the highest bid of ₱6,000.00 and a Certificate of Sale in his favor was issued by the defendant Municipal Treasurer.

"5. That all other matters not particularly and specially covered by this stipulation of facts will be the subject of evidence by the parties.

WHEREFORE, it is respectfully prayed of the Honorable Court to consider and admit this stipulation of facts on the point agreed upon by the parties.

Bangued, Abra, April 12, 1973.

Sgd. Agripino Brillantes
Typ. AGRIPINO BRILLANTES
Attorney for Plaintiff

Sgd. Loreto Roldan
Typ. LORETO ROLDAN
Provincial Fiscal
Counsel for Defendants
Provincial Treasurer of
Abra and the Municipal
Treasurer of Bangued, Abra

Sgd. Demetrio V. Pre
Typ. DEMETRIO V. PRE
Attorney for Defendant
Paterno Millare"
(*Rollo*, pp. 17-18)

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Aside from the Stipulation of Facts, the trial court among others, found the following: (a) that the school is recognized by the government and is offering Primary, High School and College Courses, and has a school population of more than one thousand students all in all; (b) that it is located right in the heart of the town of Bangued, a few meters from the plaza and about 120 meters from the Court of First Instance building; (c) that the elementary pupils are housed in a two-storey building across the street; (d) that the high school and college students are housed in the main building; (e) that the Director with his family is in the second floor of the main building; and (f) that the annual gross income of the school reaches more than one hundred thousand pesos.

From all the foregoing, the only issue left for the Court to determine and as agreed by the parties, is whether or not the lot and building in question are *used exclusively for educational purposes.* (*Rollo*, p. 20)

The succeeding Provincial Fiscal, Hon. Jose A. Solomon and his Assistant, Hon. Eustaquio Z. Montero, filed a Memorandum for the Government on March 25, 1974, and a Supplemental Memorandum on May 7, 1974, wherein they opined "that based on the evidence, the laws applicable, court decisions and jurisprudence, the school building and school lot used for educational purposes of the Abra Valley College, Inc., are exempted from the payment of taxes." (Annexes "B", "B-1" of Petition; *Rollo*, pp. 24-49; 44 and 49).

Nonetheless, the trial court disagreed because of the use of the second floor by the Director of petitioner school for residential purposes. He thus ruled for the government and rendered the assailed decision.

After having been granted by the trial court ten (10) days from August 6, 1974 within which to perfect its appeal (Per Order dated August 6, 1974; Annex "G" of Petition; *Rollo*, p. 57) petitioner instead availed of the instant petition for review on *certiorari* with prayer for preliminary injunction before this Court, which petition was filed on August 17, 1974 (*Rollo*, p. 2).

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In the resolution dated August 16, 1974, this Court resolved to give DUE COURSE to the petition (*Rollo*, p. 58). Respondents were required to answer said petition (*Rollo*, p. 74).

Petitioner raised the following assignments of error:

I

THE COURT *A QUO* ERRED IN SUSTAINING AS VALID THE SEIZURE AND SALE OF THE COLLEGE LOT AND BUILDING USED FOR EDUCATIONAL PURPOSES OF THE PETITIONER.

II

THE COURT *A QUO* ERRED IN DECLARING THAT THE COLLEGE LOT AND BUILDING OF THE PETITIONER ARE NOT USED EXCLUSIVELY FOR EDUCATIONAL PURPOSES MERELY BECAUSE THE COLLEGE PRESIDENT RESIDES IN ONE ROOM OF THE COLLEGE BUILDING.

III

THE COURT *A QUO* ERRED IN DECLARING THAT THE COLLEGE LOT AND BUILDING OF THE PETITIONER ARE NOT EXEMPT FROM PROPERTY TAXES AND IN ORDERING PETITIONER TO PAY ₱5,140.31 AS REALTY TAXES.

IV

THE COURT *A QUO* ERRED IN ORDERING THE CONFISCATION OF THE ₱6,000.00 DEPOSIT MADE IN THE COURT BY PETITIONER AS PAYMENT OF THE ₱5,140.31 REALTY TAXES. (See Brief for the Petitioner, pp. 1-2)

The main issue in this case is the proper interpretation of the phrase "used exclusively for educational purposes."

Petitioner contends that the primary use of the lot and building for educational purposes, and not the incidental use thereof, determines and exemption from property taxes under Section 22 (3), Article VI of the 1935 Constitution. Hence, the seizure and sale of subject college lot and building, which are contrary thereto as well as to the provision of Commonwealth Act No. 470, otherwise known as the Assessment Law, are without legal basis and therefore void.

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On the other hand, private respondents maintain that the college lot and building in question which were subjected to seizure and sale to answer for the unpaid tax are used: (1) for the educational purposes of the college; (2) as the permanent residence of the President and Director thereof, Mr. Pedro V. Borgonia, and his family including the in-laws and grandchildren; and (3) for commercial purposes because the ground floor of the college building is being used and rented by a commercial establishment, the Northern Marketing Corporation (See photograph attached as Annex "8" [Comment; *Rollo*, p. 90]).

Due to its time frame, the constitutional provision which finds application in the case at bar is Section 22, paragraph 3, Article VI, of the then 1935 Philippine Constitution, which expressly grants exemption from realty taxes for "Cemeteries, churches and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements *used exclusively* for religious, charitable or educational purposes x x x."

Relative thereto, Section 54, paragraph c, Commonwealth Act No. 470 as amended by Republic Act No. 409, otherwise known as the Assessment Law, provides:

"The following are exempted from real property tax under the Assessment Law:

xxx xxx xxx

(c) churches and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements *used exclusively* for religious, charitable, scientific or educational purposes.

xxx xxx xxx

In this regard petitioner argues that the primary use of the school lot and building is the basic and controlling guide, norm and standard to determine tax exemption, and not the mere incidental use thereof.

As early as 1916, in *YMCA of Manila vs. Collector of Internal Revenue, 33 Phil. 217 [1916]*, this Court ruled that while it may be true that the YMCA keeps a lodging and a boarding house and maintains a restaurant for its members, still these do

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not constitute business in the ordinary acceptance of the word, but an institution used exclusively for religious, charitable and educational purposes, and as such, it is entitled to be exempted from taxation.

In the case of *Bishop of Nueva Segovia v. Provincial Board of Ilocos Norte, 51 Phil. 352 [1972]*, this Court included in the exemption a vegetable garden in an adjacent lot and another lot formerly used as a cemetery. It was clarified that the term "used exclusively" considers incidental use also. Thus, the exemption from payment of land tax in favor of the convent includes, not only the land actually occupied by the building but also the adjacent garden devoted to the incidental use of the parish priest. The lot which is not used for commercial purposes but serves solely as a sort of lodging place, also qualifies for exemption because this constitutes incidental use in religious functions.

The phrase "exclusively used for educational purposes" was further clarified by this Court in the cases of *Herrera vs. Quezon City Board of Assessment Appeals, 3 SCRA 186 [1961]* and *Commissioner of Internal Revenue vs. Bishop of the Missionary District, 14 SCRA 991 [1965]*, thus —

"Moreover, the exemption in favor of property used exclusively for charitable or educational purposes is 'not limited to property actually indispensable' therefor (Cooley on Taxation, Vol. 2, p. 1430), but extends to facilities which are incidental to and reasonably necessary for the accomplishment of said purposes, such as in the case of hospitals, 'a school for training nurses, a nurses' home, property use to provide housing facilities for interns, resident doctors, superintendents, and other members of the hospital staff, and recreational facilities for student nurses, interns, and residents' (84 CJS 6621), such as 'athletic fields' including 'a firm used for the inmates of the institution.'" (Cooley on Taxation, Vol. 2, p. 1430).

The test of exemption from taxation is the use of the property for purposes mentioned in the Constitution (*Apostolic Prefect v. City Treasurer of Baguio*, 71 Phil. 547 [1941]).

It must be stressed however, that while this Court allows a more liberal and non-restrictive interpretation of the phrase

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"exclusively used for educational purposes" as provided for in Article VI, Section 22, paragraph 3 of the 1935 Philippine Constitution, reasonable emphasis has always been made that exemption extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purposes. Otherwise stated, the use of the school building or lot for commercial purposes is neither contemplated by law, nor by jurisprudence. Thus, while the use of the second floor of the main building in the case at bar for residential purposes of the Director and his family, may find justification under the concept of incidental use, which is complimentary to the main or primary purpose — educational, the lease of the first floor thereof to the Northern Marketing Corporation cannot by any stretch of the imagination be considered incidental to the purpose of education.

It will be noted however that the aforementioned lease appears to have been raised for the first time in this Court. That the matter was not taken up in the trial court is really apparent in the decision of respondent Judge. No mention thereof was made in the stipulation of facts, not even in the description of the school building by the trial judge, both embodied in the decision nor as one of the issues to resolve in order to determine whether or not said property may be exempted from payment of real estate taxes (*Rollo*, pp. 17-23). On the other hand, it is noteworthy that such fact was not disputed even after it was raised in this Court.

Indeed it is axiomatic that facts not raised in the lower court cannot be taken up for the first time on appeal. Nonetheless, as an exception to the rule, this Court has held that although a factual issue is not squarely raised below, still in the interest of substantial justice, this Court is not prevented from considering a pivotal factual matter. "The Supreme Court is clothed with ample authority to review palpable errors not assigned as such if it finds that their consideration is necessary in arriving at a just decision." (*Perez vs. Court of Appeals*, 127 SCRA 645 [1984]).

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Under the 1935 Constitution, the trial court correctly arrived at the conclusion that the school building as well as the lot where it is built, should be taxed, not because the second floor of the same is being used by the Director and his family for residential purposes, but because the first floor thereof is being used for commercial purposes. However, since only a portion is used for purposes of commerce, it is only fair that half of the assessed tax be returned to the school involved.

PREMISES CONSIDERED, the decision of the Court of First Instance of Abra, Branch I, is hereby AFFIRMED subject to the modification that half of the assessed tax be returned to the petitioner.

SO ORDERED.

Yap, C. J., Melencio-Herrera, Padilla, and *Sarmiento, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-28527. June 16, 1988]

ALFONSO FLORES AND VALENTIN GALLANO, *defendants-appellants, vs.* **JOHNSON SO,** *plaintiff-appellee.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE OF SPAIN; *PACTO DE RETRO* SALE; RIGHT OF OWNERSHIP ACCRUED DURING THE SPANISH CIVIL CODE CANNOT BE DEFEATED BY THE APPLICATION OF ARTICLES 1606 AND 1607 OF THE NEW CIVIL CODE; CASE AT BAR.— The *pacto de retro* sale between Gallano and Flores was executed when the Civil