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[G.R. No. L-23481. June 29, 1972]

BISHOP OF CALBAYOG, Mons. Miguel F. Acebedo, *applicant-appellant, vs.* THE DIRECTOR OF LANDS and THE MUNICIPALITY OF CATARMAN, SAMAR, *oppositors-appellees.*

SYLLABUS

1. **LAND REGISTRATION; PUBLIC PROPERTY CANNOT BE THE SUBJECT OF REGISTRATION.**— Where the evidence on record shows that Lot 2, called the "town plaza" by oppositor, is a public plaza and that Nalazon St., traversing Lot 1 and Lot 2, is a public thoroughfare, said Lot 2 and Nalazon St. should be excluded from the application for registration filed by the church.

2. **ID.; USE OF LAND AS PUBLIC PLAZA; PRESUMPTION.**— Since neither the Church nor the municipality could present positive proof of ownership or exclusive possession for an appreciable period of time and the only indubitable fact is the free and continuous use of Lot 2 by the residents of Catarman, coupled with the fact that the town has no public plaza to speak of other than this disputed parcel of land, there is a strong presumption that the same was segregated as a public plaza upon the founding of the municipality of Catarman.

3. **ID; LAND USED BY CHURCH FOR RELIGIOUS FUNCTIONS; REGISTRABLE BY CHURCH.**— Where there is no evidence that the municipality uses Lot 1 for its official activities to support its claim that this lot is a municipal plaza but the applicant for registration, on the other hand, was able to prove that this lot was used for religious functions without permit from the municipality and a religious statue has been enthroned therein since 1927, the title of the church-applicant to said lot should be confirmed.

APPEARANCES OF COUNSEL

Padilla Law Office for applicant-appellant.

Provincial Fiscal Eliseo de Veyra and *Assistant Provincial Fiscal Esprudion R. Lim of Samar* for oppositors-appellees.

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DECISION

MAKALINTAL, *J.*:

This is an appeal from the decision of the Court of First Instance of Samar in Land Registration Case No. 3448 involving three parcels of land located in Catarman, Samar (denominated as Lots 1, 2 and 3), titles to which were sought to be confirmed and registered in favor of the Bishop of Calbayog. The lower court adjudicated Lot 2 in favor of the Municipality of Catarman and declared the eastern portion of Lot 1, and the portions of Nalazon street and Anunciacion street traversing said Lot 1 and Lot 2, as public plaza and public thoroughfares, respectively, and hence not subject to registration.

The petition for registration was filed by the Bishop of Calbayog, as a corporation sole, on March 27, 1953, alleging open, continuous, exclusive and notorious possession, since the Spanish regime, of three parcels of land known as Lot 1 and Lot 2 in the survey plan Exhibit D, dated September 14-15, 1951, and Lot 3 in the survey plan Exhibit E, the first two lots situated in the poblacion of Catarman, Samar, and the third in barrio Cawayan.

Opposition to the application was filed by the Director of Lands with respect to the three lots on October 1, 1953, and by the Municipality of Catarman with respect to Lot 2 during the survey thereof.

On October 15, 1955 the lower court issued an order of general default except as against the aforementioned oppositors. In the same order the Municipality of Catarman was given 5 days from notice within which to submit in proper form its opposition with respect to Lot 2. Copy of the order of general default was received by the municipal secretary on October 18, 1955, and on October 21 the Municipality of Catarman filed its formal opposition as ordered. On November 28, 1956 it filed an amended opposition, including therein the eastern portion of Lot 1 and portions of Nalazon street and Anunciacion street traversing said Lot 1. A second amended opposition was filed on June 15, 1957, particularly describing Lot 1 and Lot 2 and alleging that the eastern portion

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of Lot 1, being a municipal plaza, was registrable in favor of the municipality.

After initial hearing the lower court, in an order dated June 15, 1957, denied the amendment on the ground that the proper procedure, which was by means of petition for relief from the order of general default, had not been resorted to.

After trial on the merits the lower court rendered its decision on April 18, 1964 (1) ordering the applicant to segregate from Lot 1 Nalazon street and Anunciacion street as public thoroughfares and the eastern portion of Lot 1, beginning from Nalazon street up to Mendiola street, as public plaza of the Municipality of Catarman; (2) confirming the imperfect title of the applicant over the remaining portion of Lot 1, with all the improvements existing thereon, and ordering that the same be registered in the name of the Bishop of Calbayog as a corporation sole; (3) adjudicating Lot 2, together with all the improvements existing thereon, except the portion of Nalazon street along the eastern boundary of the lot, in favor of the Municipality of Catarman; and (4) confirming the applicant's title over Lot 3 and ordering that the same be registered in the name of the Bishop of Calbayog.

The Bishop of Calbayog appealed.

The evidence discloses the following pertinent facts: The survey plan presented by the applicant as Exhibit D, which was executed on September 14-15, 1951, shows that the entire area of Lot 1 is 17,571 square meters, more or less. It is bounded on the north by a provincial road (now Rizal St.), on the east by Mendiola St., on the south by Bonifacio St., and on the west by a national road (Trece Martires del 1900 St.). Opposite Lot 1 to the northwest is Lot 2, which has an area of approximately 4,707 square meters. It is bounded by the provincial road (Rizal St.) on the south, on the west by the national road (Trece Martires del 1900 St.), on the north by Blumentrit St. and on the east by a municipal lot.

The survey plan does not contain any other information or markings. But from the undisputed actual observation by the lower court as well as from the description given by the witnesses

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for both parties, Nalazon St., which traverses the entire length of the *poblacion* from south to north, crosses Jacinto and Real streets and cuts across Lot 1 from Bonifacio St to Rizal St., passing immediately in front of the church and the convent. It extends across Lot 2 along its eastern boundary from Rizal St. to Blumentrit St. Thus, from actual observation Lot 2 appears bounded on the east by Nalazon St. and not by the municipal lot as described in the survey plan. With respect to Lot 1, Nalazon St. divides the lot into the western portion, which forms about 2/3 of the entire area, and the eastern portion whch comprises the other 1/3. All the permanent improvements on Lot 1, which include the Roman Catholic church, the belfry and convent, the St. Michael Academy building and a nun's residence are found on the western portion. Lot 2 has no permanent improvements. The eastern portion of Lot 1, the area in contention, is an empty space except for concrete benches along the perimeter. A partly cemented path runs across this lot from east to west leading up to the front or entrance of the church and appears to be an extension of Anunciacion St., which runs from the bank of the Catarman river up to Mendiola St. In the middle of this path, half-way between Mendiola St. and the church, is a statue of the Sacred Heart of Jesus.

The Roman Catholic Church relies on the testimony of its witnesses to prove its ownership. Mariano Singzon, 59 years old and one-time municipal councilor of Catarman and also counsel in this case for the applicant, was the principal witness. The following is his testimony: Prior to 1910 the portions of Nalazon and Anunciacion streets traversing Lot 1 and Lot 2 were merely trails used by the parishioners in going to and from the church. A retracing (Exhibit M) of a survey plan of the poblacion of Catarman executed in 1909 shows that Anunciacion St. stopped at Calle Garfil (now Mendiola St.) and that there was no other street traversing Lot 1. According to Atty. Singzon, Nalazon St. was opened and improved by the municipality sometime in 1910 or 1911. Anunciacion St. was opened only about 2 years before the trial of the case. In 1920, the municipality planted acacia trees on both sides of Nalazon St. inside Lot 1 and along Mendiola St. bordering Lot 1, but these trees were recently cut down upon order of the priest, Fr. Ricalde, and all that remain are stumps.

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The statue of the Sacred Heart found in the middle of Anunciacion St. was put up in 1927, but the base of the statue had been standing on that site even before 1905. The Roman Catholic Church had made no improvements on this eastern portion of Lot 1, which at present is being used as a public playground, although a bandstand stood there for about three years after it was constructed in 1926 by the members of an orchestra which was organized by a Fr. Ranera and which used to give musical performances on the bandstand. On the feast of Corpus Christi the parishioners would construct an altar on this lot and hold the procession there.

With respect to Lot 2, although the Church had made no improvements thereon, around the turn of the century there were *camarins* on this lot which were used as stables for the horses and cows owned by a Fr. Troquillo. In 1933 the municipal council passed a resolution (Exhibit G) asking the Bishop of Calbayog, then Mons. Hacbang, to donate a small portion of this lot for the construction of a monument in honor of the Trece Martires del 1900, but this request was denied by the Bishop. Gonzalo Olmedo, the municipal secretary of Catarman in 1933 whose signature appears on Exhibit G, testified as to the authenticity of the resolution and even pointed to the western portion of Lot 2 as the subject-matter of the request. Mons. Desoloc, who acted as private secretary to the Bishop at that time, testified that the writing on the lower right hand corner of Exhibit G, which reads "cont. negative" is the handwriting of the Bishop and was meant to impart an order that the request contained in the resolution be denied. In 1949 Mayor Eusebio Moore of Catarman and Fr. Ortega asked him, Atty. Singzon, to draft a contract of exchange between Lot 2 and a lot owned by the municipality, but the exchange did not materialize because the lot intended to be bartered by the municipality had no title, although he (the witness) found a copy of a tax declaration (Exhibit F) for Lot 2 dated May 8, 1948 in the name of the Roman Catholic Church. This tax declaration describes Lot 2 as being bounded by Trece Martires del 1900 on the west, Nalazon St. (instead of the municipal lot as described in Exhibit D) on the east, Blumentrit St. on the north and Rizal St. on the south.

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The testimony of Atty. Singzon was corroborated by Candido Franzuela, a 63 year-old resident of Catarman and brother of Fr. Franzuela of the same municipality as well as Salvadora Olmedo, and 82 year-old local resident, who died after giving her direct testimony. Franzuela confirmed the existence on Lot 2 of *camarins* used as stables for the cattle owned by the church. He remembered that sometime in 1927 a group of Chinese asked permission from the parish priest to use the lot as a football ground, which they did for 2 years. On cross-examination he admitted that before Nalazon St. was extended there was no visible boundary between Lot 2 claimed by the Church and the municipal lot on which a public school building used to stand. Salvadora Olmedo also testified that when she was yet schooling a certain Fr. Troquillo had *camarins* on Lot 2 which he used as stables for his cows and horses and that whenever she and her classmates wanted to gather flowers on this lot they asked permission from the priest.

The case for oppositors was presented by the following witnesses:

1. Martin Evangelista, 65 years old and former municipal treasurer of Catarman, declared that as property custodian of the municipality before his retirement, he knew that Lot 2 was owned by the municipality. This lot was fenced by the municipality first with bamboos and then with barbed wire because the municipal prisoners were planting camotes on this lot. On February 21, 1952 Fr. Franquela personally handed to him a letter (Exhibit 1) asking that he be allowed to use a portion of Lot 2 as playground for the students of St. Michael Academy. He endorsed the letter to the municipal council of Catarman, which passed Resolution No. 19 (Exhibit 3), declaring Lot 2 as temporary public playground until such time that the municipality was ready to construct a permanent improvement thereon.

2. Eusebio Moore, 54, mayor of Catarman since 1948, declared that Lot 2 was owned by the municipality because when he was in the elementary grades he attended classes in a public school building located on the municipal lot next to Lot 2 and did school gardening on Lot 2. When he was in Grade 6, as leader of the school football team he invited the Chinese team to play and he

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was the one who asked permission from the municipal president to use Lot 2 as their football ground. When he assumed office in 1948 he had the lot fenced and planted to fruit trees and during *fiestas temporary sheds would be put up for rent to itinerant* merchants. It was Fr. Ortega who went to see him in 1949 regarding the fencing of Lot 2 by the municipality and together they discussed the matter with Atty. Singzon, the lawyer for the Church, and the latter suggested to him that Lot 2 be exchanged with another lot owned by the municipality and he replied that it was up to the municipal council to decide. In 1950 he had the lot declared for taxation purposes. *The tax declaration (Exhibit 5) covers the* entire area of Lot 2 claimed by the applicant as well as the uncontested municipal lot, from Trece Martires del 1900 on the west to Mendiola St. on the east, Blumentritt St. on the north and Rizal St. on the east, Blumentritt St. on the north and Rizal St. on the south. This tax declaration was marked on the reverse side as newly issued because according to him the old tax declaration could not be located as the public records had been destroyed during the war. Mayor Moore denied the authenticity of Resolution No. 19 (Exh. G) sent by the municipal council to the Bishop in 1933 on the ground that the document is in Spanish, a language not spoken either by the municipal secretary who certified as to the correctness of the resolution or by the municipal president, who supposedly dictated its text. The witness produced the affidavits of Pelayo Saldo, municipal councilor in 1933 and one of those listed as present when the resolution was taken up, to the effect that Lot 2 is owned by the municipality. He also produced a similar affidavit executed by Antonio Oladive, a former municipal president of Catarman. To further buttress the municipality's position the mayor produced a letter dated February 29, 1952 by Matias Rodriguez, representing the Northern Samar Academy, requesting that Lot 2 be used as playground for the school. The mayor disclosed that he knew Rodriguez personally as he, the mayor, had been president of the Northern Samar Academy.

Nalazon St. and Anunciacion St., according to Mayor Moore, are cleaned and maintained by the municipality. With respect to the eastern portion of Lot 1 the same had always been regarded

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as owned by the municipality because the municipal building used to face this lot, although when he assumed the office of Mayor he had the backyard of the municipal building improved and the stairway transferred there.

3. Gaudencio Camposano, a 75 year-old resident of Catarman, testified that a banstand was constructed on the eastern portion of Lot 1 in 1905 and it was not only the orchestra organized by Fr. Ranera that used to play there but also the municipal band. He also testified that when he was attending school in 1905 the school garden was located inside Lot 2, which he believed to be in the possession of the municipality because nobody owned it and when he became acting mayor he required the prisoners to clear Lot 2 and had it planted to camotes and bananas.

The conclusion that may be drawn from the evidence on record is that Lot 2, called the "town plaza" by oppositor, is a public plaza and that Nalazon St., traversing Lot 1 and Lot 2, is a public thoroughfare and should therefore be excluded from the application for registration filed by the Church.

Admittedly Nalazon St. was originally merely a trail used by the parishioners in going to and from the church. But since 1910, when it was opened and improved as a public thoroughfare by the municipality, it had been continuously used as such by the townspeople of Catarman without objection from the Church authorities. The acacia trees along both sides of the street were planted by the municipality in 1920, although these trees were cut down recently upon order of the priest. There is no proof that the Church merely tolerated and limited the use of this street for the benefit of its parishioners, considering that the street traverses the entire length of the *poblacion* from south to north and that Lot 1, on which the church stands, is located almost at the center of the *poblacion*. The street does not stop on Lot 1 but extends north toward the sea, passing along the lot occupied by the Central Elementary School and the Northern Samar General Hospital. Thus it is clear that Nalazon St. inside Lot 1 is used by the residents not only in going to the church but also to the public school and the general hospital north of Lot 1.

With respect to Lot 2, there is no evidence that either the Church or the municipality exercised clear acts of ownership or

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of exclusive possession over this lot. It is true that there were witnesses who testified that around the turn of the century there were *camarins* inside this lot used as stables for the horses and cows owned by a Fr. Troquillo. But these witnesses likewise testified that this lot had been used also as a playground as well as a school garden by the students of the public school located on the adjoining municipal lot. This lot still serves as a public playground up to the present. The municipality also makes use of this lot during town *fiestas* by constructing temporary sheds which are rented to itinerant vendors. In *1949* the municipality constructed a fence around this lot because the prisoners planted it to camotes. The Church, however, objected to the putting up of the fence.

All these facts only show that neither the Church nor the municipality possessed Lot 2 exclusively. While it may be true that as late as 1933 the municipality acknowledged the ownership of the Church over Lot 2 and in 1949 the Church declared this lot for tax purposes, the continuous use thereof enjoyed by the residents of Catarman is admitted by all the witnesses. Thus, even the witnesses for the applicant testififed that the Church had made no improvements on Lot 2 and that the same had been used primarily as playground for schoolchildren. The municipality stands on the same footing as the Church. The tax declaration in its name was issued only in 1950, when the present dispute was already imminent. The letters of Fr. Franzuela and Mr. Matias Rodriguez asking permission to use this lot as a playground are not proof of municipal ownership, since after all the municipal government may be considered the administrator of public property, that is, property for public use.

In the case of *Harty vs. Municipality of Victoria,* 13 Phil. 152, involving the question as to the ownership of a parcel of land which surrounded the parish church of the town, this Court said:

"Even though all the remaining space of land which now forms the great plaza of the town of Victoria had been owned by the said Tañedo, it must be presumed that he waived his right thereto for the

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benefit of the townspeople, since from the creation or establishment of the town, down to the present day, all the residents, including the curate of said town, have enjoyed the free use of said *plaza*.

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That both the curates and the *gobernadorcillos* of said town procured fruit trees and plants to be set out in the *plaza*, does not constitute an act of private ownership, but evidences the public use thereof, or perhaps the intention to improve or embellish the said *plaza* for the benefit of the townspeople.

x x x x x x x x x

Certain it is that the plaintiff has not proven that the Catholic Church or the parish of Victoria was the owner or proprietor of the said extensive piece of land which now forms the public *plaza* of said town, nor that it was in possession thereof under the form and conditions required by law, inasmuch as it has been fully proven that said plaza has been used without let or hindrance by the public and the residents of the town of Victoria even since its creation."

Since neither the Church nor the municipality could present positive proof of ownership or exclusive possession for an appreciable period of time and the only indubitable fact is the free and continuous use of Lot 2 by the residents of Catarman, coupled with the fact that the town has no public plaza to speak of other than this disputed parcel of land, there is a strong presumption that the same was segregated as a public plaza upon the founding of the municipality of Catarman.

The municipality, as has been heretofore noted, was declared in default with respect to Lot 1, and the default was never lifted. Indeed the amended opposition of the municipality which purported to include the eastern portion of said lot, was denied by the lower court. In any event, the municipality failed to establish its allegation with respect to the said portion of Lot 1 and to the portion of Anunciacion St. within this lot. This portion is only a path which is cemented from the corner of Mendiola St. to the monument of the Sacred Heart, and asphalted from the monument to the front of the church. There is no evidence that this path was planted to acacia trees, unlike Nalazon St. and Mendiola St., where acacia stumps were observed by the lower court. The

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explanation offered by Mayor Moore as to the presence of this *religious monument in the middle of a public thoroughfare* — that the residents of Catarman are religious — is not convincing. The statue was enthroned only in 1927, when the separation of church and state was already a confirmed legal principle. The statue was even recently improved with the construction of a platform beneath it. Its location shows that the path leading to it and to the front of the church is not an extension of Anunciacion St. but was opened mainly for the benefit of the parishioners. The eastern portion of Lot 1 itself is used for religious functions, such as the feast of Corpus Christi and the procession held on the occasion. It is admitted by the municipality that the Church does not ask for a permit whenever it uses this lot for such activities.

On the other hand, there is no evidence that the municipality uses this lot for its official activities to support its claim that this lot is a municipal plaza. The circumstance that the municipal band used to perform weekly on the "kiosko" found on this lot sometime in 1927 does not constitute an act of exclusive possession which could be the basis of a title. Moreover, the "kiosko" stood only for three years and the municipality has not adduced any evidence that it continued to use the lot after the "kiosko" was demolished.

For the foregoing reasons, the appealed decision is hereby modified in the sense that Lot 2, being a public plaza, and Nalazon St., traversing Lot 1 and Lot 2, being a public thoroughfare, are not subject to registration; and that the title of the Bishop of Calbayog with respect to the entire area of Lot 1, except the portion covered by Nalazon St., and to Lot 3, is confirmed and ordered registered in his name, as corporation sole. In all other respects the decision appealed from is affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and *Antonio, JJ.*, concur.