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SECOND DIVISION

[G.R. No. 180200. November 25, 2013]

DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC., *petitioner, vs.* **JESSIE E. CANTOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; THE DISMISSAL OF THE INDIRECT CONTEMPT CHARGE AMOUNTS TO AN ACQUITTAL WHICH EFFECTIVELY BARS A SECOND PROSECUTION.— [C]ontempt is not a criminal offense. However, a charge for contempt of court partakes of the nature of a criminal action. Rules that govern criminal prosecutions strictly apply to a prosecution for contempt. In fact, Section 11 of Rule 71 of the Rules of Court provides that the appeal in indirect contempt proceedings may be taken as in criminal cases. This Court has held that an alleged contemner should be accorded the same rights as that of an accused. Thus, the dismissal of the indirect contempt charge against respondent amounts to an acquittal, which effectively bars a second prosecution.

2. ID.; ID.; ID.; CONTEMPT OF COURT; DEFINED.— "Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. It is a defiance of the authority, justice, or dignity of the court which tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice party-litigants or their witnesses during litigation."

3. ID.; ID.; JUDGMENTS; *RES JUDICATA*; REQUISITES; NOT PRESENT IN CASE AT BAR.— "*Res judicata* means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.'" For *res judicata* to apply there must among others be, between the first and the second

actions, identity of the parties, identity of subject matter, and identity of causes of action. Here, there is no identity of parties between Civil Case No. 3514 and the instant case. "Identity of parties exists 'where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity.'" In Civil Case No. 3514, the action was directed against Benjamin E. Martinez, Jr. and Francisco P. Martinez in their capacities as Mayor and Chief of the Permit and License Division of the Municipality of Balayan, Batangas, respectively. On the other hand, respondent, in the instant case, is being sued in his capacity as Provincial Treasurer of the Province of Batangas. While the defendants in both cases similarly sought to enforce the tax obligation of petitioner, they were sued under different capacities. Moreover, there is no identity in the causes of action between the two cases. In Civil Case No. 3514, the propriety of the municipal officials' closure/stoppage of petitioner's business operation in Balayan, Batangas was the one in question while what is involved in this case is respondent's act of issuing Warrants of Levy and proceeding with the auction sale of the real properties of petitioner. Clearly, the principle of *res judicata* does not apply.

4. TAXATION; TAX EXEMPTIONS; MUST BE CLEAR AND UNEQUIVOCAL.— In the later case of *Digital Telecommunications Philippines, Inc. v. City Government of Batangas*, the Court *en banc* speaking thru Senior Associate Justice Antonio T. Carpio pronounced: "Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall pay the 'same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.' The heading of Section 5 is 'Tax Provisions,' not Tax exemptions. To reiterate, the phrase 'exemption from real estate tax' or other words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase

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'exclusive of this franchise' in the first sentence of Section 5 merely qualifies the phrase 'personal property' to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the 'franchise tax.' Thus, there is no grant of tax exemption in the first sentence of Section 5. x x x Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer." As things now stand, petitioner's real properties, whether used in the furtherance of its franchise or not, are subject to real property tax.

APPEARANCES OF COUNSEL

Kathyrn Ang-Zarate for petitioner.
Ferdinand Allan U. Alda for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"It is of the utmost importance x x x that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public."[1]

This Petition for Review on *Certiorari*[2] assails the July 24, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR

[1] *Lorenzo v. Posadas, Jr.*, 64 Phil. 353, 371 (1937) citing *Dows v. Chicago*, 11 Wall., 108; 20 Law. ed., 65, 66; and *Churchill and Tait v. Rafferty*, 32 Phil. 580 (1915).

[2] *Rollo,* pp. 3-25.

[3] CA *rollo,* pp. 161-168; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Vicente S. E. Veloso and Marlene Gonzales-Sison.

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No. 29009 which affirmed the July 7, 2003 Decision[4] of the Regional Trial Court (RTC), Branch XI, Balayan, Batangas in Civil Case No. 4051 dismissing petitioner Digital Telecommunications, Philippines, Inc.'s (petitioner) Petition for Indirect Contempt/Prohibition against respondent Jessie E. Cantos (respondent) as Provincial Treasurer of Batangas. Also assailed is the October 11, 2007 CA Resolution[5] denying petitioner's Motion for Reconsideration.

Factual Antecedents

By virtue of Republic Act (RA) No. 7678,[6] petitioner was granted a legislative franchise to install, operate and maintain telecommunications systems throughout the Philippines on February 17, 1994.

Upon seeking the renewal of its Mayor's Permit to operate and provide telecommunications service in Balayan, Batangas, petitioner was informed by then Mayor Benjamin E. Martinez, Jr. that its business operation would be restrained should it fail to pay the assessed real property taxes on or before October 5, 1998. And as petitioner failed to pay, the Chief of the Permit and License Division of Balayan, Batangas, Mr. Francisco P. Martinez, issued on October 6, 1998 a Cease and Desist Order enjoining petitioner from further operating its business.

Petitioner thus promptly filed a case for Annulment of the Cease and Desist Order before the RTC of Balayan, Batangas against the Mayor and the Chief of the Permit and License Division. The case was docketed as Civil Case No. 3514 and raffled to Branch IX of said court.

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[4] Records, pp. 307-316; penned by Acting Presiding Judge Cristino E. Judit.

[5] CA *rollo*, pp. 197-198.

[6] AN ACT GRANTING THE DIGITAL TELECOMMUNICATIONS PHILIPPINES, INCORPORATED, A FRANCHISE TO INSTALL, OPERATE AND MAINTAIN TELECOMMUNICATIONS SYSTEMS THROUGHOUT THE PHILIPPINES AND FOR OTHER PURPOSES. Approved February 17, 1994.

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In a Decision[7] dated July 15, 1999, Branch IX ruled in favor of petitioner and declared that the issuance of the Cease and Desist Order was without legal basis. It held that the enjoinment of petitioner's business operation is not one of the remedies available to enforce collection of real property taxes under existing laws. The RTC also ruled that petitioner is only liable to pay real property taxes on properties not used in connection with the operation of its franchise. In arriving at such conclusion, the RTC relied on Section 5 of RA 7678, which provides that:

> Sec. 5. *Tax Provisions*. — **The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay**. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; *provided*, that the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.
>
> The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Boldfacing and underscoring supplied)

and construed the phrase "exclusive of this franchise" in the first sentence as limiting petitioner's exemption from paying real property tax only to properties used in furtherance of its legislative franchise to provide telecommunications services.

The dispositive portion of Branch IX's Decision reads:

> WHEREFORE, the Cease and Desist Order dated October 6, 1998 is hereby declared null and void for lack of legal basis. The Court

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[7] Records, pp. 15-44; penned by Presiding Judge Elihu A. Ybañez.

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further declares that real properties of plaintiff [Digital] Telecommunications Philippines, Inc. (DIGITEL) which are used in the operation of its franchise are exempt from the payment of real property taxes, but those not used in connection thereto are subject to aforesaid taxes.

SO ORDERED.[8]

The then Mayor attempted to set aside the above Decision by filing a Petition for *Certiorari* before the CA. But his efforts were in vain as the CA outrightly dismissed the Petition.[9] The dismissal became final and executory as shown in an Entry of Judgment dated February 2, 2000.[10]

In June 2002, respondent, in his capacity as Provincial Treasurer of the Province of Batangas, issued seven Warrants of Levy[11] certifying that several real properties of petitioner situated in the Municipalities of Ibaan, San Juan, Sto. Tomas, Cuenca, Nasugbu, Balayan, and Lemery, all in the Province of Batangas, are delinquent in the payment of real property taxes. Hence, the properties would be advertised and sold at public auction within 30 days from petitioner's receipt of the warrants.

On July 1, 2002, petitioner wrote respondent to request the lifting of the Warrants of Levy and to refrain from proceeding with the public sale of its property located in Balayan, Batangas.[12] It invoked the final Decision in Civil Case No. 3514 decreeing petitioner's exemption from the payment of real property tax which it claimed to be binding upon respondent. But since the warrants remained unlifted, petitioner filed with the RTC a Petition for Indirect Contempt and Prohibition with prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary

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[8] Records, p. 43-44.

[9] See CA Resolution dated December 6, 1999 in CA-G.R. SP No. 55719, *id*. at. 46.

[10] See Transmittal letter of CA Clerk of Court to RTC, Branch 9, Balayan, Batangas dated January 8, 2002, *id*. at 47.

[11] *Id*. at 8-14.

[12] *Id*. at 50-51.

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Restraining Order (TRO)[13] on July 5, 2002. The case was docketed as Civil Case No. 4051.

Proceedings before the Regional Trial Court

For his defense, respondent averred that he cannot be held liable for contempt or for having disobeyed the Decision in Civil Case No. 3514 since the same relates to an action *in personam* and, therefore, binds only the parties impleaded therein and their successors in interest.[14] He also asserted that petitioner's claim for tax exemption could not be collaterally presented and resolved in a contempt proceeding and that petitioner should have resorted instead to the remedies provided under the Local Government Code (LGC) in order to prevent the public sale of its delinquent properties.

On July 25, 2002, the RTC granted[15] petitioner's prayer for TRO. Respondent, however, manifested that when said TRO was served upon him, he had already effected the public auction of petitioner's real properties.[16] Thus, petitioner filed a Very Urgent Manifestation and Motion[17] to recall and nullify the auction sale and to order respondent and his counsel to explain why they should not be held in contempt for their blatant defiance of the TRO. It also thereafter asserted that respondent is bound by the final Decision rendered in Civil Case No. 3514 under the principle of *res judicata*.[18] It maintained that respondent has a shared interest with the defendants in Civil Case No. 3514

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[13] *Id*. at 1-7; raffled to Branch IX of RTC Balayan but later transferred to Branch XI after the Judge in the former branch inhibited himself from handling the case.

[14] See respondent's Opposition to the Motion for the Issuance of a TRO and Writ of Preliminary Injunction, *id*. at 66-76 and Answer, *id*. at 99-105.

[15] See RTC Order dated July 25, 2002, *id*. at 80-81.

[16] See respondent's Manifestation, *id*. at 86.

[17] *Id*. at 89-92.

[18] See petitioner's Reply (to Respondent's Opposition to the Motion for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction dated July 22, 2002), *id*. at 93-98.

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in that they are all interested in the levy, imposition and collection of real property tax and that the Province of Batangas, including respondent, is estopped from denying privity because of the Province's active participation in both proceedings by virtue of the representation of the same counsel. Petitioner likewise contended that the declaration in Civil Case No. 3514 that it is exempt from real property tax for properties used in the operation of its franchise is considered *in rem* and binds the property itself.

On August 14, 2002, the RTC issued an Order[19] denying petitioner's prayer for the issuance of a Writ of Preliminary Injunction. It held that the issuance of the writ prayed for had already become moot and academic since the public auction sale sought to be enjoined was already consummated. It further noted that the writ as a provisional remedy is unavailing to petitioner's case as it should have availed of the remedy provided under Section 260 of the LGC in order to stop the scheduled auction sale, that is, to pay the delinquent tax and interest due thereon under protest.

Petitioner filed a Joint Motion for Reconsideration and Motion to Declare Null and Void the Sale Conducted on July 25, 2002[20] which was, however, denied in an Order[21] dated September 3, 2002. When petitioner elevated the denial to the CA via a Petition for *Certiorari*,[22] the same was dismissed in a Resolution[23] dated November 18, 2002.

Meanwhile, acting on petitioner's Motion for Judgment on the Pleadings,[24] the RTC rendered its Decision[25] dated July 7, 2003 dismissing petitioner's Petition for Indirect Contempt and

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[19] *Id*. at 135-136.

[20] *Id*. at 139-147.

[21] *Id.* at 173-174.

[22] *Id*. at 193-208.

[23] *Id*. at 294-295.

[24] *Id*. at 186-187.

[25] *Id*. at 307-316.

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Prohibition against respondent (Civil Case No. 4051). The RTC ruled that since respondent was not a party in Civil Case No. 3514, he had no duty to render obedience to the Decision therein. Furthermore, there being no identity of causes of action between Civil Case No. 3514 and Civil Case No. 4051, the former being an action *in personam,* the Decision in said case binds only the parties impleaded therein and their successors in interest, which do not include the respondent. The said court refused to rule on petitioner's claim for exemption from payment of realty taxes ratiocinating that any case pertaining thereto should be filed directly with the local government unit concerned.

The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, the instant petition is dismissed, with costs against the petitioner.
>
> IT IS SO ORDERED.[26]

As petitioner's Motion for Reconsideration[27] was denied by the RTC in a Resolution[28] dated September 17, 2004, it appealed to the CA.[29]

Proceedings before the Court of Appeals

In a Decision[30] dated July 24, 2007, the CA found no merit in the appeal. First, it noted that the dismissal of the case for indirect contempt by the RTC amounted to an acquittal from which an appeal is not allowed. In any case, respondent's act of issuing the warrants of levy did not constitute indirect contempt in Civil Case No. 3514 since the final Decision issued in said case was not directed against him but to the Mayor and the Chief of the Permit and License Division of Balayan, Batangas. The CA also concurred with the trial court's ruling that

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[26] *Id*. at 316.

[27] *Id*. at 323-334.

[28] *Id*. at 363-365.

[29] See Notice of Appeal dated October 12, 2004, *Id*. at 368.

[30] CA *rollo*, pp. 161-168.

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petitioner's claim for tax exemption could not be presented and resolved in an indirect contempt case and opined that the correct remedy is for petitioner to file an independent action for annulment of sale against the Province of Batangas and there invoke its exemption from real property taxes.

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the assailed Decision dated July 7, 2003 and the Resolution dated September 17, 2004, rendered by the Regional Trial Court, Branch XI, Balayan, Batangas in Civil Case No. 4051 are **AFFIRMED.**

SO ORDERED.[31]

Petitioner's Motion for Reconsideration[32] was denied by the CA in a Resolution[33] dated October 11, 2007.

Issues

Petitioner, thence, filed this Petition on the following grounds:

(a) The Honorable Court of Appeals erred in ruling that Civil Case No. 4051 is simply a case for indirect contempt so much [so] that its dismissal by the lower court would amount to acquittal from which an appeal would not lie;

(b) The Honorable Court of Appeals erred in ruling that respondent, not being a party to Civil Case No. 3514, cannot be held in contempt for refusing to abide by the decision there[in];

(c) The Honorable Court of Appeals erred in ruling that the claim of Digitel for real property tax exemption cannot be presented and resolved in the indirect contempt case; and

(d) The Honorable Court of Appeals erred in ruling that the "proper remedy is for Digitel to file an independent action for annulment of sale against the Province of Batangas, invoking its exemption from payment of real property taxes.[34]

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[31] *Id*. at 167. Emphases in the original.

[32] *Id*. at 171-186.

[33] *Id*. at 197-198.

[34] *Rollo,* pp. 10-11.

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Petitioner takes exception to the CA's ruling that an appeal will not lie since the RTC Decision essentially amounts to respondent's acquittal. It posits that the CA can still take cognizance of the appeal since the same is also a Petition for Prohibition. It is well within the authority of the said court to rule on the claim for tax exemption like in the case of *The City Government of Quezon City v. Bayan Telecommunications, Inc.*[35] wherein the claim for realty tax exemption of another telecommunications company, Bayantel, was resolved through a Petition for Prohibition. Petitioner likewise insists that respondent cannot defy the final ruling in Civil Case No. 3514 and also the pronouncement of this Court in *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*[36] that petitioner is exempted from paying real property tax. Also, in consonance with said rulings, the sale by public auction of petitioner's properties is void *ab initio,* the same having been made under a mistaken premise that petitioner's properties are not exempt from realty taxes. Thus, an independent action to annul the sale of the properties, contrary to the CA's intimation, is not the proper remedy. Petitioner therefore prays for the nullification and setting aside of the auction sale conducted by respondent against its real properties.

Our Ruling

The Petition has no merit.

Respondent is not guilty of indirect contempt.

At the outset, the Court shall address the issue on double jeopardy as discussed by petitioner in its Memorandum.

In his Comment, respondent reiterated the CA's ruling that the RTC Decision amounts to an acquittal, hence, an appeal does not lie. Arguing against it, petitioner contends that the rule on double jeopardy will not bar it from pursuing its appeal

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[35] 519 Phil. 159 (2006).

[36] 545 Phil. 436 (2007).

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because this is not a criminal case and respondent is not tried as an accused.

The Court is not persuaded. Indeed, contempt is not a criminal offense.[37] However, a charge for contempt of court partakes of the nature of a criminal action.[38] Rules that govern criminal prosecutions strictly apply to a prosecution for contempt.[39] In fact, Section 11 of Rule 71[40] of the Rules of Court provides that the appeal in indirect contempt proceedings may be taken as in criminal cases. This Court has held that an alleged contemner should be accorded the same rights as that of an accused.[41] Thus, the dismissal of the indirect contempt charge against respondent amounts to an acquittal, which effectively bars a second prosecution.[42]

Be that as it may, respondent is not guilty of indirect contempt. "Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. It is a defiance of the authority, justice, or dignity of the court which tends to bring the authority and administration of the law into disrespect

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[37] *Nazareno v. Barnes,* 220 Phil. 451, 462 (1985).

[38] *Benedicto v. Cañada,* 129 Phil. 298, 303 (1967).

[39] *Esperida v. Jurado, Jr.,* G.R. No. 172538, April 25, 2012, 671 SCRA 66, 74.

[40] Section 11. *Review of judgment or final order*; *bond for stay*. – The judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in criminal cases. But execution of the judgment or final order shall not be suspended until a bond is filed by the person adjudged in contempt, in an amount fixed by the court from which the appeal is taken, conditioned that if the appeal be decided against him he will abide by and perform the judgment or final order.

[41] *Soriano v. Court of Appeals,* G.R. No. 128938, June 4, 2004, 431 SCRA 1, 8-9.

[42] *Atty. Santiago v. Hon. Anunciacion, Jr.,* 262 Phil 980, 985 (1990).

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or to interfere with or prejudice party-litigants or their witnesses during litigation."[43]

In this case, the acts of respondent in issuing the Warrants of Levy and in effecting the public auction sale of petitioner's real properties, were neither intended to undermine the authority of the court nor resulted to disobedience to the lawful orders of Branch IX. He merely performed a ministerial function which he is bound to perform under Sections 176 and 177 of RA 7160,[44] *viz*:

> Section 176. *Levy on Real Property*. — After the expiration of the time required to pay the delinquent tax, fee, or charge, real property may be levied on before, simultaneously, or after the distraint of personal property belonging to the delinquent taxpayer. To this end, the provincial, city or municipal treasurer, as the case may be, shall prepare a duly authenticated certificate showing the name of the taxpayer and the amount of the tax, fee, or charge, and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines. Levy shall be effected by writing upon said certificate the description of the property upon which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the assessor and the Register of Deeds of the province or city where the property is located who shall annotate the levy on the tax declaration and certificate of title of the property, respectively, and the delinquent taxpayer or, if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or if there be none, to the occupant of the property in question.
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> In case the levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the taxpayer is not sufficient to satisfy his delinquency, the provincial, city or municipal treasurer, as the case may be, shall within thirty (30) days after execution of the distraint, proceed with the levy on the taxpayer's real property.

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[43] *Bank of the Philippine Islands v. Calanza*, G.R. No. 180699, October 13, 2010, 633 SCRA 186, 192-193.

[44] AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991. Approved October 10, 1991.

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A report on any levy shall, within ten (10) days after receipt of the warrant, be submitted by the levying officer to the *sanggunian* concerned.

Section 177. *Penalty for Failure to Issue and Execute Warrant.* — Without prejudice to criminal prosecution under the Revised Penal Code and other applicable laws, any local treasurer who fails to issue or execute the warrant of distraint or levy after the expiration of the time prescribed, or who is found guilty of abusing the exercise thereof by competent authority shall be automatically dismissed from the service after due notice and hearing.

Noteworthy at this point is that there is nothing in the records which would show that petitioner availed of the tax exemption or submitted the requirements to establish that it is exempted from paying real property taxes. Section 206 of RA 7160 outlines the requirements for real property tax exemption, *viz*.:

Sec. 206. *Proof of Exemption of Real Property from Taxation.* — Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

Neither did petitioner avail of the remedy of paying the assessed real property tax under protest as prescribed in Section 252[45]

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

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of RA 7160. Suffice it to say that the availment of these remedies could have prevented respondent's issuance of the Warrants of Levy and the conduct of the subsequent public auction sale of petitioner's properties. Due to petitioner's non-availment of these remedies, respondent therefore remained duty bound to perform such acts, otherwise, he may be subjected to the penalties prescribed for non-performance of his ministerial duties as provincial treasurer.

Respondent is not bound by the Decision in Civil Case No. 3514.

Petitioner avers that respondent blatantly defied a final and binding Decision rendered in Civil Case No. 3514 declaring it exempt from paying taxes on its real properties. It argues that there is a shared identity of interest between the defendants in Civil Case No. 3514 and respondent. Therefore, respondent is barred by the Decision in the said case under the principle of *res judicata*.

The contention is specious. "*Res judicata* means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.'"[46] For *res judicata* to apply there must among others be, between the first and the second actions, identity of the parties, identity of subject matter, and identity

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(b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(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 II, Book II of this Code.

[46] *Heirs of Panfilo F. Abalos v. Bucal*, 569 Phil. 582, 602 (2008); *Alamayri v. Pabale*, 576 Phil. 146, 157 (2008); *Garcia v. Philippine Airlines*, G.R. No. 162868, July 14, 2008, 558 SCRA 171, 186-187; *Layos v. Fil-Estate Golf and Development, Inc.*, G.R. No. 150470, August 6, 2008, 561 SCRA 75, 102.

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of causes of action.[47] Here, there is no identity of parties between Civil Case No. 3514 and the instant case. "Identity of parties exists 'where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity.'"[48] In Civil Case No. 3514, the action was directed against Benjamin E. Martinez, Jr. and Francisco P. Martinez in their capacities as Mayor and Chief of the Permit and License Division of the Municipality of Balayan, Batangas, respectively. On the other hand, respondent, in the instant case, is being sued in his capacity as Provincial Treasurer of the Province of Batangas. While the defendants in both cases similarly sought to enforce the tax obligation of petitioner, they were sued under different capacities. Moreover, there is no identity in the causes of action between the two cases. In Civil Case No. 3514, the propriety of the municipal officials' closure/stoppage of petitioner's business operation in Balayan, Batangas was the one in question while what is involved in this case is respondent's act of issuing Warrants of Levy and proceeding with the auction sale of the real properties of petitioner. Clearly, the principle of *res judicata* does not apply. The RTC and the CA are therefore correct in ruling that respondent, not being a party thereto, is not bound by the Decision rendered in Civil Case No. 3514.

Petitioner's reliance on the rulings in Civil Case No. 3514 and Digital Telecommunications Philippines, Inc. v. Province of Pangasinan is misplaced.

In support of its prayer to annul the auction sale of its real properties, petitioner heavily relies on the Decision rendered in

[47] The requisites of *res juricata* are: 1. The former judgment or order is final; 2. It is rendered by a court having jurisdiction over the subject matter and the parties; 3. It is a judgment or an order on the merits; and 4. There is between the first and the second action identity of parties, identity of subject matter, and identity of causes of action (*Taganas v. Hon. Emuslan*, 457 Phil. 305, 311-312 [2003]).

[48] *Ceron v. Commission on Elections*, G.R. No. 199084, September 11, 2012, 680 SCRA 441, 461-462.

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Civil Case No. 3514 declaring that it is exempt from paying real property tax. In addition, it invokes *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*[49] wherein it was ruled that petitioner's real properties located within the territorial jurisdiction of Pangasinan that are actually, directly and exclusively used in its franchise are exempt from realty tax.

As in Civil Case No. 3514, this Court's Third Division in *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*[50] has interpreted the phrase "exclusive of this franchise" in the first sentence of Section 5 of RA 7678 as limiting petitioner's exemption from realty tax to real properties used in the pursuit of its legislative franchise. It was then held that RA 7678 exempted petitioner's properties that are actually, directly, and exclusively used in the conduct and operation of its franchise from real property tax.

But this ruling has already been abandoned.

In the later case of *Digital Telecommunications Philippines, Inc. v. City Government of Batangas*,[51] the Court *en banc* speaking thru Senior Associate Justice Antonio T. Carpio pronounced:

> Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall pay the 'same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.'
>
> The heading of Section 5 is 'Tax Provisions,' not Tax Exemptions. To reiterate, the phrase 'exemption from real estate tax' or other

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[49] *Supra* note 36.

[50] *Id*.

[51] G.R. No. 156040, December 11, 2008, 573 SCRA 605.

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words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase 'exclusive of this franchise' in the first sentence of Section 5 merely qualifies the phrase 'personal property' to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the 'franchise tax.' Thus, there is no grant of tax exemption in the first sentence of Section 5.

The interpretation of the phrase 'exclusive of this franchise' in the *Bayantel* and *Digitel* cases goes against the basic principle in construing tax exemptions. In *PLDT v. City of Davao*, the Court held that 'tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.'

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[52]

As things now stand, petitioner's real properties, whether used in the furtherance of its franchise or not, are subject to real property tax. Hence, its reliance on the rulings in Civil Case No. 3514 and *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*[53] becomes unavailing.

WHEREFORE, the Petition is **DENIED.** The assailed Decision dated July 24, 2007 and the Resolution dated October 11, 2007 of the Court of Appeals in CA-G.R. CR No. 29009 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, Abad,[*] and *Perez, JJ.*, concur.

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[52] *Id*. at 631-632.

[53] *Supra* note 36.

[*] Per Special Order No. 1619 dated November 22, 2013.