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of employees is however *modified* in the manner indicated in the last paragraph of paragraph 1 of this decision.[17] The respondent court's denial of the two demands covered in paragraph 1(a) and (c) of the dispositive part of the appealed decision *is set aside*, and the abolished positions and withdrawn benefits are ordered restored, as prayed for. With costs in both cases against Esso Standard Eastern, Inc.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Villamor, and *Makasiar, JJ.*, concur.

Barredo, J., reserves his vote.

[G.R. No. L.-28034. February 27, 1971]

THE BOARD OF ASSESSMENT APPEALS OF ZAMBOANGA DEL SUR and PLACIDO L. LUMBAY, in his capacity as Provincial Assessor of Zamboanga del Sur, *petitioners, vs.* SAMAR MINING COMPANY, INC. and the COURT OF TAX APPEALS, *respondents.*

SYLLABUS

1. **TAXATION; REAL ESTATE TAX; DOES NOT INCLUDE IMPROVEMENTS MADE ON ALIENABLE OR DISPOSABLE PUBLIC LAND LEASED TO BY THE GOVERNMENT.—** There is no question that the road constructed by respondent Samar on the public lands leased to it by the government is an improvement. But as to whether the same is taxable under the aforequoted provision of the Assessment Law, this question has already been answered in the negative by this Court. In the case of Bislig Bay Lumber Co., Inc. *vs.* Provincial Government of Surigao, 100 Phil., 303, where a similar issue was raised as to whether the timber concessionaire should be required to pay

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[17]At page 17 of this decision.

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realty tax for the road it constructed at its own expense within the territory of the lumber concession granted to it, this Court, after citing Section 2 of Commonwealth Act 470, held: "Note that said section authorizes the levy of real tax not only on lands, buildings, or machinery that may be erected thereon, but also on any other improvements, and considering the road constructed by appellee on the timber concession granted to it as an improvement, appellant assessed the tax now in dispute upon the authority of the above provision of the law. It is the theory of appellant that, inasmuch as the road was constructed by appellee for its own use and benefit it is subject to real tax even if it was constructed on a public land. On the other hand, it is the theory of appellee that said road is exempt from real tax because (1) the road belongs to the national government by right of accession, (2) the road cannot be removed or separated from the land on which it is constructed and so it is part and parcel of the public land, and (3), according to the evidence, the road was built not only for the use and benefit of appellee but also of the public in general. We are inclined to uphold the theory of appellee. In the first place, it cannot be disputed that the ownership of the road that was constructed by appellee belongs to the government by right of accession not only because it is inherently incorporated or attached to the timber land leased to appellee but also because upon the expiration of the concession, said road would ultimately pass to the national government (Articles 440 and 445, new Civil Code; Tobatabo *vs.* Molero, 22 Phil., 418). In the second place, while the road was constructed by appellee primarily for its use and benefit, the privilege is not exclusive, for, under the lease contract entered into by the appellee and the government, its use can also be availed of by the employees of the government and by the public in general. x x x In other words, the government has practically reserved the rights to use the road to promote its varied activities. Since, as above shown, the road in question cannot be considered as an improvement which belongs to appellee, although in part is for its benefit, it is clear that the same cannot be the subject of assessment within the meaning of Section 2 of Commonwealth Act No. 470. We are not oblivious of the fact that the present assessment was made by appellant on the strength of an opinion rendered by the Secretary of Justice, but we find that the same is predicated on authorities which are not in point, for they refer to improvements that belong to the lessees although constructed on

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lands belonging to the government. It is well settled that a real tax, being a burden upon the capital, should be paid by the owner of the land and not by a usufructuary (Mercado *vs.* Rizal, 67 Phil., 608; Article 597, New Civil Code). Appellee is but a partial usufructuary of the road in question."

2. ID.; ID.; ANY QUESTION RELATING TO THE LEGALITY OF THE TAX ASSESSMENT DOES NOT REQUIRE THAT THE TAXPAYER FIRST PAY THE TAX UNDER PROTEST.— It is also contended by petitioners that the Court of Tax Appeals can not take cognizance of the appeal of Samar from the resolution of the Board assessing realty tax on the road in question, because Samar had not first paid under protest the realty tax assessed against it as required under the provisions of Section 54 of the Assessment Law (Com. Act 470). In this connection the Court of Tax Appeals, in the decision appealed from, said: "Prior to the enactment of Republic Act 1125, all civil actions involving the legality of any tax, impost or assessment were under the jurisdiction of the Court of First Instance (Sec. 44, Republic Act No. 296). It is clear, therefore, that before the creation of the Court of Tax Appeals all cases involving the legality of assessments for real property taxes, as well as the refund thereof, were properly brought and taken cognizance by the said court. However, with the passage by Congress and the approval by the President of Republic Act No. 1125, the jurisdiction over cases involving the validity of realty tax assessment were transferred from the Court of First Instance to the Court of Tax Appeals (See Sec. 22, Rep. Act No. 1125). The only exception to the grant of exclusive appellate jurisdiction to the Tax Court relates to *cases involving the refund of real property taxes* which remained with the Court of First Instance (See City of Cabanatuan, et al. *vs.* Gatmaitan, et al., G.R. No. L-19129, February 28, 1963). A critical and analytical study of Section 7 of Republic Act No. 1125, in relation to subsections (1), (2) and (3) thereof, will readily show that it was the intention of Congress to lodge in the Court of Tax Appeals the exclusive appellate jurisdiction over cases involving the legality of real property tax assessment, as distinguished from cases involving the refund of real property taxes. To require the taxpayer, as contended by respondents, to pay first the disputed real property tax before he can file an appeal assailing the legality and validity of the realty tax assessment will

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render nugatory the appellate jurisdictional power of the Court of Tax Appeals as envisioned in Section 7(3), in relation to Section 11, of Republic Act No. 1125. If we follow the contention of respondents to its logical conclusion, we cannot conceive of a case involving the legality and validity of real property tax assessment, decided by the Board of Assessment Appeals, which can be appealed to the Court of Tax Appeals. The position taken by respondents is, therefore, in conflict with the Explanatory Note contained in House Bill No. 175, submitted during the First Session, Third Congress of the Republic of the Philippines, and the last paragraph of Section 21 of Republic Act No. 1125.

3. **ID.; BOARD OF ASSESSMENT APPEAL; APPEAL THEREFROM TO THE COURT OF TAX APPEAL; DOES NOT REQUIRE THAT TAXPAYER PAID UNDER PROTEST.**— It should be noted that what is involved in the present case is simply an assessment of realty tax, as fixed by the Provincial Assessor of Zamboanga del Sur, which was disputed by Samar before the Board of Assessment Appeals of said province. There was no demand yet for payment of the realty tax. Accordingly Samar appealed to the Board questioning the validity of the assessment. The Board rendered a resolution over-ruling the contention of Samar that the assessment was illegal. Then Samar availed of its right to appeal from the decision of the Board to the Court of Tax Appeals as provided in Section 11 of Republic Act 1125. Section 11 *does not* require that before an appeal from the decision of the Board of Assessment Appeals can be brought to the Court of Tax Appeals it must first be shown that the party disputing the assessment had paid under protest the realty tax assessed. In the absence of such a requirement under the law, all that is necessary for a party aggrieved by the decision of the Board of Assessment Appeals is to file his notice of appeal to the Court of Tax Appeals within 30 days after receipt of the decision of the Board of Assessment Appeals, as provided in Section 11 of Republic Act 1125. We gather that the only question that may be brought before the City or Provincial Board of Assessment Appeals is the question which relates to the reasonableness or legality of the realty tax that is assessed against a taxpayer. Such being the case, it would be unjust to require the realty owner to first pay the tax, that he precisely questions, before he can lodge an appeal to the Court of Tax Appeals. We believe that it is not the intendment

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of the law that in questioning before the Court of Tax Appeals the validity or reasonableness of the assessment approved by the Board of Assessment Appeals the taxpayer should first pay the questioned tax. It is Our view that in so far as appeals from the decision or resolution of the Board of Assessment Appeals, Section 54 of Commonwealth Act 470 does not apply, and said section can be considered as impliedly repealed by Sections 7, 11 and 21 of Republic Act 1125.

APPEARANCES OF COUNSEL

Solicitor General for petitioners.

P. de Castro for respondents.

DECISION

ZALDIVAR, *J.:*

Appeal from the decision of the Court of Tax Appeals, in its CTA Case No. 1705, declaring respondent Samar Mining Company, Inc. (hereinafter referred to as Samar, for short) exempt from paying the real property tax assessed against it by the Provincial Assessor of Zamboanga del Sur.

There is no dispute as to the facts of this case. Samar is a domestic corporation engaged in the mining industry. As the mining claims and the mill of Samar are located inland and at a great distance from the loading point or pier site, it decided to construct a gravel road as a convenient means of hauling its ores from the mine site at Buug to the pier area at Pamintayan, Zamboanga del Sur; that as an initial step in the construction of a 42-kilometer road which would traverse public lands Samar, in 1958 and 1959, filed with the Bureau of Lands and the Bureau of Forestry miscellaneous lease applications for a road right of way on lands under the jurisdiction of said bureaus where the proposed road would traverse; that having been given temporary permit to occupy and use the lands applied for by it, said respondent constructed a road thereon, known as the Samico road; that although the gravel road was finished in 1959, and had

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since then been used by the respondent in hauling its iron ores from its mine site to the pier area, and that its lease applications were approved on October 7, 1965, the execution of the corresponding lease contracts were held in abeyance even up to the time this case was brought to the Court of Tax Appeals.[1]

On June 5, 1964, Samar received a letter from the Provincial Assessor of Zamboanga del Sur assessing the 13.8 kilometer road[2] constructed by it for real estate tax purposes in the total sum of P1,117,900.00. On July 14, 1964, Samar appealed to the Board of Assessment Appeals of Zamboanga del Sur, (hereinafter referred to as Board, for short), contesting the validity of the assessment upon the ground that the road having been constructed entirely on a public land cannot be considered an improvement subject to tax within the meaning of Section 2 of Commonwealth Act 470, and invoking further the decision of this Court in the case of Bislig Bay Lumber Company, Inc. *vs.* The Provincial Government of Surigao, G.R. No. L-9023, promulgated on November 13, 1956. On February 10, 1965, after the parties had submitted a stipulation of facts, Samar received a resolution of the Board, dated December 22, 1964, affirming the validity of the assessment made by the Provincial Assessor of Zamboanga del Sur under tax declaration No. 3340, but holding in abeyance its enforceability until the lease contracts were duly executed.

On February 16, 1965, Samar moved to reconsider the resolution of the Board, praying for the cancellation of tax declaration No. 3340, and on August 3, 1965, Samar received Resolution No. 13 not only denying its motion for reconsideration but modifying the Board's previous resolution of December 22, 1964 declaring the assessment immediately enforceable, and that the taxes to be paid by Samar should accrue or commence with the year 1959.

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[1] October 25, 1965.

[2] Although the road constructed was 42 kilometers in length only 13.8 kilometers was assessed because they traversed alienable or disposable public lands while the rest traversed timber lands which are inalienable or indisposable.

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When its second motion for reconsideration was again denied by the Board, Samar elevated the case to the Court of Tax Appeals.

The jurisdiction of the Court of Tax Appeals to take cognizance of the case was assailed by herein petitioners (the Board and the Provincial Assessor of Zamboanga del Sur) due to the failure of Samar to first pay the realty tax imposed upon it before interposing the appeal, and prayed that the resolution of the Board appealed from be affirmed. On June 28, 1967, the Court of Tax Appeals ruled that it had jurisdiction to entertain the appeal and then reversed the resolution of the Board. The Court of Tax Appeals ruled that since the road is constructed on public lands such that it is an integral part of the lands and not an independent improvement thereon, and that upon the termination of the lease the road as an improvement will automatically be owned by the national government, Samar should be exempt from paying the real estate tax assessed against it. Dissatisfied with the decision of the Court of Tax Appeals, petitioners Board and Placido L. Lumbay, as Provincial Assessor of Zamboanga del Sur, interposed the present petition for review before this Court.

The issue to be resolved in the present appeal is whether or not respondent Samar should pay realty tax on the assessed value of the road it constructed on alienable or disposable public lands that are leased to it by the government.

Petitioners maintain that the road is an improvement and, therefore, taxable under Section 2 of the Assessment Law (Commonwealth Act No. 470) which provides as follows:

"Sec. 2. *Incidence of real property tax.* - Except in chartered cities, there shall be levied, assessed, and collected, an annual *ad valorem* tax on real property including land, buildings, machinery, and other improvements not hereinafter specifically exempted."

There is no question that the road constructed by respondent Samar on the public lands leased to it by the government is an improvement. But as to whether the same is taxable under the aforequoted provision of the Assessment Law, this question has

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already been answered in the negative by this Court. In the case of Bislig Bay Lumber Co., Inc. *vs.* Provincial Government of Surigao, 100 Phil., 303, where a similar issue was raised as to whether the timber concessionaire should be required to pay realty tax for the road it constructed at its own expense within the territory of the lumber concession granted to it, this Court, after citing Section 2 of Commonwealth Act 470, held:

"Note that said section authorizes the levy of real tax not only on lands, buildings, or machinery that may be erected thereon, but also on any other improvements, and considering the road constructed by appellee on the timber concession granted to it as an improvement, appellant assessed the tax now in dispute upon the authority of the above provision of the law.

"It is the theory of appellant that, inasmuch as the road was constructed by appellee for its own use and benefit it is subject to real tax even if it was constructed on a public land. On the other hand, it is the theory of appellee that said road is exempt from real tax because (1) the road belongs to the national government by right of accession, (2) the road cannot be removed or separated from the land on which it is constructed and so it is part and parcel of the public land, and (3) according to the evidence, the road was built not only for the use and benefit of appellee but also of the public in general.

"We are inclined to uphold the theory of appellee. In the first place, it cannot be disputed that the ownership of the road that was constructed by appellee belongs to the government by right of accession not only because it is inherently incorporated or attached to the timber land leased to appellee but also because upon the expiration of the concession, said road would ultimately pass to the national government (Articles 440 and 445, new Civil Code; Tobatabo *vs.* Molero, 22 Phil., 418). In the second place, while the road was constructed by appellee primarily for its use and benefit, the privilege is not exclusive, for, under the lease contract entered into by the appellee and the government, its use can also be availed of by the employees of the government and by the public in general. x x x In other words, the government has practically reserved the rights to use the road to promote its varied activities. Since, as above shown, the road in question cannot be considered as an improvement which belongs to appellee, although in part is for its benefit, it is clear that the same cannot be the subject of assessment within the meaning of Section 2 of Commonwealth Act No. 470.

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"We are not oblivious of the fact that the present assessment was made by appellant on the strength of an opinion rendered by the Secretary of Justice, but we find that the same is predicated on authorities which are not in point, for they refer to improvements that belong to the lessees although constructed on lands belonging to the government. It is well settled that a real tax, being a burden upon the capital, should be paid by the owner of the land and not by a usufructuary (Mercado *vs.* Rizal, 67 Phil., 608; Article 597, new Civil Code). Appellee is but a partial usufructuary of the road in question."

Again, in the case of Municipality of Cotabato, et al. *vs.* Santos, et al., 105 Phil., 963, this Court ruled that the lessee who introduced improvements consisting of dikes, gates and guard-houses on swamp lands leased to him by the Bureau of Fisheries, in converting the swamps into fishponds, is exempt from payment of realty taxes on those improvements. This Court held:

"We however believe that the assessment on the improvements introduced by defendant on the fishpond has included more than what is authorized by law. The improvements as assessed consist of dikes, gates and guard-houses and bodegas totals P6,850.00 which appellants are not now questioning, but they dispute the assessment on the dikes and gates in this wise: 'After the swamps were leased to appellants, the latter cleared the swamps and built dikes, by pushing the soil to form these dikes in the same way that paddies are built on lands intended for the cultivation of palay, the only difference being that dikes used in fishponds are relatively much larger than the dikes used in ricelands.' We believe this contention to be correct, because those dikes can really be considered as integral parts of the fishponds and not as independent improvements. They cannot be taxed under the assessment law. The assessment, therefore, with regard to improvements should be modified by excluding the dikes and gates."

It is contended by petitioners that the ruling in the Bislig case is not applicable in the present case because if the concessionaire in the Bislig case was exempt from paying the realty tax it was because the road in that case was constructed on a timberland or on an *indisposable public land,* while in the instant case what is being taxed is the 13.8 kilometer portion of the road traversing *alienable public lands.* This contention has

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no merit. The pronouncement in the Bislig case contains no hint whatsoever that the road was not subject to tax because it was constructed on inalienable public lands. What is emphasized in the Bislig case is that the improvement is exempt from taxation because it is an integral part of the public land on which it is constructed and the improvement is the property of the government by right of accession. Under Section 3(a) of the Assessment Law (Com. Act 470), all properties owned by the government, without any distinction, are exempt from taxation.

It is also contended by petitioners that the Court of Tax Appeals can not take cognizance of the appeal of Samar from the resolution of the Board assessing realty tax on the road in question, because Samar had not first paid under protest the realty tax assessed against it as required under the provisions of Section 54 of the Assessment Law (Com. Act 470), which partly reads as follows:

"SEC. 54. *Restriction upon power of Court to impeach tax.* — No court shall entertain any suit assailing the validity of a tax assessment under this Act until the taxpayer shall have paid under protest the taxes assessed against him, nor shall any court declare any tax invalid by reason ...."

The extent and scope of the jurisdiction of the Court of Tax Appeals regarding matters related to assessment of real property taxes are provided for in Section 7, paragraph (3) and Section 11 of Republic Act No. 1125, which partly read as follows:

"SEC. 7. *Jurisdiction.* The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -

x x x x x x x x x

(3) Decisions of provincial or city Board of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto."

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"SEC. 11. *Who may appeal; effect of appeal.*— Any person, association or corporation adversely affected by a decision or ruling of x x x any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

In this connection the Court of Tax Appeals, in the decision appealed from, said:

"Prior to the enactment of Republic Act No. 1125, all civil actions involving the legality of any tax, impost or assessment were under the jurisdiction of the Court of First Instance (Sec. 44, Republic Act No. 296). It is clear, therefore, that before the creation of the Court of Tax Appeals all cases involving the legality of assessments for real property taxes, as well as the refund thereof, were properly brought and taken cognizance by the said court. However, with the passage by Congress and the approval by the President of Republic Act No. 1125, the jurisdiction over cases involving the validity of realty tax assessment were transferred from the Court of First Instance to the Court of Tax Appeals (See Sec. 22, Rep. Act No. 1125). The only exception to the grant of exclusive appellate jurisdiction to the Tax Court relates to *cases involving the refund of real property taxes* which remained with the Court of First Instance (See City of Cabanatuan, et al. *vs.* Gatmaitan, et al., G. R. No. L-19129, February 28, 1963).

"A critical and analytical study of Section 7 of Republic Act No. 1125, in relation to subsections (1), (2) and (3) thereof, will readily show that it was the intention of Congress to lodge in the Court of Tax Appeals the exclusive appellate jurisdiction over cases involving the legality of real property tax assessment, as distinguished from cases involving the refund of real property taxes. To require the taxpayer, as contended by respondents, to pay first the disputed real property tax before he can file an appeal assailing the legality and validity of the realty tax assessment will render nugatory the appellate jurisdictional power of the Court of Tax Appeals as envisioned in Section 7(3), in relation to Section 11, of Republic Act No. 1125. If we follow the contention of respondents to its logical conclusion, we can not conceive of a case involving the legality and validity of real property tax assessment, decided by the Board of Assessment Appeals, which can be appealed to the Court of Tax Appeals. The position taken by respondents is, therefore, in conflict with the Explanatory Note contained

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in House Bill No. 175, submitted during the First Session, Third Congress of the Republic of the Philippines, and the last paragraph of Section 21 of Republic Act No. 1125 which provides as follows:

SEC. 21. *General provisions.*—

x x x x x x x x x

Any law or part of law, or any executive order, rule or regulation or part thereof, inconsistent with the provisions of this Act is hereby repealed.

"Accordingly, we hold that this Court can entertain and give due course to petitioner's appeal assailing the legality and validity of the real property tax assessment here in question without paying first the disputed real property tax as required by Section 54 of the Assessment Law."

We agree with the foregoing view of the Court of Tax Appeals. It should be noted that what is involved in the present case is simply an assessment of realty tax, as fixed by the Provincial Assessor of Zamboanga del Sur, which was disputed by Samar before the Board of Assessment Appeals of said province. There was no demand yet for payment of the realty tax. In fact the letter of the Provincial Assessor, of June 5, 1964, notifying Samar of the assessment, states as follows:

"Should you find the same to be not in accordance with law or its valuation to be not satisfactory, you may appeal this assessment under Section 17 of Commonwealth Act 470 to the Board of Assessment Appeals, through the Municipal Treasurer of Buug, Zamboanga del Sur, within 60 days from the date of your receipt hereof."[3]

Accordingly Samar appealed to the Board questioning the validity of the assessment. The Board rendered a resolution over-ruling the contention of Samar that the assessment was illegal. Then Samar availed of its right to appeal from the decision of the Board to the Court of Tax Appeals as provided in Section 11 of Republic Act 1125. Section 11 *does not* require

[3] See page 6 of Brief for respondents, on page 90 of the rollo.

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that before an appeal from the decision of the Board of Assessment Appeals can be brought to the Court of Tax Appeals it must first be shown that the party disputing the assessment had paid under protest the realty tax assessed. In the absence of such a requirement under the law, all that is necessary for a party aggrieved by the decision of the Board of Assessment Appeals is to file his notice of appeal to the Court of Tax Appeals within 30 days after receipt of the decision of the Board of Assessment Appeals, as provided in Section 11 of Republic Act 1125.

This Court, in the case of City of Cabanatuan *vs.* Gatmaitan,[4] said:

". . . if the real estate tax has already been paid it is futile for a taxpayer to take the matter to the City Board of Assessment Appeals for the jurisdiction of that body is merely confined to the determination of the reasonableness of the assessment or taxation of the property and is not extended to the authority of requiring the refund of the tax unlike cases involving assessment of internal revenue taxes. In the circumstances, we hold that this case comes under the jurisdiction of the proper court of first instance it involving the refund of a real estate tax which does not come under the appellate jurisdiction of the Court of Tax Appeals."

From the aforequoted portion of the decision of this Court, We gather that the only question that may be brought before the City or Provincial Board of Assessment Appeals is the question which relates to the reasonableness or legality of the realty tax that is assessed against a taxpayer. Such being the case, it would be unjust to require the realty owner to first pay the tax, that he precisely questions, before he can lodge an appeal to the Court of Tax Appeals. We believe that it is not the intendment of the law that in questioning before the Court of Tax Appeals the validity or reasonableness of the assessment approved by the Board of Assessment Appeals the taxpayer should first pay the questioned tax. It is Our view that in so far as appeals from the

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[4] G.R. No. L-19129, February 28, 1963.

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decision or resolution of the Board of Assessment Appeals, Section 54 of Commonwealth Act 470 does not apply, and said section can be considered as impliedly repealed by Sections 7, 11 and 21 of Republic Act 1125.

IN VIEW OF THE FOREGOING, the decision of the Court of Tax Appeals, appealed from, is affirmed, without pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Ruiz Castro, Fernando, Teehankee, Villamor, and *Makasiar, JJ.,* concur.

Barredo, J., took no part.

[G.R. No. L-28218. February 27, 1971]

MAGNO MANUEL, *plaintiff-appellant,* vs. MARIANO VILLENA, THE DIRECTOR OF FORESTRY, THE SECRETARY OF THE DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES, *defendants-appellees.*

SYLLABUS

1. **ADMINISTRATIVE LAW; DIRECTOR OF FORESTRY; HAS THE JURISDICTION OVER APPLICATION FOR A TREE FARM PERMIT.** — The proceedings challenged in the complaint refer to the approval or rejection of an application for a Tree Farm Permit. Under Section 1838 of the Revised Administrative Code, quoted below, this function falls within the jurisdiction of the Director of Forestry with the approval of the Secretary of Agriculture and Natural Resources. "Section 1838. *Leasing of forest land for special purposes.*- The Director of Forestry with the approval of the Secretary of Agriculture and Natural Resources, may, upon such terms as he may deem reasonable, lease or grant to any