6 Phil. 230

[G.R. No. 2466. April 30, 1906]

ROBERT LIENAU, PLAINTIFF AND APPELLANT, VS. THE INSULAR GOVERNMENT ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

The plaintiff sought to have inscribed in the Court of Land Registration a tract of land of 213 hectares 3 ares and 6 centares, situated in the pueblo of Angadanan, in the Province of Isabela, Luzon. The only evidence of ownership of the land which he presented was a deed executed by the governor of the said province on the 6th of June, 1894, in accordance with a resolution of the provincial board of adjustment of lands of the 7th of March of the same year. According to the deed the land measured 13 hectares 93 ares and 76 centares. It was stated therein that it was issued in accordance with the royal decree of the 31st of August, 1888. By the terms of that royal decree the provincial board had no jurisdiction to pass upon any applications for composition where the land exceeded 30 hectares in extent. This seems to us to be a sufficient answer to all the arguments of the petitioner. He insists that this deed from the Government described a tract of land 213 hectares in extent; that by reference to the boundaries given in the deed a tract of this extent is definitely and certainly described, and his claim is that the boundaries given in a deed must prevail over the amount of land mentioned therein where the two do not agree, and in this particular case that the statement in the deed that the land contained 13 hectares must be rejected, and the court must give force only to the boundaries mentioned therein.

Even if we concede this, and even if the deed itself, after describing the land as it does describe it, had stated that it contained 213 hectares, the petitioner would not have been entitled to have 213 hectares inscribed, for the reason that the provincial board had no authority to consider an application for a tract of land of 213 hectares in extent, or any authority to allow an adjustment of a tract of that extent, nor had the provincial governor

any authority to. execute and deliver a deed for such tract of land. By the terms of the royal decree above mentioned such an application should be made to the General Direction of Civil Administration in Manila, which was the exclusive body having jurisdiction in such a case.

The appellant says in his brief that there is no proof that the provincial board did not have such authority. In such a matter there can be no proof except that furnished by the laws then in force, which affirmatively show in this case that no such power existed.

The petitioner attempts also to overcome this objection by the citation of cases to the effect that "the acts of public officers, executed in the discharge of official duty and by public authority, are not presumed to be a usurpation, but in the exercise of an authority lawfully granted or subsequently ratified." Those cases are not applicable to the case at bar. Where an officer has authority to do a certain act in a certain way, it has been frequently held that if in executing the act he omits some of the formalities required by law his act is not necessarily void. But that principle has never been applied to a case where the officer performing the act was without any authority whatever to execute it. Said principle is applicable to cases of a defective exercise of a power which in fact exists. It is not applicable to a case where there is an entire absence of power. In the case at bar the provincial board and the provincial governor had no authority in any case to execute and deliver a deed for more than 30 hectares. There were no provisions of the law compliance with which would make any such deed valid. The case, to our minds, is the same as it would have been if the deed in question had been issued by the judge of the Court of First Instance of the Province of Isabela.

There is nothing else in the case which can help the petitioner. He must necessarily rely upon his deed from the Government. The survey and marking of boundaries which was made by Diego Flores, the remote grantor of the plaintiff, could not give any title to Flores to a tract of land of 196 hectares. It was admitted at the trial of the case that the defendants other than the Government who appeared and opposed the petition were in the actual possession of portions of the land.

The court below, in deciding the case, denied the application of the petitioner for the inscription of the land so far as the tract exceeded 13 hectares 93 ares and 76 centares, and ordered the inscription of a tract of land of that extent situated in Quelusutan, after the petitioner had so amended his plan as to describe such a tract. The claim of the petitioner is that applying the boundaries in the deed to the land itself, the only tract of land described is

a tract of 213 hectares; that these boundaries can not be made to fit a tract of land 13 hectares in extent, and he asks where these 13 hectares are which the court ordered to be inscribed. We do not see how the question which the appellant asks, *viz*, where the 13 hectares are, can have any effect upon the decision of this case. The fact that his deed is so imperfect and incomplete as not to describe any tract of land less than 30 hectares in extent, furnishes no sufficient reason for saying that such an error in the description conferred upon the provincial board and the provincial governor jurisdiction to issue a deed for 213 hectares. It may be that the petitioner's deed was void because the land described in it when limited to 13 hectares can not be located, but that is no reason for saying that by changing the extent of land described therein from 13 hectares to 213 hectares it can be located and that therefore the deed becomes valid and the provincial board had authority to order its execution.

The appellant claims also that he is entitled to relief under certain of the provisions of Act No. 926 the Public Land Act. The evidence shows that in 1882 Diego Flores made an application for the adjustment of a tract of land in Angadanan. The petition which Flores then made does not appear in the record. At the trial he gave oral testimony as to the description of the land contained in his petition. It does not appear that Flores presented any other petition prior to the execution of the deed on the 6th of June, 1894. The statement made by the Solicitor-General in his brief, that Flores made another application on the 2d of April, 1894, is not supported by the evidence. It is apparent, as suggested by the appellant, that the Solicitor-General mistook the date of the personal cedula of Flores, mentioned in the title deed issued by the provincial governor, for the date of the application made by Flores for the adjustment of his title. After this deed had been issued, and on June 30, 1895, Flores made an application to the Spanish Government relating to this land. Certain steps were taken by the Government in connection with that application, and a survey was ordered. But it does not appear that it was ever made, or that anything further was done. The nature of the application made by Flores appears only from the record of its receipt and from the recitals made by Flores in his deed to Feraldo. The said record is as follows: "Instancia de Diego Flores acompañada de documentos solicitando la adquisicion de la diferencia del terreno que posee en Angadanan, Isabela de Luzon." In tlie deed is found the following statement: "Tercera. En caso de no obtener el titulo solicitado ya por haberse presentado la instancia fuera del tiempo marcado en el Real Decreto de trece de Febrero de mil ochocientos noventa y cuatro, o bien porque sacado el terreno a subasta se adjudique a otra persona, Don Juan Feraldo perdera todo derecho a reclamar del exponente indemnizacion de ningun genero por las cantidades abonadas mas no obstante hara suyas

las trece hectareas del terreno." The appellant alleged in his petition:

> "Que el dieho Diego Flores acto seguido presento a la Administracion General del Gobierno Civil una peticion, solicitando la adquisicidn de la diferencia del terreno incluido en los linderos de su dicho titulo como lo justified por una copia certificada del asiento correspondiente en el libro de Registro de entrada de documentos en la Inspect cion de Montes correspondiente al año 1895, marcada comprobante ntimero 10 y hecha una parte de esta solicitud. Que Diego Flores de esta manera ha cumplido con lo prescripto en el articulo o, secciones 2 y 3 del Real Decreto de 25 de Junio, 1880, salvando para si el derecho exclusivo de la adquisicion de la diferencia mencionada."

The appellant claims that he comes within the provisions of paragraph 4 of section 54 of Act No. 926, which, with the first part of the section, is as follows:

> "SEC. 54. The following described persons or their legal successors in right, occupying public lands in the Philippine Islands, or claiming to own any such lands or an interest therein, but whose titles to such lands have not been perfected, may apply to the Court of Land Registration of the Philippine Islands for confirmation of their claims and the issuance of a certificate of title therefor to wit:
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> "4. All persons who were entitled to apply and did apply for adjustment or composition of title to lands against the Government under the Spanish laws and royal decrees in force prior to the royal decree of February thirteenth, eighteen hundred and ninety-four, but who failed to receive title therefor through no default upon their part."

His claim is that he applied in 1882 for title to this land, and has never received such title, through no fault of his. That the deed which he received in 1894 was issued to him in pursuance of his application in 1882, is certain. He so states in his deed to Feraldo. The granting of the deed terminated proceedings under the petition of 1882. His case was then covered by other provisions of the law. If his claim as to the possession is correct he was

occupying more land than his deed called for and was entitled to an adjustment for at least a part of such excess, in accordance with the laws then in force. This was the view taken by the appellant himself, as is seen from that part of the petition quoted above.

His new petition for acquiring the excess having been presented in 1895, his case is not brought within any of the provisions of section 54.

The appellant not having proved ownership of the land described in his petition and in his plan, and he himself claiming that there is nothing in this case to show where the 13 hectares are located, we think that his petition should have been denied *in toto*, reserving to him the right to present a new petition for the land to which he may be entitled, in accordance with the views herein expressed.

The judgment is modified so as to direct the dismissal of the petition, without prejudice to the right of the petitioner to present a new petition for the land to which he may be entitled, in accordance with the views herein expressed. In other respects it is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days let final judgment be entered in accordance herewith and ten days thereafter the case be remanded to the lower court for proper procedure. So ordered.

Arellano, C. J., Torres, Mapa, and *Carson, JJ.,* concur.

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