

[ G. R. No. L-11107. July 25, 1958 ]

**LUIS SARABIA AND JOSE LEIDO, PETITIONERS AND APPELLANTS, VS. THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES AND FRANCISCO B. LARDIZABAL, RESPONDENTS AND APPELLEES.**

**D E C I S I O N**

**MONTEMAYOR, J.:**

This is an appeal from the order of the Court of First Instance of Manila, sustaining a motion filed by Francisco B. Lardizabal to dismiss the petition for certiorari to review and set aside or annul the order of the Secretary of Agriculture and Natural Resources, and dismissing said petition.

For purposes of this case, the facts that we gather from the record on appeal and the pleadings may be briefly stated as follows: On August 27, 1951, Luis Sarabia filed a fishpond application (Fp. A No. 7304) for a parcel of land in Bo. Nagiba, Naujan, Oriental Mindoro, containing an area of about 100 hectares. About the same time, Jose Leido filed his Fp. A No. 7305 for the same area. About a year later, that is, on July 16, 1952, Francisco B. Lardizabal filed his fishpond application (Fp. A No. 8777) for the same parcel. At the time, the parcel applied for by the three men was included in a communal forest and was not available for fishpond purposes. It was disestablished only on February 27, 1953, and on March 16, 1953, it was certified by the Director of Fisheries as available for fishpond purposes.

By order of March 29, 1954, the Director of Fisheries presumably acting on the three applications, allocated and adjudicated to Sarabia and Leido individually and separately, 50 hectares each, out of the 100 hectare parcel applied for. The same order rejected the application of Lardizabal on the ground that the area applied for by him was included in that covered by the prior applications of Sarabia and Leido. Lardizabal filed a request for reconsideration of the order, which was denied by the Director of Fisheries in an order dated July 2, 1954. On August 21, 1954, Ordinary Fishpond Permit No. 1938-i was issued to

Sarabia and on September 10, 1954, Ordinary Fishpond Permit No. F-2338-j was issued in favor of Leido. Both permits bore the approval of the Secretary of Agriculture and Natural Resources.

In the meantime, on July 29, 1954, Lardizabal wrote to the PCAC (Presidential Complaints and Action Committee), complaining against the order of the Director of Fisheries rejecting his application. His complaint or letter was referred to the Secretary of Agriculture and Natural Resources who, considering it as an appeal to him from the order of the Director of Fisheries, which appeal according to him, was filed on time, took action upon it and eventually issued the order of August 22, 1955, received by Sarabia and Leido on August 30, 1955, modifying the order of the Director of Fisheries, by reducing the areas granted to Sarabia and Leido from 50 hectares to 33 1/3 hectares each, and giving the balance of 33 1/3 hectares to Lardizabal.

Sarabia and Leido filed motions for reconsideration of the order, which motions were denied on October 14, 1955. Both filed second motions for reconsideration, which motions were denied by order of January 28, 1956, received by them on February 8, 1956.

Claiming that under Fisheries Administrative Order No. 22 of the Bureau of Fisheries and approved by the Secretary of Agriculture and National Resources, which has the force and effect of law, an order of the Director of Fisheries shall become final after 30 days from notice unless appealed to the Secretary of Agriculture and Natural Resources, and that the order of said Director of Fisheries rejecting the application of Lardizabal had already become final for failure to appeal the same to the Secretary of Agriculture and Natural Resources, and that consequently, the latter no longer had jurisdiction to issue his order of August 22, 1955, modifying the order of the Director of Fisheries, Sarabia and Leido filed a petition for certiorari in the Court of First Instance of Manila (the present case) to annul said order of the Secretary of Agriculture and Natural Resources for having been issued without or in excess of jurisdiction.

Pending appeal in this Tribunal, and before the parties had filed their briefs, respondent-appellee Lardizabal filed a motion to dismiss the appeal filed by Sarabia and Leido, on the ground that the appeal was not perfected on time, for the reason that copy of the order dismissing the petition for certiorari by the trial court was received by them on July 5, 1956, and the appeal bond was filed only on August 2, 1956 or beyond the period of 15 days required by Rule 41, Section 17 of the Rules of Court.

Said motion to dismiss the appeal was opposed by Sarabia and Leido in a written opposition dated August 31, 1956, and in compliance with the resolution of September 3, 1956 requiring respondents-appellees to comment on the motion to dismiss, they filed their comment as a supplement to their written opposition of the motion to dismiss. Thereafter, by resolution of September 7, 1956, action on the motion to dismiss the appeal was deferred until consideration of the case on the merits. On September 28, 1956, respondent-appellee Secretary of Agriculture and Natural Resources adopted the motion to dismiss the appeal filed by Lardizabal.

The question of whether or not the present appeal was perfected on time is jurisdictional, and so we gave preferential consideration. According to the order of the trial court of August 11, 1956, included in the record on appeal filed by appellants Sarabia and Leido, the notice of appeal was filed within the 30-day period prescribed by Section 2 (3), Rule 41 of the Rules of Court. However, though not appearing in the record on appeal, in the brief for the Secretary of Agriculture and Natural Resources, it is stated on page 14 thereof that on August 10, 1956, said Secretary received an order of the lower court, dated August 3, 1956, disregarding the notice of appeal filed by Sarabia and Leido, for the reason that it was not filed within the reglementary period provided for in Section 17 of Rule 41 of the Rules of Court. In other words, before issuing the order approving the record on appeal on August 11, 1956 wherein Section 3 of Rule 41, providing for a 30 day period within which to appeal, was applied, the trial court had previously disregarded the notice of appeal and applied the 15 day period required in Section 17 of the same Rule 41.

We are inclined to believe that the trial court was correct in its first order of August 3, 1956. The action before the trial court was in certiorari to annul the order of the Secretary of Agriculture and Natural Resources for having been issued without or in excess of jurisdiction. According to Section 17, Rule 41 of the Rules of Court, appeals in certiorari, prohibition, etc. shall be perfected within 15 days. The 30 day period provided in Section 3 of said Rule 41 refers to ordinary actions. It is, therefore, clear that both the notice of appeal and the appeal bond were filed beyond the period for appeal which is 15 days for the present case.

Under Section 13 of the same Rule 41, which provides that where the notice of appeal, appeal bond or record on appeal is filed, but not within the period of time provided by law, the appeal shall be dismissed, there is no other recourse but to dismiss the present appeal.

In view of the dismissal of the appeal, there ordinarily would be no need or occasion for

going into the merits of the case. However, for the satisfaction of the parties, it may not be out of place to say that after a study of the case, there is reason to believe that the order or decision of the Secretary of Agriculture and Natural Resources of August 22, 1955, sought to be annulled in the certiorari proceedings, modifying the order of the Director of Fisheries, gives practical and substantial justice to the three fishpond applicants, Sarabia, Leido and Lardizabal, the Secretary saying that he believes that “to allocate equally the land given to Leido and Sarabia to the three applicants is the most proper and equitable.” It is true that Lardizabal filed his application one year later than those of Sarabia and Leido. However, as stated in the said order or decision of the Secretary of Agriculture and Natural Resources, at the time that the three applications were filed, the area applied for was part of a communal forest and therefore, not then available for fishpond purposes. Lardizabal claims that he worked hard for the disestablishment of said area so as to make it available for fishpond purposes. The Secretary of Agriculture and Natural Resources further states that inasmuch as when the three applications were filed, the area applied for was not available, said three applications should be regarded as rejected and that later they should all be considered as filed on the date of disestablishment of the area on February 27, 1953, so that the three applicants would have the same standing.

In view of the foregoing, the appeal is hereby dismissed. No costs.

*Bengzon, Padilla, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L. Endencia, and Felix, JJ., concur.*