

NATIONAL WATERWORKS SEWERAGE AUTHORITY, PETITIONER-APPELLANT, VS. HOBART DATOR, IN HIS CAPACITY AS MUNICIPAL MAYOR, ET AL., RESPONDENTS-APPELLEES.

G.R. No. L-21911. September 29, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

This case is sequel to G.R. No. L-15525[1] wherein this Court affirmed the decision of the Court of First Instance of Quezon declaring the municipality of Lucban, Quezon the owner of the "Apolinario de la Cruz Waterworks System." The dispositive of the decision in that case decreed:

"WHEREFORE, judgment is hereby rendered declaring plaintiff to be the owner of the Lucban Waterworks System known as the 'Apolinario de la Cruz Waterworks System', subject, however, to the jurisdiction, control and supervision of defendant Authority, and ordering the defendant to account to plaintiff for the revenue so far received by it from the operation of the said waterworks system."

The decision has become final and executory.

On February 2, 1962, Hobart Dator, in his capacity as Municipal Mayor of Lucban, issued a Memorandum directing the Municipal Treasurer of that municipality to designate some of the clerks in his office, as temporary waterworks collectors, to receive the water rentals paid by the users of water; and a Proclamation enjoining the consuming public to pay their water fees to the office of the Municipal Treasurer. Complying therewith, the treasurer proceeded to collect water fees, and had actually made collections from a number of consumers in the municipality.

On February 19, 1962, the National Waterworks and Sewerage Authority (NAWASA), filed with the same Court of First Instance of Quezon, a petition to declare the mayor in contempt, alleging that the acts of the latter in ordering for the collection of fees are in defiance of the decision of this Court in G. R. No. L-15525. After submission by the parties of their responsive pleadings on the matter, the lower court, on June 1, 1962, dismissed the petition, holding and concluding "that the collection of water fees and the appointment of personnel of the system are acts relating to internal management are not included in the regulatory and supervisory powers embraced in the term 'jurisdiction, supervision and control' to be exercised by the petitioner (NAWASA) over the waterworks system pertaining to municipalities under Republic Act 1383." It is from this order that the NAWASA has taken the instant appeal.

The appellant maintains that the mayor's order to collect water bills in the name of the municipality constitutes contempt of court as it is an encroachment upon the NAWASA's supervisory power over the municipality's waterworks system as declared in G. R. No. L-15525.

The contention is untenable. The authority of a municipality to fix and collect rents for water supplied by its waterworks system is expressly granted by law.[2]

Section 2317 of the Revised Administrative Code provides:

"Municipal Waterworks. - A municipal council shall have authority to acquire, construct, and maintain waterworks for the purpose of supplying the inhabitants of the municipality with water; to regulate the supply and use of water therefrom; and to fix and collect rents for water thus supplied." (Emphasis Ours.)

And section 2 of Republic Act No. 2264, also provides that: "any provision of law to the contrary notwithstanding, x x x municipalities x x x shall have authority x x x to collect fees and charges for services rendered by the city, municipality or municipal district."

Even without these express provisions, however, the authority of the municipality to fix and collect fees from its waterworks would be justified from its inherent power to administer what it owns privately. It is now settled that although the NAWASA may regulate and supervise the water plants owned and operated by cities and municipalities, the ownership thereof is vested in the municipality and in the operation thereof the municipality acts in its proprietary capacity.[3] Like any private owner, the municipality enjoys the attributes of ownership under the New Civil Code.[4] One such attribute is the right to use or enjoy the property.[5] The municipality, here concerned, has chosen to use its waterworks system for revenue purposes. Its undertaking to supply water at a cost to its inhabitants, is in itself a business venture, and the fees collected therefrom, would be the only income that said municipality may derive from such business. If a governmental entity, like the NAWASA, were allowed to collect the fees that the consuming public pay for the water supplied to them by the municipality, the latter, as owner, would be deprived of the full enjoyment of its property. As previously stated,[6] ownership is nothing without the inherent rights of possession, control and enjoyment.

In the case of *Municipality of Compostela vs. NAWASA*, supra, this Court, rejecting the NAWASA's proposition to administer the municipal waterworks therein involved, pronounced:

"x x x the National Government can not appropriate patrimonial property of municipal corporations without just compensation and due process of law. As a consequence, neither may the National Government assume the power of administration of patrimonial property of municipal corporations, if such action is based upon the aforementioned appropriation of said property by the State. In fact, it may not, by operation of law, assume such administration, without appropriating the title to the property, if the same or the income derived from its operation will be co-mingled with other property, either of the National Government or of other municipal corporations, in such a way to permit the use of the property or income belonging to one of such corporations for the benefit of another municipal corporation or of the State itself." (37 Am. Jur. p. 700; 62 C. J. S. p. 348; 38 Am. Jur. pp. 97-98; 103 A.L.R. p. 579 (Emphasis supplied). (See also *San Juan vs. NAWASA*, G.R. No. L-22047, August 31, 1967) where

Upon the foregoing, the order appealed from must be as it is hereby, affirmed, and on equitable considerations no costs is taxed.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Fernando JJ., concur.
Benzon, J., on official leave of absence.

[1] *The Municipality of Lucban vs. NAWASA*, decided on October 11, 1961.

[2] See *The Municipality of Compostela, Cebu, vs. NAWASA*, G. R. No. L-21763, December 17, 1966.

[3] *City of Baguio vs. NAWASA*, 57 Off. Gaz. 1584; *City of Cebu vs. NAWASA*, G. R. No. L-12892, April 20, 1960; *Municipality of Naguilian vs. NAWASA*, G. R. No. L-18540, November 29, 1963.

[4] Art. 424, 2nd par. In the words of the Romans, the attributes of ownership are *jus utendi*, *fructu*, *abuti*,

disponendi and vindicandi. (3 Sanchez Ro-man 84, ???; 2 Casten 76, both cited in the Civil Code of the Philippines, Annotated, by Tolentino, p. 410.

[5] Art. 428, Ibid.

[6] See Municipality of La Carlota vs. NAWASA, G.R. No. L-20232, September 30, 1964.

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