

ROSALINA SANTOS, ETC., ET AL., PLAINTIFFS-APPELLEES, VS. THE HONORABLE SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, DEFENDANT-APPELLANT.

G.R. No. L-16949. March 18, 1967

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal taken directly to Us by the Solicitor General in behalf of the Secretary of Public Works and Communications from the decision of the Court of First Instance of Pampanga, setting aside the defendant-appellant's order in Administrative Cases Nos. RA 2056-90-91 as null and void and making permanent the writ of preliminary injunction theretofore issued.

On September 19, 1958, the then Senator Rogelio de la Rosa wrote a letter to the defendant Secretary of Public Works and Communications requesting action by the latter on the petition of some residents of Sexmoan, Pampanga, that certain creeks, rivers and/or streams which were allegedly converted into fishponds by certain parties, among them the plaintiffs-appellees, be reopened pursuant to Republic Act No. 2056.

Acting on the said communication, Undersecretary of Public Works and Communications Marciano Bautista designated Atty. Jesus Lazaro to investigate the alleged encroachment of public navigable rivers, streams and waterways in Sexmoan, Pampanga. The cases, docketed as "Cases Nos. RA-2056-90-91," concerned two (2) fish-ponds, one called "Mandayag," registered in the name of the late Maxima Santos Vda. de Blas, whose estate is now under administration of the plaintiff-appellee Rosa-lina Santos, a niece of the said decedent, and the other called "Paculayo," registered in the name of the spouses Jose S. Chivi, Jr. and Lydia R. Chivi, the other plain-tiffs-appellees in this case.

The investigator conducted several hearings and thereafter submitted a report to the defendant-appellant on January 29, 1959. On the basis of this report, the defendant-appellant rendered a decision dated February 3, 1959, the dispositive part of which reads as follows:

"Premises considered it is hereby ordered:

- (1) That respondent Rosalina Santos de la Paz remove whatever fishpond constructions and/ or works illegally placed on the bed of Sapang Mandayag and restore the channel of said stream to its original condition;
- (2) That respondents Jose Chivi, Jr. and Lydia R. Chivi remove all fishpond constructions and/or works placed across the Paculayo River and Paculayo Creek and restore the channels and/ or beds of said streams to their original con-dition; and
- (3) That the above fishpond constructions and/or works be removed within thirty (30) days from the date of receipt of the decision by the respondents; otherwise, this Office or its duly authorized representative shall remove the same at the expense of said respondents within ten (10) days after the expiration of the thirty-day period given them, without prejudice to institut-ing judicial proceedings against them under the provisions of

Section 3 of Republic Act No. 2056."

Not satisfied with the decision of the defendant-appellant, plaintiffs-appellees filed in the Court of First Instance of Pampanga a complaint with preliminary injunction "to declare null and void and without legal effect the decision of the Secretary of Public Works and Communications and/or to declare Republic Act No. 2056 unconstitutional." They alleged, among other things, that the fishponds which were the subject matter of the administrative investigation were their private properties registered under the Land Registration Act; that Republic Act No. 2056 is unconstitutional, being ex post facto and having delegated a purely judicial function to administrative officials; that the complainants in the administrative case were not real parties in interest and that the defendant-appellant had no authority whatsoever to inquire into the titles of plaintiffs-appellees or otherwise conduct the investigation in question.

In his answer, defendant-appellant Secretary of Public Works and Communications claimed that the trial court had no jurisdiction over the subject matter because plaintiffs-appellees did not exhaust all administrative remedies; that Republic Act No. 2056 was valid and constitutional; that under the principle of separation of powers, the judiciary is not authorized to inquire into, or interfere with, the exercise of executive functions and defendant-appellant's duties and authority under Republic Act No. 2056; that factual findings in administrative investigations are conclusive upon courts; that the construction and encroachments ordered demolished in defendant-appellant's decision in question were made by plaintiffs on public, navigable rivers, streams and creeks without proper authority and to the detriment of public interest; and that the Torrens titles of plaintiffs-appellees to the fishponds in question do not include public streams, rivers, creeks and waterways found therein and, that even supposing that their titles purport to cover such rivers, streams, creeks and waterways, the registration and adjudication thereof in plaintiffs' name are illegal and null and void insofar as they include the said rivers, streams, creeks and waterways.

After trial, the lower court rendered judgment declaring the decision of defendant-appellant null and void and making permanent the writ of preliminary injunction theretofore issued. It, however, disallowed plaintiffs-appellees' claim for damages on the ground that defendant-appellant had acted in his official capacity.

Defendant-appellant brought this appeal on the following assignment of errors:

1. The lower court erred in holding that although plaintiffs have not appealed the defendant-appellants decision to the President of the Philippines they are not precluded from bringing the action to the court under the theory "that the Secretary of a Department is an alter ego of the President," and that "the action of the defendant bears the implied sanction of the President unless the same is disapproved by the latter."
2. The lower court erred in holding that defendant-appellant committed "gross abuse of discretion" in investigating and rendering the decision in the administrative case on the ground that he cannot review and reverse the lawful actuations and final decisions of a court of justice which granted the registration of the properties in question to plaintiffs.
3. The lower court erred in holding that Republic Act No. 2056 which became effective on June 18, 1958 could not affect the plaintiffs' fishponds constructed about a century ago; and that the prosecution of plaintiffs-appellees renders it ex post facto.

The first assignment of error is without merit. It is now settled that Department Secretaries are the alter ego of the President so that the decision of Secretary of Public Works and Communications is presumed to be that of the President, unless disapproved (See, e.g., *Villena v. Sec. of the Interior*, 67 Phil. 451; *Lovina v. Moreno*, G. R. No. L-17821, November 29, 1963).

But the second assignment is well taken. The trial court held that there was "gross abuse of discretion" on the part

of the defendant-appellant when he ordered the removal of fishpond constructions on the beds of Sapang Mandayag, Paculayo River and Paculayo Creek because in so doing defendant-appellant reviewed and reversed the decision of a court of justice which ordered the registration of the properties under the Torrens system. In the case of *Lovina v. Moreno*, supra, this Court has held already that Republic Act No. 2056 does not constitute an unlawful delegation of judicial power to the Secretary of Public Works and that the silence of the Torrens title with regard to the existence of a navigable stream with-in a property does not preclude a subsequent investigation and determination of its existence.

Indeed, the investigator found evidence of the ex-istence of a Paculayo River and Sapang Paculayo. His report states:

PACULAYO

"The documentary evidence gathered prove to the existence not only of the Paculayu Creeks but also of a certain Paculayung Maragul or River. The Blueprint Plan of a private land as surveyed for Lydia R. Chivi on July 18, 1956 and February 13, 1957 by Quintin A. Paredes which was approved by the Director of Lands on April 29, 1957, marked as Psu 158623 (See Annex S) and Blueprint Plan of private land as surveyed for Simeon Blas on December 9, 1928, by M.G. Espinosa and approved on August 20, 1930 by the Director of Lands for Psu 71475 (See Annex S-1), conclusively proved that Paculayu River was 100 meters wide and Sapang Paculayung Maragul was 30 meters wide and now enclosed in the fishpond now owned by the respondent Lydia R. Chivi.

"As to the navigability of the said Paculayu River and Sapang Paculayu, the same has been proven by the testimonies of Mr. Pedro Bengco and Pablo Lucas. x x x

"xxx xxx xxx xxx

"However, at the Sexmoan Cadastre CM 14521N-120°37'E, (hereto attached as Annex T) made by the Bureau of Lands as a result of a survey conducted sometime in 1956, the Paculayu River and the Paculayung Malati does not exist anymore for it is enclosed in the fishponds of respondent Lydia R. Chivi and Rosalina Santos. In Annex S-1, it also clearly appears that a portion of the Paculayu River and Sapang Paculayu, formerly exist and is navigable at the time it was illegally appropriated by the respondent."

These findings are supported by evidence in the record and, in the absence of any illegality, error of law, fraud, or imposition, which have not been shown in this case, should be respected. (*Lovina v. Moreno*, supra) Consequently, the court below erred in declaring null and void the entire decision of the Secretary of Public Works and Communications.

With respect to Sapang Mandayag, however, the investigator failed to determine its exact location, width and length. Thus, in his report, he states:

MANDAYAG

"In the ocular inspection it was found out by the Investigators that the alleged Sapang Mandayag is between the fishponds of Gregorio Mangalindan and the fishpond of respondent Maxima Vda. de Blas, where Rosalina Santos is now the respondent being the executrix of the testate estate. The source of the water of the Sapang Mandayag is the Pampanga River, the direction is leading to Don Tomas Creek. The Sapang Mandayag has a width from bank to bank of about 10 to 20 meters; and the water flows without obstruction and is passable by banca. From the mouth of the Sapang Mandayag up to a length of at least a kilometer, another dike of the respondent is constructed directly across the Sapang Mandayag.

"Even the evidence submitted by the respondent which is a copy of the Original Certificate of Title No. 432, it appears that Lot No. 2 is bounded on the north by Sapang Maliit which is 6 meters wide; on the northeast, by

Sapang Don Tomas, which is 25-30 meters wide; on the south-east, by Sapang Don Tomas and property of Simeon Carlos, now owned by Maxima Santos Vda. de Blas, the Sapang Batasan, 10 meters wide and the Sapang Maliit, 6 meters wide.

"In the trace copy of a plan of private land as surveyed for Maxima Santos Vda. de Blas, as surveyed on April 5, 6, and 7, 1950 by Timoteo Certeza for Psu 126222, which is sheet No. 2 (see Annex R, roughly traced by the undersigned) of the 7 sheets now on file on the Record Section of the Bureau of Lands, the Sapang Batasan, and Sapang Maliit clearly appears. However, in the attached Sexmoan Cadastre Map CM 14° 54'N-120° 36'E, CM 14°54'N-120° 37'E, CM 14°55'N-120° 36'E and CM 14°55'N-120°37'E, which was made as a result of a survey conducted by the Bureau of Lands sometime in 1956, the Sapang Batasan which is 10 meters wide and the Sapang Maliit, 6 meters wide, does not exist anymore. However, the complaint is about the enclosure and/or encroachment of a certain Sapang Mandayag, the portion of which is still existing as appearing in the attached Sexmoan Cadastre and there is no evidence gathered or presented to prove the exact location of the missing channel or bed of the Sapang Mandayag. As to the navigability of the Sapang Mandayag, in the ocular inspection conducted by the investigators, it was found out that the Mandayag River is still navigable.

"As a conclusion, therefore, based on the evidence gathered or presented, the undersigned believe that there was once a Sapang Mandayag which is navigable, only the exact location, width and length of the said Sapang Mandayag cannot at present, be determined for lack of evidence."

Investigator's recommendation:

"As no conclusive evidence has been gathered or presented to prove the exact location, width and length of the channel of the Sapang Matua and Sapang Mandayag, and that the Ilog Calise is still existing without any encroachment and/ or closure, it hereby recommended that a de-cision be rendered dismissing the complaint ag-ainst the respondent Rosalina Santos, as ex-ecutrix of the Testate Estate of the late Maxima Vda. de Blas without prejudice."

We, therefore, agree that the complaint against Rosalina Santos, as executrix of the Testate Estate of the late Maxima Vda. de Blas, with regard to fishpond "Mandayag," be dismissed without prejudice to a further reinvestigation. In doing so, We merely accord to plain-tiff-appellee what in *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, was described is her "cardinal primary right" in an administrative proceeding to have a decision rendered on the evidence presented at the hearing, or at least contained in the record and dis-closed to the parties affected.

We also find merit in the third assignment of error. The trial court held that the prosecution of the plaintiffs-appellees under section 3 of Republic Act No. 2056 which took effect on June 13, 1958, for acts done half a century earlier, makes the Act ex post facto. We do not agree with the trial court on this point. A constitutional provision that no ex post facto law shall be enacted is applicable only to criminal cases. (*Roman Catholic Bishop of Lipa v. Municipality of Taal*, 38 Phil. 367; *Prov. of Camarines Sur v. Director of Lands*, 64 Phil. 600; *Philippine National Bank v. Ruperto*, G. R. No. L-13777, June 30, 1960) Plaintiffs-appellees are not being criminally prosecuted for constructing dikes; they are merely being ordered by the Secretary of Public Works and Communications to demolish the illegal con-structions on the channels of public navigable rivers and/or streams. As to the constructions in the past, Republic Act No. 2056 merely authorizes their summary demolition as public nuisances by orders of the Secretary of Public Works and Communications after complying with due process. Here is no exercise by the State of the coercive power of its criminal law. Here is merely the invocation of an authority which, as noted in *Lovina*, was already granted the public works official as early as Act No. 3208 of the Philippine Legislature.

WHEREFORE, the decision appealed from is reversed as far as fishpond "Paculayo" is concerned and the writ of injunction issued therein is annulled and set aside, but it is affirmed with respect to fishpond "Mandayag" as to the

location, length and width of which no substantial evidence has been found by the Department of Public Works and Communications. Costs against the appellees, Jose S. Chivi, Jr. and Lydia R. Chivi.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

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