

CESAR LEDESMA, ET AL., PLAINTIFFS AND APPELLANTS, VS. CONCEPCION VDA. DE OPINION, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-18404. August 31, 1965

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Cesar Ledesma and Milagros L. Javellana from the order of the Court of First Instance of Iloilo in Civil Case No. 5478 entitled Cesar Ledesma, et al. vs. Concepcion Vda. De Opinion, et al. dismissing their complaint. The following portion of said order gives the reasons in support thereof:

"In as much as the herein petitioner had invoked the provisions of Rep. Act 2056 wherein the Secretary of Public Works and Communications is duly authorized to order the removal of any dam, dike or any other works, such administrative remedy should first be exhausted before herein petitioner could invoke the jurisdiction of this Court in order to review the decision of the Secretary of Public Works and Communications in accordance with our procedural laws. By availing of the administrative remedies, the herein petitioner should follow the remedies as provided for by Rep. Act 2056 and that in so far as the administrative remedies are concerned the decision of said Secretary if duly affirmed by the higher authorities, is considered valid and legal. On the other hand, if the purpose of the present action is to question the legality of the proceeding had before the Secretary of Public Works and Communications, said official should have been included as party in this action after the administrative remedies have been exhausted."

On June 11, 1960, appellants filed a complaint against appellees Concepcion Vda. de Opinion, her son, Serafin Opinion, Jr. and her overseer, Obe Acanicula, for the removal and demolition of the dams described therein, with a prayer for the issuance of a writ of preliminary mandatory injunction, plus damages and attorney's fees. The complaint alleged that appellants and appellee Concepcion Vda. de Opinion were the registered owners and in possession of sparsely scattered parcels of land which formerly formed part of a big estate known as Haciendas Lanhagan and Pinangtan, situated in the municipality of Ajuy, province of Iloilo; that serving as the dividing and boundary line on the northern side of these properties was the Pinangtan Creek, a stream of water of the public domain; that on May 11, 1960, appellees, in violation of the provisions of the Irrigation Act No. 2152, as amended, and of an order of the Department of Public Works and Communications dated May 11, 1960 (Annex A of the complaint), constructed a concrete dam across the Pinangtan Creek which caused its waters to overflow through the lower banks, thereby inundating appellant's properties and destroying their palay crop; that appellees have likewise constructed a dike or pavement along the stretch of the old farm road serving as dividing line of the properties of appellants and appellees within the area, on top of which pavement the latter proposed to open a canal to serve as irrigation conduit to irrigate their lands further down, which construction had caused the rain coming from higher elevations to fall upon appellant's lands, converting the area into a veritable lagoon and causing them damages in the sum of P5,000.00.

Appellees moved to dismiss the complaint claiming that the court had no jurisdiction over the persons and the

subject matter of the action, and that the complaint stated no cause of action.

On July 30, 1960, the court issued the appealed order dismissing the complaint mainly on the ground that the action was filed prematurely because of the pendency of appellees' water rights application filed with the Bureau of Public Works to divert water from the Tanduyan and Pinangtan Creeks for irrigation purposes—to which appellants had filed an opposition—and on the further ground that appellants had not exhausted all available administrative remedies.

It is not denied that prior to the filing of the present action, appellant Ledesma filed a letter-complaint with the Bureau of Public Works requesting that the office of the District Irrigation Engineer of the Western Visayas Irrigation District, Iloilo, order the demolition of the dams and canals in question. In view thereof, appellee Serafin Opinion, Jr., on April 16, 1959, filed with the Bureau of Public Works an application for water rights on the Tanduyan Creek for irrigation purposes, to which application appellant Ledesma interposed an opposition. The administrative complaint of Ledesma, as well as the water rights application of Opinion and Ledesma's opposition thereto, were jointly heard before an investigator of the Department of Public Works and Communications. On June 16, 1960, the acting Secretary of Public Works and Communications rendered a decision, the dispositive portion of which reads as follows:

"Premises considered, it is hereby ordered that respondent (Serafin Opinion, Jr.) refrain from diverting water from the creeks Involved, pending the approval of his water rights application on the Tanduyan and Pinangtan Creeks, and should not be allowed to operate the systems to safeguard the unobstructed flow of water, otherwise criminal action shall be instituted against him, pursuant to Section 47 of Act 2162. It is further ordered that the Director of Public Works expedite respondent's pending water rights application in order to safeguard the rights and properties of all concerned."

In the decision above mentioned the Acting Secretary of Public Works and Communications ruled that the constructions there and here in question were illegal, but while he ordered appellee Opinion Jr. to refrain from operating or using them, the prohibition was only during the pendency of his application for water rights. The decision also refused to order the removal of said constructions, firstly, because they did not prejudice any existing rights; secondly, because their removal would cause big losses to the Opinions; and lastly, because if the latter's application for water rights was granted, they would be entitled to operate and use said constructions.

Considering the circumstance that appellant herein filed a formal opposition to the Opinion's application for water rights mentioned heretofore—whose disposal the Department of Public Works and Communications had ordered the Director of Public Works to expedite in order to safeguard the rights and properties affected—We believe with the trial court that appellant should have waited for the adjudication of said application before resorting to the courts. As a matter of fact, if said application was denied, the Department of Public Works and Communications could order the removal of the offending constructions, in accordance with the provisions of Section 2, Republic Act No. 2056, thus making it unnecessary for appellants to resort to the courts.

Wherefore, the order appealed from is affirmed, with costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Regala, Macalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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