

VENANCIO NERA, PETITIONER AND APPELLANT VS. BENIGNO TITONG, JR., DIRECTOR OF FISHERIES AND SECRETARY OF AGRICULTURE & NATURAL RESOURCES, RESPONDENTS AND APPELLEES.*G.R. NO. L-25559. March 21, 1974*

Ponente: FERNANDO, J.

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What petitioner, now appellant, Venancio Nera sought in this certiorari, prohibition and mandamus proceeding was the judicial nullification of a fishpond permit granted by respondent Secretary of Agriculture and Natural Resources in accordance with the recommendation of respondent Director of Fisheries. It is easily understandable why he did not prevail in the lower court. It is one of the principles reaffirmed time and time again by this Court that the discretion as to such matters vested in the appropriate department head must be respected in the absence of a clear showing of legal infirmity indicative of an abuse thereof. That appellant was unable to do. So the lower court held. It dismissed his petition. Such a decision is in accordance with law and must be sustained.

The facts insofar as the issuance of the fishpond permit was concerned were stipulated. Thus: "1. That the defendant Benigno Titong, Jr. on December 28, 1951, filed an application for a fishpond permit covering a swamp area of about 40 hectares of the public domain, situated at Barrio Bugsayon, Municipality of Masbate, Province of Masbate, Philippines, which is the area in question; 2. That the aforementioned area since 1951 up to 1957, was a part of the communal forest, Parcel III of Masbate, Masbate, which was later released and disestablished from the communal forest per Forestry Administrative Order No. 2-561, dated May 16, 1957, and opened to disposition; 3. That on January 18, 1955, the plaintiff, Venancio Nera filed with the Director (now Commissioner) of Fisheries, a protest to the application of Benigno Titong, Jr.; 4. That after the release of the area in question from its reserved status in 1957, Benigno Titong, Jr., did not re-file his aforesaid application nor filed a new application; 5. The Director (now Commissioner) of Fisheries, in a letter dated September 23, 1957, recommended to the Secretary of Agriculture and Natural Resources the issuance in favor of Titong, Jr., of an ordinary fishpond permit, and consequently on September 30, 1957, the Secretary of Agriculture and Natural Resources approved the issuance of permit No. F-4218-M in favor of Benigno Titong, Jr.; 6. That on March 10, 1958, the plaintiff filed an adverse claim to the area in question covered by the Fishpond Permit No. F-4218-M of Benigno Titong, Jr.; 7. That the Director (now Commissioner) of Fisheries dismissed the adverse claim of the plaintiff Venancio Nera and sustained the fishpond permit issued to Benigno Titong, Jr., in an order dated March 31, 1959, ***; 8. That from the order of the Director (now Commissioner) of Fisheries on March 31, 1959, the plaintiff appealed to the Secretary of Agriculture and Natural Resources, who sustained the order in a decision dated March 23, 1960, ***; 9. That the plaintiff filed a motion for reconsideration of this decision of the Secretary, which was denied in an order dated July 7, 1960, ***." [1] There was nothing either that lent factual support to the untenable claim of appellant that he was a riparian owner. So the lower court declared. Such a finding is entitled to respect.

As set forth at the outset, the judgment now on appeal must be affirmed.

1. Appellant Nera in his brief appeared to be hardly cognizant of the respective roles of the executive and judicial departments in the disposition, exploitation and utilization of natural resources. It is a declared policy of the Constitution, both in the 1935 charter and in the present fundamental law, to conserve and develop the patrimony of the nation for the benefit of the -Filipino people.[2] Nor is it to be doubted that the Philippines as a persona in law, as noted in *Lee Hong Hok vs. David*[3] has such capacity to own and hold property in the concept of dominium, rather than imperium. Necessarily then its government, subject to the applicable constitutional restraints, may deal with it through the officials to whom such competence is vested. Nor is it surprising that of the three branches, it is the executive to whom such power belongs. Its exercise is subject, of course, to ultimate judicial scrutiny. Nonetheless, the well-settled principle in this jurisdiction is that the exercise of such authority by the appropriate public functionary, here the Secretary of Agriculture and Natural Resources, is deserving of the utmost sympathy. It is ordinarily entitled to deference. A relatively recent decision, *Manuel vs. Villena*,[4] the opinion being penned by the then Justice, now Chief Justice, Makalintal, reiterated such a doctrine. As set forth by him: "The power thus conferred on the Director of Forestry with the approval of the Secretary of Agriculture and Natural Resources is basically executive or administrative in nature. And courts, as a rule, refuse to interfere with proceedings undertaken by administrative bodies or officials in the exercise of administrative functions. This is so because such bodies are generally better equipped technically to decide administrative questions and that non-legal factors, such as government policy on the matter, are usually involved in the decision." [5] He further pointed out when the judiciary may step in. Thus: "There are, of course, limits to the exercise of administrative discretion. Administrative proceedings may be reviewed by the courts upon a showing that 'the board official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion' or that the decision is vitiated by fraud, imposition or mistake." [6] Such a doctrine is traceable to *Ortua vs. Singson Encarnacion*, [7] decided in 1934, where Justice Malcolm, speaking for the Court, had this to say: "Accordingly, to paraphrase the authorities and decisions coming from the United States Supreme Court, we deduce the rule on the subject to be, that a decision rendered by the Director of Lands and approved by the Secretary of Agriculture and Commerce, upon a question of fact is conclusive and not subject to be reviewed by the courts, in the absence of a showing that such decision was rendered in consequence of fraud, imposition, or mistake, other than error of judgment in estimating the value or effect of evidence, regardless of whether or not it is consistent with the preponderance of the evidence, so long as there is some evidence upon which the finding in question could be made." [8] It only remains to be added that the source of the limits to such discretionary authority, referred to by the Chief Justice in *Villena*, is *Pajo vs. Ago*, [9] promulgated in 1960. Nothing seems to be clearer then than that appellant took a heavy burden upon himself in seeking to overturn an administrative determination.

2. This is not to say that he did not try at all. To secure such reversal, he alleged as the principal error assigned that the lower court should have considered appellant as a riparian owner and as such entitled to preference. Its lack of merit was conclusively demonstrated in the well-written brief of the then Solicitor-General, now Associate Justice, Antonio P. Barredo. Thus: "Plaintiff-appellant claims that he is a riparian owner of the area in question because the Bugsayon river is a tidal river whose waters during high tide overflows said area on and reaches, touches and overflows on his properties to a certain extent ***. This contention merits scant consideration. Plaintiff-appellant himself asserted during the hearing that his coconut lands are separated from the Bugsayon River by swamplands which is the area covered by the fishpond permit granted to defendant-appellee Benigno Titong; that said river does not traverse, cross, or adjoin his coconut lands; and that the nearest bank of said river to his land is more than 200 meters, all of which clearly and completely negate his claim that he is the riparian owner of said swampland. Said assertion of the appellant deserves great probative weight because it is against his interest; it is also corroborated by the sketch map *** clearly showing that the swamp area in question covered by the fishpond permit of defendant-appellee Benigno Titong, Jr. is traversed by the Bugsayon River and that the two

parcels of land of plaintiff-appellant adjoin each other and are contiguous to portions of this swamp area, but not to Bugsayon River itself as indeed the same is separated from appellant's two parcels of land by portions of the swamp area. Of course, plaintiff-appellant contends in the same breath that the Bugsayon River is a tidal river but, in all probability, this assertion was made without a full comprehension of the meaning of the term, as in fact appellant failed to elucidate on what he understands by 'tidal river.'"[10] Nor was this all. As made clear by the then Solicitor-General Barredo: "Furthermore, granting in gratia argumenti that plaintiff-appellant is indeed a riparian owner, he was unable to cite any law to show that as such riparian owner he is entitled to preferential right to be adjudicated this particular portion of the public domain. Appellant invokes Article 207 of the Law of Water of August 3, 1866 to bolster his claim that as a riparian owner he is entitled to priority as against the appellee, but as we have discussed earlier, with respect to plaintiff-appellant and appellee Titong, Jr. applications fall under paragraph 6 of said article and both should be considered on an equal footing." [11] There is nothing then that militates against the lower court decision. This is so even on the assumption that this Court could pass upon factual questions in appeal from the lower court, a matter which, as constantly held in past decisions, it could not.

3. The third assigned error as to the respondent Titong's application suffering from the defect of having been filed when the property in question was still a municipal forest is of no consequence. The date to be reckoned as noted in the brief of respondent officials was the date the permit was granted. As of that time, there was no legal impediment. Moreover, how could petitioner object when clearly he had no right to vindicate? The finding of the lower court that petitioner was estopped from asserting any right to the fishpond permit, even if erroneous, had no bearing on the alleged nullity of the action taken by respondent officials, who acted that way not because petitioner was in estoppel but because respondent Titong had made out a good case for a favorable action on his application. No attention need be paid to the last error assigned, complaining of the dismissal of the petition, as from the preceding discussion, there was no other outcome that could legally be justified.

WHEREFORE, the decision of the lower court dated September 6, 1965, dismissing this petition for certiorari, prohibition and mandamus is affirmed. Costs against petitioner.

Zaldivar, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.

Barredo, J., took no part.

[1] Brief for Plaintiff-Appellant, 3-5.

[2] The preambles of both Constitutions make that clear. Cf. Article XIII of the 1935 Constitution and Article XIV of the present Constitution.

[3] L-30389, December 27, 1972, 48 SCRA 372.

[4] L-28218, February 27, 1971, 37 SCRA 745.

[5] Ibid, 750.

[6] Ibid, Cf. Lim Sr. vs. Secretary of Agriculture, L-26990, August 31, 1970, 34 SCRA 751.

[7] 59 Phil. 440.

[8] Ibid, 443-444.

[9] 108 Phil. 905, Cf. Pindangan Agricultural Co. vs. Dans, L-14591, April 25, 1962, 4 SCRA 1035; Pindangan Agricultural Co. vs. Dans. L-14591. Sept. 26, 1962, 6 SCRA 14; Suarez vs. Reyes, L-19828. Feb. 28. 1963, 7

SCRA 461: Castillo vs. Rodriguez, L-17189, June 22, 1965, 14 SCRA 344; Vda. de Galibo vs. Ballesteros, L-17466, Sept. 18, 1965, 15 SCRA 37; Ganitano vs. Secretary of Agriculture, L-21167. March 31, 1966, 16 SCRA 543; Deluao vs. Casteel, L-21906, Dec. 24, 1968, 26 SCRA 475; Joson vs Secretary of Agriculture, L-23533, Jan. 30, 1970, 31 SCRA 183.

[10] Brief for Defendants-Appellees, 8-9.

[11] Ibid, 9-10.

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