

VICENTE JOVEN Y MONTEVERDE, ET AL., PETITIONERS AND APPELLEES, VS. THE DIRECTOR OF LANDS, OPPOSITOR AND APPELLANT.

G. R. No. L-4628. May 25, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal by the Director of Lands from a judgment of the Court of First Instance of Davao the dispositive part of which reads as follows: "For all the foregoing considerations, the court, ratifying its order of general default entered in open court on March 1, 1948, hereby renders judgment: declaring the applicants, Vicente Joven y Monteverde, Gloria Joven y Monteverde de Santa Marina, Lourdes Joven y Monteverde de Arkoncel, Felisa Joven y Monteverde de Ventosa, Teresita Matute, Rosario Matute, Santiago Matute and Pedro Matute, Filipino citizens and residents of the City of Davao, Philippines, owners of the dry portions of lots Nos. 1 and 2 of plan Psu-111150, bounded on the east by the high tide line marked with blue ink, as shown in the sketch plan, Appendix Y, submitted by the commissioners, with the exception of the portions ceded to Jose F. Suarez and Damaso Castillo as well as those reserved by the City of Davao for public improvements, as indicated in the sketch plan, Exhibit I, and orders its registration in the name of the aforementioned applicants."

Lots Nos. 1 and 2 were admittedly formed and added to the shores by the natural action of the sea, and the petitioners herein have claimed title thereto as accretion to their adjoining lots, in accordance with article 4 of the Law of Waters of August 3, 1866, which provides as follows:

"Lands added to the shores by accretion and alluvial deposits caused by action of the sea, form part of the public domain. When they are no longer washed by the water of the sea and are not necessary for purposes of public utility, or for the establishment of special industries, or for coast-guard service, the Government shall declare them to be property of the owners of the estates adjacent thereto and as increment thereof."

Under the facts stipulated by the parties, the Government has not made an express declaration that the two lots are not needed for purposes of public utility, for the establishment of special industries, or for coast-guard services; but the theory of the lower court is that such declaration was not necessary, because certain portions of the lots had already been ceded by the Director of Lands to private individuals,—an official action implying that said lots are not needed by the Government. At any rate, the trial judge reasoned out that the courts, like the Executive and Legislative Departments, may as part of the Government declare the petitioners owners by accretion. The lower court has also relied upon the case of *Jularbal vs. Director of Lands et al.*, G. R. No. 30189, wherein it was held that the approval by the Director of Lands of an application for homestead was an implied admission that the land therein involved was not needed for the purposes specified in article 4 of the Law of Waters.

We disagree with the appealed judgment. While certain portions of the lots had been ceded to private persons by the Director of Lands, this does not necessarily mean that the remaining portions may be disposed of similarly or in favor of the adjoining owners. On the contrary, it is admitted that the City of Davao intends to utilize parts of

the land for certain projects and public improvements. The decision in *Jularbal vs. Director of Lands*, is not controlling, since the area adjudicated to the herein petitioners had not been applied for, or ceded as a homestead. Upon the other hand, in *Natividad vs. Director of Lands* (37 Off. Gaz., 2905), cited in the Solicitor General's brief, it was already held that "only the Executive and possibly the Legislative departments have the right and the power to make the declaration that the lands so gained by action of the sea is not necessary for purposes of public utility or for the cause of establishment of special industries or for coast guard services." The reason for this pronouncement is undoubtedly that the courts are neither primarily called upon, nor indeed in a position, to determine whether any public land are to be used for the purposes specified in article 4 of the Law of Waters.

Wherefore, the appealed judgment is reversed, the petitioners' application for registration denied, and the land in question declared as belonging to the Republic of the Philippines. So ordered, without costs.

Feria, Pablo, Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

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