

PRIMITIVO LOVINA AND NELLY MONTILLA, PLAINTIFFS AND APPELLEES VS. HON. FLORENCIO MORENO AND BENJAMIN YONZON, DEFENDANTS AND APPELLANTS.

G.R. No. L-17821. November 29, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is an appeal from a decision of Court of First Instance of Manila (Branch X), in its Civil Case No. 41639, enjoining the Secretary of Public Works and Communications from causing the removal of certain dams and dikes in a fishpond owned by Primitivo and Nelly Lovina in the Municipality of Macabebe, Province of Pampanga, covered by T.C.T. No. 15905.

The case started by a petition of numerous residents of the said municipality to the Secretary of Public Works and Communications, complaining that appellees had blocked the "Sapang Bulati", a navigable river in Macabebe, Pampanga, and asking that the obstructions be ordered removed, under the provisions of Republic Act No. 2056. After notice and hearing to the parties, the said Secretary found the constructions to be a public nuisance in navigable waters, and, in his decision dated 11 August 1959, ordered the land owners, spouses Lovina to remove five (5) closures of Sapang Bulati; otherwise, the Secretary would order their removal at the expense of the respondent. After receipt of the decision, the respondent filed a petition in the Court of First Instance of Manila to restrain the Secretary from enforcing his decision. The trial court, after due hearing, granted a permanent injunction, which is now the subject of the present appeal.

The respondents-appellants, Florencio Moreno, Secretary of Public Works and Communications, and Benjamin Yonson, investigator, question the jurisdiction of the trial court, and attribute to it the following errors:

- "1. The trial court erred in holding in effect that Republic Act No. 2056 is unconstitutional;
2. The trial court erred in receiving evidence de novo at the trial of the case;
3. The trial court erred in substituting its judgment for that of defendant Secretary of Public Works and Communications and in reversing the latter's finding that the stream in question is a navigable river which was illegally closed by plaintiffs;
4. The trial court erred in holding that the Sapang Bulati is a private stream; and
5. The lower court erred in not holding that plaintiffs should first exhaust administrative remedy before filing the instant petition."

The position of the plaintiffs-appellees in the court below was that Republic Act No. 2056 is unconstitutional because it invests the Secretary of Public Works and Communications with sweeping, unrestrained, final, and unappealable authority to pass upon the issues of whether a river or stream is public and navigable, whether a dam encroaches upon such waters and is constitutive as a public nuisance, and whether the law applies to the state of facts, thereby constituting an alleged unlawful delegation of judicial power to the Secretary of Public Works and Communications.

Sections 1 and 2 of Republic Act 2056 provides:

"Section 1. Any provision or provisions of law to the contrary notwithstanding, the construction or building of dams, dikes or any other works which encroaches into any public navigable river, stream, coastal waters and any other navigable public waters or waterways as well as the construction or building of dams, dikes or any other works in areas declared as communal fishing grounds, shall be ordered removed as public nuisances or as prohibited constructions as herein provided; Provided, however, That the Secretary of Public Works and Communications may authorize the construction of any such works when public interests or safety so requires, or when it is absolutely necessary for the protection of private property.

"Section 2. When it is found by the Secretary of Public Works and Communications, after due notice and hearing, that any dam, dike or any other works now existing or may hereinafter be constructed encroaches into any public navigable waters or waterways, or that they are constructed in areas declared as communal fishing grounds, he shall have the authority to order the removal of any such works and shall give the party concerned a period not to exceed thirty days for the removal of the same: Provided, That fishpond constructions or works on communal fishing grounds introduced in good faith before the areas were proclaimed as fishing grounds shall be exempted from the provisions of this Act, provided such constructions or works do not obstruct or impede the free passage of any navigable river, stream, or would not cause inundations of agricultural areas: Provided, further, That should the party concerned fail to comply with the order of the Secretary of Public Works and Communications within the period so stated in the order, such removal shall be effected by the Secretary of Public Works and Communications at the expense of the said party within ten days following the expiration of the period given the party concerned: Provided, furthermore, That the investigation and hearing to be conducted by the Secretary of Public Works and Communications under this section shall be terminated and decided by him within a period which shall not exceed ninety days from the time he shall have been notified in writing or a written complaint shall have been filed with him by any interested party apprising him of the existence of a dam, dike or any other works that encroaches into any public navigable river, stream, coastal waters or any other public navigable waters or waterways, and in areas declared as communal fishing grounds: Provided, still furthermore, That the failure on the part of the Secretary of Public Works and Communications without justifiable or valid reason to terminate and decide a case or effect the removal of any such works, as provided for in this section, shall constitute an offense punishable under section three of this Act: And provided, finally, That the removal of any such works shall not impair fishponds completed or about to be completed which do not encroach or obstruct any public navigable river or stream and/or which would not cause inundations of agricultural areas and which have been constructed in good faith before the area was declared communal fishing grounds."

The objections of the appellees to the constitutionality of Republic Act No. 2056, not only as an undue delegation of judicial power to the Secretary of Public Works but also for being unreasonable and arbitrary, are not tenable. It will be noted that the Act (R. A. 2056) merely empowers the Secretary to remove unauthorized obstructions or encroachments upon public streams, constructions that no private person was anyway entitled to make, because the bed of navigable streams is public property, and ownership, thereof is not acquirable by adverse possession (*Palanca vs. Commonwealth*, 69 Phil. 449).

It is true that the exercise of the Secretary's power under the Act necessarily involves the determination of some questions of fact, such as the existence of the stream and its previous navigable character; but these functions, whether judicial or quasi-judicial, are merely incidental to the exercise of the power granted by law to clear navigable streams of unauthorized obstructions or encroachments, and authorities are clear that they are validly conferable upon executive officials provided the party affected is given opportunity to be heard, as is expressly required by Republic Act No. 2056, section 2.

"It thus appears that the delegation by Congress to executive or administrative agencies of functions of judicial, or at least, quasi-judicial character, provided the exercise of those functions is incidental to the exercise by

such agencies of their executive or administrative powers, is not in violation of the Separation of Powers so far as that principle is recognized by the Federal Constitution nor is it in violation of due process of law." (3 Willoughby on the Const. of the U.S., pp. 1654-1655)

"The mere fact that an officer is required by law to inquire the existence of certain facts and to apply the law thereto in order to determine what his official conduct shall be and the fact that these acts may affect private rights do not constitute an exercise of judicial powers. Accordingly, a statute may give to non-judicial officers the power to declare the existence of facts which call into operation its provisions, and similarly may grant to commissioners and other subordinate officers power to ascertain and determine appropriate facts as a basis for procedure in the enforcement of particular laws." (11 Am. Jur., Const. Law, p. 950, sec. 235)

"s. 237. Powers to determine cases within Statute—One important class of cases in which discretion may properly be vested in administrative officers, which class is almost an operation of the general rule relating to the ascertainment of facts, consists of those cases in which a general rule or prohibition, is laid down and power is vested in an executive officer to determine when particular cases do or do not fall within such rule or prohibition. Power exercised under such statutes, calling for the exercise of judgment in the execution of a ministerial act, is never judicial in nature within the sense prohibited by the Constitution." (11 Am. Jur., Const. Law, sec. 237, p. 952)

A direct precedent can be found in the "Bridge cases" upholding the constitutionality of the U.S. River and Harbor Act of March 3, 1899, that empowered (sec. 18) the Secretary of War to take action, after hearing, for the removal or alteration of bridges unreasonably obstructing navigation. On the issue of undue delegation of power, the U.S. Supreme Court ruled as follows:

"Congress thereby declared that whenever the Secretary of War should find any bridge theretofore or thereafter constructed over any of the navigable waterways of the United States to be an unreasonable obstruction to the free navigation of such waters on account of insufficient height, width of span, or otherwise, it should be the duty of the Secretary, after hearing the parties concerned, to take action looking to the removal or alteration of the bridge, so as to render navigation through or under it reasonably free, easy, and unobstructed. As this court repeatedly has held, this is not unconstitutional delegation of legislative or judicial power to the Secretary. *Union Bridge Co. vs. United States*, 204 U.S. 364, 385, 51 L. ed. 523, 533, 27 Sup. Ct. Rep. 367; *Monongahela Bridge Co. vs. United States* 216 U.S. 177, 192, 54 L. ed. 435, 441, 30 Sup. Ct. Rep. 356; *Hannibal Bridge Co. vs. United States*, 221 U.S. 194, 205, 55 L. ed. 699, 703, 31 Sup. Ct. Rep. 603. The statute itself prescribed the general rule applicable to all navigable waters, and merely charged the Secretary of War with the duty of ascertaining in each case, upon notice to the parties concerned, whether the particular bridge came within the general rule. Of course, the Secretary's finding must be based upon the conditions as they exist at the time he acts. But the law imposing this duty upon him speaks from the time of its enactment." (*Louisville Bridge Co. vs. U.S.* 61 L. Ed., 395. (Italic supplied))

Appellees invoke American rulings that abatement as nuisance of properties of great value can not be done except through court proceedings; but these rulings refer to summary abatements without previous hearings, and are inapplicable to the case before us, where the law provides, and the investigator actually held, a hearing with notice to the complainants and the appellees, who appeared therein. It is noteworthy that Republic Act 2056 authorizes removal of the unauthorized dikes either as "public nuisances or as prohibited constructions" on public navigable streams, and those of appellees clearly are in the latter class.

It may not be amiss to state that the power of the Secretary of Public Works to investigate and clear public streams free from unauthorized encroachments and obstructions was granted as far back as Act 3208 of the old Philippine Legislature, and has been upheld by this Court (*Palanca vs. Commonwealth*, supra; *Meneses vs. Commonwealth*, 69 Phil. 647). We do not believe that the absence of an express appeal to the courts under the present Republic Act 2056 is a substantial difference, so far as the Constitution is concerned, for it is a

well-known rule that due process does not have to be judicial process; and moreover, the judicial review of the Secretary's decision would always remain, even if not expressly granted, whenever his act violates the law or the Constitution, or imports abuse of discretion amounting to excess of jurisdiction.

The argument that the action of the Secretary amounts to a confiscation of private property leads us directly to the issue of fact whether a navigable portion of the Bulati creek had once traversed the registered lot of the appellees Lovina and connected with the Manampil creek that borders said lot on the north-west before it was closed by Jose de Jesus, Lovina's predecessor. The Secretary of Public Works had found from the evidence before him that, originally, the sapang (creek) Bulati flowed across the property in question, and connected the Nasi river with sapang Manampil; that in 1962 or thereabouts, the Bulati creek was 2 meters deep at high tide and 1/2 meter deep at low tide, and the people used it as fishing grounds and as a communication way, navigating along its length in bancas; that the former registered owner, Jose de Jesus, closed about 800 meters of the course of the sapang Bulati that lay within the lot in question by constructing dams or dikes at both ends, and converting the lot into a fishpond.

The appellees, on the other hand, rely on the 1916 registration plan of the property (Exh. C), showing it to be merely bounded by the Bulati creek on the south-east, as well as on the testimony introduced at the hearing of the prohibition case (over the objection of the Government counsel) that the Bulati creek did not enter the property.

The court of first instance found that "according to the location plan, Exhibit C", the "Bulati creek, on which the dikes and dams in question were constructed was a mere estero and could not be considered a navigable stream then". It is not explained how such fact could appear solely from the plan Exhibit "C" (no other proof being referred to), unless indeed the court below so concluded from the fact that in said plan the Bulati creek does not appear to run within the registered lot. The conclusion of the lower court is not supported by its premises, because by law, the issuance of a Torrens title does not confer title to navigable streams (which are fluvial highways) within the registered property, nor is it conclusive on their non-existence, unless the boundaries of such streams had been expressly delimited in the registration plan (Act 496, sec. 39, of *Palanca vs. Commonwealth* 69 Phil. 449; *Meneses vs. Commonwealth* 69 Phil. 647), so that delimitation of their course may be made even after the decree of registration has become final. In the present case, in truth, the very plan of the appellees, Exhibit "C", shows parallel re-entrant lines, around its point 65 and between points 44 and 45, that indicate the existence of a stream connecting the sapang Bulati on the southeast and the sapang Manampil on the northwest, and which the surveyor apparently failed to delimit for some undisclosed reason. That the stream was the prolongation of the sapang Bulati, that formerly flowed across the registered lot, is also shown by the fact that in appellees' plan Exhibit "C", the westward continuation of the Bulati creek (west of point 65), which bounds the registered lot, is labelled "Estero Mabao". The plan thus corroborates the previously summarized testimony laid before investigator Yonson and relied upon by the Secretary in his administrative decision. Even more, appellees' own caretaker, Yambao, showed investigator Yonson the old course of the Bulati within the fishpond itself; and this evidence is, likewise, confirmed by the cross-section profile of the ground near the dams in question (See plan Annex "AA" of Yonson's Report), where the old channel of the creek is clearly discernible. To be sure, appellees contend that they were not shown this plan; but in their evidence before the court of first instance, they never attempted, or offered, to prove that said plan is incorrect.

That the creek was navigable in fact before it was closed was also testified to by the government witnesses, whose version is corroborated as we have seen.

Considering the well-established rule that findings of fact in executive decisions in matters within their jurisdiction are entitled to respect from the courts in the absence of fraud, collusion, or grave abuse of discretion (*Comm. Customs vs. Valencia*, 100 Phil., 165, 54 Off. Gaz. 3505), none of which has been shown to exist in this

case, we agree with appellant that the court below erred in rejecting the findings of fact of the Secretary of Public Works.

The findings of the Secretary can not be enervated by new evidence not laid before him, for that would be tantamount to holding a new investigation, and to substitute for the discretion and judgment of the Secretary the discretion and judgment of the court, to whom the statute had not entrusted the case. It is immaterial that the present action should be one for prohibition or injunction and not one for certiorari; in either event the case must be resolved upon the evidence submitted to the Secretary, since a judicial review of executive decisions does not import a trial de novo, but only an ascertainment of whether the executive findings are not in violation of the Constitution or of the laws, and are free from fraud or imposition, and whether they find reasonable support in the evidence.[1] Here, the proof preponderates in favor of the Secretary's decision.

Nevertheless, we agree with appellees that they can not be charged with failure to exhaust administrative remedies, for the Secretary's decision is that of the President, in the absence of disapproval (*Villena vs. Secretary of the Interior*, 67 Phil. 451).

Finally, there being a possibility that when they purchased the property in question the appellees Lovina were not informed of the illegal closure of the Bulati creek, their action, if any, against their vendor, should be, and is hereby, reserved.

In resumé, we rule:

- (1) That Republic Act No. 2056 does not constitute an unlawful delegation of judicial power to the Secretary of Public Works;
- (2) That absence of any mention of a navigable stream within a property covered by Torrens title does not confer title to it nor preclude a subsequent investigation and determination of its existence;
- (3) That the findings of fact of the Secretary of Public Works under Republic Act No. 2056 should be respected in the absence of illegality, error of law, fraud, or imposition, so long as the said findings' are supported by substantial evidence submitted to him.
- (4) That ownership of a navigable stream or of its bed is not acquirable by prescription.

Wherefore, the decision appealed from is reversed, and the writs of injunction issued therein are annulled and set aside. Costs against appellees Lovina.

Bengzon, C.J., Padilla, Bautista Angelo, Barrera, Paredes, Regala, and Makalintal, JJ., concur.

[1] *CF. Manabat vs. Cruz*, L-11228, Apr. 30, 1958; *Lao Tang Bun vs. Fabre*, 81 Phil. 682; *Ortua vs. Singson*, 59 Phil. 440; *Julian vs. Apostol*, 52 Phil. 422.

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