

APOLONIO VILLANUEVA, PETITIONER and APPELLANT, VS. HON. SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, ET AL., RESPONDENTS and APPELLEES.*G.R. No. L-21043. March 30, 1966*

Ponente: BAUTISTA ANGELO, J.

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On April 20, 1960, petitioner filed an action for injunction before the Court of First Instance of Pangasinan seeking to restrain respondents from enforcing the decision of the Secretary of Public Works and Communications rendered on February 19, 1960 which orders the demolition of certain constructions illegally made on a portion of Pantal river, Dagupan City and praying in the meantime that a preliminary injunction be issued for that purpose. The court granted on the same date the writ of preliminary injunction prayed for.

On May 9, 1960, respondents filed their answer, which was later amended by including therein a jurisdictional defense. On May 14, 1960, Arsenia O. Bacugan, et al. filed a motion for leave to intervene praying that the lot on which the alleged illegal construction was made be declared to be their property, but the motion to intervene was denied. Thereupon, respondents filed a motion to dismiss upon the grounds: (1) that petitioner failed to prosecute his action for an unreasonable length of time; (2) his petition lacks sufficient cause of action; (3) the court lacks jurisdiction over the case; and (4) the venue of the case has been improperly laid. And on May 10, 1962, the court a quo issued an order dismissing the petition on the ground, among others, that petitioner has failed to prosecute his case for an unreasonable length of time thereby showing lack of interest in his own case.

His motion for reconsideration having been denied, petitioner interposed the present appeal.

In dismissing the instant case for lack of interest of petitioner in his own case, the court a quo said: "The failure of the petitioner to take any step towards the hearing of this case on its merits for the last one and one-half years not only shows lack of interest but also gives ground for this Court to believe that the petitioner, himself, does not believe in his alleged cause of action. On this ground alone, the instant case should now be dismissed, for Republic Act No. 2056 clearly contemplates speedy hearing and decision by, and early enforcement of the decision of, the Secretary of Public Works and Communications regarding illegal construction and/or obstructions in public navigable rivers or waterways and in communal fishing grounds."

To this comment we agree for the record shows that petitioner filed his petition on April 20, 1960, copy of which was received by respondents on April 29, 1960. The writ of preliminary injunction was issued by the court a quo on April 20, 1960, while respondents amended their answer on June 11, 1960, on which date the issues were joined, and yet, notwithstanding the lapse of more than one and one-half years from the date the issues were joined, petitioner has not taken any further step with a view to the prosecution of his case. Indeed, this Court has held that "where petitioner in a petition for the writ of preliminary injunction failed to ask the court to set it for hearing within one year four months and four days from the date the respondent filed his answer, the petitioner may be said to have failed to prosecute his action for an unreasonable length of time especially because he was

not prosecuting an ordinary action but a provisional remedy." (Moran, Comments on the Rules of Court, Vol. 1, 1957 ed., p. 431, citing Chuan vs. De la Fuente, G. R. No. L-4070, February 26, 1952.)

Petitioner, however, contends that his delay in prosecuting his case was due to the fact that the then presiding judge of the court a quo traveled twice abroad during the pendency of the case, that the docket of said court was clogged resulting in the adoption of a policy that gives preferential attention to old pending cases, and that new pleadings were filed which delayed the joining of the issues, all of which shows in his opinion that the delay in the prosecution of the case cannot be attributed to his own inaction. But, answering this contention, the Government says: "There is nothing in the record showing that appellant took steps to secure the transfer of the case to another sala due to the official absence of Judge San Diego; nor is there to show that he made representations so that the instant action would be considered as exception to the policy of giving preferential attention to old pending cases, the instant action being of special character." And, in effect, Republic Act No. 2056 clearly contemplates speedy hearing and decision of the Secretary of Public Works and Communications regarding illegal constructions or obstructions in public navigable rivers or waterways or in communal fishing grounds so much so that to accomplish its purpose said Act prescribes a maximum period of 90 days under penalty of fine or imprisonment if the same is not complied with. We find no reason to disturb the finding on this matter of the court a quo.

Wherefore, the order appealed from is affirmed. No costs.

Bengzon, C.J., Concepcion, Reyes, J. B. L., Barrera, Regala, Makalintal, Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

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