

HEIRS OF JUSTO MALFORE, APPLICANTS AND APPELLEES, VS. DIRECTOR OF FORESTRY, OPPOSITOR AND APPELLANT.

G.R. No. L-13686. September 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal taken by the Director of Forestry from an order of the Court of First Instance of Iloilo (in Cadastral Case No. 86) denying his motion to reserve a strip of land in Lot No. 5316 claimed by the heirs of Justo Malfore, as a permanent timberland, pursuant to Section 90 of Commonwealth Act No. 141, as amended by Republic Act No. 1273.

On January 20, 1947, Placida Malfore, acting in behalf of the heirs of Justo Malfore, filed an answer in the above-mentioned court and cadastral case, claiming ownership of a parcel of land (lot No. 5316) located in Barrio Quipot, Janiuy, Iloilo.

On November 24, 1952, the Director of Forestry, represented by the Provincial Fiscal of Iloilo, filed an opposition to the said claim, alleging that a portion of said land is within a timberland reserved by the Director of Forestry on September 17, 1932 and belongs to the public domain. On March 5, 1953, the court rendered a decision denying the claim of Malfore on the ground that they failed to prove their right of ownership to said land.

On August 23, 1953, the claimants filed a motion for reconsideration of said decision setting the same for hearing on August 29, 1953. For reasons which do not appear in the records, said motion remained unacted upon until on November 18, 1955, or after more than 2 years, the Director of Forestry, represented by the Provincial Fiscal of Iloilo, withdrew his opposition to Malfore's claim and, instead, filed a motion asking the court to reserve a strip of land, 40 meters wide, along the east bank of the Mapatag Creek in said Lot 5316, for the protection of its banks, or as a permanent timberland, pursuant to the provision of Section 90 of Commonwealth Act No. 141, as amended by Republic Act No. 1273, which went into effect on June 14, 1955.

On November 23, 1955, the Malfores filed an opposition to the said motion, claiming that the aforecited provision of the statute is not applicable to the land in question, as the same is not public land but the private property of the claimants. On the same date, the court rendered a decision, setting aside its former decision of March 5, 1953, and adjudicating said Lot No. 5316 and ordering its registration in favor of the Malfores.

On December 3, 1955, the court issued an order denying the aforementioned motion dated November 18, 1955 of the Director of Forestry. From this order, the Director of Forestry appealed to the Court of Appeals, but said court, in its resolution of January 27, 1958, elevated the case to this Court as the only question involved in the appeal is one of law.

The only issue presented in this appeal is whether Section 90 of Commonwealth Act No. 141, as amended by Republic Act No. 1273, is applicable only to lands of the public domain subsequently acquired by a private person or entity through sales patent, lease, or homestead under the said Act, or also to those sought to be registered as

lands of private ownership under the provisions of the Cadastral Law[1] or the Land Registration Act.[2]

Section 1 of Republic Act No. 1273, purports to amend Section 90 of Commonwealth Act No. 141, known as the Public Land Law. As thus amended, said section reads:

"SEC. 90. Every application under the provisions of this Act shall be made under oath and shall set forth:

* * * * *

"(i) That the applicant agrees that a strip forty meters wide starting from the bank on each side of any river or stream that may be found on the land applied for, shall be demarcated and preserved as permanent timberland to be planted exclusively to trees of known economic value, and that he shall not make any clearing thereon or utilize the same for ordinary farming purposes even after the patent shall have been issued to him or a contract of lease shall have been executed in his favor." (Italics supplied.)

From the above-quoted provisions, it is clear that Republic Act 1273 refers to lands covered by "applications under the provisions of this Act" (Public Land Law); that the applicant shall agree to such reservation, as a condition to the granting of his application; and that the condition is enforceable "even after the patent (sales, homestead or free) shall have been issued to him or a contract of lease shall have been executed in his favor." All of these conditions can refer only to applicants for portion of a public domain. Whatever right or title the applicant acquires, he obtains it from the government which is entitled to impose any condition. In the case at bar, there is no application under the Public Land Law, but a claim of private ownership under the Cadastral Act. The court merely confirms appellee's title to the land as against the whole world including the government.

Furthermore, Section 2 of Commonwealth Act 141, of which Republic Act 1273 became part, explicitly provides that its provisions "shall apply to the lands of the public domain." (See *Garcia vs. Dinero*, 45 Off. Gaz. [9th Supp.] 101, citing *Lecaste vs. Director of Lands*, 63 Phil., 654, and *Lesada vs. Omanan*, 59 Phil., 547.) Since the land in question is, admittedly, private land (and was so claimed by appellee and adjudicated by the Court), and not land of the public domain, it is quite obvious that the above-quoted provision of Republic Act No. 1273 is inapplicable to it. (See *Central Capiz vs. Ramirez*, 40 Phil., 883.)

In support of his argument that the provision of the statute quoted above is applicable to private lands, the oppositor-appellant, represented by the Solicitor General, cites Section 39 of the Land Registration Act as imposing a similar incumbrance on lands of private ownership registered under the Torrens System. The cited section provides:

"SEC. 39. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all incumbrances except those noted on said certificate, and any of the following incumbrances which may be subsisting, namely:

* * * * *

"Third. Any public highway, way, private way established by law, or any Government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.

"But if there were easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner."

Examination of the above-quoted provision, discloses nothing which can be constructed as divesting a private

property owner of a portion of his land located along a creek, for the purpose of reserving the same as a permanent timberland of the Government. It has been held that the title intended to be created by the Land Registration Act, is one which is not subject to any sort of restriction, limitation, or reduction, except those named in the certificate of registration and in the law itself, as having been preserved against the land. (De Jesus vs. City of Manila, 29 Phil., 73, citing City of Manila vs. Lack, 19 Phil., 324.)

It is to be observed that the only servitude which a private property owner is required to recognize in favor of the Government under the aforequoted provision, is the easement of a "public highway, way, private way established by law, or any government canal or lateral thereof," where the certificate of title does not state that the boundaries thereof have been determined. But, even in these cases, it is necessary that the easement should have been previously "established by law," which implies that the same should have been pre-existing at the time of the registration of the land in order that the registered owner may be compelled to respect it. Where the easement is not pre-existing and is sought to be imposed after the land has been registered under the Land Registration Act, proper expropriation proceedings should be had, and just compensation paid to the registered owner thereof. For, it is elementary that public use may not be imposed on private property without proper expropriation proceedings and payment of just compensation made to the owner. (Sec. 1 [2], Art III, Constitution; Rule 69, Rules of Court.)

It is our conclusion, therefore, that Section 90 of Commonwealth Act No. 141, as amended by Republic Act 1273, is applicable only to lands of the public domain subsequently acquired by a private person or entity through any of the modes provided under said Act, and not to those sought to be registered as lands of private ownership under the provisions of the Cadastral Law or the Land Registration Act.

Wherefore, finding no error in the decision appealed from, the same is hereby affirmed. So ordered, without costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Gutierrez David, Paredes, and Dizon, JJ., concur.

[1] Act No. 2259, as amended.

[2] Act No. 496, as amended.

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