

AMADOR IBARDOLAZA, PETITIONER, VS. THE HON. FELIX V. MACALALAG, JUDGE OF THE COURT OF FIRST INSTANCE OF AKLAN, PILAR C. TUMBOKON, JOSE M. CONCEPCION, ET AL., RESPONDENTS.

G.R. No. L-22367. April 25, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Upon a claim that he was turned away because the judge arbitrarily refused to set aside the order of general default in a land registration case,[1] petitioner comes to this Court on certiorari to test the validity of such refusal order.

The present case came about because on July 30, 1963 in the land registration case referred to, respondent judge issued an order of general default, referred the case to a commissioner for reception of evidence. Petitioner's evidence was thereupon taken. No decision has up to now been rendered. It is upon the averment in a verified motion that he is an owner of some 110,000 square meters of land forming part of Lot No. 2, one of the three lots applied for by private respondents, that petitioner sought to set aside the order of general default. He pleaded accident or mistake. This was disposed of in a minute order of November 9, 1963 adverse to petitioner. Petitioner's motion to reconsider of November 20, 1963, with an affidavit of merits, suffered the same fate in a similar order of December 21, 1963.

1. Few phrases in law are elusive of exact definition as the term "grave abuse of discretion". Primarily to be assessed in ascertaining whether or not grave abuse of discretion is present in a given case, are the environmental facts. With this criterion in mind, we must say that petitioner's argument directed at its existence, knocks at an open door.

First. By Section 32 in relation to Section 21 of the Land Registration Act, all occupants of and persons with adverse claims to lands sought to be registered are entitled - in addition to notice by publication to personal notice of initial hearing by mail, registered if practicable. And yet, the notice sent out by the clerk of court failed to include petitioner's name and address. Because, respondents omitted specific mention of his name in the application, although it recites that a portion of Lot 2 "was occupied by Celestino Ibardolaza and his family during the war by permission of Mrs. Pilar C. Tumbokon, as evacuation place." The omission of petitioner's name as possessor with Celestino Ibardolaza of that portion could be an oversight. Nonetheless, this is a fact known to respondents. For, as early as March 22, 1954, the attorneys for the respondents wrote petitioner and Celestino Ibardolaza a letter stating that the latter were "illegally occupying" the disputed portion and requesting them "to come to a conference with us anytime within a period of ten (10) days from receipt of this letter, so that if possible we can thresh out your differences with our clients regarding the land, and at the same time take up certain points beneficial to all concerned." As he was not mentioned in the notice of initial hearing sent out by the clerk of court and published in the Official Gazette, petitioner's averment of lack of notice and lack of knowledge of the initial

hearing, as basis for excusable negligence, is not at all without basis. It is really not improbable that he could not have read the notice as it was published in the Official Gazette. And then, petitioner's affidavit states that he had been oftentimes in the land he claims, and yet, he "neither saw" nor "had knowledge of the notice posted thereon regarding such application for registration or initial hearing."

Second. The burden of petitioner's gripe before this Court is that substantial justice was denied him when respondent judge refused to set aside the order of general default and to decide the respective claims of petitioner and respondents in a full-dress trial on the merits. He sought relief below barely 27 days after the order of general default. No decision has thus far been rendered on the basis of respondents' evidence presented *ex parte*.

Not that petitioner's claim of ownership is to be brushed aside as without merit. His affidavit says that he has "continuously pos-sessed, usufructed and exercised dominion over the same for a period of over 25 years against the claim of third party whomsoever, including applicants, in concept of owner, publicly, adversely and peacefully"; that he had declared it for taxation purposes, paid the taxes thereon; that he had made improvements on the portion afore-said; and that in fact, he has his fishpond in the portion of land he asserts as his.

It is in the context heretofore recited that we say that it would have been far better to risk a little delay rather than in a sweeping manner foreclose that man's right to property. A principle deeply ingrained in our judicial system is the right to be heard. And this should not be denied absent a substantial prejudice to the adverse party and in the face of a good and substantial defense. There is, indeed, reason to complain that the order under review contravenes the basic dictates of fairness.

2. And still, there is a suggestion in the record of this case before us which should not be easily shrugged off. We note in petitioner's affidavit (attached to and in support of his motion for the reconsideration of the order below) that the northern portion of Lot 2 in dispute is not hereditary property of petitioner, "but an accretion which movant-petitioner has for a long time occupied and cultivated." Respondents join issue with this averment^[2] that that accretion belongs to them. The notice of initial hearing issued by the clerk of court, however, says that the northern and northeastern portion of Lot 2 is bounded by the Sibuyan Sea. And this is precisely the portion in dispute because the application itself says that this disputed land is "on the northern side bordering the shore part of Lot 2." These averments could be true; or, they might not be true. At any rate, this point is worth exploring into. And this to enable the State to assert its claim, if warranted, to the portion disputed.^[3]

3. The order of general default, practice teaches us, is not always rigidly to be adhered to. The Land Registration Act is to be read as meaning that the order of general default is not an inflexible judicial act such as would shut off a meritorious claim thereafter presented. Indeed, judicial actuations upon a motion to set aside a general default order must move within accepted notions of justice and fairness. As we concede the discretion of the court in the matter of lifting the order of general default, it would perhaps be appropriate to say that an arbitrary stretch of authority needful to no justifiable ends should be avoided. Because the right of an applicant must be equated with a claimant's right to oppose and establish a case for ownership in himself.

On balance, we say that petitioner has made out a case of grave abuse of discretion which calls for the corrective powers of this Court.

Upon the record, judgment is hereby rendered (1) granting the petition for a writ of certiorari; (2) setting aside the order of July 30, 1963; and (3) directing the Court of First Instance of Aklan to permit petitioner to file his opposition to the application for land registration in Land Registration Case No. K-125 (LRC Record No. N-22879) of said court, covering the application of Pilar C. Tumbokon, et al., for the registration of title to land, and thereafter to take appropriate proceedings therein.

Costs against respondents other than respondent judge.

Let a copy of this decision be forwarded to the Director of Lands and to the Solicitor General to enable the State to ascertain whether or not the portion of land claimed by petitioner is public land and to take appropriate action.

SO ORDERED.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Application was filed on September 26, 1962, amended on November 10, 1962, in the Court of First Instance of Aklan and docketed as Land Reg. Case No. K-125 (LRC Record No. N-22879), entitled "Application for Registration of Title to Land, Pilar C. Tumbokon, et al., Applicants."

[2] See: Respondents' Answer, p. 7.

[3] Land formed by the action of the sea is property of the State. *Ignacio vs. Director of Lands*, 58 O.G. No. 12, pp. 2403, 2404-2405; *Joven vs. Director of Lands*, 93 Phil. 134, 135-136.

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