

MUNICIPALITY OF PAETE, PLAINTIFF AND APPELLEE, VS. NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, DEFENDANT AND APPELLANT.

G.R. No. L-21576. May 29, 1970

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by the National Waterworks and Sewerage Authority - hereinafter referred to as NWSA - from the de-cision of the Court of First Instance of Laguna in Civil Case No. SC-283 dated April 24, 1962, the dispositive part of which reads as follows:

"In view of all the foregoing, the Court renders judgment by:

1. Declaring the Municipality of Paete as owner of the Paete Waterworks System formerly known as the Quesada Waterworks System;
2. Ordering the NWSA to turn over the Municipality of Paete the possession, control, administration and supervision of the Paete Waterworks System;
3. Ordering the dissolution of the preliminary injunction issued by this Court on February 15, 1961, in Civil Case No. SC-282 and therefore dismisses said case;
4. Ordering the NWSA to render an accounting of all the income of the Paete Waterworks System from December, 1956, up to the time the said waterworks system is turned over to the Municipality of Paete, and, after said accounting, to turn over to the Municipality of Paete all monies in the hands of the NWSA; and
5. Ordering the NWSA to pay the costs in these two cases.

SO ORDERED."

It appears that in the month of December 1956, relying upon the provisions of Republic Act No. 1383, Executive Order No. 127 and Provincial Circular No. 106 of the Pro-vincial Governor of Laguna, NWSA took possession of, and assumed the administration, control and supervision of the Paete Waterworks System, over the protest of the Municipality of Paete (Resolutions No. 131 and 190 of the Municipal Council of Paete, Laguna attached as Annexes B and C and made part of the Stipulation of Facts submitted by the parties). Subsequently, however, the municipality acquiesced thereto because, as stated at page 2 of its brief as appellee, there was "a legal and moral duty on the part of the municipality of Paete to turn over their waterworks system to the National Waterworks and Sewerage Authority".

It appears that notwithstanding the ruling of this Court in *City of Baguio vs. NAWASA*, G. R. L-12032, August 31, 1959 and *City of Cebu vs. NAWASA*, G. R. L-12892, April 30, 1960, the NWSA failed to pay to the municipality of Paete any just compensation for the value of its waterworks system. In view of our ruling and NWSA's failure aforesaid, the water consumers of the municipality of Paete started paying for their water

consumption to said municipality. This prompted NWSA to institute Civil Case No. SC-282 on January 20, 1961 in the Court of First Instance of Laguna against the Municipal Mayor and Municipal Treasurer of Paete, to enjoin them from intervening in the administration, control and supervision of the Paete Waterworks System and from collecting from the water consumers any amount due from them to the afore-said System. Two days later, the municipality of Paete, in turn, commenced Civil Case No. SC-283 in the same court for the recovery of the control, possession and administration of its waterworks system from NWSA.

On February 15, 1961 the lower court issued a writ of preliminary injunction prayed for by NWSA in the first case, enjoining the municipal mayor and municipal treasurer from interfering with the administration and control of the Paete Waterworks System and from collecting dues from the water consumers.

NWSA's answer filed in Civil Case No. SC-283 alleged that the plaintiff therein was not the owner of the Paete Waterworks System and that under the provisions of Republic Act No. 1383, otherwise known as the NAWASA Charter, it had the right to administer, possess and control all water systems in the Philippines.

Both cases were tried and decided jointly, but as NWSA failed to perfect an appeal in Civil Case No. SC-282 this appeal concerns Civil Case No. SC-283 alone. The appealed decision was rendered on the basis of the following stipulation of facts:

"x x x x x x x x

(1) That the Nawasa admits the ownership by the Municipality of Paete of the Paete Waterworks System, formerly known as the Quesada Waterworks System;

(2) That the Municipality of Paete, respondent and plaintiff, respectively, in the two above-entitled cases, admits the decision of the Supreme Court in G. R. No. L-15525, entitled, Municipality of Lucban versus Nawasa, attaching hereto as part of this stipulation a copy of said decision of the Supreme Court, together with the decision of the Court of First Instance of Quezon Province; (Annex "A")

(3) That the Nawasa came over the possession, control and supervision of the Paete Waterworks System, pursuant to Republic Act 1383 and Executive Order No. 127 and further implemented by Provincial Circular No. 106 of the Provincial Governor of Laguna;

(4) That since December, 1956 to the present all the incomes derived from the system were collected and received by the Nawasa, except for the periods of July 20, 1960 to February 20, 1961;

(5) That before the Nawasa came into the possession of the system of the Paete Waterworks System, the Municipal Council of Paete Laguna, in its Resolution No. 131, as well as by Resolution No. 190, protested the transfer as contemplated in Republic Act No. 1383; and for which said resolutions are here-by marked as Annexes B and C, and made an integral part of this stipulation;

(6) That from December, 1956 up to July 25, 1960, and from February 15, 1961, when the writ of injunction was issued and served on February 20, 1961, and up to the present the Nawasa has not rendered an accounting of the income of the said system; and

(7) That the parties admit that the question raised in these two cases does not concern 'ownership' but only as to who is entitled to administer, control and supervise the Quesada Waterworks System. x x x"

The lone assignment of error made in appellant's brief reads as follows:

"THAT THE COURT ERRED IN HOLDING THAT THE PLAINTIFFS-APPELLEES AS OWNERS IS ENTITLED TO THE POSSESSION, ADMINISTRATION OF THE PAETE WATERWORKS SYSTEM COMPLETELY DISREGARDING THE LIMITATIONS ON THE RIGHT OF OWNERSHIP UNDER THE PROVISIONS OF CIVIL CODE; AND UNDER REPUBLIC ACT NO. 1383 AS AMENDED."

The ownership of the Paete Waterworks System is not now in question, it appearing from the stipulation of facts that NWSA admitted Paete's ownership thereof. The only issue to be resolved is whether the NWSA is entitled to continue in the possession, administration, supervision and control of the aforesaid waterworks system in view of our ruling in the City of Baguio and City of Cebu cases mentioned heretofore, and in spite of the stipulated fact (paragraph 6 of the stipulation) that since December 1956 until February 1961 and up to the time when said stipulation of facts was submitted to the trial court, "the NAWASA has not rendered an accounting of the said System".

Upon the above issue we consider the following portion of our decision in the case of City of Baguio vs. The National Waterworks and Sewerage Authority (G. R. No. L-12032, August 31, 1959) to be relevant:

"But it is insisted that the waterworks system of Baguio does not have the character of patrimonial property but comes under the phrase 'public works for public service' mentioned in Article 424 of the New Civil Code and as such is subject to the control of Congress. This contention is also untenable. The Baguio Waterworks System is not like any public road, park, street or other public property held in trust by a municipal council corporation for the benefit of the public but it is rather a property owned by appellee in its proprietary character. While the cases may differ as to the public or private character of waterworks, the weight of authority as far as the legislature is concerned classes them as private affairs. (sec. 239, Vol. I, Revised, McQuillin Municipal Corporations, p. 239; Shrik vs. City of Lancaster, 313 Pa. 158, 169 Atl. 557). And in this jurisdiction, this Court has already expressed the view that a waterworks system is patrimonial property of the city that has established it. (Mendoza vs. De Leon, 33 Phil. 509). And being owned by a municipal corporation in a proprietary character, waterworks cannot be taken away without observing the safeguards set by our Constitution for the protection of private property.

'While the judicial opinions on this subject are more or less uncertain in expression, and court judgments apparently conflicting, perhaps it is correct to affirm that a majority of decisions recognize the private rights of the municipal corporation, and hence support the view that all its property of a distinctly private character is fully protected by the constitutional provisions protecting private property of the individual or the private corporation. Accordingly the right of the state as to the private property of the municipal corporation is a right of regulation to be exercised in harmony with the general policy of the state, and though broader than exists in the case of individuals, or private corporations, is not a right of appropriation.'

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'The decisions maintain that the property held by a municipal corporation in its private capacity is not subject to the unrestricted control of the legislature, and the municipality cannot be deprived of such property against its will, except by the exercise of eminent domain with payment of full compensation.' (McQuillin Municipal Corporations, 2nd Ed., Vol. I, pp. 679--681)

'In its private capacity a municipal corporation is wholly different. The people of a compact community usually require certain conveniences which cannot be furnished without a franchise from the state and which are either unnecessary in the rural districts, such as a system of sewers, or parks and open spaces, or which on account of the expense it would be financially impossible to supply except where the population is reasonably dense, such as water or gas. x x x But in so far as the municipality is thus authorized to exercise the functions of a private corporation, it is clothed with the capacities of a private corporation and may claim its rights and immunities, even as against the sovereign, and is subject to the liabilities of such a corporation, even as against third parties. (19 R.C.L. p. 698).

"The attempt of appellant in having waterworks considered as public property subject to the control of Congress or one which can be regulated by the exercise of police power having failed, the question that now

arises is: Does Republic Act No. 1383 provide for the automatic expropriation of the waterworks in question in the light of Our Constitution? In other words, does said law comply with the requirements of section 6, Article XIII, in relation to section 1 (2), Article III, of our Constitution?

"Section 6, Article XIII of our Constitution provides:

'Sec. 6. The State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprise to be operated by the Government.'

"Section 1(2), Article III, of our Constitution provides:

'(2) Private property shall not be taken for public use without just compensation.'

"It is clear that the State may, in the interest of national welfare, transfer to public ownership any private enterprise, upon payment of just compensation. At the same time, one has to bear in mind that no person can be deprived of his property except for public use and upon payment of just compensation. There is an attempt to observe this requirement in Republic Act No. 1383 when in providing for the transfer of appellee's waterworks system to a national agency it was directed that the transfer be made upon payment of an equivalent value of the property. Has this been implemented? Has appellant actually transferred to appellee any asset of the NAWASA that may be considered just compensation for the property expropriated? There is nothing in the record to show that such was done. Neither is there anything to this effect in Office Memorandum No. 7 issued by the NAWASA in implementation of the provision of Republic Act No. 1383. The law speaks of assets of the NAWASA but they are not specified. While the Act empowers the NAWASA to contract indebtedness and issue bonds subject to the approval of the Secretary of Finance when necessary for the transaction of its business (sec. 2, par. (1), sec. 5, Act No. 1383), no such action has been taken to comply with appellant's commitment in so far as payment of compensation of appellee is concerned. As to when such action should be taken no one knows. And unless this aspect of the law is clarified and appellee is given its due compensation, appellee cannot be deprived of its property even if appellant desires to take over its administration in line with the spirit of the law. We are therefore persuaded to conclude that the law, insofar as it expropriates the waterworks in question without providing for an effective payment of just compensation, violates our Constitution. In this respect, the decision of the trial court is correct."

The City of Baguio ruling was subsequently reiterated in *City of Cebu vs. NAWASA* (G. R. No. L-12892, April 30, 1960 where, among other things, We said:

"To prevent the National Waterworks and Sewerage Authority (NAWASA), created under Republic Act No. 1383, from taking over the ownership, control, supervision, and jurisdiction over the Osmeña Waterworks System, pursuant to the provisions of Section 8 of the said Act, the City of Cebu filed an action for declaratory relief in the Court of First Instance of Cebu, naming the NAWASA as defendant, praying for a clear interpretation of the provisions of said R. A. No. 1383; a declaration of the rights and obligations of the parties thereunder; and a declaration that the statute or any part thereof, in so far as it deprives the plaintiff of its property rights in the Osmeña Waterworks System without due process of law and just compensation, is unconstitutional.

"In its answer, NAWASA contended that as the System had always been under the control and operation of the National Government, its transfer to the defendant NAWASA was within the competence of Congress to do; that even assuming that the said System belonged to plaintiff, it was public property and therefore, within the absolute control of Congress; and that granting that it was patrimonial property, there was proper and just compensation provided for in Republic Act No. 1383 for its transfer to NAWASA.

"After due trial, the lower court rendered judgment which was later amended, declaring Republic Act No. 1383 unconstitutional 'in so far as it vests in defendant Authority (NAWASA) ownership over the Osmeña

Waterworks System without just compensation as required by the Constitution, without prejudice to granting positive coercive relief upon proper showing that defendant insists upon taking ownership of the Osmeña Waterworks System, at the same time upholding the defendant's right of control, jurisdiction and supervision over the said System. The question as to what acts of the NAWASA would constitute acts of ownership or dominion and what would be considered as an exercise of jurisdiction, supervision and control was left open for future determination."

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"The issues presented above are basically the same as those raised and determined by this Court in the recent case of the City of Baguio v. The National Waterworks and Sewerage Authority, G. R. No. L-12032, promulgated August 31, 1959. In the aforesaid case, passing upon the question of whether Republic Act No. 1383 provides for the automatic expropriation of the waterworks mentioned therein, we held, citing Section 6, Article XIII and Section 1-(2), Article-III of our Constitution, this wise:

'It is clear that the State may, in the interest of national welfare, transfer to public ownership any private enterprise upon payment of just compensation. At the same time, one has to bear in mind that no person can be deprived of his property except for public use and upon payment of just compensation. There is an attempt to observe this requirement in Republic Act No. 1383 when in providing for the transfer of appellee's waterworks system to a national agency it was directed that the transfer be made upon payment of an equivalent value of the property. Has this been implemented? Has appellant actually transferred to appellee any asset of the NAWASA that may be considered just compensation for the property expropriated? There is nothing in the record to show that such was done. Neither is there anything to this effect in Office Memorandum No. 7 issued by the NAWASA in implementation of the provision of Republic Act No. 1383. The law speaks of assets of the NAWASA but they are not specified. While the Act empowers the NAWASA to contract indebtedness and issue bonds subject to the approval of the Secretary of Finance when necessary for the transaction of its business (sec. 2, par. (1), sec. 5, Act No. 1383), no such action has been taken to comply with appellant's commitment in so far as payment of compensation of appellee is concerned. As to when such action should be taken no one knows. And unless this aspect of the law is clarified and appellee is given its due compensation, appellee cannot be deprived of its property even if appellant desires to take over its administration in line with the spirit of the law. We are therefore persuaded to conclude that the law, insofar as it expropriates the waterworks in question without providing for an effective payment of just compensation, violates our Constitution.'

"Exactly the same situation obtains in the present case. Section 8 of Republic Act No 1383 (supra.) provides that 'the net book value of the properties and assets of the Metropolitan Water District and of government-owned waterworks and sewerage systems in cities, municipalities, or municipal districts, and other government-owned waterworks and sewerage systems shall be received by the Authority in payment for an equal value of the assets of the National Waterworks and Sewerage Authority'. In other words, all the properties and assets of the Osmeña Waterworks System are transferred to the defendant NAWASA in exchange for an equal value of the latter's assets. But what these assets consist of, nothing concrete presently appears. All that is provided in Section 8 is that NAWASA acquires all the assets and liabilities of all government-owned waterworks and sewerage systems in the country. It is an equal value of these unliquidated assets and liabilities that is supposed to be given to plaintiff-appellee as payment of its System. Such, certainly, is not a compensation that satisfies the Constitutional provisions."

From the foregoing decisions it seems clear that while the National Government may expropriate the waterworks system involved in this case, it may validly do so only by providing for and paying the municipality of Paete the just compensation due to it. Consequently said municipality continues to be the owner of the Water System involved in this case and is entitled to have it in its possession and under its administration and control, no lawful and effective expropriation thereof by the State having been made to this date.

PREMISES CONSIDERED, the decision appealed from is hereby affirmed. With costs.

Concepcion, C.J, Reyes, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Castro, J., on official leave.

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