

JULIAN SANTULAN, SUBSTITUTED BY HIS CHILDREN NAMED PATROCINIO, ADORACION, ARTURO, CONSTAN-CIA, AND PEPITA, ALL SURNAMED SANTULAN, AND MINOR GRANDCHILDREN, JOCELYN, ROSAURO AND R...

G.R. No. L-28021. December 15, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the lease of a parcel of foreshore land of the public domain with an area of about four and one-half hectares located at Barrio Kaiñgin, Kawit, Cavite abutting on Bacoar Bay and the Ankaw Creek.

It is a protracted controversy that has been pending for more than thirty years between the rival claimants, Julian Santulan and Antonio Lusin, who have been succeeded by their heirs.

Santulan claimed that that foreshore land is an extension of his land, Lot 986 of the Kawit cadastre, with an area of 17,301 square meters, registered in his name in 1937 under Original Certificate of Title No. 6 which was issued by virtue of a free patent. The northern boundary of Lot No. 986 is Bacoar (Manila) Bay (Exh. A). The said foreshore land was allegedly formed by soil deposits accumulated by the alluvial action of the sea.

On December 5, 1942 Santulan caused the said land to be surveyed. The survey plan was approved by the Director of Lands in 1944 (Exh. B). On December 29, 1942 Santulan, pursuant to Lands Administrative Order No. 7-1, filed an application, F. L.A. No. V-562, to lease or five years for agricultural purposes an area of 36,120 square meters of the said foreshore land (Exh. F).

On that same date, December 29, 1942, Santulan, pursuant to Act No. 3077 and Lands Administrative Order No. 8-3, filed with the Bureau of Lands an application for a revocable permit to occupy the said land. He indicated therein that he would use the land for "capiz beds and oyster beds, the planting of bakawan and pagatpat and later to be developed into a fishpond" (Exh. G).

Seven years later, or on December 22, 1949, Santulan filed with the Bureau of Fisheries an application for an ordinary fishpond permit or lease, of the said foreshore land (Special Use Permit, Fp. A. No. 5114, Exh. H).

At the instance of the Director of Fisheries, the Director of Forestry investigated the condition of the said foreshore land. The latter in his first indorsement dated June 19, 1950 found that it was swampy "and not an improved fishpond as alleged by Antonio Lusin" and that it is within the disposable areas for agricultural purposes under the jurisdiction of the Bureau of Lands (Exh. L-1).

The chief of the division of commercial fisheries sent a letter to Lusin dated April 28, 1950 apprising him that he was reported to have illegally entered the area covered by Santulan's fishpond permit application and directing him to refrain from introducing improvements, with the warning that court proceedings would be taken against him (Exh. J).

On January 12, 1951 an attorney, acting for the Director of Lands wrote the following letter to Lusin advising him to vacate the disputed land and maintain the status quo:

"Mr. Antonio Lusin

Caiñgin, Kawit, Cavite

"S i r:

"We have been informed that the area which is presently controverted by and between you and Julian Santulan, under the applications noted above, was recently entered by you and some companions and that you are destroying the dikes and other im-provements previously constructed thereon by said Julian Santulan.

"If this information is true, and inasmuch as you are aware that the controversy is still pending final adjudgment in this Office, it is desired that you take proper advice and leave the area and its existing improvements in status quo in order to avoid possible confusion of rights which may delay the final disposi-tion of the area in question.

"You are advised further that the acts imputed to you may make you liable to prosecution and punish-ment under the law; and that whatever improvements you may make for yourself in the premises will not legally accrue to your benefit, nor will they serve as basis for a claim to preferential rights." (Paragraphing supplied, Exh. J-1).

Santulan declared the said foreshore land in his name for tax purposes. Tax Declaration No. 2923, which took effect in 1948 and which cancelled Tax Declaration No. 13816 also in Santulan's name, shows that the land was assessed at P460. He paid the realty taxes due on the said land for the years 1945-46, 1948-55 and 1957-60 (Exh. C, D and E, et seq.).

On the other hand, Antonio Lusin in 1942 and 1945 (he died in 1962) filed with the Bureau of Lands applications for a revocable permit and lease of a foreshore land, respectively, for the purpose of producing salt on the said land. He claimed that he had been in the continuous and exclusive possession of that land since 1920, when it was still under water, and that he had used it as a site of his fish corrals.

He allegedly converted two hectares of the said land into a fishpond. The entire area was enclosed with mud dikes and provided with a concrete sluice gate and another sluice gate made of wood. On the northern part of the land bordering the bay were bamboo stakes placed at close intervals to serve as water breakers to protect the mud dikes from being washed away by the action of the sea. Lusin introduced the alleged improvements from 1951 to 1953.

The 1942 foreshore lease applications of Santulan and Lusin gave rise to Bureau of Lands Conflict No. 8 (N). The Director of Lands in his decision in that case dated February 1, 1951 found that the disputed land is foreshore land covered and uncovered by the flow and ebb of the ordinary tides; that it is an extension of Santulan's Lot No. 986 and it was formerly a part of the sea; that Santulan was the first to enter the land and to make dikes thereon, and that Lusin entered the land later and made dikes also (Exh. K made a part hereof for reference as Annex A).

The Director ruled that the disputed foreshore land was subject "to riparian rights which may be invoked by Santulan as owner of the upland in accordance with section 32 of Lands Administrative Order No. 7-1" (Exh. K). Hence, the Director rejected Lusin's application for a foreshore lease and for a revocable permit and gave due course to Santulan's foreshore lease application.

Lusin filed a motion for reconsideration. The Director in his order of October 19, 1951 denied that motion. He found that Lusin was a possessor in bad faith; that it is not true that Lusin had improved and possessed the said foreshore land for twenty years; that the disputed area is covered by water, two to three feet deep during ordinary tides and is exposed land after the ebb of the tides, and that Lusin's alleged possession and improvements could not nullify Santulan's preferential right to lease the land by reason of his riparian rights. The Director ordered

Lusin to vacate the land within sixty days from notice (Exh. L made a part hereof for reference as Annex B).

Lusin appealed to the Acting Secretary of Agriculture and Natural Resources who in his decision of October 13, 1952 dismissed the appeal and affirmed the Director's 1951 decision (Exh. M made a part hereof for reference as Annex C). Lusin's motion for reconsideration was denied in the Secretary's order of February 28, 1953 (Exh. N made a part hereof for reference as Annex D).

Lusin asked for a reinvestigation of the case. His re-quest was granted. The Department ordered a reinvestigation on May 12, 1953.

After receipt of the report of reinvestigation, the Under-secretary of Agriculture and Natural Resources, by authority of the Secretary, in his order of December 14, 1954, reaffirmed the rejection of Lusin's revocable permit and foreshore lease applications but ordered Santulan to reimburse to Lusin the appraised value of his improvements (Exh. O made a part hereof for reference as Annex E).

Lusin appealed to the President of the Philippines after his motion for reconsideration was denied in the Undersecretary's order of May 19, 1955 (Exh. OO made a part hereof for reference as Annex F).

Executive Secretary Juan C. Pajo, by authority of the President, held in his decision of April 10, 1958 that section 32 of Lands Administrative Order No. 7-1 (promulgated by the Secretary of Agriculture and Natural Resources on April 30, 1936 pursuant to Acts Nos. 2874 and 3038) was "rendered obsolete" by section 67 of the Public Land Law which took effect on December 1, 1936 (Exh. P made a part hereof for reference as Annex G).

On the basis of the foregoing ruling and since the record is silent as to whether or not the land in question has been de-clared by the President as not necessary for the public service and as open to disposition (Sec. 61, Public Land Law), the Exe-cutive Secretary sustained Lusin's appeal and reversed the orders of the Director of Lands and the Secretary of Agriculture and Natural Resources in favor of Santulan. Secretary Pajo decided the case in the alternative as follows:

"On the assumption that the land in question has been declared open for disposition and is not neces-sary for the public service, this Office directs that an oral bidding for the leasing thereof to interested par-ties pursuant to the provisions of Section 67 of Commonwealth Act No. 141 be conducted and the contract of lease awarded to the highest bidder. Whoever shall be the highest bidder, if other than the appellant, shall be required to pay to the appellant the appraised value of the improvements introduced by him on the land to be determined by that Department.

"If the land in question has not been so de-clared, this Office directs that a revocable permit under Section 68 of Commonwealth Act No. 141 be issued to the appellant requiring him to pay permit fees since the year 1951.

"Accordingly, the orders and decisions of that Department and the Bureau of Lands are hereby revoked."

Santulan's case was distinguished from that of Gonzalo Monzon whose Lot No. 987 adjoins Santulan's Lot No. 986. Executive Secretary Fred Ruiz Castro (now Chief Justice) in his decision of May 10, 1954 upheld the preferential right of Monzon to lease the foreshore land north of his lot, which foreshore land is adjacent to the foreshore land now in dispute in this case (Exh. Q made a part hereof for reference as Annex H).

Santulan's motion for reconsideration was denied in the letter of the Acting Executive Secretary dated August 20, 1959 (Exh. W).

On October 22, 1959 Santulan filed in the Court of First Instance of Cavite a petition for certiorari wherein he alleged that the Executive Secretary committed a grave abuse of discre-tion in misinterpreting certain provisions of Act No. 2874, Com-monwealth Act No. 141, and Lands Administrative Order No. 7-1.

In the lower court the parties agreed that the case involves only a question of law. On August 18, 1961 the lower court dis-missed the petition and affirmed the Executive Secretary's deci-sion. Santulan appealed to the Court of Appeals which in its resolution of July 21, 1967 elevated the record to this Court on the ground that Santulan in his brief raised only the legal questions of whether the Public Land Law repealed section 32 of Lands Administrative Order No. 7-1 and whether the Executive Secretary's decision is "legally sound and correct" (CA-G. R. No. 30708-R).

It should be emphasized that, as found by the investigators of the Bureau of Lands, Santulan was the prior possessor of the foreshore land in question. He had it surveyed in 1942. The survey plan (Psu-115357) was approved by the Director of Lands in 1944. Santulan paid the realty taxes on that land.

It should further be underscored that the regulations give him a preferential right to lease the land as a riparian owner. Lands Administrative Order No. 7-1 dated April 30, 1936, which was issued by the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Lands for the disposition of alienable lands of the public domain, provides:

"32. Preference of Riparian Owner.- The owner of the property adjoining foreshore lands, marshy lands or lands covered with water bordering upon shores or banks of navigable lakes or rivers, shall be given preference to apply for such lands adjoining his property as may not be needed for the public service, subject to the laws and regulations governing lands of this nature, provided that he applies therefor within sixty (60) days from the date he receives a communication from the Director of Lands advising him of his preferential right."

Paragraph 32 quoted above is a substantial copy of paragraph 4 of Lands Administrative Order No. 8-3 dated April 20, 1936, which was promulgated by the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Lands for issuance of temporary permits of occupation and use of agricultural lands of the public domain.

The word "riparian" in paragraphs 32 and 4 of the departmental regulations is used in a broad sense as referring to any property having a water frontage (Shepard's Point Land Co. vs. Atlantic Hotel, 44 S. E. 39, 45, 132 N. C. 517, 65 C. J. S. 143, note 84). Strictly speaking, "riparian" refers to rivers. A riparian owner is a person who owns land situated on the bank of a river.

But in paragraphs 32 and 4, the term "riparian owner" embraces not only the owners of lands on the banks of rivers but also the littoral owners, meaning the owners of lands bordering the shore of the sea or lake or other tidal waters. The littoral is the coastal region including both the land along the coast and the water near the coast or the shore zone between the high and low watermarks.

Therefore, on the basis of paragraphs 32 and 4 of the said administrative regulations, Santulan or his heirs should be allowed to lease or occupy the said foreshore land.

But the Executive Secretary ruled that paragraph 32 was rendered obsolete by Commonwealth Act No. 141 or, as held by the trial court, Lands Administrative Order No. 7-1 was re-pealed by the Public Land Law. Is that conclusion correct? We hold that it is wrong.

It is true that Lands Administrative Orders Nos. 7-1 and 8-3 were issued when the 1919 Public Land Act was in force or before the present Public Land Law took effect on December 1, 1936. But that circumstance would not necessarily mean that the said departmental regulations are not good under the 1936 Public Land Law.

In rationalizing the alleged repeal of paragraph 32, the Executive Secretary cited the following provisions of Act No. 2874, the 1919 Public Land Act (15 Public Land Laws 24):

"SEC. 64. The lease or sale shall be adjudicated to the highest bidder; and if there is no bidder besides the applicant, it shall be adjudicated to him. The provisions of section twenty-seven of this Act shall be applied wherever applicable. If all or part of the lots remain unleased or unsold, the Director of Lands shall from time to time announce in the Official Gazette or otherwise the lease or sale of those lots, if necessary." (Section 27 refers to sealed bidding).

The Executive Secretary held that the above-quoted section 64 was repealed by the following provisions of Commonwealth Act No. 141 which took effect on December 1, 1936:

'SEC. 67. The lease or sale shall be made through oral bidding; and adjudication shall be made to the highest bidder. However, where an applicant has made improvements on the land by virtue of a permit issued to him by competent authority, the sale or lease shall be made by sealed bidding as prescribed in section twenty-six of this Act, the provisions of which shall be applied wherever applicable. If all or part of the lots remain unleased or unsold, the Director of Lands shall from time to time announce in the Official Gazette, or in any other newspapers of general circulation, the lease or sale of those lots, if necessary." (Section 26, like section 27 of Act No. 2874, refers to sealed bidding).

The Executive Secretary noted that under section 64 of Act No. 2874 sealed bidding was the general rule of procedure in determining an award of a lease of foreshore land and that the applicant is entitled to equal the bid of the highest bidder. On the other hand, under section 67, oral bidding is the general rule.

Hence, the Executive Secretary assumed that, while under section 64 of the 1919 old Public Land Act, the fact that the applicant has a preferential right to lease foreshore land was a crucial factor, it is unimportant under section 67 of the 1936 Public Land Law because in oral bidding the applicant is not entitled to equal the bid of the highest bidder.

The Executive Secretary concluded that, because the preferential right of the applicant to lease foreshore land was immaterial under section 67 of the present Public Land Law, paragraph 32 of Lands Administrative Order No. 7-1, which gives such preference, had become "idle and useless".

That conclusion is wrong because it is based on the erroneous hypothesis that section 64 of the 1919 Public Land Act is different from section 67 of the 1936 Public Land Law. They are not different. The truth is that section 64 was amended by Act No. 3517 which took effect on February 4, 1929 (24 Public Laws 416). Section 64, as thus amended, is substantially the same as section 67 of the 1936 Public Land Law.

That fact was overlooked by the Executive Secretary. Hence, his conclusion, that paragraph 32 of Lands Administrative Order No. 7-1 was repealed or rendered obsolete by section 67 of the present Public Land Law, is wrong because its premise is wrong.

In other words, paragraph 32 of Lands Administrative Order No. 7-1, issued on April 30, 1936, was promulgated under section 64 of the old Public Land Law, as amended. And since the amended section 64 was substantially reproduced in section 67 of the present Public Land Law, it is glaringly incorrect to say that section 67 rendered obsolete the said paragraph 32. Paragraph 32 is still in force and is good under the existing Public Land Law.

The foregoing discussion reveals that the Executive Secretary's rationalization of the alleged repeal of paragraph 32 of Lands Administrative Order No. 7-1 (identical to paragraph 4 of Lands Administrative Order No. 8-3) is not only deficient in clarity and cogency but is predicated on the false assumption that section 64 of the 1919 Public Land Act is different from section 67 of the present Public Land Law. Consequently, the aforementioned decision of Executive Secretary Juan C. Pajo under review has to be set aside.

This case is governed by the precedent established in the case of Gonzalo Monzon, which, as already noted, is

similar to this case since the foreshore land involved in the Monzon case is adjacent to the foreshore land involved in this case.

In the Monzon case, the Office of the President, applying the oft-cited paragraph 32 of Lands Administrative Order No. 7-1 held that Monzon, the littoral owner of the registered land abutting upon the foreshore land, has the preferential right to lease the foreshore land.

The location of the lots of Santulan and Monzon and the foreshore lands abutting thereon is shown in the following sketch based on the plan, Psu-115357 (Exh. B):

Considering that the foreshore land abutting upon Santulan's lot is in the same situation as the foreshore land abutting upon Monzon's lot, there is no reason why Santulan should not enjoy, with respect to the disputed foreshore land, the rights given to Monzon over the foreshore land adjacent to his lot.

Now, then, is there any justification for giving to the littoral owner the preferential right to lease the foreshore land abutting on his land?

That rule in paragraph 32 is in consonance with article 4 of the Spanish Law of Waters of 1866 which provides that, while lands added to the shores by accretions and alluvial deposits caused by the action of the sea form part of the public domain, such lands, "when they are no longer washed by the waters of the sea and are not necessary for purposes of public utility, or for the establishment of special industries, or for the coast guard service", shall be declared by the Government "to be the property of the owners of the estates adjacent thereto and as increment thereof" (cited in *Ignacio vs. Director of Lands*, 108 Phil. 335, 338).

In other words, article 4 recognizes the preferential right of the littoral owner (riparian according to paragraph 32) to the foreshore land formed by accretions or alluvial deposits due to the action of the sea (*Ker & Co. vs. Cauden*, 6 Phil. 732, 736, 223 U. S. 268, 56 L. Ed. 432, 435; *Jover vs. Insular Government*, 10 Phil. 522, 40 Phil. 1094, 1100, 221 U. S. 623, 55 L. Ed. 884).

The reason for that preferential right is the same as the justification for giving accretions to the riparian owner, which is that accretion compensates the riparian owner for the diminutions which his land suffers by reason of the destructive force of the waters (*Cortes vs. City of Manila*, 10 Phil. 567). So, in the case of littoral lands, he who loses by the encroachments of the sea should gain by its recession. (*Banks vs. Ogden*, 2 Wall. 57, 67, 17 L. Ed. 818, 821).

That preferential right is recognized in American jurisprudence where the rule is that the owner of the land adjacent to navigable waters has certain riparian or littoral rights of a proprietary nature not possessed by the general public which rights are incident to the ownership of the banks or the uplands: riparian as respects the waters of a river and littoral as to sea waters or the waters of a lake (65 C.J. S. 143-145).

It may be mentioned that the Director of Lands stated in his manifestation of October 26, 1977 that Lands Administrative Orders Nos. 7-1 and 8-3 are still in force and have not been superseded by any later regulations and that the directive of the President of the Philippines to the Director of Lands dated May 24, 1966, stopping the grant of foreshore leases all along Manila Bay, towards Cavite and Bataan, has not rendered the instant case moot and academic "because the foreshore lease application involved is pending award".

In view of the foregoing considerations, the trial court's decision and the decision of the Executive Secretary dated April 10, 1958 are reversed and set aside and the order of the Undersecretary of Agriculture and Natural Resources dated December 14, 1954 and the orders of the Director of Lands dated February 1 and October 19, 1951 are affirmed. Costs in both instances against respondent heirs of Lusin.

SO ORDERED.

Barredo, (Acting Chairman), Antonio, Concepcion, Jr., and Guerrero*, JJ., concur.
Fernando and Santos, JJ., on leave.

* J. Guerrero was designated to sit in the Second Division.

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