

GORGONIO PABILING, PLAINTIFF-APPELLANT, VS. ISIDORO PARINACIO, DIRECTOR OF LANDS, ET AL., DEFENDANT-APPELLEES.*G.R. No. L-22682. July 23, 1968*

Ponente: CONCEPCION, C.J.

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A conflict between a sales application filed by Petitioner Gorgonio Pabiling and a homestead application of Crisanto Parinacio predecessor in interest of herein respondent Isidoro Parinacio having been decided by the Director of Lands - hereinafter referred to as the Director - in favor of Pabiling, an appeal was taken by Crisanto Parinacio to the Secretary of Agriculture and Natural Resources - hereinafter referred to as the Secretary - who reversed the decision of the Director and rendered another decision in favor of the heirs of Crisanto Parinacio, who had died meanwhile. Upon denial of his motion for reconsideration of the latter decision, Pabiling filed, with the Court of First Instance of Isabela - hereinafter referred to as the CFI - this civil action for certiorari, against Isidoro Parinacio, the Director and the Secretary, to annul the latter's decision and his order denying said motion for reconsideration, to revive the decision of the Director and to recover from Isidoro Parinacio the possession of the disputed land, as well as damages. The CFI having, in due course, rendered judgment dismissing the case, with double costs against Pabiling, the latter appealed to the Court of Appeals, which, upon submission of the case for decision on the merits, certified the records to the Supreme Court, upon the ground that the issues raised in the appeal are purely questions of law.

Petitioner alleges that the lower court erred:

1. "x x x in denying petitioner's motion for postponement of the first day of the trial of the case set on January 29, 1962.
2. "x x x in holding that the appeal of the decision of the respondent Director of Lands to the respondent Secretary of Agriculture and Natural Resources by the respondent Isidoro Parinacio was perfected on time.
3. "x x x with grave abuse of discretion amounting to lack of jurisdiction in affirming the decision of the respondent Secretary of Agriculture and Natural Resources which decision is not supported by the evidence on records and the law and jurisprudence governing the present case.
4. "x x x in not holding that the appellant is the real and absolute owner of the land in question by virtue of prior occupation and valid title to the said land.
5. "x x x in holding that the amicable settlement Exhibit 1 has the force and effect of res judicata between the appellant and the respondent Parinacio. "

With reference to the first assignment of error, it appears that, when this case was called for trial in the CFI, on January 29, 1962, Pabiling's counsel moved for postponement, upon the ground that Pabiling was not present, owing, perhaps, to "inability to get a transportation from his place or x x due to circumstances beyond his control. The Court denied the motion; but, instead of proceeding immediately with the hearing, it called a recess, "to give

coun-sel a chance to wait for his client." When the session was resumed later, that same day, said counsel stated that, "in order to facilitate the termination of this case", he would "just present our docu-mentary evidence, " which he did. Thereupon, respondents pro-ceeded to introduce similar evidence, which formed part of the records of the Bureau of Lands. After the presentation of certified copies of said documents and the filing of memoranda by both par-ties, the CFI rendered its aforementioned decision, from which, after the denial of a motion for reconsideration thereof, Pabiling interposed the present appeal.

It is clear from the foregoing that the first assignment of error is devoid of merit, for: 1) Pabiling's failure to appear be-fore the trial Court has not been explained, much less justified; 2) no effort has ever been made to show that his testimony, if introduced in evidence, would probably change the result of the case; 3) no petition for new trial, to introduce said testimony, has been filed; and 4) Pabiling's testimony had been introduced in the Bureau of Lands - hereinafter referred to as the Bureau - and formed part of the documentary evidence presented in the CFI and considered by the same.

Moreover, this being an action for certiorari, based upon the theory that the decision of the Secretary is "null and void, for being contrary to evidence, law and jurisprudence", no other evi-dence than that which the Secretary had before him should be con-sidered in the determination of the case. Indeed, "the findings of the Secretary can not be enervated by new evidence not laid before him, for that would be tantamount to holding a new investigation, and to substitute for the discretion and judgment of the Secretary the discretion and judgment of the court, to whom the statute had not entrusted the case. It is immaterial that the present action should be one for prohibition or injunction and not one for certiorari, in either event the case must be resolved upon the evidence submitted to the Secretary, since a judicial review of executive decisions does not import a trial de novo, but only an ascertainment of whether the executive findings are not in violation of the Constitution or of the law, and are free from fraud or imposition, and whether they find reasonable support in the evidence. x x x"[1]

As regards the second assignment of error, the records show that the decision of the Director is dated June 15, 1959; that copy of said decision was sent by registered mail, in Manila, on July 6, 1959, addressed to "Crisanto Parinacio, c/o Santiago Pari-nacio, Cordon, Isabela; " and that the envelope containing said copy was received at the post office of Cordon, Isabela, on July 9, 1959. Inasmuch as Parinacio's notice of appeal from said decision is dated December 7, 1959, Pabiling concludes that the appeal had not been perfected within the period of 60 days prescribed in the rules and regulations of the Department of Agriculture and Natural Re-sources - hereinafter referred to as the Department.

Pabiling insists in this pretense - despite the fact that the envelope containing copy of the decision of the Director was returned "unclaimed" to its sender - upon the ground that the postmaster of Cordon, Isabela - who is presumed to have complied with his duty - must have sent the corresponding notice to the addressee and that the latter is deemed to have received said decision upon expiration of five (5) days from receipt of said notice, which, Pabiling further assumes, must have been more than 60 days before December 7, 1959.

This process of reasoning presupposes, however, that the addressee had received said notice, on which there is absolutely no evidence. And there could have been no possible receipt of such notice by its addressee, namely, "Mr. Crisanto Parinacio c/o Santiago Parinacio, Cordon, Isabela, " because:1) Crisanto Parinacio had died on December 4, 1957, and the Director's attention was called thereto, on June 18, 1959, and the deceased was, accordingly substituted, in the administrative proceedings in the Bureau, by his heirs, represented by herein respondent, Isidoro Parinacio;1 2) no person by the name of Santiago Parinacio existed in Cordon, Isabela.; and 3) according to the records of the Bureau, the ad-dress of Crisanto Parinacio is Inanama, Angadanan, Isabela, so that, even if alive, he could not have possibly received the notice from the postmaster of Cordon.

Besides, since the Parinacios were represented, in the Bureau, by counsel, the notice should have been sent to the latter, not to his client. At any rate, the CFI found that Isidoro Parinacir did not know of said decision until the last week of October 1959, when Patrolman Isidro Zuniga of Isabela inquired from him about the identity of the Santiago Parinacio, who turned out to be a non-existent person. In short, there is nothing to show that either the Director or the Secretary had erred in giving due course to Paris appeal from the former's decision.

Being interrelated, the last three assignments of error will be discussed jointly, for they refer to the merits of the case. The pertinent facts are:

Pabiling had, in 1932, filed, with the Bureau, a sales application for a tract of land of about 32 hectares, located in the Municipality of Angadanan, Isabela. This application and that of one Lorenzo Sumen, were in conflict with a sales application of Marcel Villanueva. Said conflict was, on October 3, 1936, decided, adversely to the latter, by the Director, who rejected Villanueva's application and gave due course to the applications of Pabiling and Sumen. On November 23, 1938, Sumen sold his improvements on the land covered by his application to Valentin Nacino, in view of which the Director cancelled Sumen's application and accepted the sales application of Nacino, with reference only to a portion of the land covered by the same and known as Lot No. 7333 of the Santiago Cadas-ter, the rest of said land being still unsurveyed.

Subsequently, Nacino died and, claiming to have succeeded to his rights under said application, his father-in-law, Crisanto Parinacio, addressed a communication to the Director complaining about Pabiling's alleged refusal to recognize his (Parinacio's) rights over said unsurveyed tract of land. This led to an investigation by the Bureau, which culminated in a compromise agreement embodied in a joint affidavit, Exhibit 1, dated October 20, 1947, and acknowledged, by both parties, before Junior Public Lands Inspector Marcelino Hernaez, whereby Pabiling relinquished, in favor of Crisanto Parinacio, whatever rights and interests the former had over the area actually held by the latter, as set forth in a sketch appearing on the back of said instrument. Accordingly, the District Land Officer issued an order, dated November 29, 1947, dropping Parinacio's aforementioned protest and amending Pabiling's application, by excluding therefrom the area covered by said agreement. In conformity with the same, soon later, or on May 3, 1948, a homestead application¹ filed by Parinacio, on October 21, 1947, for said area, was approved. In due course thereafter, an order for the issuance of a patent therefor, in favor of Parinacio, was issued on April 30, 1953.

Meanwhile, the public auction for the sale of the land covered by Pabiling's application had been held in 1949 and said land was formally awarded to him on September 20, 1951. Sometime later, or on June 21, 1953, Pabiling protested against Parinacio's aforementioned homestead application, upon the ground that it had been filed through stealth and machinations, the land therein applied for having allegedly been held by Parinacio with his (Pabiling's) permission. The Director decided the issue in favor of Pabiling, but, on appeal taken by the Parinacios, the Secretary reversed the Director's decision and found for the Parinacios, stating

"x x x During the investigation of his protest, appellee Pabiling repudiated the terms of the joint affidavit and maintained that what he agreed to relinquish was an area eighty (80) meters distant from the boundary line of Santiago and Angadanan (Alicia), along the Nagbacalan Creek to a balala tree; that the distance was actually measured by the parties without the presence of the Junior Land Inspector concerned who remained in the house of Parinacio while they were measuring the area; that at the time they signed the affidavit there was no sketch appearing at the back thereof.

"On the other hand, the Junior Public Land Inspector concerned testified that he actually measured the area together with the parties and the two others and after which he prepared the affidavit and have the same translated to the parties by one Pedro Leano, a tax collector who happened to be present at the time and who likewise affixed his signature to the affidavit; and that he was quite positive, that at the time the parties

affixed their signatures the sketch was already drawn at the back of said document.

"This case hinges on the appreciation of the probative value of the joint affidavit in the light of the surrounding facts relevant thereto.

"Uncontroverted is the fact that at the time of the ocular investigation on October 20, 1947 leading to the amicable settlement, Parinacio was found to be in actual occupation of the area in controversy (portion "B" shown in the sketch drawn at the back hereof) and to have fully im-proved the same. Uncontroverted also is the fact that at the time of the ocular investigation conducted sometime in 1954 by reason of the pro-test of appellee Pabiling, Parinacio was still in actual occupation of the same area. These facts certainly are strong and convincing reasons for us to give faith and credit to the aforesaid joint affidavit. If it were true that the sketch appearing in said joint affidavit did not express the true area relinquished by appellee Pabiling, he could have immediately protested against the continued occupation and possession of Parinacio of the controverted area as he is just staying in portion "A" (See sketch), adjacent to the said area occu-pied by Parinacio, and as thus situated, he can be considered to have been fully aware of what was taking place. But this he failed to do and instead he tolerated Parinacio's continued occupancy and only protested in 1953 after a lapse of five (5) years and nine (9) months from the execution of the amic-able settlement on October 2, 1947. This circum-stance would compel us to conclude that he res-pected the said joint affidavit and recognized the rights of Parinacio over the said area for the said period, and after which he decided to change his mind and repudiated the affidavit.

"Moreover, appellee Pabiling's claim that he relinquished only an area of eighty (80) me-ters wide from the Santiago-Angadanan boundary, along the Nagbacalan Creek, to a Balala tree, cannot be relied upon as that is only the measure of the distance of only one side of the area, leaving us entirely in the dark to conjecture the distances of the other sides of the area, if we are to sustain his claim and segregate the true area he relinquished in favor of Parinacio.

"In view of the foregoing considerations, the decision appealed from should be, as hereby its, set aside. Sales Application No. 16263 (E?V-793) of Gorgonio Pabiling should be, as hereby it is, amended, by excluding therefrom portion "B" shown in the sketch drawn at the back here-of, and as thus amended, the said application and H. A. No. V-8447 (E-V-7884) of Crisanto Parina-cio, now his heirs, covering said portion "B" shall be given further due course.

It is urged that the findings of fact made by the Director are more weighty than those of the Secretary, because the former had observed the behaviour of the witnesses whom the latter has not seen. Their testimony was taken, however, in the presence of neither the Director nor the Secretary, but before subordinate officers of the Bureau. Besides, a decision of the Director is conclusive upon question's of facts and not subject to review by the courts if affirmed by the Secretary and supported by substantial evidence. In the case at bar, said decision was not affirmed by the Secretary. Worse still, it was set aside and reversed by the latter, who, by law, has control over the Director, whose decisions must, accordingly, yield to those of the Secretary

Then, again, Pabiling's case is anchored upon his testi-mony, to the effect that he had not understood the contents of the aforementioned compromise agreement - subscribed and sworn to by him and Crisanto Parinacio before Bureau of Lands Inspector Marcelino Hernaez on October 20, 1947 - in which be (Pabiling) relinquished, in favor of Parinacio, whatever rights and interests he (Pabiling) had over the land described in the sketch appearing on the back of said instrument. Pabiling would now have us believe, further, that said sketch did not exist when he affixed his signature on Exhibit 1.

This testimony was contradicted, however, by that of Inspector Hernaez, who positively affirmed that the sketch was already on said document when the parties thereto signed thereon and that, before the did so, he saw to it that its contents were properly trans-lated to and understood by them. Considering the other factors set forth in the

decision of the Secretary, it cannot be said that he erred in attaching more weight to the testimony of said inspector, than to that of Pabiling.

In fact, even if the Secretary had, hypothetically, erred in the appreciation of the relative veracity and weight of the testimony of said witnesses, this would not render him guilty of a "grave abuse of discretion, amounting to lack of jurisdiction", warranting the issuance of the writ of certiorari prayed for herein.¹

WHEREFORE, the decision appealed from is hereby affirmed, with costs against petitioner-appellant, Gorgonio Pabiling.

IT IS SO ORDERED.

Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] *Lovina v. Moreno*, L-17821, November 29, 1963.

¹ See Exh. 18, p. 108, Record of Exhibits.

¹ No. V-8447 (E-V-7884).

¹ *Aureus v. Sec. of Agri. & Nat. Resources*, L-2367, Nov. 11, 1949; 85 Phil. 1,5; *Julian v. Apostol*, 52 Phil. 422; *De Guzman vs. De Guzman*, L-11627, June 25, 1958; *Heirs of B.A. Crumb v. Rodriguez*, L-7954, March 31, 1959; *Denopol v. Dir. of Lands*, L-13829, Nov. 28, 1959, citing *Alejo v. Garchitorena*, L-2326, May 31, 1949; *Ganitano v. Sec. of Agri. & Natural Resources*, L-21107, March 31, 1966.

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