

GERARDO D. ABE-ABE, FELICIANO MADRONA, LORETO VALDEHUEZA, MELECIO PEÑALOSA, PELAGIO BABIA, JUANITO TUMILAP, TIMOTEO CHAN, RICARDO BACOR, JESUS DORIA, VITELIANO DORIA, PABLO SIMI...

G.R. No. L-48827. May 31, 1979

Ponente: AQUINO, J.

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AQUINO, J.:

The legal issue in this case is whether the Court of First Instance of Camiguin has jurisdiction to adjudicate a dispute over water rights for irrigation purposes even if the controversy has not yet been passed upon by the National Water Resources Council, the agency vested with original and exclusive competence to resolve conflicting claims on the appropriation of water resources.

On August 20, 1976, the one hundred thirty-seven petitioners (farmers and owners of ricelands) filed an injunction suit in the Camiguin court against Pedro P. Romualdo (a lawyer and delegate to the 1971 Constitutional Convention).

The purpose of the suit was to secure a judicial declaration as to the petitioners' prior vested rights under article 504 of the Civil Code to use the water of the Anibungan (Inoboñgan), Ablay and Tajong Creeks to irrigate their ricelands located upstream in Barrios Lumad and Baylao, Mambajao, Camiguin. The petitioners sought to enjoin Romualdo from using the water of the creeks at night to irrigate his two-hectare riceland located downstream. That nocturnal use was allegedly prejudicial to the petitioners.

Their version is that their use of the water of the creeks started in 1938; that in 1952 or after the volcanic eruption, the waters of the creeks were made to converge in a single channel and two diversion dams were constructed with the help of the municipal government and the Presidential Arm on Community Development (PACD). The National Irrigation Administration allegedly contributed money for the improvement of the dams. The petitioners wanted to convey the impression that the communal irrigation system was established primarily for the benefit of the ricelands located upstream.

In July, 1976, respondent or defendant Romualdo started using the water of the creeks by opening the diversion dams at night. That act provoked the filing of the injunction suit already mentioned.

Romualdo's version in his answer is that at a conference held on July 29, 1976 among the petitioners (with their counsel), the provincial commander, the district engineer, the mayor, the members of the Sangguniang Bayan and Romualdo, it was agreed upon that the water of the creeks would be used on a rotation basis: the petitioners would use it in the daytime and Romualdo and the other landowners downstream would use the water at night. The opening and closing of the dam would be under the control of the provincial commander.

Romualdo alleged that on June 21, 1976 he filed a water permit application with the district engineer's office as required in Presidential Decree No. 424 so that he could use legitimately the water to irrigate his riceland located

downstream near the seashore in Sitio Boloc-Boloc. The regional director of the Bureau of Public Works issued to Romualdo on October 5, 1976 a temporary authority to use the water of the creeks. In contrast, the petitioners did not file any water permit applications although required to do so by the district engineer's office.

Romualdo interposed the defense that the lower court had no jurisdiction over the subject matter of the suit. He contended that the petitioners' remedy was to file their complaint with the district engineer's office pursuant to Department Order No. 245 dated September 29, 1958 of the Undersecretary of Public Works and Communications regarding the determination of water rights controversies.

Romualdo also invoked Presidential Decree No. 424, which took effect on March 28, 1974 and which created the National Water Resources Council (to replace the Water Resources Committee) and vested it with powers to coordinate and integrate water resources development activities or, according to its section 2, to "determine, adjudicate, and grant water rights" (70 O.G. 2912). Romualdo argued that Presidential Decree No. 424 repealed article 504 of the Civil Code which allows the acquisition of the use of public waters by prescription for ten years. Article 504 is the statutory basis of petitioners' alleged preferential water rights.

After the lower court found that on January 14, 1977 Romualdo's temporary permit to use the water of the communal irrigation system was cancelled, as directed by the executive director of the National Water Resources Council, it issued on February 11, 1977 an order enjoining Romualdo from diverting the water of the creeks to his two-hectare farm.

In the meantime, the Water Code of the Philippines or Presidential Decree No. 1067 was promulgated on December 31, 1976 (73 O.G. 3554). Romualdo urged the trial court to dismiss the injunction suit on the ground of lack of jurisdiction because the controversy should first be passed upon by the National Water Resources Council, as allegedly required under Presidential Decree No. 424 and under the following provisions of the Water Code which confer original jurisdiction upon the Council to decide controversies on water rights and which vest appellate jurisdiction in the Court of First Instance to review the Council's decisions:

"ART. 88. The Council shall have original jurisdiction over all disputes relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters within the meaning and context of the provisions of this Code.

"The decisions of the Council on water rights controversies shall be immediately executory and the enforcement thereof may be suspended only when a bond, in an amount fixed by the Council to answer for damages occasioned by the suspension or stay of execution, shall have been filed by the appealing party, unless the suspension is by virtue of an order of a competent court.

"All disputes shall be decided within sixty (60) days after the parties submit the same for decision or resolution.

"The Council shall have the power to issue writs of execution and enforce its decisions with the assistance of local or national police agencies.

"ART. 89. The decisions of the Council on water rights controversies may be appealed to the Court of First Instance of the province where the subject matter of the controversy is situated within fifteen (15) days from the date the party appealing receives a copy of the decision, on any of the following grounds: (1) grave abuse of discretion; (2) question of law; and (3) questions of fact and law."

For lack of jurisdiction and for nonexhaustion of administrative remedies, the lower court dismissed the case in its order of July 18, 1977. Instead of appealing that order of dismissal to this Court, as prescribed in Republic Act No. 5440, the petitioners filed a petition for certiorari in the Court of Appeals which dismissed the petition

because the issuance of the writ of certiorari would not be in aid of its appellate jurisdiction (*Abe-Abe vs. Judge Manta*, CA-G.R. No. SP-07103-R, March 31, 1978).

On August 19, 1978, the same 137 petitioners filed the instant certiorari case for the belated review of the lower court's order of dismissal.

We hold that the petition is devoid of merit. It is incontestable that the petitioners' immediate recourse is to ventilate their grievance with the National Water Resources Council which, as already noted, is the administrative agency exclusively vested with original jurisdiction to settle water rights disputes under the Water Code and under Presidential Decree No. 424.

That jurisdiction of the Council under section 2(b) of Presidential Decree No. 424 is reaffirmed in section 88 of the Water Code and in section 3(d) thereof which provides that "the utilization, exploitation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through" the Council.

It should be noted that article 100 of the Water Code repealed the provisions of the Civil Code and the Spanish Law of Waters of August 3, 1866 "on ownership of waters, easements relating to waters, use of public waters and acquisitive prescription on the use of waters, which are inconsistent with the provisions of the" Water Code. Article 100 also repealed the Irrigation Law, Act No. 2152.

It is also noteworthy that section 3(e) of the Water Code recognizes that "preference in the use and development of waters shall consider current usages and be responsive to the changing needs of the country".

Article 95 of the Water Code recognizes vested rights but requires that such rights should be registered on or before December 31, 1978.

The Code in its article 20 acknowledges that "the measure and limit of appropriation of water shall be beneficial use", a rule found in the Philippine Bill of 1902 (*See Sideco vs. Sarenas*, 41 Phil. 80, 82-83).

The Code assumes that it is more expeditious and pragmatic to entrust to an administrative agency the settlement of water rights disputes rather than require the claimants to go directly to the court where the proceedings are subject to unavoidable delays which are detrimental to the parties.

It is patent that the petitioners did not exhaust their administrative remedy. Their complaint should have been lodged with the National Water Resources Council whose decision is reviewable by the Court of First Instance as indicated in the aforequoted sections 88 and 89 of the Water Code.

If a litigant goes to court without first pursuing his administrative remedies, his action is premature or he has no cause of action to ventilate in court. His case is not ripe for judicial determination (*Aboitiz & Co., Inc. vs. Collector of Customs*, L-29466, May 18, 1978, 83 SCRA 265, 271).

"When an adequate remedy may be had within the Executive Department of the government, but nevertheless, a litigant fails or refuses to avail himself of the same, the judiciary shall decline to interfere. This traditional attitude of the courts is based not only on convenience but likewise on respect: convenience of the party litigants and respect for a co-equal office in the government. If a remedy is available within the administrative machinery, this should be resorted to before resort can be made to (the) courts." (*Cruz vs. Del Rosario*, 119 Phil. 63, 66.)

The rule on exhaustion of administrative remedies before resorting to the court means that there should be an "orderly procedure which favors a preliminary administrative sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process has run its course, and

prevention of attempts 'to swamp the courts by a resort to them in the first instance'" (2 Am Jur 2nd 428; Antonio vs. Tanco, Jr., L-38135, July 25, 1975, 65 SCRA 448, 454).

WHEREFORE, the petition is dismissed with costs against the petitioners.

SO ORDERED.

Fernando, Acting C.J., Antonio, Santos, and Abad Santos, JJ., concur.
Barredo and Concepcion, Jr., JJ., are abroad.

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