

NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, PLAINTIFF AND APPELLEE, VS. SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, DEFENDANT AND APPELLANT.

G.R. No. L-20928. March 31, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal from a judgment of the Court of First Instance of Manila, Branch XII, rendered in its Civil Case No. 43729, annulling and setting aside an administrative decision of the Secretary of Public Works and Communications, appealed to said court pursuant to the provisions of the Irrigation Law (Act 2152).

The controversy started from a letter complaint, dated January 7, 1959, of the Project Engineer of the Angat River Irrigation System to the Director of Public Works, asking that representations be made to the National Waterworks and Sewerage Authority (NAWASA for short) to secure the release of enough water from the Ipo Dam to avert a crop failure in the Province of Bulacan, and from the refusal of the NAWASA to grant the request because of the low water level in its reservoirs. After a series of indorsements, the Acting Undersecretary of Public Works and Communications, acting for the Secretary, rendered an administrative decision recognizing that Executive Proclamation Nos. 48 (dated November 10, 1922) and 72 (dated December 27, 1950) reserved 3600 and 40,000 liters per second of water from the Angat River for the Metropolitan Water District (predecessor of the NAWASA) and the Angat River Irrigation System, respectively, but declaring that NAWASA is not entitled to priority in the use of the water of the Angat River, and ordering the said entity to apply for water rights with the Bureau of Public Works, pursuant to section 14 of Act 2152 (Irrigation Law). In effect, the Secretary's decision declares that the NAWASA has no right to use the waters of the Angat River.

Its attempts to secure reconsideration of the Department's ruling having proved futile, NAWASA appealed to the court, as provided by section 4 of the Irrigation Act, that allows such appeal within 30 days from notice of the administrative decision. This was done by forwarding a complaint by registered mail on the last (or 30th) day of the period allowed by law.

The defendant Secretary of Public Works and Communications answered, interposing the defenses that: (1) the complaint was filed out of time; (2) the plaintiff NAWASA had not exhausted all available administrative remedies; and (3) that plaintiff has not acquired the right to use and enjoy the water from the Angat Rivet by administrative concession or prescription.

The court below found the defenses interposed to be untenable, and reversed the Secretary's decision. Whereupon, this appeal was duly taken and the case elevated to this Court, where defendant-appellant assigns the following errors:

"1. The trial court erred in holding that the appeal to the court made by plaintiff from the decision of the Secretary of Public Works was filed within the reglementary period.

2. The trial court erred in holding that plaintiff has acquired the right to use the waters of the Angat River by prescription.
3. The trial court erred in not dismissing the petition."

In its first assignment of error, the defendant Secretary contends that, admitting that the NAWASA's complaint in appeal was sent by registered mail on the last of the 30 days allowed by the Irrigation Act for appealing the administrative decision to the court of competent jurisdiction, still the complaint may not be deemed to have been filed on the same day, for the reason that there is no showing that the filing fees were simultaneously paid.

The appellant's argument, however, fails to take into account that, in appealed cases, failure to pay the docketing fees does not automatically result in the dismissal of the appeal; the dismissal is discretionary in the appellate court. Rule 141, section 3, speaking of the fees of the clerk of the Court of Appeals or of the Supreme Court, provides that:

"If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceeding."

The rule quoted is applicable by analogy to the Court of First Instance of Manila in the instant case, since the Court was exercising appellate jurisdiction conferred upon it by law to review administrative decisions under the Irrigation Act. For the rest, it is well to remember that the discretion of inferior courts is not to be interfered with in the absence of plain abuse thereof.

Considering that under the Rules of Court the date of mailing (by registered mail) is considered the date of filing of any petition, or pleading, the appellant's first assignment of error must be overruled.

The appellant's second assignment of error goes to the merits of the case.

It is undisputed that, by Proclamation No. 5 of July 10, 1913, as amended by Proclamation No. 48 of November 10, 1922, the then Governor-General of the Philippine Islands, General Leonard Wood, expressly declared that, pursuant to Act No. 2152—

"I hereby, for reasons of public policy, designate as exempt from appropriation and reserve for the use of the Metropolitan Water District of Manila, Philippine Islands, 3500 liters per second of time, or so much thereof as may be needed for domestic purposes, of the water of the Angat River, Province of Bulacan Philippine Islands
* * *".

The terms "exempt from appropriation and reserve for the use of the Metropolitan Water District" necessarily imply that the District was granted authority to withdraw and make exclusive use of the aforesaid amount of water; otherwise, the reservation and exemption from appropriation of such water would lose all significance. The proclamation, in effect, amounted to an administrative concession in favor of the Metropolitan Water District (predecessor of the NAWASA), and is entitled to priority over the similar reservation in favor of the Angat River Irrigation System made by Proclamation No. 72, Series of 1950, since that of the Water District was made twenty-eight years earlier, at the very least; and in addition, the amount of water thus reserved was "excluded from appropriation", obviously by anyone else other than the grantee.

The stand taken by the respondent Secretary of Public Works is that while the Governor-General's Proclamations constituted valid reservations of water in favor of the Water District, yet to validly appropriate such water the District must first apply to the Director of Public Works. This ruling does not appear reasonable. As heretofore noted, the proclamation already "excluded from appropriation" the water reserved for the Metropolitan Water District. In view of the executive control that the American Governor-General exercised (under the Organic laws in force in 1922) over the offices under him, it is difficult to conceive that the Secretary or the Director of Public

Works could refuse the Metropolitan Water District the right to use the water reserved for its use by the Chief Executive, since it would, in effect, amend the latter's proclamations. And if the Director could not refuse, but had necessarily to confirm the grant, then an application to his office for such concession became a useless ceremony and a total superfluity.

We are thus led to no other conclusion but that the Proclamations in favor of the Metropolitan Water District constituted valid and operative administrative concessions in favor of appellee's predecessor, and it admittedly made use of the water thus granted, without objection from any party until 1959. Actually, one of defendant's predecessors was even chairman of the plaintiff's Board of Directors when the Ipo Dam was built (Rec. on App., p. 41) to divert the water of the Angat River into the plaintiff's aqueducts.

The incontestable fact is that from 1913 to 1959, i.e., for 46 years, the NAWASA and its predecessors in interest had openly, publicly, and exclusively appropriated water from the Angat River without protest from anyone; but appellant Secretary seeks to neutralize this long acquiesced-in user by arguing that under the Irrigation Act, Act 2152 as amended, acquisition by prescription of the use of public waters is not recognized, because under section 14 of said Act,

"Any person hereafter desiring to appropriate any public water shall previously make an application to the Secretary of Public Works and Communications through the Director of Public Works."

It is worthy of note that, as observed by the court *quo*, both the civil code of 1889 (Art. 409) and the Law of Waters of 1866 (Art. 194) recognized two different ways of acquiring the right to the use of public waters: (1) by administrative concession and (2) by prescription for 20 years. Since the Irrigation law nowhere provides that the procedure provided in its section 14 shall be exclusive, and implied repeals are not favored, we see no reason to disturb the lower court's conclusion that even if the Irrigation law did modify the old legislation procedure in obtaining administrative concession of public waters, still it has not invalidated prescription as a mode of acquiring title thereto, specially considering that the Civil Code of 1950, Article 504, reiterates the dual juridical source of title to the use of public water, and even reduces the prescriptive period from twenty to ten years. In fact, the Attorney General of the Philippines had heretofore recognized that the Irrigation law (Art. 2152) has not affected either Article 409 of the Civil Code of 1889 or Articles 39 and 194 of the Law of Waters of 1866 (7 *op. Atty. Gen.* 570, 576-579; *Francisco, Philippine Law of Waters and Water Rights*, p. 147).

More conclusive still is the pronouncement of this Supreme Court in *Serrano vs. De la Cruz*, 67 Phil. 348, wherein as late as 1939, twenty-seven years after the enactment of the original Irrigation Act, No. 2152, this High Tribunal recognized the existence of title to the use of public water by prescription, saying (*as. cit.* p. 350):

"Neither had the petitioner acquired a right of use of public waters, through prescription, by continuous enjoyment thereof for only ten years. Prescription of twenty years is necessary to that effect. (Art. 409, Civil Code; art. 39, Law of Waters of August 3, 1866; *Magno vs. Castro*, 30 Phil. 585; *Sideco vs. Sarenas and Sarenas*, 41 Phil. 80.)"

Appellant argues finally that the use of the waters of the Angat River by NAWASA and its predecessors could not ripen into a valid right because it was not exercised adversely against the Government. The answer to this contention was given since 1933 in our decision in *Government of the Philippine Islands vs. Franco*, 57 Phil. 780, 784, where this Court ruled:

"It is axiomatic that prescription can not be asserted against the sovereign, and it is therefore futile for any claimant of real property to claim adverse possession against the Government. It results that it is never necessary, in order to acquire title by adverse possession against an individual owner, that the person asserting adverse possession should have held adversely to the Government. The decisions bearing upon this point will

be found collated in the note to Doe vs. Arnold (20 Am. & Eng. Ann. Cases, 533), as well as in 2 C. J., pp. 130, 131, and it is unnecessary to extend the discussion."

Hence, that the Metropolitan Water District and the NAWASA did not hold adversely against the Government does not mean that their possession and use of the Angat River Waters was not adverse to that of the Angat River Irrigation System, which is its adversary in the present proceedings. The NAWASA and its predecessors had no need of holding adversely against the National Government since the latter had expressly granted it the prior use of the water in question by the two proclamations previously referred to. The defendant Secretary appears to have overlooked that in prosecuting the present case the NAWASA is not asserting a right against the Government itself but merely appealing from the Secretary's decision.

Appellant's third assignment of error, being a mere consequence of the preceding ones, requires no separate discussion.

We conclude that the court below correctly reversed the administrative decision of appellant Secretary of Public Works and Communications for not being in consonance with the applicable law.

Wherefore, the decision appealed from is hereby affirmed. Without costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Regala, Makalintal, Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

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