

RAMON LANZAR, PETITIONER, VS. DIRECTOR OF LANDS AND CITY OF ILOILO, RESPONDENTS.

G.R. No. L-31934. July 29, 1977

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition to review on certiorari the decision of the Court of Appeals in CA-G.R. No. 34333-R entitled "Ramon Lanzar, Applicant-Appellee, versus The Director of Lands and The City of Iloilo, Oppositors-Appellants", declaring the property sought to be registered as the property of the public domain devoted to public use not susceptible of private appropriation.

In May 1960, the petitioner, Ramon Lanzar, filed an application for registration of title the to a parcel of land located in the District of Molo, Iloilo City in the Court of First Instance of Iloilo alleging that he is the owner in fee simple of the land in question and asking that the title thereto be registered in his name.

In August 1961, the Director of Lands and the City of Iloilo filed an opposition to the application on the ground that the land in question is a foreshore land which forms part of the public domain and is needed by the City of Iloilo as a road right of way of the Molo-Arevalo Boulevard, and that the applicant had not possessed the property in such a manner as to warrant an implied grant entitling him to confirmation of his title thereto.

After trial, the Court of First Instance of Iloilo rendered a decision in March 1963 holding that the property in question, having been possessed by the applicant and his predecessors-in-interest, publicly, continuously and adversely for more than 30 years, the same was adjudicated to the petitioner, it appearing that no proof had been adduced that the said land is necessary for public utility or establishment of special industries (Record on Appeal, pp. 30-37).

The Director of Lands and the City of Iloilo appealed to the Court of Appeals which on March 24, 1970 reversed the decision of the Court of First Instance of Iloilo and held that the land in question, being an accretion formed by the action of the sea, is property of the public domain and not susceptible of private appropriation.

Hence, the applicant-appellee, Ramon Lanzar, filed this petition for certiorari to review the aforesaid decision of the Court of Appeals.

The petitioner assigns the following errors:

"I

THE COURT OF APPEALS ERRED IN HOLDING THAT LANDS FORMED BY ACTION OF THE SEA AS ACCRETION TO THE SHORES ARE PROPERTY OF PUBLIC DOMINION, ON THE AUTHORITY OF ART. 4, LAW OF WATERS, KER & CO. VS. GAUDEN AND GOVERNMENT VS. ALDECOA.

II

THE COURT OF APPEALS ERRED IN RELYING ON MONTEVERDE VS. DIRECTOR OF LANDS, 93 PHIL. 134 HOLDING THAT ONLY THE EXECUTIVE OR LEGISLATURE CAN DECLARE THE LAND AS NO LONGER INTENDED FOR PUBLIC USE AND SO SHALL BELONG TO THE ADJACENT OWNER.

III

THE COURT OF APPEALS ERRED IN HOLDING THAT SINCE ART. 422 OF THE NEW CIVIL CODE PROVIDES THAT PROPERTY OF PUBLIC DOMAIN WHEN NO LONGER INTENDED FOR PUBLIC USE, SUCH INTENTION CAN ONLY BE SPELLED OUT BY THE EXECUTIVE OR LEGISLATURE, NOT BY THE COURTS.

IV

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT PETITIONER HAS ACQUIRED THE PROPERTY THRU ACQUISITIVE PRESCRIPTION."

(Petitioner's Brief, pp. 1-2)

The pertinent facts are not disputed.

The petitioner has applied for the registration of his title to a parcel of land which is admittedly an accretion of Lot No. 1899 of the Cadastral Survey of Iloilo, it having been formed by the gradual action of the sea before 1922. Ignacio Arroyo, the registered owner of Lot 1899, leased in 1922 the property to Maximo Tonogbanua who possessed the whole of Lot 1899 and its accretion. In 1927, Ignacio Arroyo donated Lot 1899 of the Cadastral Survey of Iloilo, together with its accretion, to Beaterio de Santissimo Rosario de Molo, which in turn leased the property to the applicant, Ramon Lanzar. The lessee planted coconuts and bananas on the land and a portion thereof was devoted to palay. A verification of Lot 1899 by the Bureau of Lands disclosed that the portion of land applied for and described in the plan, Exhibit A, and in its technical description, is outside of Lot 1899, the same being an accretion thereto formed by the action of the sea. Beaterio de Santissimo Rosario de Molo and the applicant entered into an agreement, Exhibit 1, on August 13, 1959, under which Beaterio de Santissimo Rosario de Molo assigned all its rights to the accretion, the title to which is sought to be registered by the applicant. Beaterio de Santissimo Rosario de Molo had possessed Lot 1899 and its accretion through its lessee, openly, publicly, uninterruptedly and adversely to all claimants and under claim of ownership. The Beaterio had declared Lot 1899 for taxation and when it assigned the rights to the applicant, he caused the tax declaration to be transferred to his name in May 1960, Exhibit J.

During the Cadastral Survey of 1911-1912, the lot in question was non-existent (Exhibit 2, Director of Lands). Hence, said land as an accretion to Lot 1899 must have gradually developed from 1912 to 1922 and thereafter. It is now separated by the Arevalo-Molo Boulevard from the sea.

The only issue to be resolved is whether or not the title to the land in question which was formed by action of the sea as an accretion to Lot 1899 may be registered in the name of the applicant on the basis of adverse possession for over 30 years.

Article 4 of the Law of Waters provides:

"ART. 4. Lands added to the shores by accretions and alluvium deposits caused by the action of the sea, form part of the public domain. When they are no longer washed by the waters of the sea, and are not necessary for the purposes of public utility, or for the establishment of special industries, or for the coastguard service, the

Government shall declare them to be the property of the owners of the estates adjacent thereto and as an increment thereof."

In *Ker & Co. vs. Cauden*, 6 Phil. 732, this Court said:

"This case is directly covered by the first part of said article 4. There is therein an express declaration that land formed in the way this land was formed is public property. Nothing could be more explicit and the effect of this declaration is not in any way limited by the subsequent provisions of the same article. The claim of the appellants that these subsequent provisions indicate that the ownership of such land is in the private persons who own the adjoining property, and that the declaration which is spoken of is simply proof of that ownership, can not be sustained. It is in direct conflict with the statement made in the first part of the article. The true construction of the article is that when these lands which belong to the State are not needed for the purposes mentioned therein, then the State shall grant them to the adjoining owners. No attempt was made by the appellants to prove any such grant or concession in this case and, in fact, it is apparent from the evidence that the conditions upon which the adjoining owners would be entitled to such a grant have never existed because for a long time the property was used by the Spanish navy and it is now occupied by the present Government as a naval station, and works costing more than \$500,000, money of the United States, have been erected thereon." (*Idem*. p. 736)

It is contended by the petitioner that:

"As found by the Court of Appeals, the accretion began before 1922, but after 1912, as shown by the undisputed evidence, hence, during the regime of the Spanish Civil Code, which became effective on December 8, 1889, and consequently, its nature shall be determined by the said code. Now, the said code provides:

'ARTICLE 339. The following are property of public domain:

'1. Those things intended for public use, as roads, canals, rivers, torrents, ports and bridges constructed by the State, riverbanks, shores, roadsteads and others of a like nature.'"

(Brief for Petitioner-Appellant, pp. 10-11)

However, in *Insular Government vs. Aldecoa and Company*, 19 Phil. 505, this Court held:

"The Civil Code, which went into effect in these Islands on December 7, 1889, the twentieth day of its publication in the *Gaceta de Manila* of the 17th of November of the same year, confirms the provisions of the said Law of Waters, since, in its article 339, it prescribes that:

'Property of public ownership is-

'1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads, and that of a similar character.'

Article 341 of the same code provides:

'Property of public ownership, when no longer devoted to general uses or to the requirements of the defense of the territory, shall be-come a part of the State property'.

The shores and the lands reclaimed from the sea, while they continue to be devoted to public uses and no grant whatever has been made of any portion of them to private persons, remain a part of the public domain and are for public uses, and, until they are converted into patrimonial property of the State, such lands, thrown up by the action of the sea, and the shores, adjacent thereto, are not susceptible of prescription, inasmuch as, being dedicated to the public uses, they are not subject of commerce among men, in accordance with the provision of

article 1936 of the Civil Code.

The occupation or material possession of any land formed upon the shore by accretions and alluvium deposits occasioned by the sea, where the occupant or possessor is a private person and holds without previous permission or authorization from the Government, granted in due form, although he may have had the intention to hold it for the purpose of making it his own, is illegal possession on his part and amounts to nothing more than a mere detainer of the land, which is out of the sphere of the commerce of men, as belonging to the public domain and being allotted to public uses and for the use of all persons who live at the place where it is situated." (Idem. pp. 514-515)

It is thus seen that the petitioner could not acquire the land in question by prescription.

The contention of the petitioner-appellant that by "thus expanding the meaning of shores to include inland property formed by the action of the sea, Government vs. Aldecoa is guilty of judicial legislation x x x" (Brief of Petitioner-Appellant, p. 15) has no merit.

Articles 339 and 340 of the Spanish Civil Code are not repugnant to Article 4 of the Spanish Law of Waters of 1866. The said provisions of the said Spanish Code did not provide that lands added to the shores by action of the sea form part of the patrimonial property of the State.

As stated by this Court in *Insular Government vs. Aldecoa*, supra, p. 541, the Civil Code of Spain confirms the provisions of Article 4 of the Law of Waters, citing Article 339 of said code.

This Court has been consistent in ruling that lands formed by the action of the sea belong to the public domain. Thus in *Monteverde vs. Director of Lands*, 93 Phil. 134, it was held:

"Lots Nos. 1 and 2 were admittedly formed and added to the shores by the natural action of the sea, and the petitioners herein have claimed title thereto as accretion to their adjoining lots, in accordance with article 4 of the Law of Waters of August 3, 1966, which provides as follows:

'Lands added to the shores by accretion and alluvial deposits caused by action of the sea, form part of the public domain. When they are no longer washed by the water of the sea and are not necessary for purposes of public utility, or for the establishment of special industries, or for coast-guard service, the Government shall declare them to be property of the owners of the estates adjacent thereto and as increment thereof.'"

(Idem. pp. 135-136)

In view of the foregoing, the Court of Appeals did not err in declaring the property sought to be registered as part of the public domain devoted to public use not susceptible of private appropriation. The land in question is needed by the City of Iloilo for the expansion of the Arevalo-Molo Boulevard.

WHEREFORE, the petition for review is hereby dismissed and the decision of the Court of Appeals sought to be reviewed is affirmed, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, Martin, and Guerrero, JJ., concur.

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