

**HEIRS OF SANTIAGO PASTORAL AND AGUSTIN BATO,
PETITIONERS-APPELLANTS, VS. THE SECRETARY OF PUBLIC WORKS
AND COMMUNICATIONS, THE CITY ENGINEER OF DAGUPAN CITY
AND LEONARDO ESPANOL...**

G.R. No. L-44485. June 27, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This case was certified to us by the Court of Appeals pursuant to Sections 17 and 21 of the Judiciary Act, as amended in relation to Section 3, Rule 50 of the Rules of Court on the ground that the issues raised are pure questions of law. The main issue centers on the authority of the Secretary of Public Works and Communications under Republic Act 2056 to declare the construction of dikes encroaching into public navigable waters as a public nuisance and to order their removal.

Sometime in October 1958, residents of Bacayao Norte, Caranglaan, and Mayombo Districts of Dagupan City led by Leonardo Espanol filed complaints with the Secretary of Public Works and Communications (hereinafter referred to as Secretary) denouncing the heirs of Santiago Pastoral and Agustin Bato for "alleged encroachments into the Tulao River x x x to the prejudice of public interest." The-complaints were docketed as Cases Nos. RA-2056-26 and RA-2056-37 respectively.

The Secretary designated the City Engineer of Dagupan City to conduct hearings in the two cases. All the parties were notified of the hearings set for both cases.

Based on the evidence submitted by the parties, the Secretary rendered two separate decisions ordering the removal of the encroachments complained of within thirty (30) days from receipt of notice. Thus, in Case No. RA-2056-26, the heirs of Santiago Pastoral were ordered to remove the fishpond dikes indicated as Encroachments Nos. 1, 2, 3 and 4 in Exhibit "A" while in Case No.. RA-2056-37, Agustin Bato was ordered to remove the fishpond dikes indicated as Encroachment No. 5 in Exhibit A". The Secretary ruled that encroachments Nos. 1, 2, 3, 4 and 5 in Exhibit "A" had been illegally constructed within the channel of Tulao River. The Secretary declared the encroachments as public nuisances under Republic Act 2056.

Their motion for reconsideration having been denied by the Secretary, the respondents filed in the Court of First Instance of Pangasinan a petition for certiorari and prohibition with a prayer for a writ of preliminary injunction against the Secretary, the City Engineer of Dagupan City and Leonardo Espanol. The case was docketed as Civil Case No. D-833.

The petitioners (respondents in the administrative cases) alleged "x x x that respondent City Engineer informed petitioners that the 30-day period given them to remove the fishpond dikes has expired and that his office will proceed to demolish the dikes on orders from the Secretary of Public Works and Communications; that they have title over the alleged encroachments and a fishpond permit issued by the Department of Agriculture and Natural

Resources, through the Bureau of Fisheries, authorizing them to construct a fishpond on an adjoining parcel of their property not covered by title." The petitioners sought the annulment of the decision of the Secretary of Public Works and Communications on the ground of lack of jurisdiction and the issuance of a writ of prohibition commanding the respondents to desist absolutely and perpetually from further molesting in any manner the petitioners and interfering with the exercise of their rights over the lands in question.

In his answer, the Secretary invoked his authority to remove the encroachments under Republic Act No. 2056 and stated that he had acted lawfully and justly and within the sound limits of his authority and jurisdiction thereunder.

The parties agreed to submit the case for judgment on the pleadings and were allowed by the lower court to submit their respective memoranda.

The trial court then rendered a decision in favor of the petitioners-appellants prompting the Secretary to interpose an appeal to the Court of Appeals.

The Secretary assigned a single assignment of error, to wit:

"THE TRIAL COURT COMMITTED ERROR IN HAVING ANNULLED THE DECISIONS RENDERED BY THE SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, IN CASES NUMBERED RA-2056-26 AND RA-2066-37, ON THE GROUND OF LACK OF JURISDICTION, AND IN PERMANENTLY ENJOINING SAID SECRETARY FROM IMPLEMENTING THE ORDER TO REMOVE THE ENCROACHMENTS PLACED BY THE APPELLEES ON THE TULAO RIVER." (At p. 17, Rollo)

In support of this lone assignment of error, the petitioner raised the following arguments:

"1) The Secretary was duly vested with jurisdiction both over the parties and subject matter of the controversy.

2) The Secretary duly conformed to the requirements of due process in the exercise of his authority under Republic Act No. 2056.

3) The Secretary did not, as concluded by the court a quo, rule on the validity of appellees' titles over the lots in question.

4) The issuance of fishpond permits by the Bureau of Fisheries did not preclude the Secretary from conducting due investigation and in ruling upon the same.

5) The Secretary's findings of fact are entitled to respect from the courts. (At pp. 17-18, Rollo)

As stated earlier, the main issue hinges on the authority of the Secretary of Public Works and Communications under Republic Act 2056 to declare that the construction or building of dams, dikes or any other works which encroach into any public navigable river, stream, coastal waters and any other navigable public waters or waterways as well as the construction or building of dams, dikes or any other works in areas declared as communal fishing grounds is prohibited and to order their removal as "public nuisances or as prohibited constructions."¹

The lower court concluded that the Secretary abused his authority under Republic Act No. 2056 on the following points: (1) The Secretary passed judgment on the validity of the titles of the petitioners over Encroachments 3, 4 and 5 when he declared such titles as null and void; and (2) the dikes denominated as Encroachments Nos. 1 and 2 were constructed by virtue of a permit legally issued in favor of the late Santiago Pastoral by the Bureau of Fisheries on July 19, 1948 because the area was deemed fit by said Office of fishpond purposes, and the construction of such dikes would not impede the flow of the river. The lower court opined that in constructing the

dikes, the petitioners were only exercising a right legally granted to them and that "they shall remain to enjoy the privilege until such time that their permit shall have been cancelled."

The petition is impressed with merit.

The records belie the lower court's finding that the Secretary passed judgment on the titles of the lots in question.

In connection with Encroachments Nos. 3 and 4, the Heirs of Santiago Pastoral presented a certified true copy of Original Certificate of Title No. 9 issued by the Register of Deeds of Dagupan City to show that the encroachments are within their titled lands. The Secretary, however, stated in his decision:

"As regards the last two encroachments, the evidence shows that the southern boundary thereof is the original bank of the Tulao River. The properties in question, titled as they are, are clearly within the bed of the river. Even the testimony of Aniceto Luis, a representative of the Bureau of Lands in the investigation, shows without doubt, that the encroachments are within the river bed as may be gleaned from the following:

"Q

As it appears in the record, title was granted to Santiago Pastoral on this alleged encroachment No. 3 and 4 which falls squarely on the Tulao River and during the ocular inspection by the undersigned, the fact became evident that the river is highly navigable. Now, what explanation can you make as to why title was issued over a portion of a river, public river at that, which is highly navigable?

"A

So far, our record does not show that it is a navigable river, but it is just stated that 'the area applied for is a part of the Tulao River and therefore it is 'covered by water.' (From the report of the Deputy Public Land Inspector E. Ventura dated March, 1954 in connection with the Sales application of Santiago Pastoral.)

"Q

So in the report, it was stated that the land applied for by Santiago Pastoral is entirely covered by water and part of the river?

"A

Yes, sir."

"The propriety of the title over the last two encroachments is beyond the jurisdiction of this Office to inquire into, much less question, although it seems worth looking into by the proper authorities. Be that as it may, the fact remains that the dikes and other works therein are encroachments into the Tulao River and, as such, are public nuisances within the contemplation of Republic Act No. 2056." (pp. 1-2, Decision in RA-2056-26)

Petitioner Agustin Bato also submitted a verified copy of the Original Certificate of Title No. 2 to show that encroachment No. 5 was privately owned.

Anent this argument, the Secretary said:

xxx xxx xxx

"x x x It has been found, however, that the land in question, although titled, is within the bed of the Tulao River.

Even the representative of the Bureau of Lands bolstered such finding as may be gleaned from the following portion of his testimony:

"Q

But you stated that the technical description falls squarely to the Tulao River. What I am after is the condition of the land when the application was made. Do you have that in your records?

"A

Yes sir.

"Q

Now, if I show the certificate of title that covered the portion of this land, will you agree with me that the technical description is the same as that appearing in your record?

"A

Yes, they are the same.

"Q

Mr. Luis, we have the technical description appearing in the certificate of title which you admitted to be the same as appearing in your record plotted, and it appears that the same land covered by the description falls squarely on the river? Is it still on the side of the river or in the river itself? I am referring to the encroachment No. 5 by Agustin Bato.

"A

No, if this encroachment made by Agustin Bato is the same land as described in the technical description from the title, then it is within the river."

"Moreover, Section 39 of Act No. 496, in defining the scope and efficacy of a certificate of title under the Torrens System, established some exceptions which the force of said title does not reach or affect. Among them are properties of the public domain. Since the portion appropriated is of public dominion, registration under Act No. 496 did not make the possessor a true owner thereof (*Celso Ledesma v. The Municipality of Iloilo, Concepcion Lopez, Maximo M. Kalaw and wife, and Julio Ledesma, defendants*, 49 Phil. 769)." (pp. 1-2, Decision in RA-2056-37)

In effect, the Secretary passed judgment only to the extent that, although the encroachments were inside titled properties, they are within the bed of a river. With this factual finding, he declared the encroachments, converted into fishponds within the Tulao River, as prohibited and ordered their removal pursuant to his authority under Republic Act 2056. He never declared that the titles of the petitioners over the lots in question were null and void.

The Secretary's authority to determine questions of fact such as the existence of a river even inside titled properties was recognized in the cases of *Lovina v. Moreno*, (9 SCRA 557) and *Taleon v. Secretary of Public*

Works and Communications (20 SCRA 69). We stated that the fact-finding power of the Secretary of Public Works and Communications is merely "incidental to his duty to clear all navigable streams of unauthorized constructions and, hence its grant did not constitute an unlawful delegation of judicial power, x x x that although the titles were silent as to the existence of any stream inside the property, that did not confer a right to the stream, it being of a public nature and not subject to private appropriation, even by prescription." In the instant cases, the residents along the Tulao River complained about obstructions on the river. From a width of 70 to 105 meters, the river had been reduced to a width of only 10 to 15 meters. The river was navigable and even at low-tide was two to three meters deep.

As regards the lower court's finding that the dikes designated as Encroachments Nos. 1 and 2 were constructed under the petitioners' Fishpond Permit issued by the Bureau of Fisheries in 1948 and, therefore, must be respected, the Secretary counters that such issuance of fishpond permit did not preclude him from conducting due investigation pursuant to his authority under Republic Act 2056.

We agree.

Section 1 of Republic Act 2056 is explicit in that "Any provision or provisions of law to the contrary notwithstanding, the construction or building of dams, dikes x x x which encroaches into any public navigable river, stream, coastal waters and any other navigable public waters or waterways x x x shall be ordered removed as public nuisance or as prohibited construction as herein provided x x x. The record shows that the petitioners' fishpond permit was issued in 1948 while the Act took effect on June 3, 1958. Therefore, the Secretary's more specific authority to remove dikes constructed in fishponds whenever they obstruct or impede the free passage of any navigable river or stream or would cause inundation of agricultural areas (Section 2, Republic Act 2056) takes precedence. Moreover, the power of the Secretary of Public Works to investigate and clear public streams from unauthorized encroachments and obstructions was granted as early as Act 3708 of the old Philippine Legislature and has been upheld by this Court in the cases of *Palanca v. Commonwealth* (69 Phil. 449) and *Meneses v. Commonwealth* (69 Phil. 647). The same rule was applied in *Lovina v. Moreno*, (*supra*) *Santos, etc., et al. v. Secretary of Public Works and Communications* (19 SCRA 637).

All in all, we find no grave abuse of discretion or an illegal exercise of authority on the part of the Secretary of Public Works and Communications in ordering the removal of the encroachments designated as Nos. 1, 2, 3, 4 and 5 of Exhibit "A".

The rules of due process were observed in the conduct of investigation in the two cases. The parties concerned were all notified and hearings of the two cases were conducted by the Secretary through the City Engineer of Dagupan City. All parties were given opportunity to present evidence to prove their claims after which the Secretary rendered separate decisions pursuant to Republic Act 2056.

The factual findings of the Secretary are substantiated by evidence in the administrative records. In the absence of any illegality, error of law, fraud or imposition, none of which were proved by the petitioners in the instant case, said findings should be respected. (*Lovina v. Moreno*, *supra*; *Santos, etc., et al. v. Secretary of Public Works and Communications*, *supra*; See also *Borja v. Moreno*, 11 SCRA 568; *Taleon v. Secretary of Public Works and Communications*, 20 SCRA 69).

WHEREFORE, the instant appeal is GRANTED. The questioned decision of the Court of First Instance of Pangasinan is REVERSED and SET ASIDE. The decisions of the then Secretary of Public Works and Communications in Cases No. RA-2056-26 and No. RA-2056-37 are REINSTATED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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