

ROMAN R. SANTOS, PETITIONER-APPELLEE, VS. HON. FLORENCIO MORENO, AS SECRETARY OF PUBLIC WORKS & COMMUNICATIONS AND JULIAN C. CARGULLO, RESPONDENTS-APPELLANTS.

G.R. No. L-15829. December 04, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The Honorable Secretary of Public Works & Communication appeals from the decision of the Court of First Instance of Manila declaring of private ownership certain creeks situated in barrio San Esteban, Macabebe, Pampanga.

THE BACKGROUND

The Zobel family of Spain formerly owned a vast track of marshland in the municipality of Macabebe, Pampanga province. Called Hacienda San Esteban, it was administered and managed by the Ayala y Cia. From the year 1860 to about the year 1924 Ayala y Cia., devoted the hacienda to the planting and cultivation of nipa palms from which it gathered nipa sap or "tuba". It operated a distillery plant in barrio San Esteban to turn nipa tuba to potable alcohol which was in turn manufactured into liquor.

Accessibility through the nipa palms deep into the hacienda posed as a problem. Ayala y Cia. therefore dug canals leading towards the hacienda's interior where most of them interlinked with each other. The canals facilitated the gathering of tuba and the guarding and patrolling of the hacienda by security guards called "arundines". By the gradual process of erosion these canals acquired the characteristics and dimension of rivers.

In 1924 Ayala y Cia., shifted from the business of alcohol production to bangus culture. It converted Hacienda San Esteban from a forest of nipa groves to a web of fishponds. To do so, it cut down the nipa palms, constructed dikes and closed the canals criss-crossing the hacienda.

Sometime in 1925 or 1926 Ayala y Cia., sold a portion of Hacienda San Esteban to Roman Santos who also transformed the swamp land into a fishpond. In so doing, he closed and built dikes across Sapang Malauling Maragul, Quiñorang Silab, Pepangebunan, Bulacus, Nigui and Nasi.

The closing of the man-made canals in Hacienda San Esteban drew complaints from residents of the surrounding communities. Claiming that the closing of the canals caused floods during the rainy season, and that it deprived them of their means of transportation and fishing grounds, said residents demanded re-opening of those canals. Subsequently, Mayor Lazaro Yambao of Macabebe, accompanied by policemen and some residents went to Hacienda San Esteban and opened the closure dikes at Sapang Malauling Maragul, Nigui and Quiñorang Silab. Whereupon, Roman Santos filed Civil Case No. 4488 in the Court of First Instance of Pampanga which preliminarily enjoined Mayor Yambao and others from demolishing the dikes across the canals. The municipal

officials of Macabebe countered by filing a complaint (docketed as Civil Case No. 4527) in the same court. The Pampanga Court of First Instance rendered judgment in both cases against Roman Santos who immediately elevated the case to the Supreme Court.

In the meantime, the Secretary of Commerce and Communications^[1] conducted his own investigation and found that the aforementioned six streams closed by Roman Santos were natural, floatable and navigable and were utilized by the public for transportation since time immemorial. He consequently ordered Roman Santos on November 3, 1930 to demolish the dikes across said six streams. However, on May 8, 1931 the said official revoked his decision of November 3, 1930 and declared the streams in question privately owned because they were artificially constructed. Subsequently, upon authority granted under Act 3982 the Secretary of Commerce and Communications entered into a contract with Roman Santos whereby the former recognized the private ownership of Sapang Malauling Maragul, Quiñorang Silab, Pepangebunan, Bulacus, Nigui and Nasi and the latter turned over for public use two artificial canals and bound himself to maintain them in navigable state. The Provincial Board of Pampanga and the municipal councils of Macabebe and Masantol objected to the contract. However, the Secretary of Justice, in his opinion dated March 6, 1934, upheld its legality. Roman Santos withdrew his appeals in the Supreme Court.

With respect to the portion of Hacienda San Esteban still owned by the Zobel family, the municipal authorities of Macabebe filed in 1930 an administrative complaint in the Bureau of Public Works praying for the opening of the dikes and dams across certain streams in Hacienda San Esteban. Whereupon, the district engineer of Pampanga and a representative of the Bureau of Public Works conducted investigations. In the meantime, the Attorney General, upon a query from the Secretary of Commerce and Communications, rendered an opinion dated October 11, 1930 sustaining the latter's power to declare streams as publicly owned under Sec. 4 of Act 2152, as amended by Act 3208.

On September 29, 1930 the investigator of the Bureau of Public Works, Eliseo Panopio, submitted his report recommending the removal of the dikes and dams in question. And on the basis of said report, the Secretary of Commerce and Communications rendered his decision on November 3, 1930 ordering Ayala y Cia., to demolish the dikes and dams across the streams named therein situated in Hacienda San Esteban. Ayala y Cia., moved for reconsideration, questioning the power of the Secretary of Commerce and Communications to order the demolition of said dikes.

Days before the Secretary of Commerce and Communications rendered his aforementioned decision, Ayala y Cia., thru counsel, made representations with the Director of Public Works for a compromise agreement. In its letter dated October 11, 1930, Ayala y Cia., offered to admit public ownership of the following creeks:

Antipolo, Batasan Teracan, Biuas or Batasan Capiz, Carbon, Cutut, Dalayap, Enrique, Iba, Inaun, Margarita, Malauli or Budbud, Matalaba, Palapat, Palipit Maisac, Panlo-venas, Panquitan, Quinapati, Quiñorang Bubong or Malauli Malati, Salop, Sinubli and Vitas.

provided the rest of the streams were declared private. Acting on said offer, the Director of Public Works instructed the surveyor in his office, Eliseo Panopio, to proceed to Pampanga and conduct another investigation.

On January 23, 1931 Panopio submitted his report to the Director of Public Works recommending that some streams enumerated therein be declared public and some private on the ground that they were originally dug by the hacienda owners. The private streams were:

Agape, Atlong Cruz, Balanga, Batasan, Batasan Matlaue, Balibago, Baliti, Bato, Buengco Malati, Bungalin, Bungo Malati, Bungo Maragul, Buta-buta, Camastiles, Catlu, Cauayan or Biabas, Cela, Dampalit, Danlimpu, Dilinquente, Fabian, Laguzan, Lalap Maburac, Mabutol, Macabacle Maragul or Macanduli, Macabacle or

Mababo, Maisac, Malande Malati, Magasawa, Maniup, Manulit, Mapanlao Maisac, Maragul, Maria-blus Malate, Matalaba Malati, Masamaral, Mitulid, Nasi, Nigui or Bulacus, Palipit Maragul, Pangebonan, Paumbong, Pasco or Culali, Pilapil, Pinac Malati, Pinac Ma-ragul or Macabacle, Quiñorang Silab or Malauli Maragul, Raymundo, Salamin, Sa-lop Maisac, Salop Maragul, Sermon and Sinca or Mabulog.

He therefore recommended revocation of the decision already mentioned above, dated November 3, 1930 of the Secretary of Commerce and Communications ordering the de-molition of the dikes closing Malauling Maragul, Quiñorang Silab, Pepangebonan, Nigui, Bulacus, Nasi and Pinac. On February 13, 1931 the Director of Public Works concurred in Panopio's report and forwarded the same to the Secretary of Commerce and Communications.

On February 25, 1935 the municipality of Macabebe and the Zobel family executed an agreement whereby they recognized the nature of the streams mentioned in Panopio's report as public or private, depending on the findings in said report. This agreement was approved by the Secretary of Public Works and Communications on February 27, 1935 and confirmed the next day by the municipal council of Macabebe under Resolution No. 36.

A few months later, that is, on June 12, 1935, the then Secretary of Justice issued an opinion holding that the contract executed by the Zobel family and the municipality of Macabebe has no validity for two reasons, namely, (1) the streams although originally dug by Ayala y Cia., lost their private nature by prescription inasmuch as the public was allowed to use them for navigation and fishing, citing *Mercado v. Municipality of Macabebe*, 59 Phil. 592; and (2) at the time the Secretary of Commerce and Communications approved the said contract, he had no more power so to do, because such power under Sec. 2 of Act 2152 was revoked by the amending Act 4175 which took effect on December 7, 1934.

Despite the above ruling of the Secretary of Justice, the streams in question remained closed.

In 1939 administrative investigations were again conducted by various agencies of the Executive branch of our government culminating in an order of President Manuel Quezon immediately before the national elections in 1941 requiring the opening of Sapang Macanduling Maragul, Macabacle, Balbaro and Cansusu. Said streams were again closed in 1942 allegedly upon order of President Quezon.

THE CASE

Roman Santos acquired in 1940 from the Zobel family a larger portion of Hacienda San Esteban wherein are located 25 streams which were closed by Ayala y Cia., and are now the subject matter in the instant controversy.

Eighteen years later, that is in 1958, Congress enacted Republic Act No. 2056[2] following a congressional inquiry which was kindled by a speech delivered by Senator Rogelio de la Rosa in the Senate. On August 15, 1958 Senator de la Rosa requested in writing the Secretary of Public Works and Communications to proceed in pursuance of Republic Act No. 2056 against fishpond owners in the province of Pampanga who have closed rivers and appropriated them as fishponds without color of title. On the same day, Benigno Musni and other residents in the vicinity of Hacienda San Esteban petitioned the Secretary of Public Works and Communications to open the following streams:

Balbaro, Batasan Matua, Bunga, Cansusu, Macabacle, Macanduling Maragul, Mariablus Malate, Matalabang Maisac, Nigui, Quiñorang Silab, Sapang Maragul and Sepung Bato.

Thereupon, the Secretary of Public Works and Communications instructed Julian C. Cargullo to conduct an investigation on the above named streams.

On October 20, 1958 Musni and his co-petitioners amended their petition to include other streams. The amended

petition therefore covered the following streams:

Balbaro, Balili, Banawa, Batasan Matua, Bato, Bengco, Bunga, Buta-buta, Camastiles, Cansusu, Cela, Don Timpo, Mabalanga, Ma-butol, Macabacle, Macabacle qng. Iba, Ma-canduling Maragul, Malauli, Magasawa, Mariablus Malate,,Masamaral, Matalabang Maisac, Mariablus[3] Nigui, Pita, Quiñorang Silab, Sapang Maragul, Sepung Bato, Sinag and Tumbong.

On March 2, 4, 10, 30 and 31, and April 1, 1959, the Secretary of Public Works and Communications rendered his decisions ordering the opening and restoration of the channel of all the streams in controversy except Sapang Malauling Maragul, Quiñorang Silab, Nigui, Pepangebonan, Nasi and Bulacus, within 30 days on the ground that said streams belong to the public domain.

On April 29, 1959, that is, after receipt of the Secretary's decision dated March 4, 1959, Roman Santos filed a petition with the Court of First Instance of Manila for injunction against the Secretary of Public Works and Communications and Julian C. Cargullo. As prayed for, preliminary injunction was granted on May 8, 1959. The Secretary of Public Works and Communications answered and alleged as defense that venue was improperly laid; that Roman Santos failed to exhaust administrative remedies; that the contract between Ayala y Cia., and the Municipality of Macabebe is null and void; and, that Section 39 of Act 496 excludes public streams from the operation of the Torrens System.

On April 29 and June 12, 1959, Roman Santos received the decision of the Secretary of Public Works and Communications dated March 10 and March 30, March 31, and April 1, 1959. Consequently, on June 24, 1959 he asked the court to cite in contempt Secretary Florencio Moreno, Undersecretary M.D. Bautista and Julian Cargullo for issuing and serving upon him the said decisions despite the existence of the preliminary injunction. The Solicitor General opposed the motion alleging that the decisions in question had long been issued when the petition for injunction was filed, that they were received after preliminary injunction issued because they were transmitted through the District Engineer of Pampanga to Roman Santos; that their issuance was for Roman Santos' information and guidance; and, that the motion did not allege that respondents took steps to enforce the decision. Acting upon said motion, on July 17, 1959, the trial court considered unsatisfactory the explanation of the Solicitor General but ruled that Secretary Florencio Moreno, Undersecretary M.D. Bautista and Julian Cargullo acted in good faith. Hence, they were merely "admonished to desist from any and further action in this case, observe the preliminary injunction issued by this Court, with the stern warning, however, that a repetition of the acts complained of shall be dealt with severely."

On July 18, 1959 the trial court declared all the streams under litigation private, and rendered the following judgment:

"The Writ of preliminary injunction restraining the respondent Secretary of Public Works & Communications from enforcing the decisions of March 2 and 4, 1959 and all other similar decisions is hereby made permanent."

The Secretary of Public Works and Communications" and Julian Cargullo appealed to this Court from the order of July 17, 1959 issued in connection with Roman Santos' motion for contempt and from the decision of the lower court on the merits of the case.

ISSUES

The issues are: (1) Did Roman Santos exhaust administrative remedies? (2) Was venue properly laid? (3) Did the lower court err in conducting a trial de novo of the case and in admitting evidence not presented during the administrative proceeding? (4) Do the streams involved in this case belong to the public domain or to the owner

of Hacienda San Esteban according to law and the evidence submitted to the Department of Public Works and Communications?

DISCUSSION OF THE ISSUES

1. Respondents maintain that Roman Santos resorted to the courts without first exhausting administrative remedies available to him, namely, (a) motion for recon-sideration of the decisions of the Secretary of Public Works and Communications; and, (b) appeal to the Presi-dent of the Philippines.

Whether a litigant, in exhausting available adminis-trative remedies, need move for the reconsideration of an administrative decision before he can turn to the courts for relief, would largely depend upon the pertinent law,[4] the rules of procedure and the usual practice followed in a particular office.[5]

Republic Act No. 2056 does not require the filing of a motion for reconsideration as a condition precedent to judicial relief. From the context of the law, the in-tention of the legislators to forego a motion for recon-sideration manifests itself clearly. Republic Act No. 2056 underscores the urgency and summary nature of the proceedings authorized there under. Thus in Section 2 thereof the Secretary of Public Works and Communications under pain of criminal liability is duty bound to termi-nate the proceedings and render his decision within a period not exceeding 90 days from the filing of the com-plaint. Under the same section, the party respondent concerned is given not more than 30 days within which to comply with the decision of the Secretary of Public Works and Communications, otherwise the removal of the dams would be done by the Government at the expense of said party. Congress has precisely provided for a speedy and a most expeditious proceeding for the removal of illegal obstructions to rivers and on the basis of such a provi-sion it would be preposterous to conclude that it had in mind to require a party to file a motion for reconsidera-tion - an additional proceeding which would certainly lengthen the time towards the final settlement of exist-ing controversies. The logical conclusion is that Con-gress intended the decision of the Secretary of Public Works and Communications to be final and executory sub-ject to a timely review by the courts without going through formal and time consuming preliminaries.

Moreover, the issues raised during the administrative proceedings of this case are the same ones submitted to court for resolution. No new matter was introduced during the proceedings in the court below which the Secretary of Public Works and Communications had no opportunity to correct under his authority.

Furthermore, Roman Santos assailed the constitutio-nality of Republic Act No. 2056 and the jurisdiction of the Secretary of Public Works and Communications to order the demolition of dams across rivers or streams. Those questions are not within the competence of said Secretary to decide upon a motion for reconsideration. They are purely legal questions, not administrative in nature, and should properly be aired before a competent court as was rightly done by petitioner Roman Santos.

At any rate, there is no showing in the records of this case that the Secretary of Public Works and Communi-cations adopted rules of procedure in investigations autho-rized under Republic Act No. 2056 which require a party litigant to file a motion for the reconsideration of the Secretary's decision before he can appeal to the courts. Roman Santos however stated in his brief that the prac-tice is not to entertain motions for reconsideration for the reason that Republic Act No. 2056 does not expressly or impliedly allow the Secretary to grant the same. Ro-man Santos' statement is supported by Opinion No. 61, Series of 1959, dated April 14, 1959 of the Secretary of Justice.

As to the failure of Roman Santos to appeal from the decision of the Secretary of Public Works and Communications to the President of the Philippines, suffice it to state that such appeal could be dispensed with

because said Secretary is the alter ego of the President. The actions of the former are presumed to have the implied sanction of the latter.[6]

2. It is contended that if this case were considered as an ordinary civil action, venue was improperly laid when the same was instituted in the Court of First Instance of Manila for the reason that the case affects the title of a real property. In fine, the proposition is that since the controversy dwells on the ownership of or title to the streams located in Hacienda San Esteban, the case is a real action which, pursuant to Sec. 3 of Rule 5 of the Rules of Court, should have been filed in the Court of First Instance of Pampanga.

The mere fact that the resolution of the controversy in this case would wholly rest on the ownership of the streams involved herein would not necessarily classify it as a real action. The purpose of this suit is to review the decisions of the Secretary of Public Works and Communications, to enjoin him from enforcing them and to prevent him from making and issuing similar decisions concerning the streams in Hacienda San Esteban. The acts of the Secretary of Public Works and Communications are the object of the litigation, that is, petitioner Roman Santos seeks to control them, hence, the suit ought to be filed in the Court of First Instance whose territorial jurisdiction encompasses the place where the respondent Secretary is found or is holding office. For the rule is that outside its territorial limits, the court has no power to enforce its orders.[7]

Section 3 of Rule 5 of the Rules of Court does not apply to determine venue of this action. Applicable is Sec. 1 of the same rule, which states:

"SECTION 1. General rule. - Civil actions in Courts of First Instance may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff."

Accordingly, the petition for injunction was correctly filed in the Court of First Instance of Manila. Respondents Secretary of Public Works and Communications and Julian Cargullo are found and hold office in the City of Manila.

3. The lower court tried this case de novo. Against this procedure respondents objected and maintained that the action, although captioned as an injunction, is really a petition for certiorari to review the decision of the Secretary of Public Works and Communications. Therefore, they now contend that the court should have confined itself to reviewing the decisions of the respondent Secretary of Public Works and Communications only on the basis of the evidence presented in the administrative proceedings. On the other hand, Roman Santos now submits that the action is a proceeding independent and distinct from the administrative investigation; that, accordingly, the lower court correctly acted in trying the case anew and rendering judgment upon evidence adduced during the trial.

Whether the action instituted in the Court of First Instance be for mandamus, injunction or certiorari is not very material. In reviewing the decision of the Secretary of Public Works and Communications, the Court of First Instance shall confine its inquiry to the evidence presented during the administrative proceedings. Evidence not presented therein shall not be admitted and considered by the trial court. As aptly stated by this Court speaking through Mr. Justice J.B.L. Reyes, in a similar case:

"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 laws, and are free from fraud or imposition, and whether they find reasonable

support in the evidence. x x x"[8]

The case at bar, no matter what the parties call it, is in reality a review of several administrative decisions of the Secretary of Public Works and Communications. Be-ing so, it was error for the lower court to conduct a trial de novo. Accordingly, for purposes of this review, only the evidence presented and admitted in the adminis-trative investigation will be considered in our determi-nation of whether on the basis thereof the decisions of the Secretary of Public Works and Communications were cor-rect.

4. We come to the question whether the streams In-volved in this case belong to the public domain or to the owner of Hacienda San Esteban. If said streams are public, then Republic Act 2056 applies if private, then the Secre-tary of Public Works and Communications cannot order demo-lition of the dikes and dams across them pursuant to his authority granted by said law.

First, we come to the question of the constitutiona-lity of Republic Act 2056. The lower court held Republic Act No. 2056 constitutional but ruled that it was applied by respondents unconstitutionally. That is, it held that Roman Santos was being deprived of his property without due process of law, for the dikes of his fishponds were ordered demolished through an administrative, instead of a Judicial, proceeding. This conclusion and rationaliza-tion of the lower court amount in effect to declaring the law unconstitutional, stated inversely. Note that the law provides for an expeditious administrative process to determine whether or not a dam or dike should be declared a public nuisance and ordered demolished. And to say that such an administrative process, when put to operation, is unconstitutional is tantamount to saying that the law it-self violates the Constitution. In *Lovina v. Moreno*, su-p-ra, We held said law constitutional. We see no reason here to hold otherwise.

Discussing now the applicability of Republic Act 2056, the same applies to two types of bodies of water, namely, (1) public navigable rivers, streams, coastal waters, wa-ters or waterways and (b) areas declared as communal fish-ing grounds, as provided for in Section 1 thereof:

"SECTION 1. x x x the construction or building of dams, dikes or any other works which encroaches 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, shall be ordered removed as public nuisances or as prohibited constructions as herein provided: x x x"

We are not concerned with communal fishing grounds be-cause the streams here involved have not been so declared, but with public navigable streams. The question there-fore is: Are the streams in Hacienda San Esteban which are mentioned in the petition of Benigno Musni and others, public and navigable?

Respondents contend that said streams are public on the following grounds:

(1) Hacienda San Esteban was formerly a marshland and being so, it is not susceptible to appropriation. It therefore belongs to the State. Respondents rely on *Mon-tano v. Insular Government*, 12 Phil. 572.

(2) The streams in question are natural streams. They are tributaries of public streams. Cited are the cases of *Samson v. Dionisio et al.*, 11 Phil. 538 and *Bautista v. Alarcon*, 23 Phil. 636.

(3) The streams have for their source public rivers, therefore they cannot be classified as canals.

(4) Assuming the streams were artificially made by Ayala y Cia., said titleholder lost ownership over them by prescription when it allowed the public to use them for navigation for a long time. Respondents cite *Mercado v. Municipal President of Macabebe*, 59 Phil. 592.

(5) Assuming the streams in question are not men-tioned as public in the certificates of title held by Aya-la y Cia., over Hacienda San Esteban, still they cannot be considered as privately owned for Section 39 of Act 496

expressly excepts public streams from private ownership.

(6) The Panopio Report, which found the streams in question of private ownership was nullified by the Secretary of Justice in his opinion dated June 12, 1935. And, the contract between Ayala y Cia., and the Secretary of Commerce and Communications agreeing on the ownership of the streams in question is ultra vires.

The doctrine in *Montano v. Insular Government*, supra, that a marshland which is inundated by the rise of the tides belongs to the State and is not susceptible to appropriation by occupation - has no application here inasmuch as in said case the land subject matter of the litigation was not yet titled and precisely Isabelo Montano sought title thereon on the strength of ten years, occupation pursuant to paragraph 6, section 54 of Act 926 of the Philippine Commission. Whereas, the subject matter in this case - Hacienda San Esteban - is titled land and private ownership thereof by Ayala y Cia., has been recognized by the King of Spain and later by the Philippine Government when the same was registered under Act 496.

Respondents further cite *Bautista v. Alarcon*, 23 Phil. 631, where the plaintiff sought injunction against the defendants who allegedly constructed a dam across a public canal which conveyed water from the Obando River to fishponds belonging to several persons. The canal was situated within a public land. In sustaining the injunction granted by the Court of First Instance, this Court said:

"No private person has a right to usurp possession of a watercourse, branch of a river, or lake of the public domain and use, unless it shall have been proved that he constructed the same within property of his exclusive ownership, and such usurpation constitutes a violation of the legal provisions which explicitly exclude such waterways from the exclusive use or possession of a private party." (Emphasis supplied)

As indicated in the above-cited case, a private person may take possession of a watercourse if he constructed the same within his property. This puts us into inquiry whether the streams in question are natural or artificial. In so doing, we shall examine only the evidence presented before the Department of Public Works and Communications and disregard that which was presented for the first time before the lower court, following our ruling in *Lovina v. Moreno*, supra.

(1) Sapang Macanduling Maragul or Macanduli is presently enclosed in Fishpond No. 12 of Roman Santos. Its banks cannot anymore be seen but some traces of them could be noted by a row of isolated nipa palms. Its water is subject to the rise and fall of the tides coming from Guagua and Antipolo Rivers and it is navigable by light watercrafts. Its inlet is Antipolo River and its outlet is the Palapat River.^[9] It is closed by four dikes: One dike at its inlet along the Antipolo River; another dike at its outlet along the Palapat River; and, two dikes in between. The exit channel at the Palapat River where the fishpond gate lies has been filled up with dredge spoils from the Pampanga River Control Project.

(2) Sapang Macabale is found in Fishpond No. 13. Its banks are still evident. This stream is about 30 meters wide, two meters deep and one and one-half to two kilometers long. Its source is Rio Cansusu. Like Macanduli, its channel is obstructed by four dikes. One of them was constructed by the engineers of the Pampanga River Control Project.

(3) Sapang Balbaro which is found in Fishpond No. 13, runs from Canal Enrique near Rio Cansusu to Sapang Macabale, a distance of about one-half kilometer. It is passable by banca. The closures of this stream consist of two dikes located at each end on Canal Enrique and Sapang Macabale.

(4) Sapang Cansusu is a continuation of the Cansusu River. The Cansusu River opens at the Guagua River and allegedly ends at the Palanas River in front of Barrio San Esteban. At a point near the mouth of Sapang Balbaro, the owners of Hacienda San Esteban built a canal leading straight to one end of Barrio San Esteban. They called

this canal "Canal Enrique". And at the point where Canal Enrique joins Cansusu they built a dike across Cansusu, thus closing this very portion of the river which extends up to Palanas River where they built another closure dike. This closed portion, called "Sapang Cansusu", is now part of Fishpond No. 1.

Sapang Cansusu is half a kilometer long and navigable by banca.

Appellants, witnesses, Benigno Musni, 41, Macario Quiambao, 96, Roman Manansala, 55 and Castor Quiambao, 76, all residents of Barrio San Esteban, testified that prior to their closure, Sapang Macanduli, Macabacle, Balbaro and Cansusu were used as passageway and as fishing grounds; that people transported through them tuba,[10] wood and sasa:[11] and that the tuba was brought to the distillery in Barrio San Esteban. Macario Quiambao testified also that said four streams "were created by God for the town people"; and that if any digging was done it was only to deepen the shallow parts to make passage easier. According to witness Anastacio Quiambao said streams were navigable, even Teodoro Yangco's ship "Cababayan" could pass through. Simplicio Quiambao, 36, and Marcelino Ocampo, 55, stated on direct examination that before closure of the above-named four streams, people from the surrounding towns of Guagua, Bacolor, Macabacle, Masantol and Sexmoan fished and navigated in them.

Against the afore-mentioned testimonial evidence Roman Santos presented the testimony of Nicanor Donarber, 80, Mariano Guinto, 71, and his own. Donarber, who started working as an arundin[12] testified that Ayala y Cia., dug Sapang Macanduli, Balbaro and Macabacle; that he worked also in the construction together with other workers; and, that as an overseer he inspected their work. Mariano Guinto testified that he worked for Ayala y Cia., as a tuba gatherer; that in order to reach remote nipa groves by banca, they made canals; and, that he was one of those who worked in the construction of those canals. Roman Santos also testified that Sapang Macanduli, Macabacle, Balbaro and Cansusu are artificial canals excavated as far back as 1850 and due to erosion coupled with the spongy nature of the land, they acquired the proportion of rivers; that he joined Sapang Balbaro to Sapang Macabacle because the former was a dying canal; and that Cansusu River is different from Sapang Cansusu. Witness Domingo Yumang likewise testified that Sapang Balbaro is man-made.

We observe that witnesses positively stated that Sapang Macanduli, Macabacle and Balbaro were made by the owners of Hacienda San Esteban. With respect to Sapang Cansusu, none, except Roman Santos himself, testified that Sapang Cansusu is an artificial canal. It is not one of the streams found and recommended to be declared private in the Panopio Report. Sapang Cansusu follows a winding course different and distinct from that of a canal such as that of Canal Enrique which is straight. Moreover, Sapang Cansusu is a part of Cansusu River, admittedly a public stream.

(5) Sapang Maragul, Mabalanga and Don Timpo are all part of Fishpond No. 1. Maragul is 600 meters long and 30 to 35 meters wide. Mabalanga is 250 meters in length and 50 meters in width. Don Timpo is 220 meters long and 20 meters wide. All of them are navigable by banca. Maragul and Mabalanga open at Guagua River and join each other inside the hacienda to form one single stream, Sapang Don Timpo, which leads to the Matalaba River. Maragul, Mabalanga and Don Timpo, formerly ended inside the hacienda but later Mabalanga was connected to Don Timpo. Maragul was connected to Mabalanga and Sapang Cela was extended to join Maragul.

Witnesses Nicanor Donarber, Mariano Ocampo and Mariano Guinto testified that Maragul, Mabalanga and Don Timpo are artificial canals dug by Ayala y Cia., and that they (Donarber and Mariano Guinto) worked in said excavations.[13] Witness Mariano Guinto clarified that Don Timpo was originally dug but Mabalanga and Maragul were formerly small non-navigable streams which were deepened into artificial navigable canals by Ayala y Cia.[14]

Exhibit F, which is a map showing the streams and rivers in Hacienda San Esteban, shows that Maragul,

Ma-balanga and Don Timpo are more or less straight. From the big rivers (Guagua and Matalaba Rivers) they lead deep into the interior of the hacienda, thus confirming the testimony that they were built precisely as a means of reaching the interior of the estate by banca. The weight of evidence, therefore, indicates that said streams are man-made.

(6) Sapang Bunga, now part of Bunga fishpond, gets its water from Sapang Iba and empties at Sta. Cruz River. It is about 300-400 meters long, 5-6 meters wide and 1-1.60 meters deep.

(7). Sapang Batu is found in Capiz Fishpond. About 300-400 meters long, 4-5 meters wide and 1.50-2.20 meters deep, it starts at Capiz River and ends at Malauling Ma-ragul. From Capiz River until it intersects Sapang Nigui, the stream is called Sapang Batu. Commencing from Sapang Nigui and up to its end at Sapang Malauling Maragul, the stream is called Sepong Batu. Sepong Batu is not among those streams declared in the Panopio report as private.

(8) Sapang Banawa has one end at Palanas River and the other at Sapang Macabacle. It is about 300 meters long, 3-4 meters wide and 1.30-1.40 meters deep. Its whole length is within Fishpond No. 13 of Roman Santos.

(9) Sapang Mabutol is a dead-end stream, that is, it ends inside the hacienda. It opens along the Guagua River. Since its closure, it has become part of Fishpond No. 1.

(10) Sapang Buta-buta, like Mabutol, dies inside the hacienda. It connects with Cansusu River and is about 100 meters long, 3-4 meters wide and 1.2-1.5 meters deep. It is now a part of Fishpond No. 13.

(11) Sapang Masamaral, another stream which opens at Cansusu River and ends inside the hacienda, is 100-200 meters long, 3-4 meters wide and 1.50-2 meters deep. It now forms part of Fishpond No. 13.

The uncontradicted testimony of Marcos Guinto is that Sapang Bunga, Batu, Sepong Batu, Banawa, Mabutol, Buta-buta and Masamaral were constructed by Ayala y Cia., to gain access to the nipa in the interior of the hacienda. This testimony tallies with the findings in the Panopio Report which will be discussed herein later. The evidence adduced in the administrative proceedings conducted before a representative of the Secretary of Public Works and Communications supports the contention that said streams are merely canals built by Ayala y Cia., for easy passage into the hinterland of its hacienda.

(12) Sapang Magasawa consists of two streams running parallel to each other commencing from Matalaba River and terminating at Mariablus River. About 600-700 meters long, 4-5 meters wide and 1.5-2 meters deep, these two streams are navigable by banca. They are enclosed within Fishpond No. 1.

(13) Sapang Mariablus Malate, about 3-4 meters wide and 250 meters long, is another stream that ends inside the hacienda and gets its water from Guagua River. It is now part of Fishpond No. 1.

(14) Sapang Matalabang Malate or Maisac opens at Guagua River and ends at Sapang Cela and Matalabang Maragul. This stream, which is about 800 meters long and 18 meters wide, forms part of Fishpond No. 1 of Roman Santos.

(15) Sapang Batasan Matua, about 600 meters long, three meters wide and .80 meter deep at low tide and 1.90 meters deep at high tide, crosses the hacienda from Mariablus River to Cansusu River. It is at present a part of Fishpond No. 1-A.

(16) Sapang Camastiles, a dead-end stream of about 200 to 300 meters in length, gets its water from Bivas River. It is within Fishpond No. 1.

(17) Sapang Cela is within Fishpond No. 1. Its whole length situated inside the hacienda, it opens at Sapang

Matalabang Malate or Maisac and ends at Sapang Malungkot. Later Cela was extended to connect with Sapang Maragul. It is about 200 meters long and four meters wide.

Mariano Guinto, 71, testified without contradiction that Sapang Mariablus Malate and Matalabang Malate were formerly small and non-navigable streams which were dug by Ayala y Cia.[15] while Batasan Matua, Camastiles, Magasawa and Cela are original canals made by Ayala y Cia.,[16] that he was one of those who worked in the construction of said canals; and that it took years to construct them. All these streams were recommended in the Panopio Report for declaration as private streams.

(18) Sapang Sinag, 200 meters long, four to five meters wide, one meter and one and one-half meters deep at low and high tides, respectively, gets its water from Cutod River and leads inside the hacienda to connect with Sapang Atlong Cruz, a stream declared private in the Panopio Report. It is now inside Fishpond No. 14.

(19) Sapang Balili, also found inside Fishpond No. 14, is about 200 meters long, three to four meters wide and one meter deep at low tide. From its mouth at Cutod River it drifts into the interior of the hacienda and joins Sapang Bengco.[17]

(20) Sapang Pita is within Fishpond Capiz. It takes water from Capiz River but dies 250 meters inside the hacienda. It is about four to five meters wide, and one meter deep at low tide and 1.50 meters deep at high tide.

(21) Sapang Tumbong, situated inside Capiz Fishpond, derives its water from Sapang Quiñorang Silab, a stream declared private by the Secretary of Public Works and Communications, and ends inside the hacienda.[18]

(22) Sapang Bengco is found within Fishpond No. 14. Two hundred meters long, five meters wide, and one meter deep at low tide and 1.50 meters deep at high tide, it gets water from Sapang Biabas and connects with Baliling Maisac.[19]

According to Marcos Guinto, a witness for Roman Santos, Sapang Sinag, Balili, Pita, Tumbong and Bengco were excavated a long time ago by Ayala y Cia.; and that they have a winding course because when they were made the workers followed the location of the nipa palms.[20] On the other hand, Marcelo Quiambao, testified that Sapang Tumbong is a natural stream and that the reason he said so is because the stream was already there as far back as 1910 when he reached the age of ten. No other oral evidence was presented to contradict the testimony of Marcos Guinto that the said five streams were artificially made by Ayala y Cia.

To show that the streams involved in this case were used exclusively by the hacienda personnel and occasionally by members of their families, Roman Santos introduced the testimony of Eliseo Panopio Nicanor Donarber, Bias Gaddi, Mariano Ocampo, Mariano Panopio, Alejandro Manansala and himself. The witnesses categorically testified that the public was prohibited from using the streams as a means of navigation and that the prohibition was enforced by guards called arundines.

One and all, the evidence, oral and documentary, presented by Roman Santos in the administrative proceedings supports the conclusion of the lower court that the streams involved in this case were originally man-made canals constructed by the former owners of Hacienda San Esteban and that said streams were not held open for public use. This same conclusion was reached 27 years earlier by an investigator of the Bureau of Public Works whose report and recommendations were approved by the Director of Public Works and submitted to the Secretary of Commerce and Communications.

As stated, pursuant to Act 2152, as amended by Act 3208, the Bureau of Public Works and the Department of Commerce and Communications looked into and settled the question of whether or not the streams situated within Hacienda San Esteban are publicly or privately owned. We refer to the so-called Panopio Report which

contains the findings and recommendations of Eliseo Panopio, a surveyor in the Bureau of Public Works, who was designated to conduct formal hearings and investigation. Said report found the following streams, among others, of private ownership:

Camastiles, Cela, Balanga, Bato, Batasan, Bengco, Buta-buta, Don Timpo, Mabutol, Ma-cabacle, Macanduli, Malande Malate (Bunga), Magasawa, Masamaral, Maragul, Mariablus. Malate, Matalaba Malate, Nasi, Nigui, Pa-ngebonan and Quiñorang Silab

on the ground that ?

"The preponderance of the probatory facts, x x x, shows that the rivers, creeks, esteros and canals listed in (1) have originally been constructed, deepened, widened, and lengthened by the owners of the Hacienda San Esteban. That they have been used as means of communication from one place to another and to the inner most of the nipales, exclusively for the employees, colonos and laborers of the said Hacienda San Esteban. That they have never been used by the public for navigation without the express consent of the owners of the said Hacienda." [21]

Bases for the above-quoted conclusion were "the reliable informations gathered from old residents of the locality, from outsiders, the sworn statements obtained from different persons not interested in this case and the comparison of the three plans prepared in 1880, 1906 and 1930.[22] The persons referred to are Martin Isip, Hilarion Lobo, Emigdio Ignacio, Castor Quiambao, Matias Sunga, Bonifacio Cruz, Inocencio Dayrit, Gabriel Manansala, Lope Quiambao, Marcelino Bustos and Juan Lara.

On February 13, 1931 the Director of Public Works transmitted the Panopio Report to the Secretary of Commerce and Communications recommending approval thereof. Later, on February 27, 1935, Secretary of Public Works and Communications De las Alas approved the agreement of Ayala y Cia., and the Municipality of Macabebe, concerning the ownership of the streams in Hacienda San Esteban, for being in conformity with said Panopio Report.

This agreement of Ayala y Cia., and the Municipality of Macabebe which was approved by the Secretary of Public Works and Communications only on February 27, 1935, could not however bind the Government because the power of the Secretary of Public Works and Communications to enter thereto had been suppressed by the Philippine Legislature when it enacted Act 4175 which took effect on December 7, 1934.

Nullity of the aforesaid contract would: not of course affect the findings of fact contained in the Panopio Report.

In weighing the evidence presented before the administrative investigation which culminated in this appeal, respondent Secretary seemed to have ignored the Panopio Report and other documentary evidence as well as the testimony of witnesses presented by petitioner but instead gave credence only to the witnesses of Benigno Musni, et al. Upon review, however, the lower court, taking into account all the evidence adduced in the administrative hearing, including the Panopio Report, as well as those presented for the first time before it, sustained petitioner's averment that the streams in question were artificially made, hence of private ownership. As stated, this conclusion of the lower court which is in accordance with the findings of Panopio as contained in his report, finds ample support from the evidence presented and admitted in the administrative investigation. Accordingly, we see no merit in disturbing the lower court's findings of fact.

We next consider the issue of whether, under pertinent laws, the streams in question are public or private.

We quote Articles 339, 407 and 408 of the Spanish Civil Code of 1889:

"ART. 339. Property of public ownerships is?

"1. That devoted to public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, riverbanks, shores, roadsteads, and that of a similar character;"

"ART. 407. The following are of public ownership:

"1. Rivers and their natural channels;

"2. Continuous or intermittent waters from springs or brooks running in their natural channels and the channels themselves;

"3. Waters rising continuously or intermittently on lands of public ownership;

"4. Lakes and ponds formed by nature on public lands, and their beds

"5. Rain waters running through ravines or sand beds, the channels of which are of public ownership;

"6. Subterranean waters on public lands;

"7. Waters found within the zone of operation of public works, even though constructed under contract;

"8. Waters which flow continuously or intermittently from lands belonging to private persons, to the State, to provinces, or to towns, from the moment they leave such lands;

"9. The waste waters of fountains, sewers, and public institutions."

"ART. 408. The following are of private ownership:

"1. Waters, either continuous or intermittent rising on private estates, while they run through them;

"2. Lakes and ponds and their beds when formed by nature on such estates;

"3. Subterranean waters found therein;

"4. Rain waters falling thereon as long as they remain within their boundaries;

"5. The channels of flowing streams, continuous or intermittent, formed by rain water, and those of brooks crossing estates which are not of public ownership.

"The water, bed, banks, and floodgates of a ditch or aqueduct are deemed to be an integral part of the estate or building for which the waters are intended. The owners of estates through or along the boundaries of which the aqueduct passes can assert no ownership over it, nor any right to make uses of its beds or banks, unless they base their claim on title deed which specify the right or the ownership claimed."

Articles 71 and 72 of the Spanish Law of Waters of August 3, 1866 state:

"ART. 71. The water-beds of all creeks belong to the owners of the estates or lands over which they flow."

"ART. 72. The water-beds on public land, of creeks through which spring waters run, are a part of the public domain.

"The natural water-beds or channels of rivers are also part of the public domain."

Pursuant to Article 71 of the Spanish Law of Waters of August 3, 1866, and Article 408(5) of the Spanish Civil Code, channels of creeks and brooks belong to the owners of estates over which they flow. The channels, therefore, of the streams in question which may be classified as creeks, belong to the owners of Hacienda San Esteban.

The said streams, considered as canals, of which they originally were, are of private ownership in contemplation

of Article 339(1) of the Spanish Civil Code. Under Article 339, canals constructed by the State and devoted to public use are of public ownership. Conversely, canals constructed by private persons within private lands and devoted exclusively for private use must be of private ownership.

Our attention has been called to the case of *Mercado v. Municipal President of Macabebe*, 59 Phil. 592. There the creek (Batasan-Limasan) involved was originally dug by the estate's owner who, subsequently allowed said creek to be used by the public for navigation and fish-ing purposes for a period of 22 years. Said this Court through Mr. Justice Diaz:

"And even granting that the Batasan-Limasan creek acquired the proportions which it had, before it was closed, as a result of excavations made by laborers of the appel-lant's predecessor in interest, it being a fact that, since the time it was opened as a water route between the Nasi River and Lima-san creek, the owners thereof as well as strangers, that is, both the residents of the hacienda and those of other nearby bar-rios and municipalities, had been using it not only for their bancas to pass through but also for fishing purposes, and it being also a fact that such was the condition of the creek at least since 1906 until it was closed in 1928, if the appellant and her pre-decessors in interest had acquired any right to the creek in question by virtue of exca-vations which they had made thereon, they had lost such right through prescription, in-as-much as they failed to obtain, and in fact they have not obtained, the necessary autho-rization to devote it to their own use to the exclusion of all others. The use and enjoy-ment of a creek, as any other property sus-ceptible of appropriation, may be acquired or lost through prescription, and the appel-lant and her predecessors in interest certain-ly lost such right through the said cause, and they cannot now claim it exclusively for themselves after the general public had been openly using the same from 1906 to 1928. x x x"

In the cited case, the creek could have been of private ownership had not its builder lost it by prescription. Applying the principle therein enunciated to the case at bar, the conclusion would be inevitably in favor of pri-vate ownership, considering that the owners of Hacienda San Esteban held them for their exclusive use and-prohi-bited the public from using them.

It may be noted that in the opinion, mentioned ear-lier, issued on June 12, 1935, the Secretary of Justice answered in the negative the query of the Secretary of Public Works and Communications whether the latter can declare of private ownership those streams which "were dug up artificially", because it was assumed that the streams were used by the public as fishing ground and in transporting their commerce in bancas or in small crafts without the objection of the parties who dug" them. Precisely, *Mercado v. Municipality of Macabebe* was given application therein. However, the facts, as then found by the Bureau of Public Works, do not support the factual premise that the streams in question were used by the pu-blic "without the objection of the parties who dug" them. We cannot therefore take as controlling in determining the merits of this case the factual premises and the le-gal conclusion contained in said opinion.

The case at bar should be differentiated from those cases where We held illegal the closing and/or appropria-tion of rivers or streams by owners of estates through which they flow for purposes of converting them into fish-ponds or other works.[23] In those cases, the watercourses which were dammed were natural navigable streams and used habitually by the public for a long time as a means of navigation. Consequently, they belong to the public do-main either as rivers pursuant to Article 407(1) of the Spanish Civil Code of 1889 or as property devoted to pu-blic use under Article 339 of the same Code. Whereas, the streams involved in this case were artificially made and devoted to the exclusive use of the hacienda owner.

Finally, Sapang Cansusu, being a natural stream and a continuation of the Cansusu River, admittedly a public stream, belongs to the public domain. Its closure therefore by the predecessors of Roman Santos was illegal.

The petition for the opening of Sapang Malauling Maragul, Quiñorang Silab, Nigui, Pepangebunan, Nasi and

Bulacus was dismissed by the Secretary of Public Works and Communications and the case considered closed. The said administrative decision has not been questioned in this appeal by either party. Hence, they are deemed excluded herein.

All the other streams, being artificial and devoted exclusively for the use of the hacienda owner and his personnel, are declared of private ownership. Hence, the dams across them should not be ordered demolished as public nuisances.

With respect to the issue of contempt of court on the part of the Secretary of Public Works and Communications and Julian Cargullo for the alleged issuance of administrative decisions ordering demolition of dikes involved in this case after the writ of injunction was granted and served, suffice it to state that the lower court made no finding of contempt of court. Necessarily/ there is no conviction for contempt reviewable by this Court and any discussion on the matter would be academic.

WHEREFORE, the decision appealed from is affirmed, except as to Sapang Cansusu which is hereby declared public and as to which the judgment of the lower court is reversed. No costs.

SO ORDERED.

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

[1] Jurisdiction was then lodged with the Department of Commerce and Communications, but was later transferred to the Department of Public Works and Communications.

[2] Entitled "An Act to Prohibit, Remove and/or Demolish the Construction of Dams, Dikes or any other Works in Public Navigable Waters or Waterways and in Communal Fishing Grounds, to Regulate Works in such Waters or Waterways and in Communal Fishing Grounds, and to Provide Penalties for its Violation, and for other purposes."

[3] Not mentioned in the administrative decision under review.

[4] Pascual v. Provincial Board of Nueva Ecija, L-11959; October 31, 1959; Azuelo v. Arnaldo, L-15144, May 26, 1960; Llaraena v. Lacson, L-15696, May 30, 1960.

[5] Marukot v. Director of Lands, 98 Phil. 128; Santiago v. Cruz, 98 Phil. 168.

[6] Villegas v. Secretary of Interior, 67 Phil. 451; Demas-isip v. Court of Appeals, et al., L-13000, Sept. 25, 1959.

[7] Castaño v. Lobingier, 7 Phil. 91.

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

[9] Palapat River is now part of the channel of the Pampanga River Control Project.

[10] Nipa juice which is distilled into alcohol.

[11] Nipa palm.

[12] Guard.

[13] T.s.n., p. 78, Exh. 9.

[14] T.s.n., p. 81-82, Exh. 9.

[15] T.S.N., pp. 81-82, Exh. 9.

[16] T.sn., pp. 81-83, Exh. 9.

[17] T.s.n., p. 55, Exh. 10.

[18] T.s.n., p. 111, Exh. 7.

[19] T.s.n., p. 55, Exh. 10.

[20] T.s.n., pp. 50-51, Exh. 10.

[21] Panopio Report, p. 15a; p. 34, Exh. 7.

[22] Panopio Report, supra.

[23] Samson v. Dionisio, 11 Phil. 538; Eusebio v. Aguas, 47 Phil. 567; Palanca v. Commonwealth, 69 Phil. 449; Meneses v. Commonwealth, 69 Phil. 647; Lovina v. Mo-reno, L-17821, Nov. 29, 1963; Villanueva v. Secretary of Public Works and Communications, L-21043, March 30, 1966; Macatangay v. Secretary of Public Works and Communications and Dilay, L-12673, May 16, 1966; Santos v. Secretary of Public Works and Communications, L-16949, March 18, 1967, 1967A Phil. 455.

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