

CARMEN FESTEJO, DEMANDANTE Y APELANTE, CONTRA ISAIS FERNANDO, DIRECTOR DE OBRAS PUBLICAS, DEMANDADO Y APELADO.

G.R. No. L-5156. March 11, 1954

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DIOKNO, M.:

Carmen Festejo, dueña de unos terrenos azucareros, de un total de unas 9 hectareas y media de superficie, demando a "Isaias Fernando Director, Bureau of Public Works, que como tal Director de Obras Publicas tiene a su cargo los sistemas y proyectos de irrigation y es el funcionario responsable de la construccion de los sistemas de irrigacwn en el pais," alegando que—

"The defendant, as Director of the Bureau of Public Works, without authority obtained first from the Court of First Instance of Ilocos Sur, without obtaining first a right of way,, and without the consent and knowledge of the plaintiff, and against her express objection, unlawfully took possession of portions of the three parcels of land described above, and caused an irrigation canal to be constructed on the portion of the three parcels of land on or about the month of February 1951 the aggregate area being 24,179 square meters to the damage and prejudice of the plaintiff."— R. on A. p. s.

causando a ella variados dafios y perjuicios. Pidio, en su consecuencia. sentencia condenando el demandado:

"* * * to return or cause to be returned the possession of the portions of land unlawfully occupied and appropriated in the aggregate area of 24,179 square meters and to return the land to its former condition under the expenses of the defendant." * * *

"In the remote event that the portions of land unlawfully occupied and appropriated can not be returned to the plaintiff, then to order the defendant to pay to the plaintiff the sum of P19,343.20 as value of the portions totalling an area of 24,179 square meters;"— R. on A., p. 5.

y ademas a pagar P9,756.19 de daños y P5,000 de honorarios de abogado, con las costas R. on A., pp. 5-6.

El demandado, por medio del Procurador General, presento mocion de sobreseimiento de la demanda por el fundamento de que el Juzgado no tiene jurisdiccion para dictar sentencia valida contra el, toda vez que judicialmente la reclamation es contra la Republica de Filipinas, y esta no ha presentado su consentimiento a la demanda. El Juzgado inferior estimo la mocion y sobreseyo la demanda sin perjuicio y sin costas.

En apelacion, la demandante sostiene que fue un error considerar la demanda como una contra la Republica y sobreseer en su virtud la demanda.

La mocion contra "Isaias Fernando, Director de Obras Publicas, encargado y responsable de la construction de los sistemas de irrigation en Filipinas" es una dirigida personalmente contra el, por actos que asumio ejecutar en su concepto oficial. La ley no le exime de responsabilidad por las extralimitaciones que cometa o haga cometer en el desempeno de sus f unciones oficiales.

Un caso semej ante es el de Nelson vs. Bobcock (1933) 18 minn. 584, 24 NW 49, 90 ALR 1472. Alii el

Comisionado de Carreteras, al mejorar un trozo de la carretera ocupo o se apropio de terrenos contiguos al derecho de paso. El Tribunal Supremo del Estado declaro que ea personalmente responsable al dueno de los danos causados. Declaro ademas que la ratification de lo que hicieron sus subordinados era equivalente a una orden a los mismos. He aqui lo dijo el Tribunal.

"We think the evidence and conceded facts permitted the jury in finding that in the trespass on plaintiff's land defendant committed acts outside the scope of his authority. When he went outside the boundaries of the right of way upon plaintiff's land and damaged it or destroyed its former condition and usefulness, he must be held to have designedly departed from the duties imposed on him by law. There can be no claim that he thus invaded plaintiff's land southeasterly of the right of way innocently. Surveys clearly marked the limits of the land appropriated for the right of way of this trunk highway before construction began. * * *.

"'Ratification may be equivalent to command, and cooperation may be inferred from acquiescence where there is power to restrain.' It is unnecessary to consider other cases cited, * * *, for as before suggested, the jury could find or infer that, in so far as there was actual trespass by appropriation of plaintiff's land as a dumping place for the rock to be removed from the additional appropriated right of way, defendant planned, approved, and ratified what was done by his subordinates."—Nelson vs. Bobcock, 90 A. L. R., 1472, 1476, 1477.

La doctrina sobre la responsabilidad civil de los funcionarios en casos parecidos se resume como sigue:

"Ordinarily the officer or employee committing the tort is personally liable therefor, and may be sued as any other citizen and held answerable for whatever injury or damage results from his tortious act."—49 Am. Jur. 289.

* * * If an officer, even while acting under color of his office, exceeds the power conferred on him by law, he cannot shelter himself under the plea that he is a public agent."—43 Am. Jur. 86.

"It is a general rule that an officer executive, administrative quasi-judicial, ministerial, or otherwise who acts outside the scope of his jurisdiction and without authorization of law may thereby render himself amenable to personal liability in a civil suit. If he exceeds the power conferred on him by law, he cannot shelter himself by the plea that he is a public agent acting under color of his office, and not personally. In the eye of the law, his acts then are wholly without authority." Am. Jur. 89-90.

El articulo 32 delCodigo Civil dice, a su vez:

"ART. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

* * * * *

"(6) The right against deprivation of property without due process of law;

* * * * *

"In any of the cases referred to in this article, whether or not the defendant's acts or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

Se revoca la orden apelada y se ordena la continuacion de la tramitacion de la demanda conforme proveen los reglamentos. Sin especial pronunciamiento en cuanto a las costas. Asi se ordena.

Padilla, Reyes, Ingo, Bautista Angelo y Labrador, MM., estan conformes.

DISSENTING

CONCEPCION, J.,:

To my mind, the allegations of the complaint lead to no other conclusion than that appellee Isaias Fernando is a party in this case, not in his personal capacity, but as an officer of the Government. According to said pleading the defendant is "Isaias Fernando, Director, Bureau of Public Works." Moreover, in paragraphs '4 and 5 of the complaint, it is alleged:

"4. That the defendant as Director of the Bureau of Public Works is in charge of irrigation projects and systems, and the official responsible for the construction of irrigation system in the Philippines;

5. That the defendant, as Director of the Bureau of Public Works, without authority obtained first from the Court of First Instance of Ilocos Sur, without obtaining first a right of way, and without the consent and knowledge of the plaintiff, and against her express objection, unlawfully took possession of portions of the three parcels of land described above, and caused an irrigation canal to be constructed on the portion of the three parcels, of land on or about the month of February 1951 the aggregate area being 24,179 square meters to the damage and prejudice of the plaintiff." (Italics supplied.)

The emphasis thus placed upon the allegation that the acts complained of were performed by said defendant "as Director of the Bureau of Public Works," clearly shows that the designation of his office was included in the title of the case to indicate that he was being sued in his official capacity. This conclusion is bolstered up by the fact that, among other things, plaintiff prays; in the complaint, for a judgment

"Ordering the defendant to return or caused to be returned the possession of the portions of land unlawfully occupied and appropriated in the aggregate area of 24,179 square meters and to return the land to its former condition under the expense of the defendant." (Paragraph a, of the complaint).

We take judicial notice of the fact that the irrigation projects and system referred to in the complaint—of which the defendant, Isaias Fernando, according to the same pleading, is "in charge" and for which he is "responsible" as Director of the Bureau of Public Works—are established and operated with public funds, which pursuant to the Constitution, must be appropriated by law. Irrespective of the manner in which the construction may have been undertaken by the Bureau of Public Works, the system or canal is, therefore, a property of the Government. Consequently, in praying that possession of the portions of land occupied by the irrigation canal involved in the present case be returned to plaintiff herein, and that said land be restored to its former condition, plaintiff seeks to divest the Government of its possession of said irrigation canal, and, what is worse, to cause said property of the Government to be removed or destroyed. As held in *Syquia vs. Lopez*[*] (47 Off. Gaz., 665), the Government is, accordingly, "the real party in interest as defendant" in the case at bar. In other words, the same partakes of the nature of a suit against the state and may not be maintained without its consent.

Hence I am constrained to dissent.

CONCURS

BENGZON, J.,:

Se revoca la orden opelada y se ordena la continuation de la tramitacion de la demanda conforme proveen los reglamentos.

[*] 84 Phil., 312.

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