

**CLEMENCIA B. VDA. DE VILLONGCO, ET AL., PETITIONERS AND APPELLEES, VS. HON. FLORENCIO MORENO, IN HIS CAPACITY AS SECRETARY, DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS AND BEN...**

*G.R. No. L-17240. January 31, 1962*

Ponente: LABRADOR, J.

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**LABRADOR, J.:**

The above-entitled case involves the application and interpretation of Republic Act No. 2056, 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." The pertinent provisions thereof in issue are Section 1 and the first part of Section 2, which read as follows:

"SEC. 2.—When it is found by the Secretary of Public Works and Communications, after due notice and hearing, that any dam, dike or any other works now existing or may hereinafter be constructed encroaches into any public navigable river, stream, coastal waters and any other public navigable waters or waterways, or that they are constructed in areas declared as communal fishing grounds, he shall have the authority to order the removal of any such works and shall give the party concerned a period not to exceed thirty days for the removal of the same: Provided, That fishpond constructions or works on communal fishing grounds introduced in good faith before the areas were proclaimed as fishing grounds shall be exempted from the provisions of this Act, provided such constructions or works do not obstruct or impede the free passage of any navigable river, stream, or would not cause inundations of agricultural areas: \* \* \*."

The facts involved in the case may be briefly stated as follows: On August 15, 1958, Senator Rogelio de la Rosa complained with the Secretary of Public Works and Communications against several fishpond owners in Macabebe, Pampanga, amongwhom is petitioner herein Clemencia B. Vda. de Villongco. The complaint charges that petitioner herein Vda. de Villongco has appropriated a portion of the coastal waters of Pampanga, locally known as "Pantion", converting portions of the coastal areas into fishponds. Investigations were conducted under the authority of the Secretary, who thereafter rendered the following decision:

"Complainants allege that the conversion of this area into a fishpond by the respondents deprived them of the uses of the area as a fishing ground and for navigation. On the other hand, the respondents contend that this area is owned by them as shown by the title above-adverted to.

"A relocation survey, based on the title, was made on the area in question to determine whether the fishpond constructions and/ or works of the respondents are within the titled property. Said survey shows that a portion of Manila Bay covering an area of approximately 24,860 square meters was included as part of the fishpond by the respondents.

"The defense of respondents that the area in question being a private property, is not subject to the provisions of Republic Act 2066 deserves consideration. The area being covered by a Torrens Certificate of Title, the

respondent's title thereon is indefeasible and imprescriptible. As sufficiently established, the area in question is a foreshore land and is disposable under Section 59 of the Public Land Law. However, of the enclosed portion, the area, of 24,860 square meters has been conclusively shown by the relocation survey as not within the boundaries of the titled property. Be that as it may, tins, portion is still of public ownership and the complainants should, therefore, not be deprived of its uses as a fishing ground and passageway.

"Premises considered, it is hereby ordered that the respondents remove their fishpond works and/or constructions insofar as it encroaches upon that portion of Manila Bay covering the area of approximately 24,860 square meters and restore the original condition of said coastal water within thirty (30) days from receipt of this decision; otherwise, this Office or its duly authorized representative shall remove the same at the expense of the respondents within ten (10) days following the expiration of the thirty-day period, without prejudice to instituting judicial action against them under the provisions of Section 3 of R. A. 2056." (Annex "C", pp. 20-21)

Clementia B. Vda. de Villongco filed a motion to reconsider the decision, but the same was denied by the Undersecretary in a resolution dated August 5, 1959. Thereupon, on August 20, 1959, petitioner herein filed the present suit in the Court of First Instance of Rizal, calling attention to the above proceedings, especially the decision of the Secretary and the resolution of the Undersecretary denying the motion for reconsideration, and arguing that Republic Act No. 2056, under which the Secretary issued the order above-quoted, is null and void as conferring upon the Secretary power to decide as to whether or not the dikes and other constructions encroach upon coastal waters, public streams, communal fishing grounds, etc.; that the Undersecretary acted without or in the excess of jurisdiction in delegating reception of evidence, in causing resurvey of the premises by a person who is not a duly licensed surveyor, in violation of the agreement to that effect, in the absence of petitioner Villongco; that the Secretary's order of demolition of the fishponds was beyond the jurisdiction of said Secretary and is unconstitutional as an encroachment upon the private rights of the petitioners, etc. Upon the presentation of the petition, the court below issued a writ of preliminary injunction against the enforcement of the Secretary's disputed order. Trial of the case was had, with the submission of a stipulation of facts, with exhibits, entered into between the parties, after which the court, through Hon. Andres Reyes, rendered a decision declaring that the Secretary of Public Works and Communications was in error in ordering the demolition of the dikes and other constructions of the petitioner Vda. de Villongco, on the ground that said dikes and other constructions fall under the exception mentioned in Section 2 of Republic Act No. 2056. We quote the order herein:

"Without the necessity of resolving the various incidental issues raised by the parties, the Court is of the opinion that the case at bar hinges on only one vital issue—that is whether the petitioners properly fall within the benefits of the exemption expressly provided for under section 2 of Republic Act 2056, to wit:

'PROVIDED, That fishpond constructions on communal fishing grounds introduced in good faith before the areas were proclaimed as fishing grounds shall be exempted from the provisions of this Act, provided such constructions or works do not obstruct or impede the free passage of any navigable river, stream, or would not cause inundations of agricultural areas.

'AND PROVIDED, FINALLY, that the removal of any such works shall not impair fishponds completed or about to be completed which do not encroach or obstruct any public navigable river or stream and/or which would not cause inundations of agricultural areas and which have been constructed in good faith before the area was declared communal fishing grounds.'

"A perusal of the above provisions reveals that the petitioners herein would be entitled to the benefits of said exemptions provided the following requisites are present: first, that the constructions or works in question were constructed in good faith before the areas were declared communal fishing grounds; second, that said constructions or works would not impede the free passage of any navigable river or stream; and lastly, that the

same would not cause inundations of agricultural areas.

"There is no question that the constructions of petitioners would not cause inundation of agricultural areas. This was admitted in the answer of respondent Secretary and later included in the stipulation of facts. There is also no dispute as to the fact that the same were constructed in good faith before June 13, 1958 when Republic Act No. 2056 took effect and therefore before any fishing ground could have been declared communal." (pp. 2-3 of the decision).

The respondent Secretary has appealed from the above decision, alleging the following errors:

## I

"THE LOWER COURT ERRED IN GIVING DUE COURSE TO THE INSTANT CASE FOR CERTIORARI AND PROHIBITION AND IN DECIDING THE SAME WITHOUT CONSIDERING THE ISSUES INVOLVED THEREIN.

## II

"THE LOWER COURT ERRED IN INTERPRETING THE PROVISIONS OF REPUBLIC ACT NO. 2056 WHICH, OTHERWISE, IS CLEAR AND UNAMBIGUOUS, AND IN CONSTRUING THE EXEMPTING CLAUSE PROVIDED IN SEC. 2 THEREOF TO INCLUDE FISHPOND CONSTRUCTIONS OR WORK OUTSIDE THE AREAS DECLARED AS COMMUNAL FISHING GROUNDS.

## III

"THE LOWER COURT ERRED IN HOLDING THAT THE APPELLEES FALL WITHIN SAID EXEMPTING PROVISION OF SECTION 2 OF REPUBLIC ACT NO. 2056.

## IV

"THE LOWER COURT ERRED IN ISSUING EX-PARTE THE WRIT OF PRELIMINARY INJUNCTION, AND LATER MAKING IT PERMANENT.

## V

"THE LOWER COURT ERRED IN GRANTING THE INSTANT PETITION FOR CERTIORARI AND PROHIBITION."

An examination of the facts adduced at the trial shows that petitioner Vda. de Villongco is the owner of a fishpond situated in Macabebe, Pampanga, covered by Transfer Certificate of Title No. 7087 dated January 28, 1952, containing an area of 90 hectares, 26 ares and 54 centares, bounded on the SW and W by the Manila Bay and on the NW by the Manila Bay and the Supang Maruginas (Annex B-Stipulation). A competent surveyor in the person of the Dredge Operation Supervisor of the Department of Public Works conducted an investigation and submitted a report (Annex E of the Stipulation of Facts), with an accompanying sketch of the fishpond showing the disputed portion, included within the dike of the petitioner. The existing dike of the petitioner is a straight line from point A of Annex E-1 to point D, and it includes a portion of public land indicated in red (portion B-c) in said Annex E-1, containing an area of 2 hectares, 48 ares and 60 centares (24,860 square meters). The surveyor found the following:

"It seems that the average depth along the sea side of the dike A-D as shown in the attached plan may be about one (1) foot M.L.L.W.

"That section B-C of the dike is along the prolongation of section A-B towards point C and that no part of dike B-C is protruding towards the sea.

"That navigation along dike A-D during low tide is limited to Vessels with a draft of about one foot.

"That section B-C of the dike will obstruct navigation towards a public domain (shaded red in the attached plan) with an indicated area of about 24,880 square meters.

"In my opinion, section B-C of the dike will not obstruct navigation along or parallel to it." (Annex E-Stipulation)

The court below held that said portion falls under the exception of Section 2 of Republic Act No. 2056, because it does not interfere with navigation and does not produce inundation and the dikes were constructed before the area was a fishing ground. (The parties have stipulated that there is yet no order declaring the area as a fishing ground.)

A study of the provisions of Republic Act No. 2056, especially the sections we quote above disclose that the authority granted the Secretary of Public Works and Communications is to declare that the construction or building of dams, dikes or any other works encroaching on navigable rivers, streams, or any other navigable public waters or waterways is prohibited and to order their removal or demolition. The area included in the dikes of the petitioner, indicated in the red shaded portion in the Stipulation, Exh. E-1, was not a part of the land titled in the name of the petitioner, as shown by the fact that the titled land bounds on the W by a line from point 1 to point 19, point 19, to point 20 and point 20 to point 21 of Lot No. 2 indicated in the plan of the land. Said red shaded portion, which contains an area of 24,860 square meters, is clearly, therefore; a portion of the Manila Bay area or coastal area, which the petitioner has evidently included within her dikes, perhaps to straighten the same. As the shaded portion has a depth of 1 foot at low tide, it is evidently navigable at high tide for vessels of deeper draft of 1 foot and at low tide navigable to those of 1 foot drafts. It is, therefore, a part of the waterways, taking into account that the Manila Bay area, especially those bordering the fishponds in the provinces of Pampanga, Bulacan and Rizal are waterways, especially used by fishermen and fishpond owners to bring in their catch to market. The shaded area, therefore, is a public property, not susceptible to appropriation by any private individual, not only because it belongs to the State but also because it is used as a waterway.

"Article I.—The following are part of the national domain open to public use:

- The coasts or maritime frontiers of Spanish territory, with their coves, inlets, creeks, roadsteads, bays and ports.
- The coast sea, that is, the maritime zone encircling the coasts, to the full width recognized by international law. \* \* \*," (Art. 1, paragraphs 1 and 2, Spanish Law of Waters; See also *Insular Government vs. Aldecoa*, 19 Phil., 505, 510).

The error of the court below lies in the fact that it considered the coast sea as falling under the exception of Section 2. But an examination of Section 2 shows that coastal waters or public waterways are not included in the exception. Only those works constructed on communal fishing grounds are exempted; constructions on coastal waters or public waterways are not subject to the exception. Aside from that fact, no inundation or free passage of any navigable river can take place on the coastal waters or waterways, so coastal waters are not subject to the exception. The exception, apparently, applies only to constructions on navigable rivers, when these constructions do not impede or obstruct the passage of the river and when they do not cause inundation of agricultural areas. Coastal waters are not within the contemplation of the exception because there is no navigable river or stream in coastal waters and neither may there be an inundation therein.

We, therefore, find that the court below erred in its decision that the constructions of the petitioner, subject matter of the case at bar, fall within the exception mentioned in Sec. 2 of the Act and its order in issuing the prohibition is therefore, unwarranted.

The other error is the failure of the petitioner to avail of the administrative remedy, which consists in appealing from the decision of the Secretary of Public Works and Communications to the President of the Philippines. We find this assignment of error also to be well taken. We have, however, chosen to consider the merits of the issue involved for the more prompt determination of the case and for a proper understanding of the provisions of Republic Act No. 2056.

Wherefore, the decision and the injunction issued by the court below are hereby set aside, and the petition against the Secretary of Public Works and Communications, dismissed, with costs against the petitioner.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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