

**NICOLAS DIEGO, PETITIONER, VS. THE COURT OF APPEALS AND.
FAUSTO C. MENESES, ET AL., RESPONDENTS.***G. R. No. L-9217. November 29, 1957*

Ponente: BENGZON, J.

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Review of the Court of Appeals' decision upholding the Pangasinan court's judgment that annulled the fishpond permit issued by the Director of Fisheries and the Secretary of Agriculture and Natural Resources in favor of Nicolas Diego and his predecessors in interest. The annulment rested upon the finding by both courts that such permit covered portions of a navigable river.

In May 1949, Fausto C. Meneses, Josefa Llamas and two others complained in the said court against the above officials, Benedicta G. Ramos and Nicolas Diego alleging abuse of power and discretion in the grant of a permit to occupy and operate as a fishpond a part of the Sisilien River in Binmaley, Pangasinan. The municipality of Binmaley, with leave of court, intervened and made common cause with the plaintiffs.

The defendants in their answer maintained that the area covered by the permit was a parcel of the public domain under the control and disposition of the Agriculture Department.

The material facts found by the Court of Appeals—which we are not at liberty to modify—are the following:

"In a case originating from the Court of First Instance of Pangasinan entitled *Felix Ferrer vs. Jose N. Sison*, the Supreme Court (G. R. No. 24461, Exhibit "M"—Meneses) declared and held:

'It appears that the estero Sisilien in question is a branch of the Agdao River, which is also a branch of the Agno River, and that it was a navigable stream capable of floating large bancas, and was used as a part of a regular route for the transportation of palay from Binmaley to Dagupan, '* * *.'

"Jose N. Sison, defendant in the above cited case, sold all his rights and interests over his land adjoining the Sisilien River to the spouses, Josefa Llamas and Fausto Meneses, herein plaintiffs, who, after acquiring the property from Sison, ordered its survey including a portion of the Sisilien creek or river, and afterwards filed an application for registration over the said property before the Court of First Instance of Pangasinan. The Director of Lands, and the heirs of Crispulo Vinluan filed their respective opposition and after trial the lower court held that the decisions in the former case (*Ferrer vs. Sison*, supra) was res judicata in the registration case. The dispositive part of the decision of the lower court which was affirmed by the Supreme Court in G. L. R. C. No. 38509 Exhibit "L"—Meneses) is quoted as follows: '* * *.'

"On December 29, 1934, after the promulgation of the decision of the Supreme Court in the registration case mentioned above, Fausto C. Meneses filed sales application (Exhibit "M"—Meneses) over the area twice declared by the Supreme Court as estero or rio Sisilien, for which reason, the Director of Lands, in his order dated October 3 (Exhibit "N-1"—Meneses) rejected the said sales application, stating that the area applied for is not disposable under the provisions of the Public Land Laws, and cited as reason of denial the ruling of the Supreme Court in the two cases mentioned above. On March 28, 1941 Fausto C. Meneses, filed a lease application (Exhibit

"O"—Meneses) over the same area, and for the same reason stated in the order rejecting the sales application, was also denied (Exhibit "O"—Meneses)."

"On May 11, 1944, defendant Benedicta G. Ramos filed with the Bureau of Fisheries an application for a permit to occupy and construct a fishpond over a piece of land of approximately 3.68 hectares situated in the barrio of Bac Oeste, Binmaley, Pangasinan. After an inspection of the premises applied for, said office issued on June 9, 1944, Fishpond Permit No. F-49-N (Exhibit "A"—Meneses and Exhibit "5"—Government) in favor of applicant Ramos. Upon the alleged principal ground that the proposed fishpond was within the rio or estero Sisilien, which was a public river and community fishing ground, plaintiffs Fausto C. Meneses, Mauro Rosario and the heirs of a certain Crispulo Vinluan, one of whom is plaintiff Jose Vinluan, allegedly owners of some fishponds bordering on the area in question, protested against the issuance of said fishpond permit. However, said protest was rejected by the then Director of Fisheries in its order dated September 13, 1944 (Exhibit "C"—Government) which described the character and nature of the land in question as follows:

'The area covered by the fishpond permit No. F-49 granted in favor of Mrs. Ramos is public, tidal portion of the Sisilien Creek, shallow during low tides and influenced by incoming high tides. Its bed is very much higher than the bed of the Sisilien Creek during low tides. Its location, topography and proximity to the Agno and Agdao Rivers are favorable factors for the area to be converted into fishpond.' * * *

"An appeal was interposed by the oppositors on November- 2, 1944 against said decision to the Secretary of Agriculture and Natural Resources, but it was not acted upon due to the coming of the American liberation forces." "Following liberation, or on September 27, 1945, defendant Benedicta G. Ramos sought a renewal of her fishpond permit referred to above. Accordingly, Fishpond Permit No. F-16-A was issued in her favor by the Department of Agriculture and Commerce (now Agriculture and Natural Resources) on October 14, 1945. This permit was again renewed for one year on January 29, 1946 (Exhibits "B"—, "C"—, and "E"—Meneses and also Exhibit "1"— Diego).

"On November 21, 1946, defendant Benedicta G. Ramos conveyed all her rights in the area covered by her fishpond permit to defendant Nicolas Diego (Exhibit "D"—Meneses) and (Exhibit "2"—Diego). Based upon the document of transfer defendant Nicolas Diego filed a petition with the Department of Agriculture and Natural Resources for the issuance of fishpond permit in his name."

"On February 5, 1947, plaintiffs opposed this petition upon the same grounds they attempted to impugn the issuance of a fishing- permit to defendant Benedicts G. Ramos in 1944. To resolve the dispute defendant Director of Fisheries caused an ocular inspection of the land in controversy to be made and, based upon the results of such inspection, he issued an order on November 17, 1947, overruling plaintiffs opposition and giving due course to the petition of defendant Nicolas Diego for the issuance of a fishing permit in his name. (Exhibit "6"—Government and Exhibit "E"—Meneses.) Plaintiffs appealed from said order and on February 7, 1948, sustaining the appeal, defendant Secretary of Agriculture and Natural Resources issued an order revoking the fishing permit issued in the name of defendant Nicolas Diego (Exhibit "3"—Meneses). Subsequently, however, acting upon a petition filed by defendant Nicolas Diego for the reconsideration of the order revoking his fishing permit (Exhibit "7"—Government) the Department of Agriculture and Natural Resources ordered a thorough investigation of the controversy, including an ocular inspection of the disputed land (Exhibit "8"—Government) and, based upon the results of such investigation (Exhibit "9"—Government) on September 18, 1948, defendant Secretary of Agriculture and Natural Resources issued an order stating, among other things, that the land in controversy forms part of the alienable and disposable portion of the public domain; that the area is not being used for navigation; and that its topography is the same as that of the adjoining fishponds of plaintiffs. * * *."

* * * * *

"* * * t being admitted that the fishpond in question lies within the aforestated Lot No. 5, as shown by Exhibit

"1" Government, it is beyond doubt that the said fishpond forms part of the area twice adjudged by the Supreme Court as navigable stream, called estero or rio Sisilien."

Explaining his petition for review, Nicolas Diego called attention to the circumstance that no appeal had been taken to the President from the Secretary's administrative determination in issuing the permit. And then he argued for non-interference by the courts with the acts of executive officers, unless all administrative remedies have been previously exhausted.

Upon examination of the Record on Appeal, however, we note that this defense was not interposed in the court of first instance. Perhaps because the pleader knew courts had entertained civil actions of this nature against the Secretary of Agriculture and/or subordinate officers, even if complainants had not previously taken the matter up to the Chief Executive;^[1] and perhaps because such defense might only be valid in special civil actions—this is not one—wherein the petitioner must allege and prove that "he has no other speedy and adequate remedy."

Petitioner's reliance on *Lamb vs. Auditor General*, 22 Phil. 456 is misplaced, because unlike the instant litigation, it was a special civil action: mandamus. Anyway, its ruling has been subsequently modified ^[2] so as to permit any private individual—affected by the Auditor's action to seek redress in the courts without the need of previously resorting to the Chief Executive.

Petitioner's second basis for review discusses his position that in determining the watery grounds to be disposable tracts of the public domain, the Secretary decided a question of fact, which decision is not subject to review by the courts, under section 4 of Commonwealth Act No. 141.

Obviously this point, including that already mentioned induced this Court to give due course to Diego's petition for review. Nevertheless, upon a more thorough examination of the record and of the matter, it turned out to be unmeritorious, as will presently be explained.

Undoubtedly a decision by the Secretary that the disputed area constituted no part of the Sisilien River, or was not a navigable portion thereof, would determine a question of fact. But if the same officer should decide that such part, although navigable, could be disposed of by permit as public land, he would thereby determine a question of law; erroneously at that.

Fortunately, in the administrative proceedings before him, the Secretary did not declare that the aforesaid area was no part of the Sisilien River. Had he done so, the question would arise whether he had the authority to reverse the previous decisions of the Supreme Court herein-above indicated, and whether the situation should then be viewed in the light of interference by the Secretary with findings of the courts—and not judicial review of administrative adjudication.

It seems clear from the recital of facts that in the opinion of the two defendant officials, although the disputed area was originally part of the navigable river, it had become so shallow as to be unfit for navigation, yet suitable for fishery purposes.

On the other hand, the judge of the Pangasinan Court conducted an ocular inspection of the premises during the driest season of the year 1952 (April 17) and related his observations as follows:

"With respect to the second query, suffice to say that in the said ocular inspection, the court ordered to make soundings within the area in litigation and it was found that in the deepest place it was 1 meter and 29 centimeters deep, and in other places it was 1 meter and 10 centimeters deep. In this connection, it must be stated that the persons who made the soundings were riding in a motor boat which could easily yo from one price to another within the fishpond of Nicolas Diego. It is true, as contended by counsel for defendant Diego, that the actual configuration of the area is similar, or equaj to the adjoining fishponds, and that there are plenty of api-api trees growing along the pilapil separating the land in question from Agdao River. But this condition was made possible by the acts of the defendant Diego, and not by the natural action of the water of the river, in

constructing the pilapil which now separates the waters of the Agdao River and the waters of the area in question. And with regard to the api-api trees which abound along the said pilapil, the court has observed that nowhere the neighboring fishponds said kind of trees or other trees may be found; so that it may be safely stated that they were planted by, thru the initiative of Nicolas Diego to prevent the erosion of the pilapil by the action of the water of Agdao River. (*Italics ours.*)

All of which shows the disputed area to be still so navigable that motor boats could freely ply around and over it. Now, in this conflict of findings—navigable according to the judge, not navigable according to the Secretary—which shall prevail? Petitioner Diego claims conclusiveness for the administrative determination under section 4 of Commonwealth Act No. 141. But such section relates to findings of fact by the Director of Lands when affirmed by the Department Secretary. Here is no finding of facts by the Lands Director. The findings were made by the Director of Fisheries and no statute is shown ascribing to the Director of Fisheries the same authority given to the Director of Lands.

Nevertheless supposing for the nonce that the area was not navigable when both the executive and the judicial investigation had been conducted, there is the court's finding—which is not contradicted by the Secretary's award [3]— that such portion had become shallower than the main bed of the Sisilen River, pursuant to the acts of the licensees—not by reason of natural causes. Now, no argument is needed to support the proposition that an individual may not be allowed to segregate by means of a dyke or embankment a portion of a navigable stream, then dump garbage or soil or sand into it to render it shallow, and thereafter maintain that it could be disposed of by lease, because it is no longer navigable. That is exactly what these licensees did, according to the lower courts. And they should not be permitted to profit by their own wrong. Otherwise, it would be condoning usurpations of properties of the public domain. (*V. Insular Government vs. Naval*, 40 Off. Gaz. [11th Suppjp. 59.] [3a])

Petitioner's third contention attributes reversible error to the lower courts for having refused to direct reimbursement to him of the amount of P9,607 representing the value of the improvements he had made on the fishponds, in the bona fide belief that approval of his application had been legally proper. He does not specify the parties responsible therefor.

He does not evidently demand such reimbursement from the Secretary nor the Director, nor from Benedicta Ramos, his co-defendants, because he submitted no cross-claim against them[4] in his pleadings before the Pangasinan court. Besides, said officers are not now before this Court, since they declined to petition for review.[5]

As against plaintiffs we fail to see how this defendant can recover. He set up no counter-claim on this particular account in the Court of First Instance,⁶ they did not induce him to build those improvements; in fact they always objected to the issuance of the permit. They had to sue for annulment because it prejudiced their proprietary interest[7] inasmuch as they were owners of nearby fishponds which had been freely supplied with water and fish by said river—supply which was cut off or considerably diminished by the embankments constructed on the disputed area. And what is conclusive, the courts sustain their well-grounded objection.

Wherefore, perceiving no error in the decision, under review, we hereby affirmed it, with costs against petitioner-appellants. So ordered.

Paras, C. J., Padilla, Montemayor, Reyes, R., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[1] See *Lichauco vs. Apostol* 44 Phil. 338; *McDaniel vs. Apaeible* 62 Phil. 749; *Kuiz vs. Dalio et al.* 4b Phil. S23.

[2] *Campania General de Tabacos vs. French*, 39 Phil. 34; *Yneliausti vs. Wright*, 47 Phil. 866.

[3] Observe specially that neither the Director of Fisheries nor the Secretary declared that the non-navigability of that particular had been caused by natural causes—alluvial accretion for instance.

[3a] Commonwealth Act 383 punishes such dumping into rivers.

[4] See Rule 10, section 2.

[5] Maybe they are willing to annul the permit, or not to renew it. We overlook the question whether such acquiescence affected Diego's standing before the courts.

[6] His counter-claims were based on: (a) damage to his dykes by reason of unlawful opening and (&) groundless presentation of complaint. (Record on Appeal p. 40, 41.)

[7] Cf. *Samson vst Dionislo*, 11 Phil, 53\$; *Bautista vs. Alareon*, 23 Phil. 631.

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