

ALFREDO HILARIO, PLAINTIFF AND APPELLANT, VS. THE HON. MARCIANO D. BAUTISTA, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-18400. November 29, 1962*

Ponente: CONCEPCION, J.

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This is an appeal from an order of dismissal of the Court of First Instance of Tarlac, which has been forwarded to us by the Court of Appeals, only one question of law being involved in the appeal.

This case was instituted in said Court of First Instance on October 8, 1958. Plaintiff Alfredo Hilario alleged in the complaint that on January 11, 1958, defendant Marciano D. Bautista, as Under-Secretary of Public Works and Communications, rendered a decision granting the former thirty (30) days from receipt thereof—March 6, 1958—within which to demolish and remove the dam illegally constructed by him (plaintiff) across a given creek in Mayantoc, Tarlac, and stating that otherwise the Director of Public Works and Communication or his authorized agents would effect such removal at his (plaintiff's) expense, in pursuance of section 4, of Act No. 2152, as amended; that said decision was rendered in connection with Water Right Case No. 1958-2, filed by Cesar A. Manganaan—one of the defendants herein—for Water Right Concession, with the Department of Public Works and Communication on December 17, 1957; that plaintiff had no opportunity to present evidence in the investigation conducted in relation to said water right case; that he had acquired the right to use the water of the aforementioned creek since time immemorial; that since September 23, 1958, defendant Bautista, and the other defendants herein—namely, the Acting Director of Public Works, the Supervising Project Engineer of the Central Luzon Irrigation District, and the Irrigation Superintendent of the Tarlac River Irrigation Project—had threatened to demolish said dam of the plaintiff, if he failed to destroy and remove the same within a specified period; and that said contemplated action constitutes an invasion of plaintiff's aforementioned right, which he had acquired by prescription, to the damage and prejudice not only of the plaintiff, but, also, of numerous farmers who derive water, through his dam, for the irrigation of their respective fields. Plaintiff prayed, therefore, that a writ of preliminary injunction be issued ordering the defendants or their agents to refrain from carrying out the threatened demolition of said dam and that, after due trial, judgment be rendered declaring that plaintiff has the rightful and beneficial use of that portion of the waters of the creek above referred to where plaintiff's dam is and sentencing defendant Cesar A. Manganaan to pay attorney's fees and costs.

In due course, the defendants filed motions to dismiss the complaint, which were granted by the lower court. A reconsideration of the order of dismissal having been denied, plaintiff interposed the present appeal.

Sections 2 and 4 of Act No. 2152, otherwise known as the Irrigation Act, read:

"Sec. 2.—The power to grant appropriations of public waters is hereby vested in the Secretary of Commerce and Police (now Secretary of Public Works and Communication) in accordance with the provisions of this law, upon the recommendation and approval of the irrigation council hereinafter created."

"Sec. 4.—Any controversy between the persons claiming right to use of water of any stream shall be submitted

to the Secretary of Commerce and Police (now Secretary of Public Works and Communication) through the Director of Public Works, and his decision thereon shall be final unless appeal therefrom be taken to the proper court within thirty days after the date of the notification of the parties of said decision. In case of such appeal the court having jurisdiction shall try the controversy de novo."

It is not disputed that the administrative proceedings and the decision of the Undersecretary of Public Works and Communication in said Water Right Case No. 1958-2 were conducted and rendered upon the authority of said section 4 of Act No. 2152. It is, likewise, conceded that plaintiff had filed his complaint herein by way of appeal from the aforementioned administrative decision. The only issue before us is whether said appeal has been taken "within thirty days after the date of the notification of the parties of such decision", as provided in the above quoted section 4. The lower court decided the question in the negative, but plaintiff maintains otherwise. He contends that, although copy of said decision was served upon him on March 6, 1958, he (plaintiff) had not been notified of the denial of his motion for reconsideration of said decision until September 24, 1958, and that, from this date to October 8, 1958, when the case at bar was commenced, only fourteen (14) days had elapsed, and, hence, he concludes, within the 30-day period prescribed in said section 4.

The fallacy of this argument is obvious. Said period of thirty (30) days, should, pursuant to said section 4, be computed from receipt of copy of the decision of the Department of Public Works and Communication, on March 6, 1958. Although the filing of plaintiff's motion for reconsideration on March 28, 1958, or twenty-two (22) days later, suspended the running of the period to appeal, the same continued to run upon receipt of notice of the denial of the motion, on September 24, 1958. Said period did not begin to run once more (*Centenera vs. Hon. Nicasio Yatco*, et al, 106 Phil., 1064; 57 Off. Gaz. [27] 4923; *Lloren vs. Hon. Jesus de Veyra*, G. R. No. L-13929, March 28, 1962; *Roska vs. Hon. Modesto Ramoleta*, G. R. No. L-18266, June 30, 1962). The twenty-two (22) days that had elapsed from notice of the decision to the filing of the motion for reconsideration must be added to the fourteen (14) days that had run from notice of the denial of the motion for reconsideration to the institution of this case. In short, the same was filed thirty-six (36) days after notice of said decision, and, hence, beyond the statutory period.

Wherefore, the order appealed from is hereby affirmed, with costs against the plaintiff. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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