

SANTIAGO BANAAG, PETITIONER AND APPELLEE, VS. VICENTE SINGSON ENCARNACION, IN HIS CAPACITY AS SECRETARY OF AGRICULTURE AND COMMERCE, AND THE MUNICIPALITIES OF TAAL AND LEMERY, R...

G.R. No. L-493. April 19, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

Santiago Banaag prayed for a declaratory judgment under the provisions of Rule 66, upholding validity of a contract of lease executed in his favor on June 3, 1943, which reads as follows:

"June 3, 1943

"LEASE FOR THE EXCLUSIVE PRIVILEGE OF ERECTING FISH CORRAL IN PANSIPIT RIVER, TAAL AND LEMERY, BATANGAS.

"Pursuant to sections 1 and 4 of Executive Order No. 127, Mr. Santiago Banaag, of Taal, Batangas, is hereby granted the exclusive privilege of erecting one (1) fish corral, locally known as "Baklad", in Pansipit River, outlet of Taal Lake, Municipalities of Taal and Lemery, Province of Batangas.

"This lease for the exclusive privilege of erecting such fish corral is subject to all laws, orders and regulations of the military or naval authorities, the Philippine Executive Commission, and the Bureau of Forestry and Fishery, Department of Agriculture and Commerce on fisheries and fishing.

"The fish corral should be so constructed so as to leave at least one-third of the width of the river entirely upon for free navigation and the migration of fishes; and the lessee will abide by all existing rules and regulations for the conservation and protection of the fisheries in Lake Taal and its outlet.

"The lessee shall not transfer or sublet the privilege, or any rights required therein, without the previous approval of the Director of Forestry and Fishery.

"All fish caught under this lease, whether they be for military or civilian use, shall be sold or marketed thru the Manila Fisherman's Association, in case the fish are to be brought to Manila, pursuant to Executive Order No. 81.

"The daily record of fish caught should be presented monthly and the required fee P1 per ton gross of fish caught), paid to the Cashier and Disbursing Officer of the Bureau of Forestry and Fishery, Manila, or to the Municipal Treasurers of Taal or Lemery, Batangas, not later than the 10th day of the month. Payments made thereafter shall be subject to surcharge of 100 per cent.

"The annual rental of P8,501 which was the highest bid offered in a public auction conducted in the Bureau of Forestry and Fishery on May 29, 1943, was paid to the Cashier and Disbursing Officer of the Bureau of Forestry and Fishery on June 3, 1943, for which Official Receipt No. 0080695 was issued.

"The annual rental of P8,501 shall be paid not later than June 30th of each year. Failure to pay the annual rental on time will subject the lessee to a surcharge according to the following schedule: Rental paid from July 1st to July 31st, 10 per cent; August 1st to August 31st, 15 per cent; September 1st to September 30th, 20 per cent; October 1st to October 31st, 25 per cent; and after October 31st, 30 per cent.

"As a guaranty of good faith in the satisfactory compliance with the terms and conditions of the lease, the lessee has posted a real estate bond in the amount of P8,501 with Gaudencio Banaag" and Pedro Cruz and Basilia A. de Cruz as sureties, executed on June 1, 1943. This bond should last for five years.

"This license shall expire on June 30, 1948; it may be suspended or cancelled at any time as the circumstances demand and it should be presented upon demand of competent authorities."

Petitioner contends that said contract should be declared valid for the whole period of five years therein stipulated, from July 1, 1943, to June 30, 1948, while respondents maintain the theory that the contract or concession should be declared terminated as of the date of the liberation of the Province of Batangas or that, at least, subject to suspension or cancellation at the will of the Secretary of Agriculture and Commerce, or of any person who may competently act in his behalf.

The case was submitted for decision on December 19, 1945, upon the following stipulated facts:

"x x x x x

"1. That he is of age and resident of the municipality of Taal, Province of Batangas, Philippine Islands;

"2. That the respondent Vicente Singson Encarnacion is likewise of age, a resident of the City of Manila, Philippine Islands, and is the duly appointed, qualified and acting Secretary of Agriculture and Commerce of the Commonwealth of the Philippines and is sued herein in his capacity as such; and that the municipalities of Taal and Lemery are municipal corporations, organized and existing under the laws of the Commonwealth of the Philippines;

"3. That the petitioner is the exclusive concessionaire of the Pansipit fisheries of Batangas, Philippine Islands for a period of five years, from the first of July, 1943, to the 30th of June, 1948, granted to him by the Bureau of Forestry and Fishery, under the authority of the Secretary of Agriculture and Commerce, in pursuance to Executive Order No. 127 of the Executive Commission promulgated on January 23, 1943, in connection with the Revised Administrative Code and Act 4003, as amended by Act 471 of the Commonwealth of the Philippines;

"4. That the Executive Commission, upon whose authority the concession and adjudication of the exclusive authority of the lease of Pansipit fisheries were granted to the herein petitioner, was a de facto government, recognized and declared as such by our Supreme Court in a very recent case, *Co Kim Cham alias Co Cham vs. Eusebio Valdez Tan keh and .Judge Dizon of the Court of First Instance of Manila*, 75 Phil., 371:

"In view of the foregoing, it is evident that the Philippine Executive Commission, which was organized by Order No. 1, issued on January 23, 1942, by the Commander of the Japanese Forces, was a civil government established by the Military forces of occupation and therefore a de facto government of the second kind. It was not different from the government established by the British in Castine, Maine, or by the United States in Tampico, Mexico. As Hallecks says, "the government established over an enemy's territory during the military occupation may exercise all the powers given by the laws of war to the conqueror over the conquered, and is subject to all restrictions which that code imposes. It is of little consequence whether such government be called a military or civil government. Its character is the same and the source of its authority is the same. In either case it is a government imposed by the laws of war, and so far as it concerns the inhabitants of such territory or the rest of the world, those laws alone determine the legality or illegality of its acts." (Vol. 2, p. 466). The fact that the Philippine Executive Commission was a civil and not a military government and was

run by Filipinos and not by Japanese nationals, is of no consequence.'

"x x x x x

"6. That upon the adjudication and concession of said Pansipit fisheries, the petitioner took possession of them in June 1943, after having filed a bond in the sum of P5,501 with sufficient sureties, and incurred in expenses in the amount of P10,000, more or less, for the construction of corrals and for the acquisition of fishing equipments, etc.; and since then the petitioner continued and still continues in the peaceful and quiet possession of same.

"x x x x x

"9. That there is a dispute between the petitioner and the respondents herein as to the validity and construction of the deed of lease granted to the former, the latter contending that the aforementioned deed of lease is doubtful and not enforceable at present.

"10. That article 3, section 1, of the Constitution of the Philippines reads as follows:

" 'No Person shall be deprived of * * * property without due process of law, nor shall any person be denied the equal protection of the laws.'

"11. That under the provisions of rule 66, of the Rules of Court, any person interested under a deed, contract or other instrument, or whose rights are affected by a statute or ordinance, may bring an action to determine any question of construction or validity arising under the instrument and for a declaration of his rights or duties thereunder."

Petitioner advances the theory that the Executive Commission during the Japanese occupation, upon whose authority the concession and adjudication of the Pansipit fisheries were granted to him was a de facto government and, under certain limitations, obligations assumed by it in behalf of the country, will, in general, be respected by the government de jure when restored.

Respondents allege that the deed of lease granted to petitioner on July 3, 1943, even if valid at its inception, cannot bind the government of the Philippines, not only because it was not a party thereto, but because the Executive Commission was merely an instrumentality of the Japanese forces of occupation and, as such must be regarded only as administrator and usufructuary of the public buildings, real estate, forest, and agricultural works situated in the occupied country, and that the deed of lease in question should be deemed terminated with the establishment of the Commonwealth upon the principle that a government of occupation can let lands and buildings and make contracts in reference to them only for such time as it is in occupation, and that it is expressly stated in said deed of lease that the concession "may be suspended or cancelled at any time as the circumstances demand and it should be presented upon the demand of competent authorities."

The parties agreed that on August 17, 1945, the mayors of Taal and Lemery required Banaag to return the possession of the Pansipit fisheries to said municipalities.

The trial court, in a decision rendered on February 11, 1946, declared the deed of lease valid and legitimate for all legal purposes. Respondents appealed against said decision.

This case has been submitted for decision since January, 1947, as stated in the resolution of this Court of December 23, 1947, in relation with the petition of December 20, 1947, filed by respondents praying for early hearing on the case. Deliberation for decision could have taken place only in February, 1949.

On June 21, 1948, petitioner filed a petition praying for the issuance of a writ of preliminary injunction ordering the municipalities of Taal and Lemery to refrain from taking over on July 1, 1948, or on any date thereafter, the

Pansipit fisheries until this case is decided by the Supreme Court, and to permit petitioner to continue with the administration and occupation of said fisheries in the meantime. The petition was filed in view of the adoption by the municipalities of Taal and Lemery of a resolution to take away from petitioner the Pansipit fisheries on July 1, 1948, after the expiration of the 5-year period of the lease contract executed on June 3, 1943. The petition was denied by our resolution of June 23, 1948.

Respondents appeal hinges on two main questions, one based on article 55, section III of the Hague Conventions of 1907, and the other on the context of the deed of lease.

Article 55, section III of the Hague Conventions of 1907, provides:

"The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forest, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties and administer it according to the rules of usufructuary."

They invoked the United States War Department rules of Land Warfare, 1934, No. 316, which declares that "a lease or contract should not extend beyond the conclusion of the war," reiterating the general rule embodied in article 480 of the Civil Code to the effect that "* * * all the contracts he may make as such usufructuary shall terminate at the expiration of the usufruct * * *."

Petitioner and appellee tries to advance the theory that the words "real estate," of the above quoted article 55 of the Hague Conventions of 1907, do not include all and every species of real property, failing, however, to state what should be excluded or even to state that the fisheries are among the ones excluded. There cannot be any question that the words "real estate" include said fisheries and, accordingly, the Japanese armed forces, in whose representation the Executive Commission and its agencies executed the deed of lease in question, had ceased, after liberation, to be the administrator and usufructuary of the fisheries in question and, therefore, the deed of lease has to be regarded as null and void since then.

Furthermore, although the belligerent occupant may appropriate the produce of public immovables belonging to the State, the occupant cannot, as correctly stated by Oppenheim, appropriate "the produce of those belonging to municipalities, or of those which, although they belong to the hostile State, are permanently set aside for religious purposes, for the maintenance of charitable and educational institutions, or for the benefit of art and science," as, according to article 56 of the Hague Regulations, such property is to be treated as private property. (Page 308, International Law, by Oppenheim, Vol. II, edited by Lauterpacht.) The fisheries in question belong to the municipalities of Taal and Lemery.

The said deed of lease having expressly provided that the concession "may be suspended or cancelled at any time as the circumstances demand"—and no one questions the authority of the municipalities of Taal and Lemery, to which the Pansipit fisheries belong, to suspend or cancel the deed of lease in behalf of the Philippine Government and it appearing that said municipalities have actually demanded from petitioner the return of the administration and occupation of said fisheries since August 17, 1945, it is evident that petitioner lost since then his right to continue administering and occupying said fisheries.

The other questions raised in respondents brief need not be considered in view of the result of the discussion of the above two main questions.

The appealed decision is reversed and the deed of lease executed on June 3, 1943, by Florencio Tamesis, Director of Forestry and Fishery, in favor of petitioner Santiago Banaag, is declared cancelled and without effect since the liberation of the Province of Batangas or, at least, since August 17, 1945. The Pansipit fisheries shall be returned by petitioner to the municipalities of Taal and Lemery, if he has not already done so.

Moran, C.J., Feria, Pablo, Bengzon, Briones, Tuason, Montemayor, and Reyes, JJ., concur.
Paras, J., concurs in the result.

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