

CALIXTO SAÑADO, PETITIONERS, VS. THE COURT OF APPEALS AND SIMEON G. NEPOMUCENO, RESPONDENTS.

G.R. No. 108338. April 17, 2001

Ponente: MELO, J.

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MELO, J.:

This case is one of the older ones which was raffled to undersigned ponente pursuant to the Court's Resolution in A.M. 00-9-03 dated February 27, 2001 and concerns a petition seeking the reversal of the decision of the Court of Appeals dated September 11, 1992 and its resolution dated October 15, 1992 denying reconsideration. The Court of Appeals modified the decision of Branch 18 of the Regional Trial Court of the Ninth Judicial Region stationed in Pagadian City which was rendered in favor of herein petitioner. Disposed thus the Court of Appeals in its CA-G.R. CV No. 23165 per Justice Montenegro, with Justices Paras and Ordoñez-Benitez concurring:

WHEREFORE, premises considered, judgment is hereby rendered:

(a) affirming the judgment appealed from with modification as follows:

1. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno to pay the share of plaintiff-appellee in the amount of P168,000.00 covering the period of four (4) years from February 19, 1975 to February 19, 1979, with only eight (8) hectares considered to be productive;
2. Ordering defendant-appellant Simeon G. Nepomuceno to pay reasonable rental of the fishpond area in question from February 20, 1979 to March 20, 1980 in the amount of P25,000.00;
3. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and defendant Edgar J. Chu, to jointly pay plaintiff-appellee the reasonable rentals of the fishpond area in question at the rate of P25,000.00 per annum from March 21, 1980 to January 2, 1985;
4. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and defendant Edgar J. Chu, to jointly and severally pay plaintiff-appellee the sum of P100,000.00 as attorney' fees;
5. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and Edgar J. Chu to pay the costs; and

(b) reversing the decision appealed from insofar as it ordered "defendants jointly to restore possession and control of the fishpond area in question to the plaintiff".

(pp. 37-38, Rollo.)

The generative facts are chronicled as follows:

The controversy began on October 28, 1969 when the defunct Philippine Fisheries Commission issued in favor of petitioner Sañado Ordinary Fishpond Permit No. F-5810-X covering an area of fifty hectares situated in Bo. Monching Siay, Zamboanga del Sur. As a consequence, petitioner on January 6, 1972 executed a deed of quitclaim involving twenty hectares of the original area of fifty hectares in favor of his uncle and brother

(Decision of the Office of the President, p. 46, Rollo).

On July 16, 1973, petitioner as First Party and private respondent Nepomuceno as Second Party executed a contract entitled "Contract of Fishpond Development and Financing", which pertinently provided:

That the FIRST PARTY is the possessor and holder of a piece of agricultural land with an area of approximately FIFTY (50) HECTARES COVERED BY Ordinary Fishpond Permit No. F-5810-X situated at Monching, Siay, Zamboanga del Sur;

That the SECOND PARTY agreed to undertake full expenses for the development of an area of THIRTY (30) hectares, out of the approximately FIFTY (50) hectares, covered by Ordinary Fishpond Permit No. F-5810-X of the FIRST PARTY and which parcel is described and bounded as follows:

xxx xxx xxx

That the development which shall be undertaken by the SECOND PARTY on the aforesaid area of THIRTY (30) hectares, consists of:

a -- Construction of dumps; gates, buildings and other accessories pertinent to the full development of the fishpond area;

b -- Construction of dikes and the purchase of Bangus Fry for the said fishpond;

That the whole amount invested by the SECOND PARTY for the development of the aforesaid area for fishpond shall first be recovered out of the products of the fishpond area;

That after the full investment of the SECOND PARTY shall have been recovered, the sharing basis with the FIRST PARTY shall immediately commence for a period of Four (4) years and the sharing basis shall be in accordance with the following percentage:

THIRTY FIVE PERCENT (35%) of the Net per harvest - FIRST PARTY;

SIXTY FIVE PERCENT (65%) of the Net per harvest - SECOND PARTY;

That after the expiration of the Four (4) years of sharing basis on the Net harvest, this contract of sharing basis shall be renewed at the option of the second party for a period of another Four (4) years;

(pp. 26-27, Rollo.)

On July 18, 1973, the contracting parties executed a handwritten agreement, modifying the earlier agreement by excluding the area of ten hectares already cultivated and fully developed by petitioner and providing that "the contract will be renewed for another four (4) years with another agreement beneficial to both parties." Simply stated, instead of the renewal being at the option of private respondent, it shall be renewed on terms acceptable to both petitioner and private respondent.

Based on the agreement as modified by the aforestated handwritten agreement, private respondent proceeded with the development of the fishpond area, excluding the area of ten hectares already developed by petitioner.

On September 28, 1979, the Director of Fisheries and Aquatic Resources recommended to the then Ministry of Natural Resources the conversion of Ordinary Fishpond Permit No. F-5810-X into a 25-year fishpond loan agreement which covered a reduced area of 26.7450 hectares (p. 165, Rollo). Pursuant to said recommendation, Fishpond Lease Agreement No. 3090 was issued to petitioner on October 8, 1979.

On March 20, 1980, private respondent waived his rights, interest, and participation over the fishpond area in favor of one Edgar J. Chu.

On March 28, 1980, apparently to oppose the issuance of the 25-year fishpond lease agreement in favor of petitioner, private respondent informed the Bureau of Fisheries and Aquatic Resources in writing of his financing/development contract with petitioner and that the fishpond was almost fully developed at his expense (Ibid.).

Parenthetically, sometime that year, private respondent submitted to petitioner an accounting of the income or proceeds of the fishpond as well as his expenditures in the development thereof (tsn, July 5, 1983, pp. 10-14). This document, marked as Exhibit "D" and dated February 19, 1975, showed earnings of the fishpond in the amount of P98,106.35, expenses and advances in the sum of P87,405.25, and cash on hand of P10,701.10. The original copy thereof was filed with the Bureau of Fisheries and Development as evidenced by the stamp of the office thereon.

On July 17, 1981, petitioner filed a complaint against private respondent and Edgar J. Chu with the regional trial court docketed as Civil Case No. 2085 for recovery of possession and damages, wherein he alleged that on February 19, 1975, private respondent had already recovered his investment in full; that as of said date, the total earnings had amounted to P98,106.35 leaving an excess of P10,701.10 to be divided between petitioner and private respondent at 35-65 sharing; that the 4-year period during which petitioner and private respondent would share the net harvest commenced on February 19, 1975 and expired on February 18, 1979; that after February 18, 1975, private respondent has not accounted for the income of the fishpond and has failed and refused, in gross and evident bad faith despite renewed and repeated demands, to deliver petitioner's share of the net harvest for four years which totaled P250,000.00 more or less.

Meanwhile, during the pendency of the aforesaid Civil Case No. 2085 with the trial court, an order was issued by then Minister of Agriculture and Food Salvador H. Escudero III, on January 28, 1985 cancelling Fishpond Lease Agreement No. 3090 and forfeiting the improvements thereon in favor of the government. Later, said order was reconsidered to the extent that private respondent was given priority to apply for the area and that his improvements thereon were not considered forfeited in favor of the government. Petitioner elevated the matter to the Office of the President but his appeal was dismissed in a decision rendered on July 31, 1989.

On June 19, 1989, the trial court rendered its decision in Civil Case No. 2085, the dispositive portion of which reads as follows:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. Ordering defendants jointly to restore possession and control of the fishpond area in question to the plaintiff;
2. Declaring the Waiver of All Rights, Interests and Participations Over a Fishpond Area (Part) (Exhibit "E") executed by defendant Nepomuceno in favor of defendant Edgar Chu as null and void;
3. Ordering defendant Simeon Nepomuceno to pay the share of plaintiff in the amount of P168,000.00 covering the period of four years from February 19, 1975 to February 19, 1979, with only eight (8) hectares considered to be productive;
4. Ordering defendants to jointly pay plaintiff the rentals of the fishpond area in question at the reasonable rate of P25,000.00 per annum reckoned from February 19, 1979 up to the time the same fishpond area shall have been duly restored to the possession of the plaintiff;
5. Ordering defendants jointly and severally pay plaintiff the sum of P100,000.00 as attorney's fees; and
6. To pay the costs.

IT IS SO ORDERED.;

(pp. 24-25, Rollo.)

Private respondent and Edgar J. Chu both appealed the trial court's decision. However, for failure to file brief, Chu's appeal was dismissed.

For his part, private respondent maintained that: (a) the trial court erred in ruling that private respondent has fully recovered his financial investment in the fishpond area in question as of February 19, 1975 (hence the sharing of the net harvest should not commence on said date); (b) the trial court erred in ruling that private respondent cannot waive his right to finance the development of the fishpond area; and (c) the trial court committed grave error and injustice in not dismissing petitioner's complaint and in ordering respondent to pay petitioner the amounts of P168,000.00 as petitioner's share covering the period beginning February 19, 1975 to February 19, 1979, P25,000.00 per annum constituting reasonable rentals from February 19, 1979 up to the time the fishpond area shall have been restored to petitioner, as well as P100,000.00 as attorney's fees.

As mentioned earlier, the Court of Appeals affirmed the trial court's decision as regards petitioner's share in the produce from February 19, 1975 to February 19, 1979 (P168,000.00), the reasonable rental of the fishpond area (P25,000.00 per annum) from February 20, 1979 to March 20, 1980 and from March 21, 1980 to January 2, 1986, as well as attorney's fees (P100,000.00), and costs.

The petition before us hinges on the argument that the Court of Appeals entertained evidence and/or other matters not duly covered or taken up in the trial of Civil Case No. 2085. Petitioner posits that the appellate court committed grave abuse of discretion in doing so and in applying said matters in its disposition of the case. Verily, petitioner's grumble and protest is confined to that portion of the June 19, 1989 decision of the Court of Appeals directing "defendants jointly to restore possession and control of the fishpond area to the plaintiff."

Petitioner points out that the July 31, 1989 decision rendered by the Office of the President through Deputy Executive Secretary Magdangal B. Elma is a new matter which should not have been treated by the appellate court with legal force and effect because "it was merely incidental to the propriety or impropriety of the issuance of a writ of preliminary mandatory injunction respecting the earlier Writ of Execution granted by the trial court in favor of Calixto Sañado" (p. 19, Rollo).

In this light, petitioner mentions that on December 11, 1990, during the pendency of the appeal of Civil Case No. 2085, he filed with the appellate court a motion for execution pending appeal, stating that the appeal of Edgar J. Chu (who was said to be the actual possessor of the area) had been dismissed. The appellate court denied the same. On May 21, 1991, petitioner filed another motion for issuance of writ of execution, claiming that the Sheriff's Return of Service dated June 6, 1991 stated that "the restoration to and/or placement of plaintiff Sañado thereof on said fishpond area in controversy x x x, are hereby considered complied with." Thereafter, private respondent filed a petition for relief from judgment and or execution which resulted in an order dated June 7, 1991 restoring possession of the fishpond area to him. Petitioner then proceeds to mention that on June 11, 1991, private respondent filed with the appellate court an "Ex-Parte Urgent Motion for Issuance of Writ of Preliminary Mandatory Injunction", alleging that the trial court has not yet issued the corresponding writ of preliminary mandatory injunction to restore private respondent to the possession of the subject fishpond area. Petitioner stresses that it was at this particular stage of the proceedings that the subject July 31, 1989 Malacañang decision was initially mentioned by private respondent who thereby argued that the trial court failed to consider that prior to the issuance of the writ of execution, the restoration of the subject fishpond to herein petitioner would in effect destroy the essence of said Malacañang decision which affirmed the cancellation of the Fishpond Lease Agreement No. 3050. In consequence thereof, the appellate court issued a resolution dated June 14, 1991 ordering

that anyone who had anything to do with the enforcement of the writ of execution issued by the trial court was restrained temporarily from enforcing said writ, such that private respondent, who was acknowledged to be in possession of the subject property consisting of five ponds at the time of the issuance of the aforesaid writs; should remain in the possession thereof until further notice by the court. Later, the trial court itself ordered the immediate restoration of possession of the subject fishpond area to herein private respondent. An exchange of pleadings followed where, as an attachment to his comment, private respondent presented a photostat copy of the subject July 31, 1989 decision of the Office of the President.

Setting aside the factual ramifications of the instant case, we find that the only issue thereof refers to the legal effect and evidentiary weight of the July 19, 1989 decision rendered by the Office of the President in relation to Civil Case No. 2085 and CA-G.R. CV No. 23165.

Let us first examine the premise and basis of the aforesaid July 31, 1989 decision of the Office of the President. A perusal thereof reveals that it resolved the appeal filed by petitioner and the Samahang Kabuhayan ng Barangay Monching from the order of the then Minister of Agriculture and Food, dated January 28, 1985 which cancelled the Fishpond Lease Agreement No. 3090 issued to petitioner and forfeited in favor of the government the improvements thereof, including the bond, and ruled that the area with the improvements shall be disposed of in accordance with Presidential Decree No. 704 (Revising and Consolidating All Laws and Decrees Affecting Fishing and Fisheries) to any qualified applicant pursuant to applicable rules and regulations thereon. Said cancellation was premised on the following factors: (1) violation by petitioner of the terms of the fishpond lease agreement and of Fisheries Administrative Order (FAO) 125 (s. 1979) when he transferred/subleased his leasehold rights without government approval; and (2) failure of petitioner to comply with the development requirements.

In the subject July 31, 1989 decision, the Office of the President, through then Deputy Executive Secretary Magdangal B. Elma, upholding the January 28, 1985 Escudero Order, dismissed petitioner's appeal and affirmed the cancellation of the subject Fishpond Lease Agreement No. 3090 on the following grounds: (1) Section 5(k) of Fisheries Administrative Order (FAO) No. 125 prohibits the awardee of a fishpond lease agreement from transferring or subletting the fishpond granted to him without the previous consent or approval of the ministry concerned, and similarly, the lessee shall not sublet or enter into a sub-lease contract over the area or portion covered by the fishpond lease agreement; (2) the Sañado-Nepomuceno contract is not the only instance when petitioner transferred/subleased his rights over the fishpond area without approval of the appropriate ministry head since on January 6, 1972, he transferred 20 hectares of the original 50-hectare fishpond area to his brother and uncle, and on September 12, 1982, he transferred his rights over the 26.7450 area to the Samahang Kabuhayan ng Barangay Monching Association which later assigned its leasehold rights in favor of the Development Bank of the Philippines in consideration of the amount of P653,153.46; and (3) petitioner's failure to develop forty percent of the area within three years and to completely develop the remaining portions within five years, both to commence from the date of the issuance of the lease agreement in accordance with the terms and conditions of the lease agreement (out of the whole area occupied by petitioner, only four hectares more or less, corresponding to 60% to 70% was developed). The appellate court thus held that all these violations are recognized grounds for the termination and cancellation of a fishpond lease agreement under Section 9 of the FAO No. 125, series of 1979. As a last note, the subject decision stated that it mainly deals with the validity of the cancellation by the Ministry of Agriculture and Food of petitioner's Fishpond Lease Agreement No. 3090 for violation of the terms thereof and/or fisheries rules, and that a decision in Civil Case No. 2085 which is a possessory action has hardly any bearing in the resolution of the aforestated appeal.

True, the subject July 31, 1989 decision was rendered a few days after the trial court handed down its decision

ordering herein petitioner to be restored to the possession of the subject fishpond area. However, such fact is of no moment considering that said decision of the trial court did not attain finality and was seasonably appealed. In other words, the July 31, 1989 decision was rendered while Civil Case No. 2085 was pending appeal. It is thus proper to consider the same a supervening event the existence of which cannot just be disregarded by the appellate court.

What is the nature of the July 31, 1989 Malacañang decision and what is its effect on the resolution of Civil Case No. 2085? The action of an administrative agency in granting or denying, or in suspending or revoking, a license, permit, franchise, or certificate of public convenience and necessity is administrative or quasi-judicial. The act is not purely administrative but quasi-judicial or adjudicatory since it is dependent upon the ascertainment of facts by the administrative agency, upon which a decision is to be made and rights and liabilities determined (De Leon, *Administrative Law: Text and Cases*, 1993 ed., pp. 143-144). As such, the July 31, 1989 decision of the Office of the President is explicitly an official act of and an exercise of quasi-judicial power by the Executive Department headed by the highest officer of the land. It thus squarely falls under matters relative to the executive department which courts are mandatorily tasked to take judicial notice of under Section 1, Rule 129 of the Rules of Court. Judicial notice must be taken of the organization of the Executive Department, its principal officers, elected or appointed, such as the President, his powers and duties (Francisco, *Evidence [Rules 128-134]*, 1996 ed., p. 24, citing *Canal Zone vs. Mena*, 2 Canal Zone 170).

The rendition of the subject July 31, 1989 Malacañang decision is premised on the essential function of the executive department - which is to enforce the law. In this instance, what is being enforced is Presidential Decree No. 704 which consolidated and revised all laws and decrees affecting fishing and fisheries. Such enforcement must be true to the policy behind such laws which is "to accelerate and promote the integrated development of the fishery industry and to keep the fishery resources of the country in optimum productive condition through proper conservation and protection" (Section 2, P.D. No. 704).

Further, the issue of whether or not petitioner is still entitled to possession of the subject fishpond area is underpinned by an ascertainment of facts. And such task belongs to the administrative body which has jurisdiction over the matter - the Ministry of Agriculture and Food. The policy of the courts as regards such factual findings is not to interfere with actions of the executive branch on administrative matters addressed to the sound discretion of government agencies. This policy is specially applicable in the grant of licenses, permits, and leases, or the approval, rejection, or revocation of applications therefor (*Manuel vs. Villena*, 37 SCRA 745 [1971]). Such respect is based on the time-honored doctrine of separation of powers and on the fact that these bodies are considered co-equal and coordinate rank as courts. The only exception is when there is a clear showing of capricious and whimsical exercise of judgment or grave abuse of discretion, which we find absent in the case at bar.

The reasons given by the Office of the President in dismissing petitioner's appeal are quite clear. Transferring or subletting the fishpond granted to a licensee without the consent or approval of the administrative body concerned, as well as the failure to develop the area required by the fisheries rules, are definitely solid and logical grounds for the cancellation of one's license. Withal, if petitioner disagrees with the decision of the Office of the President, he should have elevated the matter by petition for review before the Court of Appeals for the latter's exercise of judicial review. Nowhere in the record do we find such action on petitioner's part.

Understandably, to restore petitioner to the possession of the fishpond area is to totally disregard the July 31, 1989 decision of the Office of the President which can hardly be described as an unrelated matter, considering its patent implications in the result of both Civil Case No. 2085 and CA-G.R. CV No. 23165. For how could the appellate court award possession to the very same party whose license has been cancelled by the executive or

administrative officer tasked to exercise licensing power as regards the development of fishpond areas, and which cancellation has been sustained by the Office of the President? Petitioner must remember the essence of the grant of a license. It is not a vested right given by the government but a privilege with corresponding obligations and is subject to governmental regulation. Hence, to allow petitioner to possess the subject area is to run counter to the execution and enforcement of the July 31, 1989 decision which would easily lose its “teeth” or force if petitioner were restored in possession. In addition, as pointed out in the July 31, 1989 decision, petitioner is not assailing the May 14, 1985 order of Minister Escudero which gave private respondent priority in applying for the subject area and which considered respondent's improvements thereon as not forfeited in favor of the government. In this regard, the July 31, 1989 decision stated:

The Escudero Order of May 14, 1985 stands unchallenged. As such, the herein appeal of Sañado, et al., from the Escudero Order of January 25, 1985 remains the only obstacle, on the administrative level, to the said May 14, 1985 Order being considered in force and effect.

(p. 50, Rollo.)

Accordingly, the Court of Appeals correctly held --

. . . The issue (on waiver of rights and interests and participation by respondent) is rendered moot and academic by the order of then MAF Minister Salvador H. Escudero III cancelling Fishpond Lease Agreement No. 3090 of plaintiff-appellee which was affirmed on appeal by the Office of the President. The lease agreement having been cancelled, possession of the fishpond area covered by the lease agreement cannot be returned to plaintiff-appellee even if the waiver of rights, interests, and participation is held null and void . . .

(p. 31, Rollo.)

In addition, petitioner considers the July 31, 1989 decision a foreign matter which was not raised in the court below and hence should not have been treated by the Court of Appeals with legal force and effect. To reiterate, petitioner also notes that the decision of the Office of the President is dated July 31, 1989, whereas the decision of Civil Case No. 2085 was rendered June 19, 1989. Further, petitioner argues that the subject decision of the Office of the President was merely incidental to the propriety or impropriety of the issuance of a writ of preliminary mandatory injunction to restore private respondent to the possession of the fishpond area after a writ of execution was issued by the trial court in favor of petitioner.

Rules of fair play, justice, and due process dictate that parties cannot raise for the first time on appeal issues which they could have raised but never did during the trial (*Reburiano vs. Court of Appeals*, 301 SCRA 342 [1999]). Significantly, private respondent could have not been expected to present the July 31, 1989 decision during the trial because it was obviously not yet extant during that time. But one thing is for sure, petitioner knew that there was a pending administrative case (O.P. Case No. 2958) on the subject fishpond area. He knew about the appeal since he was precisely the one who filed it, challenging the January 28, 1985 order of then Minister Escudero which cancelled Fishpond Lease Agreement No. 3090. Hence, the presentation of the July 31, 1989 decision before the appellate court had caused no undue surprise upon petitioner who, we repeat, was the one who filed the appeal.

Verily, the trial court's decision of July 19, 1989 did not attain finality. It was appealed within the reglementary period. If the court could modify or alter a judgment even after the same has become executory whenever circumstances transpire rendering its decision unjust and inequitable, as where certain facts and circumstances justifying or requiring such modification or alteration transpired after the judgment has become final and executory (*David vs. Court of Appeals*, 316 SCRA 710 [1999]) and when it becomes imperative in the higher interest of justice or when supervening events warrant it (*People vs. Gallo*, 315 SCRA 461 [1999]), what more if

the judgment has not yet attained finality?

It is thus plain in the case at bar that the July 31, 1989 decision of the Office of the President is a substantial supervening event which drastically changed the circumstances of the parties to the subject fishpond lease agreement. For to award possession to petitioner is futile since he has lost the fishpond license. In point is our ruling in *Baluyot vs. Guiao* (315 SCRA 396 [1997]) where we held that judgment is not confined to what appears on the face of the decision, but also covers those necessarily included therein or necessary thereto. For example, where the ownership of a parcel of land is decreed in the judgment, the delivery of the possession of the land should be considered included in the decision, it appearing that the defeated party's claim to the possession thereof is based on his claim of ownership. By analogy, the July 31, 1989 decision, is not confined to the validity of the cancellation by the Ministry of Agriculture and Food of petitioner's Fishpond Lease Agreement No. 3090 for violation of the terms thereof and/or the fisheries rules. The right to possess the subject fishpond area is necessarily included in the decision. The cancellation or revocation of petitioner's license necessarily eliminated his right to possess the same since the new licensee would then be the one to enjoy this right.

WHEREFORE, the instant petition is hereby DENIED for lack of merit. The September 11, 1992 decision of the Court of Appeals in CA-G.R. CV No. 23165 is hereby AFFIRMED.

SO ORDERED.

Vitug, Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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