

CITY OF BAGUIO, PLAINTIFF AND APPELLEE, VS. THE NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, DEFENDANT AND APPELLANT.

G.R. No. 12032. August 31, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff, a municipal corporation, filed on April 25, 1956, in the Court of First Instance of Baguio, a complaint for declaratory relief against defendant, a public corporation created by Republic Act No. 1383, contending that said Act does not include within its purview the Baguio Waterworks System; that assuming that it does, said Act is unconstitutional because it has the effect of depriving plaintiff of the ownership, control and operation of said waterworks system without compensation and without due process of law, and that it is oppressive, unreasonable and unjust to plaintiff and other cities, municipalities and municipal districts similarly situated.

On May 22, 1956, defendant filed a motion to dismiss on the ground that Republic Act No. 1383 is a proper exercise of the police power of the State; that assuming that said Act contemplates an act of expropriation, it is still a constitutional exercise of the power of eminent domain; that at any rate the Baguio Waterworks System is not a private property but "public works for public service" over which the Legislature has control; and that the provisions of said Act being clear and unambiguous, there is no necessity for construction.

On June 21, 1956, the Court, acting on the motion to dismiss as well as on the answer and rejoinder filed by both parties, denied the motion and ordered defendant to file its answer to the complaint. On July 6, 1956, defendant filed its answer reiterating and amplifying the grounds already advanced in its motion to dismiss, adding thereto that the action for declaratory relief is improper for the reason that the Baguio Waterworks System has already been transferred to defendant pursuant to Republic Act No. 1383 or, if such has not been done, there has already been a breach of said Act.

On August 14, 1956, the parties submitted a written stipulation of facts and filed written memoranda. And after allowing plaintiff to file a supplementary complaint, the Court on November 5, 1956, rendered decision the dispositive part of which reads "This Court, * * * holds that the waterworks system of the City of Baguio falls within the category of 'private property', as contemplated by our Constitution and may not be expropriated without just compensation—and that section 8 of Republic-Act No. 1383 provides for the exchange of the nawasa assets for the value of the waterworks system of Baguio is unconstitutional as this is not 'just compensation' " Defendant filed a motion for reconsideration, and upon its denial, it took the present appeal.

The issues posed in this appeal are: (1) plaintiff's action for declaratory relief is improper because there has already been a breach by plaintiff of Republic Act No. 1383 (2) Republic Act No. 1383 does not contemplate the exercise of the power of eminent domain but the assertion of the police power of the State; and (3) assuming arguendo that Republic Act No. 1383 involves the exercise of the power of eminent domain the same does not violate our Constitution.

Before we proceed with the discussion of these issues, there is need to state some facts necessary for their determination since the proper application of the principles of law that may be pertinent would greatly depend upon them. Plaintiff is a municipal corporation organized under its Charter with principal place of business in the City of Baguio, while defendant is a public corporation created by Republic Act No. 1383 with principal place of business in the City of Manila. Under section 2553 of its Charter, plaintiff is maintaining the Baguio Waterworks System under a certificate of public convenience, the same being financed by its own funds, the Baguio general fund, and funds advanced by the National Government. The assets of said system as of December 31, 1955 were reported to be P1,408,795.98. The system supplies only the City of Baguio, its inhabitants, and transient visitors, and, as provided for in an ordinance, it grants to the employees of the City one fifth (1/5) of cubic meter free for every one peso of their total salary per annum as part of their compensation. The employees of the National Government are not given this privilege but there is a proviso in plaintiff's Charter which says: "In consideration of the exemption from taxation of the extensive real state-holdings of the National Government within the limits of the City, of the expenses of improvements which the Government of said City is required to make by reason of the location therein of offices of the National Government, and of free services in connection with said offices, there is created a permanent and continuing appropriation from any funds in the National Treasury not otherwise appropriated, equal to fifty per centum of the expenses of the Government of the City exclusive of those accounts which appear as expenses by reason of inter-departmental charges and charges against the National Government for services and supplies."

The purposes for which defendant was created are expressed in section 1 of Republic Act No. 1383, which we quote:

"Creation of the National Waterworks and Sewerage Authority; its general purposes; Zone and extent of jurisdiction comprised by it; domicile and place of business of the corporation.—For the purpose of consolidating and centralizing all waterworks, sewerage and drainage systems in the Philippines under one control, direction and general supervision, there is hereby created a public corporation to be known as the National Waterworks and Sewerage Authority, which shall be organized within one month after the approval of this Act.

The National Waterworks and Sewerage Authority shall own and/ or have jurisdiction, supervision and control over all territory now embraced by the Metropolitan Water Districts as well as all areas now served by existing government-owned waterworks in the boundaries of cities, municipalities and municipal districts in the Philippines including those served by the waterworks and wells and drills sections of the Bureau of Public Works; Provided, That the Board of Director of the National Waterworks and Sewerage Authority, may from time to time extend its territory by the admission or inclusion of any areas served by such works located in any other city, municipality or municipal districts in the Philippines.

The jurisdiction of the National Waterworks and Sewerage Authority shall extend to the construction, maintenance, operation and control of non-self-supporting and/or non-revenue producing water systems and sanitary works, whether undertaken at the expense of the Authority or through subsidy of the National Government as provided in Section ten of this act."

And to accomplish the above purposes, the following was provided in section 8 of the same act:

"Dissolution of the Metropolitan Water District; transfer to the Authority of its records, assets and liabilities; transfer to the Authority of entities, waterworks and sewerage systems in the cities, municipalities, municipal districts and other government waterworks and sewerage systems. The present Metropolitan Water District created under Act Number Two Thousand eight hundred thirty-two, as amended, is hereby dissolved, and its records, assets and liabilities are transferred to the Authority. All existing government owned waterworks and sewerage systems in cities, municipalities, and municipal districts, including springs and other water sources,

as well as the waterworks and sewerage bonds, sinking funds, and all indebtedness in general of the said Metropolitan Water District, and government-owned waterworks and sewerage systems are transferred to the National Waterworks and Sewerage Authority, and the Board is hereby authorized and directed to receive and assume all such assets and liabilities on behalf of the said Authority and in turn to pledge such assets as security for the payment of the waterworks and sewerage bonded debt.

The net book value of the properties and assets of the Metropolitan Water District and of government-owned waterworks and sewerage systems in cities, municipalities, or municipal districts, and other government-owned waterworks and sewerage systems shall be received by the Authority in payment for an equal value of the assets of the National Waterworks and Sewerage Authority.

The references made to the Metropolitan Water District or to any existing government-owned waterworks and sewerage system in any city, municipality or municipal district and any waterworks and sewerage system under the Bureau of Public Works, in any Act or Executive Order or Proclamation of the President of the Philippines or in any city or municipal ordinance which is still in force, shall be deemed to be a reference to the National Waterworks and Sewerage Authority created by this Act."

On September 19, 1955, the President of the Philippines issued Executive Order No. 127 outlining the procedure for the transfer of government-owned waterworks and sewerage systems in the provinces, cities, and municipal"ities to defendant and provided for a time limit for such transfer, which is. "at the earliest time possible but not exceeding 90 days from the date of said order."

And on March 15, 1956, defendant, implementing said Executive Order, issued Office Memorandum No. 7 providing, among other things, the following:

"(1) Pending the establishment of the Waterworks district offices of the Authority, District and City Engineers, shall continue to be in charge of the operation and maintenance of all existing waterworks systems, including the repair and improvement thereof and the construction of new. waterworks projects in their respective districts in accordance with the Memorandum of the Secretary of Public Works and Communications dated October 25, 1955, quoted in the Memorandum of the Director of Public Works dated October 27, 1955. Likewise they shall continue approving vouchers and payrolls for salaries and essential services chargeable against waterworks funds as heretofore,, provided that said expenses do not exceed the appropriations in the approved budget for the preceding fiscal year.

(2) Pending the establishment of the Waterworks district offices of the Authority which shall ultimately include an auditing force, Provincial and City Auditors shall, as heretofore, audit the accounts of the different waterworks system in their respective jurisdictions in accordance with Provincial Auditor's Memorandum No. 151 to Provincial and City Auditor's dated December 7, 1955.

(3) Pending the establishment of the waterworks district offices of the Authority, Provincial, City and Municipal Treasurers shall continue to perform the work of handling the collections and disbursements of funds of the waterworks systems and artesian wells projects in their respective jurisdictions in accordance with Provincial Circular (unnumbered) of the Secretary of Finance to all Provincial and City Treasurers dated November 23, 1955.

(4) Provincial Waterworks Boards, Provincial Boards, Municipal Boards, or City Councils of cities and municipal Councils of Municipalities and municipal districts ipso facto ceased to have control and supervision over waterworks system within their respective territorial jurisdictions upon the formal organization of the National Waterworks and Sewerage Authority in accordance with the provisions of Republic Act No. 1383. All budgets and plantillas of personnel of said waterworks personnel, including collectors who were formerly directly under the Provincial, City or Municipal Treasurers, whether permanent, temporary or emergency, shall be effective only after their approval by the Board of Directors of the Authority."

Let us now discuss the issues raised.

As regards the first issue, appellant contends that appellee's action for declaratory relief is improper because there has already been a breach of Republic Act No. 1383, invoking section 2 of Rule 66 which provides: "A contract or statute may be construed before there has been a breach thereof."

This contention is untenable. To begin with, the answer filed by defendant through its counsel the Solicitor General contains an express admission of the averment in appellee's complaint that "although Republic Act No. 1383 took effect upon its approval on June 18, 1955, and notwithstanding Executive Order No. 127 of the President, there has been no breach of said law because no actual physical turnover of the Baguio Waterworks System has so far been made." Because of such admission, it has always been assumed in the trial court that the present action is proper because there has not been such breach so much so that appellant desisted from raising the point in the rest of the proceedings in the trial court and in the long memorandum it has submitted, for which reason the trial court made in its decision the following comment: "In its memorandum, however, the NAWASA has failed to argue this point. The omission is significant and this Court takes it that any objection to the declaratory relief proceedings are waived." That appellant would now take an inconsistent stand is strange. In any event, we find that such is the situation obtaining here. Republic Act No., 1383 provides that government-owned waterworks system should be transferred to appellant at the earliest time possible, and unless by administrative action this provision is actually carried out, it cannot be said that the transfer has been effected. The most that appellant did to carry out such provision is to issue its Office Memorandum No. 7 which prescribes the preparatory steps for such transfer pending the establishment of the branch office of the nawasa that would take over the waterworks concerned, but before any definite step could be taken to comply with said directive the present action was instituted. We agree with the trial court that so far there has not been a breach of the law and that the other requisites necessary for an action for declaratory relief are present.;

The contention that Republic Act No. 1383 constitutes a valid exercise of police power rather than a directive to expropriate the waterworks of the appellee by the exercise of the power of eminent domain cannot also be entertained. This is far from the intent and purpose of the law. The Act does not confiscate, nor destroy, nor appropriate property belonging to appellee. It merely directs that all waterworks belonging to cities, municipalities and municipal districts in the Philippines be transferred to the NAWASA for the purpose of placing them under the control and supervision of one agency with a view to promoting their efficient management, but in so doing it does not confiscate them because it directs that they be paid with an equal value of the assets of the nawasa. This is clearly inferred from the context of the law. (section 8, Rep. Act No. 1383).

But appellant invites our attention to some authorities purporting to show that Republic Act No. 1383 could at least be considered as a legitimate exercise of police power such that Congress may in the exercise of such power enact a law transferring Government property from one agency to another, and laying stress on said authorities it contends that although Congress cannot deprive the citizens of a municipal corporation of the use of property held in trust for their benefit it may however change the trustee with or without its consent or compensation provided the citizens are not deprived of its enjoyment. In other words, appellant invokes the principle that the transfer of property and authority by an act of Congress from one class of public officer to another where the property continues devoted to its original purpose does not impair any vested right of the city owning the property.

But the authorities cited are not in point. They in substance point out that the transfer, if any, of the property of a municipal corporation from one agency to another is merely done for purposes of administration, its ownership and benefits being retained by the corporation. Such is not the clear intent of Republic Act No. 1383. Here, as we have already shown, its purpose is to effect a real transfer of the ownership of the waterworks to the new agency and does not merely encompass a transfer of administration. At any rate, the authorities cited do not bear out the

proposition of appellant as clearly pointed out by counsel for appellee in his brief.

But it is insisted that the waterworks system of Baguio City does not have the character of patrimonial property but comes under the phrase "public works for public service" mentioned in Article 424 of the New Civil Code and as such is subjected to the control of Congress. This contention is also untenable. The Baguio Waterworks System is not like any public road, park, street or other public property held in trust by a municipal corporation for the benefit of the public but it is rather a property owned by appellee in its proprietary character. While the cases may differ as to the public or private character of waterworks, the weight of authority as far as the legislature is concerned classes them as private affairs, (sec. 239, vol. I, Revised, McQuillin Municipal Corporations, p. 239; *Shrik vs. City of Lancaster*, 313 Pa. 158, 169 Atl. 557). And in this jurisdiction, this Court has already expressed the view that a waterworks system is patrimonial property of the city that has established it. (*Mendoza vs. De Leon*, 33 Phil. 509). And being owned by a municipal corporation in a proprietary character, waterworks cannot be taken away without observing the safeguards set by our Constitution for the protection of private property.

"While the judicial opinions on this subject are more or less uncertain in expression, and court judgments apparently conflicting;, perhaps it is correct to affirm that a majority of decisions recognize the private rights of the municipal corporation, and hence support the view that all its property of a distinctly private character is fully protected, by the constitutional provisions protecting private property of the individual or the private corporation. Accordingly the right of the state as to the private property of the municipal' corporation is a right of regulation to be exercised in harmony with the general policy of the state, and though broader than exists in the case of individuals, or private corporations, is not a right of appropriation."

* * * * *

"The decisions maintain that the property held by a municipal corporation in its private capacity is not subject to the unrestricted control of the legislature, and the municipality cannot be deprived of such property against its will, except by the exercise of eminent domain with payment of full compensation." (*Mc Quillin Municipal Corporation*, 2nd Ed., Vol. I, pp. 670-681).

"In its private capacity a municipal corporation is wholly different. The people of a compact community usually require certain conveniences which cannot be furnished without a franchise from the State and which are either unnecessary in the rural districts, such as a system of sewers, or parks and open spaces, or which on account of the expenses it would be financially impossible to supply except where the population is reasonably dense, such as water or gas.* * * But in so far ,as the municipality is thus authorized to exercise the functions of a private corporation, it is clothed with the capacities of a private corporation and may claim its rights and immunities, even as against the sovereign, and is subject to the liabilities of such a corporation, even as against third parties." (19 R.C.L. p. 698)

The attempt of appellant in having waterworks considered as public property subject to the control of Congress or one which can be regulated by the exercise of police power having failed, the question that now arises is: Does Republic Act No. 1383 provide for the automatic expropriation of the waterworks in question in the light of our Constitution? In other words, does said law comply with the requirements of section 6, Article XIII, in relation to section 1(2), Article III, of our Constitution?

Section 6, Article XIII of our Constitution provides;

"SEC. 6. The State may, in the interest of National Welfare and defense, establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government;

Section 1(2), Article III, of our Constitution provides:

"(2) Private property shall not be taken for public use without just compensation".

It is clear that the State may, in the interest of National welfare, transfer to public ownership any private enterprise upon payment of just compensation. At the same time, one has to bear in mind that no person can be deprived of his property except for public use and upon payment of just compensation. There is an attempt to observe this requirement in Republic Act No. 1383 when in providing for the transfer of appellee's waterworks system to a national agency it was directed that the transfer be made upon payment of an equivalent value of the property. Has this been implemented? Has appellant actually transferred to appellee any asset of the NAWASA that may be considered just compensation for the property expropriated? There is nothing in the record to show that such was done. Neither is there anything to this effect in Office Memorandum No. 7 issued by the nawasa in implementation of the provision of Republic Act No. 1383. The law speaks of assets of the nawasa but they are not specified.

While the Act empowers the nawasa to contract indebtedness and issue bonds subject to the approval of the Secretary of Finance when necessary for the transaction of its business (sec. 2, par. (L), sec. 5, Act No. 1383), no such action has been taken to comply with appellant's commitment in so far as payment of compensation of appellee is concerned. As to when such action should be taken no one knows. And unless this aspect of the law is clarified and appellee is given its due compensation, appellee cannot be deprived of its property even if appellant desires to take over its administration in line with the spirit of the law. We are therefore persuaded to conclude that the law, insofar as it expropriates the waterworks in question without providing for an effective payment of just compensation, violates our Constitution. In this respect, the decision of the trial court is correct.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Endencia, and Barrera, JJ., concur.
Concepcion, J., concurs in the result.

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