

METRO ILOILO WATER DISTRICT, PETITIONER, VS. HON. COURT OF APPEALS, FORMER SECOND DIVISION, MANILA, HON. SEVERINO C. AGUILAR, PRESIDING JUDGE, BRANCH 35, RTC, ILOILO, EMMA NAVA,...

G.R. NO. 122855. March 31, 2005

Ponente: TINGA, J.

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TINGA, J.:

Before this Court is a Petition[1] dated November 9, 1995 filed by the Metro Iloilo Water District assailing the Decision[2] of the Court of appeals dated June 19, 1995 which affirmed the trial court's Order[3] dismissing the petitions for injunction filed by petitioner against private respondents.

Petitioner is a water district organized under the provisions of Presidential Decree No. 198 (P.D. 198), as amended. It was granted by the Local Water Utilities Administration Conditional Certificate of Conformance No. 71[4] on January 12, 1979. Its service areas encompass the entire territorial areas of Iloilo City and the Municipalities of Ma-asin, Cabanatuan, Santa Barbara and Pavia.

Sometime between April and May of 1993, petitioner filed nine (9) individual yet identical petitions for injunction with prayer for preliminary injunction and / or temporary restraining order[5] against herein private respondents the pertinent portions of which read:

...

4. –That pursuant to the provisions of section 31 (a) of P.D. 198, as amended, the petitioner as a Water District was authorized to adopt laws and regulations governing the drilling, maintenance and operation of wells within its boundaries for purposes other than single family domestic use on overlying land, with then provision that any well operated in violation of such regulations shall be deemed an interference with the waters of the district;

5. –That by virtue of said authorization, the Board of Directors for the petitioner promulgated its “Rules Governing Ground Water Pumping and spring Development Within the Territorial Jurisdiction of the Metro Iloilo Water District,” Section 3 of which provides as follows:

“Ground Water Pumping and Spring Development. Except when the use of water is for single family domestic use, no person, natural or juridical shall abstract or withdraw ground water and appropriate the waters from springs within the jurisdiction of the District without first securing a water permit from the Council and no person shall engage in the business of drilling wells either as test wells or production wells for the purpose of abstracting or withdrawing ground water without first registering as well as driller with the Council; Provided, that the person drilling his own well or through the services of a qualified well driller shall comply with the standards and requirements established herein in addition to those established by the Council for the exploitation of ground water resources.”

6. –That the respondent has abstracted or withdrawn ground water within the territorial jurisdiction of the

petitioner at _____ Iloilo City, without first securing a Water Permit from the National Water Resources Council nor had its well driller registered as such with said council, and sold said water so extracted to commercial and other consumers in Iloilo City, within petitioner's service area;

7. –That the unauthorized extraction or withdrawal of ground water by the respondent without the necessary permit therefore is in violation of the rules and regulations prescribed by the Board of Directors of the petitioner as above-mentioned duly approved by the National Water Resources Council and constitutes interference with or deterioration of water quality or the natural flow of surface or ground water supply which maybe used or useful for any purpose of the petitioner for which the petitioner as a Water District may commence, maintain, intervene in, defend and compromise actions or proceedings under Section 31 (a) of P.D. 198, as amended;

8. –That the act of the respondent in continuing to extract or withdraw ground water without a Water Permit therefor, is in violation of Art. XIII of P.D. 1067 of the Water Code of the Philippines, and unless such act is restrained, will definitely cause great loss upon the petitioner as a Water District....[6]

In their respective answers, private respondents uniformly invoked the lack of jurisdiction of the trial court, contending that the cases were within the original and exclusive jurisdiction of the National Water Resources Council (Water Council) under Presidential Decree No. 1067, otherwise known as the Water Code of the Philippines (Water Code). In addition, private respondents Emma Nava[7] and Rebecca Berlin[8] denied having extracted or withdrawn water from the ground, much less sold the same.[9] Private respondent Carmen Pangantihon likewise denied having constructed any waterworks system in her area but admitted that she had constructed her own deep well, unaware that she needed to get a permit to do the same.[10] Private respondent Rufino Sitaca maintained the petitioner's source of water are reservoirs from rivers and are thus not affected by his well. Moreover, he claimed that his water permit application was deemed approved, and thus he is entitled to use the water from his well.[11]

Private respondent Benito Go admitted that he extracted water from the ground, which he claimed to be his private property, and used the water for his lumberyard and domestic purposes.[12] Additionally, he alleged the petitioner's rules and regulations were not published in the Official Gazette and hence petitioner had no cause of action.[13] Private respondent Charles Kana-an asserted that he had complied with the requirements for the approval of his water permit application. He claimed that he was extracting and selling water with petitioner's knowledge, and without damage and injury to the latter.[14] Meanwhile, private respondent Gerry Luzuriaga claimed that he was not the real party in interest, but Shoemart, Inc. which has the control and possession of the property where the alleged withdrawal of ground water was taking place.[15]

The trial court dismissed the petitions in its Order[16] dated March 17, 1994, ruling that the controversy was within the original jurisdiction of the Water Council, involving, as it did, the appropriation, exploitation, and utilization of water, and factual issues which were within the Water Council's competence. In addition, the trial court held that petitioner failed to exhaust administrative remedies under the doctrine of "primary administrative jurisdiction." Petitioner's Motion for Reconsideration[17] was thereafter denied on April 29, 1994.[18]

A petition[19] dated May 27, 1994 seeking a review of the trial court's order of dismissal was filed before this Court but the same was referred to the Court of Appeals for consideration and adjudication on the merits in the Resolution[20] dated July 11, 1994.

Petitioner sought the review of the order of the trial court dismissing the petitions and denying its motion for reconsideration, on the ground that the trial court failed to adhere to this Court's rulings in *Amistoso v. Ong*[21] and *Santos v. Court of Appeals*,[22] which upheld the regular court's jurisdiction over disputes which involve not the settlement of water rights but the enjoyment of the right to water use for which a permit had already been

granted.

The Court of Appeals denied the petition, holding that the trial court did not err in dismissing the case for want of jurisdiction as it was the Water Council which had jurisdiction over the case. The appellate court ratiocinated:

The controversy in this case arose from the fact that the petitioner Iloilo Water District was granted water rights in Iloilo City and the respondents also extracted or withdrew ground water within the same jurisdiction.

While at first impression this case involves a violation of the petitioner's enjoyment of a right to water use, the fact is that it actually involves also a dispute over the appropriation, utilization, exploitation development, control, conversation and protection of waters because the respondents have allegedly engaged in the extraction or withdrawal of ground water without a permit from the NWRC within the territorial jurisdiction of the petitioner. Therefore, Art. 88 of P.D. No. 1067 giving the NWRC original jurisdiction over the cases is applicable.

The NWRC has jurisdiction to hear and decide disputes relating to appropriation, utilization and control of water while the Regional Trial Court only has appellate jurisdiction over the case. This was the ruling of the Supreme Court in *Abe-abe vs. Manta*, 90 SCRA 524 which was reiterated in *Tanjay Water District vs. Gabanton*, 172 SCRA 253.

...

The cases of *Santos v. Court of Appeals*, 214 SCRA 170 and *Amistoso vs. Ong*, 130 SCRA 288 are not applicable to the case at bar for here, what is involved is not only the alleged violation of the grantee's right but a question of whether or not the respondents have equal right to the appropriation, utilization and exploitation of water rights.”[23]

The Court of Appeals denied petitioner's Motion for Reconsideration[24] dated July 11, 1995 in its Resolution of September 29, 1995.[25]

Petitioner now contends that the extraction or withdrawal of ground water as well as the sale thereof within its territorial jurisdiction is a violation of its rights as a water district.[26] Being a violation thereof, the regular courts have jurisdiction over the dispute. On the other hand, private respondents unanimously maintain that it is the Water Council which has jurisdiction over the subject matter of this case. Thus, the sole issue in this petition, as presented by petitioner, is:

DID THE REGIONAL TRIAL COURT OF ILOILO HAVE JURISDICTION OVER THE SUBJECT MATTER OF THE PETITIONS?[27]

Petitioner anchors its claim on Section 31 (now 32) of PD 198, as amended, which reads:

Sec. 32. Protection of waters and Facilities of District. – A district shall have the right to :

(a) Commence, maintain, intervene in, defend and compromise actions or proceedings to prevent interference with or deterioration of water quality or the natural flow of any surface, stream or ground water supply which may be used or useful for any purpose of the district or be a common benefit to the lands or its inhabitants. The ground water within a district is necessary to the performance of the district's powers and such districts hereby authorized to adopt rules and regulations subject to the approval of the National Water Resources Council governing the drilling, maintenance and operation of wells within its boundaries for purposes other than a singled family domestic use on overlying land. Any well operated on violation of such regulations shall be deemed in interference with the waters of the district.

...

(c) Prohibit any person, firm or corporation from vending, selling, or otherwise disposing of water for public

purposes within the service area of the district where district facilities are available to provide such service, or fix terms and conditions by permit for such sale or disposition of water.

By virtue of the above provisions, petitioner states that as a water district, it has the right to prevent interference with the water of the district; and to enforce such right, it is given remedies of commencing, maintaining, or intervening in, defending or entering into appropriate actions or proceedings.

In asserting the jurisdiction of the regular courts over its petitions and the propriety of its filing of the petitions before the trial court, petitioner invokes the ruling of the Court in *Amistoso v. Ong*,^[28] as reiterated in *Santos v. Court of Appeals*,^[29] that where the issue involved is not the settlement of a water rights dispute, but the enjoyment of a right to water use for which a permit was already granted, the regular court has jurisdiction and not the Water Council.

Petitioner insists that there is no occasion to invoke the original jurisdiction of the Water Council in this case since there is no question of appropriation, exploitation, utilization, development, control, conservation, and protection of water. The only dispute, according to petitioner, pertains to the act of private respondents in extracting ground water from the territory of petitioner as a water district and selling the same within its service area, or more succinctly, private respondents' interference with the granted right of petitioner over ground water within its territorial jurisdiction.^[30]

Private respondents, for their part, staunchly invoke Article 88 of the Water Code, which grants original jurisdiction over all disputes relating to the appropriation, utilization, exploitation, development, control, conservation and protection of waters to the Water Council.^[31]

Relying on the cases of *Abe-abe v. Manta*^[32] and *Tanjay Water District v. Gabaton*,^[33] private respondents maintain that the Water Council is exclusively vested with original jurisdiction to settle water disputes under the Water Code. They claim that the *Amistoso* and *Santos* cases do not apply to the instant case since in *Amistoso*, the issue was the prevention of the flow of water through an irrigation canal, and in *Santos*, the issue referred to the prevention of the enjoyment of a water right. In contrast, the issue in the instant case is the right to appropriate water which petitioner and some of the private respondents profess to have.

We find merit in the petition.

The petitions file before the trial court were for the issuance of an injunction order for respondents to cease and desist from extracting or withdrawing water from petitioner's well and from selling the same within its service areas.^[34] The petitions contained factual allegations in support of the prayer for injunction, to wit:

- the grant to petitioner of a Conditional Certificate of Conformance by the Local Water Utilities Administration over areas from which water was allegedly extracted or withdrawn by private respondents, by virtue of which its Board of Directors promulgated rules governing ground water pumping within its service areas;
- abstraction or withdrawal of water within the territorial jurisdiction of petitioner by private respondents without first securing a permit from the Water Council, or registering their well drillers, and sale of said water so extracted to commercial and other consumers within petitioner's service areas;
- that the unauthorized extraction or withdrawal of ground water by private respondents without the necessary permit was in violation of petitioner's prescribed rules, and constitutes interference for which petitioner may commence, maintain, intervene in, defend and compromise actions or proceedings under Sec. 31 of P.D. No. 198;
- that the extraction or withdrawal of ground water without the corresponding permit was a violation of Art. 13

of the Water Code; and

- that great damage and prejudice will be suffered by petitioner if private respondents' extraction and withdrawal of ground water, as well as the selling thereof be allowed to continue.

In essence, the petitions focus on the violations incurred by private respondents by virtue of their alleged unauthorized extraction and withdrawal of ground water within petitioner's service area, *visa-a-vis* petitioner's vested rights as a water district. At issue is whether or not private respondents' extraction and sale of ground water within petitioner's service area violated petitioner's rights as a water district. It is at once obvious that the petitions raise a judicial question.

A judicial question is raised when the determination of the questions involves the exercise of a judicial function, i.e., the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy. As opposed to a moot question or one properly decided by the executive or legislative branch, a judicial question is properly addressed to the courts.[35]

The instant case certainly calls for the application and interpretation of pertinent laws and jurisprudence in order to determine whether private respondents' actions violate petitioner's rights as a water district and justify an injunction. This issue does not so much provide occasion to invoke the special knowledge and expertise of the Water Council as it necessitates judicial intervention. While initially it may appear that there is a dimension to the petitions which pertains to the sphere of the Water Council, i.e., the appropriation of water which the Water Code defines as "the acquisition of rights over the use of waters or the taking or diverting of waters from a natural source in the manner and for any purpose allowed by law," in reality the matter is at most merely collateral to the main thrust of the petitions.

The petitions having raised a judicial question, it follows that the doctrine of exhaustion of administrative remedies, on the basis of which the petitions were dismissed by the trial court and the Court of Appeals, does not even come to play.[36]

Notably too, private respondents themselves do not dispute petitioner's rights as a water district. The cases of *Abe-Abe v. Manta*[37] and *Tanjay Water District v. Gabaton*[38] invoked by private respondents are thus inapplicable. In *Abe-Abe v. Manta*, both petitioners and respondent had no established right emanating from any grant by any governmental agency to the use, appropriation and exploitation of water, while in *Tanjay Water District v. Gabaton*, petitioner Tanjay sought to enjoin the Municipality of Pamplona and its officials from interfering in the management of the Tanjay Waterworks System.

On the other hand, in the analogous case of *Amistoso v. Ong*[39], petitioner had an approved Water Rights Grant from the Department of Public Works, Transportation and Communications. The trial court was not asked to grant petitioner the right to use but to compel private respondents to recognize that right. Thus, we declared that the trial court's jurisdiction must be upheld where the issue involved is not the settlement of a water rights dispute, but the enjoyment of a right to water use for which a permit was already granted.[40]

In like manner, the present petition calls for the issuance of an injunction order to prevent private respondents from extracting and selling ground water within petitioner's service area in violation of the latter's water permit. There is no dispute regarding petitioner's right to ground water within its service area. It is petitioner's enjoyment of its rights as a water district which it seeks to assert against private respondents.

WHEREFORE, the Decision of the Court of Appeals dated June 19, 1995 is SET ASIDE and the case is ordered REMANDED to the trial court for further proceedings, with costs against respondents.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 27-43.

[2] Id. at 45-52. Penned by Associate Justice Salome A. Montaya and concurred in by Associate Justices Fidel P. Purisima and Godardo A. Jacinto.

[3] Records, pp. 21-24.

[4] Id. at 38.

[5] Id. at 33-86.

[6] Id. at 34-35.

[7] Id. at 88.

[8] Id. at 108.

[9] Ibid.

[10] Id. at 99.

[11] Id. at 95.

[12] Id. at 105.

[13] Id. at 104.

[14] Id. at 113.

[15] Id. at 124.

[16] Supra note 3.

[17] Id. at 26.

[18] Id. at 32.

[19] Id. at 5-20.

[20] Id. at 135.

[21] 215 Phil. 197 (1984).

[22] GR No. 61218, September 23, 1992, 214 SCRA 162 (1992).

[23] Supra note 2 at 50-52.

[24] Id. at 53-55.

[25] Id. at 66

[26] Id. at 31-32.

[27] Id. at 34.

[28] Supra note 21.

[29] Supra note 22.

[30] Supra note 1 at 314.

[31] Art. 88 of the Water Code provides;

The Council shall have original jurisdiction over all disputes relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters within the meaning and context of the provisions of this Code.

[32] G.R. No. L-4827, May 31, 1979, 90 SCRA 524.

[33] G.R. No. 63742, April 17, 1989, 172 SCRA 253.

[34] Supra note 3 at 36-37.

[35] Jorge Gonzales and Panel of Arbitrators v. Climax Mining Ltd., Climax-Arimco Mining Corp., and Australasian Philippines Mining Inc., G.R. No. 161957, February 28, 2005.

[36] Atis v. Court of Appeals, G.R. no. 96401, April 6, 1992, 207 SCRA 742.

[37] Supra note 32.

[38] Supra note 33.

[39] Supra, note 21

[40] See also Santos v. Court of Appeals, supra note 29 and Atis v. Court of Appeals, supra note 36.

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