

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

G.R. No. 12892. April 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

To prevent the National Waterworks and Sewerage Authority (NAWASA), created under Republic Act No. 1383, from taking over the ownership, control, supervision, and jurisdiction over the Osmeña Waterworks System, pursuant to the provisions of Section 8 of the said Act, the City of Cebu filed an action for declaratory relief in the Court of First Instance of Cebu, naming the NAWASA as defendant, praying for a clear interpretation of the provisions of said R. A. No. 1383; a declaration of the rights and obligations of the parties thereunder; and a declaration that the statute or any part thereof, in so far as it deprives the plaintiff of its property rights in the Osmeña Waterworks System without due process of law and just compensation, is unconstitutional.

In its answer, NAWASA contended that as the System had always been under the control and operation of the National Government, its transfer to the defendant NAWASA was within the competence of Congress to do; that even assuming that the said System belonged to plaintiff, it was public property and therefore, within the absolute control of Congress; and that granting that it was patrimonial property, there was proper and just compensation provided for in Republic Act No. 1383 for its transfer to NAWASA.

After due trial, the lower court rendered judgment which was later amended, declaring Republic Act No. 1383 unconstitutional "in so far as it vests in defendant authority (NAWASA) ownership over the Osmeña Waterworks System without just compensation as required by the Constitution, without prejudice to granting positive coercive relief upon proper showing that defendant insists upon taking ownership of the Osmeña Waterworks System," at the same time upholding the defendant's right of control, jurisdiction and supervision over the said System. The question as to what acts of the NAWASA would constitute acts of ownership or dominion and what would be considered as an exercise of jurisdiction, supervision and control was left open for future determination.

From this decision the present appeal has been interposed by the defendant NAWASA.

The facts as found by the lower court and upon which its decision was based, are as follows:

"By an Act of 27 December 1918, the now defunct Philippine Legislature authorized the Municipality of Cebu, Province of Cebu, Philippines, to incur an indebtedness of \$125,000.00 in money of the United States, and to issue bonds covering the amount of the said indebtedness in gold coin of the United States, for the purpose of providing funds for the construction of sewer and drainage facilities, to secure a sufficient supply of water and necessary buildings for primary schools, and for other purposes (Act No. 2009). The Act provided that the proceeds of the sale of the bond issue should be placed by the Treasurer of the Philippines to the credit of the municipality, to be drawn therefrom by appropriations by the Municipal Council of Cebu. It exclusively charged the municipality with the obligation of reimbursing the same from its current revenues. (Sections 4

and 7, Act No. 2009). The bonds which were to mature in 1941 were expressly declared exempt from taxes by the government of the United States or by the government of the Philippine Islands, and its political or municipal subdivisions, or by any state or territory of the United States. (Sec. 1, Act No. 2009).

"Pursuant to the statute, the Municipality of Cebu floated the bond issue and invested part of the proceeds of the sale thereof in the construction of a waterworks system to supply water to its inhabitants. The system came to be known as the Osmeña Waterworks System in honor of the illustrious son of Cebu, former President Sergio Osmeña, Sr., who was then the Speaker of the National Assembly that approved Act No. 2009. Since its establishment, the System has been supplying the inhabitants of the municipality of Cebu with water originally taken exclusively from the Buhisan basin, within an area of approximately five hundred hectares, and which, is admittedly within a government reservation. The basin catches the rain water run-off from, the surrounding hills and impounds it in a reinforced concrete dam. From the dam the water is conveyed in a 14 inch main pipe to the Tisa Filters where it is treated or purified by means of coagulants, rapid sand filtration and chlorination. After the purification process, the water is stored in a four million-gallon clear water reservoir. From the Tisa Filters the water is finally conveyed through a 16-inch conduit to the city for distribution to the paying customers of the system.

"By statute, the City of Cebu came into existence as a political body corporate on 20 October 1936. (Sec. 2, Commonwealth Act No. 58). The newly created city absorbed the former municipality of Cebu. (Sec. 3, Commonwealth Act No. 68).

"Among the general powers granted to, and duties imposed upon, the legislative body of the City, known as the Municipal Board, is that of providing for the maintenance of waterworks for the purpose of supplying water to the inhabitants of the city, and the purification of the source of supply and the places through which the same passes, and to regulate the consumption and use of the water; to fix and provide for the collection of rents therefor; and to regulate the construction, repair, and use of hydrants, pumps, cisterns, and reservoirs. Sec. 17-x. Commonwealth Act 58). Pursuant to the aforesaid charter provision, the Municipal Board of the City of Cebu has been running and operating the Osmeña Waterworks System, Its municipal Board provides for the budgetary expenses of the System and governs the disposition of the System's revenue.

"On 16 November 1948, the Public Service Commission granted plaintiff City a certificate of public convenience to operate and maintain the Osmeña Waterworks System, subject to the terms and conditions imposed therein Exh. E).

"For the purpose of expanding the service to meet the water needs of its increased population, the City of Cebu, on 11 December 1950 filed with the Department of Agriculture and Natural Resources an application for the use of water emanating from a natural spring in a private land belonging to the late Dr. Pio Valencia, situated in Hagubiao, Consolacion, Cebu. The said application was in due time approved by the department head. Page 5, Exh- C).

"On 17 June 1955, defendant Authority was created as a public corporation. (Sec. 1, Republic Act No. 1383). Pursuant to its charter, defendant shall own and/or have jurisdiction, supervision and control over all territory now embraced by the Metropolitan Water District as well as all areas now served by existing government-owned waterworks and sewerage and drainage systems within the boundaries of cities, municipalities, and municipal districts in the Philippine including those served by the Waterworks and Wells and Drills Sections of the Bureau of Public Works' (Sec. 1). Defendant was also given the power to acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose of real and personal property including rights and franchises within the Philippines, as authorized by the purposes for which the Authority was created and reasonably and necessarily required for the 'transaction of the lawful business of the same unless otherwise provided in this Act', and to exercise the right of eminent domain for the purpose for which the Authority was created, in the manner provided for by law for condemnation proceedings by the national, provincial, and municipal governments;' (Sec. 2, paragraphs [h] and [i]).

"Lastly, the Act provides that 'all existing government-owned waterworks and sewerage systems in cities, municipalities and municipal districts, including springs and other water sources, as well as the water-works 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 or on behalf of the said Authority and in turn to pledge such assets as security for the payment of waterworks and sewerage bonded debt' and that 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'. (Sec. 8)."

Appellant, in its appeal, claims that the lower court erred:

- In declaring Republic Act Number 1383 unconstitutional in that it vests in defendant ownership and control of the Osmeña Waterworks System without just compensation as required by the Constitution.
- In not holding that under the legitimate exercise of the police power of the State, Congress has the authority to enact a law transferring the Osmeña Waterworks System to another agency of the Government such as the defendant National Waterworks and Sewerage Authority in this case.
- In declaring that Republic Act Number 1383 does not provide; for just compensation and also in refusing to recognize the right of the National Government to acquire the Osmeña Waterworks System by eminent domain.
- In not dismissing the plaintiff's complaint.

The issues presented above are basically the same as those raised and determined by this court in the recent case of the City of Baguio vs. The National Waterworks and Sewerage Authority, 106 Phil., 144; 57 Off. Gaz. [9] 1579. In the aforesaid case, passing upon the question of whether Republic Act No. 1383 provides for the automatic expropriation of the waterworks mentioned therein, we held, citing Section 6, Article XIII and Section 1-(2), Article III of our Constitution, this wise:

"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. 1883 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. (1), see. 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."

Exactly the same situation obtains in the present case, Section 8 of Republic Act No. 1383 (*supra*.) provides that "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 of 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". In other words, all the properties and assets of the Osmeña Waterworks System are transferred to the defendant NAWASA in exchange for an equal value of the latter's assets. But what these assets consist of, nothing concrete presently appears. All that is provided in Section 8 is that NAWASA acquires all the assets and liabilities of all government-owned waterworks and sewerage systems in the country. It is an equal value of these unliquidated assets and liabilities that is supposed to be given to plaintiff-appellee as payment of its System. Such, certainly, is not a compensation that satisfies the Constitutional provisions.

Appellant, however, maintains that the waterworks involved herein is not a patrimonial property of the City of Cebu but one for public use and, therefore, falls within the control of the legislature. We find no merit in this contention.

It must be remembered that the Osmeña Waterworks System was established out of the \$125,000.00 loan extended to the municipality of Cebu by the U.S. Government payable within 80 years from the release thereof (Sec. 1, Act 2009), and which apparently was fully paid for by said municipality as certified to by the Insular Treasurer (Exh. D). For its operation and maintenance, the City of Cebu (Osmeña Waterworks System) applied for and obtained a certificate of public convenience from the Public Service Commission (Exh. B) and was made subject to the rates fixed and regulations imposed by said body. The System owned properties which appellee estimated at P10,000,000.00, although appellant claims it to be worth only P1,000,000.00, and operates on a budget approved by its. Board of Directors (not by Congress), the disbursement of which was placed under the supervision and custody of the City Treasurer (*t.s.n.*, pp. 28-29). The mere fact that the Buhisan basin where the water is collected stands on a government reservation, and that the System was created to serve the needs of the residents of said City (upon payment of certain rates from which the System derives material gain), to our mind do not transform the proprietary nature of appellee's ownership over the same to governmental or public. The flaw in appellant's contention that the System is a public works for public service is due to an apparent misapprehension that because the System serves the public in a manner of speaking, it is, but that token alone, necessarily for public service. The contention overlooks the fact that only those of the general public who pay the required rental or charge authorized and collected by the System, do make use of the water. In other words, the System serves all who pay the charges. It is open to the public (in this sense, it is public service), but upon the payment only of a certain rental (which makes it proprietary.) Article 424 of the New Civil Code cited by appellant makes clear this distinction. It reads:

"Art. 424. Property for public use, in the province, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.

"All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws."

Thus, the term "public works for public service" must be interpreted, following the principle of *ejusdem generis*, in the concept of the preceding words "provincial roads, city streets, municipal streets, the squares, fountains, public waters and promenades" which are used freely by all, without distinction. Hence, if the public works is not for such free public service, it is not within the purview of the first paragraph, but of the second paragraph of Article 424, and, consequently, patrimonial in character. And, as already held by this Court, a municipal water

system designed to supply water to the inhabitants for profit is a corporate function of the municipality (*Mendoza vs. De Leon*, 33 Phil., 508, citing *Omaha Water Co. vs. Omaha*, 12 L.R.A., [N.S.] 736; CCA. 267; 147 Fed. 1; *Jodson vs. Borough of Winsted*, 80 Conn. 384; 15 L.R.A. [N.S.], 91).

"Cases differ as to the public and private character of waterworks in some respects, but the weight of authority, in so far as legislative control is concerned, classes them as private affairs. (*Shirk vs. City of Lancaster*, 313 Pa. 158, 169 Alt. 557, 90 A.L.E. 688, cited in *City of Baguio vs. National Waterworks and Sewerage Authority*, *supra*.)

The consequential effect of such declaration is foreseeable, thus:

Although the state may regulate the service and rates of water plants owned and operated by municipalities, such property is not employed for governmental purposes and in the ownership operation thereof the municipality acts in its proprietary capacity, free from legislative interference (1 McQuiliin, p. 683).

The water system of a city not being a property held for governmental purposes is not subject to legislative control (*Kenton Water Co. vs. City of Covington*, 156 Ky. 569, 161 SW 988).

In the ownership and control of a water system purchased by the city out of the proceeds of the loan contracted for that purpose, the city acts in its proprietary, character as distinguished from its governmental capacity (*Helena Consolidated Water Co. vs. Steele*, 20 Mont. 1, 49 Pac. 382, 37 L.R.A. 412; *Public Service Commission vs. City of Helena*, 52 Mont. 527; 159 Pac. 24).

Similarly, we cannot uphold appellant's theory that the transfer of ownership of the Osmeña Waterworks System to another government agency is a valid exercise of the police power of the State, because while the power to enact laws intended to promote public order, safety, health, morals and general welfare of society is inherent in every sovereign state (*Churchill vs. Rafferty*, 32 Phil., 580), such power is not without limitations, notable among which is the constitutional prohibition against the taking of private property for public use without just compensation. (Art. III, Sec. 1, Philippine Constitution.)

No exercise of the police power can disregard the constitutional guarantees in respect to the taking of private property, due process and equal protection of the laws and it should not override the demands of natural justice (*People vs. Chicago, M & St. P.R. Co.*, 306 111. 486, 138 N.E. 155, 28 A.L.R. 610.)

If a statute purporting to have been enacted to protect the public health, morals or safety, has no real or substantial reason to these objects, or is a palpable invasion of rights secured by fundamental law, it is the duty of courts to so adjudge, and thereby give effect to the Constitution, (*Gaines & Co. vs. Holmes*, 15, Ga. 344, 114 S.E. 327, 37 A.L.R. 98.)

Action in the nature of police regulation is void if against the express provisions of the Constitution although otherwise within its general power to make police regulations. (*State vs. Froechnich*, 115 Wis. 82, 91 N.W. 115).

Appellant also urges recognition of the right of the National Government (through the National Waterworks & Sewerage Authority) to acquire the Osmeña Waterworks System by eminent domain. This, we find to be equally untenable, for one of the essential requisites to the lawful exercise of this right is the payment to the owner of the condemned property of just compensation to be ascertained according to law (*Western Union Tel. Co. vs. Louisville, etc. R. Co.*, 270 Ill. 399; 110 NE 583, Ann. Cas 1917B, 760; II *Cooley's Constitutional Limitations*, p. 1110). Needless to state in this respect, that it is precisely for this reason, that is, lack of provision regarding effective payment of just compensation, that Republic Act No. 1383 was declared violative of the Constitution, in the case of *City of Baguio vs. National Waterworks & Sewerage Authority*.

Wherefore, and finding no reason to depart from the established jurisprudence on the matter, the decision

appealed from is hereby affirmed, without costs. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Gutierrez David, JJ.,
concur.

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