

## GAUDENCIO D. DEMAISIP, PETITIONER, VS. THE COURT OF APPEALS, ET AL., RESPONDENTS.

*G.R. No. 13000. September 25, 1959*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

On December 4, 1936, Gaudencio Demaisip filed an action in the Court of First Instance of Iloilo praying that judgment be rendered (1) ordering the Secretary of Agriculture and Natural Resources to execute a contract of lease of Lots Nos. 233, 236 and 237 of the Dumangas Cadastre, for a period of 10 years, and to issue the corresponding fishpond permit in his favor, and to order said Secretary not to entertain the lease application of Luis E. Buenaflor pending final decision of the case; (2) declaring null and void all actions taken by the Secretary of Agriculture and Natural Resources, particularly that of October 15, 1936 with respect to the lease application of Luis Buenaflor (3) ordering Buenaflor to vacate the lands in question and to deliver their possession to him; (4) ordering the Provincial Fiscal of Iloilo to take the necessary steps for the criminal prosecution of Buenaflor for violation of the Forestry Law and Regulations pertaining thereto; and (5) ordering both defendants to pay him, jointly and severally, damages in the amount of P2,000.00.

After trial, the court dismissed the complaint on the following grounds: (1) that the complaint is in reality a petition for mandamus and therefore should have been verified as required by Section 3, Rule 67, of the Rules of Court, and (2) that plaintiff did not exhaust all available remedies before resorting to court action. Plaintiff appealed to the Court of Appeals,, which affirmed in toto the decision of the court a quo. Plaintiff interposed the present petition for review. The facts of this case which the Court of Appeals found to be correct are quoted as follows:

"The first applicant for a fishpond permit covering Lots Nos. 233, 236 and 237 of Dumangas Cadastre, Iloilo, was the late Geronimo Destacamento who filed his application on April 1, 1927 (p. 56, rec). On Dec. 31, 1930, the Fishpond Permit No. F-624B granted to the late Geronimo Destacamento expired, because he failed to make any improvements on the lots and to pay the required rentals (pp. 27-28, 35, 36, 54, 76-77, rec).

"Before his death or to he more exact on December 19, 1928, Geronimo Destacamento without the knowledge and consent of the Director of Forestry, executed a deed of sale covering the lots in question in favor of Serafin Villanueva, an act which was illegal and contrary to the rules of the permit granted him (pp. 55-56, rec.).

"In a letter dated December 19, 1928, the District Forester of Iloilo, notwithstanding the existence of the aforesaid deed of sale, requested Serafin Villanueva to apply for a fishpond permit over the same lots. In spite of the request, Villanueva neglected and failed to file his application for a fishpond permit, such that no permit was ever granted to him before or after the expiration of the permit of the late Geronimo Destacamento (p. 56, rec).

"It appears that on October 15, 1935 the herein complainant Gaudencio G. Demaisip filed with the Fish and Game Administration a fishpond permit application which was given No. 2285 for the same lots Nos. 233, 236 and 237 of pumangas Cadastre, containing an area of 13.9859 hectares of public mangrove forest land located

in Sitios Buang and Balabag, barrio Buang, Dumangas, Iloilo (pp. 33, 54, rec).

"By March 6, 1936, the Demaisip had complied with all the prerequisites necessary for the issuance of a fishpond permit, namely, payment of annual rental of P21 and posting of a surety bond in the sum of P350 (pp. 36-38, 54, rec).

"On March 19, 1936, when the fishpond permit in favor of Gaudencio Demaisip was ready to be issued (p. 38, rec), Serafin Villanueva executed a deed of sale covering the lots in question in favor of the herein defendant Luis E. Buenaflor (p. 55, rec.); shortly thereafter or in the same month, the latter started to occupy the land, and introduced improvements thereon consisting of a big dam 27 meters long, 4 meters high, across the Balabag River, worth P1,600 (p. 57, rec). According to the result of an investigation conducted by a representative of the Fish and Game Administration, the dam deprives other fishponds leased from the government of fresh or flowing water and was illegally constructed because it violated a rule of that Office prohibiting the introduction of any improvements on the land applied for before the issuance of a permit (pp. 57-58, rec).

"It was only on May 21, 1936, or 7 months after Demaisip had filed an application, that Luis Buenaflor also filed his application for the area in question with the Iloilo branch of the Fish and Game Administration (pp. 33, 57, rec).

"Under the above set of facts, the Director of Fish and Game Administration was called upon to decide who of the conflicting claimants—Luis Buenaflor or Gaudencio G. Demaisip—had a better right to be regarded as the lessee of the land in question pursuant to Section 63 of Act No. 4003. .

"The dispositive part of the decision rendered by the Director of the aforementioned office, dated June 26, 1936, was as follows:

'In view of the foregoing, it is the opinion of this Office and it is hereby decided that: the application of the applicant contestant Luis E. Buenaflor be rejected; the dam constructed across Balabag River be opened; all improvements on the area be forfeited in favor of the Government; and the application of the applicant respondent Gaudencio E. Demaisip be given due course upon payment of an additional rental of f 16 which is one per centum of the value of improvements assessed at P1,600.' (p. 58, Rec. on Appeal)

"From such decision, Luis E. Buenaflor appealed to the Secretary of Agriculture and Natural Resources (p. 43, rec.). On October 15, 1936, the latter official reversed the decision of the Director of Fish and Game Administration and awarded the right of lease to the lots in question to Luis E. Buenaflor and also ordered the return to Demaisip of the amount paid by him as annual rental (pp. 4—43, 47, rec). It is not known on what ground the Secretary of Agriculture and Natural Resources based his decision, because a copy of said decision was not presented in the reconstitution of the records of this case. (Appellee's Brief, pp. 3-6)"

It is contended that the Court of Appeals erred in holding that the present action partakes of the nature of a petition for mandamus which should be verified as required by Section 3, Rule 67, of the Rules of Court, and not having been so verified it suffers from a fatal defect which cannot confer jurisdiction on the court a quo. It is contended that the complaint which initiated this proceeding is not one of mandamus but an action to obtain relief in connection with the lease of certain lots for the purpose of converting them into fishponds as well as to annul certain actions taken by the Secretary of Agriculture and Natural Resources, and that even if it be considered as a special civil action for mandamus the one that should govern the same is not the Rules of Court but Section 220 of the Court of Civil Procedures (Act 190).

This claim is meritorious for it appears that the instant case was filed on December 4, 1936 and at that time the procedural law that was in force was Act 190 because the present Rules of Court took effect only on July 1, 1940, and it is well-settled that the formal as well as substantial requisites of a pleading are governed by the law prevailing at the time of its filing. We also find correct the claim that the present action is not one for mandamus

but an ordinary action wherein several reliefs are prayed for concerning the lease of certain lots which plaintiff desires to be granted to him, and since the action is not one for mandamus, it is unnecessary to state in the complaint that the plaintiff has no plain, speedy and adequate remedy in the ordinary course of law to entitle him to relief as required in special civil actions.

It is true that plaintiff did not appeal from the decision of the Secretary of Agriculture and Natural Resources to the President of the Philippines when he reversed the decision of the Director of Fish and Game Administration, and ruled that the lease application of Demaisip should be denied and that of defendant Buenaflor be given due course upon compliance with certain requirements, but such failure cannot preclude the plaintiff from taking court action in view of the theory that the Secretary of a department is merely an alter-ego of the President. The presumption is that the action of the Secretary bears the implied sanction of the President unless the same is disapproved by the latter (*Villena vs. The Secretary of the Interior*, 67 Phil., 451). It is therefore incorrect to say that plaintiff's action should not be entertained because he has failed to exhaust first all the administrative remedies available to him.

"Explaining his petition for review, Nicolas Diego called attention to the circumstance that no appeal had been taken to the President from the Secretary's administrative determination in issuing the permit. And then he argued for non-interference by the courts with the acts of executive officers, unless all administrative remedies have been previously exhausted.

"Upon examination of the Record on Appeal, however, we note that this defense was not interposed in the court of first instance. Perhaps because the pleader knew courts had entertained civil actions of this nature against the Secretary of Agriculture and/or subordinate officers, even if complainants had not previously taken the matter up to the Chief Executive; and perhaps because such defense might only be valid in special civil actions—this is not one—wherein the petitioner must allege and prove that he has no other speedy and adequate remedy." (*Diego vs. The Court of Appeals, et al.*, 54 Off. Gaz., No. 4, 956; *Italics supplied*)

With regard to the question whether the Secretary of Agriculture and Natural Resources has not acted properly or has abused his discretion in reversing the decision of the Director of Fish and Game Administration awarding the right to lease the lots in question to Buenaflor as now contended by petitioner, we are not now in a position to pass judgment on the actuation of such official for we do not have before us a copy of his decision. As the Solicitor General observes in his brief: "This Honorable Court is not in a position to make an accurate finding as to whether or not the Secretary of Agriculture and Natural Resources had grossly or gravely abused his discretion in the instant case because the decision of the said Secretary reversing the decision of the Director of Fish and Game Administration had not been reconstituted and appended to the record of the case as indicated in our statement of facts. To rule that the Secretary of Agriculture and Natural Resources had gravely abused his discretion, without knowing his reasons for reversing the decision of the Director of Fish and Game Administration would be tantamount to deciding this case against said official without giving him his day in court." We concur in this observation.

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

Padilla, Montemayor, Endencia, and Gutierrez David, JJ., concur.

Paras, C. J., Bengzon, Labrador, and Concepcion, JJ., concur in the result.

Barrera, J.: I concur in the result and disagree in the reliance made on the case of *Villena vs. The Secretary of the Interior*.

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