

CARLOS C. BUENDIA, PETITIONER, VS. CITY OF ILIGAN, RESPONDENT.

G.R. NO. 132209. April 29, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari assailing the Decision[1] of the Regional Trial Court (RTC) of Lanao del Norte, Branch 2, which set aside the Order[2] of the National Water Resources Board (NWRB), the dispositive portion of which reads:

WHEREFORE, the writ of certiorari prayed for is hereby granted and the question (sic) NWRB order of March 10, 1994, is hereby set aside and rendered of no effect for being issued in grave abuse of discretion.[3]

THE FACTS

On 05 October 1992, petitioner Buendia filed with the NWRB an application for the appropriation of water from a spring located within his property in Ditucalan, Iligan City. Said application was docketed as Application No. 11913 (for commercial purposes) and No. 11917 (for domestic water supply).[4]

In the absence of protests to the applications being timely filed, the NWRB, after evaluating petitioner's applications, issued on 25 June 1993, Water Permits No. 13842 and No. 13827[5] in his favor.

On 17 November 1993, almost five (5) months after petitioner's Water Permits were issued, respondent City of Iligan filed with the NWRB an "Opposition and/or Appeal"[6] contesting the issuance of said water permits to petitioner. The Opposition and/or Appeal sought to serve as both a protest against petitioner's water permit applications, as well as an appeal to the NWRB's grant of the water permits to petitioner.

On 10 March 1994, the NWRB issued an Order[7] dismissing respondent's Opposition and/or Appeal. The "Opposition" part was dismissed for being filed out of time, while the "Appeal" part was dismissed as a consequence of the denial of the opposition to the application, i.e., in the absence of a verified protest having been seasonably filed, no water rights controversy arose; hence, there was no decision from which respondent may appeal from.

Respondent City of Iligan did not move for a reconsideration of said order, nor did it appeal to the appropriate Executive Department,[8] but instead filed on 09 September 1994, with the RTC of Lanao del Norte, Branch 2, a Petition for Certiorari assailing the legality of the NWRB Order for being issued in excess of its jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction.

Respondent sought to annul the NWRB Order on the following specific grounds:

- The NWRB did not notify the City of Iligan of Buendia's Water Permit Application No. 11913 and No. 11917. Neither did the NWRB give the City of Iligan an opportunity to be heard with respect to the applications because no public hearing was conducted; and

- The NWRB's March 10, 1994 Order was issued without due process, the NWRB having "arbitrarily and despotically" denied the City of Iligan's Opposition and/or Appeal notwithstanding the fact that the latter was not furnished a copy (sic) of Buendia's Water Permits.[9]

In his Answer, petitioner prayed for the dismissal of the petition claiming inter-alia that: (a) the petition was not filed within a reasonable period, as it was filed more than five (5) months after petitioner received a copy of the order it seeks to annul; (b) the petition lacks cause of action for failure of the City of Iligan to file a Motion for Reconsideration which is a prerequisite to the filing of a petition for certiorari; (c) the City of Iligan did not exhaust all administrative remedies, since it did not avail itself of its right to appeal as provided under the Administrative Code of 1987; and (d) the NWRB appropriately dismissed the Opposition and/or Appeal.[10]

After all the issues were joined with the filing of the last pleading, the case was set for pre-trial. As reflected in the pre-trial order of 28 June 1996 which was amended on 02 July 1996, the parties specifically agreed to limit the issue of the case to "whether or not the NWRB Order dated March 10, 1994 was rendered by the NWRB with grave abuse of discretion or contrary to law." [11]

On 15 August 1997, the trial court rendered the assailed decision. Although the court a quo upheld the dismissal of the "Opposition and/or Appeal" on procedural grounds, it nonetheless annulled the NWRB Order, to wit:

From the aforesaid established facts, it could be safely deduced that as early as October 22, 1992 or eight months prior to the issuance of respondent Buendia's water permits on June 23, 1993, petitioner City of Iligan was already aware of respondent Buendia's water permit application and had all the opportunity to protest or oppose the same.

...

In this particular case, as emphatically stressed in respondent Buendia's memorandum, it is not disputed that no verified protest or opposition was filed during all the time, respondent Buendia's applications were being processed by respondent NWRB. Hence, under the prevailing circumstances, it being uncontested, no water rights controversy arose and respondent NWRB directly evaluated the technical aspect of the applications pursuant to the Implementing Rules and Regulations as explained above. In fact, on March 11-12, 1993, respondent NWRB, had conducted the physical investigation of the spring, which is the subject matter of the application.

...

Accordingly, based only upon the foregoing considerations, it would appear that respondent NWRB was correct in dismissing petitioner's Opposition and/or Appeal because there is "nothing which can be the subject of an appeal" as there is nothing for respondent NWRB to decide considering the absence of water rights controversy.

Considering, however, that the instant case is a clash between an individual or private right as against an assertion for the public welfare, involving, as a matter of fact, the water supply for the City of Iligan, this Court has to examine more closely the facts and the law in their broadest perspective. A more careful scrutiny of the records as well as the stipulations of facts and admissions by the parties, as herein above specified, reveal material and substantial aspects of the case, not taken into consideration by the respondent NWRB, which entirely changes the complexion of the case.[12] [Emphases ours]

According to the lower court, the appropriation by the Iligan City Waterworks Sewerage System (ICWSS) and its predecessors-in-interest of the water source at Ditucalan spring was from 1927 up to the present, as shown by the following:

- That the Iligan Waterworks Sewerage System has been existing as early as 1927 and the same was taken over

by the NAWASA on April 1, 1956;

- That in 1971, R. A. No. 6234 was passed and by virtue of the same, the MWSS took over the NAWASA, and on August 19, 1973, a Memorandum of Agreement (MOA) was issued between the MWSS and the City Mayor of Iligan, transferring the power of the MWSS to Iligan City.[13]

Thus, following the rule on acquisitive prescription that the right to the use of public water may be acquired through prescription for twenty (20) years, the court a quo ruled that the ICWSS had already acquired by acquisitive prescription the right to appropriate water from the Ditucalan spring prior to Buendia's application for water rights before the NWRB and that the Board no longer had any jurisdiction to issue any water right over the same water source.

Thereafter, on 30 September 1997, petitioner filed a Motion for Reconsideration, which was subsequently denied by the trial court in an Order[14] dated 05 January 1998.

Raising purely questions of law, petitioner filed the present petition.

ISSUES

In this Petition for Certiorari, petitioner raises the following issues:

- Whether the court a quo went beyond the issues it was empowered to adjudicate, as delineated in the Pre-Trial Order, and thus departed from the accepted and usual course of judicial proceedings, as well as deprived petitioner of his right to present evidence to support the case;
- Assuming that the court a quo may validly pass upon the issue of who has the better right to appropriate water from petitioner's property, whether it decided this question of substance in accord with law or with the applicable decisions of the Supreme Court;
- Whether the court a quo correctly ruled that since respondent had already acquired by acquisitive prescription the right to appropriate water from the Ditucalan spring then the NWRB no longer had any jurisdiction to issue any water right over the same water source; and
- Whether the court a quo correctly ruled that respondent has the right to appropriate water under its charter, Republic Act No. 525.

RULING OF THE COURT

In order to properly settle the issues raised in the instant case, a perusal of the NWRB Order of 10 March 1994 is of utmost importance since, as determined by the parties during pre-trial and recognized by the trial court in its decision, the pivotal issue of the case is the legality of the NWRB Order dismissing respondent's Opposition and/or Appeal.

It bears stressing that respondent's Opposition and/or Appeal was dismissed by the NWRB solely on procedural grounds, the opposition being filed out of time. According to the NWRB:

As against this gratuitous claim by the oppositors, however, the record is replete with evidence that Iligan City, was in point of fact and in law, very much aware of these applications as early as October 22, 1992, yet no verified protest nor opposition was filed by Iligan City during all the time that these applications were being processed, investigated and evaluated and despite having ample opportunity to do so...

On the other point raised which pertains to the "appeal issue," a careful examination of these articles alluded to (Art. 88 and 89, P.D. 1067) shows beyond doubt that these refers to decisions of the Council (now Board) on

water rights controversies or disputes, which in this particular case does not exist. In the case at bar, there was NO decision of a water right controversy in the pre-issuance of subject water permits which may be the subject of an appeal. Considering further that there was NO verified protest seasonably filed against said applications, logically therefore, there is no controversy to speak of

In essence, the “Opposition and/or Appeal” filed by Iligan City, has no leg to stand on, because it was filed “OUT OF TIME” and secondly, because of want of legal and factual basis.[15] [Italics ours]

Clearly, therefore, the only question which the court a quo should have resolved is whether or not the NWRB had correctly dismissed the “Opposition and/or Appeal” for being filed out of time. To said issue, the trial court opined:

In this particular case, as emphatically stressed in respondent Buendia’s memorandum, it is not disputed that no verified protest or opposition was filed during all the time, respondent Buendia’s applications were being processed by respondent NWRB. Hence, under the prevailing circumstances, it being uncontested, no water rights controversy arose...

...

Accordingly, based only upon the foregoing considerations, it would appear that respondent NWRB was correct in dismissing petitioner’s Opposition and/or Appeal because there is “nothing which can be the subject of an appeal” as there is nothing for respondent NWRB to decide considering the absence of water rights controversy.[16] [Emphasis Ours]

Respondent’s penchant for disregarding the rules of procedure is evident from the facts of the case. Both the NWRB and the trial court deduced that as early as 22 October 1992 or eight (8) months prior to the issuance of petitioner’s water permits, respondent City of Iligan was already aware of Buendia’s applications and had all the opportunity to protest the same but failed to do so and instead, filed it’s opposition and/or appeal almost five months after the permits have been issued. Further, from receipt of the NWRB order denying its opposition and/or appeal, respondent did not file a Motion for Reconsideration but proceeded to file a Petition for Certiorari with the RTC after almost six (6) months from the issuance of said order. Certainly, filing said petition almost six (6) months later does not fall within what this Court considers as a reasonable period to institute a petition for certiorari. Although the applicable rules on special civil action for certiorari, at the time of the filing of the petition, did not provide for a definite time frame within which to file the petition,[17] this Court has ruled, as early as 20 January 1992 in a Resolution in PHILEC Workers’ Union v. Hon. Romeo A. Young,[18] “that the special civil action for certiorari under Rule 65 of the Rules of Court must be filed within a reasonable period of only three (3) months.”[19]

“The failure to file the certiorari petition within a reasonable time renders the petitioner [respondent in this case] susceptible to the adverse legal consequences of laches.”[20] The essence of laches is the failure, or neglect, for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[21]

Notwithstanding the conclusion that the dismissal of said opposition and/or appeal was in accordance with law, the court a quo proceeded to resolve the question of as to who between the City of Iligan and Carlos Buendia has the better right to the water source, certainly going beyond the issue delineated in the pre-trial. The RTC reasoned:

Considering, however, that the instant case is a clash between an individual or private right as against an assertion for the public welfare, involving, as a matter of fact, the water supply for the City of Iligan, this Court has to examine more closely the facts and the law in their broadest perspective. A more careful scrutiny of the

records as well as the stipulations of facts and admissions by the parties, as herein above specified, reveal material and substantial aspects of the case, not taken into consideration by the respondent NWRB, which entirely changes the complexion of the case.[22]

Absent a discussion by the NWRB of the substantial issues raised in the Opposition and/or Appeal, the trial court should not have decided said questions especially since they were not passed upon by the Board which exercises original jurisdiction over issues involving water rights controversies.[23]

Time and again, this Court has upheld the doctrine of primary jurisdiction in deference to the specialized expertise of administrative agencies to act on certain matters. As held by the Court in the case of *Industrial Enterprises, Inc. v. Court of Appeals*:[24]

. . . [I]f the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court.

Therefore, the question of as to who between the City of Iligan and Carlos Buendia has the better right to the water source should have been left to the determination of the NWRB via a timely protest filed during the pendency of the water permit applications. However, said issue could not have been adjudicated upon by the NWRB since the application was never properly contested. Hence, in the absence of a timely protest filed before the NWRB, no water rights controversy arose wherein the NWRB can properly discuss the substantial issues raised by respondent.

Furthermore, Articles 16 and 17 of the Water Code of the Philippines provide:

Art. 16. Any person who desires to obtain a water permit shall file an application with the Council [now Board] who shall make known said application to the public for any protests.

In determining whether to grant or deny an application, the Council [now Board] shall consider the following: protests filed, if any; prior permits granted; the availability of water; the water supply needed for beneficial use; possible adverse effects; land-use economics; and other relevant factors.

Upon approval of an application, a water permit shall be issued and recorded.

Art. 17. The right to the use of water is deemed acquired as of the date of filing of the application for a water permit in case of approved permits, or as of the date of actual use in a case where no permit is required. [Emphases ours]

From a reading of the above provisions, it is evident that after an application to obtain a water permit has been made known to the public, any interested party must file his protest thereto, in order that the application may be properly evaluated. Otherwise, after the application for a water permit has been approved, the grantee of the permit now acquires an exclusive right to use the water source, reckoned from the date of the filing of the applications. Thus, after petitioner's right to the water permit has been properly adjudicated, respondent may no longer belatedly question said grant. By virtue of respondent's failure to lodge a timely protest, petitioner has already acquired the right to appropriate the water from the spring inside the latter's property.

In conclusion, the failure of respondent City of Iligan to timely oppose the water permit applications, and later on to file the Petition for Certiorari within a reasonable time has the effect of rendering the grant of the water permits to petitioner Buendia final and executory.

As to the issue of acquisitive prescription, the Court cannot now accept hook, line, and sinker the lower court's findings on the issue based on two reasons. First, said determination was not passed upon by the agency that

exercises original jurisdiction to settle said question of fact, which brings us to the conclusion that the court a quo should have declined to decide on the matter. Second, such determination is contradicted by the allegations made by the City of Iligan in a previous case that has become final involving the same parties. It has been established in the decision[25] of the RTC of Lanao del Norte, Branch 1, entitled, Buendia v. City of Iligan, and affirmed by the Court of Appeals,[26] that respondent entered petitioner's property only in 1974 and constructed an in-take dam thereon for purposes of appropriating water from the spring only in 1978. According to the said decision:

On the other hand, the defendant City of Iligan's allegations that its entry and clearing over the area in 1974 was acted upon in good faith as allowed by the administratrix of the estate of plaintiff's father in the person of Aurea Buendia is right. But its failure later on to obtain the consent and knowledge of the true owner when it constructed the in-take dam over the land in 1978 constitute bad faith...[27]

Therefore, based on respondent's previous allegations, the ICWSS cannot be said to have acquired a right to the use of the water source by acquisitive prescription, since it only entered the premises two (2) years before the enactment of the Water Code of the Philippines and only eighteen (18) years before petitioner applied with the NWRB for water permits. Furthermore, respondent's alleged exercise of its right to appropriate the water source since 1927 is negated by its belated application with the NWRB for water permits. If indeed the City of Iligan has the right to appropriate water from the spring located inside petitioner's property, then respondent would not have filed said application after the water permits over said water source have already been issued to petitioner.

As to the fourth issue of whether or not respondent has the right to appropriate water under its charter, suffice it to say that a perusal of the charter of the City of Iligan (Rep. Act No. 525) shows no grant of the power to appropriate water resources. Section 15 of the charter merely provides for the power to "provide for the maintenance of waterworks for supplying water to the inhabitants of the city."

WHEREFORE, premises considered, the petition is hereby GRANTED and the Decision of the Regional Trial Court of Lanao del Norte, Branch 2, dated 15 August 1997, is hereby SET ASIDE. The Order of the National Water Resources Board dated 10 March 1994 is AFFIRMED. No costs.

SO ORDERED.

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

[1] Dated 15 August 1997, docketed as Civil Case No. II-3024.

[2] Dated 10 March 1994.

[3] Rollo, p. 45.

[4] Rollo, pp. 47-48.

[5] Rollo, pp. 49-50.

[6] Rollo, pp. 51-56.

[7] Rollo, pp. 57-58.

[8] As provided for in the Administrative Code of 1987, respondent should have appealed the NWRB Order directly with the pertinent Department Head.

[9] RTC Decision, pp. 1-2; Rollo, pp. 33-34.

[10] Rollo, pp. 65-66.

[11] Rollo, p. 90.

[12] RTC Decision, pp. 7-8; Rollo, pp. 39-40.

[13] Id., p. 8.

[14] Rollo, p. 46.

[15] NWRB Order, pp. 1-2; Rollo, pp. 57-58.

[16] RTC Decision, p. 7; Rollo, p. 39.

[17] The 1997 Rules on Civil Procedure now provides under Sec. 4 of Rule 65 that petitions for certiorari must be filed not later than sixty (60) days from notice of the judgment, order, or resolution sought to be assailed.

[18] G.R. No. 101734.

[19] *Gaston v. Court of Appeals*, G. R. No. 116340, 29 June 2000, 334 SCRA 546, 554.

[20] *Municipality of Carcar v. CFI of Cebu*, G.R. No. L-31628, 27 December 1982, 119 SCRA 392, cited in *Ysmal, Jr. & Co. v. Deputy Executive Secretary*, G.R. No. 79538, 18 October 1990, 190 SCRA 673.

[21] *Lim Tay v. Court of Appeals*, G.R. No. 126891, 05 August 1998, 293 SCRA 634; *Santiago v. Court of Appeals*, G.R. No. 103959, 21 August 1997, 278 SCRA 98; *Philgreen Trading Construction Corp. v. Court of Appeals*, G.R. No. 120408, 18 April 1997, 271 SCRA 719, cited in *Gaston v. Court of Appeals*, supra, Note 19.

[22] RTC Decision, pp. 7-8.

[23] Art. 88. 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. (Presidential Decree No. 1067)

[24] G.R. No. 88550, 18 April 1990, 184 SCRA 426, 431-432.

[25] Civil Case No. 1255, dated 15 May 1990.

[26] CA-G.R. CV No. 27723, dated 29 November 1991.

[27] RTC Decision in Civil Case No. 1255, p. 5; Rollo, p. 119.

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