

IRINEO C. HAMOY, PETITIONER AND APPELLANT, VS. THE HONORABLE SECRETARY AND UNDERSECRETARY OF AGRICULTURE AND NATURAL RESOURCES, THE HONORABLE EXECUTIVE SECRETARY, AND NARCISO DE...

G.R. No. 13456. January 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal taken from the decision dated December 6, 1957, of the Court of First Instance of Zamboanga del Norte (in Special Civil Case No. 902), dismissing petitioner-appellant Irineo C. Hamoy's petition for certiorari.

It appears that on April 19, 1934, petitioner-appellant Irineo C. Hamoy and respondent-appellee Narciso de la Calzada executed an "Amicable Arrangement" before Public Lands Inspector Bartolome C. Biñosa, which reads:

"AMICABLE ARRANGEMENT

"We, the undersigned, of legal ages, married and residents of Disacan, Katipunan, Zamboanga, after having duly subscribed and sworn to declare the following:—

"1. That Narciso de la Calzada is the holder of the Sales Application No. 9860 covering a parcel of land at Disacan, Katipunan, Zamboanga and Irineo C. Hamoy is a claimant to said land;

"2. That Narciso de la Calzada offers an arrangement requesting for the amendment of his application described as follows: provided that Irineo C. Hamoy will retreat his claim to said land: Beginning at point 1 dom-on tree running in straight line to point 2 monument of Francisco Soler to point S another monument of Francisco Soler following Soler's line until it intersect a creek and then following, said creek to the sea and then connect to point 1 thus following the sea as illustrated in the sketch on the back hereof. This arrangement will exclude 15 coconuts of Narciso de la Calzada in favor of claimant Irineo C. Hamoy which the latter promise the applicant to pay the amount of Twenty Pesos (P20.00) on or before September 30, 1934 on condition of returning said coconuts to de la Calzada in case of failure of payment within the limit of this contract;

"3. That Irineo Hamoy hereby quit his claim on the area described in this document for which the Sales Application of N. de la Calzada is to cover only and conform to all other conditions stated in this contract."

On July 30, 1934, the Assistant Director of Lands, acting pursuant to the above-quoted amicable arrangement, issued an order, as follows:

"As the parties herein have amicably settled their controversy by establishing the common boundary between their respective holdings as shown in the sketch drawn on the back hereof, this case is hereby dropped and the Sales Application No. 9800 of Narciso de la Calzada amended accordingly and thereafter same shall be given due course.

"Nothing herein, however, shall be construed as a recognition by this Office that the claimant herein has a registerable title to the portion excluded from the above application in his favor."

On February 27, 1951, petitioner-appellant Hamoy wrote to the District Land Officer at Zamboanga City, protesting against the inclusion in the survey of the area covered by respondent-appellee De la Calzada's Sales Application No. 9760, of a portion known as Lot 1, Si-9860-D, which he claimed as his. Acting on said protest, the Director of Lands, on November 27, 1953, issued an order which in part, reads as follows:

"Clearly, the area of Lot 1 of said survey is outside his (De la Calzada's) application and is a part of that land claimed by Irineo C. Hamoy under his Survey Psu-60957 and Sales Application No. 8601. As there is no basis for the present claim of Narciso de la Calzada to said Lot 1, the same should be excluded from his survey and the claim of Irineo C. Hamoy thereto should be upheld.

"In view hereof, the present claim of Narciso de la Calzada to Lot 1, Survey Si-9860-D shown on the sketch drawn on the back hereof, is hereby denied and dismissed and his Sales Application No. 9860 shall stand on record as covering only Lots 2 and 3 of said survey conformably to the above-quoted order of July 30, 1934."

On January 22, 1954, respondent-appellee De la Calzada filed a motion for reconsideration of said order praying, inter-alia, that the aforementioned amicable arrangement of April 19, 1934 be set aside for failure of Hamoy to comply with the terms thereof, and that he and Hamoy be allowed to present their evidence at a hearing on the merits of the case. The Director of Lands denied the motion as well as a subsequent motion for reconsideration. Calzada thereafter appealed to the Secretary of Agriculture and Natural Resources. On July 21, 1954, respondent-appellee Undersecretary of Agriculture and Natural Resources issued an order which, in pertinent part, states:

"It appearing undisputed that Irineo C. Hamoy failed to comply with the agreement stipulated in the said Amicable Arrangement for his failure to pay de la Calzada the amount of P20.00, this Office believes that the said agreement is no longer enforceable and should be considered as rescinded. And inasmuch as the order of the Director of Lands of July 30, 1934, upon which the decision of the Director of Lands of November 27, 1953 was predicated, was based on said Amicable Arrangement entered into by De la Calzada and Hamoy, this Office can not just see now how this order of the Director of Lands dated July 30, 1934 could be enforced, considering that the agreement of the parties upon which said order was based is considered rescinded and unenforceable as already stated above.

"Under the circumstances, this Office believes that both orders of the Director of Lands dated July 30, 1934 and November 27, 1953 should be set aside, and to determine the preferential right over the land in question between De la Calzada, on the one hand, and Irineo C. Hamoy, on the other hand, a formal investigation should be conducted with a view to determining the following points:

"1. Who between Narciso de la Calzada and Irineo C. Hamoy is actually occupying the land in question and since when said occupation began;

"2. What improvements, if any, are on the land and who introduced said improvements; and

"3. Other material points which the investigator deems necessary to determine the right of preference between de la Calzada and Hamoy.

"Wherefore, the Director of Lands is hereby directed to assign an attorney in his office to conduct the necessary investigation and ocular inspection of the premises to determine the points above enumerated. He should submit his report thereon within sixty (60) days from the date hereof. As soon as the report of the investigation is submitted, the Director of Lands is hereby directed to decide the case anew."

His motion for reconsideration having been denied, petitioner-appellant Hamoy appealed to the President. On

February 10, 1955, respondent-appellee Executive Secretary, by authority of the President, issued an order affirming said order of July 21, 1954 of respondent-appellee Undersecretary of Agriculture and Natural Resources, which, in part, reads:

"The record reveals that Irineo C. Hamoy did not pay Calzada the sum of P20.00 for the 15 coconut trees on or before September 30, 1934, as agreed in the Amicable Arrangement of April 19, 1934. Since that arrangement was the basis of the Bureau of Land's order of July 30, 1934, and as such arrangement was not fulfilled or complied with, it follows that said order has lost force and effect. For the purpose of determining the rights of the contending parties to the land in question, it is necessary that a formal investigation of the case be conducted. That Department, therefore, did not err in ordering such investigation.

"In view of the foregoing, the orders appealed from are hereby affirmed."

Not satisfied with this order, Hamoy filed an urgent motion for reconsideration which the Executive Secretary denied, disposing of appellant's contention as follows:

"In support of your motion for reconsideration, you contend that this Office erred in affirming the Department's ruling that the Bureau's order of July 30, 1934, had become ineffective by reason of Hamoy's failure to pay P20.00 for the fifteen coconut trees pursuant to the 'Amicable Arrangement' upon which said order was based. Your contention is predicated on the ground that the Bureau's order of July 30, 1934, had long become final and irrevocable.

"Your contention is untenable. In the face of the following facts and circumstances, this Office is constrained to conclude that the Bureau's order of July 30, 1934, did not become final:

"1. One of the stipulations of the 'Amicable Arrangement' of April 19, 1934, which was the basis of the order of July 30, 1934, was that Hamoy would pay P20.00 to De la Calzada for the latter's fifteen coconuts. Hamoy failed to comply with that stipulation.

"2. De la Calzada continued occupying and improving the lot in dispute up to the present time, obviously because of Hamoy's failure to comply with his obligation to pay P20.00 under the 'Amicable Arrangement.'

"3. From 1934 to 1950 Hamoy did not mind De la Calzada's possession of the land, presumably because he himself had not complied with his obligation to pay as indicated above. It was only in 1951 that he protested De la Calzada's occupancy of the land.

"4. De la Calzada has been in possession of the land for more than 20 years while Hamoy has never been in possession thereof.

It will therefore be seen that the 'Amicable Arrangement' of April 19, 1934, and the Bureau of Land's order of July 30, 1934, did not become final not only because of Hamoy's failure to comply with his part of the agreement to pay P20.00 to De la Calzada, which was one of the considerations for the amicable settlement, but also because of the subsequent conduct of the parties as explained above. De la Calzada's actual possession of the land in dispute for 20 years is a tremendous fact which cannot in conscience and justice be overlooked, let alone disregarded, in the consideration of the case.

"In view of the foregoing, this Office finds no ground for modifying its decision affirming that of the Department of Agriculture and Natural Resources which ordered a formal investigation of the case for the ultimate purpose of determining the right of preference to the land in question as between the parties herein."

On December 26, 1956, petitioner-appellant Hamoy filed with the trial court a petition for certiorari to review and set aside the aforesaid orders dated July 21, 1954 and February 10, 1955 of respondents-appellees Undersecretary of Agriculture and Natural Resources and Executive Secretary, respectively. Respondents-appellees duly filed their answers to said petition. At the hearing of the case, however, only petitioner-appellant Hamoy and

respondent-appellee De la Calzada appeared and they submitted the case for decision on the basis of the pleadings filed with the court, without presenting their evidence on the merits.

On December 6, 1957, the court rendered a decision dismissing petitioner-appellant's petition for certiorari, for failure on his part to make sufficient showing entitling him to the issuance of the writ. Hence, this appeal.

The only issue presented by the appeal is whether respondent-appellees Undersecretary of Agriculture and Natural Resources and Executive Secretary, in issuing the orders dated July 21, 1954 and November 15, 1954, respectively, acted without or in excess of jurisdiction, or with grave abuse of discretion, as to entitle petitioner-appellant to the remedy prayed for.

We think not. It is uncontroverted that neither Hamoy nor de la Calzada had perfected their claims over the land in controversy. In fact in the very order relied upon by Hamoy, it was specifically stated: "Nothing herein, however, shall be construed as a recognition by this Office (Bureau of Lands) that the claimant herein (Hamoy) has a registerable title to the portion excluded from the above application in his favor." The land, therefore, is still public land under the administration and control of the Bureau of Lands and of the Department of Agriculture and Natural Resources. Hence, in issuing his order dated July 21, 1954, which set aside the orders of the Director of Lands dated July 30, 1934 and November 17, 1953, and which required a formal investigation of the case to determine the preferential sights of Hamoy and De la Calzada over the land in question, respondent-appellee Undersecretary of Agriculture and Natural Resources properly acted within his jurisdiction under Commonwealth Act No. 141 (Public Land Law)[1], which entrusts to said official control over the orders or decisions of the Director of Lands and who may, therefore, modify, adopt, or set aside, in his discretion, said orders or decision.

Neither did respondent-appellee Executive Secretary, in issuing the order dated November 15, 1954, by authority of the President, affirming the aforementioned order of July 21, 1954, of respondent-appellee Undersecretary of Agriculture and Natural Resources, act without or in excess of his jurisdiction, inasmuch as said official is empowered to modify, adopt, or set aside the orders or decisions of respondent-appellee Undersecretary of Agriculture and Natural Resources brought to him on appeal.[2] And that is, precisely, what respondent-appellee Executive Secretary did in the instant case. Finding that the investigation ordered by respondent-appellee Undersecretary of Agriculture and Natural Resources was proper and justified by the facts of the case, he affirmed the order in question. In this connection, it has been held that the lack of jurisdiction which entitles one to the remedy of certiorari, is that which is from the beginning, or having jurisdiction, the court, board or officer oversteps it while acting thereon (*Leung Ben vs. O'Brien*, 39 Phil., 182; *Silvestre vs. Torres*, 57 Phil., 885)[3], which circumstances are not present in the case at bar.

We come next to the question of whether said respondents-appellees, in issuing the orders in question, acted with grave abuse of discretion. This Court has repeatedly held that there is grave abuse of discretion justifying the issuance of the writ of certiorari, when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos vs. Province of Tarlac*, 67 Phil., 480; *Tan vs. People*, 88 Phil., 609)[4], as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law (*Tavera-Luna, Inc. vs. Nable*, 67 Phil., 340; *Alafriz vs. Nable*, 72 Phil., 278; *Liwanag, et al. vs. Castillo*, supra, p. 375).

In his order of July 21, 1954, respondent-appellee Undersecretary of Agriculture and Natural Resources ruled that the orders of the Director of Lands dated July 30, 1934 and November 17, 1953 should be set aside, and that in order to determine the preferential rights of the parties over the land in dispute, a formal investigation of the case should be conducted. We do not think in issuing said order he thereby gravely abused his discretion, considering

that his action was based on his finding that petitioner-appellant not only had failed to comply with the condition imposed in the amicable arrangement of April 19, 1934, but also because of the subsequent conduct of the parties which constituted abandonment of the agreement and, therefore, the same was, in his opinion, rescinded and rendered unenforceable.

Neither did respondent-appellee Executive Secretary act with grave abuse of discretion in issuing the order of February 10, 1955 affirming the questioned order of respondent Undersecretary of Agriculture and Natural Resources, inasmuch as the same was predicated on his finding similar to that of the latter, that the facts of the case warranted a formal investigation, for the purpose of determining which of the parties petitioner-appellant and respondent-appellee De la Calzada had a better right to the land subject of the controversy.

Wherefore, finding no error in the judgment of the lower court, the same is hereby affirmed, with costs against the petitioner-appellant. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

Gutierrez David, J., concurs in the result.

[1] See Secs. 3, 4, and 5; see also Sec. 79 (c) (1).

[2] Art. VII (11) (1), Constitution; Sec. 75, Rev. Adm. Code.

[3] Villarica vs. Sison, 60 Phil., 828; Francisco vs. Zanduetta, 61 Phil., 752.

[4] See also Rueda vs. Court of Agrarian Relations, *supra*, p. 300; Liwanag, et al. vs. Castillo, *supra*, p. 375.

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