

MARINDUQUE IRON MINES AGENTS, INC., PETITIONER AND APPELLANT, VS. THE SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, RESPONDENT AND APPELLEE.

G.R. No. 15982. May 31, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appellant's petition for certiorari in the Court of First Instances of Manila was dismissed for lack of cause of action, on the ground that petitioner had not exhausted the administrative remedy available to him, namely, appeal to the President from the decision of respondent Secretary of Public Works and Communications. The events which gave rise to that petition are stated in the order of dismissal dated July 30, 1959, as follows:

"It appears from the allegations of the petition that the petitioner was denounced before the Port and Harbor Board, Manila for making certain constructions near the mouth of Calat-an Creek in Sipalay, Negros Occidental; that on September 11, 1958, petitioner was served with copy of the charges filed against it by two investigators of respondent Secretary of Public Works and Communication who conducted an investigation of said charges; that on the bases of this investigation, respondent Secretary respondent a decision dated January 16, 1959 ordering the petitioner herein to remove the causeway illegally constructed at the mouth of the Catalan River and restore the bed of said river to its original condition within thirty days from receipt of copy of the decision, otherwise, the removal shall be effected by the government at the expense of herein petitioner. Without appealing the decision of the respondent Secretary to the President, herein petitioner has filed with this Court the present petition for certiorari seeking that the decision of respondent be annulled."

The order of dismissal was issued after a preliminary hearing on the question of whether or not an appeal to the President should first have been taken. It is the same question now raised before us.

Respondent's action ordering petitioner-appellant to remove the causeway constructed by it at the mouth of the Calat-an River was based on Republic Act No. 2056, sections 2 and 3 of which provide:

"SECTION 2. When it is found by the Secretary of Public Works and Communications, after due notice and hearing, that any dam, dike or another works * * * encroaches into any public navigable river, stream, coastal waters and any other public navigable waters or waterways, * * * he shall have the authority to order the removal of any such works and shall give the party concerned a period not to exceed thirty days for the removal of the same; * * * Provided, further, That should the party concerned fail to comply with the order of the Secretary of Public Works and Communications within the period so stated in the order, such removal shall be effected by the Secretary of Public Works and Communications at the expense of said party within ten days following the expiration of the period given the party concerned: Provided, furthermore. That the investigation and hearing to be conducted by the Secretary of Public Works and Communications under this section shall be terminated and decided by him within a period which shall not exceed ninety days from the time he shall have been notified in writing or a written complaint shall have been filed with him by any interested party apprising him of the existence of a dam, dike or any other works that encroaches into any public navigable river, stream, coastal waters or any other public waters or waterways * * *: Provided, still furthermore, That the failure on

the part of the Secretary of Public Works and Communications without justifiable or valid reason to terminate and decide a case or effect the removal of any such works, as provided for in this Section, shall constitute an offense punishable under section three of this Act * * *

"SECTION 3. Any person who shall violate the provisions of this Act or who shall fail to comply with a lawful order of the Secretary of Public Works and Communications within the period given him in the said order for the removal of any works, shall be punished by imprisonment of not less than six months or more than six years and fine of not less than five hundred pesos or more than six thousand pesos. In the case of any Secretary of Public Works and Communications, in addition to the fine and imprisonment herein provided, he shall suffer the penalty of perpetual absolute disqualification to hold any office."

Nowhere in the foregoing provisions, or in any other part of Republic Act No. 2056, is it required that appeal to the President should precede recourse to the courts. The silence of the statute, to be sure, does not mean that the President may not review the action of the Secretary. His power to do so is implicit in his constitutional power of control, of all the executive departments (Section 10, par. 1, Art. VII of the Constitution). This, however, does not resolve the issue, which is not whether petitioner could have appealed to the President but whether he should have done so before seeking judicial relief. The answer depends, in turn, upon whether an appeal to the President would have been sufficiently effective, adequate and expeditious, a negative finding in this respect being the basis on which the extraordinary writ of certiorari, as prayed for by petitioner, may be issued.

Section 2 of Republic Act No. 2056, it may be noted, prescribes three peremptory periods: (1) not more than thirty days for the party concerned to remove the illegal construction, counted from the date the Secretary of Public Works and Communications gives the order to that effect; (2) ten days following the expiration of the thirty-day period for the Secretary to carry out the removal in case the party concerned has not complied with the directive; and (3) ninety days within which the investigation and hearing to be conducted by the Secretary under the said Section should be terminated, counted from notice to him, by complaint or otherwise, of the existence of an illegal construction that should be removed. What is more, failure of the offending party to comply with the order of removal within the time given to him is punishable as a criminal offense. So is failure on the part of the Secretary of Public Works and Communications "without justifiable or valid reason to terminate and decide a case or effect the removal of any such works, as provided in this Section (2)."

The absence of an express provision in Republic Act No. 2056 for an appeal to the President from the decision of the Secretary, considered together with the peremptory character of the periods therein prescribed, shows that such an appeal—assuming that it may be taken in view of the President's constitutional power of executive control—would not affect the inexorable requirement that those periods be observed, the only exception being in favor of the Secretary, if there is justifiable or valid reason for his failure or delay to terminate and decide a case or effect the removal of the illegal construction such as, for instance, an injunction issued by a court.

The view of the executive department on this point, as expressed by the Secretary of Justice in his opinion No. 249, s. 1958, coincides with ours; He said:

"The above law was evidently enacted to provide for an effective and expeditious manner of removing illegal obstruction on public waterways. Not only is the Secretary of Public Works and Communications required to investigate fluvial obstructions but is in terms required to finish the investigation within a prescribed period. And upon failure of an errant builder of a dam or dike to comply with an order of removal, the Secretary is specifically directed to cause the execution of his decision. Failure on the part of the latter, without justifiable or valid reason, to decide a case or effect the removal of illegal constructions within the time prescribed by the statute is made a criminal offense.

"It is to be noted that the law does not provide for an administrative appeal. But even assuming that such

appeal is legally authorized, in the face of the unmistakable legislative policy disclosed by the quoted statute, I am inclined to the view that an appeal to the President from a decision of the Secretary of Public Works and Communications, does not in the meantime stay the execution of the appealed decision.

"Nevertheless, in order to afford the aggrieved party ample opportunity to secure judicial intervention before a demolition order is carried out, it is thought advisable that said party in every case be given reasonable notice of the date when the demolition shall affected."

We are of the opinion that an appeal to the President from the order of respondent Secretary would not have been expeditious enough for petitioner's purposes and hence the latter did not have to resort to it before seeking judicial relief. In any event, we believe the facts of this case place it within the rule enunciated in *Dimaisip vs. Court of Appeals*, 106 Phil., 237, as follows:

"Such failure (to appeal from the decision of the Secretary of Agriculture and Natural Resources to the President) cannot preclude the plaintiffs from taking court action in view of the theory that the Secretary of a Department is merely an alter-ego of the President; the assumption is that the action of the Secretary bears the implied sanction of the President, unless the same is disapproved by the latter."

The order appealed from is reversed, and the case is remanded to the court a quo for trial and judgment on the merits. No costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, and Regala, JJ., concur.

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