

CALAPAN LUMBER COMPANY, INC., PLAINTIFF AND APPELLEE, VS. COMMUNITY SAWMILL COMPANY, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 16351. June 30, 1964

Ponente: PADILLA, J.

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PADILLA, J.:

This is an action for injunction, prohibition against defendant public officers, compensatory, exemplary and nominal damages, attorney's fees and costs.

All the defendants prayed in their respective answers for the dismissal of the second amended complaint, in addition to their counterclaims.

After trial, the Court of First Instance of Oriental Mindoro rendered judgment, the dispositive part of which reads:

Wherefore, this Court renders judgment:

1. Finding:

(a) That the road and bridge in question, known as the Biga-Communal Goob (from Km. 12.3S to 15.88) was constructed during the period from 1950 to 1952 by the plaintiff at its exclusive expense with the knowledge and consent of the Provincial Board of Oriental Mindoro;

(b) That before actual construction of said road and bridge the personnel of the Office of the District Engineer surveyed the lay-out of the road to be constructed, also at the expense of the plaintiff;

(c) That before the actual construction of the road in question the plaintiff secured and used road-right-of-way agreements (Exhs. Y, Y-1 to Y-7 and Z-AA), executed in favor of the plaintiff by the owners of the several portions of land traversed by said road;

(d) That from the completion of the road up to the present the plaintiff has been contributing to the repair and maintenance of the said road such as stones, gravel, sand and lumber at its own expense;

(c) That before the completion of the road in question, to the same has been used by the public without any restriction with the written consent of the plaintiff as embodied in Resolution No. 222 (Exh. A) and 119 (Exh- B) with the exception of logging and lumber concerns who might use the road with the permission of the plaintiff;

(f) That Lao Kee (alias Lu Pong), Lee Cok, Tan. Hong, Tan Kiun, Co G«ac, Yan Ong Chi Hian, Tan Tak Tiap, Kiok Chia and the Community Sawmill Company had used the road and bridge in question sometime before April 6, 1953, until the issuance of the writ of preliminary injunction of June 25, 1953, manifest bad faith;

2. Declaring:

(a) That Resolution No. 186, series of 1953, marked Exh. C. is valid insofar as it repealed Resolution No. 222,

series of 1953, marked Exh. "A", and Resolution No. 119, series of 1953, marked Exh. B;

(b) That Resolution No. 186, series of 1953, marked Exh. C insofar as it declared that the road and bridge in question, public, is null and void the same being in violation of Sec. 2131 of the Revised Administrative Code;

(c) That the road and bridge in question are of private ownership belonging to the plaintiff;

(d) That the said defendant Lao Kee (alias Lu Pong), Lee Cok, Tan Hong, Tan Kian, Co Giac, Tan Hong Chia Hian, Tan Tiik Tiao, Kiok Chia and Community Sawmill did not have the right to use the road and bridge in question;

3. Ordering:

(a) That the writ of preliminary injunction issued against the Community Sawmill Company he made permanent, perpetually restraining the said defendants Lao Kee (alias Lu Pong), Lee Cok, Tan Hong, Tan Kian, Co Giac, Tan Hong Chia Hian, Tan Tak Tiao, Kiok Chia and Community Sawmill Company, their agents, attorneys, or other persons or entities from acting on their behalf;

(b) The same defendants named in the immediately preceding paragraph to pay jointly and severally to the plaintiff the sum of P10,000.00 as attorney's fees and to pay the costs;

4. Absolving from the third amended complaint the defendants Marciuno Roque, Pablo Lorenzo, Isaias Fernando, Francisco Infantado, Bernabe Jamilla and Cenon C. Laurena;

6. Dismissing all the counterclaims filed by the defendants for lack of sufficient merits. (Civil case No. R-542)

From the judgment thus rendered, the defendants Lao Kee (alias Lu Pong), Lee Cok, Tan Hong, Tan Kian, Co Giac, Chia Hian, Tan Tak Tiao, Kiok Chia, all acting under the name and style of Community Sawmill Company, appealed to this Court. They claim that the trial court committed the following errors:

1. The lower court erred in holding that the road in question is a private road and that, therefore, plaintiff could legally deny Us use to herein appellants.

2. The lower court erred in ordering herein appellants to pay plaintiff attorney's fees.

3. The lower court erred in holding that plaintiff can recover expenses of litigation under article 2208 of the Civil Code.

4. The lower court erred in not dismissing the complaint and finding for herein appellants on their counterclaim.

At the trial, the parties submitted to the Court a stipulation of facts which reads:

1. That the parties agree to the existence and authenticity of the following resolutions which were passed by the Provincial Board of Oriental Mindoro, as follows:

(a) Resolution No. 22,2. Series of 1950 (Annex "A" of the Third Amended Complaint), but not its regularity and validity, which must be proven;

(b) Resolution No. 119, Series of 1953 (Annex "B" of the Third Amended Complaint);

(c) Resolution No. 186, Series of 1955, revoking Resolutions Nos. 222. Series of 1950 and 119, Series of 1953. of the Provincial Board, granting the Calapan Lumber Company the exclusive right under certain conditions to use the Viga-Communal Goob road for a period of twenty (20) years, and declaring said road as a toll road.

2. That the parties agree as to the existence and authenticity of the following official communications,

indorsements and letters re the Biga-Communal-Goob read:

- (a) Letter dated March 20, 1953 addressed to the Hon. Executive Secretary, signed by Rodolfo Naguit and Joe Ong, both representatives of the Community Sawmill Company;
- (b) 1st Indorsement of Assistant Executive Secretary Lucas Madumba, dated March 21, 1953 (Annex "C", Third Amended Complaint);
- (c) 2nd Indorsement of Governor Infantado dated March 23, 1953;
- (d) 3rd Indorsement of District Engineer C. C. Laurena dated March 26, 1953;
- (e) 4th Indorsement of Governor Infantado dated March 28, 1953;
- (f) Letter of Rodolfo G. Naguit, representative of the Community Sawmill Company, dated May 4, 1953 and addressed to the Assistant Executive Secretary, Office of the President;
- (g) Letter of Atty. Ferdinand E. Marcos, counsel for the plaintiff company addressed to Executive Secretary Marciano Roque, dated May 21, 1953 (Annex "F", Third Amended Complaint) ;
- (h) 7th Indorsement of Director of Public Works, Isaias Fernando, dated April 20, 1953 (Annex "D", Third Amended Complaint) ;
- (i) 8th Indorsement of Undersecretary Vicente Orosa, dated April 25, 1953;
- (j) 9th Indorsement of Executive Secretary Marciano Roque dated May 11, 1953 (Annex "E", Third Amended Complaint);
- (k) 3rd Indorsement of Acting Executive Secretary Marciano Roque, dated July 3, 1953 and the 4th Indorsement of Undersecretary Vicente Orosa. dated July 16, 1953;
- (l) 1st Indorsement of Acting Executive Secretary Marciano Roque, dated July 17, 1953.

Wherefore, the parties respectfully pray that the foregoing stipulation of facts be admitted and approved by this Honorable Court, without prejudice to the parties adducing other evidence to prove their case not covered by this stipulation of facts.

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Resolution No. 222, adopted 4 December 1950, reads:

Whereas, there is not present an unfinished provincial road in the barrio of Viga, of the municipality of Calapan, known as the Biga-Communal Goob road, the construction of which could not be undertaken by the province due to insufficiency of funds;

Whereas, the Calapan Lumber Co., Inc., through its President, Mr. D. M. Gotauco, in a letter addressed to the Governor of this province this made representation to undertake the construction of said road under certain conditions; and the province is willing to accede to the request of the . Lumber Co. Inc. and to give it the sole right for its use, provided that after a period of twenty (20) years, said company shall donate to the province the road it had constructed; provided further that during the said period of 20 years other concerns dealing in logs and/or lumber may use the same road upon permission granted to them by the said Calapan Lumber Co., Inc. and provided finally that said road is open to all non-logging concerns or individuals during the said period of 20 years; Now, therefore, be it:

RESOLVED , That the Provincial Board of Oriental Mindoro grants, as hereby is granting, the Calapan Lumber

Co., Inc. to undertake the construction of the unfinished provincial road to the barrio of Viga, municipality of Calapan, known as the Viga-Connunual-Goob-Road, subject to the stipulation stated above; and

RESOLVED FURTHER , That copies of this resolution be furnished the District Engineer and the Calapan Lumber Co., Inc., through its President, Mr. D. M. Gotauco, for the information.

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Resolution No. 119, adopted 6 April 1953, reads:

Whereas, under Resolution No. 222, series of 1950, the Provincial Board of Oriental Mindoro under the former administration, granted the Calapan Lumber Co., Inc. the right to undertake the construction of the unfinished Viga-Communal-Goob provincial road the sole right for its use, under the following conditions:

- (1) That after a period of twenty (20) years, said company shall donate to the province the road it had constructed;
- (2) That during the said period of 20 years other concerns dealing in logs and/or lumber may use the same road upon permission granted to them by the Calapan Lumber Co.. and
- (3) That said road is open to all non-logging concerns or individuals during the said period of 20 years.

Whereas, according to the records of the Provincial Board the said resolution has not been amended or modified up to the present, and, therefore, the same is still in force and binding as per agreement stipulated therein;

Whereas, this Board has received reliable information to the effect that another certain lumber company is attempting to use, or has actually used the same road, by allowing to pass thru it its heavy trucks and tractors without securing any permission from the Culapari Lumber Co., Inc. to the detriment and prejudice of the interests of the latter lumber company which shouldered the cost of its completion in accordance with the rights granted to it by the province; and

Whereas, after a careful consideration of the matter this Board is of the opinion that the right of the Calapan Lumber Co., Inc., over the said road as stipulated in the conditions set forth in the resolution must be upheld for obvious reasons; Now, therefore, be it

RESOLVED by the Provincial Board of Oriental Mindoro to authorize, as it hereby authorizes, the Calapan Lumber Company. Inc. to prohibit the use of the Viga-Communal-Goob provincial road, from point Km. 12.38 up to Km. 15.88 of said road, by any other concern or company dealing in logs and/or lumber, without the permission or consent of the said Calapan Lumber Co., Inc., in accordance with one of the stipulations or conditions agreed upon in Resolution No. 222, series of 1950, of the Provincial Board; and

RESOLVED, FURTHER, That the District Engineer and the Calapan Lumber Co., Inc. be furnished with copies of this resolution, for their information.

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Resolution No. 186, adopted 19 June 1953, reads:

REVOKING RESOLUTIONS NOS. 222, SERIES OF 1950, AND 119. SERIES OF 1953, OF THE PROVINCIAL BOARD, GRANTING THE CALAPAN LUMBER COMPANY THE EXCLUSIVE RIGHT UNDER CERTAIN CONDITIONS TO USE THE VIGA-COMMUNAL-GOOB PROVINCIAL ROAD FOR A PERIOD OF TWENTY (20) YEARS.

Whereas, under Resolution No. 222, series of 1950, the Provincial Board of Oriental Mindoro, under the former provincial administration, granted the Calapan Lumber Co., Inc., an authority to undertake the construction of the

unfinished Viga-Goob provincial road from Point Km. 12.38 to Km. 15.88. and the exclusive right for its use, under certain conditions;

Whereas, on April 6, 1953, this Board passed another resolution (119) maintaining the right of the Calapan Lumber Co., Inc., over the said road under the conditions stipulated in the above-cited resolution No. 222, and forthwith authorized the said company to prohibit the use of the portion of said road constructed at its expense by any other concern or company dealing in logs or lumber without its permission;

Whereas, in a 9th Indorsement dated May 11, 1953, the pertinent parts of which are quoted hereunder, the Honorable, the Executive Secretary, to whom the case regarding this matter was appealed for decision, and upon the recommendation of the Director of Public Works and with the concurrence of the Undersecretary of Public Works and Communications, ruled that provincial roads are considered as properties for public use and the Provincial Board may not therefore grant the exclusive use thereof to any private individual or entity which would discriminate against or exclude the general public from a reasonable use thereof, and therefore, the resolution in question should be revoked:

In this connection, it should be stated that provincial roads are properties for public use and the provincial board may not grant the exclusive use thereof to any private individual or entity or enter into a contract or agreement which would tend to discriminate against or exclude the general public from a reasonable use thereof. Resolutions Nos. 222, series of 1950, and 119, series of 1953. of the Provincial Board, granting the Calapan Lumber Company an exclusive right to use the said road for a period of twenty (20) years and to prohibit lumber or logging concerns from using the road in question without the company's permission, should therefore be revoked. In consonance with the policy of the law, and as correctly suggested by the Director of Public Works and the Undersecretary of Public Works and Communications, the portion of the Viga-Communal Road from Km. 12.38 to 15.88. having a length of 3.5 kilometers, should be declared a toll road in order to raise funds for its maintenance and with which to reimburse the Calapan Lumber Company for the expenses the latter had incurred in the construction of this portion of the road.

Whereas, in view of the said ruling, this Board has been requested to take immediate action on the matter, to declare the above-said portion of the Viga-Communal-Goob provincial road as a toll road; and

Whereas, according to an estimate made by the Office of the District Engineer the Calapan Lumber Company has spent for the construction of the portion of the road in question having a length of 3.5 kilometers, the amount of P25,000.00 more or less; Now therefore, be it—

RESOLVED, That Resolution Nos. 222, series of 1950, and 119, series of 1953, of the Provincial Board, which grants the Calapan Lumber Co., Inc., the exclusive right to use the Viga-Communal-Goob provincial road a good period of 20 years, under certain conditions, be, and hereby are, revoked;

RESOLVED, FURTHER, That portion of said Viga-Communal-Goob provincial road, from Point Km. 12.38 up to Km. 15.88 thereof, be and hereby is, declared PROVINCIAL TOLL ROAD, under the provisions of Section 2131 of the Revised Administrative Code;

RESOLVED, FURTHER, That the following toll rates to be paid by any motor vehicle for the use of the provincial road be, and hereby are, fixed, effective today, June 19, 1953, the proceeds from which shall be used for the maintenance of the said road and the balance thereof for the reimbursement to the said company for the expenses it had incurred in the construction for said portion of the road:

For every truck, one way P1.00

For every weapon carrier, one way 60

For every jeeney 30

PROVIDED, however, that the portion of the road declared herein as provincial toll road shall continue to be so up to and until the amount spent by the Calapan Lumber Company for its construction shall have been covered by reimbursement to said company; and

RESOLVED, FINALLY, That copies of this resolution be forwarded to His Excellency, the President of the Philippines, thru the Director of Public Works and the Honorable, the Secretary of Public Works and Communications, Manila.

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Resolution No. 169, adopted 21 April 1956, revoked Resolution No.. 186 insofar as it declared Provincial Toll Road, that part of the road involved in this case.

There seems to be no doubt that Resolutions Nos. 222 and 119, adopted by the Provincial Board of Oriental Mindoro quoted above, were ultra vires, because sections 2067 (f) and (g) on powers of the provinces as political bodies corporate; 2102 (g) on powers of the provincial boards; 2106 (f) on powers of the provincial boards to be exercised with the approval of the Department Head; and 2113 (a) on road and bridge fund, of the Revised Administrative Code, do not authorize the Provincial Board of Oriental Mindoro to pass and adopt said resolutions. The contention that the Provincial Board of Oriental Mindoro under section 2106 (g) invoked by the appellee is authorized to pass the resolutions Nos. 222 and 119 quoted above, is untenable, because said paragraph of the section authorizes the Provincial Board "to permit, upon favorable recommendation by the Secretary of Public Works and Communications, and subject to such conditions as may properly protect the public interests, the construction and maintenance, for private use, of railways, conduits, and telephone lines across public thoroughfares, streets, roads, or other public property, and in the province: Provided, That such construction and private use shall not prevent or obstruct the public use of such thoroughfare, streets, roads or other public property, and that the permit granted shall at all times be subject to revocation by the Secretary of the Interior, if, in the judgment of that official, the public interest requires it." Consequently, Resolution No. 186 revoking the two previous resolutions was in order.

The road known as the Viga-Communal-Goob connecting two finished or completed parts of the provincial road, from kilometer 12.38 to 15.88, as laid out by the personnel of the office of the District Engineer was planned or intended to be laid out and constructed by the Provincial Government of Oriental Mindoro to complete said road. The fact that the survey, lay-out and actual construction of the unfinished part of the road were done at the appellee's expense, does not convert said road after construction into a private road, for it does not appear that the parts of the land where the road was laid out and constructed belong to or are owned by the appellee. The evidence shows that the owners of such parts of land ceded their parts of the land owned by them without any consideration because of their desire to have the road completed or to connect the ends of two completed parts of the road. It may be conceded that the appellee built the road in question in good faith; and such being the case, it may be argued that the appellee is entitled to keep or have possession of the road until after it shall have been reimbursed of the expenses it had incurred in constructing and maintaining the road in good condition. The provisions of the Civil Code on the right of a builder in good faith on a private land [1] cannot be invoked and applied to the road in question, because public interest is involved and the people living in that part of the province are entitled to use the road. It is true that that part of the Resolution No. 186 above quoted converting the road in question into toll road contravenes section 2131 of the Revised Administrative Code, because in the case of road the recommendation of the Secretary of Public Works and Communications and the authorization of the

President of the Philippines had to be secured and such recommendation and authorization had not been obtained.

Upon the foregoing considerations, this Court is of the opinion, and so holds, that the road involved in this case cannot be declared private property, and for that reason the Provincial Board of Oriental Mindoro may elect between paying the appellee the total cost of the construction of the road and together with lawful interest from the date of actual disbursement by the appellee to the date of payment by the Province of Oriental Mindoro within a reasonable period not to exceed one year from the date this judgment shall become final; or upon securing the recommendation of the Secretary of Public Works and Communications and authorization of the President of the Philippines to designate such road and toll road, to raise the necessary fund to reimburse the appellee of the total cost of construction of the road, together with lawful interest from the date of actual disbursement by the appellee to the date of payment by the Province of Oriental Mindoro, and the latter is ordered to refund the amount paid for is by the appellee during the enforcement of Resolution No. 186 which, as above stated, was unauthorized. The judgment appealed from making final the preliminary writ of injunction and ordering the appellants to pay the appellee the sum of P10,000 as attorney's fees, are reversed and set aside. The rest of the judgment appealed from not inconsistent with this opinion is affirmed, without pronouncement as to costs.

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

[1] Articles 448 and 546, Civil Code.

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