

**MACARIO SOLIS, FLORENTINO JOYA, JULIAN MONTANO, AND
GREGORIO TRIAS, PLAINTIFFS AND APPELLEES, VS. BENEDICTA
FUJEDA, VALENTIN GIONGCO, AND ROMAN ARAÑAS, DEFENDANTS
AND APPELLANTS.**

G. R. No. 16392. January 13, 1922

Ponente: STREET, J.

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STREET, J.:

The defendant Benedicta Pujeda is the owner of a strip of land in the barrio of Calibuyo, municipality of Tanza, Cavite, lying along a stream known as the estero of Calibuyo. Prior to the institution of this action the three plaintiffs named in the caption hereof constructed a dam of stone or concrete across said stream in order to obtain water for irrigation purposes, and one of the wings of the dam was made to rest upon the bank which belongs to Benedicta Pujeda. As a result of this construction, not only were several square meters of land belonging to Benedicta Pujeda appropriated by the plaintiffs for purposes of construction, but several hundred additional square meters lying along the stream above the dam and belonging to her were flooded by the rise of the water consequent upon the building of the dam. Believing herself to be aggrieved by this, Benedicta Pujeda, with the aid of one Roman Arañas, on or about July 20, 1918, made an opening in that portion of the dam which abuts upon her property, to the extent necessary to free the water that had accumulated upon her property. The perforation thus effected in the dam was about 1 meter wide and 2 meters deep.

Thereafter the present action was instituted by the plaintiffs to restrain Benedicta Pujeda (with whom is joined her husband Valentin Giongco) and Roman Arañas from interfering with the reparation of the dam by the plaintiffs, and to enjoin the same defendants from molesting the plaintiffs in the use of said dam in the future. The plaintiffs also asked that the defendants be adjudged to pay the sum of P90 to the plaintiffs as damages resulting from the breaking of the dam. The defendants answered generally and interposed a counterclaim, praying that they be absolved from the complaint and that the plaintiffs in turn be required to remove the aforesaid dam and that they be enjoined from reconstructing it or maintaining any other dam in that place to the prejudice of the defendants. The defendants furthermore prayed that the plaintiffs should be required to pay damages to the defendants in the amount of P3,000, with costs.

At the hearing the trial judge found the issues in favor of the plaintiffs, and decreed accordingly. From this judgment the defendants appealed. As no transcript of the oral testimony appears in the record, the facts must be taken as found by the trial judge, in relation with the documents to which reference is made in his opinion.

The question before us is, whether the plaintiffs have justified the invasion by them of the rights of Benedicta Pujeda in the manner above stated, for it is evident that if the building of the dam by the plaintiffs was unauthorized, so much of the construction as rests upon the land of Benedicta Pujeda constitutes a private nuisance and may be lawfully demolished or removed by her or by any person acting under her directions. It is incumbent upon the plaintiffs to prove that they had legal authority to build the dam.

In this connection it appears that when this work was first undertaken several years ago, the plaintiffs expected to obtain the approval of the Director of Lands for the project, and at that time they promised to indemnify Benedicta Pujeda for any damage caused to her by the construction of the dam. However, after the work had progressed to a certain extent, the Director of Lands ordered its removal. Later, the Director of Lands proposed as a reasonable solution of the controversy that, if the plaintiffs desired to continue with the construction of the dam, they should within thirty days deposit with the Bureau of Lands the sum of P371.68 to cover the damage that would probably be done to Benedicta Pujeda. This deposit was apparently made. Still later, upon further protest from Benedicta Pujeda, security was given by bond to the extent of P1,000. The Director of Lands having thus, inferentially at least, approved the project under the conditions stated, the plaintiffs proceeded with the construction, and reliance is now placed by them upon the authority thus granted by the Director of Lands as sufficient justification for their continuing the work.

Assuming, as we do, that the Director of Lands intended, by the communications referred to in the decision of the trial judge, to authorize the undertaking referred to, we are nevertheless of the opinion that under the facts appearing of record he had no power to confer such authority.

By article 143 of the Law of Waters, an easement of buttress can be imposed by administrative authority with respect to land lying adjacent to public or private waters; but in such case it is required that an investigation of record shall be made before the easement of buttress is decreed.

For the purposes of this decision it may be taken for granted that the Bureau of Lands is the proper repository of the administrative authority conferred in said article with respect to the decreeing of the easement in case of public waters, and the Director of Lands may be assumed to be the proper official to conduct the investigation and make the appropriate order. Nevertheless, the making of the investigation of record is an essential prerequisite to the exercise of the power. This implies that the interested parties shall have an opportunity to be heard and that record be made of the proof adduced with reference to the proposed servitude and the damage to result therefrom. These formalities are essential; otherwise the decreeing of the servitude would be obnoxious to the constitutional provision which forbids the taking of property without due process of law. The administrative investigation contemplated in article 143 of the Law of Waters must proceed along the lines of a judicial inquiry, at least to the extent of giving the parties an opportunity to be heard and making record of the proof pertinent to their respective contentions.

In the case now before us no investigation of record was made. About all that appears to have been done was that the watermaster, as representative of the Director of Lands, inspected the site of the dam and recommended that it be removed, reporting that it had been a failure. The letters referred to by the court as constituting a license from the Director of Lands to the plaintiffs to proceed with the work, under the conditions already stated, show a praiseworthy effort on the part of that official to adjust the controversy upon a fair basis, but they afford no legal warrant for the plaintiffs to proceed with the construction of the dam.

It appears that the land owned by Benedicta Pujeda is of the class known as friar lands; and his Honor, the trial judge, seems to have supposed that section 19 of Act No. 1120, referring to these lands, gives the Government special authority to construct, or to authorize another to construct, improvements of this character upon such lands. However, we discover nothing in said provision which, when rightly interpreted, could be considered as conferring upon the Director of Lands any such extraordinary power as has been here claimed.

It results that the dam in question has been constructed without legal authority, and the action instituted by the plaintiffs cannot be maintained. The judgment appealed from will therefore be reversed, and the defendants will be absolved from the complaint.

Under the prayer of their cross-complaint the defendants Benedicta Pujeda, with her husband, Valentin Giongco, are entitled to an order, which will be accordingly entered, requiring the plaintiffs within a reasonable time to remove so much of the dam as constitutes a burden upon the land of Benedicta Pujeda, and to the extent necessary to avoid the flooding of her land by the obstruction of the dam. In addition to this, judgment will be entered that the same defendants recover of the plaintiffs the sum of P80, plus the further sum of P6.80 for each year from April, 1915, until the obstruction mentioned shall have been removed, as ordered. No special pronouncement will be made as to costs of either instance. So ordered.

Johnson, Araullo, Avancena, and Villamor, JJ., concur. Judgment reversed.

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