

MANUEL BORJA, PETITIONER AND APPELLEE, VS. HON. FLORENCIO MORENO, AS SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS, AND BENJAMIN YONZON, RESPONDENTS AND APPELLA...*G.R. No. 16487. July 31, 1964*

Ponente: MAKALINTAL, J.

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This is an appeal by respondents Secretary of Public Works and Communications and Benjamin Yonzon from the decision of the Court of First Instance of Pampanga dated November 9, 1959 in Civil Case No. 1508 of said Court, which was initiated by a petition of herein appellee, Manuel Borja, for certiorari, mandamus and prohibition with preliminary injunction.

Borja is the owner of a parcel of land with an area of some 104 hectares in barrio Consuelo, municipality of Macabebe, province of Pampanga. This land, utilized as a fishpond, was acquired by him from Ayala and Company in 1937. On August 15, 1958 an administrative complaint was filed with the office of respondent Secretary by Benigno Musni and others, including then Senator de la Rosa, against a number of landowners, among them petitioner Borja, for abatement of nuisance and demolition of illegally constructed dams, dikes or any other works in the public navigable rivers in Macabebe, pursuant to the provisions of Republic Act No. 2056. In the particular case of Borja, he was alleged to have closed the stream called Matlaue, supposedly public, which runs through his land.

Benjamin Yonzon, an attorney in the Department of Public Works and Communications, was designated by the Secretary to investigate the charges in the complaint. A copy of the decision, purportedly signed by the Under-secretary, M. B. Bautista, and dated April 3, 1959, was served upon counsel for Borja on June 12, 1959, ordering the latter as follows: "remove the dams and/or dikes illegally constructed across the channel of the southern portion of Batacan-Matlaue including that dam and/or dike found across the channel bordering the properties owned by respondent and Maxima Vda. de Bias, and restore the bed to its original condition within thirty (30) days from the date of receipt of this decision, otherwise, the removal thereof shall be effected by this office or its duly authorized representative at the expense of the respondent within ten (10) days after the expiration of the thirty-day (30) period, without prejudice to whatever judicial action that may be instituted against them pursuant to Section 3 of Republic Act No. 2056."

The foregoing decision of respondent Secretary was assailed by petitioner Borja in the latter's petition before the court a quo on several grounds: that it was based on erroneous findings of fact; that it was contrary to law; that the investigation constituted a usurpation of judicial power and hence beyond the jurisdiction of respondent Secretary; that the delegation to Benjamin Yonzon of the authority to investigate was illegal and therefore null and void; and that the investigation was conducted with grave abuse of discretion and in violation of due process. Respondents raised a number of defenses in their answer to the petition, and after trial the court rendered the judgment now

subject to the present appeal, granting the writs prayed for by petitioner; declaring null and void and of no legal effect all proceedings had by respondents in the administrative investigation, including the decision entered on April 3, 1959; restraining and prohibiting respondent Secretary from enforcing said decision, and declaring the injunction previously issued to be permanent.

The issues raised by appellants in this appeal are formulated in the errors assigned in their brief, as follows:

I

"The lower Court erred in holding in effect that Republic Act No. 2056 is unconstitutional in that it constitutes an undue delegation of judicial power to an administrative official.

II

The lower Court erred in holding that there was no duty on the part of petitioner to exhaust his administrative remedies.

III

The lower Court erred in not finding the decision of the Secretary of Public Works and Communications supported by evidence.

IV

The lower Court erred in holding that the Matlaue river is a private stream.

V

The lower Court erred in finding that respondent Benjamin Yonzon gravely used his discretion and acted capriciously."

The provisions of Republic Act No. 2056 referred to by appellants in their first assignment of error are Sections 1 and 2. Section 1 provides that the construction or building of dams, dikes or any other works which encroaches into any public navigable river, stream, coastal waters and any other navigable public waters or waterways as well as the construction or building of dams, dikes or any other works in areas declared as communal fishing grounds shall be ordered removed as public nuisances or as prohibited construction, but authorizes the Secretary of Public Works and Communications to allow the construction of any such works when public interest or safety so requires, or when it is absolutely necessary for the protection of private property. Section 2 provides for due notice and hearing to establish the facts mentioned in Section 1, after which the Secretary, upon an affirmative finding as to their existence, is authorized to order the removal of the works declared as nuisances or prohibited constructions, giving the party concerned a period of not more than 30 days to do so, failing which such removal should be carried out by the Secretary within 10 days after the expiration of the period originally allowed. The same section adds that the investigation to be conducted by the Secretary must be terminated and decided by him within a period not exceeding 90 days from the time a complaint in writing is filed with him by any interested party apprising him of the existence of the illegal works or constructions. Failure on his part, without justifiable reason, to terminate or decide a case or to effect the removal of the works or constructions within the time limit is considered an offense, for which the corresponding penalty is prescribed.

With respect to the first error assigned by appellants, it is not true that the trial court ruled the foregoing provisions unconstitutional. On the contrary, it declined to pass upon the constitutional question on the ground that those provisions do not apply to the facts of the instant case. As far as may be gathered from the court's

opinion, the particular fact which removes this case from the purview of Republic Act No. 2056 and which it considered duly established by the evidence is that the Matlaue stream which runs through the land of petitioner-appellee is not a public navigable river but his private property. The implication is that the authority of the Secretary of Public Works and Communications to proceed under the provisions of said statute covers only cases where there is no dispute as to the public navigable character of the river or water-way alleged to be illegally obstructed, but that when this is precisely a basic fact in contention the matter should be left to the courts for determination.

To the writer of this opinion the view thus taken by the court a quo and now urged upon us by petitioner-appellee has cogent reasons behind it. There is a certain danger in leaving the adjudication of a claim of private ownership of property, vis-a-vis the Government, in the hands of an executive official. This danger is demonstrated by the very argument of appellants under their third and fourth assignments of error. They point to the evidence submitted at the administrative investigation and, invoking the "substantial evidence" rule, assail the lower court's conclusion that the Matlaue stream is privately owned. The said rule, indeed, which has been applied in a number of cases in this jurisdiction, is that if there is substantial evidence to support the findings of an administrative official in matters within his competence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (*Ang Tibay vs. CIR*, 69 Phil. 635, 642), the courts are bound to look no further, not even to consider contrary evidence of a preponderant nature. If the decision of the administrative official carries with it, as the premise upon which it rests, a finding that certain property claimed by a private party to be his is in fact part of the public domain, it does not seem fair to take that finding as conclusive upon the courts just because it is supported by substantial evidence, although there may be evidence to the contrary which, if properly considered and evaluated, would lead them to a different conclusion.

The other members of this Court, however, hold that the authority of the Secretary of Public Works and Communications to inquire into and decide the question-of the public or private character of a river or stream is incidental to the power conferred upon him by the statute to conduct the necessary investigation and to order the removal of any works which constitute obstructions therein. This authority recognized, the next question posed by appellants is with respect to the correctness of the trial court's finding that the Matlaue stream is privately owned by petitioner-appellee. Under the "substantial evidence" rule (laying aside for the moment the question of whether or not such evidence may properly be considered at all, in view of the manner in which the administrative investigation was conducted) we find appellants' third and fourth assignments of error to be well-taken: there is substantial evidence to support the conclusion of respondent Secretary that the Matlaue stream is a public navigable river. This evidence consists of the testimony of two witnesses, one a farmer and the other a fisherman, and of the result of the ocular inspection conducted by the investigator, appellant Yonzon, as embodied in the report subsequently submitted by him and depicted in a sketch prepared by the assistant engineer of the Pampanga River control project.

Nevertheless, we do not feel justified in affirming, for purposes of adjudication, the aforesaid conclusion of respondent Secretary, and reversing that of the trial court, for the investigation wherein the evidence was received was conducted with manifest disregard of the requirements of due process. And it is solely on this ground that the members of this Court are agreed that this decision should be predicated.

The administrative complaint was filed with respondent Secretary on August 15, 1958. On October 22, 1958 Yonzon issued a subpoena to Borja ordering him to appear at the hearing of the case on October 24, 1958. That was the first time Borja had notice of the complaint. Acting on his request that the hearing be postponed for at least two weeks, Yonzon deferred it, but only up to October 27, 1958.

When that day arrived Attorney Vicente V. Mendoza, a member of the law firm Carlos, Laurea & Associates, in

representation of appellee, attended the investigation at Macabebe, Pampanga, but for the sole purpose of delivering to Yonzon appellee's motion to quash and dismiss on the grounds that complainants Musni, et al. did not have the capacity to file the complaint and that Republic Act 2056 would be unconstitutional if it should be given retroactive effect. Without acting on the motion Yonzon proceeded with the examination of the two witnesses for the complainants. Attorney Mendoza repeatedly manifested that he was not prepared for the hearing and was not in a position to cross-examine complainants' witnesses because the law firm of which he was a member had not had time to confer with appellee on account of the limited time given by Yonzon. Attorney Mendoza, however, sought to reserve his right to cross-examine, but Yonzon ruled that his failure to cross-examine was in effect a waiver of the right.

On October 28, 1958 appellant Yonzon, upon a mere oral notice, conducted an ocular inspection of the questioned stream without giving appellee Borja sufficient time to prepare therefor. Furthermore, Yonzon did not limit himself to inspecting the premises but proceeded to conduct a hearing by questioning the witnesses who had testified the day before.

On the next hearing date, October 30, 1958, Attorney Clemente Madarang, Jr., of the law firm representing appellee, was present. He asked for reconsideration of Yonzon's ruling that Attorney Mendoza's request for reservation to cross-examine amounted to a waiver of the right to do so. Yonzon refused to reconsider. When Attorney Madarang reiterated his request, Yonzon relented and agreed to allow him to cross-examine the witnesses who had previously testified, but without waiting for the transcription of the stenographic notes of the hearing previously had. Attorney Madarang agreed to cross-examine even if only on the notes taken by Attorney Mendoza. But when he was about to do so Yonzon again changed his mind and refused to let him cross-examine. On that same day, Attorney Madarang sought to take the stand as witness for appellee in order to identify certain documents which he had secured for the latter, but Yonzon prevented him from doing so. In addition, during that same hearing Yonzon called to the witness stand a certain engineer Manangan of the Pampanga River Control Project, allegedly as witness for the Government, which was not a party to the case. And then Yonzon denied to Attorney Madarang the right to object to any question propounded to Manangan, even if the same were prejudicial to appellee's interest.

On November 17, 1958 appellant Yonzon, at the request of appellee, issued a subpoena to Eliseo Panopio to attend the hearing the next day. When Yonzon delivered the subpoena he found out that Panopio was in the province. In spite of Attorney Madarang's insistence that Panopio's testimony would not be limited to identifying the tatter's report (Exhibit S) Yonzon refused to grant continuance, reasoning out that Panopio's testimony would only corroborate that of Valderrama, who had identified certain documents which were in the custody of his office. The Panopio report, it may be mentioned, was prepared by him in 1931 when, as a surveyor of the Bureau of Public Works, he investigated the different streams and rivers situated in Macabebe, Pampanga, and found that Matlaue in particular had been artificially dug, and subsequently increased in width, length and depth by the owner at the time, from whom Borja acquired the land in 1937.

On November 18, 1958, Yonzon terminated the hearing without giving counsel for Borja opportunity to present other witnesses and in spite of vigorous objections on his part.

Appellant Yonzon clearly abused his discretion in riding roughshod over appellee's right to a fair hearing. His acts of (1) proceeding with the hearing without first acting on appellee's motion to dismiss; (2) ruling that appellee's attempt to reserve his right to cross-examine was a waiver of said right; (3) conducting an ocular inspection *motu proprio* and interrogating witnesses during the same; (4) not allowing Attorney Mdarang to cross-examine the complainants' witnesses during the hearing of October 30, 1958; (5) calling to the witness stand a person who was not a witness for either the complainants or the respondents, and asking him questions to which he refused to

entertain any objection from counsel; (6) arbitrarily refusing appellee opportunity to present Eliseo Panopio on the ground that his testimony was merely corroborative, although as it later turned out in court Panopio's testimony was important to appellee's defense; and (7) terminating the hearing without giving appellee full opportunity to present his other witnesses—all these are indicative of the capricious and arbitrary manner in which the administrative investigation was conducted.

By way of justification Yonzon repeatedly invoked the ninety-day period proscribed by R.A. 2056 within which an administrative case for abatement of nuisance thereunder must be terminated. Noteworthy, however, is the fact that while the complaint for abatement was filed on August 16, 1958, it was only on October 22, 1958—more than two months later—that appellant officials informed appellee thereof and, strangely enough, by means of a subpoena. The latter did not have sufficient time to prepare his defense when appellant Yonzon started rushing the proceedings, evidently to make up for lost time.

As it was, even with all that undue haste, the last day of the hearing was still beyond the deadline sought to be met. The decision was dated April 3, 1959, eight months after the complaint was filed; and copy was served on appellee's counsel only on June 12, 1959.

The manner the investigation was conducted was a virtual denial of due process. This is one of the exceptions to the rule requiring exhaustion of administrative remedies—in this case by appeal to the President, it' otherwise it was necessary at all—before resort to the courts may be had.

The judgment appealed from is affirmed in ho far as it sets aside the administrative investigation conducted by respondents-appellants and the decision therein against petitioner-appellee, but not in so far as said judgment declares the Matlaue stream or river the private property of said petitioner-appellee, the question of ownership thereof being left for determination in such other proceeding, administrative or judicial, as respondents-appellants may deem proper to initiate. No pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Paredes and Regala, JJ., concur.

Reyes, J. B. L., concurs on the ground of virtual denial of due process.

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