

DASMARIÑAS WATER DISTRICT, PETITIONER, VS. LEONARDO-DE CASTRO, JJ. MONTEREY FOODS CORPORATION, RESPONDENT.

G.R. No. 175550. September 17, 2008

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari[1] of the May 26, 2006 decision[2] and November 21, 2006 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 90855.

Respondent Monterey Foods Corporation is a domestic corporation primarily engaged in the livestock and agriculture business. It was issued water permit nos. 17779 and 17780 by the National Water Resources Board (NWRB)[4] for its two deep wells located at Barangay Langcaan, Dasmariñas, Cavite. The water drawn from the wells was used solely for respondent's business and not for the purpose of selling it to third persons for profit.

Petitioner Dasmariñas Water District is a government-owned corporation organized by the Sangguniang Bayan of Dasmariñas in accordance with the provisions of PD 198 (otherwise known as the "Provincial Water Utilities Act of 1973").[5]

On March 30, 2004, petitioner filed a complaint for payment of production assessment against respondent in the Regional Trial Court (RTC) of Imus, Cavite, Branch 90, docketed as Civil Case No. 0113-04. Invoking Sec. 39 of PD 198, it prayed that respondent be ordered to pay the following: (1) monthly production assessment for the two deep wells in the amount of P55,112.46 from the date of demand; (2) actual expenses of at least P50,000 and (3) attorney's fees and costs of suit.[6]

On June 8, 2004, respondent filed a motion to dismiss on the ground that the RTC had no jurisdiction to hear the case because, under PD 1067 (otherwise known as the "Water Code of the Philippines"),[7] it was the NWRB that had jurisdiction.[8]

On April 28, 2005, the RTC issued an order denying the motion to dismiss.[9] It ruled that it had jurisdiction over the subject matter of the case because it referred to the right of petitioner to collect production assessments. It denied reconsideration in an order dated June 8, 2005.[10]

Aggrieved, respondent filed a petition for certiorari[11] in the CA under Rule 65 of the Rules of Court docketed as CA-G.R. SP No. 90855 assailing the April 28, 2005 and June 8, 2005 RTC orders. Aside from the issue of jurisdiction, it likewise raised the issue of whether petitioner had the authority to impose a production assessment under Sec. 39 of PD 198.

In a decision promulgated on May 26, 2006, the CA granted herein respondent's petition and dismissed petitioner's complaint.[12] It held that since the complaint involved a dispute relating to the appropriation, utilization, exploitation, development, control, conservation and protection of waters, the NWRB had original jurisdiction over it under Art. 88 of PD 1067. It also ruled that under PD 1067, petitioner had no authority to impose the assessment without the prior approval of the NWRB.[13]

Hence this petition. The sole issue is whether it is the RTC or the NWRB which has jurisdiction over the collection of water production assessments.

The CA ruled that the NWRB had original jurisdiction over the complaint under Arts. 3 (d), 88 and 89 of PD 1067 and that the regular courts exercised only appellate jurisdiction:

ART. 3. The underlying principles of this Code are:

xxx xxx xxx

d. The utilization, exploitation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through the [NWRB].

xxx xxx xxx

ART. 88. The [NWRB] shall have original jurisdiction over all disputes relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters within the meaning and context of the provision of this Code.

xxx xxx xxx

ART. 89. The decisions of the [NWRB] on water rights controversies may be appealed to the [RTC][14] of the province where the subject matter of the controversy is situated within fifteen (15) days from the date the party appealing receives a copy of the decision, on any of the following grounds: (1) grave abuse of discretion; (2) question of law; and (3) questions of fact and law.

Petitioner argues that the issue in its complaint was the determination of its right as a water district under Sec. 39 of PD 198 to impose production assessments on respondent:

Sec. 39. Production Assessment. - In the event the board of a district finds, after notice and hearing, that production of ground water by other entities within the district for commercial or industrial uses is injuring or reducing the district's financial condition, the board may adopt and levy a ground water production assessment to compensate for such loss. In connection therewith, the district may require necessary reports by the operator of any commercial or industrial well. Failure to pay said assessment shall constitute an invasion of the waters of the district and shall entitle this district to an injunction and damages pursuant to Section 32[15] of this Title. (Emphasis supplied)

Thus, it avers that the regular courts had jurisdiction over the subject matter thereof. It asserts that since it was not questioning the validity of the water permits issued by the NWRB to respondent, it was not a water rights dispute over which the NWRB had original jurisdiction.[16]

The petition has merit.

It is axiomatic that jurisdiction is determined by the allegations in the complaint.[17] Petitioner alleged the following:

1. That [petitioner] is a government owned agency duly organized by the Sangguniang Bayan of the Municipality of Dasmariñas pursuant to the express provisions of [PD. 198], as amended, particularly Secs. 5, 6, 7, Chapter 1, Title 2, thereof and with principal office at Camerino Avenue, Dasmariñas, Cavite;

xxx xxx xxx

3. That under the provisions of [PD 198], specifically Sec. 47 thereof, [petitioner] is the exclusive franchise holder in the maintenance and operation of water supply and in the distribution thereof for domestic, industrial uses, and that no franchise shall be granted to any other person, agency or corporation for domestic, industrial

or commercial water service within its district without the consent of [petitioner] and subject only to the review by the Local Water Utilities Administration;

4. That [respondent] is engaged in farm business, in the operation of which [respondent] has installed two (2) deepwells, namely Well No. 1 and Well No. 2, with the following description and capacity:

WELL No. HP CAPACITY

1 30 300 gpm

2 7.5 75 gpm

5. That under the provision of [PD 198], particularly Sec. 39 Chapter VIII, Title II thereof, if the district ([petitioner] herein) thru its board of directors, finds, after notice and hearing, that production of ground water by other entities, including [respondent] herein, within the district for commercial or industrial uses is injuring or reducing the district's financial condition, the Board may adopt and levy a ground-water assessment to compensate for such loss;

6. Since the operation of [respondent's] business, together with other companies or entities within the district, [petitioner] has found that [respondent's] operation of its two (2) deepwells has adversely affected [petitioner's] financial condition;

7. That [petitioner] therefore invited [respondent's] representative or representatives to discuss the matter of production assessment on the basis of the volume of water consumption extracted from [respondent's] two (2) deepwells and its adverse effect on [petitioner's] financial condition, as shown by [petitioner's] letters dated 24 March 1998 and 31 August 2002 and others, xerox copies of said letters dated 24 March 1998 and 31 August 2002 are hereto attached and marked as Annexes "A" and "B" hereof;

8. That [petitioner] thru its authorized inspectors, conducted inspection of [respondent's] deepwells Nos. 1 and 2 and submitted their own findings of the daily and monthly average consumption of [respondent's] subject deepwells, and on the basis of [petitioner's] duly approved resolution regarding charge rate of P2.00 per cubic meter, petitioner came up with the following production assessment charge:

Well

HP

Capacity

Hrs. of

Charge

Average

Actual Charge Average

Operation

Rate

Consumption

Daily

Monthly

Peso/m3

Daily

Monthly

peso/m3

peso/m3

1

30

300

12

P2.00

816.48

2,449.42

1,632.96

48,988.85

2

7.5

75

6

P2.00

102.06

3,061.80

204.12

6,123.61

P55,112.46

xero copies of said finding and coputaion is hereto marked as Annex "C" hereof;

9. That despite demands made upon [repondent], the latter failed and refused and continues to fail and refuse to pay [petitioner's] fair and just demands, to the damage and prejudice of [petitioner].[18]

It is clear from the allegations that the complaint involved the determination and enforcement of petitioner's right under PD 198 to impose production assessments, not the appropriation and use of water and the adjudication of the parties' respective water rights.[19] It was admitted that petitioner was a duly constituted water district. Respondent, on the other hand, obtained water permits from the NWRB. Both thus had respective rights to the use of the water. But petitioner was not challenging the water permits acquired by respondent. As we held in *Atis v. CA*:^[20]

The case at bar does not involve any dispute relating to appropriation or use of waters. "Appropriation" as used in the Water Code means the "acquisition of rights over the use of waters or the taking or diverting of waters

from a natural source" (Art. 9); while "use of water for fisheries is the utilization of water for the propagation and culture of fish as a commercial enterprise." In fact, Petitioner is the holder of [two water permits]. The issuance of said permits served to grant petitioner water rights or the privilege to appropriate and use water (Art. 13, [PD] 1067) from the San Pedro Creek and sea water from Dapitan Bay for his fishpond.

Private Respondents/Intervenors do not dispute the water rights petitioner had acquired by reason of those permits xxxx

xxx no dispute lies relative to the use or appropriation by Petitioner of water from the San Pedro Creek and sea water from the Dapitan Bay. The case does not involve a determination of the parties' respective water rights, which would otherwise be within the competence and original jurisdiction of the [NWRB]. Rather, the issue is whether or not the construction of the dike, obstructed the natural water course or the free flow of water from Petitioner's higher estate to Intervenors' lower estate thereby causing injury to petitioner's rights and impairing the use of his fishpond.[21]

Also, in *Amistoso v. Ong, et al.*,[22] we explained:

As correctly postulated by the petitioner, the court a quo is not being asked to grant petitioner the right to use but to compel private respondents to recognize that right and have the same annotated on respondent Neri's Torrens Certificate of Title. Resort to judicial intervention becomes necessary because of the closure made by the respondents of the irrigation canal thus depriving the petitioner to continue enjoying irrigation water coming from Silmod River through respondents' property. The interruption of the free flow of water caused by the refusal to re-open the closed irrigation canal constituted petitioner's cause of action in the court below, which decidedly do not fall within the domain of the authority of the [NWRB].

Respondents, however, rely very heavily on the dictum laid down in the *Abe-Abe vs. Manta*[23] xxxx

xxx xxx xxx

The said pronouncement, however, finds no application to the instant case for in there, both petitioners and respondent have no established right emanating from any grant by any governmental agency to the use, appropriation and exploitation of water. In the case at bar, however, a grant indubitably exists in favor of the petitioner. It is the enjoyment of the right emanating from that grant that is in litigation. Violation of the grantee's right, who in this case is the petitioner, by the closure of the irrigation canal, does not bring the case anew within the jurisdiction of the [NWRB].[24]

Clearly at issue in this case is whether, under the factual allegations of petitioner, it had the right under PD 198 to impose production assessments on respondent. It did and it was a judicial question properly addressed to the courts.

A judicial question is raised when the determination of the question involves the exercise of a judicial function, that is, it involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy.[25]

Aside from the aforequoted cases, we ruled in the following that judicial questions were raised and were thus properly cognizable by the regular courts:

(1) in *Metro Iloilo Water District v. CA*,[26] the issue was whether the extraction and sale of ground water within petitioner's service area violated petitioner's rights as a water district, justifying the issuance of an injunction.

(2) the action in *Bulao v. CA*[27] was for damages predicated on a quasi-delict. Private respondent alleged that petitioner maliciously constructed a dam and diverted the flow of water, causing the interruption of water passing through petitioner's land towards that of private respondent and resulting in the loss of harvest of rice and loss of

income.[28]

In the same vein, the claim under Sec. 39 related to a prejudice or damage to petitioner's finances as a water district which gave it the right to levy a production assessment to compensate for the loss. Under the provision, the water district was also entitled to injunction and damages in case there was failure to pay. Obviously, this was a judicial issue which fell under the jurisdiction of the regular courts. Since this involved a judicial question, it followed that the doctrine of primary jurisdiction did not apply because the technical expertise of the NWRB was not required.

Specifically, the action was within the exclusive jurisdiction of the RTC because it was incapable of pecuniary estimation as provided in Sec. 19 (1) of BP 129,[29] as amended by RA 7691.[30] The basic issue was petitioner's entitlement to the right provided under Sec. 39 of PD 198. Although there was a claim for a sum of money, it was purely incidental to, or a consequence of, the principal relief sought.[31]

We note that the CA already ruled on the issue of whether petitioner had the authority to impose production assessments. Petitioner did not raise this issue in its petition before us. Did this amount to a waiver of the issue? No, it did not. In its motion to dismiss in the RTC, respondent raised the sole issue of lack of jurisdiction. Accordingly, the RTC in its April 28, 2005 and June 8, 2005 orders dealt only with this issue. However, respondent, in its petition for certiorari in the CA, raised the additional question of petitioner's authority to impose the production assessments. This was obviously premature because it already went into the merits of the case and the RTC had not yet had the opportunity to resolve the issue. Furthermore, points of law, theories, issues and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court as these cannot be raised for the first time on appeal.[32] Therefore, it was an error for the CA to rule on this issue.

Finally, respondent challenged the constitutionality of Sec. 39 of PD 198 in its memorandum. It contended that said provision was an undue delegation of legislative power.[33] A collateral attack on a presumably valid law is not allowed.

We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[34]

Besides,

[a] law is deemed valid unless declared null and void by a competent court; more so when the issue has not been duly pleaded in the trial court. The question of constitutionality must be raised at the earliest opportunity. xxx The settled rule is that courts will not anticipate a question of constitutional law in advance of the necessity of deciding it.[35]

WHEREFORE, the petition is hereby GRANTED. The decision and resolution of the Court of Appeals dated May 26, 2006 and November 21, 2006, respectively, are REVERSED and SET ASIDE. The case is REMANDED to Branch 90 of the Regional Trial Court of Imus, Cavite for further proceedings.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio Morales[*], Azcuna, and Leonardo-De Castro, JJ., concur.

[*] As replacement of Justice Antonio T. Carpio who is on official leave per Special Order No. 515.

[**] The Court of Appeals was originally impleaded as public respondent. However, it was excluded pursuant to Rule 45, Sec. 4 of the Rules of Court.

- [1] Under Rule 45 (but petitioner also invokes Rule 65) of the Rules of Court. Rollo, p. 12.
- [2] Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Amelita G. Tolentino and Fernanda Lampas Peralta of the Special Fourth Division of the Court of Appeals; *id.*, pp. 287-296.
- [3] *Id.*, pp. 304-306.
- [4] Formerly referred to as the National Water Resources Council. It was renamed to National Water Resources Board pursuant to EO 124-A dated July 22, 1987.
- [5] Entitled "Declaring a National Policy Favoring Local Operation and Control of Water Systems; Authorizing the Formation of Local Water Districts and Providing for the Government and Administration of Such Districts; Chartering a National Administration to Facilitate Improvement of Local Water Utilities; Granting Said Administration Such Powers as are Necessary to Optimize Public Service from Water Utility Operation, and for Other Purposes." This took effect upon its issuance by then President Marcos on May 25, 1973; *Metropolitan Cebu Water District v. Adala*, G.R. No. 168914, 4 July 2007, 526 SCRA 465, 469.
- [6] Rollo, p. 30.
- [7] Entitled "A Decree Instituting a Water Code, Thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources" and enacted on December 31, 1976.
- [8] Rollo, p. 38.
- [9] *Id.*, p. 67. Penned by Executive Judge Perla V. Cabrera-Faller.
- [10] *Id.*, p. 79.
- [11] With very urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction; *id.*, p. 101.
- [12] *Id.*, p. 296.
- [13] *Id.*, pp. 291, 294-295.
- [14] Formerly, the Court of First Instance.
- [15] Sec. 32. Protection of Waters and Facilities of District. -- A district shall have the right to:
- (a) Commence, maintain, intervene in, defend and compromise actions or proceedings to prevent interference with or deterioration of water quality or the natural flow of any surface, steam or ground water supply which may be used or useful for any purpose of the district or be a common benefit to the lands or its inhabitants. The ground water within a district is necessary to the performance of the district's powers and such district is hereby authorized to adopt rules and regulations subject to the approval of the [NWRB] governing the drilling, maintenance and operation of wells within its boundaries for purposes other than a single family domestic use on overlying land. Any well operated in violation of such regulations shall be deemed in interference with the waters of the district. xxxx (As amended by PD 768 and 1479)
- [16] Rollo, pp. 389-390.
- [17] *Sta. Clara Homeowners' Association v. Sps. Gaston*, 425 Phil. 221, 239 (2002); *Samar II Electric Cooperative, Inc. v. Quijano*, G.R. No. 144474, 27 April 2007, 522 SCRA 364, 373-374, citing *Fabia v. CA*, 415 Phil. 656, 662 (2001).

[18] Rollo, pp. 28-29.

[19] Art. 13, PD 1067 states:

"Except as otherwise herein provided, no person, including government instrumentalities or government-owned or controlled corporations, shall appropriate water without a water right, which shall be evidenced by a document known as a water permit.

A water right is the privilege granted by the government to appropriate and use water."

[20] G.R. No. 96401, 6 April 1992, 207 SCRA 742.

[21] *Id.*, pp. 746-747.

[22] 215 Phil. 197 (1984). This was reiterated in *Santos v. CA* (G.R. No. 61218, 23 September 1992, 214 SCRA 162). This case involved an action for annulment of title and reversion of a portion of the lot to the government. The Court stated:

"Article 88 of [PD 1067] speaks of limited jurisdiction conferred upon the [NWRB] over all disputes relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters and said jurisdiction of the council does not extend to, much less cover, conflicting rights over real properties, jurisdiction over which is vested by law with the regular courts. Where the issue involved is not on a settlement of water rights dispute, but the enjoyment of a right to water use for which a permit was already granted, the regular court has jurisdiction over the dispute, not the [NWRB] (*Amistoso v. Ong*, 130 SCRA 228, 237 [1984])." (*Id.*, pp. 170-171)

[23] 179 Phil. 416 (1979).

[24] *Supra* note 22, pp. 205-206.

[25] *Metro Iloilo Water District v. CA*, G.R. No. 122855, 31 March 2005, 454 SCRA 249, 259, citing *Gonzales v. Climax Mining Ltd.*, G.R. No. 161957, 28 February 2005, 452 SCRA 607, 620, in turn citing *Jose Agaton R. Sibala*, *Philippine Legal Encyclopedia* (1986), p. 472.

[26] *Id.*

[27] G.R. No. 101983, 1 February 1993, 218 SCRA 321.

[28] *Id.*, p. 325.

[29] Also known as "The Judiciary Reorganization Act of 1980."

[30] Entitled "An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose *Batas Pambansa*, Blg. 129, Otherwise Known As The `Judiciary Reorganization Act of 1980'" and approved on March 25, 1994.

[31] *Lapitan v. Scandia, Inc., et al.*, 133 Phil. 526, 528 (1968).

[32] *Valdez v. China Banking Corporation*, G.R. No. 155009, 12 April 2005, 455 SCRA 687.

[33] Rollo, pp. 372-377.

[34] *Tan v. Bausch & Lomb, Inc.*, G.R. No. 148420, 15 December 2005, 478 SCRA 115, 123-124, citing *Olsen and Co. v. Aldanese*, 43 Phil. 259 (1922); *San Miguel Brewery v. Magno*, 128 Phil. 328 (1967).

[35] *Philippine National Bank v. Palma*, G.R. No. 157279, 9 August 2005, 466 SCRA 307, 323, citations omitted.

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