

FRANCISCO MACATANGAY, PETITIONER AND APPELLANT, VS. THE SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS AND MARIANO DILAY, RESPONDENTS AND APPELLEES.

G.R. No. 21673. May 16, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Francisco Macatangay on April 14, 1961 applied with the Bureau of Lands for temporary agricultural use of a 1,200-square-meter land in Sta. Clara, Batangas, Batangas. On April 17, 1961 he was issued a permit fee good for a year expiring on April 16, 1962, upon payment of P5.00. Subsequently, he introduced improvements in the form of dikes and fillings on the eastern bank of the Sta. Clara river, also known as the Pantalan river.

For alleged violation by him of Republic Act 2056, consisting in illegal encroachment into the Sta. Clara river, a complaint was filed on September 5, 1961 with the Secretary of Public Works and Communications by Mariano Dilay—barrio lieutenant of Sta. Clara—on behalf of the barrio people. It was charged that Francisco Macatangay's dikes and fillings enclosed a portion of the bed of the afore-stated river, and incorporated it as part of his adjoining fishpond, to the prejudice of the public.

The Secretary of Public Works and Communications, after notice and hearing, found, on November 29, 1961, that the river in question was navigable, used by the general public for passage and for fishing, and that Francisco Macatangay's dikes and fillings encroached into said public navigable river, in violation of Republic Act 2056,[1] in view of which, he ordered the removal of said constructions and the restoration of the encroached areas to their previous conditions.

After filing a motion for reconsideration, to no avail, Francisco Macatangay filed on February 6, 1962 a petition for prohibition with preliminary injunction in the Court of First Instance of Batangas. Said court issued preliminary injunction on February 15, 1962 to restrain the carrying out of the decision of the Secretary of Public Works and Communications.

In its decision, however, on March 21, 1963, the Court of First Instance denied the petition for prohibition and dissolved the writ of preliminary injunction on the grounds that (1) the river involved, is navigable, and the encroached areas, were part of the waterways; and (2) the findings of fact of the Secretary of Public Works and Communications were binding upon the court.

Following denial of a motion to reconsider, Francisco Macatangay appealed directly to this Court.

Appellant would contend that the river in question is not navigable; that the finding as to navigability is not one of fact; and that, at any rate, findings of fact of the Secretary of Public Works and Communications are not binding upon the courts.

Republic Act 2056 authorizes the Secretary of Public Works and Communications, after notice and hearing, to order the removal of any dam, dike or other works encroaching into any public navigable river, stream, coastal

waters or any other navigable public waters or waterways or constructions on areas declared as communal fishing grounds. Speaking through Justice J.B.L. Reyes in *Lovina vs. Moreno*,^[2] this Court said:

"It is true that the exercise of the Secretary's power under the Act necessarily involves the determination of some questions of fact, such as the existence of the stream and its previous navigable character; . . . these functions, whether judicial or quasi-judicial, are merely incidental to the exercise of the power granted by law to clear navigable streams of unauthorized obstructions or encroachments".

In the same case it was ruled that the findings of fact of the Secretary in the exercise of his powers under Republic Act 2056 are entitled to respect from the courts, in the absence of fraud, collusion or grave abuse, of discretion. And in the present case, none of these grounds has been shown to exist. It follows that the court *a quo* did not err in refusing to disturb the finding of the Secretary that the river encroached into by appellant's constructions was navigable in fact.

Neither is said finding without support in the evidence. The record shows that the Sta. Clara river is 285 to 300 meters long (T.s.n., pp. 18-20, September 6, 1962; Record of Exhibits, p. 73) and its mouth empties into Batangas Bay (F-2 of Sketch plan, Exh. F). The river is 10' to 40 meters wide from its dead end to its mouth (Tsn., p. 19, September 6, 1962)- Its depth is from 2 or 3 inches to 11/2 feet at lowest tide. At high tide or in the months of June, July, August to September, it is 3 feet deep (t.s.n., p. 42, September 15, 1961; Record of Exhibits, p. 72). There are two bridges crossing the river under which boats without outriggers may pass (Tsn., p. 5, October 5, 1962; Record, p. 146). The people, whose houses are along the river, among them appellant himself, use it for transportation, carrying salt, stones, sand, provisions and supplies on their boats (Record of Exhibits, PP. 43, 65, 88, 177).

Appellant, invoking American jurisprudence, would however argue that the Sta. Clara river is not navigable in law because it affords passage only to small boats or bancas and has not been shown as used or capable of being used as a highway of commerce.

In American jurisprudence, it is true, the prevailing test of whether a river is navigable in law is whether it is navigable in fact; and it is navigable in fact if it is used or susceptible of being used, in its ordinary condition, as a highway of commerce, that is, for trade and travel in the usual and ordinary modes (65 C.J.S. 48-49; 56 Am. Jur. 645). In this respect, however, "highway of commerce," does not mean, as appellant would have it, a passage for commercial intercourse, of all kinds, including transportation of persons and property by common carriers (Appellant's brief, p. 10).

Rather, as stated by American jurisprudence:

"If it is capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be carried on, it is navigable in fact, and therefore becomes a public river or highway. It is sufficient if it is capable of floating vessels, boats, or other craft, or rafts of logs, or logs in quantities to make it of commercial value." (56 Am. Jur. 647; Italics supplied.)

Furthermore, the rule of the civil law is that a navigable river is one that is "floatable," that is, a river admitting floats. And, thus, a floatable stream is considered a navigable stream (65 C.J.S. 50; See also footnote 24, 45 C.J. 408). It was in this sense that this Court, speaking through Justice Labrador, ruled in *Villongco vs. Moreno*^[3] that a river with a depth of 1 foot at low tide is evidently navigable at high tide for vessels of deeper draft of 1 foot and at low tide navigable to those of 1 foot drafts, thereby applying floatability as the norm of navigability under Act 2056. It cannot be doubted that under such norm, the Sta. Clara river—admittedly encroached into by appellant's dikes and fillings—is navigable.

Wherefore, the judgment appealed from is hereby affirmed with costs against appellant.

Bengzon, C.J. Bautista Angelo, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Zaldivar and Sanchez, JJ., concur.

Judgment affirmed.

[1] R. A. 2056 took effect June 13, 1958.

[2] L-17821, November 29 1963.

[3] L-114 Phil. 266.

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