

THE DIRECTOR OF LANDS, IN BEHALF OF THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONER, VS. BRAULIO BEJASA AND LEOPOLDO ROVIRA, JUDGES OF THE COURT OF FIRST INSTANCE OF ILOILO...

G. R. No. 35824. August 21, 1931

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

It is sought by this certiorari proceeding to set aside the order entered on March 28, 1931, by Braulio Bejasa, and on May 5, 1931, by Leopoldo Rovira, on the ground that the issuance of both these orders was an abuse of discretion and in excess of jurisdiction.

On February 23, 1924, final judgment was rendered in cadastral case No. 30 of the Court of First Instance of Iloilo, G. L. R. O. cadastral record No. 487, entitled "The Government of the Philippine Islands, petitioner, vs. Leontina Advincula et al., claimants," among other rulings, declaring lot No. 4728 to be public land. On March 19, 1931, the respondent Alejandro Palma filed a motion in said case praying that the order of general default be set aside, that the answer thereto attached be admitted, and that after hearing the evidence, the title to said parcel of land be adjudicated to him. On March 28, 1931, Braulio Bejasa, granted the motion, set aside the order of general default with respect to the respondent Palma, and admitted his answer. On April 22, 1931, the petitioner filed a motion for reconsideration in said cadastral case praying that the order dissolving that of default with respect to the respondent Palma and admitting his answer, be vacated, and that the decision of February 23, 1924, declaring lot No. 4728 public land, be upheld. The motion for reconsideration was denied on May 5, 1931, by the respondent Judge Leopoldo Rovira.

The petitioner contends that the orders so entered by the respondent judges are null and void for the following reasons: (a) Respondent Palma's motion was filed after the expiration of the year fixed in section 1 of Act No. 3672 of the Philippine Legislature; (b) that the petitioner, as representative of the Government of the Philippine Islands, was not notified of the motion filed by Palma; and (c) that the latter does not allege that all other requisites of the law had been complied with, among which is the condition that the land had been declared public land within ten years prior to the approval of said Act.

In the case of Director of Lands vs. Ocampo and Manuel (G. R. No. 35776),^[1] recently decided by this court, it was held that the period of one year fixed in section 1 of Act No. 3672 should be computed from March 26, 1930, the date on which proclamation No. 307 was issued by His Excellency, the Governor-General. According to this doctrine, it is evident that the motion of the respondent Palma was filed within the said one-year period, having been presented on March 19, 1931.

With reference to the second ground, it is of no importance and must be decided against the petitioner inasmuch as, according to his own allegations, on April 22, 1931, he filed a motion for reconsideration to have the order of March 28th set aside. From this it may be gathered that although somewhat late, he was heard by the court upon

the motion filed by the respondent Palma. And with regard to the last ground of the petition, it appears from the second paragraph of said petition that the decision declaring lot No. 4728 public land was entered on February 23, 1924, from which it may be clearly inferred that said parcel of land was declared public land within the ten years prior to the approval of Act No. 3672, which took effect on February 7, 1930.

Wherefore, the petition is denied, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

[1]Page 974, ante.

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