

FORTUNATO ORTUA, PETITIONER AND APPELLANT, VS. VICENTE SINGSON ENCARNACION, SECRETARY OF AGRICULTURE AND COMMERCE, ET AL., RESPONDENTS AND APPELLEES.

G. R. No. 39919. January 30, 1934

Ponente: MALCOLM, J.

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MALCOLM, J.:

In this case the petitioner and appellant seeks the issuance of a writ of mandamus directed against the Secretary of Agriculture and Commerce and the Director of Lands, for the purpose of compelling them to give due course to his sale's application for a tract of public land. The demurrers interposed to the complaint by the respondents and appellees were sustained in the trial court, and on the failure of the petitioner further to amend his complaint, the action was dismissed, without costs.

The principal facts admitted by the pleadings may be stated as follows: In January, 1920, the petitioner Fortunato Ortua filed an application with the Bureau of Lands for the purchase of a tract of public land situated in the municipality of San Jose, Province of Camarines Sur. Following an investigation conducted by the Bureau of Lands, Ortua's application was rejected, allowing him, however, to file a sale or lease application for the portion of the land classified to be suitable for commercial purposes, within a period of sixty days from the date of the decision and upon payment of P3,000 for accrued rents. Two motions for reconsideration of the decision were filed and denied. On appeal to the then Secretary of Agriculture and Natural Resources (Agriculture and Commerce), the decision was affirmed, except that the sum of P3,000 was reduced to P400.

It should be explained that one condition for the purchase of a tract of public agricultural land, provided by the Public Land Law, Act No. 2874, in its sections 23 and 88, is that the purchaser shall be a citizen of lawful age of the Philippine Islands or of the United States. Fortunato Ortua in his application stated that he was a Filipino citizen, but the Director of Lands held that on the contrary, Ortua was a Chinese citizen. On this question, the Director of Lands found established the following facts: Fortunato Ortua was born in 1885 in Lagonoy, Camarines Sur, Philippine Islands, being the natural son of Irene Demesa, a Filipina, and Joaquin Ortua, a Chinese. In 1896 Fortunato was sent to China to study. While he was in China his father and mother were legally married. Fortunato returned to the Philippines in 1906, that is, when he was twenty-one years of age.

It was conceded by the Director of Lands that presumptively Fortunato Ortua was a Philippine citizen, but certain acts of Ortua were pointed to as demonstrating that he had forfeited his Philippine citizenship. Thus it was stated that Ortua voluntarily applied for a landing certificate of residence which was issued by the Insular Collector of Customs and which is only given to Chinese persons. Also, when Ortua applied for the registration of a boat, and it was denied by the Insular Collector of Customs on the ground that the appellant was a Chinese citizen, Ortua submitted to the ruling.

The Director of Lands performs his functions pursuant to the provisions of the Public Land Law. In accordance with this law, the Secretary of Agriculture and Commerce is made the executive officer charged with carrying out

the provisions of the Public Land Law, and he performs this duty through the Director of Lands (sec. 3). Subject to the control of the executive head, the Director of Lands is by law vested with direct executive control over land matters, "and his decisions as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Commerce." (Sec. 4.)

The foregoing analysis of the pertinent provisions of the Public Land Law will show why in the opening paragraphs of this decision, we accepted the decision of the Director of Lands on questions of facts as conclusive. We would even go farther and would hold that the Director of Lands has been made by law a quasi-judicial officer. As such officer he makes findings of fact, even passes upon questions of mixed fact and law, and considers and decides the qualifications of applicants for the purchase of public lands. A discretion is lodged by law in the Director of Lands which should not be interfered with. The decisions of the Director of Lands on the construction of the Public Land Law are entitled to great respect by the courts.

Accordingly, to paraphrase the authorities and decisions coming principally from the United States Supreme Court, we deduce the rule on the subject to be, that a decision rendered by the Director of Lands and approved by the Secretary of Agriculture and Commerce, upon a question of fact is conclusive and not subject to be reviewed by the courts, in the absence of a showing that such decision was rendered in consequence of fraud, imposition, or mistake, other than error of judgment in estimating the value or effect of evidence, regardless of whether or not it is consistent with the preponderance of the evidence, so long as there is some evidence upon which the finding in question could be made. (Vargas and Manalac, *The Philippine Land Registration Law*, pp. 738-740; *Julian vs. Apostol* [1928], 52 Phil., 422; 50 C. J., 1089 et seq.; *Johnson vs. Riddle* [1916], 240 U. S., 467.)

There is, however, another side to the case. It certainly was not intended by the legislative body to remove from the jurisdiction of courts all right to review decisions of the Bureau of Lands, for to do so would be to attempt something which could not be done legally. Giving force to all possible intendments regarding the facts as found by the Director of Lands, yet so much of the decision of the Director of Lands as relates to a question of law is in no sense conclusive upon the courts, but is subject to review. In other words, any action of the Director of Lands which is based upon a misconstruction of the law can be corrected by the courts. (*Shepley vs. Cowan* [1876], 91 U. S., 330; *Moore vs. Robbins* [1878], 96 U. S., 530; *Marquez vs. Frisbie* [1879], 101 U. S., 473; *Black vs. Jackson* [1900], 177 U. S., 349; *Johnson vs. Riddle*, *supra*.)

Having adjusted this fundamental matter, it is now for the court to determine if the question of law arising from the undisputed evidence was correctly decided by the Director of Lands. This question is, if the petitioner Fortunato Ortua should be considered to be a Philippine citizen or a Chinese citizen. Presumptively it is admitted that he is a Philippine citizen. More correctly stated, Fortunato Ortua had a sort of a dual citizenship, and had it within his power either to elect to become a Philippine citizen or a Chinese citizen. Predicated on these assumptions, we doubt very much if it could be found that Ortua has by his own acts repudiated his Philippine citizenship and chosen Chinese citizenship. The Director of Lands gave too much prominence, we think, to two minor facts, susceptible of explanation. When Ortua returned from China at the age of twenty-one, it was the most natural thing in the world for him to land as a Chinese, for this would facilitate entry and obviate complications. Again, when Ortua applied for the registration of a boat, there may have been any number of reasons why he did not care to appeal from the decision of the Insular Collector of Customs. On the other hand, some consideration should be given to the intention of the petitioner, and he vigorously insists that it is his desire to be considered a Philippine citizen. He has taken a Filipino name. He has gone into business and has improved the property here in question to a great extent. There has been no implied renunciation of citizenship, because the petitioner has been domiciled in these Islands except for a short period during his infancy when he temporarily sojourned in China for study. On the contrary, he states that he has always considered himself to be a Filipino, and that he has elected to

remain as a Philippine citizen. Therefore, on the facts found by the Director of Lands, we hold that clear error of law resulted in not considering petitioner a Philippine citizen and so qualified under the Public Land Law to purchase public agricultural lands.

Sustaining the assigned errors, the order of the trial court will be set aside, and the record will be remanded to the court of origin for further proceedings in accordance with law. No pronouncement as to costs in this instance.

Villa-Real, Hull, Imperial, and Goddard, JJ., concur.

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