

MELCHOR LAMPREA, PETITIONER, VS. THE DIRECTOR OF LANDS ET AL., RESPONDENTS.

G.R. No. 45721. April 18, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This petition for certiorari was filed by Melchor Lamprea asking that the decision rendered by the Court of Appeals on August 26, 1937, in Civil Case G. R. No. 44194 of said Court, wherein Melchor Lamprea was applicant and appellee and the Director of Lands and the Municipality of Iloilo were oppositors and appellants, be reversed, with the costs to said respondents.

As grounds of the petition the petitioner alleges: (1) That the reversal of the lower court's decision by the Court of Appeals is arbitrary because the latter failed to consider the fundamental questions raised by both parties; (2) that the decision of said Court of Appeals reversing that of the lower court, is erroneous, contrary to law, and against the decisions of the Supreme Court, and (3) that the Court of Appeals erred in applying to the case at bar the decision of this Court in *Government of the Philippine Islands vs. Cabañgis* (53 Phil., 112).

The only material facts on which we may rest our decision are those set out in the decision of the Court of Appeals sought to be reviewed, namely:

The very evidence of the applicant shows that this lot gained by accession was formed as a result of the construction by the Government of a breakwater fronting the place. This is confirmed by counsel for the applicant who states on page 19 of his brief: "It is also established that * * * the accretion took place since the construction of the breakwater (pages 12 and 15, t. s. n.), that is, since 1925, more or less (page 5, t. s. n.), when the sea returned the excavated land (pages 12 and 15, t. s. n.)."

In view of the aforesaid facts found established by the Court of Appeals, the latter held that the land belongs to the Philippine Government on the authority of article 4 of the Law of Waters of 1866 and the doctrine laid down by this Court in *Government of the Philippine Islands vs. Cabangis*, above-cited.

Hence, the only question for decision in this case is whether the lot in contention belongs to the Philippine Government because reclaimed from the sea as a result of the construction by the Government of a breakwater in front of the place as contended by the Government, or whether it was gained by accession, as contended by the petitioner.

If the lot in question was formed as a result of the construction by the Government of a breakwater fronting the place, then the applicable law is article 5 of the Law of Waters of 1866, reading: "Lands reclaimed from the sea in consequence of works constructed by the State, or by the provinces, pueblos, or private persons, with proper permission, shall become the property of the party constructing such works, unless otherwise provided by the terms of the grant of authority," and the doctrine laid down by this Court in *Government of the Philippine Islands vs. Cabangis*, *supra*, containing the following conclusion:

"In conclusion, then, we hold that the lots in question having disappeared on account of the gradual erosion due to the ebb and flow of the tide, and having remained in such a state until they were reclaimed from the sea by the filling in done by the Government, they are public land (*Aragon vs. Insular Government*, 19 Phil., 223; *Francisco vs. Government of the Philippine Islands*, 28 Phil., 505)."

If, as contended by the petitioner, said lot was formed by accession in the manner provided in article 4 of the same Law of Waters of 1866, the Government may only declare it property of the adjoining owners and as an increment thereto when it is no longer washed by the water of the sea and when it is no longer necessary for public use. It appears that the sea washes the lot in question and that the City of Iloilo needs it for the improvement of the said city by the construction thereon of an avenue for public use.

In the first case, the petitioner may not claim to be the owner of said lot because it was formed in consequence of works undertaken by the Government. Neither may he ask, in the second case, that the Government declare him the owner of said lot inasmuch as it is still washed by the water of the sea and it is needed for public use, namely, the construction of an avenue.

In view of the foregoing considerations, and not finding that the Court of Appeals committed an error of law in reversing the decision of the Court of First Instance of Iloilo, we affirm the decision sought to be reviewed, with the costs to the petitioner. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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