

URBANO SERRANO, PETITIONER AND APPELLANT, VS. VICENTE RE JUA CRUZ, UNDER-SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, RESPONDENT AND APPELLEE.*G.R. No. 45931. April 14, 1939*

Ponente: MORAN, J.

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On July 20, 1937, petitioner herein, Urbano Serrano, instituted an action in the Court of First Instance of Pampanga praying that the respondent, Vicente de la Cruz, in his capacity as Under-Secretary of Public Works and Communications, be ordered to abstain from executing his order of April 15, 1937 or, if execution thereof be proper, then, said petitioner be awarded P30,000 in damages. The complaint alleges that ten years ago petitioner, upon permission granted by the municipal authorities of Bacolor, Pampanga, constructed a dam across Potrero river for the use of its waters in the irrigation of his land and others adjacent thereto; that he had acquired an easement thereon for irrigation purposes through more than ten years of continuous and unmolested enjoyment and use of said waters; that on a supposed complaint of certain residents of the sitio of Balas, Potrero, respondent herein as Under-secretary of Public Works and Communications, after an investigation, directed him in an order of April 15, 1937, to remove the dam; that in issuing such order, respondent acted in excess of his powers and in abuse of discretion; that the order, if executed, would cause him damages in the sum of P30,000; and that, having exhausted the administrative remedies, he had no other plain, speedy and adequate relief at law but the filing of the present petition. Respondent interposed a demurrer, alleging that no facts sufficient to constitute a cause of action were alleged in the complaint. The demurrer was sustained, and petitioner filed an amended complaint to which a like demurrer was interposed and again sustained. On petitioner's election to stand upon his amended complaint, the case was dismissed. Hence, this appeal.

We hold that the demurrer was rightly sustained on the ground that the facts alleged in the petition do not constitute a cause of action. The supposed right of the petitioner in the use of the waters of the Potrero river rests upon two basic allegations, to wit: (1) the permission of the municipal authorities of Bacolor, Pampanga; and (2) continuous and unmolested enjoyment thereof for a period of more than ten years. The complaint, however, discloses that the dam for the diversion of the water of the Potrero river was constructed by the petitioner when the Irrigation Act (No. 2152) was long in effect. Under said Act, the power to grant appropriations of public waters is vested exclusively in the Secretary of Commerce and Police (sec. 2, Act No. 2152; also, sec. 2, Act No. 3208 amending Act No. 2152), now Secretary of Public Works and Communications (Reorganization Act of 1932), upon recommendation and approval of an Irrigation Council created thereunder. The appropriation, therefore, by the petitioner herein of the waters of the Potrero river, having proceeded from an authority not vested by law with the power to grant it, is null and void. And, as the supposed right did not exist prior to the passage of the Irrigation Act, it is not an "existing right" protected by the saving provisions of said Act. (See secs. 1 and 50, Act No. 2152.)

Neither had the petitioner acquired a right of use of public waters, through prescription, by continuous enjoyment

thereof for only ten years. Prescription of twenty years is necessary to that effect. (Art. 409, Civil Code; art. 39, Law of Waters of August 3, 1866; *Magno vs. Castro*, 30 Phil., 585; *Sideco vs. Sarenas and Sarenas*, 41 Phil., 80.)

Appellant argues that his amended complaint alleges facts sufficient to constitute a cause of action with respect to damages. But the claim for damages is contingent upon the validity of his claim for the use of the waters. If he has no right to the use of the waters of the Potrero river, he can have no right to ask for damages for respondent's refusal to let him use said waters.

Order is affirmed, with costs against appellant.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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