

BIENVENIDO AMISTOSO, PETITIONER, VS. SENECIO ONG, EPIFANIA NERI & HON. PRESIDING JUDGE, ESTEBAN M. LISING OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR, BRANCH VI, RESPONDENTS.

G.R. No. 60219. June 29, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

This is a Petition for Review on Certiorari of the Order of the defunct Court of First Instance of Camarines Sur, Branch VI dated January 14, 1981, dismissing its Civil Case No. p-153, for lack of jurisdiction.

The pertinent antecedents are as follows:

On July 27, 1978, petitioner as plaintiff, filed before the then Court of First Instance of Camarines Sur, a complaint for Recognition of Easement with Preliminary Injunction and Damages. The complaint which was docketed in the aforesaid Court as Civil Case No. p-153 among others alleged, that plaintiff (now petitioner) and defendant Epifania Neri (one of the herein private respondents) are the owners of adjoining parcels of agricultural land situated in Cauayan, Tinambac, Camarines Sur; that an irrigation canal traverses the land of defendant Neri through which irrigation water from the Slimod River passes and flows to the land of the petitioner for the latter's beneficial use; and that respondent Neri, owner of the land on which said irrigation canal exists and Senecio Ong, the cultivator of the said property, despite repeated demands refused to recognize the rights and title of the petitioner to the beneficial use of the water passing through the aforesaid irrigation canal and to have petitioner's rights and/or claims annotated on the Certificate of Title of respondent Neri..... Hence, the filing of the said complaint.

In their Answer, private respondents denied the existence of any right on the part of the petitioner to the use of the canal mentioned in the complaint nor any contract, much less any deed or encumbrance on their property and assert that they have not performed any act prejudicial to the petitioner that will warrant the filing of the complaint against them. By way of affirmative and special defenses, private respondents alleged that petitioner's complaint states no cause of action and that the Court has no jurisdiction over the same.

Issues having been joined, trial was held. After petitioner has rested his case by a formal offer of his testimonial and documentary evidences, private respondents instead of presenting their evidence, filed a motion to dismiss. In the said motion, respondents contend that the instant case, involving as it does development, exploitation, conservation and utilization of water resources falls with-in the exclusive jurisdiction of the National Water Resources Council pursuant to P.D. NO. 424, Section 2(b) and Section 88 thereof. Acting on private respondents' motion, respondent Judge dismissed petitioner's complaint for lack of jurisdiction in an Order dated January 14, 1981. The pertinent portion of that Order reads as follows:

"x x x The basis of the motion to dismiss are the provisions of Presidential Decree No. 424 and the Water Code known as Presidential Decree No. 1067. In opposing the motion to dismiss, plaintiff contends that the present

action does not involve water dispute and that since the present action was filed before the court prior to the effectivity of the Presidential Decree No. 424, it is the old law on the matter that should be applied. These contentions of the plaintiff are without merit. The complaint belies the plaintiff's contention. Allegations in the complaint are explicit regarding the claim of the right of plaintiff over the water passing through his land. The right over irrigation water not having been shown as established or vested or that said vested right, if any, has not been alleged to be registered in accordance with the water code, the provisions of Presidential Decrees 424 and 1067 shall govern. As stated by the Supreme Court in the case of *Abe-Abe vs. Manta*, No. L-4827, May 31, 1979, 90 SCRA 523, to wit:

"It is incontestable that the petitioner's immediate recourse is to ventilate their grievance with the National Water Resources Council which, as already noted, is the administrative agency exclusively vested with original jurisdiction to settle water rights disputes under the water code under Presidential Decree No. 424.

The code assumes that it is more expeditious and pragmatic to entrust to an administrative agency the settlement of water rights disputes rather than require the claimants to go directly to the court where the proceedings are subject to unavoidable delays which are detrimental to the parties x x x

That jurisdiction of the Council under Section 2(b) of Presidential Decree No. 424 is reaffirmed in Sec. 88 of the Water Code and in Section 3(d) thereof which provides that 'the utilization, exploitation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through Council.'

Failing to obtain a favorable reconsideration of the Order of dismissal, petitioner now comes before Us through the instant petition contending:

(1) That the case at bar is not to settle any water dispute between the parties but a complaint which calls purely for a determination of the right of the plaintiff to have an established right amounting to an easement annotated on the certificate of title of the defendant, hence the question is judicial which may be taken cognizance of by the respondent court;

(2) That since the case was filed on July 26, 1972, which was before the effectivity of P.D. NO. 424, therefore even if defendant's contention is correct - that the case involved water rights dispute - the old law on water applies and not the present water code of the Philippines of 1976; otherwise, the Court shall lose jurisdiction by subsequent legislation contrary to the well-settled rule that once jurisdiction is acquired it cannot be lost;

(3) That the herein defendant can no longer raise the question of plaintiff's right to the beneficial use of irrigation water since the right to use had already been determined, decided and laid to rest when the Department of Public Works, Transportation and Communications awarded petitioner Water Rights Grant after complying with all the legal requirements such as publication, payment of fees, survey, investigation, etc.; and

(4) That the issue in the case at bar which was erroneously overlooked by the respondent Judge does not involve a determination of the right of the parties to the utilization, conservation and protection of the parties' respective water rights, hence it does not fall within the competence nor jurisdiction of the National Water Resources Council.

In a Resolution promulgated on August 11, 1982, we required the respondents to comment on the petition. Private respondents' COMMENT was filed on March 2, 1984. Petitioner's REPLY thereto on the other hand was filed on May 10, 1984.

We considered the COMMENT as an Answer and gave due course to the petition.

Private respondents contend that the assailed order of dismissal was in order since a mere cursory reading of the complaint shows that petitioner claims for the right to use water coming from the Silmod River and prays that his

right to the utilization thereof be respected and not be disturbed and/or obstructed by the respondents. On its face then, the dispute is on the use, conservation and protection of the right to water either by the petitioner or by the private respondents. The annotation of the alleged encumbrance on the title of the private respondent is merely the relief prayed for on the basis of the claim to the use and protection of water passing through the land of the respondents. And since the controversy hinges on the right to use and protect the water from the Silmod River that passes on the land of the private respondents to the petitioner's property, the proper authority to determine such a controversy is the National Water Resources Council which is vested with exclusive jurisdiction over such question pursuant to P.D. NOS. 424 and 1067.

We find the petition impressed with merit.

Private respondents' insistence that what is involved in the instant case is the right to use, exploit and convey water is controverted by the "STIPULATION OF FACTS" entered into between them and the petitioner in the court below which was approved in an Order dated February 20, 1975, the pertinent portion of which reads as follows:

"1. That there exists an irrigation canal for the use of the defendants diverting water coming from the Silmod River, Tinambac, Camarines Sur, passing on the ricelands of the latter to the plaintiff's land irrigating the land of the latter, although plaintiff claims it existed since 1952 up to the present, but disputed by the defendants.

2. That the plaintiff has an approved water rights Grant issued by the Department of Public Works, Transportation and Communications, which plaintiff claims it for beneficial use to irrigate their land from the Silmod River and defendants dispute said claim.

3. That as of now, defendants have no approved Water Rights Grant issued by the proper authorities for the use of the water for irrigation purposes from the Silmod River. However, defendants have a pending application for Water Rights, the water of which shall pass thru a different irrigation canal.

4. That one of the defendants' predecessors-in-interest, Abundio Barallas had a written contract with the plaintiff, which defendants claim easement of aqueduct. Defendants are questioning the legality, enforceability and validity of such contract.

x x x x x

6. That defendants re-fused to surrender their Transfer Certificate of Title of her land for purposes of annotation of the contract, allegedly an easement of aqueduct, on the ground that she questions the validity, enforceability, legality and therefore they are not bound by the same."

From the foregoing stipulations, private respondents admit that petitioner, then plaintiff, has an approved Water Rights Grant issued by the Department of Public Works, Transportation and Communications. Private respondents, however, contend that the said grant does not pertain to the beneficial use of irrigation water from Silmod River. The records, however, do not show any other irrigation water going to petitioner's property passing thru respondents' lot aside from that coming from the Silmod River. Respondents' controversion of petitioner's right to irrigation water specifically from Silmod River is undoubtedly a lame denial.

Aside from this admission, the record clearly discloses an approved Water Rights Grant in favor of petitioner. Dr. Bienvenido V. Amistoso, which was approved on November 13, 1973 by the Acting Secretary of Public Works and Communications, David M. Consunji. (Exh. I) The grant was made three (3) years before the promulgation of P.D. 1067 on December 31, 1976, known as the Water Code of the Philippines, which revised and consolidated the laws governing ownership, appropriation, utilization, exploitation, development, conservation and protection of water resources thereby repealing among others, the provisions of the Spanish Law of Water of August 3,

1866, the Civil Code of Spain of 1889, and the Civil Code of the Philippines on ownership of water, easement relating to water and of public water and acquisitive prescription on the use of water which are inconsistent with the provisions of said Code (Art. 10, P.D. 1067).

The water rights grant partakes the nature of a document known as a water permit recognized under Article 13 of P.D. 1067, which provides:

"Article 13. Except as otherwise herein provided, no person, including government instrumentalities or government-owned or controlled corporations, shall appropriate water without a water right, which shall be evidenced by a document known as a water permit.

Water right is the privilege granted by the government to appropriate and use water."

As to the validity of the WATER RIGHTS GRANT of Amistoso upon the promulgation of P.D. 1067 on December 31, 1976, the governing provision of law is found in the Transitory and Final Provisions of P.D. 1067. It falls under "acts and contracts under the regime of old laws". Article 97 provides, thus:

"Article 97. Acts and contracts under the regime of old laws, if they are valid in accordance there-with, shall be respected, subject to the limitations established in this Code. Any modification or extension of these acts and contracts after the promulgation of this Code, shall be subject to the provisions hereof."

It may be observed that the WATER RIGHTS GRANT of Amistoso does not fall under "claims for a right to use water existing on or before December 31, 1974" which under P.D. 1067 are required to be registered with the National Water Resources Council within two (2) years from promulgation of P.D. 1067, otherwise it is deemed waived and the use thereof deemed abandoned. It is no longer a mere "claim" inasmuch as there was already a GRANT by the Secretary of Public Works, Transportation and Communications (the official then authorized to issue said grant) on November 13, 1973 after complying with all the requirements then prescribed by law for such grant.

The grant contradicts the erroneous findings of the respondent Judge, and incontrovertibly entitles petitioner to the beneficial use of water from Silmod River. That right is now a vested one and may no longer be litigated anew so as to bring petitioner's case within the jurisdiction of the National Water Resources Council. To resurrect that issue - - right to the use of irrigation water from Silmod River - - will be violative of the rule on res judicata which also applies with equal vigor and effect to quasi judicial tribunal (*Bril-lantes vs. Castro*, 99 Phils. 497, *Ipekdjian Merchandising, Inc. vs. Court of Tax Appeals*, 9 SCRA 72, September 30, 1963).

As correctly postulated by the petitioner, the court a quo is not being asked to grant petitioner the right to use but to compel private respondents to recognize that right and have the same annotated on respondent Neri's Torrens Certificate of Title. Resort to judicial intervention becomes necessary because of the closure made by the respondents of the irri-gation canal thus depriving the petitioner to continue enjoying irrigation water coming from Silmod River through respondents' property. The interruption of the free flow of water caused by the refusal to re-open the closed irrigation canal constituted petitioner's cause of action in the court below, which decidedly do not fall within the domain of the authority of the National Water Resources Council.

Respondents, however, rely very heavily on the dictum laid down in the *Abe-Abe vs. Manta*, No. L-4827, May 31, 1979, 90 SCRA 524, wherein it was held that -

"It is incontestable that the petitioner's immediate recourse is to ventilate their grievance with the National Water Resources Council which, as already noted, is the administrative agency exclusively vested with original jurisdiction to settle water rights disputes under the water code and under Presidential Decree No. 424.

The Code assumes that it is more expeditious and pragmatic to entrust to an administrative agency the settlement

of water rights disputes rather than require the claimants to go directly to the court where the proceedings are subject to unavoidable delays which are detrimental to the parties x x x

That jurisdiction of the Council under Section 2(b) of Presidential Decree No. 424 is reaffirmed in Section 88 of the Water Code and in Section 3(d) thereof which provides that 'the utilization, exploitation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through the Council.'

The said pronouncement, however, finds no application to the instant case for in there, both petitioners and respondent have no established right emanating from any grant by any governmental agency to the use, appropriation and exploitation of water. In the case at bar, however, a grant indubitably exists in favor of the petitioner. It is the enjoyment of the right emanating from that grant that is in litigation. Violation of the grantee's right, who in this case is the petitioner, by the closure of the irrigation canal, does not bring the case anew within the jurisdiction of the National Water Resources Council.

WHEREFORE, the Order of the Honorable respondent Judge of January 14, 1981, is hereby SET ASIDE. Private respondents are hereby ordered to RECOGNIZE petitioner's EASEMENT of water and to surrender to the Register of Deeds of Camarines Sur the owner's duplicate Transfer Certificate of Title No. 14216 covering respondent Epifania Neri's property so that petitioner's right to the beneficial use of said irrigation canal and water passing through the same may be annotated thereon. v SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, and Escolin, JJ., concur.

Aquino, J., concur in the result. Private respondents should REOPEN the irrigation canal which they closed.

Abad Santos, J., see separate opinion.

SEPARATE OPINION

ABAD SANTOS, J.:

The petitioner's right to establish an easement of aqueduct over the lands of the private respondents appear to be indubitable in the light of the facts given in the main opinion. However, before the easement of aqueduct can be formally established certain requirements must be observed. I refer to the provisions of Articles 642 and 643 of the Civil Code. Among other things, the petitioner must show that the situation of the aqueduct is the most convenient and the least onerous to third persons and he should pay indemnity to the owners of the servient estates. The case should be remanded to the trial court which should adjudicate on these matters before the petitioner's easement of aqueduct is annotated on the certificates of title.

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