

EULALIO LAGARIZA, PETITIONER AND APPELLEE, VS. THE COMMANDING GENERAL OF THE DIVISION OF THE PHILIPPINES, OPPONENT AND APPELLANT.

G.R. No. 6585. March 22, 1912

Ponente: MORELAND, J.

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MORELAND, J.:

There is one question which, when resolved, decides all three of the above cases. For this reason they have been considered together by all the parties and it is agreed that the decision of one shall be a decision as to all.

In his brief the Acting Attorney-General says:

"This is an appeal taken by the Commanding General of the Division of the Philippines against the decision of the Court of Land Registration in the three cases above named and dated the 11th, 13th and 14th of June, 1910, respectively, adjudicating to each one of the petitioners the land described in his petition, and overruling the opposition of the Commanding General of the Division of the Philippines, which opposition is founded upon the fact that the lands described in said causes are located within the military reservation of Biliran and are the property of the Government of the United States in the Philippine Islands, and in the further fact that the applications in said three causes were presented a long time after the expiration of the time provided by law within which they must be presented.

"These proceedings were begun in the Court of Land Registration upon petitions presented by the applicants. These petitions were presented as follows: That of Eulalio Lagariza was received in the Court of Land Registration on the 17th of May, 1909; that of Laureano Saba on the 24th of May, 1909; and that of Justiniano Garcia on the last-mentioned date. The Commanding General of the Division of the Philippines, through his counsel, the Attorney-General, interposed objections against said petitions. The trial of said causes was had before the Court of Land Registration and judgments were rendered by that court overruling the opposition in each one of said causes as already stated. The application for a new trial in each one of said causes was denied by the court, and the corresponding exceptions having been taken, both against the decisions and against the orders overruling the motions for a new trial, these appeals were taken.

"The appeal interposed by the Commanding General of the Division of the Philippines in each one of these cases is based upon the fact that the respective petitions were presented after the termination of the period prescribed by Act No. 627 relating to military reservations; for, as has already been said, the lands in question are located within the limits of the military reservation of Biliran, duly established by virtue of an executive order of the President of the United States, duly published in these Islands in a proclamation of the Governor-General, which proclamation was, on the 10th day of August, 1908, duly notified to the owners of lands within the said reservation and to all persons who might be interested therein.

"The appellant contends that said petitions having been presented after the expiration of the period prescribed by Act No. 627, the court below erred in not sustaining the opposition of the Commanding General of the Division of the Philippines in each one of said cases."

The Acting Attorney-General contends that Act No. 627, as amended, requires that applications such as those presented by the petitioners in these cases shall be presented to the Court of Land Registration within six months from the date of the notice published in pursuance of the proclamation of the Governor-General; and that the six months' limitation prescribed by that Act begins to run from the date of the notice and not from the time such notice is received by the person upon whom it is personally served. Sections 3 and 4 of the Act referred to read as follows:

"SEC. 3. Immediately upon receipt of the notice from the Civil Governor in the preceding section mentioned it shall be the duty of the judge of the Court of Land Registration to issue a notice, stating that the lands within the limits aforesaid have been reserved for military purposes, and announced and declared to be military reservations, and that claims for all private lands, and interests therein, within the limits aforesaid, must be presented for registration under the Land Registration Act within six calendar months from the date of issuing the notice, and that all lands, buildings, and interests therein within the limits aforesaid not so presented within the time therein limited will be conclusively adjudged to be public lands, and all claims on the part of private individuals for such lands, buildings, or an interest therein not so presented will be forever barred. The clerk of the Court of Land Registration shall immediately upon the issuing of such notice by the judge cause the same to be published once a week for three successive weeks in two newspapers, one of which newspapers shall be in the English language, and one in the Spanish language in the city or province where the land lies, and, if there be no such Spanish or English newspapers having a general circulation in the city or province wherein the land lies, then it shall be a sufficient compliance with this section if the notice be published, as herein provided, in a daily newspaper in the Spanish language and one in the English language, in the city of Manila, having a general circulation. The clerk shall also cause a duly attested copy of the notice in the Spanish language to be posted in a conspicuous place at each angle formed by the lines of the limits of the land so reserved. The clerk shall also issue and cause to be personally served the notice in the Spanish language upon every person living upon or in visible possession of any part of the military reservation. If the person in possession is the head of a family living upon the land, it shall be sufficient to serve the notice upon him, and if he is absent it shall be sufficient to leave a copy at his usual place of residence. The clerk shall certify the manner in which the notices have been published, posted, and served, and his certificate shall be conclusive proof of such publication, posting, and service, but the court shall have power to cause such further notice to be given as in its opinion may be necessary.

"SEC.4. All claims for private lands, buildings, and interests therein within the limits of such military reservation not presented to the Court of Land Registration within six months from the date of the notice in the previous section provided, shall be forever barred, and the lands, buildings, and interests therein shall be deemed to be public and not private property: Provided, nevertheless, That it shall be in the power of the Court of Land Registration, on suitable application, filed within three months after the expiration of the six months first aforesaid, to allow an application and claim to be filed upon proof that the failure to file it within the six months' limitation resulted from fraud, accident, mistake, or excusable negligence."

We are of the opinion that the contention above stated can not be sustained. As is seen from the wording of the sections just quoted, the law contemplates notification to two classes of persons: one, those who are "living upon or in visible possession of any part of the military reservation the other, those persons who are not living upon or in visible possession of any part of the military reservation, but are absentees. A distinction is made in the law between these two classes of persons as to the manner in which service of such notice shall be made. Service is complete under the law as to those persons who are not living upon or in visible possession of any portion of the lands in question when publication of the notice in the newspapers is completed and duly fixed upon the four corners of the premises as required by the law. When these two things are done service upon those persons who are not living upon or in visible possession of the premises is complete, and the six months' period then begins to run. But as to those persons who are living upon or in visible possession of the lands, the service is not complete

and the six months period does not begin to run until the notice is served upon them personally. As to this class, it is of no consequence when the notice was published or when it was posted. Their rights relative to the period within which they must respond are determined by the date of the personal service. The date of the notice, or the time of its publication, or when it was posted upon the premises, has no influence, direct or indirect, upon the time within which persons living upon or in visible possession of the premises must present their claims. The publication is, of itself, no sufficient notice to them; nor is the posting of notice upon the premises. Their notice is a personal notice, given by personal service, and only such notice can set the period running against them. If the six months period begins to run from the date of the notice and not from the date of personal service, then the notice may be served upon a person in possession of the premises on the very day that the six months' period expires, and, indeed, on the very last hour of that day. Such service, being a good service under the theory advanced, would effectually deprive the person so served of his property as it would give him no opportunity to present his claim.

The petitioners in these cases were living upon and in visible possession of the lands in question at the time the notice referred to was personally served. It was served upon them during the month of December, 1908. They were entitled to six months from the date of that service within which to present their petitions relative to the land in question, or until the month of June, 1909. The petitions were as a matter of fact presented during the month of May, 1909, clearly within the period of six months prescribed by Act No. 627, as amended.

The judgments of the Court of Land Registration in the above cases are hereby severally affirmed, without special finding as to costs.

Arellano, C. J., Torres, Johnson, Carson, and Trent, JJ., concur.

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