

MUNICIPALITY OF HINUNANGAN, PLAINTIFF AND APPELLEE, VS. THE DIRECTOR OF LANDS, DEFENDANT AND APPELLANT.

G.R. No. 7054. January 20, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from the judgment of the Court of Land Registration, ordering the registration of the title of the petitioner to the lands described in the petition. The appeal is taken by the Insular Government from the registration of the title of one of the parcels of land only. It is situated in the municipality of Hinunangan, Province of Leyte, and contains an area of 10,328.8 square meters. It is bounded on the northeast by the maritime zone; on the southeast by North America Street; on the southwest by Manilili Street, and on the northwest by San Isidro Labrador Street. Upon this lot is built a stone fort which has stood there from time immemorial and was in times past used as a defense against the invasion of the Moros.

Formerly, as now, the defense of the national territory against invasion by foreign enemies rested upon the state and not upon the towns and villages and for this reason all of the defenses were constructed by the National Government. In volume 2, book 3, title 7, law 1 of the Laws of the Indies appears the following:

"We command that all the ground roundabout the castles and fortresses be clear and unoccupied, and if any building is erected within 306 paces of the wall or other building so strong that even at a greater distance it would prejudice the defenses, it shall be torn down, and the owner of the same shall be paid from the Royal Treasury for the damages caused him."

Book 4, title 7, law 12, reads as follows:

"We order that, for the security and defense of the cities as is now assured by the castles and fortresses, no building shall be erected within 300 paces of the walls or stockades of the new cities."

Article 339 of the Civil Code is as follows, in part:

"ART. 339. The following are public property:

* * * * *

"2. That which belongs privately to the state, which is not for public use and which is destined for the public good or to increase the national riches, such as walls, fortresses and other constructions for the defense of the country, and the mines as long as no concession in regard to them is made."

Article 341 of the Civil Code provides:

"ART. 341. Public property, when it ceases to be used for the public good or for the necessities of the defense of the country, becomes a part of the property of the state."

From these provisions it seems clear that the fortress in question was erected for the national defense and was a part of the property of the state destined and used for that purpose. As a necessary result, the land upon which it

stands must also have been dedicated to that purpose.

The fact that said fortress may not have been used for many years for the purposes for which it was originally built does not of necessity deprive the state of its ownership therein. As we have seen, the Civil Code provides that, when the fortress ceases to be used for the purpose for which it was constructed, it becomes the property of the state in what may be called the private sense. That the municipality may have exercised within recent years acts of ownership over the land by permitting it to be occupied and consenting to the erection of private houses thereon does not determine necessarily that the land has become the property of the municipality. We have held in several cases that, where the municipality has occupied lands distinctly for public purposes, such as for the municipal court house, the public school, the public market, of other necessary municipal building, we will, in the absence of proof to the contrary, presume a grant from the state in favor of the municipality; but, as indicated by the wording, that rule may be invoked only as to property which is used distinctly for public purposes. It cannot be applied against the state when occupied for any other purpose.

The evidence does not disclose that the municipality has used the land for purposes distinctly public.

The judgment in relation to the parcel of land heretofore described is reversed and the petition as to that parcel dismissed. In all other respects the judgment is affirmed. So ordered.

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

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