

THE HEIRS OF PROCESO BAUTISTA REPRESENTED BY PEDRO BAUTISTA, PETITIONERS, VS. SPOUSES SEVERO BARZA AND ESTER P. BARZA, AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 79167. May 07, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

The facts of this case began as far back as 1946, when the Philippines was still a new republic and frontier lands and bountiful natural resources down south beckoned the adventurous-like Proceso Bautista and Ester Barza.

It was on October 25, 1946, to be exact, when Proceso Bautista applied for a fishpond permit over a thirty-hectare parcel of marshy public land located in Sitio Central, Lupon, Davao (Fishpond Application No. 1205). The application was acknowledged on December 12, 1946, by the then Division of Fisheries. Said application was, however, rejected by the same office on November 9, 1948 because the area applied for was needed for firewood production as certified to by the Bureau of Forestry. The rejection covered an area of 49 hectares as against the 30 hectares applied for by Proceso Bautista.[1] Between October 25, 1946 and November 9, 1948, Bautista occupied an area which extended beyond the boundary of the one he had applied for and introduced improvements thereon.[2]

On September 23, 1948, Ester Barza filed a fishpond application covering an area of approximately 14.85 hectares at Sitio Bundas, Lupon, Davao (Fishpond Application No. 2984). Subsequent investigation revealed that the portion applied for by Barza overlapped the area originally applied for by Proceso Bautista.[3]

Despite the rejection of his application, Proceso Bautista filed another fishpond application on February 8, 1949 with the Bureau of Fisheries (Fishpond Application No. 3346). The 49 hectares applied for was in Sitio Bundas instead of Sitio Central.[4]

The records of the Bureau of Fisheries further show that while the 14.85 hectares applied for by Barza in Fishpond Application No. 2984 had been released by the Bureau of Forestry as available for fishpond purposes, the 49 hectares applied for by Bautista in Fishpond Application No. 3346 had not yet been similarly released by the said bureau. It must be emphasized that the area, including the portion applied for by Barza had been greatly improved by Proceso Bautista.[5] As expected, an administrative case involving the two applicants arose.

On September 19, 1953, the Director of Fisheries ruled in favor of Ester Barza. The dispositive portion[6] of his order reads:

"IN VIEW OF THE FOREGOING, Fp. A. No. 2984 of Ester F. Barza should be, as hereby it is, GIVEN DUE COURSE, subject however to the reimbursement of the amounts of improvements in the area to Proceso Bautista within a period of sixty days from the date hereof, the said amounts to be appraised and determined by the District Fishery Officer at Davao City; and Fp. A. No. 3346 of Proceso Bautista should be, as hereby it is, REJECTED.

SO ORDERED."

Bautista appealed the said order to the Secretary of Agriculture and Natural Resources (DANR Case No. 836). In a decision dated April 28, 1954, the Secretary, through Undersecretary Jaime M. Ferrer, dismissed the appeal and affirmed in toto the order of the Director of Fisheries giving due course to the fishpond application of Barza.[7] Bautista moved for reconsideration but the same was denied on October 8, 1954.[8]

It was not until February 2, 1955, that the Director of Fisheries, in pursuance of the order of September 19, 1953, required Ester Barza to remit the amount of P3,391.34 which represented the value of the improvements introduced by Bautista.[9] This figure was protested by Mrs. Barza in her letter dated March 6, 1955 where she expressed her willingness to pay the amount of P1,763.31 only. On April 18, 1955, the Director of Fisheries advised her to remit a reappraised amount of P2,263.33. Subsequent reappraisals on the value of the improvements became necessary in view of Bautista's claim that the improvements were worth P14,000.[10]

Meanwhile, since the parties could not agree on the amount of reimbursement, on October 13, 1956, Bautista moved for the rejection of the fishpond application of Barza in view of her non-compliance with the order of the Director of Fisheries dated September 19, 1953 mandating Barza's deposit of the value of the improvements.[11] Bautista appealed to the then Secretary of Agriculture and Natural Resources, who, in his decision dated May 5, 1959 denied Bautista's appeal thereby enforcing the Director of Fisheries' order of September 19, 1953.[12]

On October 19, 1960, Jose Montilla, Assistant Director of Fisheries, ordered Ester Barza by letter to reimburse Bautista P1,789.18, the total value of the improvements pursuant to the appraisal report of District Fishery Officer Crispin Mondragon dated October 31, 1958.[13] On December 22, 1960, Barza, agreeing to said appraisal, consigned the sum of P1,789.18 with the then Justice of the Peace of Lupon, Davao.[14] Bautista, however, refused to accept the same. On July 11, 1961, another reappraisal of the improvements was made establishing the value of the dikes, dams, trees and houses in the area involved to be P14,569.08.[15] On December 12, 1962, this amount was reduced to P9,514.33 in view of the finding that certain improvements were suitable for agricultural and not for fishpond purposes.[16] In the meantime, the decision of the Secretary of Agriculture and Natural Resources dated May 5, 1959 became final.[17]

More than seven years after the last reappraisal of the improvements or on December 12, 1968, Ester Barza and her husband Engr. Severo M. Barza, filed in the then Court of First Instance of Davao Oriental, an action against Bautista praying for recovery of possession over the 14.85-hectare fishpond area she had applied for a declaration of the validity of the consignment made before the Justice of the Peace of Lupon, and damages and attorney's fees. On January 30, 1971, while the case was pending resolution, Proceso Bautista died.[18] Consequently, his heirs were substituted as party defendants.

The lower court at first dismissed the case for lack of jurisdiction but later, it reconsidered the dismissal.[19] After a protracted trial, on November 15, 1983, the Regional Trial Court of Davao, Oriental,[20] rendered a decision[21] in favor of defendant Bautista. While disagreeing with the Bautistas that the priority rule in applications for permits was inapplicable because Proceso Bautista's application was made before the area was declared available for fishpond purposes, the lower court ruled that the Barzas had not acquired a vested right to possess the areas concerned as they had not complied with the "condition precedent" to such possession - the reimbursement of the value of the improvements made by Bautista. Hence, the court ruled, it was premature for the Barzas to demand possession of the area.

On whether the action for recovery of possession had prescribed,[22] the lower court said:

"x x x Besides, a review of the established facts and circumstances would show that Proceso Bautista started to possess the property adversely as early as 1946. It was only on September 23, 1948 when Ester Barza filed her

application and protest-ed Bautista's entry. Under Article 2253 of the New Civil Code; the Civil Code of 1899 and other previous laws shall govern rights originating, under said laws, from acts done or events which took place under their regime, even though this Code may regulate them in a different manner or may not recognize them. Prescription therefore which started prior to the effectivity of the New Civil Code on August 30, 1950 should be governed by the law prior to the effectivity of the New Civil Code, which was the Code of Civil Procedure, under which the action of recovery of (possession) prescribed within ten (10) years. In this case, the adverse possession of Proceso Bautista which could be a basis for prescription was interrupted with the filing of the application of Ester Barza and her protest against the acts of the former which she lodged with the Bureau of Fisheries in 1948. When the decision of the Department of Agriculture and Natural Resources dated May 5, 1959 became final on July 4, 1959 as per Exhibit 'D' and as in fact admitted by the parties, the said prescription by adverse possession continued (sic). This is clear from the provision of Art. 1123 of the New Civil Code which provides that civil interruption of possession for the purpose of prescription is produced by the judicial summons to the possessor which, in the conflict between the parties, took the form of the fishpond application and the pro-test filed by Ester Barza with the Bureau of Fish-eries in 1948. From July 4, 1959 to December 12, 1968, a period of more than nine (9) years elapsed, and as the same should be tacked with, the period of almost two (2) years which elapsed from 1946 to 1948, when Proceso Bautista started to adversely possess the area and when, on September 23, 1948, Ester Barza filed her application, more than ten (10) years had expired and therefore by reason of prescription, the recovery of possession is also barred."

Emphasizing that Barza's failure to reimburse Bautista for the improvements introduced on the area was inconsistent with good faith, the lower court held that the order of the Director of Fisheries giving due course to her fishpond application and the decision of the Secretary of Agriculture and Natural Resources "had all become stale." Moreover, the consignment of the amount of P1,789.18 was illegal as it was not in accordance with Art. 1258 of the New Civil Code and, the court added, Barza's failure to pay the sum required of her and to file the necessary action within ten years was tantamount to a non-user of her rights under the September 19, 1953 order of the Director of Fisheries. Citing by analogy Art. 506 of the Civil Code providing that the right to make use of public waters is extinguished by the lapse of the concession and by non-user for five (5) years, the lower court held that the cancellation of Barza's application, as recommended by Fishery Product Examiner Abdul Bakir, was proper.

On the other hand, the lower court ruled that Bautista's right to retain possession over his improvements was implied by the order of September 19, 1953 while Barza's failure to pay the value of the improvements was "unfair and unsporting" and viola-tive of Art. 19 of the New Civil Code. The lower court believed that P9,514.33 was the "right amount" that Barza should have properly consigned. The dispositive portion of the decision[23] reads:

"WHEREFORE, judgment is hereby rendered in favor of the defendants and against the plaintiffs, dismissing the complaint and the plaintiffs are hereby directed to pay defendants the sum of P10,000 by way of litigation expenses and P10,000 by way of attorney's fees and to pay the costs.

SO ORDERED."

The Barzas appealed to the Court of Appeals. On June 30, 1986 said court reversed the decision of the lower court.[24] It interpreted the decision of the Secretary of Agriculture and Natural Resources as an "official imprimatur" on the application of Barza and as an implication that Bautista had no right to continue possession over the 49 hectares covered by Fishpond Application No. 3346.

While stating that consignment in an action for recovery of possession of realty is not required by law and that the reim-bursement of the value of the improvements is not an obligation, the appellate court nonetheless held that the consignment of P1,789.18 was "proper and effective." [25] It found that Bautista was not a possessor in good

faith nor a planter in good faith because he filed Fishpond Application No. 3346 after Barza had filed Fishpond Application No. 2984. It concluded that Bautista claim to prescriptive rights, acquired or vested, did not arise "because it infringe(d) on the rights of other(s) like Barza whose Fishpond Application No. 2984 was given due course by the proper officials of the government." [26] It disposed of the case as follows:

"Wherefore, the decision a quo is hereby set aside and reversed and another one is rendered ordering the heirs of Proceso Bautista to accept or withdraw the sum of P1,789.18 from the Municipal Trial Court Lupon, Davao Oriental (formerly Municipal Court of Lupon, Davao Oriental) representing the value of the improvements introduced on the controverted area and to surrender possession of the con-tested area to the heirs of Ester Barza both within 10 days from receipt of the entry of judgment. No damages and cost.

SO ORDERED." (Rollo, p. 55)

On July 29, 1986, petitioners filed a motion for reconsideration of the decision of the Court of Appeals but the same was denied on June 18, 1987. [27]

Hence, this recourse. Petitioners contend that the private respondents cannot be given the right to possess the fishpond in question as they themselves did not comply with the Director of Fisheries' order to reimburse Bautista for the improvements thereon. They assert that whatever rights the Barzas had under their fishpond application had become stale by non-user.

At the outset, it should be remembered that until timber or forest lands are released as disposable or alienable, neither the Bureau of Lands nor the Bureau of Fisheries has authority to lease, grant, sell, or otherwise dispose of these lands for homesteads, sales patents, leases for grazing purposes, fishpond leases and other modes of utilization. [28] On October 25, 1946 when Bautista filed Fishpond Application No. 1205, the area applied for could not yet be granted to him as it was yet to be released for public utilization. The situation, however, changed when Barza filed Fishpond Application No. 2984 for the area had, by then, been opened for fishpond purposes.

Thus, even if Bautista were ahead of Barza by two years in terms of occupation, possession and introduction of substantial improvements, he was not placed in a better position than Barza. The priority rule under Fisheries Administrative Order No. 14 applies only to public lands already released by the Bureau of Fisheries. Until such lands had been properly declared available for fishpond purposes, any application is ineffective because there is no disposable land to speak of. [29] Accordingly, Bautista's application was premature and the ruling of the Director of Fisheries on this matter was, therefore, correct.

Although an administrative decision does not necessarily bind us, it is entitled to great weight and respect. It should be stressed that the function of administering and disposing of lands of the public domain in the manner prescribed by law is not entrusted to the courts but to executive officials. [30] Matters involved in the grant, cancellation, reinstatement and revision of fishpond licenses and permits are vested under the executive supervision of the appropriate department head who in this case is the Secretary of Agriculture and Natural Resources. As such, his discretion must be respected in the absence of a clear showing of abuse. [31] This is in consonance with our well settled ruling that administrative decisions on matters within the jurisdiction of the executive department can only be set aside on proof of gross abuse of jurisdiction, fraud or error of law. [32] As earlier noted, and there being no motion for its reconsideration, the decision of the Secretary of Agriculture and Natural Resources became final on July 3, 1959, thirty (30) days from receipt by the parties of copies of the decision. [33]

Petitioners' contention that the action for recovery of possession had prescribed when the Barzas filed it on December 12, 1968 is erroneous for it was filed within the ten-year period for enforcing a judgment, which in this case is the May 1959 decision of the Secretary of Agriculture and Natural Resources, as provided for in Art. 1144

of the Civil Code. Hence, the ultimate issue in this case is whether or not the Barzas may rightfully seek enforcement of the decision of the Director of Fisheries and that of the Secretary of Agriculture and Natural Resources, notwithstanding their refusal to reimburse the Bautistas for the improvements in the area. We find that the peculiar circumstances of this case compel us to rule in the affirmative.

Although Bautista was in possession of the area for quite a number of years, he ceased to become a bona fide possessor upon receipt of the decision of the Director of Fisheries granting due course to Barza's fishpond application. Under Art. 528 of the Civil Code, "(p)ossession acquired in good faith does not lose its character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully." Thus, Bautista should have desisted from introducing improvements on the property when he learned that Barza's application had been approved.

However, Bautista may not be solely faulted for holding on to the area notwithstanding that he had no right over it. The Barzas, after receiving the administrative decision in their favor, should have complied with its directive to reimburse the Bautistas for the improvements introduced thereon. This is not to say, however that such failure to abide by the decision of the Director of Fisheries rendered "stale" the said decision. There is also the established fact that Bautista refused the payments tendered by the Barzas. However, the Barzas failure to question the last reappraisal of the improvements constituted inaction on their part, for which they should bear its consequences.

WHEREFORE, the decision of the Court of Appeals is hereby **AFFIRMED** subject to the modification that the petitioners shall be **REIMBURSED** the amount of P9,514.33 (inclusive of the consigned amount of P1,789.18) with legal interest from December 12, 1962 until fully paid. Upon payment of said reimbursement, the Bautistas shall **SURRENDER** possession of the 14.85 hectares, including the improvements thereon, for which the Barzas had been granted the right to operate as fishpond. This decision is immediately executory. No costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, and Davide, Jr., JJ., concur.

Bidin, J., No part. I participated in the appealed decision of respondent court.

[1] Exh. A; Plaintiff's Folder of Exhibits, p. 1.

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] Exhibit A, p. 2.

[6] Ibid.

[7] Exh. B; supra, pp. 3-6.

[8] Exh., C; supra, p. 6.

[9] Exh. 12; Defendant's Folder of Exhibits, p. 17.

[10] Exh. B; Plaintiff's Folder of Exhibits, pp. 6-7.

[11] Exh. 13; Defendant's Folder of Exhibits, pp. 18, 20.

[12] Exh. C; Plaintiff's Folder of Exhibits, p. 7.

- [13] Exh. E; *supra*, pp. 9-10.
- [14] Exhs. N & O; *supra*, p. 26.
- [15] Exh 5-A; Defendant's Folder of Exhibits, p. 2.
- [16] Exhibit 16-D; *supra*, p. 30.
- [17] Exh. D; Plaintiff's Folder of Exhibits, p. 8.
- [18] Exh. 8; Defendant's Folder of Exhibits, p. 6.
- [19] Records, p. 216.
- [20] Judge Jose C. Estrada, presiding.
- [21] Rollo, p. 86.
- [22] Decision, pp. 17-19; Rollo, pp. 76-78.
- [23] Rollo, p. 86.
- [24] The decision was penned by Justice Porfirio V. Sison with Justices Abdulwahid A. Bidin, Ramon B. Britanico and Josue N. Bellosillo; concurring.
- [25] Court of Appeals Decision, pp. 3-4; Rollo, pp. 53-54.
- [26] *Ibid*, p. 5
- [27] The resolution was penned by Justice Oscar Victoriano and concurred in by Justices Josue N. Bellosillo and Oscar M. Herrera.
- [28] *Yngson v. Secretary of Agriculture and Natural Resources*, L-36847, July 20, 1983, 123 SCRA 440; *Mapa v. Insular Government*, 10 Phil. 175 (1908); *Ankron v. Government of the Philippine Islands*, 40 Phil. 40 (1919); *Vda. de Alfafara v. Mapa*, 95 Phil. 125 (1954); and *Director of Forestry v. Muñoz*, L-24796, June 28, 1968, 23 SCRA 1183.
- [29] *Yngson v. Secretary of Agriculture and Natural Resources*, *supra* and *Bonilla v. Secretary of Agriculture and Natural Resources* L-20083, April 27, 1967; 19 SCRA 836.
- [30] *Cerdon v. Court of Appeals*, G.R. No. 47422, April 6, 1990, 184 SCRA 198 citing Sec. 4 of the Public Land Act (Commonwealth Act No. 141).
- [31] *Pastor v. Echavez*, L-30593, September 30, 1977, 79 SCRA 220; *Nera v. Titong*, L-25559, March 21, 1974, 56 SCRA 40.
- [32] *Assistant Executive Secretary for Legal Affairs of the Office of the President v. Court of Appeals*, G.R. No. 76761, January 9, 1989, 169 SCRA 27; *Lovina v. Moreno*, 1-17821, November 29, 1963, 9 SCRA 557; *Timbancaya v. Vicente*, L-19100, December 27, 1963, 9 SCRA 852.
- [33] Sec. 10 of Fisheries Administrative Order No. 22 states: "The decision Of the Secretary of Agriculture and Natural Resources on an appealed case shall become final, unless otherwise specifically stated therein, after the lapse of 30 days from the receipt of a copy thereof by the interested parties." (44 O.G. 431).

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