

NEMESIO N. ATIS, PETITIONER, VS. COURT OF APPEALS, ORLANDO S. DELATINA (DECEASED), SUBSTITUTED BY HIS HEIRS, NAMELY: MANSUETA BAGON VDA. DE DELATINA & THEIR CHILDREN, DELIA, ELS...

G.R. No. 96401. April 06, 1992

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is an appeal by certiorari, under Rule 45 of the Rules of Court, from the judgment of the Court of Appeals[1] in CA-G.R. CV No. 15534 (Nemesio N. Atis, Plaintiff-Appellant, versus Orlando Delatina, Defendant?Appellee, Spouses Arturo M. Paculanang and Eleuteria (Lilian) Bobes Paculanang, Intervenors-Appellees), dated 23 November 1989, affirming "in full" the Resolution dated 30 July 1987 of the Regional Trial Court, Branch X, Dipolog City, which dismissed the case "for failure to exhaust administrative remedies, under Presidential Decree No. 1067."

The material allegations of the Complaint for "Judicial Abatement of Nuisance, Mandatory Injunction and Damages," which the Trial Court dismissed, read:

"4. Lot 1 of the plaintiff, together with Lots 2, 3 & 4 of the persons named, have been devoted primarily, directly and solely for fishpond purposes, the nature of the realty being for these purposes as there is a natural watercourse, stream, or continuous water between the banks;

"5. Since time immemorial the water flows from these higher estates down to the sea of Dapitan Bay, passing through a lower estate claimed by one Eleuteria Lilian Bobis, the wife of Arturo M. Paculanang, municipal trial judge of Liloy and Sindangan, Zamboanga del Norte;

"6. The natural watercourse, since time immemorial, has been freely flowing from the upper estates aforesated, unimpeded and continuously into the sea, through the land claimed by the said Eleuteria Lilian Bobis-Paculanang, even as during high tide of the sea, sea water also goes upwards into the fishpond of plaintiff. This condition has been by nature, existing since time immemorial and all riparian or littoral estate owners have recognized it, even as the public and government authorities have also respected it;

"7. Sometime in the middle of August 1986, without plaintiff's knowledge or permission, defendant closed the natural waterway by constructing and building a dike on the land claimed by Eleuteria Lilian Bobis-Paculanang thereby completely blocking and obstructing the flow of the water from the higher estate of plaintiff and his relatives, and thus causing the water in plaintiff's fishpond to remain stagnant, and leading to the poisoning of plaintiff's growing shrimps, prawns, bangus (milkfish) and others to the great and irreparable damage and injury to plaintiff;

"8. When plaintiff knew and realized defendant's tortious acts, the effect of which was to create a nuisance, plaintiff readily confronted him and asked for an explanation why he did that, when as a Barangay Captain of San Pedro, Dapitan City, defendant has always known of the condition of the watercourse that freely empties

its water into the sea, and vice versa, the sea water also goes upwards during high tides, but defendant merely said that he closed the waterflow because he was making or constructing a dike for the fishpond which he said, he was authorized to make for Judge & Mrs. Paculanang;" (pp. 36-38, Rollo).

As prayed for in the Complaint and reiterated by Petitioner in his Motion, dated 25 November 1986, the Trial Court issued, on 27 November 1986, a Temporary Mandatory Restraining Order which directed Respondent Delatina "to demolish or destroy immediately the dyke he has constructed on the land of Mrs. Eleuteria Bobis Paculanang and restore the condition of the water way prior to August, 1986, and to refrain from further acts that may change the contour in the area surrounding Mrs. Paculanang's fishpond and the plaintiff's fishpond."

In due time, Respondent Delatina (now deceased and substituted by his heirs) filed his Answer denying the material allegations of the Complaint.

Spouses Arturo and Eleuteria Paculanang filed an Answer-in-Intervention with Counterclaim making common cause with Respondent Delatina, which Answer the Trial Court admitted in an Order, dated 8 January 1987. Intervenors maintained among others:

"2. Defendant (Delatina) is a mere caretaker of the intervenors in this case because the intervenors are the true owners of the property in question;

"3. That the action for nuisance by plaintiff is not actionable because the community is not affected, as in fact the people around the area are happy with the construction of intervenors dike because they have utilized the same as their bridge and pathway which they have not availed in the property of the plaintiff;

"4. That the fishpond in question is a titled property of the intervenors;

"5. That plaintiff's complaint against defendant and/or intervenors is unfounded and not true for there was never any moment that they have obstructed completely the free flow and passage of water which may passed (sic) on their property because of the construction of an irrigation dike and canal in their property, as shown in the sketch plan hereto attached as Annex "1" of intervenor and made integral part of this answer;"

In an Order bearing the same date, or on 8 January 1987, the Trial Court directed its Clerk of Court, who was earlier designated as Commissioner, to supervise the drainage experiment on the fishponds involved.

In his Report dated 13 April 1987, the Commissioner recommended "the immediate demolition of all dykes, obstructions and the like introduced in August, 1986 and thereafter by defendant Delatina."

On 30 June 1987, Respondent Delatina filed a Motion to Dismiss the case on the following grounds: (1) the Trial Court has no jurisdiction over the subject matter or nature of the action, the same being vested in the National Water Resources Council by Pres. Decree No. 424;[2] and (2) Petitioner failed to exhaust administrative remedies as no prior recourse was made to said Council.

Acting on said Motion, the Trial Court dismissed the case on 30 July 1987, for Petitioner's "failure to exhaust administrative remedies under Presidential Decree No. 1067."

As the Court of Appeals, to which Petitioner appealed, affirmed "in full" the Trial Court's order of dismissal, herein Petitioner availed of this recourse claiming that the Court of Appeals erred: (1) in failing to consider the main issue raised by the ultimate facts which is whether the acts of Private Respondents/Intervenors caused damage or injury to the rights of Petitioner, no "dispute as to water rights" being involved; (2) in applying the general rule on exhaustion of administrative remedies, the instant case being an exception thereto; and (3) in not ruling that Private Respondents/Intervenors could no longer question the jurisdiction of the Trial Court after submitting to its jurisdiction and seeking reliefs from it.

Private Respondents/Intervenors, on the other hand, have taken a contrary position.

The decisive issue pivots around whether or not, under the material allegations of the Complaint, the case falls under the jurisdiction of the Trial Court.

As earlier stated, the Trial Court and the Court of Appeals entertained a negative view. Both Courts agreed with the Private Respondents/Intervenors that the case falls under the jurisdiction of the National Water Resources Council.

Presidential Decree No. 1067 otherwise known as "The Water Code of the Philippines" has spelled out in Article 3 thereof the underlying principles of the Code, one of which is:

"d. The utilization, exploitation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through the National Water Resources Council, herein referred to as the Council." (underlining supplied.)

Article 88 of the same Code provides that:

"Art. 88. The Council shall have original jurisdiction over all disputes relating to appropriation, utilization, exploration, development, control, conservation and protection of waters within the meaning and context of this Code." (Underlining supplied.)

The case at bar does not involve any dispute relating to appropriation or use of waters. "Appropriation" as used in the Water Code means the "acquisition of rights over the use of waters or the taking or diverting of waters from a natural source" (Art. 9); while "use of water for fisheries is the utilization of water for the propagation and culture of fish as a commercial enterprise." In fact, Petitioner is the holder of: (1) WATER PERMIT NO. 10974 to use water from the San Pedro Creek, Dapitan City, and (2) WATER PERMIT NO. 10975 to use sea water, "for purposes of Fisheries," issued to him by no less than the National Water Resources Council on January 4, 1988 (pp. 93 and 94, Rollo). The issuance of said permits served to grant petitioner water rights or the privilege to appropriate and use water (Art. 13, Pres. Decree No. 1067) from the San Pedro Creek and sea water from Dapitan Bay for his fishpond.

Private Respondents/Intervenors do not dispute the water rights petitioner had acquired by reason of those permits but maintain that said licenses were issued by the National Water Resources Council to Petitioner only on 4 January 1988, or more than a year after the case was filed in Court. The crucial point is, however, that "since time immemorial" water had been flowing from the higher estates down to Dapitan Bay and to the sea passing through the lower estate belonging to the intervenors. There is nothing in the records before us controverting this statement of fact.

Obviously, therefore, no dispute lies relative to the use or appropriation by Petitioner of water from the San Pedro Creek and sea water from the Dapitan Bay. The case does not involve a determination of the parties' respective water rights, which would otherwise be within the competence and original jurisdiction of the National Water Resources Council. Rather, the issue is whether or not the construction of the dike, obstructed the natural water course or the free flow of water from Petitioner's higher estate to Intervenors' lower estate thereby causing injury to petitioner's rights and impairing the use of his fishpond. This issue necessitates resort to judicial intervention. As held in the case of *Amistoso v. Ang* (L-60219, 29 June 1984, 130 SCRA 228), where there is a grant existing in favor of the petitioner, and there is a violation of grantee's right by closure of irrigation canal, it is the enjoyment of the right emanating from the grant that is in litigation, and the case is not within the jurisdiction of the National Water Resources Council.

In fine, it is the Regional Trial Court, Branch X, Dipolog City, and not the National Water Resources Council,

that has jurisdiction over the instant case. It follows that the doctrine of exhaustion of administrative remedies on the basis of which the case was dismissed by both Courts below, does not come into play.

WHEREFORE, the Decision of the Court of Appeals is SET ASIDE and the case is ordered REMANDED to the Trial Court for further proceedings, with costs against respondents/intervenors.

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

[1] Eleventh Division, composed of Justices Josue N. Bellosillo, Chairman, Alfredo Marigomen, Ponente, and Cesar D. Francisco, Member.

[2] Creating a National Water Resources Council, Reconstituting its Membership, Vesting the same with Powers to Coordinate and Integrate Water Resources Development xxx.

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