

**ZARATE AND VALENTIN ZARATE, APPLICANTS AND APPELLANTS,
VS. THE DIRECTOR OF LANDS, OPPOSITOR AND APPELLEE.***G.R. Nos. 37084, 37085. March 24, 1933*

Ponente: BUTTE, J.

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This is an appeal from a decision of the Court of First Instance of Benguet in a land registration case dismissing the petitions of an Igorot named Zarate and another named Valentin Zarate, for the registration of their title to certain lots in the townsite of Baguio. In his application for registration filed November 4, 1930, Zarate claims to be the owner in fee simple of lot No. 186 in Residence Section K of the Baguio townsite; that he acquired said lot by inheritance from his father who in turn inherited it from his father who had for many years put parts of it in cultivation; that applicant and his tenants have occupied the land continuously for many years; that he is fifty years of age, a citizen of the Philippine Islands and a native of Baguio. He attaches to his petition tax receipts for the years 1910, 1913, 1918, 1920, 1925 and 1926.

Valentin Zarate, in his petition for registration, filed July 31, 1931, asserts that he is the owner in fee simple of a parcel of land of nine-tenths of a hectare in the townsite of Baguio described in his petition; that he acquired said land from his grandmother; that the same is in his possession but that the Bureau of Lands has been cultivating a part thereof since last August without the knowledge and consent of the petitioner. The Director of Lands, through the Attorney General, filed objections to the applications, the principal ground of which is that both the lots involved had been judicially declared to be public domain in Record No. 211 of the same court.

At the hearing, the following stipulation was entered into between the parties:

"The applicant Zarate in case No. 98, G. L. R. O. Rec. No. 40458, and his attorney Mr. Hermenegildo Gualberto, and the applicant Valentin Zarate in case No. 100, G. L. R. O. Rec. No. 42434, and his counsel, Attorney Manuel Montilla, and Fiscal Magno representing the Director of Lands, the oppositor in both cases, agree to the joint hearing of these two applications. All the parties and their counsel further agree that the lands applied for in both cases are included in the Townsite Reservation of Baguio No. 1, G. L. R. O. Rec. No. 211; that the notice of this reservation was issued on July 22, 1915, and was duly published pursuant to law; that the proceedings in this townsite reservation of Baguio were instituted pursuant to the provisions of Act No. 926 in relation to Act No. 627 relative to military reservations and that this reservation case was finally decided on November 13, 1922; that the herein applicants Zarate and Valentin Zarate did not file their applications for their claims within the reservation, within the period required by law. The parties further agree that pursuant to the provisions of section 3 of Act No. 627, particularly the last part of said section, the deputy clerk of court Gabino Villanueva has prepared and issued a certificate, a certified copy of which marked Exhibit X is made part of this record and that attached to said certificate, he has also prepared and issued a list of the persons supposed to be found living on and occupying lands within the reservation and that the names of the applicants herein or their predecessors in interest do not appear in this list. These certificate and list are attached to the record of the reservation of the townsite of Baguio."

On motion of the oppositor, the court below dismissed the applications of Zarate and Valentin Zarate on the

ground that they did not file their applications for the registration of their titles within the period required in sections 3 and 4 of Act No. 627, being entitled: "An Act to bring immediately under the operation of the Land Registration Act all lands lying within the boundaries lawfully set apart for military reservations, and all lands desired to be purchased by the Government of the United States for military purposes."

It is the contention of the appellee that the appellants are bound by the judgment finally entered on November 13, 1922, in Record No. 211 referred to in the stipulation of facts; that the lands, which appellants claim, were thereby declared to be public domain and hence their application for registration must be dismissed as *res judicata*. The appellants in substance contend that they are not bound by the judgment of November 13, 1922, because they were not served personally with the notice required by Act No. 627 under which said judgment was entered; that said notice is mandatory and said judgment, if binding on them, would amount to the taking of their property without due process in violation of the Organic Act.

In the three consolidated cases of Lagariza against the Commanding General of the Division of the Philippines; Saba against the same and Garcia against the same, reported in 22 Phil., 297, we had occasion to consider at length sections 3 and 4 of Act No. 627. These sections are quoted in that opinion. In those cases as in this, it was contended that the applications for registration were filed long after the expiration of the period prescribed by Act No. 627; that the six months limitation period begins to run from the date the notice is issued by the court of Land Registration and not from the time the notice is received by the occupants upon whom it is personally served. In rejecting this contention, we made the following comments:

"As is seen from the wording of the section 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 court below said: "That these applicants or their predecessors in interest never received any personal notice may be presumed." The applicants Zarate, through their attorneys, offered to prove, if allowed by the court, that the applicants or their predecessors in interest were the actual occupants of the land applied for during the period covered by the reservation proceedings (Record No. 211), having houses and other improvements there to show their visible occupancy. But this offer of the applicants was rejected, although the court below recognized that that

was precisely the question before it for determination. The court below raised a conclusive presumption against the applicants that they were not living upon or in visible possession of the lands which they now claim, at any time during the reservation proceedings, nor at the time the clerk of the court made personal service upon such occupants in conformity with the duty laid upon him by Act No. 627.

Besides notice by publication and posting, Act No. 627 requires personal notice as follows:

"* * * 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." The return of the clerk (Exhibit X) certifies as follows:

"2nd. That I have made personal service upon each and all persons living upon and each and all persons in visible possession of any part of said reservation by delivering to each of said persons a true and certified copy of said notice, in the Spanish Language, a correct list of which persons, together with the dates of service thereon, marked Exhibit B, is attached hereto, returned herewith and made a part hereof." The certificate gives a list of one hundred thirty-four occupants upon whom the clerk made the personal service referred to in his certificate, but the names of the appellants are not on this list. Because of that omission the court below drew the inference that the appellants were not in fact occupants of any lands within the reservation. We think this inference is not warranted.

Section 3 of Act No. 627 provides that the certificate of the clerk shall be "conclusive proof of service". That undoubtedly means that none of the persons whose names appear on the list referred to will be heard to impeach the clerk's certificate. But we find no warrant for reading into that certificate any statement not therein contained. The court below also rested its inference that the appellants were not in fact occupants at the time referred to, on the presumption of our Code of Civil Procedure (section 334, paragraph 14) to the effect that "official duty has been regularly performed": that is to say, inasmuch as the clerk is required by Act No. 627 to serve personal notice "upon every person" living upon or in visible possession, it must be presumed that he has performed that duty. If the appellants' names, therefore, are not on the list, it could only be because they were not in fact living upon the land or in visible possession. But this presumption is not conclusive. It is rebuttable and the appellants have made the offer to overcome it by proof.

Nor are we impressed by the "practical" argument of the appellee, that if this appeal is sustained a cloud will be thrown upon all the titles to lands which were decreed in Record No. 211 to be public lands, the assumption being that there may be many persons who did not receive the personal notice required by the statute. We cannot concur in that assumption in the absence of any evidence. But even so, if a wrong has been done by the Government on a wholesale scale, there is all the more reason why it should be corrected.

Considering the vital importance of personal notice (*Lagariza vs. Commanding General of the Division of the Philippines*, *supra*) and further that the explicit mandatory provision of the statute and the due process clause of the Organic Act require that such notice shall be given as a basis for the jurisdiction of the court to require compulsory registration within the time limited, on the pain of forfeiture (section 4 of Act No. 627), we have come to the conclusion that the judgment appealed from should be reversed and the court below directed to consider on their merits the applications of the appellants for registration of the lands which they claim, in accordance with the provisions of the Land Registration Act.

Costs in this court de oficio.

Avanceña, C. J., Street, Abad Santos, and Imperial, JJ., concur.

Villamor, Ostrand, Villa-Real, and Vickers JJ., concur in the result.

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