

SECOND DIVISION

[G.R. NO. 132209, April 29, 2005]

**CARLOS C. BUENDIA, PETITIONER, VS. CITY OF ILIGAN,
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* assailing the Decision^[1] of the Regional Trial Court (RTC) of Lanao del Norte, Branch 2, which set aside the Order^[2] of the National Water Resources Board (NWRB), the dispositive portion of which reads:

WHEREFORE, the writ of *certiorari* prayed for is hereby granted and the question (sic) NWRB order of March 10, 1994, is hereby set aside and rendered of no effect for being issued in grave abuse of discretion.^[3]

THE FACTS

On 05 October 1992, petitioner Buendia filed with the NWRB an application for the appropriation of water from a spring located within his property in Ditucalan, Iligan City. Said application was docketed as Application No. 11913 (for commercial purposes) and No. 11917 (for domestic water supply).^[4]

In the absence of protests to the applications being timely filed, the NWRB, after evaluating petitioner's applications, issued on 25 June 1993, Water Permits No. 13842 and No. 13827^[5] in his favor.

On 17 November 1993, almost five (5) months after petitioner's Water Permits were issued, respondent City of Iligan filed with the NWRB an "Opposition and/or Appeal"^[6] contesting the issuance of said water permits to petitioner. The Opposition and/or Appeal sought to serve as both a protest against petitioner's water permit applications, as well as an appeal to the NWRB's grant of the water permits to petitioner.

On 10 March 1994, the NWRB issued an Order^[7] dismissing respondent's Opposition and/or Appeal. The "Opposition" part was dismissed for being filed out of time, while the "Appeal" part was dismissed as a consequence of the denial of the opposition to the application, i.e., in the absence of a verified protest having been seasonably filed, no water rights controversy arose; hence, there was no decision from which respondent may appeal from.

Respondent City of Iligan did not move for a reconsideration of said order, nor did it appeal to the appropriate Executive Department,^[8] but instead filed on 09

September 1994, with the RTC of Lanao del Norte, Branch 2, a Petition for *Certiorari* assailing the legality of the NWRB Order for being issued in excess of its jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction.

Respondent sought to annul the NWRB Order on the following specific grounds:

1. The NWRB did not notify the City of Iligan of Buendia's Water Permit Application No. 11913 and No. 11917. Neither did the NWRB give the City of Iligan an opportunity to be heard with respect to the applications because no public hearing was conducted; and
2. The NWRB's March 10, 1994 Order was issued without due process, the NWRB having "arbitrarily and despotically" denied the City of Iligan's Opposition and/or Appeal notwithstanding the fact that the latter was not furnished a copy (sic) of Buendia's Water Permits.^[9]

In his Answer, petitioner prayed for the dismissal of the petition claiming *inter-alia* that: (a) the petition was not filed within a reasonable period, as it was filed more than five (5) months after petitioner received a copy of the order it seeks to annul; (b) the petition lacks cause of action for failure of the City of Iligan to file a Motion for Reconsideration which is a prerequisite to the filing of a petition for *certiorari*; (c) the City of Iligan did not exhaust all administrative remedies, since it did not avail itself of its right to appeal as provided under the Administrative Code of 1987; and (d) the NWRB appropriately dismissed the Opposition and/or Appeal.^[10]

After all the issues were joined with the filing of the last pleading, the case was set for pre-trial. As reflected in the pre-trial order of 28 June 1996 which was amended on 02 July 1996, the parties specifically agreed to limit the issue of the case to "*whether or not the NWRB Order dated March 10, 1994 was rendered by the NWRB with grave abuse of discretion or contrary to law.*"^[11]

On 15 August 1997, the trial court rendered the assailed decision. Although the court a quo upheld the dismissal of the "Opposition and/or Appeal" on procedural grounds, it nonetheless annulled the NWRB Order, to wit:

From the aforesaid established facts, it could be safely deduced *that as early as October 22, 1992 or eight months prior to the issuance of respondent Buendia's water permits on June 23, 1993, petitioner City of Iligan was already aware of respondent Buendia's water permit application and had all the opportunity to protest or oppose the same.*

...

In this particular case, as emphatically stressed in respondent Buendia's memorandum, *it is not disputed that no verified protest or opposition was filed during all the time, respondent Buendia's applications were being processed by respondent NWRB.* Hence, under the prevailing circumstances, it being uncontested, no water rights controversy arose and respondent NWRB directly evaluated the technical aspect of the applications pursuant to the Implementing Rules and Regulations as explained above. *In fact, on March 11-12, 1993, respondent NWRB, had conducted the physical investigation of the spring, which is the subject*

matter of the application.

...

Accordingly, based only upon the foregoing considerations, it would appear that respondent NWRB was correct in dismissing petitioner's Opposition and/or Appeal because there is "nothing which can be the subject of an appeal" as there is nothing for respondent NWRB to decide considering the absence of water rights controversy.

Considering, however, that the instant case is a clash between an individual or private right as against an assertion for the public welfare, involving, as a matter of fact, the water supply for the City of Iligan, this Court has to examine more closely the facts and the law in their broadest perspective. *A more careful scrutiny of the records as well as the stipulations of facts and admissions by the parties, as herein above specified, reveal material and substantial aspects of the case, not taken into consideration by the respondent NWRB, which entirely changes the complexion of the case.*^[12] [Emphases ours]

According to the lower court, the appropriation by the Iligan City Waterworks Sewerage System (ICWSS) and its predecessors-in-interest of the water source at Ditucalan spring was from 1927 up to the present, as shown by the following:

1. That the Iligan Waterworks Sewerage System has been existing as early as 1927 and the same was taken over by the NAWASA on April 1, 1956;
2. That in 1971, R. A. No. 6234 was passed and by virtue of the same, the MWSS took over the NAWASA, and on August 19, 1973, a Memorandum of Agreement (MOA) was issued between the MWSS and the City Mayor of Iligan, transferring the power of the MWSS to Iligan City.^[13]

Thus, following the rule on acquisitive prescription that the right to the use of public water may be acquired through prescription for twenty (20) years, the court ruled that the ICWSS had already acquired by acquisitive prescription the right to appropriate water from the Ditucalan spring prior to Buendia's application for water rights before the NWRB and that the Board no longer had any jurisdiction to issue any water right over the same water source.

Thereafter, on 30 September 1997, petitioner filed a Motion for Reconsideration, which was subsequently denied by the trial court in an Order^[14] dated 05 January 1998.

Raising purely questions of law, petitioner filed the present petition.

ISSUES

In this Petition for *Certiorari*, petitioner raises the following issues:

1. Whether the court a quo went beyond the issues it was empowered to adjudicate, as delineated in the Pre-Trial Order, and thus departed from the accepted and usual course of judicial proceedings, as well as deprived petitioner of his right to present evidence to support the case;
2. Assuming that the court a quo may validly pass upon the issue of who has the better right to appropriate water from petitioner's property, whether it decided this question of substance in accord with law or with the applicable decisions of the Supreme Court;
3. Whether the court a quo correctly ruled that since respondent had already acquired by acquisitive prescription the right to appropriate water from the Ditucalan spring then the NWRB no longer had any jurisdiction to issue any water right over the same water source; and
4. Whether the court a quo correctly ruled that respondent has the right to appropriate water under its charter, Republic Act No. 525.

RULING OF THE COURT

In order to properly settle the issues raised in the instant case, a perusal of the NWRB Order of 10 March 1994 is of utmost importance since, as determined by the parties during pre-trial and recognized by the trial court in its decision, the pivotal issue of the case is the legality of the NWRB Order dismissing respondent's Opposition and/or Appeal.

It bears stressing that respondent's Opposition and/or Appeal was dismissed by the NWRB solely on procedural grounds, the opposition being *filed out of time*. According to the NWRB:

As against this gratuitous claim by the oppositors, however, the record is replete with evidence that Iligan City, was in point of fact and in law, very much aware of these applications as early as October 22, 1992, yet no verified protest nor opposition was filed by Iligan City during all the time that these applications were being processed, investigated and evaluated and despite having ample opportunity to do so...

On the other point raised which pertains to the "appeal issue," a careful examination of these articles alluded to (Art. 88 and 89, P.D. 1067) shows beyond doubt that these refers to decisions of the Council (now Board) on water rights controversies or disputes, which in this particular case does not exist. *In the case at bar, there was NO decision of a water right controversy in the pre-issuance of subject water permits which may be the subject of an appeal.* Considering further that there was NO verified protest seasonably filed against said applications, logically therefore, there is no controversy to speak of

In essence, the "Opposition and/or Appeal" filed by Iligan City, has no leg to stand on, because it was filed "OUT OF TIME" and secondly, because of want of legal and factual basis.^[15] [Italics ours]