**Lovina v Moreno**

**GR No. L-17821, 29 Nov. 1963**

**ISSUE:**

W/N the ownership of navigable stream can be acquired by prescription.

 W/N RA 2056 is unconstitutional due to unlawfully delegating to the Secretary of Public Works and Communications the judicial power to determine whether a river or stream is public and navigable.

**RULES:**

1. **RA No. 2056 –** Act prohibiting construction of dams, dikes or any other works in public navigable waters…
2. **Palanca v Commonwealth (69 Phil. 449) –** beds of navigable streams is public property and no acquirable by adverse possession.
3. **Luisville Bridge Co. v US Secretary of War** – the Sec. of War is to take action, after hearing, for the removal of bridges unreasonably obstructing navigation. Abatement as nuisances of property cannot be done except through court proceedings.
4. **Villena v Secretary of Interior (67 Phil. 451)** – The Secretary’s is that of the President in the absence of disapproval.

**ANALYSIS OF FACTS:**

 Numerous residents of Macabebe, Pampanga complained that Lovina had blocked the “*Sapang Bulati,*” a navigable river in the same municipality and asked that the obstructions be ordered removed, under the provisions of RA 2056. After notice and hearing to the parties, the said Secretary of Public Works and COmmunications found the constructions to be a public nuisance in navigable waters, and ordered the land owners, Sps. Lovina, to remove the same. After receipt of the decision, the Sps. Lovina filed a petition to restrain the Secretary from enforcing his decision and which the CFI Manila rendered in favor of the spouses saying that RA 2056 is unconstitutional due to undue delegation to the Secretary and that *Sapang Bulati* is not a navigable river but a private stream.

 Moreno, on the other hand, contends that it is not a case of undue delegation for the power of determining the existence of a stream is only incidental to the exercise of the power granted by the law.

**CONCLUSION:**

RA 2056 is unconstitutional. It cannot be held that the law is constitutional but was applied unconstitutionally as the Lovino’s dikes were demolished through an administrative, not judicial, proceeding. It will be noted that the questioned law merely empowers the Secretary to remove unauthorized obstructions or encroachments upon public streams, constructions that no private person was anyway entitled to make, because the bed of navigable streams is public property, and ownership thereof is not acquirable by adverse possession.

 It is true that the exercise of the Secretary's power under the Act necessarily involves the determination of some questions of fact, such as the existence of the stream and its previous navigable character; but these functions, whether judicial or quasi-judicial, are merely incidental to the exercise of the power granted by law to clear navigable streams of unauthorized obstructions or encroachments, and authorities are clear that they are, validly conferrable upon executive officials provided the party affected is given opportunity to be heard, as is expressly required by RA2056.