

**GLICERIO D. RAMIREZ, PETITIONER, VS. MARCELO B. DAYAG,
EMMANUEL I. GARCIA AND ROMUALDITO I. GARCIA,
RESPONDENTS.[]***SP No. 112757, September 15, 2010*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/01cfdfa43957/>**Court of Appeals**

This is an appeal[1] seeking the reversal and setting aside of the Decision[2] of the Regional Trial Court (RTC), Third Capital Judicial Region, Br. 51, Guagua, Pampanga, which denied for lack of merit the petition for mandamus in Special Civil Case No. G-08-581.

The Facts:

On August 14, 2008, Glicerio D. Ramirez[4] (Ramirez) filed before the RTC a Verified Petition for Mandamus[5] praying that Marcelo B. Dayag (Dayag), the Chief of Police of the Municipality of Guagua, Pampanga, be commanded to provide him the necessary police protection and to restrain and/or arrest Emmanuel Garcia and Romualdito Garcia(hereinafter, the Garcias[6]) for illegally preventing him from constructing a fence on his property, identified as Lot No. 4307-P, which is a portion of Lot No. 4307, Cad. 376-D, Guagua Cadastre, located in San Isidro, Guagua, Pampanga.

The basis for establishing the boundaries of the said property was manifested in a Joint Affidavit[7] executed in 1980 by the previous owners thereof, namely, Aurelia Samonte, Teodora Samonte, and Consolacion Garcia (all deceased), viz:

We, Aurelia Samonte, Teodora Samonte, and Consolacion Garcia, all of legal age, Filipinos, married, all residing at present in San Isidro, Guagua, Pampanga, after having been duly sworn to in accordance with law depose and say:

That during the cadastral survey of the municipality of Guagua[,] incidentally[,] our lots which were located in San Isidro, Guagua, Pampanga were surveyed as one[,] identified as lot 4307 in the name of Aniano Garcia.

That in order to rectify or correct the erroneous outcome of the cadastral survey of the said Barrio, We come[sic] into an agreement to have the land in question subdivided into 3 lots, based on our actual occupation[,] which is indicated on plan CSD _____executed by GEODETIC ENGINEER SALVADOR ERMITANO (Emphasis and bracketed insertions ours)

Based on the affidavit, Ramirez, who is married to the daughter of Aurelia Samonte, wished to construct a concrete fence along one side of the property, adjacent to the lot of the Garcias. On July 14, 2008, Ramirez informed the Garcias, orally and in writing[8], of his plan. When he proceeded with the construction on July 31, 2008, the Garcias and their cohorts prevented him by pulling out some if the construction stakes. He then asked for the assistance of Barangay Captain Antonio Ladao(Ladao) and showed to the latter all the documents evidencing his legitimate ownership of the subject property[9]. The Garcias, on the other hand, were not able to present any evidence as to their legal interest thereon. By reason of the Garcias' threat that they will do anything to prevent him from constructing the fence, he(Ramirez) and Ladao went to the office of Dayag and requested for

police assistance. However, Dayag neglected to carry out his official duty when he refused to provide police assistance purportedly because the policy of their police department is to require a court order before providing police protection. Ramirez, thus, prays that a writ of mandamus be issued against Dayag and the Garcias be ordered to pay the costs of the suit.

Opposing, the Garcias claim that because Lot No. 4307 is a public land, necessarily portions thereof, which include Lot No. 4307-P, are likewise public lands. As such, it is a public land under the disposition of the Department of Environment and Natural Resources (DENR) pursuant to its Free Patent Program; that the original claimant thereof under FPA No. 035407-917 was their grandfather, Aniano Garcia, as evidenced by a DENR certification¹⁰ dated September 1, 2008; and, that in the disposition and titling of the entire lot (Lot No. 4307), Ramirez filed before the DENR two (2) cases which were both objected to by them and Heirs of Aniano Garcia^[11].

By way of affirmative defense, the Garcias argue that the filing of the mandamus case constituted forum shopping in view of Ramirez' failure to state in the certification that he filed two (2) cases before the DENR pertaining to his claim over the entire lot (Lot No. 4307); that the issue of Ramirez in fencing the property is the subject of a pending incident before the DENR such that the Garcias and their relatives, the Heirs of Aniano Garcia, filed a manifestation to set the case for hearing and for the urgent issuance of a status quo order; and, that Ramirez intentionally misled the RTC into believing that he is a Filipino citizen when evidence showed that he is, in fact, an American citizen and, therefore, is disqualified from becoming a beneficiary under the Free Patent Program.

For his part, Dayag claims that the dispute between Ramirez and the Garcias is civil in nature, involving as it does the alleged boundaries of their properties and Ramirez' intention to construct a fence thereon; that the dispute had already undergone Barangay conciliation proceedings and, thus, the next course of action is to file an appropriate action before the proper court; that instead of filing a case, Ramirez sent a letter dated July 14, 2008 to the Garcias informing them that he will proceed to construct the fence; that as stated in the letter, Ramirez did construct a fence thereon but was prevented by the Garcias who then threatened that they will do anything to stop him from constructing the fence; and, that as a result of the altercation, Ramirez went to the police station to seek police protection.

Dayag also explains that the intention of Ramirez is, clearly, to be able to successfully put up a fence on the property, the dispute over which is yet to be settled before the DENR; that Ramirez' intention to put up a fence on the property is premature due to a pending incident with the DENR and due to his failure to seek recourse before the proper court; that as a member of the PNP, he has no authority to render, much less, impose a judgment upon the parties especially in the instant case where the dispute is yet to be settled in court; that he is fully aware of his legal duty to prevent occurrence of lawless violence in his jurisdiction and to preserve the peace and order within the vicinity; and, that on the morning of July 27, 2008 and pursuant to the request of Ladao, he dispatched three (3) police officers to coordinate with the Barangay officials and maintain peace and order within the vicinity of the subject property.

On May 11, 2009, the RTC dismissed the petition for mandamus for lack of merit.

Hence, the present recourse.

The Issues:

In his appeal, Ramirez raises the following:

(1)

WHETHER OR NOT THE ASSAILED DECISION OF THE REGIONAL TRIAL COURT [RTC] SHOULD

BE DISTURBED OR REVERSED BY THIS HONORABLE COURT; AND

(2)

WHETHER OR NOT THE ASSAILED DECISION, OF THE THR[SIC] RTC IS NULL AND VOID AB INITIO BECAUSE IT IS PREDICATED ON THE WRONG ISSUE OF OWNERSHIP OR TITLE UPON WHICH THE REGIONAL TRIAL COURT HAS NO JURISDICTION TO LITIGATE.[12]

In support of the above, Ramirez contends, in essence, that the RTC erred in not considering the Joint Affidavit executed by the deceased owners of the property as his basis to rightfully fence one side of Lot No. 4307-P; that the said affidavit supports the legal concept of "boundary by acquiescence"; that based on the same affidavit, he has established his actual occupation and possession of the said property; and, that the issue before the RTC is not the ownership of but his right to fence the same as the lawful possessor of the lot.

On the other hand, the Garcias argue, in the main, that the petition for mandamus is not the proper remedy and the filing thereof is premature. They mention the existence of a status quo order issued by the DENR on September 24, 2008 ordering both parties to maintain the lot in status quo while the protest case is pending resolution therewith. They likewise stress that Ramirez has no legal and competent right to demand police protection from Dayag while constructing the fence, adding that the act sought to be performed by the latter is discretionary and not ministerial.

In reply to the Garcias' comment, Ramirez insists that his filing of a petition for mandamus is appropriate. The cases pending before the DENR are immaterial to the instant case since they involve the issue of ownership while the issue before the RTC is that of possession. Furthermore, the doctrine of exhaustion of administrative remedies is inapplicable since it pertains to the issue of ownership or title which is immaterial to the issue of boundary fencing [which is related to possession or actual occupation]. The issue of ownership or title for untitled public lands is under the jurisdiction of DENR while the issue of boundary fencing is within the jurisdiction of the Regional Trial Court[13]. As regards the status quo order of the DENR, Ramirez believes that the "STATUS QUO" Order by DENR has no effect on the instant mandamus because it[is] null and void ab initio since it is [an] infringement on the jurisdiction of the Regional Trial Court to decide on the issue of boundary fencing upon which[the] DENR has no jurisdiction.[14] Lastly, Ramirez asseverates that he established a clear legal right to the relief sought [police protection] on the ground that he is entitled under the Constitutional not to be denied equal protection of the laws, including the applicable provisions in the Civil Codes.[15]

This Court's Ruling:

Clearly, the pivotal issue for resolution is whether or not the RTC was correct in denying the petition for mandamus filed by Ramirez.

The appeal lacks merit.

Section 3, Rule 65 of the Rules of Court states that:

SEC. 3. Petition for mandamus.—When any tribunal corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained

by the petitioner by reason of the wrongful acts of the respondent.

Stated differently, mandamus lies under any of the following cases: 1) in case any tribunal, corporation, board or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; 2) in case any tribunal, corporation, board or person unlawfully excludes another from the use and enjoyment of a right or office to which such other is legally entitled; and, 3) in both cases, there is no other plain, speedy, and adequate remedy in the ordinary course of law.

Moreover, as an extraordinary writ, the remedy of mandamus lies only to compel an officer to perform a ministerial duty, not a discretionary one[16]. The duty is ministerial only when its discharge requires neither the exercise of official discretion nor judgment.[17]

Recognized further in this jurisdiction is the principle that mandamus will not issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists, although objection raising a mere technical question will be disregarded if the right is clear and the case is meritorious[18]. On the part of the petitioner, it is essential for the writ to issue that he should have a clear legal right to the thing demanded, and it must be the imperative duty of respondent to perform the act required[19]. Thus, as an extraordinary remedy mandamus may be availed of only if the legal right to be enforced is well-defined, clear, and certain.

The above principle is reiterated in the case of *Olama, et al. v. PNB, et al.*[20], viz:

Further, it is settled that in order that a writ of mandamus may aptly issue, it is essential that, on the one hand, the person petitioning for it has a clear legal right to the claim that is sought and that, on the other hand, the respondent has an imperative duty to perform that which is demanded of him. Mandamus will not issue to enforce a right, or to compel compliance with a duty, which is questionable or over which a substantial doubt exists. The principal function of the writ of mandamus is to command and to expedite, not to inquire and to adjudicate; thus, it is neither the office nor the aim of the writ to secure a legal right but to implement that which is already established. Unless the right to the relief is unclouded, mandamus will not issue. (Emphasis supplied)

After perusing the records of this case, We find that the arguments raised by Ramirez fail to make a case for the issuance of a writ of mandamus.

Contrary to the contention of Ramirez that he has established a clear legal right to the relief that he is seeking, his claim rests on very doubtful grounds. There is no showing that he has a clear legal right to the writ demanded or that it is the imperative duty of Dayag, clearly and peremptorily enjoined by law, to perform the act required which, in this case, is police protection while constructing a fence on a property.

We explain. Ramirez insists that the Joint Affidavit establishes his right to fence one side of the property for which he needs police protection. There is, however, nothing in the affidavit which suggests that he is entitled to the relief being demanded. The provisions therein relied upon by Ramirez are dubious, vague, and inconclusive. Besides, the issue of Ramirez' right to fence the property is still the subject of pending incidents before the DENR. His insistence to build the fence thereon is, therefore, premature. More importantly, this also indicated that Ramirez' right has not yet been clearly established. Thus, at the time he instituted the petition for mandamus, his claim had no prima facie leg to stand on. To emphasize, mandamus will not issue to establish a legal right, but only to enforce one that is clearly established.

Moreover, the appreciation of the evidence (Joint Affidavit) involves the use of discretion on the part of Dayag. This he cannot do. As a member of the PNP, he has no authority to render, much less, impose his judgment on who between the parties has a better right to construct the fence on the disputed boundary. Although he has a duty to prevent violence in his jurisdiction and to preserve the peace and order within the vicinity, he can only do so

within the confines of what his duty imposes upon him. Mandamus will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do, or to give to the applicant anything to which he is not entitled by law[21].

On this score, We quote with favor the sound observations of the RTC:

First, petitioner [Ramirez] failed to establish that he has a clear legal rights over the subject property.

The parties are in the dispute over a parcel of land, Lot 4307, Cad. 376-D Guagua Cadastre, located in San Isidro, Guagua, Pampanga. Respondents[the Garcias] claim that said land is covered by a free patent application with their grandfather, Aniano Garcia, as the original claimant. On the other hand, petitioner contends that there was a cadastral survey mistake of naming Aniano Garcia as the sole claimant of Lot 4307 because said lot is owned by three (3) families, namely: the Heirs of Aurelia Samonte Alingcastre, the Heirs of Aniano Garcia, and the Heirs of Teodora Samonte Manalang. Petitioner claims that his wife, Corazon Alingcastre Ramirez, is an heir of Aurelia Samonte Alingcastre. Petitioner alleges that the southeasterly fence that he seeks to construct is on the portion owned by one of the three (3) owners, the Heirs of Aurelia Samonte Alingcastre.

It is not disputed that the subject property is also the subject of three (3) cases before the DENR: As of September 1, 2008 (Annex 4) and September 2, 2008 (Annex 5), the first and second cases, respectively, referred to above are still pending before the DENR.

Thus, it appear that the parties' (not only petitioner's but also private respondents') title, rights[,] and interests over the subject property is[sic] still be resolved and determined by the DENR. For said reason, petitioner has not quite established a clear right over the subject property. In other words, for public respondentf [Dayag] to assist petitioner in constructing a fence on a property which is the subject of a controversy and over which petitioner has not established a clear right, is doubtful.

* * * * *

Petitioner alleges that he has shown documents to public respondent Chief of Police to show his right, title [,] and ownership over the land he seeks to fence. It is not however the duty of the public respondent Chief of Police to decide for himself whether petitioner has a better right or title than private respondents over the subject property. Such function is reposed in the DENR where the controversy of the parties over the subject property is pending.

Second, the act sought to be performed by public respondent Chief of Police, to provide police protection while petitioner is constructing a fence on litigated property, is a discretionary, not a ministerial, duty on the part of said police officer.

* * *

To the mind of the Court, under the circumstances, the act sought to be performed by public respondent Chief of Police, particularly in assisting petitioner in putting up his fence, is discretionary, and not ministerial. It called for public respondent Chief of Police's judgment of whether petitioner's request is proper or not. Public respondent acted within the scope of his official discretion when he opted not to heed petitioner's request, knowing that the subject property is under controversy, lest he be faulted on taking sides.[22]

Ramirez also opines that the cases pending before the DENR are immaterial to the instant case since they involve the issue of ownership while the issue before the RTC is that of possession; that the doctrine of exhaustion of administrative remedies is inapplicable since it pertains to the issue of ownership or title which is immaterial to the issue of boundary fencing [which is related to possession or actual occupation]. The issue of ownership or title for untitled public lands is under the jurisdiction of DENR while the issue of boundary fencing is within the jurisdiction of the Regional Trial Court; and, that the status quo order of the DENR has no effect on the instant

mandamus because it[is] null and void ab initio since it is[an] infringement on the jurisdiction of the Regional Trial Court to decide on the issue of boundary fencing upon which [the] DENR has no jurisdiction. These postulations by Ramirez are utterly incomprehensible, if not bordering on the absurd. To underscore, the only purpose of the writ of mandamus is simply to command the exercise of a power already possessed and to perform a duty already imposed. There are other legal remedies available for Ramirez to have the issue of possession or ownership passed upon by the proper court, but not through a mandamus proceeding. In the words of the RTC:

Let it be noted that the denial of the instant petition for mandamus does not adjudicate the parties' respective rights, title and interests over the subject property as said issue is laid before and will be resolved by the DENR which has primary jurisdiction over the grant and adjudication of public lands via free patent.[23] (Emphasis Ours)

All told, the requirements under Rule 65 for the issuance of the writ of mandamus not having been proven by Ramirez to exist, We deny the appeal for lack of merit.

WHEREFORE, the appeal is DENIED. The assailed Decision of the RTC is AFFIRMED. With costs.

SO ORDERED.

Tolentino and Ayson, JJ., concur.

Appeal denied. Judgment of the RTC affirmed.

[*] Court of Appeals Reports Annotated, Vol. 49.

[1] See Notice of Appeal, dated January 25, 2010, and the RTC Order, dated January 28, 2010, giving due course thereon; Rollo, pp. 16-17 and 18, respectively.

[2] Dated May 11, 2009; Id., pp. 30-36.

[3] As culled from the records.

[4] Of legal age, Filipino, married, and residing at No. 348, San Juan 1st, Guagua, Pampanga; Appellant's Memorandum, p. 1; Rollo, p. 22.

[5] Records, pp. 3-11.

[6] Both of legal age, Filipinos, married, and with postal address at Brgy. San Isidro, Guagua, Pampanga; Memorandum, p. 2; Rollo, p. 43.

[7] See Exh. "A", Joint Affidavit; Id., p. 13.

[8] See Exh. "C", Letter and Registry Return Receipt; Records, pp. 14-17.

[9] See Exh. "A", Declaration of Real Property; Exh. "B", Joint Affidavit of Aurelia Samonte, Teodora Samonte, and Consolacion Garcia in the partition of the property; Id., pp. 12 and 13, respectively.

[10] Records, p. 47.

[11] See Comment; Id., pp. 38-39.

[12] Rollo, p. 24.

[13] See Answer to Respondents' Memorandum; Rollo, p. 52.

[14] Ibid. Words in bracket ours

[15] Rollo, p. 53.

[16] As discussed in the case of *Sanson v. Barrios, et al.*, G.R. No. L-45086, July 20, 1936, discretion, when applied to public officials, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others; while, a ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial

[17] See *Civil Service Commission v. Department of Budget and Management*, G.R. No. 158791, July 22, 2005, 464 SCRA 115, 133-134.

[18] See *Palileo v. Ruiz Castro*, 85 Phil. 272 275 (1949).

[19] See *University of San Agustin, Inc. v. Court of Appeals*, G.R. No. 100588, March 7, 1994, 230 SCRA 761, 771.

[20] G.R. No. 169213, June 22, 2006.

[21] See *Tangonan v. Pano*, No. L-45157, June 27, 1985, 137 SCRA 245, 255; *Gonzalez v. Board of Pharmacy*, 20 Phil. 367, 375 (1911).

[22] *Supra*, Note 2 at pp. 33-35. Bracketed insertions and emphasis supplied.

[23] *Supra*, Note 2 at p. 36.

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