

## **FAUSTINA JAMISOLA VDA. DE CALIBO, ET AL., PETITIONERS AND APPELLANTS, VS. TIBURCIO BALLESTEROS, ET AL., RESPONDENTS AND APPELLEES.**

*G.R. No. L-17466. September 18, 1965*

Ponente: MAKALINTAL, J.

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### **MAKALINTAL, J.:**

This is an appeal from the order of the Court of First Instance of Zamboanga del Sur dismissing appellant's petition for certiorari with prohibition (Sp. Civil Case No. 389). The said order was issued on a stipulation whereby the parties agreed to the admission, as the evidence in the case, of certain decisions and orders of the Director of Lands and the Secretary of Agriculture and Natural Resources as well as the pleadings with respect thereto (Exhibits A to F for appellants and Exhibits 1 to 10 for appellees).

This being an appeal on questions of law exclusively, we therefore consider as conclusive the following findings of fact made by the trial court:

"The sales application of Tiburcio Ballesteros involved in this case had been in conflict a long time ago with the sales application No. 10969 of one Barbara Andoy on which the Director of Lands rendered a decision on April 10, 1930, the dispositive part of which is as follows:

'Upon investigation it was found that Barbara Andoy entered a portion of the land in dispute with the knowledge that the premises had already been applied for by Tiburcio Ballesteros. As Andoy's entry was not made in good faith, her Sales Application No. 10960 is hereby rejected, and that of Ballesteros, given due course.' The said Barbara Andoy, defeated party in that decision and now dead, was the mother of the petitioner, Faustina Jamisola de Calibo; Oliva Jamisola, mother of the petitioners Hipolito, Alejandro, Aurora, Vicente, Pasifico and Pass, all surnamed Libutan. The land was surveyed in 1931 by a certain Leon Gonzaga, a deputy land surveyor, who segregated Lot No. 6509 claimed by Faustina Jamisola, Lot No. 6576 claimed by Faustina Jamisola de Calibo and Lots Nos. 8586 and 7098 claimed by the heirs of Oliva Jamisola.

"In order to determine whether or not to give due course to the sales application of the respondent, Tiburcio Ballesteros, an investigation was ordered of the land applied for. The investigator was charged with the tasks of determining whether or not there were existing claims of or improvements made, by third parties and also of assessing the said improvements—which data were necessary in connection with the proceeding for the sale of the land in accordance with the Public Land Act. Complying with the said order, Public Land Inspector Pablo Canda, Jr., held a hearing at which Tiburcio Ballesteros, on one hand, and the Jamisolas, on the other, presented their respective evidence. After the hearing, he submitted to the Director of Lands his report (Exh. 10) and the minutes of the investigation or hearing (Exh. 8); and on the basis of said report and minutes the latter official rendered the decision dated August 11, 1953, Exhibit V, dismissing the claim of the Jamisolas and giving due course to the application of Tiburcio Ballesteros.

"It would appear that the Jamisolas do not deny the public character of the land in question. According to the testimony of Faustina Jamisola and their other witnesses, they entered the land only in 1925 when it was still

cogonal and partly covered with virgin forest; and subsequently they declared their respective holdings for tax purposes and they had been paying the taxes thereon. Then again, the fact that their mother Barbara Andoy, filed a sales application over the land covering the identical area claimed now by the Jamisolas (although they deny the fact that she also acted on their behalf) is added proof that the land is public land.

The Jamisolas filed a motion for the reconsideration of the decision, which was denied. They then seasonably appealed to the Secretary of Agriculture and Natural Resources who on June 30, 1955 modified the decision of the Director of Lands, holding that the petitioners herein were entitled to preferential right to acquire by means of the sales patent application Lot No. 6507 Faustina Jamisola and lot 6576 heirs of Oliva Jamisola, totalling an area of 17.41 hectares. The decision of the Department Head would appear to be based on the ground that the Jamisolas were landless people, and pursuant to the policy of the Government to give land to the landless, the Secretary of the Department thus rendered the decision in favor of the Jamisolas. But the respondent, Tiburcio Ballesteros, moved for the reconsideration of the said decision on the ground that the Jamisolas were not landless people, because on the contrary, they are rich and own and possess considerable landed properties. The petitioners herein through counsel were furnished copies of the original as well as the amended motions for reconsiderations and were required to answer said motions; but they failed to do so or to submit any defenses, notwithstanding the lapse of more than thirty days. So, the Secretary of Agriculture and Natural Resources reversed his decision of June 30, 1955 and affirmed the decision of the Director of Lands but excepted Lot No. 6509 which was transferred by Paustino Jamisola to one Pantaleon Suasola and the transfer is also recognized by Ballesteros. The petitioner in turn filed a motion for the reconsideration of the order reversing the original decision of June 30, 1955; but it was denied because the herein petitioners did not avail of the opportunity to answer or refute the allegations of facts supported by documents and affidavits contained in the respondent's (Ballesteros) motions for reconsideration, notwithstanding the lapse of more than thirty days and, again, because the herein petitioners were already given ample opportunity to adduce their evidence at the original hearing or investigation conducted by the Public Land Inspector, Mr. Pablo Canda, Jr."

Appellants now claim that the lower court erred (1) in not finding that the Director acted with grave abuse of discretion in rendering his decision of August 11, 1953; and (2) in not finding that the Secretary had acted in excess of jurisdiction and with grave abuse of discretion in issuing his orders of September 3, 1955 and November 9, 1955.

We find that the trial court did not commit either of the assigned error.

The controverted land is public land. The Director, who is the officer charged with carrying out the provisions of the Public Land Law (Section 3), has control over the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain. His decision as to questions of fact, when approved by the Secretary of Agriculture and Natural Resources, is conclusive (Section 4). The appellants and appellee Ballesteros were given the chance to submit their respective evidence at a hearing conducted by the Bureau of Lands investigator. The Director based his decision on the evidence thus presented. He clearly acted within his jurisdiction. If he had erred in appraising the evidence, the error is one of judgment, but not an act of grave abuse of discretion annulable by writ of certiorari. There is grave abuse of discretion only when there is capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law (Suarez v. Reyes, L-19828, February 28, 1963; People v. Marave, L-19023, July 31, 1964).

Likewise the Secretary had not overreached his jurisdiction, nor were his acts tainted by grave abuse of discretion. Concededly, as head of the Department of Agriculture and Natural Resources, he has the power to review,

reverse, modify or affirm the decision of the Director. At first, he modified the decision of the Director by excluding Lots Nos. 6576, 6586 and 7098, containing 17.41 hectares from the sales application of Ballesteros. This he did on the ground that it was the policy of the Government to give land to the landless, and presuming that appellants were landless, gave them preferential right over the aforementioned three lots. But upon proof, attached by Ballesteros to his amended motion for reconsideration, that appellants were not quite landless, the Secretary set aside his decision and affirmed the Director's decision, except with respect to Lot No. 6509 which had been transferred to a certain Suasola, for the reason that Ballesteros recognized the transfer.

The Secretary gave appellants thirty days within which to deny or refute Ballesteros' claim that they should not have been given preferential right on the basis of the "land for the landless" policy since they owned landed property. Despite the chance thus granted, appellants failed to answer either by choice or through neglect. Consequently they must accept the consequences of their failure. Since they were given sufficient time within which to answer, certainly it cannot be said that the procedure adopted by the Secretary for the expeditious resolution of cases before his Department, was so lacking in the fundamentals of fair play that it infringed on appellants' right to due process of law.

Wherefore, the appealed order of dismissal is affirmed, with costs against appellants.

Bengzon, C. J., Bautista Angelo, Concepcion, Dizon, Bengzon, J. P., and Zaldivar, JJ., concur.

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