

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON.
MEL-QUIADES G. ILAO, JUDGE OF THE COURT OF FIRST INSTANCE
OF CAMARINES NORTE. PASCUAL M. PEREZ AND NICASIA
SARMIENTO, RESPONDENTS.**

G.R. No. L-16667. January 30, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for certiorari, mandamus and preliminary injunction.

On 3 November 1959 the petitioner filed in the Court of First Instance of Camarines Norte a verified petition dated 2 November 1959 averring that on 1 August 1958 the respondents Pascual M. Perez and Nicasia Sarmiento, husband and wife, filed in the same Court a petition for registration in their names under the provisions of the Land Registration Act, as amended, of four parcels of land situated in barrio Tuaca, municipality of Basud, province of Camarines Norte (land registration case No. 202; Exhibit D); that to this application the petitioner filed an objection on the ground that three of the parcels of land sought to be registered are of the public domain and, except Lots Nos. 6 to 19, inclusive, Psu-167487, are within the Bicol National Park established by Proclamation No. 657 of the Governor General, dated 13 February 1934 (Exhibit A), as amended by Proclamation No. 655 of the President of the Philippines, dated 23 December 1940 (Exhibit B), pursuant to the provisions of Act No. 3915 (Exhibit E); that during the pendency of the land registration case the respondent applicants filed with the Bureau of Forestry an application for registration in their names of the same parcels of land as private forest land under the provisions of section 1829 of the Revised Administrative Code (P.W.R.A. No. 2616); that the Director of Parks & Wildlife objected to the respondent applicants' request for registration as private forest land insofar as the area within the Bicol National Park is affected (Exhibit F); that before the hearing of the land registration case the respondent applicants filed a motion in the land registration court praying for the withdrawal of their petition for registration; that on 2 June 1959 the land registration court granted the respondent applicant's motion for withdrawal of their petition for registration, without prejudice to reviving it should they so desire; that on 15 June 1959 the Assistant Director of Forestry granted the respondent applicants' request for registration of the parcels of land as private forest land "on a year to year basis after compliance with all requirements * * * and subject to the condition that within one year the land owner or owners hereof shall take positive steps to perfect the title thru land registration proceedings," but without conceding that the possessory information title purportedly issued in the name of the respondent applicants' predecessor is a registerable title to the land under Act No. 496, as amended (Exhibit F); that on 30 June 1959 the Assistant Director of Forestry issued to the respondent applicants Certificate of Private Woodland Registration No. 1533 (Exhibit G); that the order dated 15 June 1959 and Certificate of Private Woodland Registration No. 1533 dated 30 June 1959 (Exhibits F & G) were issued by the Assistant Director of Forestry without or in excess of jurisdiction and/or with grave abuse of discretion and are null and void; that the respondent applicants had never occupied or possessed and they have no right, claim, ownership or interest over the Bicol National Park or any part thereof; that the respondent applicants

have started logging operations in the forest area within the Bicol National Park; that the petitioner is entitled to a writ of preliminary injunction and unless the respondent applicants are restrained, the continued logging operations being conducted by them in the Bicol National Park during the pendency of this case would work injustice and inflict irreparable damage and injury to the petitioner; and that the petitioner has no other plain, speedy and adequate remedy in the ordinary course of law. The petitioner prayed that upon the filing of the petition, the Court issue ex-parte a writ of preliminary injunction without bond enjoining the respondent applicants and/or their agents or employees from entering, cutting, deforesting and/or undertaking any logging operation of the forest, trees, timber and other forest products in the Bicol National Park or any part thereof; and after trial, render judgment declaring the order dated 15 June 1959 issued by the Assistant Director of Forestry and the Certificate of Private Woodland Registration No. 1533 issued pursuant thereto (Exhibits F & G) illegal and null and void; that the respondent applicants had never occupied or possessed and they have no right, claim, ownership and/or interest of any nature or kind whatsoever over the Bicol National Park or any part thereof; that the writ of preliminary injunction to be issued be declared final; and that the respondents therein be ordered to pay the costs. The petitioner further prayed for other just and equitable relief (civil case No. 1140, Annex A).

On 6 November 1959 the Solicitor General wrote a letter to the Director of Forestry through the Secretary of Agriculture and Natural Resources urging suspension of the force and effect of or holding in abeyance Certificate of Private Woodland Registration No. 1533, dated 30 June 1959, issued by the Assistant Director of Forestry to the respondent applicants and that they be ordered immediately to desist from cutting trees and logging timber in the area covered by the said certificate, in view of the pendency of civil case No. 1140 in the Court of First Instance of Camarines Norte, questioning the legality and validity of the said order and certificate issued by the Assistant Director of Forestry (Annex B). On 9 November 1959 the Undersecretary for Natural Resources referred to the Director of Forestry the Solicitor General's letter of 6 November 1959 and directed "that the force and effect of PWB No. 1533 of Pascual Perez be suspended and that Pascual Perez and Nicasia Sarmiento be immediately directed to stop cutting timber thereunder, until the case is finally decided by competent authorities" (Annex B-1). On the same date, 9 November 1959, the Assistant Director of Forestry suspended the force and effect of Certificate of Private Woodland Registration No. 1533 and directed the respondent applicants to stop "all cutting operations thereunder." On 12 November 1959 the Assistant Director of Forestry wired the Forester in Camarines Norte to immediately stop the cutting operations of the respondent applicants under Certificate of Private Woodland Registration No. 1533 (Annex B-2).

On 9 November 1959 the respondent applicants filed in the Court of First Instance of Camarines Norte a motion to dismiss the petitioner's petition for a writ of prohibition and objection to the issuance of a writ of preliminary injunction on the ground that the Court "has no jurisdiction to entertain the petition, the order appealed from having become final and unappealable," and that "the petition states no cause of action against the respondents" (Annex C).

On 19 November 1959 the respondent applicants filed in Court a motion dated 17 November 1959 praying that the Director of Parks and Wildlife and the respondent Assistant Director of Forestry be directed to preserve the status quo of the parties as of the filing of the petition dated 2 November 1959, pending final determination of the issues raised in the said petition; to refrain from any act or conduct amounting to contempt of court by interfering with the processes or proceedings of the Court or directly or indirectly impeding, obstructing or degrading the administration of justice; and to annul the order of the Assistant Director of Forestry dated 9 November 1959 (Annex I). On 3 December 1959 the petitioner filed an objection thereto (Annex J).

On 20 November 1959 the petitioner by registered mail filed a verified amended petition dated 19 November 1959, supplementing the original petition filed on 3 November 1959, impleading as respondents Paulino Castillo

and Francisca Sabando and, in addition, praying for recovery of damages in the amount of not less than P500,000 (Annex D). On the same date, 20 November 1959, the petitioner filed an "Opposition to the Motion to Dismiss and Opposition to the Issuance of Writ of Preliminary Injunction," stating that its prayer for a writ of preliminary injunction already had become moot because the respondent applicants must have stopped cutting timber inside the Bicol National Park, and praying that in view of the filing of an amended petition by it, the respondent applicants' motion to dismiss be denied, without prejudice to allowing them to raise the same issue against the amended petition should they so desire (Annex E).

On 24 November 1959 the Court entered an order dismissing the original petition filed by the petitioner, without costs, on the ground "that the Director of Parks and Wildlife did not take any appeal from the order (of the Director of Forestry); that he failed to exhaust all administrative remedies provided for by law on the matter and that when the petitioner filed the present petition for prohibition and injunction, the order in question of the Assistant Director of Forestry has already become final" (Annex F).

On 4 December 1959 the petitioner filed a motion for reconsideration of the order of the Court dated 24 November 1959 dismissing its petition, "it being contrary to law and the facts of the case, which will be demonstrated in the oral arguments and/or memorandum in Support of this motion for reconsideration" (Annex G). On 16 December 1959 the petitioner filed a "memorandum in support of the motion for reconsideration dated December 4, 1959" (Annex G-1). On 19 December 1959 the respondents filed an objection to the petitioner's motion for reconsideration (Annex H). On 29 December 1959 the respondents filed a motion praying that they be granted a period of ten days "from receipt of the resolution on petitioner's 'Urgent Motion for Reconsideration' within which to submit their responsive pleading to the 'Amended Petition' dated November 19, 1959" (Annex H-1).

On 5 January 1960 the respondent Court entered an order denying the petitioner's motion for reconsideration, declaring the order of the Assistant Director of Forestry, dated 9 November 1959, suspending the force and effect of Certificate of Private Woodland Registration No. 1533, null and void, ordering the Director of Parks and Wildlife and the Assistant Director of Forestry to preserve the status quo of the parties pending resolution of the issues in the petition and to refrain from committing any act amounting to unlawful interference with the processes or proceedings of the Court or tending to directly or indirectly impede, obstruct or degrade the administration of justice (Annex M).

Claiming that in entering the orders of 24 November 1959 and 5 January 1960, dismissing its original petition for prohibition, and denying its motion for reconsideration, the respondent Court gravely abused its discretion and/or acted without or in excess of jurisdiction, the petitioner prays this Court for a writ of preliminary injunction enjoining the respondent Court from enforcing the orders dated 24 November 1959 and 5 January 1960 (Annexes F and M) and the other respondents from entering into and cutting timber and forest products in the Bicol National Park; after hearing, for a writ declaring illegal, null and void the said orders (Annexes F and M); directing the respondent Court to give due course to the petitioner's amended petition dated 19 November 1959 (Annex D) and to summon the respondents named therein to file their responsive pleading; declaring the writ of preliminary injunction to be issued permanent and irrevocable; and ordering the respondents except the Court to pay the costs. The petitioner further prays for other just and equitable relief. On 4 March 1960 this Court granted the writ prayed for and on 7 March 1960, issued it.

In their answer to the petition the respondents contend that the respondent Court did not exceed jurisdiction or abuse its discretion in entering the orders complained of and deny that the petitioner is entitled to the relief sought, for its remedy was an appeal from the orders complained of.

This being a special civil action for certiorari and mandamus, the only issue to determine is whether or not the respondent Court acted without or in excess of jurisdiction or with grave abuse of discretion in dismissing the petition for prohibition filed by the petitioner.

Section 1, Rule 17, of the Rules of Court, provides:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within ten (10) days after it is served. (*Italics supplied.*)

A party may amend his pleading once as a matter of course at any time before a responsive pleading its served. In its order dated 5 January 1960, the respondent Court states:

* * * The above-entitled petition was filed on November 3, 1959. The respondents Pascual Perez and Nicasia Sarmiento filed their motion to dismiss on November 12, 1959. The motion to dismiss was set for hearing on November 14. On November 14, the petitioner did not appear and after the attorney for the respondents finished his oral argument, the motion to dismiss was submitted for resolution. Upon request, however, of the Provincial Fiscal on behalf of the Solicitor General's Office, the petitioner was given 5 days within which to file an opposition to the motion to dismiss. The request was granted and on November 23, an opposition dated November 19, 1959, was received in the Office of the Clerk of Court. The opposition did not contain any notice of hearing and there was no separate petition for the hearing of 4310 motion to dismiss. When the Court, therefore, issued on November 24, 1959, the order dismissing the petition, the motion to dismiss was already submitted for resolution and could be acted upon by the Court.

It is true that on November 23, 1959, an amended petition for certiorari, prohibition and injunction with damages was filed by the petitioner. But the amended petition is, for all legal intents and purposes, a mere scrap of paper. It was filed after the motion to dismiss was served upon the petitioner and submitted for resolution, and without leave of court. The motion to dismiss is a pleading under Sec. 1 of Rule 8 of the Rules of Court and a responsive pleading under Sec. 2 of Rule 17. (*Annex M*)

A motion to dismiss is not a responsive pleading within the meaning of section 1, Rule 17, said this Court in *Paeste vs. Jaurigue*, 94 Phil., 179; 50 Off. Gaz. 112, 114. The petitioner filed an amended petition before the respondents filed an answer to the original petition. The motion to dismiss filed by the respondent applicants not being a responsive pleading, the petitioner could amend its petition as a matter of right. The respondent Court, therefore, in treating the petitioner's amended petition for prohibition as "a mere scrap of paper" because it was not filed with previous leave of court had unlawfully excluded the petitioner from the enjoyment of a right to which it is entitled. Mandamus, therefore, will lie to compel the respondent Court to consider the petitioner's amended petition.

The most serious objection to the granting of the petitioner's prayer is that the orders complained of should have been appealed. The only dates appearing in the record are 1 December 1959, of receipt of a copy of the order of 24 November 1959 and 4 December 1959, of the filing of the motion for reconsideration. The record does not furnish the Court with the date of receipt by the Solicitor General of a copy of the order of 5 January 1960. So the only period that may be counted against the petitioner's right to appeal is three days from 2 December 1959, the day following the receipt of a copy of the order of 24 November 1959, to 4 December 1959, the date of the filing of the motion for reconsideration. And in view of the clear and serious error which the respondent Court had committed in dismissing the original petition when there was an amended petition already filed, this Court chooses to grant the remedy prayed for to prevent or forestall that an injustice be done to the petitioner.

The other point that goes into the legality and validity of the suspension by the Assistant Director of Forestry of the force and effect of Certificate of Private Woodland Registration No. 1533 need not be passed upon and

determined, because the respondent Court, that has concurrent jurisdiction with this Court to issue writs of prohibition, having acquired jurisdiction of the case where the same issue had been raised, has to pass upon and determine it.

The writs prayed for are granted, with costs against the respondents except the Court.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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