

THE MUNICIPALITY OF MADRID, DULY REPRESENTED BY THE MAYOR, THE VICE-MAYOR AND ALL THE MEMBERS OF THE MUNICIPAL COUNCIL, PLAINTIFF-APPELLEE, VS. THE MUNICIPALITY OF CARMEN, DULY ...

Ponente: CAMELLO, J.

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CAMELLO, J.:

This is an appeal from the Decision[1] dated 22 April 2010 of the Regional Trial Court, Branch 41, Cantilan, Surigao del Sur, in Civil Case No. C-17,[2] an action for “recovery of Barangay Sayoron and its sitios from Barangay Hinapuyan, annulment of the creation of Barangay Hinapuyan insofar as it encroaches on the territory of San Roque, Madrid, Surigao del Sur” filed by the Municipality of Madrid against the Municipality of Carmen and the Provincial Government of Surigao del Sur.

The antecedent facts are as follows:

On February 2, 1953, then President Elpidio Quirino issued Executive Order (E.O.) No. 561,[3] organizing the eastern part of the Municipality of Cantilan of the Province of Surigao del Sur, into an independent municipality under the name of Madrid, composed of the Barrios of Union and Madrid.

On April 26, 1960, then Provincial Governor Constantino Navarro of the Province of Surigao del Sur issued Executive Order (E.O.) No. 11-60[4] creating Barrio San Roque as part of the Municipality of Madrid, composed of Sitios Sayoron, Kinaputian, Daan, Cagongcongan, and Cawa.

On August 16, 1971, Republic Act No. 6367[5] was enacted, creating the Municipality of Carmen in the Province of Surigao del Sur, comprising the Barrios of Carmen, Malibho, Santa Cruz, Puyat, Antao, Cancaban, and Esperanza of the Municipality of Lanuza, Surigao del Sur.

On October 6, 1977, the Provincial Board of Surigao del Sur passed Sangguniang Panlalawigan (SP) Resolution No. 252-A creating Barangay Sayoron, composed of the sitios Sayoron, Gacub, Agasan, Daan, Himamaylan, and Agutayan of Barangay San Roque of Municipality of Madrid.

The creation of Barangay Sayoron, triggered a boundary conflict between the Municipality of Lanuza and Municipality of Madrid. Confronting this conflict, the Provincial Board of Surigao del Sur created a Committee tasked to investigate and settle the boundary dispute. On October 30, 1978, that Committee came up with a recommendation, the pertinent portion of which reads:

After thorough, careful scrutiny and analysis of the position papers and documentary evidence, the committee came into conclusion that sitio Sayoron falls within the territorial jurisdiction of the municipality of Madrid.

IN VIEW OF THE FOREGOING, the Investigating Committee hereby recommends that Sitio Sayoron be created into a separate and independent Barangay of the Municipality of Madrid, Surigao del Sur.

On June 5, 1985, the Municipality of Madrid filed a Complaint[6] for Boundary Dispute against the Municipality

of Carmen before the Provincial Board of Surigao del Sur, claiming Sitios Sayoron, Gacub, Agasan, Daan, Himamaylan and Agutayan to be within its jurisdiction. The complaint was later withdrawn[7] by the Municipality of Madrid after the Municipality of Carmen filed an Answer.[8]

On June 20, 1988, the residents of Sitios Sayoron, Hinapuyan, Gacub, Agutayan, Tabianas, Kadilotan, and Agasan, allegedly of Barangay Esperanza, Municipality of Carmen, signed a Petition[9] requesting the Provincial Governor and Members of the Sangguniang Panlalawigan of Surigao del Sur that their sitios be created into a separate and distinct barangay named Barangay Hinapuyan;

On July 4, 1988, the Municipal Council of Carmen passed Resolution No. 53-88,[10] indorsing the petition to the Provincial Governor and the Provincial Board of Surigao del Sur, for favorable action and approval.

On June 16, 1989, the Provincial Board of Surigao del Sur passed SP Ordinance No. 70-89[11] creating Barangay Hinapuyan in the Municipality of Carmen, comprising sitio Hinapuyan and the adjoining and contiguous sitios of Sayoron, Gacub, Agutayan, Tabianas, Kadilotan, and Agasan, allegedly of Barangay Esperanza, Municipality of Carmen, Surigao del Sur.[12]

On February 18, 1992, the Provincial Board of Surigao del Sur passed SP Ordinance No. 05-92[13] amending certain sections of Ordinance No. 70-89, delineating the boundaries of Barangay Hinapuyan, and directing that a plebiscite be conducted in the sitios involved.

On November 8, 1992, the Commission on Elections (COMELEC), through its Election Officer of Municipality of Carmen, Surigao del Sur, conducted a plebiscite on the proposed creation of Barangay Hinapuyan in the Municipality of Carmen. On even date, the COMELEC issued a Certificate[14] of Canvas of the Votes Cast in the Plebiscite, showing that out of the 410 votes cast, 407 were in favor, and 2 were against, the creation of Barangay Hinapuyan. Accordingly, Barangay Hinapuyan was proclaimed a newly created Barangay in the Municipality of Carmen.

On December 17, 1997, the Municipality of Madrid filed the action a quo[15] against the Municipality of Carmen and the Province of Surigao del Sur, seeking, among other things, to declare null and void SP Ordinance No. 70-89, to annul the creation of Barangay Hinapuyan of the Municipality of Carmen, and to recover Barangay Sayoron and its Sitios.

In answer,[16] the Municipality of Carmen and the Province of Surigao del Sur alleged that the sitios comprising Barangay Hinapuyan, particularly Sayoron, Gacub, Agasan, and Agutayan are not part of Barangay San Roque of the Municipality of Madrid, but of Barangay Esperanza of the Municipality of Carmen. They contended that the creation of Barangay Hinapuyan in the Municipality of Carmen by virtue of SP Ordinance No. 70-89 did not alter the boundary of the Municipality of Madrid because the sitios comprising Barangay Hinapuyan belonged to Barangay Esperanza of the Municipality of Carmen.

On March 6, 2000, the court a quo issued an Order[17] dismissing the complaint of the Municipality of Madrid on ground of lack of capacity to sue.

On appeal,[18] this Court reversed the court a quo and ordered the remand of the records for adjudication of the case on the merits. This Court also directed the court a quo “to take appropriate steps through the assistance of the Bureau of Lands, Department of Environment and Natural Resources (DENR) and other appropriate government agency to locate on the ground, survey by metes and bounds, and to monument the boundary line of the Municipality of Madrid as defined in Executive Order No. 561...”

In compliance, the court a quo took efforts to have the boundary of the Municipality of Madrid relocated pursuant

to this Court's directive. The DENR declined to conduct the relocation survey, however, because no technical descriptions were detailed in E.O. No. 561.[19]

After a series of conferences, the parties finally agreed to submit the case for resolution on the sole issue: "whether or not SP Ordinance No. 70-89, as amended by SP Ordinance No. 05-92, creating Barangay Hinapuyan, has superseded Executive Order No. 11-60 insofar as the inclusion of Sitios Sayoron, Kinaputian, Daan, Cagongcongan, and Cawa is concerned." [20]

On April 22, 2010, the court a quo promulgated a Decision[21] finding for the Municipality of Madrid and against the Municipality of Carmen and the Province of Surigao del Sur, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants:

1. Annuling SP Resolution No. 70-89 of Surigao del Sur, as amended by SP Ordinance No. 05-92, insofar as it included in the creation of Barangay Hinapuyan in the Municipality of Carmen, the Sitios of Sayoron, Kinaputian, Daan Cagongcongan and Cawa of Barangay San Roque of the Municipality of Madrid, Surigao del Sur; and

2. Ordering the segregation from Barangay Hinapuyan of Carmen and return to Barangay San Roque of Madrid, the aforementioned Sitios.

No pronouncement as to cost.

SO ORDERED.

Dissatisfied, the Municipality of Carmen interposed an appeal before this Court, raising the following issues for consideration: (i) whether or not the creation of Barangay Hinapuyan in the Municipality of Carmen altered the boundary line of the Municipality of Madrid; and (ii) whether or not the court a quo has original jurisdiction to settle boundary dispute between the Municipality of Carmen and the Municipality of Madrid.

The Province of Surigao del Sur also appealed to this Court, raising issues similar to those raised by the Municipality of Carmen, to wit: (i) whether or not the court a quo erred in annulling SP Ordinance No. 70-89, as amended by SP Ordinance 05-92, insofar as it included in the creation of Barangay Hinapuyan in the Municipality of Carmen, the Sitios of Sayoron, Kinaputian, Daan, Cagongcongan, and Cawa, of Barangay San Roque of Madrid; (ii) whether or not the court a quo erred in ordering the segregation from Barangay Hinapuyan of the Municipality of Carmen the Sitios of Sayoron, Kinaputian, Daan, Cagongcongan, and Cawa, and their return to Barangay San Roque of the Municipality of Madrid; and (iii) whether or not the court a quo has jurisdiction over the case, which, allegedly, is a boundary dispute case.

Together, the Municipality of Carmen and the Province of Surigao del Sur allege that the trial court erred in ruling that the creation of Barangay Hinapuyan altered the boundary of the Municipality of Madrid. They contend that because the boundary line between the Municipalities of Madrid and Carmen has not yet been properly delineated on the ground, nor was a relocation survey conducted, there is no basis for the trial court to conclude that the creation of Barangay Hinapuyan has altered the boundary of the Municipality of Madrid. They also contend that, since SP Ordinance No. 70-89[22] creating Barangay Hinapuyan included Sitio Sayoron only, and did not include Sitios Kinaputian, Cagongcongan, and Cawa, the trial court erred in ordering the return of the latter sitios to Barangay San Roque of the Municipality of Madrid. They likewise argue that although Sitio Sayoron was mentioned as one of the sitios to comprise Barangay Hinapuyan, it did not necessarily follow that it was the same sitio referred to in E.O. 11 and SP Resolution No. 252-A. In short, they allege that Sitio Sayoron of Barangay San Roque in the Municipality of Madrid, is not one and same Sitio Sayoron carved out from Barangay Esperanza of Carmen to comprise Barangay Hinapuyan. Lastly, they claim that it is the Sangguniang Panlalawigan, not the

court a quo, which has primary and original jurisdiction over the case, a boundary dispute, pursuant to the 1991 Local Government Code.

The Court finds the appeals unmeritorious.

At the outset, we note that this is the first time at this late stage that the Municipality of Carmen and the Province of Surigao del Sur allege that there are two sitios, both named Sayoron, that are involved in this case. The records plainly show that this specific issue had never been properly raised in the court below. The fundamental rule in this jurisdiction has always been and still is as we so hold ? that no question shall be entertained unless it has been appropriately raised below,[23] and that rule precludes us from taking cognizance of this belatedly raised issue.[24] Besides, no justifying reason has been proffered by either appellant to make us prescind from a strict adherence to the rule. Basic tenets of fair play, justice, and due process dictate that parties cannot raise for the first time on appeal issues which they could have raised but never did during the proceedings below. Thus said the Supreme Court in a catena of cases:[25] “Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be considered by a review court as they cannot be raised for the first time on appeal.”

Contrary to the concerted assertions of the Municipality of Carmen and the Province of Surigao del Sur, there is but one sitio Sayoron, and the sitio, according to evidence on record geographically and territorially pertains to the Municipality of Madrid. It is noteworthy that the Provincial Board of Surigao del Sur had already passed SP Resolution No. 252-A creating Barangay Sayoron, composed of sitios Sayoron, Gacub, Agasan, Daan, Himamaylan, and Agutayan, which sitios, except Himamaylan and Daan, now form part of the more recently created Barangay Hinapuyan under SP Ordinance No. 70-89, as amended by SP Ordinance No. 05-92. The express provision of SP Resolution No. 252-A providing for the creation of Barangay Sayoron as a new component barangay glaringly shows that the Provincial Board of Surigao del Sur duly recognized and officially acquiesced that Barangay Sayoron belonged to Barangay San Roque of the Municipality of Madrid, not to Barangay Esperanza of the Municipality of Carmen. While it is true SP Ordinance No. 70-89, as amended by the SP Ordinance No. 05-92, was enacted much later than SP Resolution No. 252-A and E.O. No. 11-60 (creating Barrio San Roque of the Municipality of Madrid, composed of Sitios Sayoron, Kinaputian, Daan, Cagongcongan, and Cawa), it does not necessarily follow that the previously issued resolution and executive order have been repealed or superseded by the later ordinances. The consistent principle in statutory construction has been that the provision: “all laws or parts thereof which are inconsistent with this Act are hereby repealed or modified accordingly” or phrases of similar import found in the repealing section of a statute (or, for that matter, an ordinance or resolution), are not express repealing clauses because they fail to identify or designate the act or acts that are intended to be repealed. If repeal of a particular or specific law was so intended, the proper step should have been to so express it.[26] The following disquisition of the trial court amply covers this particular issue, thus:

...To begin with, there is no express repeal. SP Ordinance No. 70-89 does not carry a provision expressly repealing or even amending Executive Order NO. 11-60. And implied repeal and even amendment, as defendants[-appellants] would suggest, is not favored. On the contrary, the existence of Barangay San Roque, of which Sitio Sayoron is comprised together with the sitios of Kinaputian, Daan, Cagongcongan and Cawa, as created under Executive Order No. 11-60, has been recognized as such by the Local Government Code enacted on February 10, 1983. The second paragraph of Section 82 thereof provides as follows:

“Existing barangays, and those which have been organized pursuant to existing laws, operating with their own set of officers, shall be considered as such, and shall be governed by the law provisions of this Code.”

Of significance also is the fact that the creation of Barangay San Roque on August 26, 1960 as an independent Barangay of plaintiff[-appellee] Municipality of Madrid, pursuant to Executive Order No. 11-60 of then

Provincial Governor Constantino C. Navarro of Surigao, antedated the passage of SP Ordinance No. 70-89 of Surigao del Sur, creating Barangay Hinapuyan in defendant[-appellant] Municipality of Carmen by more than twenty-eight (28) years. It even antedated the creation of defendant[-appellant] Municipality of Carmen itself on August 16, 1971 by almost eleven (11) years. Accordingly, the existence of Barangay San Roque as part of the Municipality of plaintiff[-appellee] Madrid for such a long period of time cannot just be ignored, much more disregarded, by detaching some of its sitios including Sayoron, and making the same as part of the Municipality of Carmen, under the specious argument that being the more recent enactment, SP Ordinance No. 70-89 shall be deemed to have repealed or superseded Executive Order No. 11-60, without “wrecking havoc” on the vested rights of Barangay San Roque, among which are its share in the Internal Revenue Allotment (IRA) and power of local taxation.[27]

Indeed, the de jure status and existence of Barangay San Roque of the Municipality of Madrid for a long period of time are, as it were, operative facts that this court cannot peremptorily disregard. E.O. No. 11-60, the law creating Barangay San Roque, from which Sitio Sayoron was carved out, has never been questioned. Nor can E.O. 11-60 be considered repealed by the mere enactment of SP Ordinance No. 70-89, which resultantly took out the same sitio Sayoron, together with the component Sitios of Gacub, Agasan, and Agutayan, to constitute Barangay Hinapuyan in the Municipality of Carmen. The act of taking Sitio Sayoron from Barangay San Roque of the Municipality of Madrid, and making it a component part of Barangay Hinapuyan in the Municipality of Carmen invariably resulted in the substantial alteration of the territory of the Municipality of Madrid. Obviously, such a substantial territorial alteration is an ultra vires act of the Provincial Board. Section 6, in conjunction with Section 441, of Republic Act No. 7160, or The Local Government Code of 1991, vested the power to alter boundaries of municipalities only in Congress, exclusively:

Section 6. Authority to Create Local Government Units. – A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision...

Section 441. Manner of Creation. – A municipality may be created, divided, merged, abolished, or its boundary substantially altered only by an Act of Congress...

In *Municipality of Jimenez v. Baz, Jr.*,[28] the facts are of which strikingly similar to the present case, the Supreme Court declared that the Provincial Board of Misamis Occidental has no power to declare certain barrios as part of one or the other municipalities if doing so would result in the amendment of the area described in Executive Order No. 258, the law creating the Municipality of Sinacaban, thus:

...[I]n 1950 the two municipalities agreed that certain barrios belonged to Jimenez, while certain other ones belonged to Sinacaban. This agreement was subsequently approved by the Provincial Board of Misamis Occidental. Whether this agreement conforms to E.O. No. 258 will be determined by the result of the survey. Jimenez contends, however, that regardless of its conformity to E.O. No. 258, the agreement as embodied in Resolution No. 77 of the Provincial Board, is binding on Sinacaban. This raises the question whether the Provincial Board had authority to approve the agreement or, to put it in another way, whether it had the power to declare certain barrios part of one or the other municipality. We hold it did not if the effect would be to amend the area as described in E.O. No. 258 creating the Municipality of Sinacaban.

In the present case, the Municipality of Madrid, out of which Barangay San Roque was taken did initially have its territorial boundaries that were clearly delineated in E.O. No. 561. An alteration of those boundaries that is not in accordance with E.O. No. 561 is, therefore, tantamount to an amendment to the law, which only Congress has the power to do.[29]

Corollarily, there is no merit in the argument that the court a quo merely had appellate jurisdiction over this case

which is a boundary dispute over which the Sangguniang Panlalawigan of Surigao del Sur has original and primary jurisdiction. By law, the real nature of the action of the Municipality of Madrid is to challenge the validity of SP Ordinance 70-89 (creating Barangay Hinapuyan in the Municipality of Carmen) on the ground that it encroaches on the territorial boundary of Barangay San Roque of the Municipality of Madrid. This is judicially admitted by the parties themselves when they jointly submitted to the trial court the sole legal issue to be considered, i.e., “whether or not SP Ordinance No. 70-89, as amended by SP Ordinance No. 05-92, creating Barangay Hinapuyan, has superseded Executive Order No. 11-60 insofar as the inclusion of Sitios Sayoron, Kinaputian, Daan, Cagongcongan, and Cawa is concerned.” Apparently, Rule 63 of the Rules of Court[30] conferred to the Regional Trial Court the jurisdiction to hear and decide cases akin to the case at bar:

DECLARATORY RELIEF AND SIMILAR REMEDIES

Section 1. Who may file petition. – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

The ambient facts recounted above show no reversible error committed by the Regional Trial Court in annulling SP Ordinance No. 70-89, as amended by SP Ordinance 05-92, and in ordering the segregation from Barangay Hinapuyan of the Municipality of Carmen the Sitios of Sayoron, Kinaputian, Daan, Cagongcongan, and Cawa of Barangay San Roque of the Municipality of Madrid.

It may not be out of place to point out, though, that the court a quo did not entirely annul SP Ordinance No. 70-89, as amended. The nullification was expressly pro tanto, that is-only “insofar as it included, in the creation of Barangay Hinapuyan in the Municipality of Carmen, the Sitios of Sayoron, Kinaputian, Daan, Cagongcongan and Cawa of Barangay San Roque of the Municipality of Madrid, Surigao del Sur.” Which simply means Barangay Hinapuyan still exists, but with a territory diminished by so much area as may be comprised by the sitios that have been so excluded.

FOR THE REASONS STATED, the instant appeals are DENIED. The assailed Decision of the Regional Trial Court, Branch 41, Cantilan, Surigao del Sur, in Civil Case No. C-17, is AFFIRMED in toto.

SO ORDERED.

Inting and Perez, JJ., concur.

[1] Records, pp. 1081-1108.

[2] Captioned “The Municipality of Madrid, duly represented by the Mayor, the Vice-Mayor, and all the Members of the Municipal Council, Plaintiff versus The Municipality of Carmen, duly represented the Mayor, the Vice-Mayor, and all Members of the Municipal Council, and the Provincial Government of Surigao del Sur, duly represented by the Governor, the Vice-Governor and all the Members of the Provincial Board, Defendants.”

[3] Exhibit “F”; Exhibit “13; Records, p. 302.

[4] Exhibit “A”, Records, p. 947.

[5] Exhibit “C”, Records, p. 948.

- [6] Exhibit “14”, Records, pp. 303-307.
- [7] See Ex-Parte Motion to Withdraw Complaint dated 30 July 1985; Exhibit “16”, Records, p. 313.
- [8] Exhibit “15”, Records, pp. 308-312.
- [9] Exhibit “1”, Records, pp. 74-94.
- [10] Exhibit “2”, Records, p. 95.
- [11] Exhibit “B”, Records, pp. 949-950; Exhibit “3”, pp. 96-97.
- [12] Exhibit “B”; Exhibit “3”.
- [13] Exhibits “E”; Exhibit “4”, Records, pp. 968-969.
- [14] Exhibit “6”, Records, pp. 99-100.
- [15] See Complaint dated 17 December 1996; Records, pp. 1-3. See also Amended Complaint dated 12 September 1998; Records, pp. 517-520.
- [16] See Answer dated 6 January 1997; Records, pp. 72-73. See also Answer to Amended Complaint dated 28 September 1998; Records, pp. 523-525.
- [17] Records, pp. 665-670.
- [18] Docketed as CA-G.R. CV No. 70014.
- [19] See Letter dated 3 October 3, 2007 of Engineer Rey Patagoc of the Department of Environment and Natural Resources, Records, p. 806.
- [20] See Order dated 2 March 2010, Records, pp. 1038-1040.
- [21] See Note 1.
- [22] See Note 9.
- [23] Manila Bay Club Corporation v. Court of Appeals, 245 SCRA 715; Hizon Realty Inc. v. Fonteha, 246 SCRA 183.
- [24] See Keng Hua v. Court of Appeals, 12 February 1998, 286 SCRA 257; Arcelona v. Court of Appeals, 2 October 1997, 280 SCRA 20; Mendoza v. Court of Appeals, June 20, 1997, 274 SCRA 527; Remman Enterprises, Inc. v. Court of Appeals, 26 February 1997, 268 SCRA 688.
- [25] Matienzo v. Servidad, 107 SCRA 276 (1981); Dela Santa v. Court of Appeals, 140 SCRA 44 (1985); Dihiansan v. Court of Appeals, 153 SCRA 713 (1987); Anchuelo v. Intermediate Appellate Court, 147 SCRA 434 (1987); Dulos Realty and Development Corporation v. Court of Appeals, 157 SCRA 425 (1988); Ramos v. Intermediate Appellate Court, 175 SCRA 70 (1989); Gevero v. Intermediate Appellate Court, 189 SCRA 201 (1990); Kamos v. Intermediate Appellate Court, G.R. No. 78282, 5 July 1989; First Philippine International Bank v. Court of Appeals, 24 January 1996, 252 SCRA 259.
- [26] Iloilo Palay & Corn Planters’ Assn., Inc. v. Feliciano, G.R. No. 24022, March 3, 1965, 13 SCRA 377; City of Naga v. Agna, G.R. No. 36049, 31 May 1976, 71 SCRA 176; Agujetas v. Court of Appeals, G.R. No. 106560, August 23, 1996.
- [27] Citations omitted.

[28] G.R. No. 105746, 2 December 1996, 265 SCRA 182.

[29] Municipality of Jimenez v. Baz, Jr., *supra*.

[30] As amended by the 1997 Rules of Civil Procedure.

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