

HON. JUAN L. UTLEG, AS ACTING DIRECTOR OF THE BUREAU OF FORESTRY, HON. JOSE Y. FELICIANO, AS SECRETARY OF AGRICULTURE AND NATURAL RESOURCES AND THE EXECUTIVE SECRETARY, PETITION...

G.R. No. L-25026. August 31, 1971

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

Petition for certiorari and prohibition with preliminary injunction to annul and set aside the order dated September 10, 1965 and the writ of preliminary injunction dated September 13, 1965, both issued by the Court of First Instance of Manila, Branch I, in civil case 62144.

The facts are undisputed.

On June 20, 1962 the Director of Forestry issued to Tindalo Timber Corporation (hereinafter referred to as the respondent corporation) Ordinary Timber License 181-'63 (new) to cut and remove 14,340 cubic meters of timber from the public forest situated in the municipalities of Compostela, Mabini and Pantukan, province of Davao, subject to the rules, terms and conditions specified therein, said license to expire on June 30, 1963.

On June 28, 1963 the respondent corporation filed with the District Forester of Davao an application for renewal of the afore-mentioned timber license and paid the corresponding fees therefor which were duly accepted and receipted for. The District Forester, by a 1st Indorsement dated June 28, 1963, forwarded the said application to the Director of Forestry for proper consideration and action, noting therein as follows:

"Per the certificates issued by the Revenue Collector and the Acting City Treasurer of Butuan City and as attested by the Assistant District Forester of the same city, the Tindalo Timber Corporation has manifested under its O.T. No. 181-'63 a total volume of 7,746.15 cubic meters of timber, which is less than 60% of the allowable cut of 14,000 cubic meters granted in its license. However, an examination of the records of payment of the licensee shows that the last recorded invoice paid is May 28, 1963. It is the opinion of this Office, therefore, that at the rate of production the licensee has in its operation, it is possible that the total volume that can be manifested by the licensee up to the end of June, 1963, can come up to the required 60%.

"Per the certificate issued by the Officer in Charge of Nabunturan Timber Management Station, selective logging practices have not yet been implemented inside the area covered by this license as the licensee's operation has been confined to the construction of logging roads leading to its area. However, the necessary number of laborers for timber management work has already been employed by the licensee and their services for selective logging work will be availed of as soon as logging operations inside the area have started."

Nevertheless, the District Forester recommended that

"In view of the fact that all the major requisites for the renewal of O.T. No. 181-'63 have been complied with, x x x the application of the Tindalo Timber Corporation for the renewal and extension of their license for the

next fiscal year be given due course."

On August 8, 1963 the Bureau of Forestry, through the then acting Director of Forestry, issued an extension or renewal of the said license in favor of the respondent corporation under Ordinary Timber License 642-'64 to expire on June 30, 1964.

On September 6, 1963 the acting Director of Forestry, by letter dated August 3, 1963, forwarded to the Secretary of Agriculture and Natural Resources the proposed license, O. T. 642-'64 (renewal), stating therein that "The area covered by this license is identical to that covered by its expired O. T. No. 181-'63."

On September 24, 1963 the acting Director of Forestry received from the officer-in-charge of the forest station at Magugpo, Tagum, Davao, a report that the respondent corporation had committed violations of the terms and conditions of its expired license by cutting timber outside its licensed area, i.e., in the Mainit Hot Springs National Park and in a portion of the area of one Jose C. Garcia. Upon receipt of the said report, the acting Director of Forestry wrote the Secretary of Agriculture and Natural Resources, requesting for the return of the proposed license No. 642-'64. Consequently, the Secretary of Agriculture and Natural Resources returned the proposed license unapproved.

On November 5, 1963 the acting Director of Forestry issued an order rejecting the application for renewal of license filed by the respondent corporation on the ground that during the lifetime of its Ordinary Timber License 181-'63 (new), the corporation had cut timber outside its licensed area, in violation of the terms and conditions of the said license.

On November 19, 1963 the respondent corporation by letter moved the Director of Forestry to reconsider his abovementioned order, but admitting in the said letter that the logs gathered by its workers were logs cut by kaingineros.

On December 13, 1963 the Director of Forestry rendered a decision denying the respondent corporation's motion for reconsideration on the ground that, even if no cutting was made by it outside its licensed area and that what its men gathered were trees cut by kaingineros, still, it violated the terms and conditions of its license by invoicing under its Ordinary Timber License 181-'63 (new) the illegally gathered logs, contrary to the provisions of section 35(c) of Forestry Administrative Order 11 incorporated at the back of its license, which provides:

"(c) A licensee shall neither purchase forest products illegally gathered, nor invoice those cut without license, or allow any person to cut, collect or remove forest products within his license area under any consideration, financial or otherwise. In the case of forest products cut by a non-Christian, the necessary forest charges shall be collected from the dealer who contracts for or received such products,"

in relation to section 3 (s) thereof, which reads:

"(s) If a licensee cuts, collects or removes forest products other than those specified in his license, such forest products shall be considered as taken without license."

On January 2, 1964 the Director of Forestry, in a telegram to the District Forester, ordered the latter to determine the amount of timber cut within the 274-meter long road right-of-way inside the respondent corporation's area and to authorize the removal therefrom upon payment of forest charges and proper contribution to the reforestation fund.

On April 29, 1964, before the expiration of the aforementioned extension or renewal of its license, the respondent corporation again applied for its renewal for the year 1964-1965 and paid the corresponding fees therefor, which were accepted and receipted for by the Bureau of Forestry. The payment of the application fee

was however made only on July 8, 1964, although the license fee was paid on June 29, 1964.

From the adverse decision of the Director of Forestry rendered on December 13, 1963, the respondent corporation appealed to the Secretary of Agriculture and Natural Resources. On January 15, 1965 the Secretary rendered a decision dismissing the appeal of the respondent corporation on the ground that -

"Since it appears from the above report that as of June 17, 1963, the corporation had as yet no logging operations as all road improvements were still inside the park, the 7,746.15 cubic meters it manifested under its O.T. No. 181-'63 could not have been cut by it inside its license area and, therefore, there must be some truth to its allegation that the logs were either cut by kaingineros or left stranded by floods along the Manat River. However, under the regulations and as one of the conditions of its license, the corporation is prohibited from invoicing any forest product secured without license (Sec. 35(c), FAO No. 11 and Rule No. 12 of the rules appended to the license)."

The respondent corporation elevated the order and decision of the Director of Forestry and the said decision of the Secretary of Agriculture and Natural Resources to the Office of the President. On April 30, 1965 the Executive Secretary, acting by authority of the President, rendered a decision dismissing the appeal of the respondent corporation on the ground that the act of the latter in invoicing as its own under its O.T. License No. 181-'63 the 7,746.15 cubic meters of logs allegedly cut by kaingineros or left stranded by floods along the Manat River was illegal, for the same, having been cut within the national park and not in the respondent corporation's licensed area, should have been turned over to the Parks and Wildlife Office having jurisdiction thereon. The Executive Secretary furthermore observed that the Director of Forestry and the Secretary of Agriculture and Natural Resources had observed due process in the administrative proceedings.

On May 29, 1965 the respondent corporation filed a motion for reconsideration of the Executive Secretary's decision. On July 13, 1965 the Executive Secretary advised the Director of Forestry and the Secretary of Agriculture and Natural Resources to withhold implementation of their respective orders and decisions rejecting the application for renewal until after the said motion for reconsideration shall have been decided.

On August 12, 1965 the respondent corporation, without waiting for the resolution of its motion for reconsideration then pending with the Executive Secretary, filed with the Court of First Instance of Manila (hereinafter referred to as the respondent court) civil case 62144 for certiorari, prohibition, and mandamus with preliminary injunction against the acting Director of the Bureau of Forestry, the Secretary of Agriculture and Natural Resources, and the Executive Secretary (hereinafter collectively referred to as the petitioners); alleging that the aforementioned acts of the petitioners were "highly arbitrary, abusive, and confiscatory, and had deprived herein petitioner [the respondent corporation herein] of its rights, interest and properties without due process of law," praying for the reliefs mentioned therein, which are that, pending hearing on the merits, due to the urgent need under the circumstances and facts of the case, time being of the essence, (a) an order and/or writ of preliminary injunction be issued by the said court restraining, enjoining, and prohibiting immediately the petitioners herein or their agents, representatives or any other persons acting in their behalf, from enforcing and implementing the order of the Director of Forestry dated November 5, 1963, the decision of the said Director of Forestry dated December 13, 1963; the decision of the Secretary of Agriculture and Natural Resources dated January 15, 1965, and the decision of the Executive Secretary dated April 30, 1965, and from granting, disposing of and/or awarding the said timber concession area covered by Ordinary Timber License 181, series of 1963, of the respondent corporation to other parties, upon the filing of a bond in an amount which the said court may fix; and that (b) herein petitioners be enjoined or prohibited from further proceeding in the matter of the acts complained of.

On August 16, 1965 the respondent court issued an order requiring the petitioners (respondents therein) to answer

the petition within ten days from receipt thereof, and on the same date, by a separate order, it temporarily restrained the petitioners from implementing the order and decisions complained of, and set the application for preliminary injunction for hearing on September 4, 1965.

On August 27, 1965 the petitioners filed an opposition to the motion to dismiss, on the grounds that the petition fails to state a cause of action; that the respondent corporation failed to exhaust administrative remedies; that its Ordinary Timber License, 181-'63 (new) having incontestably expired on June 30, 1963, and its renewal being a matter of discretion vested upon the, Director of Forestry, whatever action that the latter may take, whether to grant or deny the renewal, is an act within his authority and jurisdiction, and hence, not subject to judicial review, and being a discretionary act, it can be done in either way and still be right; that the lower court has no power to substitute its judgment for that of the respondent public officials (petitioners herein) in whom the law vested the authority to grant or renew licenses or permits for logging operations in any public forest; and that the respondent corporation will not suffer grave or irreparable damage or injury. They prayed that the issuance of a writ of preliminary injunction be denied and the petition dismissed.

On September 4, 1965 the respondent corporation filed an opposition to the petitioners' opposition to preliminary injunction and motion to dismiss petition, reiterating its prayer for the issuance of a writ of preliminary injunction.

On September 6, 1965 the Executive Secretary, by authority of the President, released and returned to the Secretary of Agriculture and Natural Resources, by 4th Indorsement dated August 17, 1965 (received by the Record Section, Department of Agriculture and Natural Resources on September 6, 1965, but thru inadvertence was not brought to the Secretary's attention until after the filing of the original petition), resolution of the respondent corporation's motion for reconsideration filed with the Office of the President, finding that the rejection of the respondent corporation's application for renewal of its timber license was based on facts appearing on record and that due process had been accorded, and therefore denying the said motion for reconsideration for lack of merit.

On September 8, 1965 the herein petitioners filed their answer to the petition.

On September 10, 1965 the respondent court issued an order granting the issuance of a writ of preliminary injunction applied for, upon a bond of P5,000, and denying the plea for dismissal of the petition. The said bond having been filed, it accordingly issued the corresponding writ of preliminary injunction.

Hence, the present petition for certiorari and prohibition with preliminary injunction, which raises two issues, namely, (1) whether the respondent court acted without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction in granting a writ of preliminary injunction against the petitioners, and (2) whether the lower court has jurisdiction to take cognizance of and grant the reliefs prayed for in its civil case 62144.

On October 1, 1965 this Court issued a preliminary injunction enjoining the respondent court "from executing or implementing the order dated September 10, 1965 and the writ of preliminary injunction dated September 13, 1965, and other-wise taking further cognizance of or in any manner assuming jurisdiction" over civil case 62144, and enjoining the respondent corporation "from conducting any logging operations in the forest area formerly covered by Ordinary Timber License No. 181-'63 (New), or any other forest area without license from the Director of Forestry."

We find for the petitioners.

Only the Bureau of Forestry has jurisdiction to grant licenses for the taking of forest products, pursuant to section

1816 of the Revised Administrative Code, which states:

"Jurisdiction of Bureau of Forestry. - The Bureau of Forestry shall have jurisdiction and authority over the demarcation, protection, management, reproduction, reforestation, occupancy, and use of all public forests and forest reserves and over the granting of licenses for game and fish, and for the taking of forest products, including stone and earth therefrom."

That the authority for the cutting, gathering or removal of forest products shall only be upon license to be issued by the Bureau of Forestry, is further stressed by section 1831 of the said Code, thus:

"License required for taking or removal of forest products. - Except as herein provided, forest products shall be cut, gathered or removed in or from any forest only upon license from the Bureau of Forestry."

There is no dispute that the respondent corporation was issued Ordinary Timber License 181-'63 (new) by the Bureau of Forestry on June 20, 1962, but the said license, by its own terms, expired on June 30, 1963.

The respondent corporation, however, insists that its timber license still exists because it filed an application for the renewal thereof and paid the corresponding fees therefor, duly accepted by the Bureau of Forestry, which accordingly forwarded a proposed license (Ordinary Timber License 642-'64) to the Secretary of Agriculture and Natural Resources.

It is true that the respondent corporation filed on June 28, 1963 an application for renewal of license. The said application was however rejected by the Director of Forestry because foresters of the Bureau of Forestry found that during the life term of its license the said respondent corporation had been cutting logs outside its licensed area and invoicing the same under its Ordinary Timber License 181-'63 (new). Thus, in the 1st Indorse-ment of District Forester Eugenio D. Rebosura, dated June 28, 1963, the said official stated that as of May 28, 1963, the respondent corporation had invoiced under the said license 7,746.15 cubic meters of timber, although its operations had been confined to the construction of logging roads leading to its licensed area. In fact, the said respondent violated not only the terms and conditions of its expired timber license but also the rules and regulations of the Bureau of Parks and Wildlife, in that it had been constructing a logging road through the Mainit Hot Springs National Park leading to its licensed area even before the approval of its road right-of-way permit by the Bureau of Parks and Wildlife. The right-of-way permit 15 issued to it was approved only on December 19, 1963 by Undersecretary Benito Montinola, the application for which appears to have been filed on or about June 25, 1963, but the records show that the said respondent corporation had been constructing a logging road through the Mainit Hot Springs National Park leading to its licensed area as early as June 17, 1963.

We do not accord credit to the respondent corporation's argument that the acceptance by the Bureau of Forestry of the fees for renewal of its license for the year 1963-1964 is tantamount to granting it the authority and license to continue operating its forest concession under its old and expired license. The payment of the said fees is a requirement to be complied with before the application for renewal may be processed. The said fees were refundable if the license was denied. The mere filing therefore of an application and the payment of fees do not entitle the applicant to begin logging operations. A license must first be issued. The respondent corporation was well aware of this fact, since it is so provided in its application. Thus, paragraphs 14, and 18 of the said application read as follows:

"14. To show my good faith in filing this application, I am herewith enclosing the required application fee of P130.00 [in case this application is for a bid or proposal in response to a notice] together with the license fee of P493.85 and bond deposit of P5,250.00 [if application is for the renewal of a license] in cash, by certified check or post office money order. [The latter two are refundable if the applicant is not granted a license.]"

"18. I understand that the mere filing of an application and/or payment of necessary fees does not entitle me to

begin operation until the necessary license is properly issued."(emphasis supplied)

Neither can the said respondent corporation buttress its position by the mere fact that on September 6, 1963, the acting Director of Forestry forwarded the proposed license No. 642-'64 to the Secretary of Agriculture and Natural Resources for approval. For, the said proposed license was recalled by the Director of Forestry, as shown by his letter of September 24, 1963, and the same was returned unapproved by the Secretary of Agriculture and Natural Resources. What is more significant is that the said proposed license was never issued and released to the respondent corporation, but, on the contrary, its application for renewal of license was denied by the Director of Forestry on November 5, 1963. It is clear therefore that the supposed extension dated August 8, 1963 of its license was not approved by the Department Secretary as required, and without such approval, the extension was ineffective.

Thus, with the expiration on June 30, 1963 of the respondent corporation's timber license and the denial of its application for renewal thereof by the Director of Forestry, the right or authority of the respondent corporation to continue cutting, gathering or removing logs had ceased. It could not and can no longer continue conducting logging operations even within the area covered by its expired license.

However, the writ of preliminary injunction issued by the respondent court would allow the respondent corporation to continue cutting, gathering and removing timber from the concession area in question without license duly issued by the Director of Forestry, in violation of the aforementioned provisions of section 1831 of the Revised Administrative Code. The said writ, being against the law, is null and void.[1] The respondent court, in issuing the writ of preliminary injunction and thus allowing the respondent corporation to conduct logging operations in the timber concession area in question, had in effect arrogated unto itself the jurisdiction of the Bureau of Forestry and had resuscitated in 1965 a timber license that expired on June 30, 1963. Clearly, it acted without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction in granting the issuance of the writ of preliminary injunction complained of.

At all events, even if the renewal permit for 1964-65 - the last renewal applied for by the respondent corporation - were duly approved and granted, it would have anyway expired on June 30, 1965. It follows that the said respondent corporation had no cause of action when it went to court on August 12, 1965.

ACCORDINGLY, the order dated September 10, 1965 and the writ of preliminary injunction dated September 13, 1965 issued by the respondent court are declared null and void and set aside; the preliminary injunction issued by this Court on October 1, 1965 is hereby made permanent. Civil case 62144 is hereby ordered dismissed. Costs against the respondent corporation.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Dizon, J., took no part.

[1] *Vivo vs. Arca*, 9 SCRA 878 (1963).

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