QUIRINO FERNANDEZ, VICTORIO FABRICA, ILUMINADO FABRICA, ARSENIO LABRICA, MARCELINO ABELLA, RODULFO SY AND RUFINO CAUMERAN, PETITIONERS, VS. SANTIAGO O. TAÑADA, AS PRESIDING JUDG...

G.R. No. L-31673. June 30, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a special civil action for certiorari with preliminary injunction.

The antecedent facts follow:

In an application for registration dated 21 December 1967 filed with the Court of First Instance of Cebu, Branch V (L. R. C. No. N-767, L. R. C. Rec. No. 34192), respondent Juan Borromeo prayed that he be declared as the real and absolute owner of the parcel of land situated in Barrio Pook, Talisay, Cebu, consisting of 5,897 square meters, more particularly described as follows:

> A parcel of land (described in Original Plan Psu-234595) situated in Barrio Pook, Municipality of Talisay, Province of Cebu, Philippines, having an area of 5,897 square meters, more or less, assessed at P70.00 as per Tax Declaration No. 026448 and bounded as follows:

N-Lot No. 191 owned by Juan Borromeo (applicant);

E-by a lot belonging to Claudio Baller;

S-Bohol Strait or Seashore; and

W-Lot No. 2586 owned by Juan Borromeo (applicant).

Respondent bases his claim of ownership on Article 457 of the New Civil Code,[1] alleging that the land sought to be registered was formed by accretion, having been de-posited therein gradually by currents of a river bordering lot Nos. 7191 and 2586 owned by him. Respondent further prayed that the Register of Deeds be ordered to issue an original certificate of title in his name.

On 8 March 1968, petitioners herein opposed the above-said application on the grounds, among others, that (a) Article 457 of the New Civil Code could not be invoked, the disputed area having been formed by action of the sea and not by river currents, there being no river in the vicinity; (b) that it was the oppositors who occupied the said land openly and publicly and not respondent; and (c) respondent Juan Borromeo is an alien, not qualified to own real properties in the Philippines.

In an order dated 28 July 1969, the Land Registration Court (LRC for short) ruled that the petitioners-oppositors have no interest over the subject land, thereby dismissing the opposition filed by them for lack of legal basis. However, the said order was set aside after a Motion for Reconsideration was filed by said

petitioners-oppositors.[2] In an order dated 3 December 1969, the aforesaid order of 28 July 1969 was revived, directing further the demolition of the 11 huts in the premises built by the herein petitioners-oppositors.

Petitioners-oppositors tried to appeal the aforesaid order of 3 December 1969 but the LRC denied the appeal bond and record on appeal in its order of 14 January 1970, on the ground that the order was merely interlocutory and, therefore, unappealable. Petitioners-oppositors moved to reconsider the said order of 14 January 1970 but the motion for reconsideration was likewise denied.

The jurisdictional issue raised by applicants herein is without merit. If it be true that the lot sought to be registered

> "was formed by accretion which it gradually received from the effects of the current of the waters flowing on the river bordering the said Lots No. 7191 and 2586 of the herein applicant" (now private respondent Juan Borromeo) (Application, Annex "A" of Petition, paragraph 3).

then title to the lot vested in said applicant under Article 457 of the Civil Code of the Philippines[3] from the time the alluvial deposit was formed. Borromeo's petition to the Registration Court "to declare him the owner" of the lot is in effect a request for confirmation of the title already vested in him by the law, and the court plainly had jurisdiction to take cognizance of the application.

It is true that the oppositors averred below that the deposit was not alluvial but a result of the action of the sea. This issue, however, is dependent on the result of the evidence to be produced at the trial on the merits that was still to be held. The same thing can be said of the negation that the applicant for registration was an alien disqualified to acquire agricultural land. Neither of these claims can now be inquired into at this stage of the proceedings.

The respondent court ordered the opposition of herein petitioners to be dismissed as improper, for lack of personality to oppose the registration independently of that of the national government, after receiving evi-dence that oppositors were mere sales applicants to the Bureau of Lands, and that they had been warned that they should not enter nor improve the land object of their sales applications, prior to the approval thereof by the land authorities; and in fact paragraph 6 of their sales applications explicitly provided that the same conveyed no right to occupy the land prior to approval (Order of 3 December 1969, Annex "E" of Petition). Under the circumstances, We can not say that the action of the court below was in abuse of discretion, considering the rule in Leyva vs. Jandoc[4], where this Court fully agreed with the Court of Appeal's ruling that:

> "Although the provisions of law just cited apparently authorizes any person claiming any kind of interest to file an opposition to an application for registration, it is our view nevertheless that the opposition must be base on a right of dominion or some other real right independent of and not at all subordinate to, the rights of the Government. We have examined Soriano vs. Cortes, 8 Phil. 459; Roxas vs. Cuevas, 8 Phil. 469; and Archbishop of Manila vs. Barrio of Santo Cristo, et al., 39 Phil. 1, all of which cases are discussed in the petition and answer, and we find that in all these cases the interest of the oppositors were each private in nature; otherwise stated, their interests were not in any manner subordinate to those of the Government. While the right claimed by the petitioners herein seemed at first blush to be directly opposed to the adjudication of ownership to the ap-plicant, it developed in the proceedings that their right, that of being fore-shore lessees of public land, is completely subordinate to the interests of the Government, and must necessarily be predicated upon the property in question being part of the public domain. In such case, it is incumbent upon the duly authorized representatives of the Government to represent its interests as well as private claims intrinsically dependent upon it. It is well-settled that the interest of the government cannot be represented by private persons." (Emphasis supplied)

In the recent case of Mindanao vs. Director of Lands[5], it was declared by this Court that "persons who claim to be in possession of a tract of public land and have applied with the Bureau of Lands for its purchase have the

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necessary personality to oppose registration". An examination of the facts of the said case, however, not only reveals that the subject land was already determined to be public, but that the application was opposed by the Directors of Lands and of Forestry as well as by the private oppositor, who likewise alleged possession that "is open, continuous, notorious and under the claim of ownership" for at least 60 years. Moreover, it was not shown that the sales application of private oppositor therein was subject to the restrictions on entry and improvement found in the sales applications of the petitioners in the case at bar. Manifestly, the proper step for petitioners herein would have been to urge the Director of Lands to oppose the application for registration of the applicant Juan Borromeo.

But the dismissal of the oppositions to the registration application did not warrant the respondent court's order to demolish the houses and improvements of herein petitioners in the controverted land. The reason is obvious: there is as yet no decision, much less a decree of registration, in favor of applicant Borromeo; neither is there any showing that the land authorities had complained of petitioners' occupancy. Even if their land sales applications forbade entry before approval, the Director of Lands could waive that condition. Only after the land is duly registered, and a writ of possession issued after due hearing (or alternatively, a final court order of ejectment), can oppositors below, now petitioners in this court, be dispossessed. In ordering the demolition of petitioners' houses at this stage of the proceedings, the respondent court acted in grave abuse of discretion, equivalent to excess of jurisdiction, and certiorari lies to correct it.

FOR THE FOREGOING REASONS, the order of 3 December 1969 is declared null and void in so far as it directed the demolition of the 11 huts of petitioners-oppositors on the disputed premises; and the preliminary writ of injunction heretofore issued is made permanent. Let the records be remanded to the court of origin for further proceedings. Costs against private respondent Juan Borromeo.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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[1] Article 457 of the New Civil Code provides:

"Art. 457. To the owners of land adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters."

[2] See Annex "D" to Petition, page 22, Rollo.

[3] "ART. 457. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters."

[4] No. L-16965, 28 February 1962, 4 SCRA 595.

[5] No. L-19535, 10 July 1967, 20 SCRA 641.

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