

POLICARPIO VISCA, PETITIONER-APPELLANT, VS. HON. SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, DIRECTOR OF LANDS, HEIRS OF LEON REYES, REPRESENTED BY ESCOLASTICA FERNANDO, RES...

G.R. No. L-40464. May 09, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This case was certified to Us by the Court of Appeals, per its Resolution, dated March 17, 1975.

The issue to be resolved in this case is whether or not certiorari and/or mandamus will lie: 1) in the absence of statements in the petition establishing and proving with certainty that there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law; 2) for failure to exhaust the administrative remedy of appeal to the Office of the President.

Petitioner Policarpio Visca (hereafter VISCA), upon discovering that the homestead application of one Leon Reyes (H.A. No. 9893) allegedly approved on August 4, 1948, under Entry No. V-9119, had adversely covered about 24 hectares of the western portion of his 50-hectare land, filed a protest with the Bureau of Lands on May 28, 1962, claiming that said homestead application is illegal and unlawful (1) because the land covered thereby is marshy and swampy and suitable only for fishpond purposes and should be disposed of only through sale or lease; and 2) for abandonment and non-compliance with the cultivation requirement of the Public Land Law. On September 22, 1969, he filed a supplemental protest, based on the dummy relationship between the private respondent herein, Escolastica Fernando, and one Ceferino Panopio, the person really interested in the land covered by the homestead application of Leon Reyes (CA Resolution, pp. 28-29, Rollo).

The Director of Lands dismissed the protest for want of valid and legal ground on July 29, 1969. VISCA's "Motion for Reconsideration" was likewise denied on June 18, 1970. The order of dismissal was affirmed by the Secretary of Agriculture on March 9, 1971. A motion for reconsideration was denied on April 28, 1971.

VISCA filed a direct suit for certiorari and mandamus with the then CFI of Mindoro to: 1) annul the orders of the Director of Lands and the Decision of the Secretary of Agriculture and Natural Resources and 2) direct the Director of Lands a) to cancel HA 9893 (E.V. 9119), Leon Reyes' homestead application, and b) to give due course to his Sales Application over the controverted land. Public respondents Director of Lands and the Secretary of Agriculture filed separate answers, both of which contain special and affirmative defenses, among which is that VISCA has not exhausted the administrative remedies, for not appealing to the Office of the President.

Private respondents, on the other hand, filed a motion to dismiss on the grounds that:

1. The petition failed to state a sufficient cause of action for certiorari.
2. The petitioner failed to exhaust all his administrative remedies.

The lower court sustained the Motion to Dismiss the dispositive portion of which, provides as follows:

"After carefully reviewing the pleadings submitted by the parties, the court is inclined to sustain the motion to dismiss because according to the New Rules of Court, the petitioner should establish and prove (sic) with certainty in the petition that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law and in the case at bar, the appeal should have been interposed and filed with the President against the decision rendered by the Secretary of Agriculture and Natural Resources." (pp. 30-31, Rollo)

Upon denial of his Motion for Reconsideration, petitioner went to the Court of Appeals, alleging in his lone assignment of error that:

"The trial court erred in dismissing the petition for certiorari and mandamus (to review and annul decision of the Director of Lands and Secretary of Agriculture and Natural Resources) on the grounds that: (a) the petition does not establish and prove with certainty that there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law, and (b) petitioner failed to exhaust the administrative remedy of appeal to the President, despite clear showing in said petition that the decision of the Director of Lands, affirmed by the decision of the Secretary, was rendered without any formal hearing whatsoever, whereby said officials acted with grave abuse of discretion and/or in excess of their jurisdiction, and that, appeal to the President under the circumstances could be dispensed with" (p. 32, Rollo; emphasis ours).

On the issue of whether or not the failure to allege in the petition for certiorari that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law is a jurisdictional defect, it is incumbent upon an applicant for a writ of certiorari to allege with certainty in his verified petition facts showing that "there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law," because this is an indispensable ingredient of a valid petition for certiorari. "Being a special civil action, petitioner-appellant must allege and prove that he has no other speedy and adequate remedy" (Diego vs. Court of Appeals, et al., 54 O.G. No. 4, 956, cited in Tan vs. Director of Forestry; 125 SCRA 302, at p. 322). "Where the existence of a remedy by appeal or some other plain, speedy and adequate remedy precludes the granting of the writ, the petitioner must allege facts showing that any existing remedy is impossible or unavailing, or that excuse petitioner for not having availed himself of such remedy (10 Am. Jur. 2d, Certiorari, 811; emphasis ours). A petition for certiorari which does not comply with the requirements of the rules may be dismissed" (Iligan Concrete Products vs. Mogadon, G.R. No. 67706, January 29, 1988).

There is no record of the petition for certiorari filed in the lower court, but on the basis of the trial court's ruling that the petitioner failed to allege facts to show why appeal to the Office of the President was no longer necessary in seeking judicial relief, then the petition was correctly dismissed on this ground.

This brings us to the second issue on whether petitioner failed to exhaust administrative remedies when he filed a direct suit for certiorari and mandamus.

The rule in administrative law is that parties requesting judicial action must first exhaust their remedies in the executive branch. This is premised not only on practical considerations but also on the comity existing between different departments of the government, which comity requires the court to stay their hands until the administrative processes have been completed (Madriñan vs. Sinco, 110 Phil. 160).

The doctrine of exhaustion of administrative remedies is not absolute, however. It is not applicable in cases (among many other exceptions) (1) where the question in dispute is purely a legal one (Tapales vs. President and Board of Regents of the U.P., L-17523, March 30, 1963); and (2) where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction or where the respondent Secretary had acted with grave abuse of discretion amounting to lack or in excess of jurisdiction. (Mangubat vs. Osmeña, L-12837, April

30, 1959, 105 Phil. 1309; Baguio vs. Rodriguez, L-11068, May 27, 1959, 105 Phil. 1323; Pascual vs. Provincial Board, L-11959, Oct. 31, 1959, 106 Phil. 406; Cortes vs. Valentin, 100 SCRA 1; Industrial Power Sales Inc. vs. Duma Sinsuat, G.R. No. L-29171, April 15, 1988, 160 SCRA 19). In the present case, the petition for certiorari and mandamus was prompted by petitioner's belief that both respondent officials had acted with grave abuse of discretion and/or in excess of jurisdiction, - i.e., the Director of Lands, in dismissing the protest, "not on evidence formally introduced" but on "records and reason alone" (p. 16, Reply Brief, p. 26, Rollo) and the Secretary of Agriculture, by his affirmance in toto of said Order. Hence, he is not precluded from directly resorting to the courts for redress.

However, while the petitioner did not violate the principle on exhaustion of administrative remedies and is thus not precluded from seeking immediate judicial relief from the department secretary's orders, his petition was nonetheless defective for failure to comply with the formal requirements of a petition for certiorari and mandamus, Rule 65, Sections 1 and 3, respectively. As stated earlier, therefore, the court a quo correctly dismissed the petition on this ground.

ACCORDINGLY, the decision of the court a quo dismissing the petition is hereby AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Grino-Aquino, JJ., concur.

Gancayco, J., no part.

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