

HEIRS OF MANUEL TAMESIS, SR. AS REPRESENTED BY GRECILDA A. TAMESIS, PETITIONERS, VS. ENRIQUE AMANTE, RESPONDENT.

Ponente: INTING, J.

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INTING, J.:

Before Us is a Petition for Review[1] filed by petitioners (Tamesis) assailing the Decision[2] of the Office of the Secretary, Department of Environment Natural Resources, Diliman, Quezon City, awarding a whole parcel of land covered under a Miscellaneous Sales Application to respondent Amante, the dispositive portion of which states:

WHEREFORE, finding the decision, dated April 20, 1999 not fully in accord with the merit of the case, the same is hereby MODIFIED, that the whole lot No. 3920, Pls-67 should be awarded to the appellant Enrique Amante pursuant to RA 730.

Accordingly, his Miscellaneous Sales Application No. 68359 filed on April 15, 1959 should be given due course.

SO ORDERED.

The facts of the case are as follows:

In 1959, Amante applied for a Miscellaneous Sales Patent over Lot No. 3920 Pls-67, the subject property located at Barangay 5, San Francisco, Agusan del Sur.[3] In an investigation conducted by the Bureau of Lands on the subject property sometime in 1960, it was reported that no improvement was made on the property.[4] In another investigation over the lot in 1974, it was reported that Amante constructed his house made of light materials on the property and that there was no other occupant of the property.[5] The 1974 report has a handwritten note on the upper right hand portion of the document which says "personal file".[6] Based on the records, Amante filed his tax declarations and paid the real property taxes over the property.[7]

In 1993, Tamesis filed his land protest on the patent application of Amante alleging that: (1) he, not Amante, is the actual occupant of the property; (2) he started occupying the property since 1959; and (3) Amante has never occupied the property.[8]

In his Answer, Amante alleged, among others, that: (1) his temporary residence is Ampayon, Butuan City; (2) Tamesis had never been and still is not in possession of the property; (3) "there is nobody in actual occupancy thereof;" (4) there is no house or improvement on the land; (5) he is in open, continuous, peaceful, adverse and public possession of the property as shown by his tax declarations, payment of taxes and the 1974 investigation report.[9]

In an investigation conducted by the DENR on the subject property in 1997 as a consequence of the protest filed, it was found that[10]:

It is the observation of the undersigned that the applicant respondent is actually residing at Purok 1, Ampayon, Butuan City and his allegation that he had introduced improvements such as coconut trees, star apple and

pomelo cannot be found on the land in question, per re-inspection and re-verification conducted by the representative of this office.

The applicant-respondent, Enrique Amante, failed to comply with the basic requirements of law of residence and cultivation.

The protestant, Manuel A. Tamesis, is now actually occupying Lot No. 3920, Pls-67, situated at Barangay 5, San Francisco, Agusan del Sur and have introduced improvements such as eight (8) coconut trees; one (1) hill banana, and rice field newly planted with rice, as shown in the pictorials.

The decision[11] of DENR Ambago, Butuan City mentioned two ocular inspections which revealed the following:

April 15, 1994 Ocular Inspection

Tamesis is the actual occupant of the property and he introduced improvements such as coconuts, banana, and a rice paddy.

September 25, 1998 Ocular Inspection

There are two (2) recently built houses on the lot. One occupied by Tamesis and the other occupied by Ma. Luz Nobleza, lessee of Amante.

The DENR Ambago, Butuan then ruled that the subject property be equally divided between Amante and Tamesis for equitable considerations considering that both are occupying the subject property.[12]

The DENR Secretary, acting on the the appeal filed by Amante, ruled the whole property be awarded to Amante.[13] The Secretary considered, among others, that: (1) in 1974, per investigation report, Amante constructed a house and introduced improvements on the land; and (2) the house of Tamesis was newly built per investigation report in 1998.[14]

Aggrieved, Tamesis filed the instant petition and raised the following sole ground:

THE DECISION RENDERED BY THE DENR SECRETARY VIOLATES REPUBLIC ACT 730, AS AMENDED.

Our Ruling

The petition is with merit.

At the outset, we note that Tamesis did not appeal the decision of the DENR Secretary to the Office of the President and consequently the petition is dismissable on the ground of failure to exhaust administrative remedies. But we also note that respondent never invoked the principle in their pleadings. Considering the lapse of time and the several pleadings the parties submitted to the Court, we deem respondent to have waived his right to invoke the principle as a defense. "The doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppel on the part of the party invoking the doctrine.[15]" To reiterate, Amante never invoked the principle in all his pleadings before this Court.

Section 1 of Republic Act 730 states:

Notwithstanding the provisions of sections sixty-one and sixty-seven of Commonwealth Act Numbered One hundred forty-one, as amended by Republic Act Numbered Two hundred ninety-three, any Filipino citizen of legal age who is not the owner of a home lot in the municipality or city in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is

not needed for the public service, shall be given preference to purchase at a private sale of which reasonable notice shall be given to him not more than one thousand square meters at a price to be fixed by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources. It shall be an essential condition of this sale that the occupants has constructed his house on the land and actually resided therein. Ten per cent of the purchase price shall be paid upon the approval of the sale and the balance may be paid in full, or in ten equal annual installments.

In the instant case, Amante's occupation of the subject property is shown by the following: (1) a 1974 report which says he built a house on the property although this same house was not indicated in the 1994 and 1997 reports; (2) a newly built house of Amante which he rented out to Nobleza per 1998 report; and (3) his payment of realty taxes over the property.

On the other hand, Tamesis, the protestant, has shown that: (1) per 1994, 1997 and 1998 reports, he has actually occupied the land; (2) established his house on the lot and actually resides on the land.

It appears then that both have occupied the land. Considering that the law was created to sell public lands for residential purposes to those who do not own a home lot, equitable considerations would impel this Court to allow both parties to purchase their respective areas. We quote with approval the following pronouncement of the Regional Director:

From the foregoing premises, and considering the evidences presented we are convinced that indeed, the protestant (Tamesis) was the actual occupant or the possessor of the aforementioned lot. But we also believe that the latter occupied the same after the respondent (Amante) had rightfully possessed or acquired a prior right over the lot by virtue of the filing of his Miscellaneous Sales Application. It has been duly proved that respondent has been paying real estate taxes for the controversial parcel of land.

However, while we admit that the respondent once had prior and preferential right over the contested land, these rights were unjustifiably neglected when respondent left the lot for long years, thus, inviting the attention of a more interested person who eventually turned the idle land into productive use.

Hence, we now see both the respondent and the protestant on the same footing, thus making us conclude that the disputed land be just equally divided between the disputants for equitable considerations.

WHEREFORE, the instant petition is partly GRANTED. The Decision of the Secretary of the Department of Environment and Natural Resources is SET ASIDE. Lot No. 3920 Pls-67 located at Barangay 5, San Francisco, Agusan del Sur should be equally awarded to both Manuel Tamesis and Enrique Amante pursuant to Republic Act No. 730.

SO ORDERED.

Camello, (Chairperson), and Perez, JJ., concur.

[1] Rollo, pp. 4-10

[2] Rollo, pp. 15-19

[3] Rollo, pp. 6 and 67

[4] Rollo, p. 172

[5] Rollo, p. 153

[6] Rollo, p. 153

[7] Rollo, pp. 155-169

[8] Rollo, p. 170

[9] Rollo, pp. 147-150

[10] Rollo, pp. 177-178

[11] Rollo, p. 74

[12] Rollo, pp. 43-44

[13] Rollo, p. 19

[14] Rollo, pp. 17-18

[15] Addition Hills Mandaluyong Civic and social Org. Inc. v. Megaworld Properties and Holdings Inc., G.R. No. 175039, April 18, 2012.

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