

**LOPE DESIATA, PETITIONER-APPELLEE, VS. THE EXECUTIVE SECRETARY, SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, DI-RECTOR OF LANDS AND CALIXTO DUQUE, RESPONDENTS-APPELLANTS.**

*G.R. No. L-21894. February 28, 1967*

Ponente: BENGZON, J.P., J.

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**BENGZON, J.P., J.:**

From a decision of the Court of First Instance of Agusan in a special civil action for certiorari and pro-hibition with preliminary injunction, this appeal was taken.

On October 28, 1928, Calixto Duque filed with the Bureau of Lands a sales application for a parcel of land in Mabolo, Ampayon, Butuan, Agusan. Said application (SA No. 11116-E-2193) described the land, then not yet surveyed, by stating identifiable natural boundaries, and approximated its area at 77 hectares. The Bureau of Lands approved the application on October 8, 1931.

In 1932 Duque appointed Doroteo Lavadia overseer of the land. In 1942 Lope Desiata requested and was al-lowed by Lavadia to stay in a portion of the land.

In 1947 Lavadia was replaced as overseer by Amparo L. Santos who asked Desiata to vacate the land occupied by him since 1942.

In March 1947 Desiata, after payment to him of P100 for his improvements thereon, vacated the portion of land occupied by him; but he transferred to another site con-taining 14 hectares and asserted a claim over the same.

On April 14 and 21, 1947, a provisional survey of the land applied for by Duque was conducted by a Public Land Inspector who found that only 10 hectares were under actual cultivation. Nevertheless, he recommended that sales patent be issued after final survey.

On May 15, 1947, Duque filed a formal protest, alleging illegal entry of Desiata on the land applied for by him.

On May 21, 1947, Desiata filed with the Bureau of Lands a homestead application over the 14-hectare area he has occupied.

Said claims resulted in the docketing of B.L. Con-flict No. 52, entitled "H.A. Unnumbered, Desiata, appli-cant-contestant vs. SA No. 11116 (E-2193) Duque, appli-cant-respondent."

On September 23, 1947, a survey was made of the land applied for by Duque. The surveyor, using the same natu-ral boundaries as aforestated, found the area to be 90.9447 hectares, or 14 hectares more than the 77 hec-tares stated in the application. Said excess was the portion occupied by Desiata.

On May 16, 1949, the District Land Officer rendered a decision giving due course to the sales application of Duque and dismissing the homestead application of Desia-ta on the ground that the latter's application covered

land which is part of the area included in Duque's application and that his occupancy thereof was merely tolerated by Duque.

On July 28, 1949, the Director of Lands issued an order wherein he sustained the findings of the District Land Officer, but, in addition, held that Duque failed to protest the encroachment within six months as required by paragraph 5, Land Administrative Order No. 6, Bureau of Lands, thereby losing his right over the disputed area. Thus a survey was ordered to exclude said area and to limit the sales application to 77 hectares. The Director of Lands furthermore noted that per the ocular inspection, 20 or more hectares were still under forest while the rest were mostly second growth forest, with about 10 hectares under cultivation by Manobo tenants numbering three families.

On December 24, 1949, Duque moved for a reconsideration of the foregoing order. Acting on said motion, the Director of Lands on August 23, 1951 suspended his order of July 28, 1949 and remanded the case for further investigation because the records disclosed that Duque had timely filed in May 1947 a protest against Desiata's alleged encroachment.

On November 28, 1953, the Director of Lands, after reinvestigation and rehearing, rendered a decision giving due course to Duque's application and dismissing that of Desiata. From this decision, Desiata on May 31, 1954 appealed to the Secretary of Agriculture.

In his decision of November 15, 1954, the Secretary of Agriculture (through the Undersecretary) found Desiata's assigned errors without merit. But based on the finding of the Director of Lands that 20 hectares of the land applied for by Duque were still under forest and that the rest were under second growth forest, except 10 hectares which were actually cultivated, he ordered the amendment of Duque's petition to exclude the area occupied and applied for by Desiata.

On November 26, 1954 Duque's counsel received a copy of the Secretary's decision. Duque himself received a copy in January, 1955.

On February 24, 1955, Duque, through another counsel, filed in the Court of First Instance of Agusan a suit to annul the decision of the Secretary of Agriculture (Civil Case No. 391).

On May 22, 1959, during the pendency of Civil Case No. 391, Duque addressed a letter-petition to the President of the Philippines praying for the setting aside of the decision of the Secretary of Agriculture and the re-instatement of the decision of the Director of Lands of November 28, 1953, based on the alleged grounds that there was lack of notice to him of the ocular inspection to determine the prerequisites of cultivation; that the appeal of Desiata did not raise cultivation requisite as an issue; and that he was denied due process.

On March 16, 1959, Desiata moved to dismiss Duque's appeal to the President.

On July 19, 1960, a decision was rendered by the Executive Secretary (for the President) revoking the decision of the Secretary of Agriculture and reaffirming that of the Director of Lands of November 28, 1953 which gave due course to Duque's application and dismissed Desiata's homestead application.

On August 31, 1960, Desiata moved for a reconsideration of the Executive Secretary's decision. This was denied on September 30, 1960.

On November 23, 1960, Desiata filed in the court a quo the present suit for certiorari, prohibition and preliminary injunction against the Executive Secretary.

After hearing, the lower court on June 29, 1963 rendered judgment holding that the Executive Secretary committed grave abuse of discretion in entertaining the appeal from the decision of the Secretary of Agriculture

which had already long become final, and that therefore his decision was null and void.

Respondents appealed to Us to raise questions of law having to do with the finality or non-finality and the validity or invalidity of the decision of the Secretary of Agriculture dated November 15, 1954.

As to the point of finality, Section 12 of Administrative Order No. 6 (Bureau of Lands) provides:

"Sec. 12. Finality of decisions promulgated by Secretary. - The decision of the Secretary of Agriculture and Commerce (now Natural Resources) or the Undersecretary of an appealed case shall become final, unless otherwise specifically stated therein, after the lapse of thirty (30) days from the date of its receipt by the interested parties."

Duque's counsel received a copy of the questioned decision on November 26, 1954. Therefore, based on the afore-quoted Section 12 of Administrative Order No. 6, said decision became final on December 26, 1954. That Duque allegedly received said decision in the middle of January 1955 is of no moment because it is settled principle in this jurisdiction that receipt of processes by counsel is receipt by the party himself.[1] In fact, counsel's failure to inform his client of an adverse judgment is not even a ground for setting aside a judgment valid and regular on its face;[2] neither is it necessarily a ground for granting relief against the result of neglect.[3]

The decision having become final, the Executive Secretary had no more power to review it when Duque filed his letter-petition on May 22, 1959. Neither can it be seriously contended that the President has power to alter Administrative Order No. 6 retroactively by setting it aside to be able to review a decision already final and to revoke rights already vested therein.

Appellant Duque, however, argues that Administrative Order No. 6 itself recognizes certain exceptions wherein decisions of the Secretary of Agriculture do not become final even after 30 days, particularly citing Section 14 thereof. But this proviso is unavailing to him because he does not contend that in his case there obtains any of the recognized exceptions to finality listed thereunder, to wit: mistake, inadvertence, default or excusable negligence.

Appellant, under the issue of validity, raises the question of due process in order to impugn the decision of the Secretary of Agriculture. It is alleged that he did not receive any notice of the ocular inspection that resulted in the report, basis of the decision, that he had cultivated only 10 hectares of the land applied for by him.

Section 30 of Act No. 2874, as amended, which was the law in force when the application of Duque was approved in 1931, provides:

"Sec. 30. - Before any patent is issued, the purchaser must show actual occupancy, cultivation, and improvement of at least one-fourth of the land applied for until the date on which final payment is made. (As amended by Sec. 5 of Act No. 3517)."

It is clear that the afore-quoted law required applicant for sales patent to show actual occupancy and cultivation of at least 1/4 of the land. Duque failed to prove that he had complied with this requirement. So even disregarding the adverse report of the ocular inspector, the absence of evidence upon this point operates against sales patent applicant Duque. And, besides, the allegation of alleged lack of notice to Duque is supported by his self-serving statement merely, which is insufficient to rebut the presumption of regularity of the official report and action.

Appellant further claims that if at all the notice was sent, the purpose of the inspection was to determine the exact boundaries of the property - not to find the extent of his actual cultivation. The reason for the inspection of the land is obviously to ascertain compliance with all requisites of the law, including cultivation. This is the import of

Section 25 of Land Circular No. 16 which provides:

"Sec. 35. Purpose. - The final investigation is for the purpose of ascertaining whether the applicant has complied with the requirements of the law and regulations promulgated thereunder, preparatory to the issuance of patent. This is necessary in homestead, sales and free patent applications."

The Director of Lands, having determined that the land Duque applied for has an area of 90.9447 hectares, rightly ordered the exclusion of the excess so as to conform substantially to the requisite that one-fourth of the land be under actual cultivation. For as the court aptly said, the rationale of the award is beneficial use, and since Duque apparently could not cultivate a larger area, he was properly awarded a lesser one.

Summarizing, therefore, the foregoing, We find that the decision of the Secretary of Agriculture dated November 15, 1954 had become final and beyond review by respondent Executive Secretary at the time the same was referred to him; and that said decision is in accord with law and is not defective for lack of due process.

WHEREFORE, the judgment appealed from is hereby affirmed, with costs against appellant Duque.

**SO ORDERED.**

Concepcion, C.J., Reyes, Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

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[1] *Perez v. Isip*, 81 Phil. 218; *Chainani v. Judge Tancinco*, 90 Phil. 862; *Perez v. Araneta*, G.R. No. L-11788, May 16, 1958; *Ballesteros, et al. v. Caoile, et al.*, G.R. No. L-16056, May 31, 1961; *Cabili v. Badelles*, G.R. No. L-17786, Sept. 29, 1962.

[2] *Duran v. Agarigan*, G.R. No. L-12573, Nov. 29, 1960.

[3] *Vivero v. Santos*, G.R. No. L-8105, Feb. 28, 1956.

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