

**CUSTODIO MARI, REPRESENTED BY HIS ATTORNEY-IN-FACT,
MARCELIANO MARI, PETITIONER, VS. SECRETARY OF
AGRICULTURE AND NATURAL RESOURCES, MARCIANA DURAN,
MAXIMIANO ASUNCION, AND FRAN...**

G.R. No. L-5622. December 29, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

This is a petition to prohibit the Secretary of Agriculture and Natural Resources and his subordinates from proceeding further in the case pending before that Department wherein Marciana Duran and other are contesting the homestead application of Custodio Mari, the herein petitioner.

Facts. On March 12, 1946 Custodio Mari applied for homestead patent over a parcel of land of about six hectares in Mangatarem, Pangasinan. On June 12, 1946 such application was preliminarily approved by the Director of Lands. But opposition having been submitted by Marciana Duran, Maximiano Asuncion and Francisco Asuncion (herein respondents) the Director of Lands assigned Public Lands Inspector De Guzman to make the necessary investigation. This officer conducted an ocular inspection and reported that portions of the land applied for were occupied and cultivated by Bonifacio Mari, Custodio Mari, Francisco Asuncion, Maximiano Asuncion and others.

After several postponements, the examination of the witnesses was had on August 8, 1946, in the absence of the oppositors. The applicant Custodio Mari presented his evidence. Thereafter, based on the proofs adduced, the Director of Lands overruled the oppositions and adjudged the land to Custodio Mari. A motion to reconsider was denied. On March 30, 1950, a document purporting to be an appeal to the Department of Agriculture and Natural Resources was filed with said Department. Afterwards Custodio Mari questioned the appeal, alleging that the signature and thumbmark affixed to such "appeal" were spurious and forged. At the request of the Department, the National Bureau of Investigation scrutinized the document, and confirmed the allegations of forgery. Consequently on October 11, 1950 the Department dismissed the appeal and the protest, and approved the order awarding the land to Custodio Mari.

Several months later, in their communication dated May 15, 1951, the protestants requested that said last order be set aside and that they be given "an opportunity to prove their claim to the land in question on the grounds (1) that the said order of this Office dismissing their appeal was based on the technicality that the signature of the claimants were forged by Attorney Bugayong who, instead of signing the said appeal in his own name as attorney of the said claimants, unlawfully forged their signature and thumbmarks thereon for one reason or another" which the said attorney only knows, and that as a result of such: unlawful act a criminal complaint has been filed against Attorney Bugayong which is now pending investigation in the Fiscal's Office of Pangasinan; (2) that the claimants believe that there was connivance between their attorney and the son of the respondent; (3) that the failure of the claimants-protestants to appear at the investigation of the case which resulted in their being non-suited and the investigation of the case being conducted ex-parte without their appearance was due to the misrepresentation of

their aforesaid attorney, who told them that this case would be heard in Mangatarem, Pangasinan and that it was not necessary for them to go to Dagupan, Pangasinan, the place of the investigation; (4) that they have been in possession of the land for more than 30 years as shown by their improvements thereon; and (5) that the lease contract supposed to have been signed by them (claimants) was secured by fraud and deceit, as they were made to sign it while under the influence of liquor."

Finding favorably to the protestants, the respondent Head of Department, on June 20, 1951, set aside his aforesaid order of October 11, 1950 and reinstated the appeal.

Subsequently, on March 29, 1952, he decided the appeal as follows:

"Considering (1) that the appealed decision of the Director of Lands in the above-entitled case dated November 14, 1949 dismissing the claim of the protestants-appellants to the land covered by Homestead Application No. V-8P (E-86) of Custodio Mari was based upon an ex-parte investigation; (2) that the claim of the appellants to the said land is based upon their alleged ownership and possession thereof for more than 30 years; (3) that the said claimants-appellants have already been relieved from the effects of the order of this Office of October 11, 1950 dropping their appeal in the order of this Office of June 20, 1951; and (4) that the motion of the counsel for the applicant-appellee for the reconsideration of the said order of June 20, 1951 had already been denied on September 19, 1951, this office believes that in order to avoid any possible miscarriage of justice this case should be investigated in accordance with paragraphs 6 and 7 of Lands Administrative Order No. 6 by the District Land Officer himself of Pangasinan.

"WHEREFORE, this case should be, as hereby it is, remanded to the Bureau of Lands; the decision of the Director of Lands dated November 14, 1949, set aside; and said official directed to have this case investigated in accordance with the aforesaid Lands Administrative Order No. 6 and to decide the case anew on the basis of the result of the formal investigation as herein directed."

Discussion. The petitioner contends that the respondent official was "without jurisdiction or exceeded his jurisdiction, or committed abuse of discretion" in promulgating his orders of June 20, 1951 and March 29, 1952. Various reasons are explained in his several pleadings before this court. Considering them as in relation with the answers and memoranda of the respondents, we do not think that the petition should be granted.

The administration and distribution of public lands is committed by law to the Director of Lands primarily, and ultimately to the Secretary of the Department of Agriculture and Natural Resources. In the exercise of such power they have to determine the conflicting claims of applicants and occupants of disposable lands of the public domain. To regulate the procedure of adjudication the head of department saw fit to promulgate rules and regulations, one of which prescribes the following:

"Relief from effect of decisions and orders of the Secretary or of the Director of Lands.—Upon such terms as may be considered just, the Secretary of Agriculture and Commerce, the Undersecretary or the Director of Lands may relieve a party or his legal representative from a decision, order, or other proceeding taken against him through his mistake, inadvertence, surprise, default or excusable neglect; Provided, that application therefor be made within a reasonable time but in no case exceeding one (1) year after such decision, order or proceeding was taken."

There is neither constitutional nor legal objection to the validity of the above regulation. Neither may its equitable feature be assailed for it is a counterpart of Rule 38 of the Rules of Court affording relief against fraud, accident, mistake or excusable negligence.

Now, as we read the record, we see that the official acts of the respondent Secretary come within the purview of the above-quoted rule. And we are not convinced that he has acted clearly with abuse of that discretion which he necessarily has in affording relief. For one thing his findings of facts are final. (*Julian vs. Apostol*, 52 Phil., 422).

Anyway—and this is the main ground of our decision—the petitioner knows, or ought to know, that when relief is granted under Rule 38 by an inferior court, no appeal lies to this court, (*Samia vs. Medina*, 56 Phil., 613) nor is certiorari permissible (*Mendoza vs. Montesa*,[*] L-4159, Dec. 28, 1951) inasmuch as the aggrieved party may still appeal should he finally lose in the new hearing which the order granting relief directs or allows. In other words, such aggrieved party has another remedy. With reference to the instant case, the "other" remedy of petitioner is to appear at the reinvestigation, protect his interests therein, and thereafter, if the Director of Lands decides against him, to appeal to the Department—of course, provided the circumstances disclosed at such reinvestigation justify his claim to preference over the land.

Judgment. Wherefore this petition will be dismissed, with costs against petitioner.

Paras, C. J., Pablo, Padilla, Jugo, Bautista Angelo, and Labrador, JJ., concur.

* 90 Phil., 631.

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