

**SEPTEMIO CEBEDO, ET AL., PETITIONERS AND APPELLANTS, VS.
DIRECTOR OF LANDS, ET AL., RESPONDENTS AND APPELLEES.***G.R. No. L-12777. May 23, 1961*

Ponente: DIZON, J.

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Appeal taken by Septemio and Abelardo Cebedo from a decision of the Court of First Instance of Misamis Occidental dismissing their petition for prohibition with preliminary injunction against the Hon. Director of Lands, the District Land Officer, Marciano Aldemita, Mariano Paculaba, Arcadio Pescadero, Lucio Enriquez and Laureano Retiza. The case was decided upon an agreed stipulation of facts which showed the following:

On February 15, 1951 Septemio Cebedo and Abelardo Cebedo filed their respective Free Patent Application in connection with different portions of Lot No. 2012 of the Cadastral Survey of Tangub, Misamis Occidental. Pursuant thereto and after the proceedings provided by law, Free Patent No. V-1637 was issued to Septemio Cebedo and Original Certificate of Title No. RP-68 was entered in the book of the Register of Deeds of Occidental Misamis in his name on May 30, 1952, while Free Patent No. V-1635 was likewise issued to Abelardo Cebedo and Original Certificate of Title No. RP-67 was entered in the same register in his name on the same date, the respective owner's duplicate copies of their original certificates of title having been issued to them.

On August 27, 1953, Arcadio Pescadero, Lucio Enriquez and Laureano Retiza (respondents herein), claiming to be the actual occupants and owners of different portions of the lot covered by the Free Patent Title of Septemio Cebedo, filed Civil Case No. 1586 in the Court of First Instance of Misamis Occidental against the latter, the Secretary of Agriculture and Natural Resources and the Director of Lands, for the annulment of Septemio's title on the ground that it was secured through fraud. On the same date Marciano Aldemita, Arcadio Pescadero and Mariano Paculaba (other respondents herein), filed in the same court a similar case against Abelardo Cebedo, the Secretary of Agriculture and Natural Resources and the Director of Lands (Civil Case No. 1585), claiming to be the owners of separate portions of the lot covered by Abelardo's Free Patent Title. Both cases were dismissed by the court on May 21, 1954 upon the ground that the therein plaintiffs had not exhausted the administrative remedies available, and the motions for reconsideration filed by the plaintiffs were denied on July 3, 1954.

On July 30, 1954, the herein appellees (except the Director of Lands and the District Land Officer) filed a protest with the Director of Lands against the Free Patent Titles of appellants. In connection therewith, the Director of Lands issued an order dated January 31, 1955, the dispositive part of which reads as follows:

"Conformably herewith, steps shall be taken in the proper court (Italics supplied) for the cancellation of Free Patents Nos. V-1635 and V-1637 and the corresponding certificates of title therefor to Abelardo Cebedo and Septemio Cebedo, respectively. Mariano Paculaba, Marciano Aldemita, Laureano Retiza and Lucio Enriquez shall within a period of sixty (60) days from receipt of their copies hereof, file separate applications for the respective portion adjudged to them; otherwise, they shall lose their preferential right thereto. The Homestead Application No. 140276 (E-79072) of Arcadio Pescadero shall be given further due course as soon as the aforesaid patents have been cancelled".

Appellants filed on May 21, 1955 a motion for reconsideration and on June 24 of the same year a supplementary motion for the reconsideration of the above order, alleging lack of a previous investigation in connection therewith; lack of jurisdiction on the part of the Director of Lands to issue the order and the want of legal personality of Arcadio Pescadero and his co-protestants to attack the free patents issued in their favor, invoking the ruling in the case of *Sumail vs. Court of First Instance of Cotabato, et al.*, 96 Phil., 946; 51 Off. Gaz., (5) 2413 but on December 15, 1955, the Director of Lands, without deciding squarely the question of jurisdiction, issued an order directing the District Land Officer at Iligan City to conduct an investigation of the case in accordance with Section 6 and 7 of Lands Administrative Order No. 6, and the latter had subpoenas served upon herein appellants informing them, besides, that the investigation of the protest of Pescadero and others would be held on May 28, 1956. This order gave rise to the filing of the present petition for prohibition with preliminary injunction by Septemio and Abelardo Cebedo to prohibit the Director of Lands from proceeding with the investigation.

In their answer to the petition for prohibition appellees alleged that in accordance with Article 91 of the Public Land Law, Commonwealth Act No. 141, the Director of Lands has not only the authority but the duty to investigate the facts that had led to the issuance of a free patent for the purpose of ascertaining whether the same were true, or whether they continue to exist and are maintained and preserved in good faith, and that in such investigation the existence of bad faith, fraud, concealment or fraudulent and illegal modification of essential facts may be inquired into.

Upon the undisputed facts, we are constrained to affirm the decision appealed from.

In the first place, appellants could have first appealed to the Secretary of Agriculture and Natural Resources from the orders of the Director of Lands complained of before commencing the present action. Their failure to resort to such remedy not having been satisfactorily explained, prohibition can not lie, it being settled in this jurisdiction that said writ may be issued only in the absence of an appeal or any other plain, speedy and adequate remedy in the ordinary course of law.

In the second place, when the respondent Director of Lands issued his order of January 31, 1955, appellants moved to have it set aside claiming that no investigation had been conducted before its issuance and, if there was any, they had not been notified in connection therewith. Finding their allegation to this effect to be well founded, the Director of Lands, in his order of December 15 of the same year, precisely directed the district land officer at Iligan City to conduct an investigation of the case, and said officer fixed a date for said investigation and sent proper notice thereof to appellants. The latter, therefore, have no reason to complain.

Lastly, it is clear from the facts that the investigation complained of is merely preliminary, its purpose being to determine whether steps should be taken in the proper court for the annulment of the titles issued to appellants. We agree with the position taken in this connection by the Director of Lands that it is not only his right but his duty to conduct the investigation complained of and to file the corresponding court action for the reversion of the properties to the State, if the facts disclosed in the course of the investigation so warrant.

Wherefore, the decision appealed from is affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, De Leon, and Natividad, JJ., concur.

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