

**THE DIRECTOR OF LANDS, PETITIONER, VS. COURT OF APPEALS
AND TEODORO ABISTADO, SUBSTITUTED BY MARGARITA, MARISSA,
MARIBEL, ARNOLD AND MARY ANN, ALL SURNAMED ABISTADO,
RESPONDENTS.**

G.R. No. 102858. July 28, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Is newspaper publication of the notice of initial hearing in an original land registration case mandatory or directory?

Statement of the Case

The Court of Appeals ruled that it was merely procedural and that the failure to cause such publication did not deprive the trial court of its authority to grant the application. But the Solicitor General disagreed and thus filed this petition to set aside the Decision[1] promulgated on July 3, 1991 and the subsequent Resolution[2] promulgated on November 19, 1991 by Respondent Court of Appeals[3] in CA-G.R. CV No. 23719. The dispositive portion of the challenged Decision reads:[4]

"WHEREFORE, premises considered, the judgment of dismissal appealed from is hereby set aside, and a new one entered confirming the registration and title of applicant, Teodoro Abistado, Filipino, a resident of Barangay 7, Poblacion Mamburao, Occidental Mindoro, now deceased and substituted by Margarita, Marissa, Maribel, Arnold and Mary Ann, all surnamed Abistado, represented by their aunt, Miss Josefa Abistado, Filipinos, residents of Poblacion Mamburao, Occidental Mindoro, to the parcel of land covered under MSI (IV-A-8) 315-D located in Poblacion Mamburao, Occidental Mindoro.

The oppositions filed by the Republic of the Philippines and private oppositor are hereby dismissed for want of evidence.

Upon the finality of this decision and payment of the corresponding taxes due on this land, let an order for the issuance of a decree be issued."

The Facts

On December 8, 1986, Private Respondent Teodoro Abistado filed a petition for original registration of his title over 648 square meters of land under Presidential Decree (PD) No. 1529.[5] The application was docketed as Land Registration Case (LRC) No. 86 and assigned to Branch 44 of the Regional Trial Court of Mamburao, Occidental Mindoro.[6] However, during the pendency of his petition, applicant died. Hence, his heirs -- Margarita, Marissa, Maribel, Arnold and Mary Ann, all surnamed Abistado -- represented by their aunt Josefa Abistado, who was appointed their guardian ad litem, were substituted as applicants.

The land registration court in its decision dated June 13, 1989 dismissed the petition "for want of jurisdiction."

However, it found that the applicants through their predecessors-in-interest had been in open, continuous, exclusive and peaceful possession of the subject land since 1938.

In dismissing the petition, the trial court reasoned:[7]

"x x x. However, the Court noted that applicants failed to comply with the provisions of Section 23 (1) of PD 1529, requiring the Applicants to publish the notice of Initial Hearing (Exh. `E') in a newspaper of general circulation in the Philippines. Exhibit `E' was only published in the Official Gazette (Exhibits `F' and `G'). Consequently, the Court is of the well considered view that it has not legally acquired jurisdiction over the instant application for want of compliance with the mandatory provision requiring publication of the notice of initial hearing in a newspaper of general circulation."

The trial court also cited Ministry of Justice Opinion No. 48, Series of 1982, which in its pertinent portion provides:[8]

"It bears emphasis that the publication requirement under Section 23 [of PD 1529] has a two-fold purpose; the first, which is mentioned in the provision of the aforequoted provision refers to publication in the Official Gazette, and is jurisdictional; while the second, which is mentioned in the opening clause of the same paragraph, refers to publication not only in the Official Gazette but also in a newspaper of general circulation, and is procedural. Neither one nor the other is dispensable. As to the first, publication in the Official Gazette is indispensably necessary because without it, the court would be powerless to assume jurisdiction over a particular land registration case. As to the second, publication of the notice of initial hearing also in a newspaper of general circulation is indispensably necessary as a requirement of procedural due process; otherwise, any decision that the court may promulgate in the case would be legally infirm."

Unsatisfied, private respondents appealed to Respondent Court of Appeals which, as earlier explained, set aside the decision of the trial court and ordered the registration of the title in the name of Teodoro Abistado.

The subsequent motion for reconsideration was denied in the challenged CA Resolution dated November 19, 1991.

The Director of Lands represented by the Solicitor General thus elevated this recourse to us. This Court notes that the petitioner's counsel anchored his petition on Rule 65. This is an error. His remedy should be based on Rule 45 because he is appealing a final disposition of the Court of Appeals. Hence, we shall treat his petition as one for review under Rule 45, and not for certiorari under Rule 65.[9]

The Issue

Petitioner alleges that Respondent Court of Appeals committed "grave abuse of discretion"[10] in holding—

"x x x that publication of the petition for registration of title in LRC Case No. 86 need not be published in a newspaper of general circulation, and in not dismissing LRC Case No. 86 for want of such publication."

Petitioner points out that under Section 23 of PD 1529, the notice of initial hearing shall be "published both in the Official Gazette and in a newspaper of general circulation." According to petitioner, publication in the Official Gazette is "necessary to confer jurisdiction upon the trial court, and xxx in xxx a newspaper of general circulation to comply with the notice requirement of due process." [11]

Private respondents, on the other hand, contend that failure to comply with the requirement of publication in a newspaper of general circulation is a mere "procedural defect." They add that publication in the Official Gazette is sufficient to confer jurisdiction.[12]

In reversing the decision of the trial court, Respondent Court of Appeals ruled:[13]

“x x x although the requirement of publication in the Official Gazette and in a newspaper of general circulation is couched in mandatory terms, it cannot be gainsaid that the law also mandates with equal force that publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court.”

Further, Respondent Court found that the oppositors were afforded the opportunity “to explain matters fully and present their side.” Thus, it justified its disposition in this wise:[14]

“x x x We do not see how the lack of compliance with the required procedure prejudiced them in any way. Moreover, the other requirements of: publication in the Official Gazette, personal notice by mailing, and posting at the site and other conspicuous places, were complied with and these are sufficient to notify any party who is minded to make any objection of the application for registration.”

The Court’s Ruling

We find for petitioner.

Newspaper Publication Mandatory

The pertinent part of Section 23 of Presidential Decree No. 1529 requiring publication of the notice of initial hearing reads as follows:

“Sec. 23. Notice of initial hearing, publication, etc. -- The court shall, within five days from filing of the application, issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order.

The public shall be given notice of initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting.

1. By publication. --

Upon receipt of the order of the court setting the time for initial hearing, the Commissioner of Land Registration shall cause a notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: Provided, however, that the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. Said notice shall be addressed to all persons appearing to have an interest in the land involved including the adjoining owners so far as known, and `to all whom it may concern.' Said notice shall also require all persons concerned to appear in court at a certain date and time to show cause why the prayer of said application shall not be granted.

xxx xxx xxx”

Admittedly, the above provision provides in clear and categorical terms that publication in the Official Gazette suffices to confer jurisdiction upon the land registration court. However, the question boils down to whether, absent any publication in a newspaper of general circulation, the land registration court can validly confirm and register the title of private respondents.

We answer this query in the negative. This answer is impelled by the demands of statutory construction and the due process rationale behind the publication requirement.

The law used the term “shall” in prescribing the work to be done by the Commissioner of Land Registration upon the latter’s receipt of the court order setting the time for initial hearing. The said word denotes an imperative and thus indicates the mandatory character of a statute.[15] While concededly such literal mandate is not an absolute rule in statutory construction, as its import ultimately depends upon its context in the entire provision, we hold that in the present case the term must be understood in its normal mandatory meaning. In *Republic vs. Marasigan*,[16] the Court through Mr. Justice Hilario G. Davide, Jr. held that Section 23 of PD 1529 requires

notice of the initial hearing by means of (1) publication, (2) mailing and (3) posting, all of which must be complied with. "If the intention of the law were otherwise, said section would not have stressed in detail the requirements of mailing of notices to all persons named in the petition who, per Section 15 of the Decree, include owners of adjoining properties, and occupants of the land." Indeed, if mailing of notices is essential, then by parity of reasoning, publication in a newspaper of general circulation is likewise imperative since the law included such requirement in its detailed provision.

It should be noted further that land registration is a proceeding in rem.[17] Being in rem, such proceeding requires constructive seizure of the land as against all persons, including the state, who have rights to or interests in the property. An in rem proceeding is validated essentially through publication. This being so, the process must strictly be complied with. Otherwise, persons who may be interested or whose rights may be adversely affected would be barred from contesting an application which they had no knowledge of. As has been ruled, a party as an owner seeking the inscription of realty in the land registration court must prove by satisfactory and conclusive evidence not only his ownership thereof but the identity of the same, for he is in the same situation as one who institutes an action for recovery of realty.[18] He must prove his title against the whole world. This task, which rests upon the applicant, can best be achieved when all persons concerned -- nay, "the whole world" -- who have rights to or interests in the subject property are notified and effectively invited to come to court and show cause why the application should not be granted. The elementary norms of due process require that before the claimed property is taken from concerned parties and registered in the name of the applicant, said parties must be given notice and opportunity to oppose.

It may be asked why publication in a newspaper of general circulation should be deemed mandatory when the law already requires notice by publication in the Official Gazette as well as by mailing and posting, all of which have already been complied with in the case at hand. The reason is due process and the reality that the Official Gazette is not as widely read and circulated as newspapers and is oftentimes delayed in its circulation, such that the notices published therein may not reach the interested parties on time, if at all. Additionally, such parties may not be owners of neighboring properties, and may in fact not own any other real estate. In sum, the all-encompassing in rem nature of land registration cases, the consequences of default orders issued against the whole world and the objective of disseminating the notice in as wide a manner as possible demand a mandatory construction of the requirements for publication, mailing and posting.

Admittedly, there was failure to comply with the explicit publication requirement of the law. Private respondents did not proffer any excuse; even if they had, it would not have mattered because the statute itself allows no excuses. Ineludibly, this Court has no authority to dispense with such mandatory requirement. The law is unambiguous and its rationale clear. Time and again, this Court has declared that where the law speaks in clear and categorical language, there is no room for interpretation, vacillation or equivocation; there is room only for application.[19] There is no alternative. Thus, the application for land registration filed by private respondents must be dismissed without prejudice to reapplication in the future, after all the legal requisites shall have been duly complied with.

WHEREFORE, the petition is GRANTED and the assailed Decision and Resolution are REVERSED and SET ASIDE. The application of private respondent for land registration is DISMISSED without prejudice. No costs. SO ORDERED.

Davide, Jr., Melo, and Francisco, JJ., concur.
Narvasa, C.J., (Chairman), on leave.

[1] Rollo, pp. 29-36.

[2] Ibid., p. 37.

[3] Seventh Division composed of Justice Celso L. Magsino, ponente, and Justices Serafin E. Camilon, Chairman, and Artemon D. Luna, concurring.

[4] Ibid., p. 35.

[5] Known as the Property Registration Decree.

[6] Presided by Judge Niovy M. Marin.

[7] Rollo, p. 41.

[8] Ibid., pp. 41-42.

[9] The Solicitor General asked for and was granted an extension of 30 days within which to file a “petition for review on certiorari.” It is thus strange why the OSG described its petition as one “for certiorari under Rule 65 of the Rules of Court.” In any event, the Court, in its Resolution dated March 9, 1992 admitted the OSG’s “petition for review on certiorari,” clearly ruling that the petition was one for review, and not one for certiorari.

[10] Ibid., p. 21. This should really read “reversible error” since as already explained, the petition should be treated as one for review under Rule 45.

[11] Ibid., pp. 22-23.

[12] Ibid., pp. 56-57.

[13] Ibid., p. 34; Decision, p. 6.

[14] Ibid.

[15] Bersabal vs. Salvador, 84 SCRA 176, 179-180, July 21, 1978, citing Dizon vs. Encarnacion, 9 SCRA 714, 716-717, December 24, 1963.

[16] 198 SCRA 219, 227-228, June 6, 1991.

[17] Grey Alba vs. De la Cruz, 17 Phil. 49, September 16, 1910.

[18] Archbishop of Manila vs. Arnedo, 30 Phil. 593, March 31, 1915.

[19] Cebu Portland Cement Company vs. Municipality of Naga, Cebu, 24 SCRA 708, 712, August 22, 1968 citing Lizarraga Hermanos vs. Yap Tico, 24 Phil. 504, 1913; People vs. Mapa, L-22301, August 30, 1967; Pacific Oxygen and Acetylene Co. vs. Central Bank, L-21881, March 1, 1968; Dequito vs. Lopez, L-27757, March 28, 1968.

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