

MAURICIA VDA. DE VILLANUEVA, PEDRO TOYON, FELIZARDO CON-AY, ROQUE NAYVE, ROMEO CALO, GENARO BALUD, CANTIDIO CALO, AND FLORENCIO TABAO, PETITIONERS, VS. MONTANO A. ORTIZ, AS DIST...

G.R. No. 11412. May 28, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is a petition for "certiorari, prohibition and mandamus."

Petitioner Mauricia Vda. de Villanueva is the holder of an ordinary timber license, covering a public forest situated in the municipality of Esperanza, province of Agusan, and more particularly described as follows:

"* * * Bounded on the North by Wawa River and Cagbas Creek; on the South by Labao River; on the West by Agusan River; and extending about 12 kilometers eastward to the interior, covering a total forested area of about 4,720 hectares in the Province of Agusan, Municipality of Esperanza, * * *."

Respondent Pedro B. Patanao holds a similar timber license covering, a forest area adjoining that of Mrs. Villanueva and more particularly described as follows:

"Parcel II.-Starting from point 1, or junction of Wawa and Cagbas Creek; thence following Wawa River upstream in a north and northeasterly and Bayugan Creek; thence following Bayugan Creek upstream in a general easterly direction about 11,000 meters to point 3, on junction of Bayugan and Maytoroc Creeks; thence following a straight line S 70° E about 1,400 meters to point 4, or junction of Labao River and Mahogion Creek; thence following Labao River downstream in a general southerly direction about 6,000 meters to point 5, or junction of Labao River and a trail (Proposed National Road; thence following straight line N 65° W. about 1,800 meters to point 6, or source of Cagbas Creek; thence following Cagbas Creek downstream in a northeasterly direction about 8,000 meters to point 1, or point of beginning."

Prior to September 1, 1956, a conflict arose between these concessionaires in connection with a portion of said forest, which was claimed by both as part of the area covered by their respective licenses. The conflict was due to the fact that the areas covered by licenses were separated, on one side thereof, by the Cagbas Creek; that there were several creeks in the portion in dispute; and that the concessionaires disagreed on which one was the Cagbas Creek. Upon the other hand, this question was not, as yet, definitely settled by the records of the Bureau of Forestry, under the jurisdiction of which the concessions in question and public forests are. What is worse, in order to determine the exact location of said creek, insofar as material to the issue under consideration, a physical survey of the area in dispute-which the Bureau of Forestry was not in a position to undertake, at the moment-was necessary. Having been informed of said conflict, on September 1, 1956, the office of the district forester in Butuan City wrote to Pedro B. Patanao a letter reading:

"Reports from our field representatives who has conducted some survey along and within the vicinities of Cagbas Creek show that you are operating within the right side of said creek, following its course upstream. If

this is true, you are hereby requested to stop immediately your operations thereat until your common boundary with Licensee M. Yda. de Villanueva is finally established on the ground. Meanwhile that this Office is not yet in a position to survey the course of Cagbas Creek, you should move your men and equipments to the left side of Cagbas Creek following its course upstream to avoid trouble with your neighboring licensee.

"In this connection, you will be informed when our man is ready to undertake the establishment of your common boundary with O. T. Licensee M. C. Vda. de Villanueva. Be sure to provide your representative who will accompany our man with a written authorization, in case you cannot attend in person the field survey.

"Your cooperation and compliance with this request will be highly appreciated."

On September 8, 1956, the same office wrote to Mrs. Villanueva a communication of the following tenor:

"This Office has been informed that you are still operating within the area contested by you and Mr. Pedxo B. Patanao contrary to our letter to you of August 27, 1956, "whereby no new cutting, felling, bucking or hauling of logs should be undertaken. The reasons given by you in your letter of August 27, 1956, while justifiable on ground of the -previous findings of this Office, are now apparently assailable because the certainty of the Cagbas Creek has been questioned. As a consequence, the boundary dispute and incidentally the logs involved cannot be resolved unless the Cagbas Creek has been properly determined as such beyond reasonable doubt by all parties concerned.

"If this information is correct and in justice to all concerned, we are once more advising you to stop momentarily your operation in the area in question including the vicinity which is the right side upstream of the Cagbas Creek within three kilometers from the third bridge as mentioned in your letter of August 29, 1956, until this conflict is settled. This reiterates our similar injunction in connection with this case.

"Since the undersigned is going to the field on Monday to establish your common boundary, it will be appreciated that you give this matter your understanding and cooperation."

On the same date (September 8, 1956), Patanao instituted Civil Case No. 507 of the Court of First Instance of Agusan, against Mrs. Villanueva. In his complaint therein, Patanao alleged that in August, 1956, "and on the succeeding days thereafter," Mrs. Villanueva had, through her agents and without his consent, entered and cut down commercial timber and hauled and transported the same from his forest concession, for which reason it was prayed that Mrs. Villanueva be ordered to pay damages, and that, during the pendency of the case, she be enjoined from "entering, cutting, hauling, transportation and otherwise disposing timber in said portion of the forest area aforementioned, including her agents, cutters, loggers, contractors, and persons under her, and that after trial the injunction be made permanent." By an order dated September 12, 1956, said court, presided over by Hon. Montano A. Ortiz, Judge, authorized the issuance of the writ of preliminary injunction prayed for upon the posting of a P5,000 bond. Said writ having been issued on September 13, 1956, the clerk of court wrote to the district forester a letter, dated September 14, requesting his cooperation in the determination of the boundary line between the two (2) concessions. In reply thereto, the office of the district forester supplied, on September 15, 1956, the following information:

"I have the honor to inform you that as of this date, the boundary line between Mrs. Villanueva and Mr. Patanao has not as yet been establish. However, survey of the allegedly Cagbas Creek from the last point of the survey of the Bureau of Lands to a point supposed to be the source of the said creek and marked on a nearby tree '6/102', and the survey of the Mayhag Creek from its junction with Cagbas Creek to a point marked in our survey as '5/22' on the said Mayhag Creek, have already been made. We will continue to survey the Mayhag Creek to its source.

"Survey of these two branches of Cagbas Creek has to be made in order to determining the extent of the area in question, determine the layout of these creeks on the ground so that the boundary in question could be properly

established.

"A copy of this letter is furnished the Provincial Sheriff, Butuan City, for his information and record."

On October 4, 1956, Mrs. Villanueva filed a motion to dismiss and a motion to dissolve the aforementioned writ of preliminary injunction. Both motions were predicated upon the alleged lack of jurisdiction of the court over the "subject matter of the writ." In support of this pretense, Mrs. Villanueva alleged, among other things, that the issue posed by the complaint of Patanao was merely the effect of a conflict on the boundaries of their respective concessions, as indicated in the above-quoted letters, of the District Forester, dated September 1 and 8, 1956, copies of which were attached to the motion to dissolve the writ of preliminary injunction; that said conflict should first be settled administratively by the Bureau of Forestry and the Department of Agriculture and Natural Resources; and that Patanao does not appear to have previously exhausted the administrative remedies. These motions were set for hearing on October 6, 1956. Patanao then filed an opposition, to which Mrs. Villanueva replied on October 8, 1956. Although said motions were, thus, deemed submitted on the date last mentioned, respondent Judge took no action thereon.

Meanwhile, or on October 11, 1956, Patanao, in turn, filed a motion praying that an alias writ of preliminary injunction be issued against Pero Toyon, Felizardo Conay, Roque Nayve, Romeo Calo, Genaro Balud, Cantidio Calo and Florencio Tabao, upon the ground that, despite the writ issued on September 13, 1956, said persons, as agents of Mrs. Villanueva, had entered the area in dispute, and cut, hauled and taken away timber therefrom. Patanao, likewise, prayed that they be declared in contempt of court. By order dated October 15, 1956, respondent Judge granted the motion, insofar as the alias writ of preliminary injunction was concerned, which alias writ was issued on the same date. As regards the contempt proceedings, the hearing was "postponed until after the return of the presiding Judge * * * from Oroquieta."

Soon thereafter, or on October 23, 1956, Mrs. Villanueva and the persons against whom said alias writ of preliminary injunction was issued, instituted the present action against Hon. Montano A. Ortiz, as Judge of First Instance of Agusan, the Provincial Sheriff of Agusan and Pedro B. Patanao. It is alleged in the petition herein that, taking cognizance of said Civil Case No. 507 of said court of first instance and in issuing said writ of preliminary injunction, as well as the alias writ of preliminary injunction, respondent Judge had acted without jurisdiction and with grave abuse of discretion, thereby excluding the petitioners from the use and enjoyment of a right to which they are entitled, and that they have no other plain, speedy and adequate remedy in the ordinary course of law, except the present petition, for which reason they pray that, pending the final determination of this case, an ex parte writ of preliminary injunction be issued restraining the respondents and their agents or representatives from enforcing the aforementioned writs and from molesting, disturbing or interfering with the logging operations of the petitioners in the area covered and described in the license of Mrs. Villanueva, and ordering and commanding the respondent Judge to desist from further proceedings in said Civil Case No., 507, and that, after due hearing, the writ preliminary injunction issued by this Court be made final and permanent and respondent Judge ordered to dismiss said Civil Case No. 507 for lack of jurisdiction, with costs against respondent Patanao.

Upon the filing of the petition herein, respondents were required to answer thereto within ten (10) days from notice. As petitioners, thereafter, renewed their petition for a writ of preliminary injunction, respondents were required to comment thereon within five (5) days from notice. Subsequently, respondents filed their opposition to said petition for a writ of preliminary injunctions, after which we ordered, on November 13, 1956, the issuance of said writ, upon the filing of a P10,000 bond. This condition having been fulfilled, the writ prayed for was issued by this Court on December 6, 1956.

In his answer, respondent Patanao alleged that the forest area in dispute is covered by the license issued in his

favor; that the motions of Mrs. Villanueva to dismiss Civil Case No. 507 of the Court of First Instance of Agusan and to dissolve the writ of preliminary injunction therein issued are still pending resolution in said court; that the issue between the parties herein is one involving a purely private right, which does not require previous administrative determination; that petitioners have a plain, adequate and speedy remedy in the ordinary course of law, which is to writ for the outcome of said Case No. 507, particularly the action of the Court of First Instance of Agusan on petitioners' motions to dismiss said case and to dissolve said writ of preliminary injunction issued by respondent Judge; and that the co-petitioners of Mrs. Villanueva are her agents, laborers and persons acting in her behalf.

At the outset, respondents allege in their answer herein that petitioners' motions to dismiss Case No. 507 and to dissolve the writ of preliminary injunction issued therein were still pending when the case at bar was instituted on October 23, 1956, and that by agreement of the parties, said motions were set for hearing on November 3, 1956. Thus, respondents, in effect, maintain that petitioners had no cause of action for either certiorari, or prohibition or mandamus. However, as adverted to above, said motions were set for hearing on October 6, 1956. Patanao then filed his answer thereto, to which Mrs. Villanueva replied on October 8, 1956. Accordingly, the motions were then deemed submitted for resolution and, yet, respondent Judge took no action thereon before October 23, 1956, when this case was begun. Instead said respondent issued an alias writ of preliminary injunction on October 15, 1956, which petitioners herein regarded as implying a denial of said motions. Indeed, the aforementioned alias writ constituted a reaffirmation of the writ of injunction complained of, and, consequently, indicated that respondent Judge did not favor the dissolution thereof. Under the circumstances, petitioners were not bound to wait indefinitely for an explicit denial of said motions. They were justified in taking appropriate measures for the protection of their rights, particularly because there was a move to deal with them for alleged contempt of court.

Upon the other hand, it is not true that the issue in this case affects, rights which are purely private in nature. As holders of ordinary timber license, Mrs. Villanueva and respondent Patanao were permitted to enter public forests, cut timber therein and take the same therefrom. These are privileges emanating from the Government and affecting public property, as well as public interest and public policy. Indeed, the issue between the parties was one involving exclusively the boundary of their respective concessions, which, in turn, depended upon the extent of the grant made by the Government in their favor. What is more, the above-quoted official communications attached to the motion to dissolve the writ of preliminary injunction issued by respondent Judge-the authenticity of which communications was not questioned by Patanao-showed clearly that the common boundary of said concessions was an unsettled matter; that the very Bureau of Forestry-which has direct authority over public forests and over timber concessions-was not, as yet, in a position to determine said common boundary; and that steps were still being taken to ascertain the same. In other words, there were sufficient facts before respondent Judge to show that the alleged right of Patanao to the writ prayed for in the complaint was, to say the least, debatable or dubious. Hence, said respondent should have forthwith dissolved the writ of preliminary injunction and the alias writ of preliminary injunction complained of. (Cordillo vs. Del Rosario, 39 Phil., 829; Kodulfa vs. Alfonso, 76 Phil., 225; Calo vs. Roldan, 76 Phil., 445; Calo vs. Ortega et al., L-4673 and L-4675, January 25, 1952.)

In fact, upon investigation and physical check up by ranger-sealer Moises R. Babalos of the Bureau of Forestry, it was eventually verified, and the Director of Forestry officially declared, on November 15, 1956, that the disputed area is part of the concession of Mrs. Villanueva, and outside that of Mr. Patanao.

Lastly, it was apparent from the aforementioned communications, annexed to the motion to dissolve the writ of preliminary injunction issued by respondent Judge, that the controversy between Mrs. Villanueva and respondent Patanao was still pending investigation by the Bureau of Forestry, the office charged by law with the duty of

administering our public forests, of issuing licenses for the cutting of timber therefrom and of seeing" to it that the concessionaires comply with their 'obligations under their respective licenses and the pertinent laws and regulations. Thus, it was patent from the record before respondent Judge, upon the filing of said motion, that Patanao had, not only failed to exhaust the administrative remedies available to him, but, also, failed to complete even the initial and indispensable step for the redress of his alleged grievance against Mrs. Villanueva-the determination of the common boundary of their concession. In other words, Patanao had no cause of action, as yet, against Mrs. Villanueva. It is well settled that before one resorts to the courts of justice, such administrative remedies as may be available should first be exhausted (*Miguel et al. vs. Vda. de Reyes et al.*, 93 Phil., 542; *Lubugan et al. vs. Castrillo et al.*, L-10521, May 29, 1957; *Cabo Kho vs. Rodriguez*, L-9032, September 28, 1957; *Heirs of Lachica vs. Ducusin*, 102 Phil., 551; and *Geukeko vs. Araneta*, 102 Phil., 706).

Wherefore, the orders of respondent Judge dated September 12 and October 15, 1956, and the writ of preliminary injunction and the alias writ of preliminary injunction issued on September 13 and October 15, 1956, in pursuance of said orders, are hereby set aside and annulled, and the writ of preliminary injunction issued by this Court on December 6, 1956, is made final and permanent, with costs against respondent, Pedro B. Patanao. It is so ordered.

Paras, C.J, Bengzon, Montemayor, Bautista Angelo, Labrador, Reyes, J.B.L., Endencia and Felix, JJ., concur.

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