

ERNESTO INGLES, MAXIMO CANOY, ISMAEL BONTILAO, CONRADO BONTILAO, SERGIO CANOY, ZALDY CANOY, REMITSOR CANOY, ROBERTO CANOY, RODULFO NABLE, GUILLERMO BORRES, ENRIQUE BORRES, LOBER...

G.R. No. 125202. January 31, 2006

Ponente: TINGA, J.

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TINGA, J.:

This is a petition for review on certiorari under Rule 45, assailing the Court of Appeals' Decision in CA-G.R. SP No. 37333 promulgated on January 31, 1996 and its Resolution dated April 23, 1996 denying petitioners' motion for reconsideration of the Decision.

From the records, the following antecedents appear:

On January 30, 1981, by virtue of Proclamation No. 2052,[1] former President Ferdinand Marcos declared the barangays of Sibugay, Malubog, Babag and Sirao in Cebu City and the municipalities of Argao and Dalaguete as tourist zones under the administration and control of the Philippine Tourism Authority (PTA). On a vast tract of land spanning the barangays of Sibugay, Malubog, Babag and Sirao in Cebu City is the Kang-Irag Sports Complex (Complex). Part of the Complex is Lot No. 16306, situated at Barangay Sibugay, measuring approximately 568,878 square meters and owned by private respondent Manuel Cantos. Herein petitioners, mostly residents of Barangay Sibugay, are farmers occupying portions of the Complex.

On December 17, 1992, private respondent Cantos filed a petition with the Department of Agrarian Reform (DAR) for the exemption of his landholding from the coverage of the comprehensive agrarian reform program (CARP). Petitioners opposed the petition on various grounds.

Acting on the petition for exemption, DAR Secretary Ernesto Garilao ordered on September 16, 1994 the exclusion of the landholdings within the Complex from the coverage of the CARP and operation land transfer program of the government because the area has a slope of more than 18 degrees and therefore exempted under

Section 10 of Republic Act (R.A.) No. 6657.[2] In a subsequent Order[3] dated August 30, 1994, the DAR Secretary amended the September 16, 1994 Order by declaring only 808 hectares of the 1,500 hectares of Complex as excluded from the CARP since the PTA identified only 808 hectares as ideal for tourism purposes. Since the actual area excluded from the CARP had not yet been determined exactly, the DAR Secretary directed the DAR Regional Director to coordinate with the PTA in delineating the area to be allocated for tourism development and to devise a comprehensive relocation plan for the farmer-beneficiaries to be affected by the zoning, including the payment of disturbance compensation.

The dispositive portion of the August 30, 1994 Order reads:

IN VIEW OF THE FOREGOING, the Order of this Office dated September 16, 1992, is hereby set aside and a

new Order issued, to wit:

- The area of 808 hectares, more or less, is hereby declared for tourism purposes and therefore deemed excluded from OLT or CARP coverage;
- The balance of the area which is covered under Proclamation No. 2052, which is a total of 2,192 hectares, more or less, is deemed covered under the Comprehensive Agrarian Reform Program, either through its land transfer or Integrated Social Forestry, and Handog Titulo components;
- DAR Regional Office VII is hereby directed to delineate the 808 hectares for tourism development with the assistance of the PTA, to determine with exactitude what areas will be covered by CARP;
- The legitimate farmer-beneficiaries within the 808 hectares shall be paid disturbance compensation pursuant to Section 36 of RA 3844, as amended by Sec. 7 of RA 6389;
- The DAR Regional Office VII is directed further to devise a comprehensive relocation/resettlement plan for the farmers that stand to be affected by the tourism development, which may include among others:
 - Temporary usufructuary agreements for the use of the land pending actual site development;
 - Permanent relocation sites in the areas outside the 808 hectares;
 - Provision of support services; and
 - Issuance of Certificates of Land Ownership Award or Certificates of Stewardship, or other appropriate tenurial instruments, corresponding to the relocation areas;
- Directing that any and all development activities, inclusive of preparatory site development, for the change of the 808 hectares from agricultural to non-agricultural use shall be suspended until after the payment of just compensation by the landowners concerned and the actual relocation of the farmers.

In the light of this Order, we deem the Petition of Mr. Manuel Cantos, dated December 15, 1992, and the Motion For Intervention, dated May 3, 1993, to be moot and academic, and are hereby dismissed.

SO ORDERED.[4]

Through counsel, petitioners requested for a copy of the development plan and the map delineating the 808 hectares to be excluded from the CARP. On October 19, 1994, petitioners moved for the reconsideration of the August 30, 1994 Order, alleging that private respondent and his agents had demolished and destroyed their houses for his development plans although the area excluded from the CARP had not yet been identified. Petitioners also pointed out that the area which private respondent was developing for tourism purposes is a portion of the Mananga Watershed Forest Reserve. Petitioners also filed a Supplemental Motion for Reconsideration, arguing that the subject property had been utilized for the interest of private respondent and not for public purpose.

Private respondent moved for the issuance of a writ of execution of the August 30, 1994 Order contending that petitioners' supplemental motion did not toll the running of the reglementary period for appeal. The DAR Secretary granted private respondent's motion in his November 29, 1994 Order, declaring the August 30, 1994 Order as final and executory, subject to the following modifications:

IN FINE, the Order of August 30, 1994 is hereby affirmed in toto, with the following modifications:

- that pending the final survey of the 808 hectares, the relocation/payment of disturbance compensation for farmers/farmholdings who can be determined with certainty to be within the 808 hectares shall proceed;
- expenses for relocation, including the relocation site, shall be for the account of the applicant/developer.

The Order of August 30, 1994, as modified, is hereby declared final and executory. Let the corresponding Writ of Execution be issued by the Regional Director, DAR Region VII.

SO ORDERED.[5]

Accordingly, DAR Regional Director Elmo Banares issued an Order of Execution[6] on December 22, 1994. The Order of Execution directed private respondent to effect the immediate relocation and payment to each petitioner of disturbance compensation the amount of which was based either on the data submitted by the Barangay Committee on Land Production or on the proposal of private respondent, whichever was higher. The Order of Execution also awarded each petitioner 200 square meters of land, although no relocation site was provided.

Petitioners moved to quash the Order of Execution, arguing that the order to be executed was ambiguous as it did not provide for an area where the farmers affected would be relocated and no hearing or survey was conducted. Petitioners also filed a motion for actual survey to determine whether or not the area in question is within the Mananga and Kotkot-Lusaran Watershed Reservations established under Presidential Proclamations Nos. 502, 581 and 932 and therefore within the administrative jurisdiction of the Department of Environment and Natural Resources (DENR). The DAR Secretary, however, affirmed the Order of Execution.

Petitioners elevated the matter to the Court of Appeals, questioning the Order of Execution via a petition for review. According to petitioners, the DAR Secretary had no authority to issue the Order of Execution since it was equivalent to a writ of demolition and since it was issued without notice and hearing. The Order of Execution also purportedly gave unbridled discretion to the implementing officer because the terms were vague and did not specify the boundaries excluded from the CARP, the amount of compensation to the farmers affected by the relocation, and the relocation site itself.

The Court of Appeals promulgated the questioned Decision on January 31, 1996, dismissing the petition for review for lack of merit. For raising no new matters, the Court of Appeals also denied petitioners' Motion for Reconsideration. Hence, this petition for review on certiorari, raising the following issues:

WHETHER OR NOT AN ADMINISTRATIVE AGENCY, SUCH AS THE DEPARTMENT OF AGRARIAN REFORM CAN ISSUE AN ORDER WHICH HAS A FORCE AND EFFECT OF A WRIT OF DEMOLITION

WHETHER OR NOT AN ORDER OF EXECUTION PROMULGATED BY AN ADMINISTRATIVE AGENCY CAN STAND AS VALID WITHOUT NOTICE AND HEARING CONDUCTED IN CONNECTION THEREOF

The instant petition is accompanied by a prayer for the issuance of a restraining order to maintain the status quo and to prevent private respondent from committing acts of demolition against petitioners' properties. Before the prayer for a restraining order could be resolved, petitioners filed a motion to declare the Order of Execution null and void for want of jurisdiction because as per cadastral survey conducted by the Land Management Services Division of the DENR, private respondent's Lot No. 16306 is within the site of the Kotkot-Lusaran Watershed and petitioners' homelots are among those listed as within the premises of the same watershed reservation. Petitioners manifested their intention to request for a declaration of status as tenured migrants with the DENR.

On August 12, 1996, the Court issued a Resolution, granting petitioners' prayer for the issuance of a temporary restraining order enjoining the Court of Appeals and the DAR from enforcing the questioned Decision and Resolution in CA-G.R. SP No. 37333.[7]

On October 16, 1996, the Court resolved to deny the petition for failure of petitioners to sufficiently show that the Court of Appeals had committed any reversible error in rendering the assailed Decision.[8] Petitioners moved for

the reconsideration of the denial on the ground that the DAR has no jurisdiction over the property in question since it is a portion of a watershed. On August 25, 1999, the Court resolved to grant petitioners' motion for reconsideration, reinstate the petition and require respondents to file their respective comments on the petition.

Petitioner contends that the DAR Regional Director is not authorized to issue the questioned Order of Execution because only the Department of Agrarian Reform Adjudication Board (DARAB), the quasi-judicial arm of the DAR, is empowered to issue a writ having the effect of a writ of demolition. Petitioners also opine that the Order of Execution suffers from procedural defects as it was issued without notice and hearing to determine key issues such as the relocation site for the displaced farmers, the expenses for relocation, and who should be liable therefor, among others.

The petition is meritorious.

The Court finds that the December 22, 1994 Order of Execution issued by the DAR Regional Director suffers from jurisdictional and procedural defects as it directed the relocation of petitioners without first conducting a hearing or survey to determine the portion of the subject property excluded from the CARP.

A writ of execution should conform to the dispositive portion of the decision to be executed, and the execution is void if it is in excess of and beyond the original judgment or award, for it is a settled general principle that a writ of execution must conform strictly with every essential particular of the judgment promulgated.[9] It may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed.[10] Where the writ of execution is not in harmony with and exceeds the judgment which gives it life, the writ has pro tanto no validity.[11]

The Order of Execution does not conform to the tenor of the orders supposed to be implemented. The twin orders dated August 30, 1994 and November 29, 1994 merely declared that only 808 hectares of the Complex would be excluded from the CARP's coverage and directed that a survey be made to delineate the area. In the Order dated November 29, 1994, the DAR Secretary clarified that a table survey is necessary to identify the farmers affected by the exclusion from the CARP coverage. Neither order categorically declared that private respondent's property is excluded from the CARP, wholly or partially, or that petitioners would be affected by the exemption. Hence, the indispensability of the survey. However, as admitted by respondent DAR Secretary in his order affirming the assailed Order of Execution, no survey was conducted by the appropriate DAR officials.

The August 30, 1994 Order directed the suspension of development activities in the area exempted from the CARP coverage pending actual relocation of the farmers and recommended the creation of temporary usufructuary agreements on the excluded area. The import of these directives suggests that an immediate relocation of the farmers would be premature since a survey is yet to be undertaken and a possible contentious proceeding would follow once the exact boundaries of the properties to be excluded from the CARP are identified. As a matter of fact, in his Comment on the instant petition, respondent DAR Secretary explained that the orders did "not outrightly contemplate demolition which, under the Rules, would require a separate order issuable only after notice and hearing and in compliance with the prescribed conditions." [12] On the other hand, the questioned Order of Execution directed the immediate relocation of herein petitioners and even enjoined the Philippine National Police to assist the DAR personnel in its implementation. This significant variance alone indubitably demonstrates that the Order of Execution goes beyond the content and tenor of the orders sought to be implemented.

Petitioners' contention that the authority to issue the Order of Execution is vested with the DARAB and not with the DAR Regional Director is likewise correct.

A Regional Director is the head of a DAR Regional Office which, under the Administrative Code of 1987, is responsible for "supporting the field units and supervising program implementation of the Department within the region." The function of the DAR Regional Office includes "[implementing] laws, policies, plans, rules and regulations of the Department in the regional area." A similar function is delegated to the DAR Regional Offices under Executive Order No. 129-A.[13] Thus, the functions of the DAR Regional Director are purely administrative, that is, to put into operation agrarian laws and fill out the details necessary for their implementation, and not adjudicatory.

On the other hand, when a dispute arises between parties affected by the operation of agrarian laws, the controversy should be settled in an adversarial proceeding before the DARAB, the quasi-judicial arm of the DAR.[14] A function becomes judicial or quasi-judicial in nature when the exercise thereof involves the determination of rights and obligations of the parties.

In issuing the questioned Order of Execution, the DAR Regional Director overstepped the limits of his office and crossed the realm of adjudication. While the orders sought to be implemented merely directed the survey of the areas to be excluded from the CARP, the Order of Execution, however, included the search for a relocation site for the benefit of farmers who would be affected by the order of exemption and the determination of appropriate disturbance compensation. Thus, the DAR Regional Director turned what was supposed to be an administrative process into an adjudicatory proceeding. The relocation of occupants is normally conducted with the issuance of a writ of demolition, an act which is within the competence of the DARAB.

WHEREFORE, the instant petition for review on certiorari is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 37333 is REVERSED and SET ASIDE and the Order of Execution issued by the DAR Regional Director on December 22, 1994 is likewise NULLIFIED. Costs against private respondent.

SO ORDERED.

Quisumbing, (Chairman), Carpio, and Carpio-Morales, JJ., concur.

[1] Declaring the Barangays of Sibugay, Malubog, Babag and Sirao Including the Proposed Lusaran Dam in the City of Cebu and the Municipalities of Argao and Dalaguete in the Province of Cebu as Tourist Zones and for Other Purposes.

[2] Section 10, R.A. No. 6657: Exemptions and Exclusions. - Lands actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watershed and mangroves, national defense, school sites and campuses including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production centers, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed shall be exempt from the coverage of the Act.

[3] CA Rollo, p. 38.

[4] Id. at 43-44.

[5] Id. at 86-87.

[6] The dispositive portion reads:

WHEREFORE, the undersigned hereby issues this Order of Execution:

- Directing the Landowner concerned to effect payment of disturbance compensation to the FBs concerned in the amount that is stated in this Order;
- Directing the landowner concerned to effect the immediate relocation of the FBs to the site that has been offered/proposed;
- Directing the landowner concerned to shoulder the cost of relocation; and
- Directing the FBs concerned to vacate their occupied premises within the subject landholding immediately after the landowner concerned shall have already complied with the directive contained in paragraphs a, b and c.

The PARO of Cebu is hereby directed to effect compliance of this Order within fifteen (15) days from receipt hereof.

Pursuant to Section 5(m) of Executive Order No. 129-A and the Memorandum Circular December 31, 1992, issued by the then Director General Raul S. Imperial, the Regional Command of the PNP in Region VII, is hereby enjoined to assist the DAR official/personnel concerned in the smooth and effective implementation of this Order of Execution.

[7] Rollo, p. 136.

[8] Id. at 159.

[9] Ex-Bataan Security Agency, Inc. v. NLRC, 320 Phil. 517 (1995).

[10] Nazareno v. Court of Appeals, et al., 383 Phil. 229 (2000).

[11] Buan v. Court of Appeals, 235 SCRA 424 (1994).

[12] Comment, p. 5; Rollo, p. 306.

[13] Lilia Y. Gonzales v. Court of Appeals, et al., 357 SCRA 599 (2001).

[14] Section 50, R.A. No. 6657: Quasi-Judicial Powers of the DAR. - The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

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