

RACHEL C. CELESTIAL, PETITIONER, VS. JESSE CACHOPERO, RESPONDENT.

G.R. No. 142595. October 15, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In the instant appeal by petition for review on certiorari,[1] petitioner Rachel Cachopero Celestial assails the February 15, 1999 Decision of the Court of Appeals in CA-G.R. SP No. 45927, "Jesse C. Cachopero v. Regional Executive Director of DENR, Region XII and Rachel C. Celestial," which reversed and set aside the Order of the Regional Trial Court (RTC) of Midsayap, Cotabato, Branch 18 dismissing respondent's petition for certiorari, prohibition and mandamus, and mandated the Regional Executive Director of the Department of Environment and Natural Resources (DENR), Region XII to process the Miscellaneous Sales Application (MSA) of respondent Jesse Cachopero in DENR Claim No. XII-050-90 to which petitioner filed a protest.

Respondent, brother of petitioner, filed an MSA (Plan No. (XII-6)- 1669) with the Bureau of Lands covering a 415 square meter parcel of land located at Barrio 8, Midsayap, Cotabato and formerly part of the Salunayan Creek in Katingawan, Midsayap.

In his MSA, respondent alleged that he had, since 1968, been occupying the land whereon he built a residential house and introduced other improvements.

Petitioner filed a protest against respondent's MSA, claiming preferential right over the land subject thereof since it is adjacent to, and is the only outlet from, her residential house situated at Lot No. 2586-G-28 (LRC) Psd-105462, Poblacion 8, Midsayap.

Following an ocular inspection, the Bureau of Lands, finding the land subject of respondent's MSA to be outside the commerce of man, dismissed petitioner's protest and denied respondent's MSA, to wit:

In the ocular inspection, it was verified that the land in dispute with an area of 415 square meters was formerly a part of the Salunayan Creek that became dry as a result of the construction of an irrigation canal by the National Irrigation Administration. However, it was certified by Project Engineer Reynaldo Abeto of the said office in his certification dated May 19, 1982, that only a portion of the same containing an area of 59.40 square meters more or less was taken as part of the National Irrigation Administration service road. It was also ascertained that the P20,000.00 residential house wherein Jesse Cachopero and his family are living is not within the 69-meters width of the national highway. However, per the certification of the local office of the District Engineer for Public Works and Highways, the government may need the area where the house stands for expansion in the future. Moreover, it was also certified by the office of Municipal Mayor that the whole area covered by the miscellaneous sales application of Jesse Cachopero is needed by the municipal government for future public improvements.

From the foregoing facts, it is clear that the subject land is outside the commerce of man and therefore, not susceptible of private acquisition under the provision of the Public Land Act. However, in keeping with the

policy of our compassionate society in tilting the balance of social forces by favoring the disadvantaged in life, we may allow Jesse Cachopero to temporarily occupy the land in dispute, after excluding therefrom the portion needed for the existing right of way being claimed by Rachel Celestial to be [the] only adequate outlet to the public highway until such time that the land is needed by the government for expansion of the road.

WHEREFORE, it is ordered that this case, be, as hereby it is, dismissed and this case (sic), dropped from the records. The Miscellaneous Sales Application (New) of Jesse Cachopero is hereby rejected and in lieu thereof, he shall file a revocable permit application for the land in question after excluding from the southern part of the land the area of five (5) meters for right of way purposes as shown in the sketch drawn at the back of this order. The segregation survey of the area shall be at the pro-rata expense of the parties.

SO ORDERED.[2] (Emphasis and underscoring supplied)

Petitioner thereafter instituted an action for ejectment against respondent and his wife before the Municipal Trial Court of Midsayap, Cotabato, docketed as Civil Case No. 711. A judgment based on a compromise was rendered in said case under the following terms and conditions:

That Spouses Jesse Cachopero and Bema Cachopero, defendants in this case, are going to vacate the premises in question and transfer the old house subject of this ejectment case at the back of Lot No. 2586-G-28 (LRC) Psd-105462, located at 8, Midsayap, Cotabato, within eight (8) months from today, but not later than April 30, 1990;

xxx

That plaintiff is willing to give a two (2)-meter wide exit alley on the eastern portion of said lot as road-right-of-way up to the point of the NIA road on the west of Lot No. 2586-G-28, (LRC) Psd-105462;

That defendants hereby promise to remove all their improvements introduced fronting the residence of the plaintiff before August 31, 1989; and the plaintiff shall likewise remove all her existing improvements on the same area;

x x x[3] (Underscoring supplied)

Subsequently or on May 21, 1991, respondent filed another MSA with the DENR Regional Office of Cotabato involving a portion of the same lot subject of his first MSA, covering an area of 334 square meters, more or less (the subject land), and docketed as DENR-XII-Claim No. 050-90. This time, the MSA was supported by a certification[4] dated January 9, 1989 issued by the Office of the Mayor of Midsayap and an Indorsement[5] dated January 16, 1989 by the District Engineer of the Department of Public Works and Highways stating that the subject land is suitable for residential purposes and no longer needed by the municipal government.

Petitioner likewise filed a protest against her brother-respondent's second MSA, alleging a preferential right over the subject land, she being the adjacent and riparian owner, and maintaining that it is her only access to the national highway. She thus reiterated her demand for a five (5)-meter road right of way through the land.

After another investigation of the subject land, DENR Regional Executive Director Macorro Macumbal issued an Order dated February 17, 1994 stating that it was suitable for residential purposes but that, in light of the conflicting interest of the parties, it be sold at public auction. Respondent's second MSA was accordingly dismissed, viz:

In the ocular investigation of the premises, it was established that the said property is a dried bed of Salunayan Creek resulting from the construction of the irrigation canal by the National Irrigation Administration; that it is suitable for residential purpose x x x

x x x

It is evident that under the law, property of the public domain situated within the first (1st) to fourth class municipalities are disposable by sales only. Since municipality of Midsayap, Cotabato is classified as third (3rd) class municipality and the property in dispute, Lot no. (MSA-XII-6)-1669, is situated in the poblacion of Midsayap, Cotabato, and considering the conflicting interest of the herein parties, it is therefore equitable to dispose the same by sale at a public auction pursuant to Section 67, C.A. No. 141, as amended, pertinent clause of which provides:

x x x sale shall be made through oral bidding; and adjudication shall be made to the highest bidder, xxx.

WHEREFORE, in view of all the foregoing, it is ordered as hereby is ordered that the instant protest is dismissed and dropped from the records, and the Miscellaneous Sales Application (New) of Jesse C. Cachopero is rejected and returned unrecorded. Accordingly, the CENR Officer of CENRO XII-4B shall cause the segregation survey of a portion of five (5) meters in width running parallel to line point C-1 of the approved survey plan (MSA-XII-6)- 1669, sketch is shown at the dorsal side hereof, as a permanent easement and access road for the occupants of Lot No. 2386-G-28, (LRC) Psd-105462 to the national highway. Thereafter, and pursuant to paragraph G.2.3 of Department Administrative Order No. 38, Series of 1990, the CENRO XII 4B shall dispose the remaining area of the lot in question through oral bidding.

SO ORDERED."[6] (Emphasis and underscoring supplied)

Respondent filed a Motion for Reconsideration of the above-said order of the DENR Regional Executive Director, but it was denied by Order of February 27, 1995 by the OIC Regional Executive Director of Region XII, Cotabato City in this wise:

A meticulous scrutiny of the records disclosed that Civil Case No. 711 for ejectment, decided on the basis of compromise agreement of the parties dated August 10, 1989, involved "transfer of the house from Lot No. MSA XII-6-1669 to the litigant's parents' property situated at the back of protestant property, Lot No. 2586-G-28 (LRC), Psd-105462." Whereas the issue in DENR XII Claim No. 050-90 involved the disposition of lot no. (MSA XII-6)- 1669 a residential public land being exclusively vested with the Director of Lands (Sec. 4, C.A. 141).

The two (2) meters wide exit alley provided in the compromise agreement was established by the protestant from her private property (Lot No. 2586-G-28 (LRC), Psd-105462) for the benefit of her brother, herein respondent, upon his transfer to their parents property at the back of Lot No. 2586-G-28 (LRC), Psd-105462. Whereas the five (5) meters wide easement imposed on Lot No. (MSA-XII-6)-1669, a public land, provided in the decision in DENR Claim No. 050-90 is in accordance with Article 670 of the New Civil Code x x x

x x x

With all the above foregoing, we find no reversible error to reconsider our Order of February 17, 1994.

WHEREFORE, the instant motion for reconsideration is DENIED.[7]

Respondent thereupon filed on April 3, 1995 with the RTC of Midsayap, Cotabato a petition for certiorari, prohibition and mandamus with preliminary mandatory injunction and temporary restraining order assailing the Orders dated February 17, 1994 and February 27, 1995 of the DENR Regional Executive Director and OIC Regional Executive Director of Region XII, Cotabato, attributing grave abuse of discretion in the issuance thereof.

Petitioner moved for the dismissal of the petition, alleging lack of jurisdiction and non-exhaustion of administrative remedies.

By Order of March 26, 1997, the RTC denied respondent's petition for certiorari for lack of merit and non-exhaustion of administrative remedies, as it did deny his motion for reconsideration.

The Court of Appeals, before which respondent assailed the RTC orders by petition for certiorari, prohibition and mandamus, granted said petition, and accordingly reversed and set aside the assailed orders of the RTC and ordered the DENR to process the MSA of respondent.[8]

Petitioner's Motion for Reconsideration[9] of the appellate court's decision having been denied by Resolution of March 2, 2000,[10] she lodged the present petition, alleging that the Court of Appeals acted contrary to law and jurisprudence 1) in holding that the RTC of Midsayap had jurisdiction over respondent's petition, the doctrine of exhaustion of administrative remedies was not applicable to the instant case, and the contested land is public land; and 2) in ordering the processing of respondent's MSA pursuant to R.A. 730.[11]

Petitioner contends that the RTC of Midsayap had no jurisdiction over respondent's petition for certiorari as (a) it "is in the nature of an appeal"[12] falling within the jurisdiction of the Court of Appeals under Section 9(3)[13] of Batas Pambansa Blg. 129 (B.P. 129), as amended; and (b) respondent failed to exhaust administrative remedies when he failed to appeal the questioned Orders to the Secretary of Environment and Natural Resources.[14]

Petitioner's petition fails.

Petitioner has apparently confused the separate and distinct remedies of an appeal (i.e. through a petition for review of a decision of a quasi-judicial agency under Rule 43 of the Rules of Court) and a special civil action for certiorari (i.e. through a petition for review under Rule 65 of the Rules of Court). In *Silverio v. Court of Appeals*,[15] this Court, speaking through then Chief Justice Claudio Teehankee, distinguished between these two modes of judicial review as follows:

The provisions of the Rules of Court permit an aggrieved party, in the general types of cases, to take a cause and apply for relief to the appellate courts by way of either of two distinctly different and dissimilar modes - through the broad process of appeal or the limited special civil action of certiorari. An appeal brings up for review errors of judgment committed by a court with jurisdiction over the subject of the suit and the persons of the parties or any such error committed by the court in the exercise of its jurisdiction amounting to nothing more than an error of judgment. On the other hand, the writ of certiorari issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of certiorari "cannot legally be used for any other purpose." In terms of its function, the writ of certiorari serves "to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction" or to relieve parties from arbitrary acts of courts - acts which courts have no power or authority in law to perform.[16] (*Italics, emphasis and underscoring supplied*)

Concomitantly, appellate jurisdiction is separate and distinct from the jurisdiction to issue the prerogative writ of certiorari. An appellate jurisdiction refers to a process which is a continuation of the original suit and not a commencement of a new action. In contrast, to invoke a court's jurisdiction to issue the writ of certiorari requires the commencement of a new and original action therefor, independent of the proceedings which gave rise to the questioned decision or order.[17] As correctly held by the Court of Appeals,[18] the RTCs have concurrent jurisdiction with the Court of Appeals and the Supreme Court over original petitions for certiorari, prohibition and mandamus[19] under Section 21[20] of B.P. 129.

A perusal of respondent's Petition dated April 3, 1995 filed before the RTC clearly shows that it alleged that the DENR Regional Executive Director and OIC Regional Executive Director acted with "grave abuse of discretion and without or in excess of jurisdiction amounting to lack of jurisdiction" when they issued the questioned Orders dated February 17, 1994 and February 27, 1995. Evidently, respondent sought a judicial review of the questioned Orders through a special civil action for certiorari which, as aforementioned, was within the jurisdiction of the RTC of Midsayap, Cotabato.[21]

Additionally, this Court finds no reason to disturb the Court of Appeals' conclusion that the instant case falls under the recognized exceptions to the rule on exhaustion of administrative remedies, to wit:

The rule of exhaustion of administrative remedies is inapplicable if it should appear that an irreparable injury or damage will be suffered by a party if he should await, before taking court action, the final action of the administrative official concerned on the matter as a result of a patently illegal order (*Vivo vs. Cloribel*, 18 SCRA 713; *De Lara vs. Cloribel*, 14 SCRA 269); or where appeal would not prove to be speedy and adequate remedy.[22]

True, the doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review, and non-observance thereof is a ground for the dismissal of the complaint,[23] the rationale being:

The thrust of the rule on exhaustion of administrative remedies is that the courts must allow the administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. It is presumed that an administrative agency, if afforded an opportunity to pass upon a matter, will decide the same correctly, or correct any previous error committed in its forum. Furthermore, reasons of law, comity and convenience prevent the courts from entertaining cases proper for determination by administrative agencies. Hence, premature resort to the courts necessarily becomes fatal to the cause of action of the petitioner.[24]

However, this requirement of prior exhaustion of administrative remedies is not absolute, there being instances when it may be dispensed with and judicial action may be validly resorted to immediately, among which are: 1) when the question raised is purely legal; 2) when the administrative body is in estoppel; 3) when the act complained of is patently illegal; 4) when there is urgent need for judicial intervention; 5) when the claim involved is small; 6) when irreparable damage will be suffered; 7) when there is no other plain, speedy and adequate remedy; 8) when strong public interest is involved; and 9) in quo warranto proceedings.[25]

Hence, where the act complained of is patently illegal since the administrative body acted without or in excess of jurisdiction or with such grave abuse of discretion as to be tantamount to lack of jurisdiction, as was alleged in respondent's petition before the RTC, prior exhaustion of administrative remedies is not required and resort to the courts through a special civil action for certiorari under Rule 65 is permitted:

We hold that it was an error for the court a quo to rule that the petitioners should have exhausted its remedy of appeal from the orders denying their application for waiver/suspension to the Board of Trustees and thereafter to the Court of Appeals pursuant to the Rules. Certiorari is an appropriate remedy to question the validity of the challenged issuances of the HDMF which are alleged to have been issued with grave abuse of discretion amounting to lack of jurisdiction.

Moreover, among the accepted exceptions to the rule on exhaustion of administrative remedies are: (1) where the question in dispute is purely a legal one; and (2) where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction. Moreover, while certiorari as a remedy may not be used as a substitute for an appeal, especially for a lost appeal, this rule should not be strictly enforced if the petition is genuinely meritorious. It has been said that where the rigid application of the rules would frustrate substantial justice, or bar the vindication of a legitimate grievance, the courts are justified in exempting a particular case from the operation of the rules.[26] (Emphasis supplied)

To justify the issuance of the writ of certiorari, however, it must be clearly shown that there is a patent and grave abuse of discretion amounting to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner

by reason of passion or personal hostility.[27]

The crux of the case at bar is, therefore, whether the DENR Regional Executive Director and OIC Regional Director acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned Orders dated February 17, 1994 and February 27, 1995, respectively.

In resolving respondent's second MSA and petitioner's protest thereto, the DENR Regional Executive Director, after considering the conflicting interest of the parties, found it equitable to resolve the same by directing the sale of the subject land at public auction pursuant to Section 67, C.A. No. 141, as amended.

Section 67 of Commonwealth Act No. 141, otherwise known as "The Public Land Act," provides the procedure for the disposition of lands of the public domain which are open to disposition or concession and intended to be used for residential, commercial, industrial or other productive purposes other than agricultural, to wit:

SEC. 67. The lease or sale shall be made through oral bidding; and adjudication shall be made to the highest bidder. However, where an applicant has made improvements on the land by virtue of a permit issued to him by competent authority, the sale or lease shall be made by sealed bidding as prescribed in Section twenty-six of this Act, the provisions of which shall be applied wherever applicable. If all or part of the lots remain unleased or unsold, the Director of Lands shall from time to time announce in the Official Gazette or in any other newspapers of general circulation, the lease or sale of those lots, if necessary. (Underscoring supplied)

With the enactment of Republic Act No. 730[28] on June 18, 1952, however, an exception to the foregoing procedure was created by authorizing disposition of lands of the public domain by private sale, instead of bidding, provided that: (1) the applicant has in his favor the conditions specified therein and (2) the area applied for is not more than 1,000 square meters.[29] The pertinent provision of R.A. 730 thus provides:

SEC. 1. Notwithstanding the provisions of Sections 61 and 67 of Commonwealth Act No. 141, as amended by Republic Act No. 293, any Filipino citizen of legal age who is not the owner of a home lot in the municipality or city in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is not needed for the public service, shall be given preference to purchase at a private sale of which reasonable notice shall be given to him not more than one thousand square meters at a price to be fixed by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources. It shall be an essential condition of this sale that the occupant has constructed his house on the land and actually resided therein. Ten percent of the purchase price shall be paid upon the approval of the sale and the balance may be paid in full, or in ten equal annual installments.

SEC. 2. Land acquired under the provisions of this Act shall not be subject to any restrictions against encumbrance or alienation before and after the issuance of the patents thereon. [30]

SEC. 3. The provisions of the Public Land Act with respect to the sale of lands for residential purposes which are not inconsistent herewith shall be applicable.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 18, 1952. (Emphasis supplied)

Given the foregoing provisions of R.A. 730 which took effect on June 18, 1952, and the DENR Regional Executive Director's February 17, 1994 finding that the subject land was "suitable for residential purposes," it was incumbent upon him to determine whether the provisions of R.A. 730 were applicable to respondent's MSA. As held by the Court of Appeals:

Finally, petitioner contends that the DENR Regional Executive Director and OIC Regional Executive Director gravely erred in ordering the sale of the subject lot through oral bidding applying Section 67, Commonwealth

Act No. 141 and not Republic Act 730 authorizing the sale of public land without bidding.

We agree with the petitioner.

x x x

Apropos is the case of Reyes vs. Court of Appeals, 125 SCRA 785, ruling that:

"When public land lots of not more than 1,000 sq. ms. are used, or to be used as a residence x x x they can be sold on private sales under the provisions of Republic Act No. 730."

In Agura vs. Serfino, Sr., (204 SCRA 569); the Supreme Court held that:

"R.A. 730 authorizes a sale by private sale, as an exception to the general rule that it should be by bidding, if the area applied for does not exceed 1,000 square meters, x x x."

We see no reason why these ruling should not be applied in this case which involves 415 [should have been 334] square meters only.[31]

The Regional Director, however, summarily chose to apply Section 67 of the Public Land Act upon a finding that it was more "equitable" in light of the "conflicting interest" of the parties. In his "Answer" to respondent's petition before the RTC, the Director justified his non-application of R.A. 730 in this wise:

x x x Republic Act No. 730 is not applicable to the case at bar, the land being disputed, Republic Act No. 730 requisite (sic) was not meet (sic) that for this law to apply to a particular case, the land must be in the first place not a land in conflict. There being a pending protest for final adjudication, the said conflict continues to exist thus an impediment to the application of Republic Act 730[32] (Emphasis supplied),

which justification he reiterated in his Opposition[33] to respondent's Motion for Reconsideration of the RTC decision.

The Director's reliance on equity as basis for his action was misplaced, however. It is well-settled that "equity follows the law." [34] Described as "justice outside legality," it is applied only in the absence of, and never against, statutory law or legal pronouncements.[35] Where pertinent positive rules are present, they should pre-empt and prevail over all abstract arguments based only on equity.[36]

A reading of R.A. 730 (or of the Public Land Act for that matter) shows nothing therein to support the Director's contention that the pendency of a protest is a bar to the application of R.A. 730 to an MSA. Indeed, that Section 1 of R.A. 730 gives a qualified applicant preference to purchase alienable public land suitable for residential purposes implies that there may be more than one party interested in purchasing it.

What is more, under Section 91 of the Public Land Act, it is the duty of the Director of the Lands Management Bureau (formerly the Director of Lands) to determine whether the material facts set forth in an MSA are true:

SEC. 91. The statements made in the application shall be considered as essential conditions and parts of any concession, title, or permit issued on the basis of such application, and any false statement therein or omission of facts altering, changing, or modifying the consideration of the facts set forth in such statements, and any subsequent modification, alteration, or change of the material facts set forth in the application shall ipso facto produce the cancellation of the concession, title, or permit granted. It shall be the duty of the Director of Lands, from time to time and whenever he may deem it advisable, to make the necessary investigations for the purpose of ascertaining whether the material facts set out in the application are true, or whether they continue to exist and are maintained and preserved in good faith, and for the purposes of such investigation, the Director of Lands is hereby empowered to issue subpoenas and subpoenas duces tecum and, if necessary, to obtain compulsory process from the courts. In every investigation made in accordance with this section, the existence

of bad faith, fraud, concealment, or fraudulent and illegal modification of essential facts shall be presumed if the grantee or possessor of the land shall refuse or fail to obey a subpoena or subpoena duces tecum lawfully issued by the Director of Lands or his authorized delegates or agents, or shall refuse or fail to give direct and specific answers to pertinent questions, and on the basis of such presumption, an order of cancellation may issue without further proceedings. (Emphasis supplied)

Likewise, under Section 102 of the same Public Land Act, it is the duty of the Director of the Lands Management Bureau to, after due hearing, verify whether the grounds of a protest or objection to an MSA are well founded, and, if so, to cancel the MSA:

SEC. 102. Any person, corporation, or association may file an objection under oath to any application or concession under this Act, grounded on any reason sufficient under this Act for the denial or cancellation of the application or the denial of the patent or grant. If, after the applicant or grantee has been given suitable opportunity to be duly heard, the objection is found to be well founded, the Director of Lands shall deny or cancel the application or deny patent or grant, and the person objecting shall, if qualified, be granted a prior right of entry for a term of sixty days from the date of the notice. (Emphasis supplied)

There was thus clearly a positive duty on the part of the DENR Director to process respondent's MSA, and to ascertain, particularly in light of petitioner's protest, whether respondent was qualified to purchase the subject land at a private sale pursuant to R.A. 730. This, he did not do.

In fine, by abdicating his duty to process respondent's MSA and summarily ordering, without factual or legal basis, that the subject land be disposed of via oral bidding pursuant to Section 67 of the Public Land Act, the Director acted with patent grave abuse of discretion amounting to lack or excess of jurisdiction. As the Court of Appeals held:

Considering that the assailed Orders of public respondent DENR Regional Executive Director applying Section 67 of Commonwealth Act No. 141 and ordering the sale of the subject lot by oral bidding are patently erroneous, the authority of the court to issue writs of certiorari, prohibition and mandamus is warranted.[37]

The Director's commission of grave abuse of discretion does not, however, mean that respondent automatically has the better right to the subject land. As mandated by law, the Director must process respondent's MSA, conduct an investigation, and determine whether the material facts set forth therein are true to bring it within the coverage of R.A. 730.

A thorough investigation is all the more imperative considering that petitioner's protest raises serious factual issues regarding respondent's qualification to purchase the subject land - in particular, whether he already owns a home lot in Midsayap and whether he has, in good faith, constructed his house on the subject land and actually resided therein. These factual issues are properly within the authority of the DENR and the Land Management Bureau, which are tasked with carrying out the provisions of the Public Land Act and R.A. 730,[38] to determine, after both parties have been given an opportunity to fully present their evidence.

As for petitioner's claim of ownership over the subject land, admittedly a dried-up bed of the Salunayan Creek, based on (1) her alleged long term adverse possession and that of her predecessor-in-interest, Marcelina Basadre, even prior to October 22, 1966, when she purchased the adjoining property from the latter, and (2) the right of accession under Art. 370 of the Spanish Civil Code of 1889 and/or Article 461 of the Civil Code, the same must fail.

Since property of public dominion is outside the commerce of man[39] and not susceptible to private appropriation and acquisitive prescription,[40] the adverse possession which may be the basis of a grant of title in the confirmation of an imperfect title refers only to alienable or disposable portions of the public domain.[41] It is

only after the Government has declared the land to be alienable and disposable agricultural land that the year of entry, cultivation and exclusive and adverse possession can be counted for purposes of an imperfect title.[42]

A creek, like the Salunayan Creek, is a recess or arm extending from a river and participating in the ebb and flow of the sea.[43] As such, under Articles 420(1)[44] and 502(1)[45] of the Civil Code, the Salunayan Creek, including its natural bed, is property of the public domain which is not susceptible to private appropriation and acquisitive prescription.[46] And, absent any declaration by the government, that a portion of the creek has dried-up does not, by itself, alter its inalienable character.

This, in fact, was the very reason behind the denial of respondent's first MSA, the District Engineer having certified that the government may need the subject land for future expansion, and the office of the Municipal Mayor having certified that it was needed by the municipal government for future public improvements.[47] Consequently, it was only after the same offices subsequently certified[48] that the subject land was suitable for residential purposes and no longer needed by the municipal government that it became alienable and disposable. Confronted with similar factual circumstances, this Court in *Bracewell v. Court of Appeals*[49] held:

Clear from the above is the requirement that the applicant must prove that the land is alienable public land. On this score, we agree with respondents that petitioner failed to show that the parcels of land subject of his application are alienable or disposable. On the contrary, it was conclusively shown by the government that the same were only classified as alienable or disposable on March 27, 1972. Thus, even granting that petitioner and his predecessors-in-interest had occupied the same since 1908, he still cannot claim title thereto by virtue of such possession since the subject parcels of land were not yet alienable land at that time nor capable of private appropriation. The adverse possession which may be the basis of a grant of title or confirmation of an imperfect title refers only to alienable or disposable portions of the public domain.[50] (Emphasis supplied)

With respect to petitioner's invocation of the principle of accession under either Article 370 of the Spanish civil Code of 1889 or Article 461 of the Civil Code, the same does not apply to vest her with ownership over subject land.

Under Article 370[51] of the Spanish Civil Code of 1889 which took effect in the Philippines on December 7, 1889,[52] the beds of rivers which remain abandoned because the course of the water has naturally changed belong to the owners of the riparian lands throughout their respective lengths. If the abandoned bed divided estates belonging to different owners, the new dividing line shall run at equal distance therefrom.[53]

When the present Civil Code took effect on August 30, 1950,[54] the foregoing rule was abandoned in favor of the present Article 461, which provides:

ART. 461. River beds which are abandoned through the natural change in the course of the waters ipso facto belong to the owners whose lands are occupied by the new course in proportion to the area lost. However, the owners of the lands adjoining the old bed shall have the right to acquire the same by paying the value thereof, which value shall not exceed the value of the area occupied by the new bed. (Emphasis supplied)

Article 461 provides for compensation for the loss of the land occupied by the new bed since it is believed more equitable to compensate the actual losers than to add land to those who have lost nothing.[55] Thus, the abandoned river bed is given to the owner(s) of the land(s) onto which the river changed its course instead of the riparian owner(s).[56]

Petitioner claims that on October 22, 1966, when she purchased the property adjoining the subject land from Marcelina Basadre, the said subject land was already a dried-up river bed such that "almost one-half portion of the residential house x x x was so already built and is still now situated at the said dried-up portion of the Salunayan Creek bed x x x." [57] She failed to allege, however, when the subject portion of the Salunayan Creek dried up, a

fact essential to determining whether the applicable law is Article 370 of the Spanish Civil Code of 1889 or Article 461 of the Civil Code.

Had the disputed portion of the Salunayan Creek dried up after the present Civil Code took effect, the subject land would clearly not belong to petitioner or her predecessor-in-interest since under the aforementioned provision of Article 461, "river beds which are abandoned through the natural change in the course of the waters ipso facto belong to the owners of the land occupied by the new course," and the owners of the adjoining lots have the right to acquire them only after paying their value.[58]

And both Article 370 of the Old Code and Article 461 of the present Civil Code are applicable only when "[r]iver beds are abandoned through the natural change in the course of the waters." It is uncontroverted, however, that, as found by both the Bureau of Lands and the DENR Regional Executive Director, the subject land became dry as a result of the construction an irrigation canal by the National Irrigation Administration. Thus, in *Ronquillo v. Court of Appeals*,[59] this Court held:

The law is clear and unambiguous. It leaves no room for interpretation. Article 370 applies only if there is a natural change in the course of the waters. The rules on alluvion do not apply to man-made or artificial accretions nor to accretions to lands that adjoin canals or esteros or artificial drainage systems. Considering our earlier finding that the dried-up portion of Estero Calubcub was actually caused by the active intervention of man, it follows that Article 370 does not apply to the case at bar and, hence, the Del Rosarios cannot be entitled thereto supposedly as riparian owners.

The dried-up portion of Estero Calubcub should thus be considered as forming part of the land of the public domain which cannot be subject to acquisition by private ownership. x x x[60] (Emphasis supplied)

Furthermore, both provisions pertain to situations where there has been a change in the course of a river, not where the river simply dries up. In the instant Petition, it is not even alleged that the Salunayan Creek changed its course. In such a situation, commentators are of the opinion that the dry river bed remains property of public dominion.[61]

Finally, while this Court notes that petitioner offered to purchase the subject land from the government,[62] she did so through an informal letter dated August 9, 1989[63] instead of the prescribed form. By such move, she is deemed to have acknowledged that the subject land is public land, for it would be absurd for her to have applied for its purchase if she believed it was hers. She is thus estopped from claiming otherwise.[64]

WHEREFORE, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Puno, (Chairman), Panganiban, and Sandoval-Gutierrez, JJ., concur.
Corona, J., on leave.

[1] Under Rule 45 of the Rules of Court.

[2] Bureau of Lands Order dated September 24, 1985, Records at 35-36.

[3] Rollo at 47-48.

[4] Records at 30.

[5] Id. at 31.

[6] DENR Order dated February 17, 1994, Rollo at 49-50.

[7] Id. at 52.

[8] Id. at 67.

[9] CA Rollo at 74-121.

[10] Rollo at 68-69.

[11] Id. at 13-15.

[12] Id. at 19.

[13] SEC. 9. Jurisdiction. - The Court of Appeals shall exercise:

xxx

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards, or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

xxx

[14] Rollo at 15-17.

[15] 141 SCRA 525 (1986).

[16] Id. at 538-539 (citations omitted); see also Fortich v. Corona, 289 SCRA 624, 642 (1998) and Fernando v. Vasquez, et al., 31 SCRA 288 (1970)

[17] Morales v. Court of Appeals, 283 SCRA 211, 222 (1997).

[18] Rollo at 65.

[19] Cebu Women's Club v. De la Victoria, 227 SCRA 533, 539 (2000); Morales v. Court of Appeals, supra at 222; Comendador v. De Villa, 200 SCRA 80, 96 (1991); People v. Cuaresma, 172 SCRA 415, 423 (1989); Dela Cruz v. Gabor, 30 SCRA 325 (1969)

[20] SEC 21. Original Jurisdiction in other cases. - Regional Trial Courts shall exercise original jurisdiction:

- 1) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions; and
- 2) In actions affecting ambassadors and other public ministers and consuls.

[21] Significantly, respondent Cachopero filed his petition in 1995, before the 1997 Rules of Civil Procedure took effect. Under Section 4, Rule 65 of the present Rules of Court, a petition assailing acts or omissions of quasi-judicial agencies should now be filed with the Court of Appeals, viz:

SEC. 4. Where petition filed. - The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If

it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals. (Italics supplied)

[22] Rollo at 66.

[23] *Castro v. Gloria*, 363 SCRA 417, 422 (2001).

[24] *Gonzales v. Court of Appeals*, 357 SCRA 599, 604 (2001) (citations omitted).

[25] *Castro v. Gloria*, *supra* at 422.

[26] *China Banking Corp. v. Members of the Board of Trustees, Home Development Mutual Fund*, 307 SCRA 443, 449-450 (1999) (citations omitted).

[27] *J.L. Bernardo Construction v. Court of Appeals*, 324 SCRA 24, 34(2000) citing *Lalican v. Vergara*, 276 SCRA 518 (1997); see also *San Miguel Corporation v. Sandiganbayan*, 340 SCRA 289, 310-3 11 (2000); *Cuison v. Court of Appeals*, 289 SCRA 159, 171 (1998).

[28] AN ACT TO PERMIT THE SALE WITHOUT PUBLIC AUCTION OF PUBLIC LANDS OF THE REPUBLIC OF THE PHILIPPINES FOR RESIDENTIAL PURPOSES TO QUALIFIED APPLICANTS UNDER CERTAIN CONDITIONS.

[29] *Agura v. Serfino, Sr.*, 204 SCRA 569, 581-83 (1991).

[30] As amended by Presidential Decree No. 2004, December 30, 1985.

[31] Rollo at 65-66.

[32] Records at 76.

[33] *Id.* at 120.

[34] *I J.C. Vitug*, Civil Law 12 (2003 Ed.) citing *Severino v. Severino*, 44 Phil. 343, 355 (1923); *Labayan v. Talisay Silay Milling Co.*, 52 Phil. 440 (1928).

[35] *Smith, Bell & Co., Inc. v. Court of Appeals*, 267 SCRA 530, 542 (1997); *David-Chan v. Court of Appeals*, 268 SCRA 677, 687 (1997).

[36] *Causapin v. Court of Appeals*, 233 SCRA 615, 625 (1994) citing *Zabat v. Court of Appeals*, 142 SCRA 587 (1986).

[37] Rollo at 66.

[38] Commonwealth Act No. 141, secs. 3-4.

[39] *Municipality of Antipolo v. Zapanta*, 133 SCRA 820, 820 (1984); *Meneses v. Commonwealth*, 69 Phil. 647, 650 (1940).

[40] Civil Code, art. 1113; *Maneclang v. Intermediate Appellate Court*, 161 SCRA 469, 471 (1988); *Meneses v. Commonwealth*, *supra*.

[41] *Palomo v. Court of Appeals*, 266 SCRA 392, 401 (1997); vide *Villarico v. Court of Appeals*, 309 SCRA 193, 198 (1999).

[42] *Republic v. Court of Appeals*, 154 SCRA 476 (1987); *Director of Land Management v. Court of Appeals*, 172 SCRA 455 (1989); see also *Ignacio v. Director of Lands*, 108 Phil. 335, 339 (1960).

[43] *Maneclang v. Intermediate Appellate Court*, supra, citing *Mercado v. Municipal President of Macabebe*, 59 Phil. 592 (1934).

[44] ART. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

xxx (Italics supplied).

[45] ART. 502. The following are of public dominion:

(1) Rivers and their natural beds;

x x x

[46] Vide note 43, supra.

[47] Vide note 2, supra.

[48] Vide notes 4 and 5, supra.

[49] 323 SCRA 193 (2000).

[50] Id. at 198

[51] ART. 370. Los cauces de los rios, que quedan abandonados por variar naturalmente el curso de las aguas, pertenecen a los dueños de los terrenos ribereños en toda la longitud respective a cada uno. Si el cauce abandonado separaba heredades de distintos dueños, la nueva linea divisoria correra equidistante de unas y otras.

[52] *Mijares v. Nery*, 3 Phil. 195 (1904); *Insular Government v. Aldecoa*, 19 Phil. 505 (1911); *Baretto v. Tuazon*, 59 Phil. 845 (1934).

[53] See *Agne v. Director of Lands*, 181 SCRA 793, 805 (1990) and *Pascual v. Sarmiento, et al.*, 37 Phil. 170, 177 (1917).

[54] *Lara v. Del Rosario*, 94 Phil. 778, 783 (1954); *Raymundo v. Peñas*, 96 Phil. 311, 313 (1954); *Hilario, Jr. v. City of Manila*, 126 Phil. 128, 135 (1967).

[55] Report of the Code Commission at 96.

[56] This provision was further modified by Article 58 of Presidential Decree 1067, the Water Code of the Philippines, which took effect on December 31, 1976, viz:

ART. 58. When a river or stream suddenly changes its course to traverse private lands, the owner of the affected lands may not compel the government to restore the river to its former bed; nor can they restrain the government from taking steps to revert the river or stream to its former course. The owners of the lands thus affected are not entitled to compensation for any damage sustained thereby. However, the former owners of the new bed shall be the owners of the abandoned bed in proportion to the area lost by each.

The owners of the affected lands may undertake to return the river or stream to its old bed at their own expense; Provided, That a permit therefor is secured from the Secretary of Public Works, Transportation and Communications and work pertaining thereto are commenced within two years from the change in the course of the river or stream.

[57] Rollo at 24-25.

[58] Ramos v. Intermediate Appellate Court, 175 SCRA 70, 74 (1989).

[59] 195 SCRA 433 (1991).

[60] Id. at 443 (citations omitted).

[61] II. A. Tolentino, Civil Code of the Philippines 137-138 (1992 ed.); II Edgardo L. Paras, Civil Code of the Philippines Annotated 275 (2002 [15th] ed.).

[62] Rollo at 8.

[63] Annex "F" of the Petition, Rollo at 46.

[64] Ronquillo v. Court of Appeals, supra at 443; Ramos v. Intermediate Appellate Court, supra at 74.

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