

SIAIN ENTERPRISES, INC., PETITIONER, VS. F.F. CRUZ & CO., INC., RESPONDENT.*G.R. NO. 146616. August 31, 2006*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-146616/>**CARPIO MORALES, J.:**

Western Visayas Industrial Corporation (WESVICO) filed on September 18, 1973 a foreshore lease application over the foreshore land adjacent to certain lots registered in its name, located in Loboc, Lapuz, La Paz, Iloilo City, including Lot 3309. It eventually withdrew the application and filed on March 1976 a petition for registration over the same foreshore land with the then Court of First Instance of Iloilo. The case was, however, archived as WESVICO's representative could no longer be contacted.

It appears that WESVICO ceased to hold operations and its properties including Lot 3309 were foreclosed by the Development Bank of the Philippines (DBP) which later consolidated its ownership thereon.[1]

On July 7, 1983, F.F. Cruz & Co. (F.F. Cruz) filed with the Bureau of Lands, Iloilo City, District Land Office VI-1 a foreshore lease application[2] over a foreshore land, a portion of which is adjacent to Lot 3309. The application was docketed as FLA (VI-1) 176.

In the preliminary investigation report[3] on F.F. Cruz' FLA (VI-1) 176, Senior Special Investigator Ramon Torre who personally visited and examined the land applied for recommended that the application be given due course.

District Land Officer Norberto Bernas thereafter submitted to the Director of Lands a report,[4] together with relevant documents including the preliminary investigation report. The pertinent portion of Bernas' report reads:

. . . I personally visited the area applied for by the herein applicant and found that the same is actually occupied and used by them as a sanctuary of their marine equipment which they are using in their construction work of the Iloilo Port. The applicant has also introduced some facilities on the area applied for in the repair and maintenance of said equipment. A portion of the land applied for has already been filled up by the applicant as they are in need of a land area for the repair and maintenance of their equipment and in the loading and unloading of materials that they use in the construction of the Iloilo City Port.

x x x x[5] (Emphasis and underscoring supplied)

Petitioner Siain Enterprises Inc. (SIAIN), who purchased from the DBP the properties previously owned by WESVICO including Lot 3309,[6] filed on September 29, 1986 a foreshore lease application[7] over the foreshore land adjacent to the properties it bought from DBP.

Upon learning that 130 linear meters of the foreshore land subject of F.F. Cruz's foreshore lease application overlapped that covered by its foreshore lease application, SIAIN filed on January 9, 1987 a protest[8] alleging that it being the owner of the property adjoining the overlapping area, it should be given preference in its lease.

On March 6, 1987, the Sangguniang Panglungsod of Iloilo City, by Resolution No. 174,[9] approved the recommendation of its Committee on Finance that "for the mutual interest" of F.F. Cruz and SIAIN, SIAIN would get 70 linear meters and F.F. Cruz would get 60 linear meters of the disputed area, in light of its finding that,

among other things, both SIAIN and F.F. Cruz would "contribute substantially to the economic growth of the City of Iloilo."

Concurring with the Sangguniang Panglungsod, the Land Management Bureau (LMB) through its Director, by Order[10] of July 15, 1989, dismissed SIAIN's protest in this wise:

. . . While it cannot be denied that protestant is now the registered owner of the property adjoining the foreshore in question, the disputed foreshore cannot be considered to have been built or formed by means of accretion but is a reclaimed land made by respondent F.F. Cruz and Company for the purpose of utilizing the same in the loading and unloading of their equipment and materials and for the repair and maintenance of said equipment which respondents use in the reclamation of the Iloilo City Port. This is supported by the findings of the District Land Officer Norberto Bernas who, in his letter dated February 18, 1984 to this Office, reported that he personally visited the foreshore in question and found that the same is now actually occupied and used by the respondent company as a sanctuary of its marine equipment which it is using in its construction work of the Iloilo City Port and that a portion of the land applied for has already been filled up by the applicant to be utilized in the repair and maintenance of its equipment and in the loading and unloading of materials it uses in the construction of the Iloilo City Port. It is therefore clear that the foreshore in question is neither an accretion nor an accessory to protestants' property. While protestant SEI appears to be owner of the property adjacent to the disputed foreshore, it cannot be considered as a riparian owner within the contemplation of the aforementioned law.[11] (Emphasis and underscoring supplied)

Accordingly, the LMB disposed:

WHEREFORE, it is ordered that the protest of SIAIN Enterprises, Inc. be, as it hereby it is, dismissed and this case, dropped from the records. Both Foreshore Lease Application Nos. (VI-5) 220 and (VI-1) 176 of SIAIN Enterprises, Inc. and F.F. Cruz and Co., Inc. respectively, shall be amended in such a way that SIAIN's application shall cover SEVENTY (70) linear meters of the disputed foreshore adjoining Lot 3309 while F.F. Cruz's application shall cover SIXTY (60) linear meters thereof. Accordingly, both applications shall be give due course in accordance with the provisions of the Public Land Law, otherwise known as Commonwealth Act No. 141, as amended.[12] (Underscoring supplied)

SIAIN appealed to the Secretary of the Department of Environment and Natural Resources (DENR), arguing that the LMB:

- . . . made [a] false assumption of fact when it considered the foreshore area under . . . controversy as reclaimed land;
- . . . committed a grave error in not considering the preferential right of the riparian owner/littoral owner, . . . to apply for a lease over the foreshore under controversy; [and]
- . . . erred in awarding sixty (60) linear meters of the foreshore under controversy to [F.F. Cruz].[13]

By Decision[14] of May 6, 1997, then DENR Acting Secretary Antonio G.M. La Viña set aside the LMB Order, the pertinent portions of which decision read:

It is blatant error to consider the contested area as reclaimed land as it has no basis in fact, in law and jurisprudence.

The area in question is unquestionably a natural foreshore for which various applicants prior to the herein parties have applied. CRUZ's F.L.A. No. (VI-1) 176 itself which was filed on July 7, 1983, long after it had allegedly filled up the area undeniably shows CRUZ's admission that it is a foreshore and not something else.

The assumption that the contested area is a reclaimed land runs smack against the provision of Article 5 of the Spanish Law on Waters of August 3, 1866 stating that:

"Lands reclaimed from the sea in consequence of works constructed by the State, or by provinces, pueblos or private persons, with proper permission, shall become the property of the party constructing such works, unless otherwise provided by the terms of the grant of authority."

We cannot find in the records anything to show that a "permission" was ever sought by or granted to, CRUZ for the alleged reclamation of the land in question.

x x x x

It is by reason of the Director of Lands' erroneous classification of the contested area as "reclaimed" that he awarded 60 linear meters thereof to CRUZ. However, as heretofore discussed, the said area in question is clearly a natural foreshore and SIAIN is correct in claiming it to be so. Hence, the law that applies in this case is Section 32 of Lands Administrative Order No. 7-1 which was issued by the Secretary of the then Department of Agriculture and Natural Resources . . .

x x x x

It is an undisputed fact that SIAIN is the registered owner of the land adjoining the foreshore area in controversy. Hence SIAIN is the riparian/littoral owner insofar as the contested foreshore area is concerned and should enjoy the preferential right to lease the entire one hundred thirty (130) linear meters of said area adjoining its property, which includes the sixty (60) linear meters thereof awarded to CRUZ in the questioned Order.

x x x x[15] (Emphasis supplied; underscoring partly in the original and partly supplied)

The DENR Acting Secretary thus ordered that the application of F.F. Cruz be amended to exclude the disputed foreshore area adjacent to Lot 3309 and that SIAIN's application be given due course.

F.F. Cruz appealed to the Office of the President, contending that the DENR Acting Secretary acted with grave abuse of discretion:

- IN DISREGARDING THE FINDINGS OF THE DIRECTOR OF LANDS MANAGEMENT BUREAU THAT THE CONTROVERTED AREA IS A RECLAIMED LAND UNDERTAKEN BY APPELLANT F.F. CRUZ . . .

- IN RULING THAT [SIAIN] HAS A PREFERENTIAL RIGHT OVER THE PROPERTY IN DISPUTE;
[and]

- IN ISSUING THE SUBJECT DECISION CONSIDERING THAT HE IS NOT EMPOWERED BY LAW OR RULE TO ISSUE THE SAME.[16]

By Decision[17] of March 12, 1999, the Office of the President, through then Executive Secretary Ronaldo B. Zamora, reversed the decision of the DENR Acting Secretary and reinstated that of the LMB in this wise:

Records reveal that WESVICO, who may be considered as the real riparian owner, had previously availed itself of the preferential right to apply for the foreshore area adjacent to its property. However, it withdrew its application, and instead sought the titling of said property via a petition for registration filed with the court, which eventually archived the case for petitioner's lack of interest. In net effect, WESVICO's preferential right adverted to, albeit initially pursued, was thereafter abandoned due to its voluntary withdrawal of the corresponding application and its erroneous resort to some other mode of acquisition, i.e., the filing of a petition for registration. Consequent to such abandonment, it may be said that WESVICO had already waived its preferential right over the controverted area at the time SIAIN purchased the adjacent property. As vendee, SIAIN was subrogated not only to the rights and actions of its predecessor-in-interest, WESVICO, but also to the absence/lack of those. Also decidedly going for CRUZ is the fact that it applied for the disputed area, occupied the same and introduced improvements thereon long before SIAIN filed its own lease application.

Subject to certain exceptions, it is axiomatic in public land grant that he who is first in time is preferred or stronger in law – *Priore in tempore, potior jure*.

It may be, as stated by the DENR, that the contested area abuts upon the titled property of SIAIN, a circumstance which ordinarily would accord that firm a preferential right to lease the property in question, the rule being that a riparian/littoral owner enjoys preference over the abutting foreshore lands formed by accretion or alluvial deposits.

x x x x

. . . The principle thus enunciated in *Santulan* properly applies where the adjoining lot is a natural foreshore, meaning that the foreshore was formed by what may rightfully be considered as accretion, or the settling down, by natural causes, of soil, earth and other deposits. But such is not what it obtains in this case, contrary to the bare assertion of the DENR Acting Secretary that the "area in question is unquestionably a natural foreshore." .

. .

x x x x

Not being the product of accretion, the disputed strip of foreshore land cannot be the proper subject of a riparian or littoral claim.

x x x x

The actuality of the DENR not formally granting CRUZ a permit to undertake reclamation works on the disputed area can be conceded. But in the light of the *Bernas* report, . . . there can be no quibbling that CRUZ occupied and raised, thru filling, the area to its present level, with the implicit consent, if not approval, of lands authorities. That consent and/or approval have been given may be deduced from the fact that the Bureau of Lands required the payment of, and received from appellant, the amount of P40,032.00 as occupation fee. Any suggestion that CRUZ, after paying the occupational fee, merely planted itself on the disputed area without as much as dredging and filling the same is unacceptable. In a very real sense, therefore, the reclamation work undertaken by CRUZ was with the proper permission, or at least the acquiescence of the Bureau of Lands, the agency which, following *Insular Government v. Aldecoa* (19 Phil. 505), is empowered to grant such permit in behalf of the DENR Secretary.[18] (Emphasis and underscoring supplied)

In its petition for review before the Court of Appeals, SIAIN raised the issues of 1) whether the disputed area is reclaimed land or foreshore land and if found to be foreshore land, 2) whether SIAIN has preferential right to lease the same.[19]

By Decision of July 3, 2000,[20] the appellate court dismissed SIAIN's petition, ruling that there is no justification to digress from the findings and conclusions of the Office of the President and the LMB and that administrative matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud or error of law.

Hence, the present petition for review filed by SIAIN.

SIAIN contends that the evidence overwhelmingly proves that the disputed area is foreshore land and not reclaimed land as found by the Office of the President. It invites attention to F.F. Cruz's own declaration in its foreshore lease application that the disputed area is a "parcel of foreshore land." To SIAIN, this declaration is equivalent to a judicial admission which does not require proof and is conclusive as to it.

Further, SIAIN argues that the records reveal that the only evidence relied upon by the Office of the President is the *Bernas* report which speaks of a portion allegedly filled-up by F.F. Cruz, the identity, location and size of which were never established; and that there is no evidence to prove that the filled-up portion is one and the same

as the disputed area, but that even assuming that it is, F.F. Cruz cannot have a better right over it as the reclamation was made without the necessary permit, hence, it cannot be allowed to benefit from its own wrongdoing.

Furthermore, SIAIN contends that there can be no waiver of preferential right over the disputed property, no advice from the Director of Lands having been communicated to WESVICO, DBP or SIAIN of their preferential right to lease the adjacent foreshore land, and therefore, the 60 days within which they are supposed to apply[21] has not begun to run.

The key to the present controversy lies in the classification of the disputed area.

The DENR Secretary found that the disputed area is a "natural foreshore," hence, it concluded that SIAIN, being a littoral owner (owner of land bordering the sea or lake or other tidal waters[22]), has preferential right to lease it as provided in paragraph 32 of Lands Administrative Order No. 7-1 dated April 30, 1936 which reads:

- Preference of Riparian Owner. – The owner of the property adjoining foreshore lands or lands covered with water bordering upon shores or banks of navigable lakes or rivers, shall be given preference to apply for such lands adjoining his property as may not be needed for the public service, subject to the laws and regulations governing lands of this nature, provided that he applies therefore within sixty (60) days from the date he receives a communication from the Director of Lands advising him of his preferential right.[23] (Emphasis supplied)

The DENR Secretary found the LMB's classification of the disputed area as "reclaimed" erroneous for lack of basis in fact, law and jurisprudence.

On the other hand, while the Office of the President recognized the preferential right of littoral owner WESVICO, it held that it had waived its preferential right and SIAIN, as successor-in-interest, was subrogated to WESVICO's right or lack of it.

The Office of the President went on to hold that since the disputed area is already reclaimed land, it cannot be subject to littoral claim, SIAIN, not being the littoral owner within the contemplation of the law, citing *Santulan v. The Executive Secretary*[24] which elucidated on the principal reason for giving a riparian or littoral owner preferential right, thus:

Now, then, is there any justification for giving to the littoral owner the preferential right to lease the foreshore land abutting on his land?

That rule in paragraph 32 is in consonance with article 4 of the Spanish Law of Waters of 1866 which provides that, while lands added to the shores by accretions and alluvial deposits caused by the action of the sea form part of the public domain, such lands, when they are no longer washed by the waters of the sea are not necessary for purposes of public utility, or for the establishment of special industries, or for the coast guard service," shall be declared by the Government "to be the property of the owners of the estates adjacent thereto and as increment thereof."

In other words, article 4 recognizes the preferential right of the littoral (riparian according to paragraph 32) to the foreshore land formed by accretions or alluvial deposits due to the action of the sea.

The reason for the preferential right is the same as the justification for giving accretions to the riparian owner for the diminutions which his land suffers by reason of the destructive force of the waters. So, in the case of littoral lands, he who loses by the encroachments of the sea should gain by its recession.[25] (Emphasis and underscoring supplied)

Furthermore, as reflected above, the Office of the President, finding that F.F. Cruz's occupation and introduction

of improvements on the contested area long before SIAIN filed its lease application, held that "it is axiomatic in public land grant that he who is first in time is preferred or stronger in law."

The petition is impressed with merit.

That the foreshore area had been reclaimed does not remove it from its classification of foreshore area subject to the preferential right to lease of the littoral owner.

It bears noting that it was not the reclamation that brought the disputed foreshore area into existence. Such foreshore area existed even before F.F. Cruz undertook its reclamation. It was "formed by accretions or alluvial deposits due to the action of the sea." Following Santulan, the littoral owner has preferential right to lease the same.

Contrary to the ruling of the Office of the President, as affirmed by the appellate court, littoral owner WESVICO cannot be considered to have waived or abandoned its preferential right to lease the disputed area when it subsequently filed an application for registration thereover. For being a part of the public domain, ownership of the area could not be acquired by WESVICO. Its preferential right remained, however. Its move to have the contested land titled in its name, albeit a faux pas, in fact more than proves its interest to utilize it.

As correctly argued by SIAIN, were WESVICO's petition for registration which, as stated earlier, was archived by the trial court, pursued but eventually denied, WESVICO would not have been barred from filing anew a foreshore lease application. Parenthetically, the petition for registration of WESVICO was archived not on account of lack of interest but because it ceased operations due to financial reasons.

WHEREFORE, the Court of Appeals Decision dated July 3, 2000 is REVERSED and SET ASIDE.

The May 6, 1997 Decision of then Acting Secretary Antonio G.M. La Viña of the Department of Environment and Natural Resources is REINSTATED.

SO ORDERED.

Quisumbing, (Chairman), Carpio, Tinga and Velasco, Jr., JJ., concur.

[1] Rollo, p. 90 (dorsal side).

[2] Land Management Bureau (LMB) folder, p. 61. (The LMB folder is paginated from pp. 307-1).

[3] Id. at 59.

[4] Id. at 65-64.

[5] Ibid.

[6] LMB folder, p. 147.

[7] Id. at 140.

[8] Id. at 130-128.

[9] Id. at 175-170.

[10] Id. at 285-282.

[11] Id. at 283.

[12] Id. at 282.

[13] Id. at 295.

[14] DENR folder, pp. 95-90. (The DENR folder is paginated from pp. 188-1).

[15] Id. at 93-91.

[16] Id. at 120.

[17] Id. at 180-174.

[18] Id. at 177-174.

[19] Court of Appeals (CA) rollo, p. 18.

[20] Penned by Justice Jose Sabio, Jr. and concurred in by Justices Ramon Mabutas, Jr. and Demetrio G. Demetria, id. at 219-227.

[21] Paragraph 32 of Lands Administrative Order No. 7-1 dated April 30, 1936.

[22] *Santulan v. The Executive Secretary*, G.R. No. L-28021, December 15, 1977, 80 SCRA 548, 556.

[23] In *Santulan* (supra note 22), this Court held:

The word "riparian" in paragraphs 32 and 4 of the departmental regulations is used in a broad sense as referring to any property having a water frontage. Strictly speaking, "riparian" refers to rivers. A riparian owner is a person who owns land situated on a bank of a river.

But in paragraphs 32 and 4, the term "riparian owner" embraces not only the owners of lands on the banks of rivers but also the littoral owners, meaning the owners of lands bordering the shore of the sea or lake or other tidal waters. The littoral is the coastal region including both the land along the coast and the water near the coast of the shore zone between the high and low watermarks.

[24] *Supra*.

[25] Id. at 557-558.

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