

DORIS CHIONGBIAN-OLIVA, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE REGISTER OF DEEDS OF CEBU CITY, RESPONDENTS.

G.R. NO. 163118. April 27, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari assails (1) the Decision[1] dated August 7, 2003 of the Court of Appeals in CA-G.R. CV. No. 74409, reversing the Decision[2] dated December 13, 2001 of the Regional Trial Court of Cebu City, Branch 12 in SP. Proc. No. 10746-CEB, and (2) the Resolution[3] dated March 17, 2004, denying the motion for reconsideration.

The following facts are undisputed.

Petitioner Doris Chiongbian-Oliva is the registered owner of a parcel of land in Talamban, Cebu City, as evidenced by Transfer Certificate of Title (TCT) No. 5455.[4] This title originated from Original Certificate of Title (OCT) No. 1066 from a free patent granted on September 11, 1969 under Commonwealth Act No. 141,[5] as amended. The free patent, OCT No. 1066, and TCT No. 5455 contained the condition that a forty-meter legal easement from the bank of any river or stream shall be preserved as permanent timberland.[6]

On October 1, 2001, petitioner filed a petition for reduction of legal easement docketed as SP. Proc. No. 10746-CEB before the Regional Trial Court of Cebu City, Branch 12. Petitioner alleged that the property is residential as shown by the tax declaration[7] and the Certification[8] of the Office of the City Assessor. Thus, the applicable legal easement is only three meters pursuant to Department of Environment and Natural Resources (DENR) Administrative Order No. 99-21,[9] and not forty meters, which applies to timberlands and forest lands. Petitioner also alleged that enforcing the forty-meter legal easement would virtually deprive her of the use and enjoyment of the property since it consists only of 1,000 square meters.

The DENR countered that the property is inalienable. It also claimed that the applicant agreed on the forty-meter legal easement when the free patent was applied for.

The trial court ruled in favor of petitioner. It said that there is no longer any reason for the forty-meter legal easement because the property had been transformed into residential land and the area where it is located has been reclassified as urban. Applying DENR A.O. No. 99-21, the applicable legal easement is only three meters. The decision's decretal portion states:

WHEREFORE, premises considered, it is hereby ordered that the legal encumbrance of forty (40) meters for river bank protection annotated on Petitioner's Transfer Certificate of Title No. 5455 be reduced to the applicable legal easement of three (3) meters in accordance with law.

Accordingly, the Register of Deeds of Cebu City is hereby directed to cancel the above legal encumbrance of

forty (40) meters annotated on Petitioner's Transfer Certificate of Title No. 5455 and in lieu thereof, annotate the applicable legal encumbrance of three (3) meters for river bank protection.

SO ORDERED.[10]

On appeal, the Court of Appeals reversed the trial court's decision. It upheld the DENR's claim that the property was inalienable. Accordingly, a positive act of the government was necessary to declassify it from forest land to alienable land. Declaration of the property as residential in the tax declaration and reclassification of the area where it is located as urban were insufficient bases to reclassify the property. The fallo of the appellate court's decision reads:

WHEREFORE, premises considered, the Decision dated December 13, 2001, of the Regional Trial Court, 7th Judicial Region, Branch 12, Cebu City, in SP. PROC. NO. 10746-CEB, is hereby REVERSED and SET ASIDE. No pronouncement as to costs.

SO ORDERED.[11]

The appellate court later denied petitioner's motion for reconsideration.

Petitioner now raises the following issues:

I.

WHETHER OR NOT PETITIONER'S LOT COVERED BY THE LEGAL ENCUMBRANCE IS A PUBLIC LAND/LAND OF THE PUBLIC DOMAIN (AND THUS, CANNOT BE RECLASSIFIED EXCEPT BY THE EXECUTIVE DEPARTMENT) OF THE GOVERNMENT, OR A PRIVATE LAND.

II.

WHETHER OR NOT THE TRIAL COURT IS CORRECT IN TAKING JUDICIAL NOTICE OF THE FACT THAT PETITIONER'S LOT COVERED BY TCT NO. 5455 IS SITUATED IN AN URBAN AREA AND NOT IN A FOREST AREA, AND IN THUS CONCLUDING THAT THE LEGAL EASEMENT APPLICABLE FOR RIVER BANK PROTECTION IS THREE (3) METERS AND NOT FORTY (40) METERS.

III.

WHETHER OR NOT SECTION 90(I) OF C.A. NO. 141 WHICH PROVIDES FOR A UNIFORM EASEMENT OF FORTY (40) METERS FROM THE BANK ON EACH SIDE OF ANY RIVER, AND WHICH PRESERVES THE SAID 40-METER PORTION AS PERMANENT TIMBERLAND REGARDLESS OF WHETHER IT IS SITUATED IN A FOREST AREA OR AN URBAN AREA, IS STILL APPLICABLE TO LOTS SITUATED IN AN URBAN AREA IN THE LIGHT OF THE PROVISIONS OF SUBSEQUENT LEGISLATION, SPECIFICALLY SECTION 51 OF P.D. NO. 1067.[12]

Simply stated, the issues are: (1) Is the property public or private land? and (2) Is the applicable legal easement forty or three meters?

On the first issue, C.A. No. 141, as amended, provides that lands of the public domain may be classified by the President, upon the recommendation of the Secretary of Environment and Natural Resources, into: (1) alienable or disposable; (2) timber; and (3) mineral lands.[13] However, only alienable or disposable lands may be disposed of through any of the forms of concession enumerated in the law.[14] A free patent is one of such concessions[15] and once it is registered and the corresponding certificate of title issued, the land covered by them ceases to be part of the public domain and becomes private property.[16]

Verily, by the issuance of a free patent on September 11, 1969, and the subsequent issuance of OCT No. 1066 and

TCT No. 5455, the property in this case had become private land. It is inconsistent for an alienable land of the public domain to be covered by a free patent and at the same time retain its character as public land.

On the second issue, Section 90(i) of C.A. No. 141 requires that a forty-meter legal easement from the bank of any river or stream shall be preserved as permanent timberland. More specifically, it provides:

(i) That the applicant agrees that a strip forty meters wide starting from the bank on each side of any river or stream that may be found on the land applied for, shall be demarcated and preserved as permanent timberland to be planted exclusively to trees of known economic value, and that he shall not make any clearing thereon or utilize the same for ordinary farming purposes even after patent shall have been issued to him or a contract of lease shall have been executed in his favor. (Emphasis supplied.)

To implement this, the DENR promulgated A.O. No. 99-21 which provides the guidelines in the processing, verification, and approval of isolated and cadastral surveys. Pertinent to this case are the following provisions:

2.1 Original Surveys:

2.1.a Public Lands:

All alienable and disposable (A and D) lands of the public domain shall be surveyed pursuant to Section 1 Par. (1) of R.A. 1273 [C.A. No. 141, Section 90(i)] whereby a strip of forty (40) meters wide starting from the banks on each side of any river or stream that may be found on the land shall be demarcated and preserved as permanent timberland.

Likewise, to be demarcated are public lands along the banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest area, along their margins which are subject to the easement for public use in the interest of recreation, navigation, floatage, fishing and salvage.

x x x x

2.3 Survey of Titled Lands:

2.3.1 Administratively Titled Lands:

The provisions of item 2.1.a and 2.1.b shall be observed as the above. However, when these lands are to be subdivided, consolidated or consolidated-subdivided, the strip of three (3) meters which falls within urban areas shall be demarcated and marked on the plan for easement and bank protection.

The purpose of these strips of land shall be noted in the technical description and annotated in the title.

x x x x

Running in parallel vein is the Water Code of the Philippines[17] which provides:

Art. 51. The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind.

Since the property in this case was originally alienable land of the public domain, the application for free patent contained the condition that a forty-meter legal easement from the banks on each side of any river or stream found on the land shall be demarcated and preserved as permanent timberland. However, after the property was administratively titled, it underwent several surveys for purposes of subdivision, consolidation, or consolidation-subdivision as evidenced by TCT No. 5455. This title provides that it is a transfer from TCT Nos. 3975 and 4360[18] and describes the property as Lot 2 of the consolidation-subdivision plan Pcs-07-002121,

being a portion of Lot 6 and 7 Pcs-07-000974.[19] Thus, presently only three meters is required to be demarcated and preserved as permanent timberland.

In this case, the trial court properly took judicial notice that Talamban, Cebu City is an urban area. Judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them.[20] A municipal jurisdiction, whether designated as chartered city or provincial capital, is considered as urban in its entirety if it has a population density of at least 1,000 persons per square kilometer.[21] The City of Cebu was created on October 20, 1934 under Commonwealth Act No. 58.[22] It is a highly urbanized city classified as entirely urban.[23] Thus, all its barangays, including Talamban, are considered urban.

Conformably with the foregoing considerations, the reduction of the legal easement of forty meters on petitioner's property covered by TCT No. 5455 to three meters now is in order.

WHEREFORE, the instant petition is GRANTED. The assailed Decision dated August 7, 2003 and Resolution dated March 17, 2004 of the Court of Appeals in CA-G.R. CV. No. 74409 are REVERSED, and the Decision dated December 13, 2001 of the Regional Trial Court of Cebu City, Branch 12 in SP. Proc. No. 10746-CEB is REINSTATED.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 44-51.

[2] Records, pp. 28-30.

[3] Supra note 1, at 56-57.

[4] Records, p. 5.

[5] AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN. Otherwise known as "The Public Land Act," approved on November 7, 1936.

[6] Inserted by Republic Act No. 1273, Section 1, approved on June 14, 1955.

SECTION 1. Section ninety of Commonwealth Act Numbered One hundred forty-one, otherwise known as the "Public Land Act", is hereby amended by adding the following subsection at the end thereof:

"(i) That the applicant agrees that a strip forty meters wide starting from the bank on each side of any river or stream that may be found on the land applied for, shall be demarcated and preserved as permanent timberland to be planted exclusively to trees of known economic value, and that he shall not make any clearing thereon or utilize the same for ordinary farming purposes even after patent shall have been issued to him or a contract of lease shall have been executed in his favor."

x x x x

[7] Records, p. 6.

[8] Id. at 7.

[9] Superseding DAO No. 97-05 and Prescribing the Revised Guidelines in the Implementation of the Pertinent Provisions of R.A. 1273, P.D. 705 and P.D. 1067, dated June 11, 1999.

[10]Records, p. 30.

[11] Rollo, p. 50.

[12] Id. at 21-22.

[13]Commonwealth Act No. 141 (1936), Sec. 6.

[14] Id. at Secs. 7 to 10.

[15]Id. at Sec. 11.

[16] Republic v. Heirs of Felipe Alejaga, Sr., G.R. No. 146030, December 3, 2002, 393 SCRA 361, 373; See Heirs of Carlos Alcaraz v. Republic, G.R. No. 131667, July 28, 2005, 464 SCRA 280, 291, citing Baguio v. Republic of the Philippines, 361 Phil. 374, 379 (1999).

[17] Presidential Decree No. 1067. A DECREE INSTITUTING A WATER CODE, THEREBY REVISING AND CONSOLIDATING THE LAWS GOVERNING THE OWNERSHIP, APPROPRIATION, UTILIZATION, EXPLOITATION, DEVELOPMENT, CONSERVATION AND PROTECTION OF WATER RESOURCES, done on December 31, 1976.

[18] Records, p. 5.

[19] Id.

[20]Habagat Grill v. DMC-Urban Property Developer, Inc., G.R. No. 155110, March 31, 2005, 454 SCRA 653, 668; See People v. Rullepa, G.R. No. 131516, March 5, 2003, 398 SCRA 567, 586; People v. Tundag, G.R. Nos. 135695-96, October 12, 2000, 342 SCRA 704, 716.

[21] National Statistical Coordination Board, Active Stats, Philippine Standard Geographic Code, Articles, Concepts and Definitions, at <http://www.nscb.gov.ph/data/pressrelease/2003/pr0382tx.html>> (visited October 12, 2005). The Philippine Standard Geographic Code (PSGC) is a comprehensive geographical classification which serves as a tool for ensuring the comparability of statistics relating to the geographical areas of the country (See Commission on Information and Communications Technology — National Computer Center, Plans Review and Monitoring Office, Report on National Government Agencies (NGAs) with Online Services (Stage 3) as of July 2005, at <http://www.ncc.gov.ph/files/stage3july2005.pdf>> (visited October 12, 2005).

[22] See Republic Act No. 3857. An Act to Revise the Charter of the City of Cebu, approved on June 10, 1964.

[23] National Statistics Office, Results from the 2000 Census of Population and Housing, Philippines: Urban Population was Registered at 48.05 Percent, Press Release No. 2003-82, October 10, 2003, at <http://www.census.gov.ph/data/pressrelease/2003/pr0382tx.html>> (visited October 12, 2005); See National Statistical Coordination Board, Active Stats, Philippine Standard Geographic Code Interactive, Municipality, at <http://www.nscb.gov.ph/activestats/psgc/municipality.asp?muncode=072217000@cod=07&provcode=22>> (visited October 12, 2005).

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