

**PHILIPPINE ECONOMIC ZONE AUTHORITY, REPRESENTED HEREIN
BY DIRECTOR GENERAL LILIA B. DE LIMA, PETITIONER, VS. JOSEPH
JUDE CARANTES, ROSE CARANTES, AND ALL THE OTHER HEIRS OF
MAXI...**

G.R. No. 181274. June 23, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeks to reverse and set aside the Decision[1] dated October 26, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 73230. The Court of Appeals had affirmed the Order[2] dated October 2, 2001 of the Regional Trial Court (RTC), Branch 5, Baguio City in Civil Case No. 4339-R, granting the respondents' Petition[3] for injunction.

The facts are gathered from the records of the case.

Respondents Joseph Jude Carantes, Rose Carantes and the heirs of Maximino Carantes are in possession of a 30,368-square meter parcel of land located in Loakan Road, Baguio City. On June 20, 1997, they obtained Certificate of Ancestral Land Claim (CALC) No. CAR-CALC-022[4] over the land from the Department of Environment and Natural Resources (DENR). On the strength of said CALC, respondents secured a building permit[5] and a fencing permit[6] from the Building Official of Baguio City, Teodoro G. Barrozo. Before long, they fenced the premises and began constructing a residential building thereon.

Soon, respondents received a letter[7] dated February 9, 1999 from Digna D. Torres, the Zone Administrator of the Philippine Economic Zone Authority (PEZA), informing them that the house they built had overlapped PEZA's territorial boundary. Torres advised respondents to demolish the same within sixty (60) days from notice. Otherwise, PEZA would undertake its demolition at respondents' expense.

Without answering PEZA's letter, respondents filed a petition for injunction, with prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction before the RTC of Baguio City. By Order[8] dated April 8, 1999, the RTC of Baguio City issued a TRO, which enjoined PEZA to cease and desist from threatening respondents with the demolition of their house before respondents' prayer for a writ of preliminary injunction can be heard. On September 19, 2001, the RTC likewise issued an Order,[9] which directed the parties to maintain the status quo pending resolution of the case.

On October 2, 2001, the RTC granted respondents' petition and ordered the issuance of a writ of injunction against PEZA, thus:

WHEREFORE, the petition is herein GRANTED and a writ of injunction is hereby issued enjoining the respondents, their agents, representatives or anybody acting in their behalf from dispossessing, notifying or disturbing in any [manner] the peaceful possession and occupation of the land by the petitioners.

SO ORDERED.[10]

The trial court ruled that respondents are entitled to possess, occupy and cultivate the subject lots on the basis of their CALC. The court a quo explained that by the very definition of an ancestral land under Republic Act (R.A.) No. 8371[11] or the Indigenous Peoples Rights Act of 1997, said lots have been segregated from lands of the public domain. As such, the rights of respondents to the land are already vested in them and cannot be disturbed by Proclamation No. 1825,[12] which included said land within the export processing zone of Baguio City.

On appeal, the CA affirmed the RTC ruling. In the assailed Decision dated October 26, 2007, the appellate court echoed the trial court's declaration that the subject lots have been set aside from the lands of the public domain.

On February 1, 2008, the Office of the Solicitor General (OSG), as counsel for petitioner PEZA, filed a Motion to Admit[13] petition, with the present Petition[14] attached. Petitioner challenges the CA decision on two (2) issues:

I.

WHETHER OR NOT IT IS THE PETITIONER OR THE CITY ENGINEER OF BAGUIO CITY WHO HAS THE LEGAL AUTHORITY TO ISSUE BUILDING AND FENCING PERMITS FOR CONSTRUCTIONS WITHIN THE PEZA-BCEZ.

II.

WHETHER OR NOT RESPONDENTS' CALC IS SUFFICIENT TO DISREGARD THE PROVISIONS OF THE NATIONAL BUILDING CODE OF THE PHILIPPINES.[15]

Amplified, the issue for our determination is whether petitioner can require respondents to demolish the structures they had built within the territory of PEZA-BCEZ (Baguio City Economic Zone).

The OSG, at the outset, explains the delay in appealing the CA decision. It attributes the delay to the inadvertence of Senior State Solicitor Rodolfo Geronimo M. Pineda, the temporarily-designated officer-in-charge (OIC) of Division XV, who took over the case when State Solicitor Maricar S.A. Prudon-Sison went on maternity leave. Pineda allegedly merely noted receipt of the CA decision without noticing that it was adverse to PEZA. The OSG adds that the sparse complement of three (3) lawyers left at the time could not tackle at once the horde of cases assigned to the division.

On substantive grounds, petitioner claims exclusive authority to issue building and fencing permits within ecozones under Section 6[16] of Presidential Decree (P.D.) No. 1716,[17] amending P.D. No. 66.[18] Alongside, petitioner asserts concurrent authority to require owners of structures without said permits to remove or demolish such structures under Section 14 (i)[19] of R.A. No. 7916.[20]

For their part, respondents rely on CAR-CALC-022 for their right to fence the lots and build a house thereon. They insist that the function of issuing building and fencing permits, even within the Baguio City Economic Zone, pertains to the Office of the City Mayor and the Building Official of Baguio City, respectively. Respondents likewise assail the petition for being filed late, stressing that it was filed only after almost three (3) months from petitioner's receipt of the CA decision.

We grant the petition.

It is settled that an appeal must be perfected within the reglementary period provided by law; otherwise, the decision becomes final and executory.[21] Before the Supreme Court, a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, must be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. Even then, review is not a matter of right, but of

sound judicial discretion, and may be granted only when there are special and important reasons therefor.

In the case at bar, the Docket Division of the OSG received a copy of the CA decision on November 7, 2007. It was not until February 1, 2008 or almost three (3) months however, that the OSG, for petitioner, filed a petition for review on certiorari with this Court. The OSG pleads for understanding considering the scarcity of its lawyers and the inadvertence of the temporarily-designated OIC of Division XV in overlooking that the CA decision was adverse to PEZA.

While the Court realizes the OSG's difficulty in having only three (3) lawyers working full time on its cases, the OSG could have easily asked for an extension of time within which to file the petition. More importantly, as the government agency tasked to represent the government in litigations, the OSG should perform its duty with promptness and utmost diligence.

However, upon careful consideration of the merits of this case, the Court is inclined to overlook this procedural lapse in the interest of substantial justice. Although a party is bound by the acts of its counsel, including the latter's mistakes and negligence, a departure from this rule is warranted where such mistake or neglect would result in serious injustice to the client. Indeed, procedural rules may be relaxed for persuasive reasons to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.[22] More so, when to allow the assailed decision to go unchecked would set a precedent that will sanction a violation of substantive law. Such is the situation in this case.

Injunction is a judicial writ, process or proceeding whereby a party is directed either to do a particular act, in which case it is called a mandatory injunction or to refrain from doing a particular act, in which case it is called a prohibitory injunction. As a main action, injunction seeks to permanently enjoin the defendant through a final injunction issued by the court and contained in the judgment. Section 9, Rule 58 of the 1997 Rules of Civil Procedure, as amended, provides,

SEC. 9. When final injunction granted. - If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the party or person enjoined from the commission or continuance of the act or acts or confirming the preliminary mandatory injunction.

Two (2) requisites must concur for injunction to issue: (1) there must be a right to be protected and (2) the acts against which the injunction is to be directed are violative of said right.[23] Particularly, in actions involving realty, preliminary injunction will lie only after the plaintiff has fully established his title or right thereto by a proper action for the purpose. To authorize a temporary injunction, the complainant must make out at least a prima facie showing of a right to the final relief. Preliminary injunction will not issue to protect a right not in esse.[24] These principles are equally relevant to actions seeking permanent injunction.

At the onset, we must stress that petitioner does not pose an adverse claim over the subject land. Neither does petitioner dispute that respondents hold building and fencing permits over the lots. For petitioner, the question that must be answered is whether respondents may build structures within the Baguio City Economic Zone on the basis of their CAR-CALC-022, and the building and fencing permits issued by the City Building Official.

We rule in the negative.

In the parallel case of Philippine Economic Zone Authority (PEZA) v. Borreta,[25] Benedicto Carantes invoked CAR-CALC-022, the same CALC invoked by respondents in this case, to put up structures in the land subject of said case. The Court, speaking through Justice Angelina Sandoval-Gutierrez, refused to recall the writ of demolition issued by the trial court therein. We held that Carantes is a mere applicant for the issuance of a

certificate of ownership of an ancestral land who has yet to acquire a vested right as owner thereof so as to exclude the land from the areas under PEZA. We perceive no good reason to depart from this ruling as we find respondents herein to be similarly situated.

As holders of a CALC, respondents possess no greater rights than those enumerated in Par. 1, Section 2, Article VII of DENR Department Administrative Order (DAO) No. 02, Series of 1993:

SECTION 2. Rights and Responsibilities of Ancestral Land Claimants -

1. Rights

- The right to peacefully occupy and cultivate the land, and utilize the natural resources therein, subject to existing laws, rules and regulations applicable thereto;
- The right of the heirs to succeed to the claims subject to existing rules and regulations;
- The right to exclude from the claim any other person who does not belong to the family or clan; and
- The right to utilize trees and other forest products inside the ancestral land subject to these rules as well as customary laws. (Emphasis supplied.)

Respondents being holders of a mere CALC, their right to possess the subject land is limited to occupation in relation to cultivation. Unlike No. 1,[26] Par. 1, Section 1, Article VII of the same DENR DAO, which expressly allows ancestral domain claimants to reside peacefully within the domain, nothing in Section 2 grants ancestral land claimants a similar right, much less the right to build permanent structures on ancestral lands - an act of ownership that pertains to one (1) who has a recognized right by virtue of a Certificate of Ancestral Land Title. On this score alone, respondents' action for injunction must fail.

Yet, even if respondents had established ownership of the land, they cannot simply put up fences or build structures thereon without complying with applicable laws, rules and regulations. In particular, Section 301 of P.D. No. 1096, otherwise known as the National Building Code of the Philippines mandates:

SECTION 301. Building Permits

No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.

Supplementary to a building permit, a fencing permit must also be secured from the Building Official concerned before fences may be installed in the premises.

In the present case, petitioner refuses to honor the building and fencing permits issued by the City Building Official to respondents. Petitioner PEZA maintains that the function of administering and enforcing the provisions of P.D. No. 1096 within the areas owned and administered by it, pertains to PEZA. Hence, it is PEZA, and not the local Building Official of Baguio City, which may properly issue building and fencing permits within PEZA.

On this point, Section 205 of P.D. No. 1096 is pertinent:

SECTION 205. Building Officials

Except as otherwise provided herein, the Building Official shall be responsible for carrying out the provisions of this Code in the field as well as the enforcement of orders and decisions made pursuant thereto.

Due to the exigencies of the service, the Secretary may designate incumbent Public Works District Engineers,

City Engineers and Municipal Engineers to act as Building Officials in their respective areas of jurisdiction.

The designation made by the Secretary under this Section shall continue until regular positions of Building Official are provided or unless sooner terminated for causes provided by law or decree.

The position of Building Official is a regular item in the organizational structure of the local government. Only in case of urgent necessity may the Secretary of Public Works designate the incumbent District Engineer, Municipal Engineer or City Engineer, as the case may be. This was the applicable law even for areas covered by the Export Processing Zone Authority (EPZA) until P.D. No. 1716 was enacted on August 21, 1980.

P.D. No. 1716 further amended P.D. No. 66,[27] the law creating the EPZA, by creating the PEZA. Section 11 of R.A. No. 7916 provides that the existing EPZA created under P.D. No. 66 shall evolve into and be referred to as the PEZA in accordance with the guidelines and regulations set forth in an executive order issued for the purpose.

Thus, on October 30, 1995, Executive Order No. 282[28] was enacted. Under Section 1 thereof, all the powers, functions and responsibilities of EPZA under P.D. No. 66, as amended, insofar as they are not inconsistent with the powers, functions and responsibilities of the PEZA, under R.A. No. 7916, shall be assumed and exercised by PEZA.

Among such powers is the administration and enforcement of the National Building Code of the Philippines in all zones and areas owned or administered by EPZA, as expressly provided in Section 6 of P.D. No. 1716:

SEC. 6. The administration and enforcement of the provisions of Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines in all zones and areas owned or administered by the Authority shall be vested in the Administrator or his duly authorized representative. He shall appoint such EPZA qualified personnel as may be necessary to act as Building Officials who shall be charged with the duty of issuing Building Permits in the different zones. All fees and dues collected by the Building Officials under the National Building Code shall accrue to the Authority. (Emphasis supplied.)

This function, which has not been repealed and does not appear to be inconsistent with any of the powers and functions of PEZA under R.A. No. 7916, subsists. Complimentary thereto, Section 14 (i) of R.A. No. 7916 states:

SEC. 14. Powers and Functions of the Director General. - The director general shall be the overall [coordinator] of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.

In addition, he shall have the following specific powers and responsibilities:

xxxx

(i) To require owners of houses, buildings or other structures constructed without the necessary permit whether constructed on public or private lands, to remove or demolish such houses, buildings, structures within sixty (60) days after notice and upon failure of such owner to remove or demolish such house, building or structure within said period, the director general or his authorized representative may summarily cause its removal or demolition at the expense of the owner, any existing law, decree, executive order and other issuances or part thereof to the contrary notwithstanding; (Emphasis supplied.)

By specific provision of law, it is PEZA, through its building officials, which has authority to issue building permits for the construction of structures within the areas owned or administered by it, whether on public or private lands. Corollary to this, PEZA, through its director general may require owners of structures built without said permit to remove such structures within sixty (60) days. Otherwise, PEZA may summarily remove them at

the expense of the owner of the houses, buildings or structures.

As regards the issuance of fencing permits on ancestral lands, particularly within Baguio City and the rest of the Cordilleras, DENR-Circular No. 03-90 (Rules on the Acceptance, Identification, Evaluation, and Delineation of Ancestral Land Claims by the Special Task Force Created by the Virtue of DENR Special Order Nos. 31 and 31-A both Series of 1990) prescribes in Section 12:

SEC. 12. The Regional Land Management Services or the CENROs, through their respective Provincial Environment and Natural Resources Officer (PENRO), shall prepare and submit to the Special Task Force a report on each and every application surveyed and delineated. Thereafter, the Special Task Force after evaluating the reports, shall endorse valid ancestral land claims to the Secretary through the Indigenous Community Affairs Division, Special Concerns Office for the issuance of a Certificate of Ancestral Land Claim. As soon as ancestral land claim is found to be valid and in meritorious cases, the Special Task Force may recommend to the City/Municipal Mayor's Office the issuance of a fencing permit to the applicant over areas actually occupied at the time of filing. (Emphasis supplied.)

This is the general rule. Considering, however, that in this case, a fencing permit is issued complementary to a building permit and that within the premises of PEZA, it is the Authority that may properly issue a building permit, it is only fitting that fencing permits be issued by the Authority.

From the foregoing disquisition, it clearly appears that respondents likewise failed to satisfy the second requisite in order that an injunction may issue: that the acts against which the injunction is to be directed, are violative of said right. PEZA acted well within its functions when it demanded the demolition of the structures which respondents had put up without first securing building and fencing permits from the Authority.

WHEREFORE, the Petition is GRANTED. The Decision dated October 26, 2007 of the Court of Appeals in CA-G.R. CV No. 73230 affirming the Order dated October 2, 2001 of the court a quo in Civil Case No. 4339-R is REVERSED and SET ASIDE. Respondents are hereby DIRECTED to demolish the residential building they had built within the premises of PEZA within sixty (60) days from notice.

No costs.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Abad,[*] JJ., concur.

[*]Additional member per Special Order No. 843.

[1] Rollo, pp. 34-42. Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Jose C. Mendoza (now a member of this Court) and Myrna Dimaranan Vidal concurring.

[2] CA rollo, pp. 54-61. Penned by Judge Antonio M. Esteves.

[3] Records, pp. 1-4.

[4] Rollo, pp. 168-172.

[5] Records, p. 10.

[6] Id. at 9.

[7] Id. at 11.

[8] Id. at 19-20.

[9] Id. at 237.

[10] CA rollo, p. 61.

[11] AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLE, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[12] RESERVING FOR EXPORT PROCESSING ZONE PURPOSES A CERTAIN PARCEL OF LAND OF THE PUBLIC DOMAIN SITUATED IN THE CITY OF BAGUIO, ISLAND OF LUZON.

[13] Rollo, pp. 3-8.

[14] Id. at 9-29.

[15] Id. at 16.

[16] SEC. 6. The administration and enforcement of the provisions of Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines in all zones and areas owned or administered by the Authority shall be vested in the Administrator or his duly authorized representative. He shall appoint such EPZA qualified personnel as may be necessary to act as Building Officials who shall be charged with the duty of issuing Building Permits in the different zones. All fees and dues collected by the Building Officials under the National Building Code shall accrue to the Authority.

[17] FURTHER AMENDING PRESIDENTIAL DECREE NO. 66 DATED NOVEMBER 20, 1972, CREATING THE EXPORT PROCESSING ZONE AUTHORITY.

[18] Creating the Export Processing Zone Authority and Revising Republic Act No. 5490.

[19] SEC. 14. Powers and Functions of the Director General. - The director general shall be the overall coordinator of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.

In addition, he shall have the following specific powers and responsibilities:

x x x x

(i) To require owners of houses, buildings or other structures constructed without the necessary permit whether constructed on public or private lands, to remove or demolish such houses, buildings, structures within sixty (60) days after notice and upon failure of such owner to remove or demolish such house, building or structure within said period, the director general or his authorized representative may summarily cause its removal or demolition at the expense of the owner, any existing law, decree, executive order and other issuances or part thereof to the contrary notwithstanding;

x x x x

[20] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISM FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY

(PEZA), AND FOR OTHER PURPOSES.

[21] TFS, Incorporated v. Commissioner of Internal Revenue, G.R. No. 166829, April 19, 2010, p. 6.

[22] Id. at 7.

[23] City Government of Baguio City v. Masweng, G.R. No. 180206, February 4, 2009, 578 SCRA 88, 99.

[24] Ortigas & Company, Limited Partnership v. Ruiz, No. L-33952, March 9, 1987, 148 SCRA 326, 336.

[25] G.R. No. 142669, March 15, 2006, 484 SCRA 664, 669.

[26] SECTION 1. Rights and Responsibilities of Ancestral Domain Claimants

1. Rights

1. The right to occupy, cultivate and utilize the land and all natural resources found therein, as well as to reside peacefully within the domain, subject to existing laws, rules and regulations applicable thereto. (Emphasis supplied.)

[27] Dated November 20, 1972.

[28] PROVIDING FOR THE GUIDELINES AND REGULATIONS FOR THE EVOLUTION OF THE EXPORT PROCESSING ZONE AUTHORITY; CREATED UNDER PRESIDENTIAL DECREE NO. 66, INTO THE PHILIPPINE ECONOMIC ZONE AUTHORITY UNDER REPUBLIC ACT NO. 7916.

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