

**MAXIMO SOLIS, ISRAEL LOMBAB, JAIME PONS, ARSENIO SOLISON,
AND PERCIVAL ARCHISALES, PETITIONERS, VS. HON.
INTERMEDIATE APPELLATE COURT, JUANITO GUIRIT AND RUSTICO
CARMEN, RESPOND...**

G.R. No. 72486. June 19, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Involved in this case is a 1,200 square meter land which on the north adjoins a parcel of coconut land registered under Original Certificate of Title No. 2950, Free Patent No. V-99166 issued in the name of Juanito Guirit on May 19, 1959 and located in Sitio Danipas, Barrio Mangagoy, now Labisma, Bislig, Surigao del Sur. The evidence shows that this contiguous land was formerly occupied and cultivated with coconuts and bananas by Juanito Guirit's son-in-law, Rustico Carmen.[1]

During the years 1964-1970, as a result of the construction of the PICOP pier which affected the action of the waves, said land was eroded and became part of the sea. The coconut trees planted therein were damaged.[2] However, sometime in the latter part of 1971, the same land was filled up with waste materials dumped by PICOP along the seashore. Private respondent Rustico Carmen then fenced the area with veneer core and planted bananas and "kangkong".

On November 9, 1977, Rustico Carmen filed a Miscellaneous Sales Application[3] for the land in question, supporting the same with a certification from the Bureau of Customs, Bislig, Surigao del Sur that the land was not needed for customs purposes[4] and a resolution of the Sangguniang Bayan of Bislig, Surigao del Sur[5] stating that said land applied for was not needed by the Municipal Government of Bislig, Surigao del Sur for any public improvement.

With the permission of Juanito Guirit, petitioners Israel Lombab and Percival Archisales built their respective houses on the land in question sometime in 1976 and 1977 and agreed to pay rentals. Under the same conditions, petitioners Maximo Solis, Jaime Pons and Arsenio Salison, with the consent of Rustico Carmen, also constructed their houses. Subsequently, all five petitioners filed on August 18, 1978 a protest to Rustico Carmen's Miscellaneous Sales Application upon the advice of one Trazon Guda, then the Officer-in-Charge of the Bureau of Lands, claiming that the parcels they were occupying are public lands.[6] Interestingly enough, they did not file a miscellaneous sales application of their own.

On January 16, 1979, private respondents Juanito Guirit and Rustico Carmen filed an alternative action for the recovery of ownership and/or possession of the land in question with damages before the then Court of First Instance of Surigao del Sur.[7] They alleged that since 1973, they have continuously possessed and occupied the subject land and that it was only between April 1976 and December of 1977 when petitioners, by mere tolerance of respondents, were able to enter the area.[8] They premised their right to acquire the disputed area on the High Court ruling in the case of *Lanzar vs. Director of Lands*,[9] to the effect that:

"Lands added to the shores by accretion and alluvial deposits caused by action of the sea, form part of the public domain. When they are no longer washed by the water of the sea and are not necessary for purposes of public utility, or for the establishment of special industries, or for coastguard service, the Government shall declare them to be property of the owners of the estates adjacent thereto and as increment thereof."

Guirit and Carmen prayed that ownership and possession be restored to them and that petitioners be ordered to vacate the land and to pay damages corresponding to the unpaid rentals, attorney's fees, moral damages and incidental damages.[10]

Arguing that the disputed area belongs to the public domain and that jurisdiction correctly pertains to the Director of Lands under Section 4 of the Public Land Act[11] petitioners filed a motion to dismiss on February 9, 1979.[12] Petitioners called the attention of the court to the miscellaneous sales application and protest then pending before the Director of Lands.

On June 13, 1979, the lower court denied the motion for dismissal and proceeded to hear the case on the merits. On February 24, 1981, the lower court rendered its judgment declaring that the land in question is undisputably part of the public domain. However, it ruled that private respondents had a preferential right over said land considering that their possession was prior to that of petitioners as proven by the destroyed coconuts formerly cultivated by Rustico Carmen. Thus:

"Plaintiff Juanito Guirit, being the adjacent owner of the land in question on the south has the preferential right to acquire the same as an increment of his land provided he could show that said land is not necessary for the purpose of public utility or for the establishment of special industries, or for coastguard service. Guirit and his son-in-law, plaintiff Rustico Carmen, have to prove the presence of said requirements to the Bureau of Lands, the government entity which is charged with the disposition of public lands.

"Defendants who have not shown a better right than plaintiffs over said land are not entitled to the occupation of the portions of said public land where they have constructed their respective houses. They should therefore vacate the same.

"In view of the foregoing considerations, the court hereby orders defendants to vacate the portion of land in question which they are now occupying and to remove their respective houses thereon. Considering that plaintiff Rustico Carmen filed a miscellaneous sales application of the land in question with the Bureau of Lands and that defendants submitted their protest thereto, the Bureau of Lands is hereby requested to take appropriate action on the same in consonance with the ruling of the Supreme Court in *Lanzar vs. Director of Lands x x x*." [13]

Undaunted, herein petitioners appealed. On July 17, 1985, the Court of Appeals affirmed in toto the decision of the lower court.[14]

Hence, this recourse.

Before us, the petitioners raise the following assignment of errors:

"1. THAT THE COURT A QUO ERRED IN NOT DISMISSING THE CASE ON GROUND OF LACK OF JURISDICTION AS PRIMARY JURISDICTION PERTAINED TO THE DIRECTOR OF LANDS AND THERE WAS NO EXHAUSTION OF ADMINISTRATIVE REMEDIES.

"2. THAT THE COURT A QUO ERRED IN HOLDING THAT ACCRETION TOOK PLACE BY ACTION OF THE SEA TO THE BENEFIT OF THE PLAINTIFFS, INSTEAD OF FINDING (CONCLUSION OF LAW) THAT WHAT REALLY TOOK PLACE SHOULD BE DENOMINATED AS RECLAMATION UNDERTAKEN BY PICOP AND THE DEFENDANTS." [15]

Admittedly, the 1,200-square-meter land is a public land over which a miscellaneous sales application and protest are pending with the Bureau of Lands for adjudication. It is now the argument of petitioners that the trial court has no jurisdiction because primary jurisdiction pertains to the Director of Lands since the subject matter is public land.[16] Petitioners point out that inasmuch as there is a pending administrative case between the parties, respondent Carmen having filed a sales application and petitioners having filed a protest, the filing of the instant case for recovery of possession and/or ownership was premature in view of the non-exhaustion of administrative remedies.

We hold that the power and authority given to the Director of Lands to alienate and dispose of public lands does not divest the regular courts of their jurisdiction over possessory actions instituted by occupants or applicants against others to protect their respective possessions and occupations. While the jurisdiction of the Bureau of Lands is confined to the determination of the respective rights of rival claimants to public lands or to cases which involve disposition of public lands, the power to determine who has the actual, physical possession or occupation or the better right of possession over public lands remains with the courts.[17]

The rationale is evident. The Bureau of Lands does not have the wherewithal to police public lands. Neither does it have the means to prevent disorders or breaches of peace among the occupants. Its power is clearly limited to disposition and alienation and while it may decide disputes over possession, this is but in aid of making the proper awards. The ultimate power to resolve conflicts of possession is recognized to be within the legal competence of the civil courts and its purpose is to extend protection to the actual possessors and occupants with a view to quell social unrest.

It must be stressed that a judgment of the court ordering restitution of the possession of a parcel of land to the actual occupant, who has been deprived thereof by another through the use of force or in any other illegal manner, should never be construed as an interference with the disposition and alienation of public lands. On the other hand, if courts were to be deprived of jurisdiction over cases concerning controversies over possession, the deterrence of judicial action will be eliminated and will only embolden would be encroachers and intruders.[18]

With regard to the second issue of whether accretion or reclamation took place in the subject land, this Court is not the proper forum to resolve the same. Considering that the matter involves factual considerations relating to lands of the public domain, it is properly within the administrative competence of the Director of Lands. The classification of public lands is an exclusive prerogative of the Executive Department and not of the courts.[19]

The ultimate issue then that must be addressed is who between the opposing parties have the better right to the possession of the subject property until such time that the Director of Lands shall have ruled on the miscellaneous sales application.

We hold that the courts a quo did not err in declaring that private respondents Guirit and Carmen have the preferential right of possession. It is more in consonance law and equity. Guirit and Carmen have continuously and peacefully cultivated the subject property since 1973. They have the inherent right to be protected in their possession as against petitioners who appear to have entered the land only because of the tolerance of private respondents who allowed them to construct their houses thereon.

However, it was patent error for the trial court to "request" the Bureau of Lands to take appropriate action in accordance with the Lanzar ruling. Precisely, one of the issues to be resolved by the Director is whether the subject land was formed by accretion (as claimed by private respondents) or by reclamation (as maintained by petitioners). The Lanzar case is premised on the finding that the land formation was the result of the natural movement of the sea and not caused by human hands. To "request" the Bureau of Lands to apply that particular case is tantamount to saying that the disputed area was formed by accretion. This is completely unwarranted and

must be stricken off from the lower court's decision.

Briefly then, the Court decrees that private respondents must be allowed possession of the subject property to enable them, particularly Rustico Carmen, to comply with the requirements set forth by law for the purchase of public lands. This is without prejudice to whatever action the Director of Lands will ultimately take on the pending miscellaneous sales application.

WHEREFORE, the petition is DENIED. Except as hereinabove modified, the appealed decision of the Court of Appeals is hereby AFFIRMED in all other respects. Costs against petitioners.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Record on Appeal, p. 2.

[2] Exhibit G.

[3] Exhibit C.

[4] Exhibit K.

[5] Exhibit L.

[6] Rollo, p. 27.

[7] Civil Case No. L-265.

[8] Record on Appeal, pp. 1-4.

[9] No. L-31934, July 29, 1977, 78 SCRA 130.

[10] Record on Appeal, pp. 2-4.

[11] Commonwealth Act 141.

[12] Ibid. pp. 6-10.

[13] Emphasis supplied.

[14] Rollo, p. 26.

[15] Rollo, p. 11.

[16] Section 4, Public Land Act.

[17] National Development Co. vs. Hervilla, G.R. No. 65718, June 30, 1987, 151 SCRA 520; Espejo vs. Malate, No. L-48612, January 27, 1983, 120 SCRA 269.

[18] Pitargue vs. Sorilla, 48 SCRA O.G. 3849.

[19] Director of Lands vs. Court of Appeals, G.R. No. 58867, June 22, 1984, 129 SCRA 689. See Republic vs. De Porkan, G.R. No. 66866, June 18, 1987, 151 SCRA 88.

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