

**SPOUSES FRANCISCO JIMENEZ AND MARY H. JIMENEZ,
PETITIONERS, VS. HON. CATALINO MACARAIG, IN HIS CAPACITY AS
EXECUTIVE SECRETARY, HON. FULGENCIO S. FACTORAN, JR., IN HIS
CAPACITY ...**

G.R. No. 94542. March 01, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

On June 23, 1954, petitioner Francisco Jimenez filed with the Bureau of Lands a Townsite Sales Application (TSA) over a piece of land designated as Lot No. 30, Residence Section "K" with an area of 750 square meters situated in Lourdes Subdivision, Baguio City. An auction sale of the land was held on November 23, 1955 where the only bid received was that from petitioner Francisco Jimenez. In an Order Award dated April 1, 1957, the Bureau of Lands awarded the land to Jimenez. In a subsequent Order dated October 16, 1963, the Director of Lands modified the Award by increasing the land area awarded from 750 square meters to 1,000 square meters. The purchase price was correspondingly increased.

The Award issued in favor of Jimenez provides that:

"1. The applicant shall commence the construction of the improvements appropriate for the purpose for which the land is purchased within six (6) months from the date of receipt hereof and shall complete the said construction within eighteen (18) months from the date of award."

Furthermore, the Award specifically states that "non-compliance with any of the terms and conditions hereof and/or of the rules and regulations governing the sale will result in the rescission of the sale and the cancellation of the application..."

Sometime in 1972, private respondent Eufrocina Guirnalda occupied the disputed land. She cleared the land, introduced leveling and riprapping and built a shack which she and her family used as residence.

In 1984, the daughter and son-in-law of petitioners informed private respondent about the Award made in favor of petitioner Francisco Jimenez and ordered private respondent and her family to vacate the land.

On December 17, 1984, private respondent filed a letter-protest with the Bureau of Land in connection with the Award made in favor of Francisco Jimenez.

On July 23, 1985, Mr. Pastor Teodoro, Administrative Assistant and Deputy Land Inspector of the Bureau of Lands, Natural Resources District No. I-13, Baguio City submitted to the Director of Lands a final investigation, comment and recommendation with respect to private respondent's protest, the relevant portion of which reads:

"A necessary hearing on the case is not deemed necessary by the investigator, considering that a final investigation report is sufficient to resolve the issues at hand. Both parties are represented during the investigation and ocular inspection of the area under consideration. Further investigation would not alter or

change greatly the material facts of the case, namely:

A. The awardee, Francisco Jimenez failed to comply with the construction requirements stipulated in the Order of Award and the Public Land Law as amended within the period of 18 months since 1957 April and up to the present time or for about 28 years stretch, and that no improvements by the awardee, were introduced on the area. In his case the maxim 'He who sleeps on ones (sic) right, forfeits that right' is applicable in a way.

B. On the other hand, the occupant E. Guirnalda, with a semi invalid husband and her family of 8 members, entered and built his (sic) house and introduced improvements on the lot without permit and consent of the awardee and/or the government. However, her uninterrupted, peaceful and continuous (sic) occupation of the land since 1972 up to the present time should be considered in her favor in the light of compassionate (sic) Government Policy on the matter.

Premises considered the following recommendations are submitted:

1. The cancellation of T.S.A. V-3426 (B515) forfeiting in favor of the Government whatever payments made on account thereof on the grounds of non-compliance with the construction requirements of the law.
2. Thereafter, to consider only Lot 1 of survey plan TSI-3426 P AMD, open for disposition to any qualified applicant, but particularly to the occupant Eufrosina Guirnalda. Lot 2 is now part of the existing road.
3. And for such other remedies that maybe applicable in the case.

x x x x x x x x."[1]

On September 22, 1986, Rolleo L. Ignacio, the Deputy Minister and Officer in Charge of the Bureau of Lands, acting on the abovequoted report, issued an Order cancelling the Townsite Sales Application previously approved in favor of petitioner Francisco Jimenez. The said Order reads:

"In the investigation and field verification of the premises conducted by a representative of this Office, both parties presented their respective evidence in support of their respective claims. It was ascertained that the land in question has been actually occupied by protestant since 1972 up to the present; that protestant has introduced thereon considerable improvements such as leveling, riprapping, built her residential house where she and her family resides (sic), built a septic tank and planted plants of economic value like bananas, sayote, camote, guava trees and fences; that she declared the land for taxation purposes in 1975 under Tax Declaration No. 12582 and has paid the taxes thereon since then to the present; and that prior to the occupation of protestant, the land in question remained unoccupied and uncultivated and that respondent-awardee Francisco Jimenez has never occupied, much less introduced any improvements thereon.

Evidently, respondent Francisco Jimenez, now represented by Rodolfo Singson, has failed to comply with the first condition of his award which provides:

'1. The applicant shall commence the construction of the improvements appropriate for the purpose for which the land is purchased within six (6) months from the date of receipt hereof and shall complete the said construction within eighteen (18) months from the date of the award.'

In accordance with the terms and conditions of the order of the award, non-compliance with the aforecited condition can be a cause for the cancellation thereof.

In the light of the foregoing facts, there is obviously a violation of the aforequoted condition that warrant (sic) the cancellation of the townsite sales application of Francisco Jimenez. On the other hand, the protestant, on basis of actual possession, may be allowed to file appropriate application for the same land.

WHEREFORE, it is ordered that the Townsite Sales Application No. V-3126 (B515) of Francisco Jimenez be, as hereby it is, cancelled, forfeiting in favor of the Government whatever amount that has been paid on account

thereof. The District Land Officer is directed to take the administration of the land in question pending its disposition.

SO ORDERED."[2]

From this Order, Francisco Jimenez filed a Motion for Reconsideration. On November 24, 1986, Rolleo L. Ignacio of the Bureau of Lands issued an order granting the Motion for Reconsideration and ordering an investigation of the case. The relevant portion of the Order states:

"WHEREFORE, it is ordered that the District Land Officer in Baguio City cause an immediate investigation of this case in accordance with Land Office Circular No. 68 and thereafter, submit the corresponding report to this office for appropriate disposition.

The order of this office dated September 22, 1986 is hereby set aside.

SO ORDERED."[3]

Private respondent filed an appeal with the respondent Secretary of Environmental and Natural Resources[4] assailing the November 24, 1986 Order of the Bureau of Lands. On March 2, 1987, the respondent Secretary, through his Assistant Secretary for Legal Affairs Alexander G. Castro, issued an Order setting aside the Order of the Bureau of Lands dated November 24, 1986. The dispositive portion of the Order reads:

"In the LIGHT OF THE FOREGOING CONSIDERATION, the order appealed from should be, as hereby it is SET ASIDE conformably herewith, the order of September 22, 1986, REINSTATED.

SO ORDERED."[5]

Petitioner Francisco Jimenez filed a Motion for Reconsideration of the Order dated March 2, 1987 issued by the respondent Secretary. In the Motion for Reconsideration, petitioner husband maintained that the decision, dated March 2, 1987, was rendered without notice to him and therefore without opportunity to present his side and that the order of the Director of Lands, dated September 22, 1986, was made without a formal hearing in derogation of the guarantee of due process. He further alleged that the investigation report, dated July 23, 1985, does not show that both parties presented their respective claims and that well settled is the rule that 'no one shall be personally bound, until he has had a day in court or has been afforded an opportunity to be heard.[6]

Acting on the claim of denial of due process contained in the Motion for Reconsideration, the respondent Secretary, preparatory to actually deciding the said Motion, issued on January 26, 1988, an Order, the dispositive portion of which reads:

"Wherefore, in the interest of justice and to erase the impression that appellee had been denied due process in this case, Atty. Miguel Manalo and Janet Du, both of the Legal Service of the Department of Environment and Natural Resources, are directed to conduct a formal investigation/hearing to afford the parties involved, the opportunity to adduce therein respective evidence. The investigators are authorized to issue subpoena/subpoena duces tecum to secure the compulsory attendance with the parties and their witnesses and the production of materials or relevant papers, documents, to travelling expenses and per diems, subject to the usual accounting and auditing rules and regulations, to enlist the assistance of all personnel of the department, its bureau and agencies, as well as law enforcement agencies, to accomplish their task and to submit a report thereon within fifteen (15) days from termination of the investigation/hearing.

SO ORDERED."[7]

Pursuant to this Order, representatives of the Office of the Secretary, Department of Environment and Natural Resources (DENR) proceeded, on February 16, 1988, to Baguio City to conduct a formal investigation/hearing.

After several postponements, the case was set for hearing on May 4, 1988 in Baguio City. The parties and their respective counsel were present during the hearing. Because the parties could not agree to settle their case, they opted to submit their respective memoranda and supporting documents.

On October 12, 1988, the respondent Secretary, after considering the evidence presented by the parties, issued an Order denying the Motion for Reconsideration of the Order dated March 2, 1987. Respondent Secretary ruled that petitioner Francisco Jimenez's failure to build a house on the disputed land and establish a residence therein constitutes a valid ground for the rescission of the Award. In effect, the respondent Secretary's Order dated October 12, 1988 affirmed the Order of the Bureau of Lands Order dated September 22, 1986 cancelling the Award made in favor of petitioner Francisco Jimenez.

On September 14, 1989, Jimenez filed a second Motion for Reconsideration which was denied by the respondent Secretary in an Order dated October 6, 1989. The respondent Secretary observed that the second Motion for Reconsideration was filed by Jimenez ten (10) months after receiving the Order dated October 12, 1988 denying the first Motion for Reconsideration. According to the respondent Secretary, his October 12, 1988 Order has already become final, thus:

"Appellee's Second Motion for Reconsideration having been filed only on September 14, 1989 or more than ten (10) months from receipt by appellee's counsel of the questioned Order, the Decision and Order of this Office, dated March 2, 1987 and October 12, 1988, respectively, have already become final and executory. So the Supreme Court has held that where a motion for reconsideration is filed out of time, the decision or order subject of reconsideration becomes final (*Elizalde & Co., Inc. vs. Court of Industrial Relations*, 25 SCRA 58). Thus, this Office is now bereft of jurisdiction to entertain the Second Motion for Reconsideration." [8]

Francisco Jimenez filed an appeal with the Office of the President which issued an Order dated July 13, 1990 affirming the Order of the respondent Secretary dated October 6, 1989. Jimenez, now joined by his wife Mary H. Jimenez, filed the present petition assailing the abovementioned Order of the Office of the President and the various Orders of the respondent Secretary of Environment and Natural Resources.

Petitioners contend that the respondent Executive Secretary committed grave abuse of discretion in not holding that the respondent Secretary did not have jurisdiction to entertain the appeal filed by private respondent from the Order of the Bureau of Lands dated November 24, 1986.

According to petitioners, the November 24, 1986 Order of the Bureau of Lands was interlocutory and was, therefore, not appealable. Because the respondent Secretary allegedly did not have jurisdiction to take cognizance over the appeal, the Orders he issued in relation thereto are, it is argued, null and void.

Petitioners' challenge to the jurisdiction of the respondent Secretary is, however, too late. When private respondent appealed the November 24, 1986 Order of the Bureau of Lands, petitioners did not question respondent Secretary's jurisdiction over the case but instead actively participated in the proceedings conducted to settle the appeal. In a long line of decisions, the Court has consistently held that while an order or decision rendered without jurisdiction is a total nullity and may be assailed at any stage, a party's active participation in the proceedings in the tribunal which rendered the order or decision will bar such party from attacking its jurisdiction.[9] In *Tijam v. Sibonghanoy*, [10] the case often cited to support this doctrine, the Court made these pronouncements:

"... a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (*Dean v. Dean*, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties is barred from such

conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated -- obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court ... And in *Littleton vs. Burges*, 16 Wyo, 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.”[11]

Elaborating on the rationale for the doctrine, the Court, in *Crisostomo v. CA*,[12] stated that:

"The petitioners, to borrow the language of Mr. Justice Bautista Angelo (*People vs. Archilla*, G.R. No. L-15632, February 28, 1961, 1 SCRA 699, 700-701), cannot adopt a posture of double-dealing without running afoul of the doctrine of estoppel. The principle of estoppel is in the interest of a sound administration of the laws. It should deter those who are disposed to trifle with the courts by taking inconsistent positions contrary to the elementary principles of right dealing and good faith (*People v. Acierto*, 92 Phil. 534, 541 [1953]). For this reason, this Court closes the door to the petitioners' challenge against the jurisdiction of the Court of Appeals and will not even honor the question with a pronouncement."

In *Marquez v. Secretary of Labor*,[13] the Court further observed that the doctrine applies not only to the plaintiff or the party who, by filing the action, initiated the case but also the defendant or respondent, if the latter fails to timely raise the jurisdictional issue and instead actively participates in the proceedings.

In the instant case, private respondent filed with the respondent Secretary an appeal of the Bureau of Lands Order dated November 24, 1986. On March 2, 1987, the respondent Secretary issued an Order setting aside the November 24, 1986 Order of the Bureau of Lands. Petitioner Francisco Jimenez filed a Motion for Reconsideration of the respondent Secretary's Order. In the said Motion for Reconsideration, Jimenez did not question the respondent Secretary's jurisdiction over the case but instead invoked denial of due process.[14] Without ruling on the Motion for Reconsideration, the respondent Secretary relented on the due process argument of Jimenez by issuing an Order dated January 26, 1988 directing his legal staff to conduct a formal investigation. Hearings were set and reset with the acquiescence of petitioner Jimenez. During the hearing set on May 4, 1988, Jimenez and private respondent, assisted by their respective counsel, agreed to submit their respective Memoranda. Jimenez, in his Memorandum of July 18, 1988,[15] again did not question the jurisdiction of respondent Secretary but discussed the merits of the case and impliedly invoked the jurisdiction of respondent Secretary when it made the following prayer: "WHEREFORE, premises considered, it is respectfully prayed that the appeal be dismissed and that the award and other rights already granted to the Appellee (petitioner Francisco Jimenez) be maintained." [16]

Not only did petitioners fail to seasonably raise the jurisdictional issue but, on the other hand, participated earnestly in the proceedings conducted before the respondent Secretary. Petitioners' conduct, while the case was pending before the respondent Secretary, bars them from assailing the latter's jurisdiction for "[t]he active participation of a party against whom the action is brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction." [17]

Petitioners next contend that "[p]ublic respondent officials had incorrectly, rather invalidly, disposed of or resolved the controversy on the basis of mere technicality without taking into account or considering the merits of the case..." [18]

The contention is without merit for although the second Motion for Reconsideration of the respondent Secretary's Order dated March 2, 1986 filed by petitioners was dismissed on the ground that it was filed out of time, which dismissal was affirmed by the respondent Executive Secretary, the merits of the case were discussed in the Order of respondent Secretary dated October 12, 1988 denying the first Motion for Reconsideration. In said Order, which was issued only after an investigation was conducted, the respondent Secretary ruled that petitioner Francisco Jimenez, by not building a house and establishing his residence within the time prescribed in the Award, abandoned his rights and violated the Award, thus justifying its rescission.

Indeed, the land was granted to Jimenez subject to the following condition stipulated in the Award:

"1. The applicant shall commence the construction of the improvements appropriate for the purpose for which the land is purchased within six (6) months from the date of receipt hereof and shall complete the said construction within eighteen (18) months from the date of the award."

This condition is required by law since Commonwealth Act No. 141 (1936), under which the land was awarded to Jimenez, provides:

"SECTION 65. The sale of the lands comprised in class (d) of section fifty-nine shall, among others, comprise the following conditions:

(a) The purchaser shall make improvements of a permanent character appropriate for the purpose for which the land is purchased, shall commence work thereon within six months from the receipt of the order of the award, and shall complete the construction of said improvements within eighteen months from the date of such award; otherwise the Secretary of Agriculture and Commerce may rescind the contract." [19]

The abovequoted provision in the Award issued to Jimenez is also consistent with the rules and regulations which were effective at the time the Award was granted, governing the filing and disposition of applications for alienable lands of the public domain, under the following pertinent paragraph:

"24. Period allowed for cultivation of land or construction of improvements. - Purchasers of agricultural lands shall occupy and begin to cultivate the same within six (6) months from the date of award, and shall continue such occupation and cultivation until the issuance of patent therefor, and shall have at least one-fourth (1/4) of the area cultivated in order to be entitled to a patent. Purchasers of lands used for residential, commercial or industrial purposes shall commence the construction thereon of the improvements appropriate for the purpose for which the land was purchased, within six (6) months from the date of award, and shall complete the construction of such improvement within eighteen (18) months from said date." [20]

The Award spells out the penalty for failure to comply with its terms, thus: "non-compliance with any of the terms and conditions hereof and/or of the rules and conditions governing the sale will result in the rescission of the sale and the cancellation of the application..."

Petitioners claim in their Memorandum that they have complied with the aforequoted condition in their award because they cleared, levelled and fenced the land.[21] They have not, however, proved that these improvements were commenced and completed within the time specified in the Award and under Commonwealth Act No. 141 (1936). Moreover, in the proceedings conducted before the respondent Secretary, petitioner Francisco Jimenez actually admitted that he has failed to comply with the condition to construct improvements on the land, thus:

"It is true that the applicant/awardee/winner at public auction/purchaser and initial possessor of the property failed to build the residential house within the period stated in the award. But this office can take judicial notice of the fact that most awardees fall in the same situation without loss of their rights to the lands awarded to them." [22]

Both the Bureau of Lands[23] and the respondent Secretary[24] found that the required improvements were not constructed on the land within the time prescribed by the Award and by law. This Court, which is not a trier of facts, finds no cogent reason to depart from these findings for it generally accords respect to the factual findings of administrative tribunals.[25] Having found that petitioner Francisco Jimenez breached the terms of the Award, the public respondents committed no grave abuse of discretion when they ordered the rescission of the Award over the disputed land.

Finally, petitioners stated in their petition that "the actions of public respondents have allowed an unlawful occupant of public land to prevail over a legitimate awardee of the same in utter disregard of public land laws and policies. This circumstance has permitted private respondent, who is not even a public land applicant (her application was not accepted), to dispossess petitioners of the land which they legitimately acquired." [26]

These statements are baseless. While public respondents rescinded the Award made in favor of petitioner Francisco Jimenez, they have not awarded the land to private respondent. Whatever claim private respondent might hold over the land must still be presented before the proper forum and must still go through the appropriate procedure required by law. Hence, by deciding that public respondents did not lack jurisdiction nor commit grave abuse of discretion in rescinding the Award issued to petitioner over the disputed land, we are not thereby recognizing private respondent's claim over the property.

WHEREFORE, the Petition is DISMISSED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

Gutierrez, Jr., J., on terminal leave.

Quiason, J., no part.

[1] Rollo, p. 73.

[2] Rollo, pp. 74-75.

[3] Rollo, p. 77.

[4] Hereafter referred to as the respondent Secretary.

[5] Rollo, pp. 80-81.

[6] Order of respondent Secretary dated January 26, 1988, pp. 4-5; Rollo, pp. 187-188.

[7] Rollo, pp. 29-30, 188-189.

[8] Rollo, p. 32.

[9] *Salen v. Dinglasan*, G.R. No. 59082, June 28, 1991, 198 SCRA 623; *Finman General Assurance Corp. v. Salik*, G.R. No. 84084, August 20, 1990, 188 SCRA 740; *Suarez v. CA*, G.R. No. 80199, June 6, 1990, 186 SCRA 339; *Tan Boon Bee & Co., Inc. v. Jarencio*, G.R. No. L-41337, June 30, 1988, 163 SCRA 205; *Tejones v. Ginorella*, G.R. No. L-35506, March 21, 1988, 159 SCRA 100; *Balais v. Balais*, G.R. No. L-33924, March 18, 1988, 159 SCRA 37; *Ong Ching v. Ramolete*, G.R. No. L-35356, May 18, 1973, 51 SCRA 13; *Tolentino v. Escalona*, G.R. No. L-26556, January 24, 1969, 26 SCRA 613.

[10] G.R. No. L-21450, April 15, 1968, 23 SCRA 29.

[11] *Id.*, at 35-36.

[12] G.R. No. L-27166, March 25, 1970, 32 SCRA 54, 60.

[13] G.R. No. 80685, March 16, 1989, 171 SCRA 337.

[14] *Supra*, note 6 and accompanying text.

[15] Rollo, p. 219.

[16] Rollo, p. 224. Underscoring supplied.

[17] *Marquez v. Secretary of Labor*, *supra*, note 13 at 346.

[18] Memorandum for Petitioners, p. 20; Rollo, p. 167.

[19] Sections 58 and 59 of Commonwealth Act No. 141 (1936) provide:

"SECTION 58. Any tract of land of the public domain which, being neither timber nor mineral land, is intended to be used for residential purposes or for commercial, industrial, or other productive purposes other than agricultural, and is open to disposition or concession, shall be disposed under the provisions of this chapter and not otherwise.

SECTION 59. The lands disposable under this title shall be classified as follows:

(a) Lands reclaimed by the Government by dredging, filling, or other means;

(b) Foreshore;

(c) Marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers;

(d) Lands not included in any of the foregoing classes.

[20] Lands Administrative Order No. 7-1, April 30, 1936, issued by the then Secretary of Agriculture and Commerce Eulogio Rodriguez. Underscoring supplied.

[21] Petitioners' Memorandum, p. 17; Rollo, p. 164.

[22] Petitioners' Memorandum dated July 18, 1988 filed with the respondent Secretary, p. 6; Rollo, p. 223.

[23] Bureau of Lands Order dated September 22, 1986; Rollo, pp. 74-75.

[24] October 12, 1988 Order; Rollo, pp. 102-105.

[25] *Manila Public School Teachers Association, et al. v. Laguio, et al.*, G.R. Nos. 95445, 95590, August 6, 1992, 200 SCRA 323.

[26] Petition, p. 11; Rollo, p. 12.

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