

**DESAMPARADO VDA. DE NAZARENO AND LETICIA NAZARENO
TAPIA, PETITIONERS, VS. THE COURT OF APPEALS, MR. & MRS.
JOSE SALASALAN, MR. & MRS. LEO RABAYA, AVELINO LABIS,
HON. ROBERTO G. ...**

G.R. No. 98045. June 26, 1996

Ponente: ROMERO, J.

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ROMERO, J.:

Petitioners Desamparado Vda. de Nazareno and Leticia Nazareno Tapia challenge the decision of the Court of Appeals which affirmed the dismissal of petitioners' complaint by the Regional Trial Court of Misamis Oriental, Branch 22. The complaint was for annulment of the verification, report and recommendation, decision and order of the Bureau of Lands regarding a parcel of public land.

The only issue involved in this petition is whether or not petitioners exhausted administrative remedies before having recourse to the courts.

The subject of this controversy is a parcel of land situated in Telegrafo, Puntod, Cagayan de Oro City. Said land was formed as a result of sawdust dumped into the dried-up Balacanas Creek and along the banks of the Cagayan river.

Sometime in 1979, private respondents Jose Salasalan and Leo Rabaya leased the subject lots on which their houses stood from one Antonio Nazareno, petitioners' predecessor-in-interest. In the latter part of 1982, private respondents allegedly stopped paying rentals. As a result, Antonio Nazareno and petitioners filed a case for ejectment with the Municipal Trial Court of Cagayan de Oro City, Branch 4. A decision was rendered against private respondents, which decision was affirmed by the Regional Trial Court of Misamis Oriental, Branch 20.

The case was remanded to the municipal trial court for execution of judgment after the same became final and executory. Private respondents filed a case for annulment of judgment before the Regional Trial Court of Misamis Oriental, Branch 24 which dismissed the same. Antonio Nazareno and petitioners again moved for execution of judgment but private respondents filed another case for certiorari with prayer for restraining order and/or writ of preliminary injunction with the Regional Trial Court of Misamis Oriental, Branch 25 which was likewise dismissed. The decision of the lower court was finally enforced with the private respondents being ejected from portions of the subject lots they occupied.

Before he died, Antonio Nazareno caused the approval by the Bureau of Lands of the survey plan designated as Plan Csd-106-00571 with a view to perfecting his title over the accretion area being claimed by him. Before the approved survey plan could be released to the applicant, however, it was protested by private respondents before the Bureau of Lands.

In compliance with the order of respondent District Land Officer Alberto M. Gillera, respondent Land Investigator Avelino G. Labis conducted an investigation and rendered a report to the Regional Director

recommending that Survey Plan No. MSI-10-06-000571-D (equivalent to Lot No. 36302, Cad. 237) in the name of Antonio Nazareno, be cancelled and that private respondents be directed to file appropriate public land applications.

Based on said report, respondent Regional Director of the Bureau of Lands Roberto Hilario rendered a decision ordering the amendment of the survey plan in the name of Antonio Nazareno by segregating therefrom the areas occupied by the private respondents who, if qualified, may file public land applications covering their respective portions.

Antonio Nazareno filed a motion for reconsideration with respondent Rolleo Ignacio, Undersecretary of the Department of Natural Resources and Officer-in-Charge of the Bureau of Lands who denied the motion. Respondent Director of Lands Abelardo Palad then ordered him to vacate the portions adjudicated to private respondents and remove whatever improvements they have introduced thereon. He also ordered that private respondents be placed in possession thereof.

Upon the denial of the late Antonio Nazareno's motion for reconsideration, petitioners Desamparado Vda. de Nazareno and Leticia Tapia Nazareno, filed a case before the RTC, Branch 22 for annulment of the following: order of investigation by respondent Gillera, report and recommendation by respondent Labis, decision by respondent Hilario, order by respondent Ignacio affirming the decision of respondent Hilario and order of execution by respondent Palad. The RTC dismissed the complaint for failure to exhaust administrative remedies which resulted in the finality of the administrative decision of the Bureau of Lands.

On appeal, the Court of Appeals affirmed the decision of the RTC dismissing the complaint. Applying Section 4 of C.A. No. 141, as amended, it contended that the approval of the survey plan belongs exclusively to the Director of Lands. Hence, factual findings made by the Metropolitan Trial Court respecting the subject land cannot be held to be controlling as the preparation and approval of said survey plans belong to the Director of Lands and the same shall be conclusive when approved by the Secretary of Agriculture and Natural Resources.[1]

Furthermore, the appellate court contended that the motion for reconsideration filed by Antonio Nazareno cannot be considered as an appeal to the Office of the Secretary of Agriculture and Natural Resources, as mandated by C.A. No. 141 inasmuch as the same had been acted upon by respondent Undersecretary Ignacio in his capacity as Officer-in-Charge of the Bureau of Lands and not as Undersecretary acting for the Secretary of Agriculture and Natural Resources. For the failure of Antonio Nazareno to appeal to the Secretary of Agriculture and Natural Resources, the present case does not fall within the exception to the doctrine of exhaustion of administrative remedies. It also held that there was no showing of oppressiveness in the manner in which the orders were issued and executed.

Hence, this petition.

Petitioners assign the following errors:

I. PUBLIC RESPONDENT COURT OF APPEALS IN A WHIMSICAL, ARBITRARY AND CAPRICIOUS MANNER AFFIRMED THE DECISION OF THE LOWER COURT WHICH IS CONTRARY TO THE PREVAILING FACTS AND THE LAW ON THE MATTER;

II. PUBLIC RESPONDENT COURT OF APPEALS IN A WHIMSICAL, ARBITRARY AND CAPRICIOUS MANNER AFFIRMED THE DECISION OF THE LOWER COURT DISMISSING THE ORIGINAL CASE WHICH FAILED TO CONSIDER THAT THE EXECUTION ORDER OF PUBLIC RESPONDENT ABELARDO G. PALAD, JR., DIRECTOR OF LANDS, MANILA, PRACTICALLY CHANGED THE DECISION OF PUBLIC RESPONDENT ROBERTO HILARIO, REGIONAL DIRECTOR, BUREAU OF LANDS, REGION 10, THUS MAKING THE CASE PROPER SUBJECT FOR ANNULMENT WELL

WITHIN THE JURISDICTION OF THE LOWER COURT.

The resolution of the above issues, however, hinges on the question of whether or not the subject land is public land. Petitioners claim that the subject land is private land being an accretion to his titled property, applying Article 457 of the Civil Code which provides:

"To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters."

In the case of *Meneses v. CA*,^[2] this Court held that accretion, as a mode of acquiring property under Art. 457 of the Civil Code, requires the concurrence of these requisites: (1) that the deposition of soil or sediment be gradual and imperceptible; (2) that it be the result of the action of the waters of the river (or sea); and (3) that the land where accretion takes place is adjacent to the banks or rivers (or the sea coast). These are called the rules on alluvion which if present in a case, give to the owners of lands adjoining the banks of rivers or streams any accretion gradually received from the effects of the current of waters.

For petitioners to insist on the application of these rules on alluvion to their case, the above-mentioned requisites must be present. However, they admit that the accretion was formed by the dumping of boulders, soil and other filling materials on portions of the Balacanas Creek and the Cagayan River bounding their land.^[3] It cannot be claimed, therefore, that the accumulation of such boulders, soil and other filling materials was gradual and imperceptible, resulting from the action of the waters or the current of the Balacanas Creek and the Cagayan River. In *Hilario v. City of Manila*,^[4] this Court held that the word "current" indicates the participation of the body of water in the ebb and flow of waters due to high and low tide. Petitioners' submission not having met the first and second requirements of the rules on alluvion, they cannot claim the rights of a riparian owner.

In any case, this court agrees with private respondents that petitioners are estopped from denying the public character of the subject land, as well as the jurisdiction of the Bureau of Lands when the late Antonio Nazareno filed his Miscellaneous Sales Application MSA (G-6) 571.^[5] The mere filing of said Application constituted an admission that the land being applied for was public land, having been the subject of Survey Plan No. MSI-10-06-000571-D (Equivalent to Lot No. 36302, Cad-237) which was conducted as a consequence of Antonio Nazareno's Miscellaneous Sales Application wherein said land was described as an orchard. Said description by Antonio Nazareno was, however, controverted by respondent Labis in his investigation report to respondent Hilario based on the findings of his ocular inspection that said land actually covers a dry portion of Balacanas Creek and a swampy portion of Cagayan River. The investigation report also states that except for the swampy portion which is fully planted to nipa palms, the whole area is fully occupied by a part of a big concrete bodega of petitioners and several residential houses made of light materials, including those of private respondents which were erected by themselves sometime in the early part of 1978.^[6]

Furthermore, the Bureau of Lands classified the subject land as an accretion area which was formed by deposits of sawdust in the Balacanas Creek and the Cagayan river, in accordance with the ocular inspection conducted by the Bureau of Lands.^[7] This Court has often enough held that findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality.^[8] Again, when said factual findings are affirmed by the Court of Appeals, the same are conclusive on the parties and not reviewable by this Court.^[9]

It is this Court's irresistible conclusion, therefore, that the accretion was man-made or artificial. In *Republic v. CA*,^[10] this Court ruled that the requirement that the deposit should be due to the effect of the current of the river is indispensable. This excludes from Art. 457 of the Civil Code all deposits caused by human intervention. Putting it differently, alluvion must be the exclusive work of nature. Thus, in *Tiongco v. Director of Lands, et al.*,^[11]

where the land was not formed solely by the natural effect of the water current of the river bordering said land but is also the consequence of the direct and deliberate intervention of man, it was deemed a man-made accretion and, as such, part of the public domain.

In the case at bar, the subject land was the direct result of the dumping of sawdust by the Sun Valley Lumber Co. consequent to its sawmill operations.[12] Even if this Court were to take into consideration petitioners' submission that the accretion site was the result of the late Antonio Nazareno's labor consisting in the dumping of boulders, soil and other filling materials into the Balacanas Creek and Cagayan River bounding his land,[13] the same would still be part of the public domain.

Having determined that the subject land is public land, a fortiori, the Bureau of Lands, as well as the Office of the Secretary of Agriculture and Natural Resources have Jurisdiction over the same in accordance with the Public Land Law. Accordingly, the court a quo dismissed petitioners' complaint for non-exhaustion of administrative remedies which ruling the Court of Appeals affirmed.

However, this Court agrees with petitioners that administrative remedies have been exhausted. Petitioners could not have intended to appeal to respondent Ignacio as an Officer-in-Charge of the Bureau of Lands. The decision being appealed from was the decision of respondent Hilario who was the Regional Director of The Bureau of Lands. Said decision was made "for and by authority of the Director of Lands." [14] It would be incongruous to appeal the decision of the Regional Director of the Bureau of Lands acting for the Director of the Bureau of Lands to an Officer-In-Charge of the Bureau of Lands.

In any case, respondent Rolleo Ignacio's official designation was "Undersecretary of the Department of Agriculture and Natural Resources." He was only an "Officer-In-Charge" of the Bureau of Lands. When he acted on the late Antonio Nazareno's motion for reconsideration by affirming or adopting respondent's Hilario's decision, he was acting on said motion as an Undersecretary on behalf of the Secretary of the Department. In the case of *Hamoy v. Secretary of Agriculture and Natural Resources*, [15] This Court held that the Undersecretary of Agriculture and Natural Resources may modify, adopt, or set aside the orders or decisions of the Director of Lands with respect to questions involving public lands under the administration and control of the Bureau of Lands and the Department of Agriculture and Natural Resources. He cannot therefore, be said to have acted beyond the bounds of his jurisdiction under Sections 3, 4 and 5 of Commonwealth Act No. 141. [16]

As borne out by the administrative findings, the controverted land is public land, being an artificial accretion of sawdust. As such, the Director of Lands has jurisdiction, authority and control over the same, as mandated under Sections 3 and 4 of the Public Land Law (C.A. No. 141) which states, thus:

"Sec. 3. The Secretary of Agriculture and Natural Resources shall be the exclusive officer charged with carrying out the provisions of this Act through the Director of Lands who shall act under his immediate control.

Sec. 4. Subject to said control, the Director of Lands shall have direct executive control of the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain, and his decisions as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Natural Resources."

In connection with the second issue, petitioners ascribe whim, arbitrariness or capriciousness in the execution order of public respondent Abelardo G. Palad, the Director of Lands. This Court finds otherwise since said decision was based on the conclusive finding that the subject land was public land. Thus, this Court agrees with the Court of Appeals that the Director of Lands acted within his rights when he issued the assailed execution order, as mandated by the aforecited provisions.

Petitioners' allegation that respondent Palad's execution order directing them to vacate the subject land practically changed respondent Hilario's decision is baseless. It is incorrect for petitioners to assume that respondent Palad awarded portions of the subject land to private respondents Salasalans and Rayabas as they had not yet been issued patents or titles over the subject land. The execution order merely directed the segregation of petitioners' titled lot from the subject land which was actually being occupied by private respondents before they were ejected from it. Based on the finding that private respondents were actually in possession or were actually occupying the subject land instead of petitioners, respondent Palad, being the Director of Lands and in the exercise of this administrative discretion, directed petitioners to vacate the subject land on the ground that private respondents have a preferential right, being the occupants thereof.

While private respondents may not have filed their application over the land occupied by them, they nevertheless filed their protest or opposition to petitioners' Miscellaneous Sales Application, the same being preparatory to the filing of an application as they were in fact directed to do so. In any case, respondent Palad's execution order merely implements respondent Hilario's order. It should be noted that petitioners' own application still has to be given due course.[17]

As Director of lands, respondent Palad is authorized to exercise executive control over any form of concession, disposition and management of the lands of the public domain.[18] He may issue decisions and orders as he may see fit under the circumstances as long as they are based on the findings of fact.

In the case of *Calibo v. Ballesteros*,[19] this Court held that where, in the disposition of public lands, the Director of Lands bases his decision on the evidence thus presented, he clearly acts within his jurisdiction, and if he errs in appraising the evidence, the error is one of judgment, but not an act or grave abuse of discretion annulable by certiorari. Thus, except for the issue of non-exhaustion of administrative remedies, this Court finds no reversible error nor grave abuse of discretion in the decision of the Court of Appeals.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Regalado (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Decision in CA-G.R. No. 22927 penned by Justice Segundino Chua, pp. 55-56, Rollo.

[2] 246 SCRA 374 (1995).

[3] Petition, p. 16, Rollo.

[4] 19 SCRA 931 (1967).

[5] Memorandum for Private Respondents, p. 118, Rollo.

[6] Annex "C", Investigation Report, p. 30, Rollo.

[7] Appendices "D" and "E", pp. 33-37, Rollo.

[8] *COCOFED v. Trajano*, 241 SCRA 362 (1995).

[9] *Coca-Cola Bottlers Philippines, Inc. v. CA*, 229 SCRA 533 (1994).

[10] 132 SCRA 514 (1984).

[11] 16 C.A. Rep. 211.

[12] Investigation Report, Appendix "C", p. 30, Rollo.

[13] Petition, p. 16, Rollo.

[14] Appendix "D", p. 33, Rollo.

[15] 106 Phil. 1046 (1960).

[16] *Hamoy v. Secretary of Agriculture and Natural Resources*, *supra*.

[17] Appendix "D", p. 35, Rollo.

[18] *Pineda v. CFI of Davao*, 1 SCRA 1020.

[19] 15 SCRA 37 (1965).

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