



Republic of the Philippines  
 Supreme Court  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**THIRD DIVISION**

**VERONICA L. TUMAMPOS**  
**and DEPARTMENT OF**  
**ENVIRONMENT AND**  
**NATURAL RESOURCES,**  
**REGION VII,**

*Petitioners,*

- versus -

**G.R. No. 235051**

Present:

LEONEN, J., *Chairperson,*  
 HERNANDO,\*  
 CARANDANG,\*\*  
 INTING, and  
 LOPEZ, J., *JJ.*

Promulgated:

**CONCEPCION P. ANG,**  
*Respondent.*

**June 16, 2021**

*MSPDCB/H*

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**RESOLUTION**

**INTING, J.:**

This Petition for Review on *Certiorari*<sup>1</sup> assails the Decision<sup>2</sup> dated January 31, 2017 and the Resolution<sup>3</sup> dated September 11, 2017 of the Court of Appeals (CA) which, respectively, granted the Petition for *Certiorari*<sup>4</sup> and denied the Motion for Reconsideration<sup>5</sup> in CA-G.R. SP No. 09539.

*The Antecedents*

The subject matter of this case is a parcel of land referred to as Lot

\* On official leave.

\*\* Designated additional member per Raffle dated March 25, 2021.

<sup>1</sup> *Rollo*, pp. 4-13.

<sup>2</sup> *Id.* at 15-25; penned by Associate Justice Geraldine C. Fiel-Macaraig with Associate Justices Edgardo L. Delos Santos (now a member of the Court) and Edward B. Contreras, concurring.

<sup>3</sup> *Id.* at 27-31.

<sup>4</sup> *Id.* at 56-67.

<sup>5</sup> *Id.* at 33-39.

No. 1211 located in Babag, Lapu-Lapu City, Cebu with an area of 19,156 square meters (subject property).<sup>6</sup>

Veronica L. Tumamos (Tumamos) alleged that, through a Confirmation of Waiver and Quitclaim dated January 28, 2013, she acquired the subject property from the heirs of Teodoro Berdon (Teodoro), the previous tax declarant and survey claimant. She further stated that she had declared the property for taxation purposes, immediately took its possession, and introduced improvements thereon.<sup>7</sup>

For her part, Concepcion P. Ang (Ang) averred the following:

In 1947, the subject property was registered for taxation purposes under Tax Declaration No. 02267 in the name of a certain Julio Berdon (Julio). In 1978, Tomasa Pongasi (Pongasi) bought and registered it in her name under Tax Declaration No. 01338. Thereafter, Bonifacio Domosmog (Domosmog) acquired the same property. After the death of Domosmog, his heirs purportedly sold it to Ang through a Deed of Absolute Sale dated May 5, 1994.<sup>8</sup>

In 1995, Ang filed an application for judicial titling of the subject property. The case is still pending before Branch 53, Regional Trial Court (RTC), Lapu-Lapu City.<sup>9</sup>

Meanwhile, in June 2012, Tumamos filed a free patent application over the subject property with the Department of Environment and Natural Resources, Region VII (DENR-VII), docketed as FPA No. 072226-27-F.<sup>10</sup>

When she learned of the free patent application of Tumamos, Ang filed a formal protest against it. She asserted that the DENR-VII had no jurisdiction over the land in dispute; that Tumamos' supporting documents were void; and that she (Ang) had a better right over the subject property.<sup>11</sup>

<sup>6</sup> As culled from the Department of Environment and Natural Resources, Region VII (DENR-VII) Decision dated September 2, 2014, *id.* at 51.

<sup>7</sup> *Id.* at 53.

<sup>8</sup> *Id.*

<sup>9</sup> As culled from the Court of Appeals (CA) Decision dated January 31, 2017, *id.* at 16.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 16, 53.

*Ruling of the DENR-VII*

In its Decision<sup>12</sup> dated September 2, 2014, the DENR-VII gave due course to Tumampos' application for free patent and concomitantly, dismissed the protest filed by Ang.

The DENR-VII declared that per the Certification dated August 6, 2012 issued by the Acting Chief, Cadastral Decree Section of the Land Registration Authority (LRA), Marco A. Castro, the land in dispute was declared public land in Cadastral Case No. 17, Cadastral Record No. 946; and that because the subject property still forms part of the land of the public domain, the DENR-VII, not the regular court, had jurisdiction over its administration and disposition. It also decreed that pursuant to the doctrine of primary jurisdiction, it had jurisdiction over the case because the claim over the disputed land may be better addressed by an administrative body, which has special competence over the controversy.<sup>13</sup>

Moreover, the DENR-VII lent credence to the contention of Tumampos that she had preferential right of the subject land having acquired it from the heirs of its previous tax declarant and survey claimant, Teodoro. On the contrary, the tax declarations of Ang's predecessors-in-interest – Pongasi (Tax Declaration No. 01338) and Julio (Tax Declaration No. 02267) – contained discrepancies; the cadastral number of the former was only handwritten, while the cadastral number of the latter was superimposed. The circumstances only cast doubt as to the identity of the land covered by the tax declarations. It also noted that there was no proof how Julio acquired the land in dispute.<sup>14</sup>

Finally, the DENR-VII ruled that while both parties presented tax declarations on the subject property, Tumampos established that she immediately took its possession after acquiring it and introduced considerable improvements. Considering that Tumampos had all the qualification and none of the disqualification to acquire the property and having tacked her possession through that of her predecessor-in-interest, her free patent application should be given due course.<sup>15</sup>

<sup>12</sup> *Id.* at 51-55; penned by Regional Director Isabelo R. Montejo, D.M., CESO IV.

<sup>13</sup> *Id.* at 52.

<sup>14</sup> *Id.* at 53.

<sup>15</sup> *Id.* at 54-55.

With the denial of her motion for reconsideration<sup>16</sup> and without interposing an appeal with the DENR Secretary, Ang filed a Petition for *Certiorari* with the CA.

*Ruling of the CA*

On January 31, 2017, the CA granted the Petition for *Certiorari*.

The CA elucidated that Ang properly filed a *certiorari* petition in challenging the decision of the DENR-VII. It decreed that it was undisputed that Ang filed a case for judicial titling over the subject land prior to the filing of Tumampos' free patent application over the same property with the DENR-VII; and that it would be unjust if it would disregard the possibility that DENR-VII erred when it took cognizance of the free patent application of Tumampos despite the pendency of Ang's judicial titling case.<sup>17</sup>

The CA also noted that there was the possibility that the DENR-VII decision would run contrary to the ruling of the RTC on Ang's application for title; and that to act on the *certiorari* petition may prevent the possibility of Ang losing title over the land in dispute especially because the order of execution was already issued on the DENR-VII Decision dated September 2, 2014.<sup>18</sup>

The CA further held that considering that both the DENR and the regular courts have the authority to issue a title on incomplete ownership over alienable land, DENR-VII's knowledge of the judicial titling case over the subject property should have prompted it not to take cognizance of the free patent application of Tumampos.

On September 11, 2017, the CA denied Tumampos' Motion for Reconsideration prompting her to file the instant Petition for Review on *Certiorari* and raising the issues as follows:

<sup>16</sup> In an Order dated May 22, 2015 of the DENR-VII as culled from the CA Decision dated January 31, 2017, *id.* at 19.

<sup>17</sup> *Id.* at 21.

<sup>18</sup> *Id.* at 21-22.

Whether the CA gravely erred in giving due course to the Petition for *Certiorari*; and, whether the rule on appeal from the decision of the DENR-VII may be dispensed with and instead allow a petition for *certiorari* be filed in lieu of an appeal.<sup>19</sup>

### *Our Ruling*

The petition is meritorious.

Section 1,<sup>20</sup> Rule 65 of the Rules of Court provides that a writ of *certiorari* shall issue in instances where the respondent tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction *and* there is *no appeal*, or any other plain, adequate and speedy remedy in the ordinary course of law that the aggrieved party might take.

A petition for *certiorari* under Rule 65 is an extraordinary recourse. It is limited in scope and covers only errors of jurisdiction. It does not concern any error of judgment as the same can only be reviewed through an appeal. To further stress, within the purview of errors of judgment are the findings of fact and conclusions of law of a court while errors of jurisdiction involve acts made without or in excess of jurisdiction or with grave abuse of discretion.<sup>21</sup> In *Taar v. Lawan*,<sup>22</sup> the Court highlighted the distinct character of “error of jurisdiction” in this manner:

<sup>19</sup> See Petition for Review on *Certiorari* dated October 18, 2017, *id.* at 8-9.

<sup>20</sup> Section 1, Rule 65 of the Rules of Court provides:

SECTION 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46.

<sup>21</sup> *Taar, et al. v. Lawan, et al.*, 820 Phil. 26, 44-45 (2017).

<sup>22</sup> *Id.*

*Without jurisdiction* denotes that the tribunal, board, or officer acted with absolute lack of authority. There is *excess of jurisdiction* when the public respondent exceeds its power or acts without any statutory authority. *Grave abuse of discretion* connotes such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; otherwise stated, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.<sup>23</sup> (Italics in the original)

To reiterate, other than the necessity of “error of jurisdiction,” a petition for *certiorari* shall be given due course upon showing that there is “no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.”<sup>24</sup>

In this case, Tumampos contends that despite the availability and adequacy of an appeal, Ang filed a Petition for *Certiorari* with the CA.

The Court agrees.

Section 1(a) of DENR Department Administrative Order No. 87, Series of 1990, provides for the manner of appeal from the decision or orders of the DENR Regional Offices, to wit:

*Section 1. Perfection of Appeals.* — a) Unless otherwise provided by law or executive order, appeals from the decisions/orders of the DENR Regional Offices shall be perfected within fifteen (15) days after the receipt of a copy of the decision/order complained of by the party adversely affected, by filing with the Regional Office which adjudicated the case a notice of appeal, serving copies thereof upon the prevailing party and Office of the Secretary, and paying the required fees.

In *Besaga v. Sps. Acosta, et al.*,<sup>25</sup> the Court decreed that the appeal of the decisions or orders of the DENR Regional Offices to the DENR Secretary was in order for the latter to review, at the earliest opportunity,

<sup>23</sup> *Id.* at 45, citing *Milwaukee Industries Corporation v. Court of Appeals*, 650 Phil. 429, 435-436 (2010).

<sup>24</sup> Section 1, Rule 65, RULES OF COURT.

<sup>25</sup> 758 Phil. 339 (2015).

the findings of the former or any possible error of judgment the DENR Regional Offices might have committed.

In this case, Ang has an available remedy to challenge the adverse decision against her by the DENR-VII, that is, by filing an appeal before the DENR Secretary within the 15-day reglementary period as above-cited. However, instead of interposing an appeal, she filed a Petition for *Certiorari* which is an improper recourse.

It bears stressing that the Court is mindful that there are exceptions to the rule that a *certiorari* petition may be filed despite the availability of appeal especially in case the appeal would be “inadequate, slow, insufficient and will not promptly relieve a party from the injurious effects of the order complained of.”<sup>26</sup>

However, in the present case, Ang failed to prove that the appeal with the DENR Secretary will not promptly and fully resolve her objections on the decision and order of the DENR-VII. In addition, she cannot make use of the *certiorari* petition as a substitute for a lost appeal as she had evidently erred in her choice of remedy.<sup>27</sup> At the same time, because Ang failed to timely file her appeal with the DENR Secretary, then the DENR-VII Decision and Order had attained finality. That the DENR-VII issuances were indeed final and executory were noted by the CA itself when it declared that an order of execution was already issued on the DENR-VII Decision dated September 2, 2014.<sup>28</sup>

The Court also disagrees with the CA in taking cognizance of the Petition for *Certiorari* on the ground that Ang has a pending judicial titling case filed before the RTC which supposedly bars the eventual filing of Tumamos’ free patent application with the DENR-VII.

In *De Leon v. De Leon-Reyes, et al.*<sup>29</sup> (*De Leon*), the Court discussed the modes of disposing public land through confirmation of incomplete or imperfect titles, namely: (1) by judicial confirmation; and (2) by administrative legalization or the grant of free patents.

<sup>26</sup> *Taar, et al. v. Lawan, et al.*, *supra* note 21 at 46, citing *Hualam Construction and Dev't Corp. v. Court of Appeals*, 289 Phil. 222, 240 (1992), further citing *St. Peter Memorial Park, Inc. v. Hon. Campos, Jr.*, 159 Phil. 781, 791 (1975).

<sup>27</sup> *Id.* at 48.

<sup>28</sup> *Rollo*, p. 22.

<sup>29</sup> 785 Phil. 832 (2016).

As regards the first mode, the Court stressed that upon compliance with the requirements under Section 48(b)<sup>30</sup> of The Public Land Act,<sup>31</sup> as amended, the possessor of the land subject of judicial confirmation is considered to have obtained a right over it by operation of law. This means that the land is removed from the public domain and its possessor is conclusively presumed to have complied with the requirements for the grant. In fine, the land becomes private in character and is beyond the DENR's authority to dispose.<sup>32</sup>

Meanwhile, anent the second mode, the applicant for an administrative legalization acknowledges that the land being applied for belongs to the government. This is because by its very nature, patent is a government grant of an authority, a right or privilege. A free patent is, therefore, an instrument by which the government gives a grant over a public land to a private person.<sup>33</sup>

In *De Leon*, the Court also ruled that the DENR has exclusive jurisdiction over the management and disposition of public lands, and the authority to resolve conflicting claims over them as well as determine the applicant's entitlement to a free patent. Definitely, in the absence of showing that the land subject of a free patent application had been obtained a private character, then regular courts have no jurisdiction to resolve conflicting claims over public lands.

To note, in its Decision dated September 2, 2014, the DENR-VII stressed that the disputed property was declared public land in Cadastral

<sup>30</sup> Section 48(b) of the Commonwealth Act No. 141, as amended, provides:

SECTION 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and, occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, immediately preceding the filing of the application for confirmation of title, except when prevented by war or *force majeure*. Those shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter.

<sup>31</sup> Commonwealth Act No. 141, approved on November 7, 1936.

<sup>32</sup> *De Leon v. De Leon-Reyes*, 785 Phil. 832, 846-847 (2016), citing *Martinez v. Court of Appeals*, 566 Phil. 590, 600 (2008).

<sup>33</sup> *Id.* at 847, citing *Black's Law Dictionary* (8<sup>th</sup> ed. 2004), p. 3555.




Case No. 17, Cadastral Record No. 946 as evidenced by certification issued by the Acting Chief, Cadastral Decree Section of the LRA. It likewise emphasized that the land in question remains part of the public domain. This being the case, the DENR-VII properly took cognizance of the subject property's administration and disposition.

Given the foregoing, the CA erred in granting the Petition for *Certiorari* on its view that the DENR-VII had no jurisdiction over the free patent application by reason of the pendency of Ang's application for judicial titling over the subject land. To reiterate, judicial confirmation of incomplete or imperfect title, which is under the jurisdiction of regular courts, varies from administrative legalization which is within the jurisdiction of the DENR.


In sum, there is no indication that the DENR-VII acted with grave abuse of discretion in rendering its Decision dated September 2, 2014 and Order dated May 22, 2015. Put in another way, the DENR-VII did not act arbitrarily on account of any prejudice, personal hostility, or passion that would amount to an evasion or denial to fulfill its legal duty when it granted Tumampos' application for free patent. For which reason, the Court finds that the grant of the Petition for *Certiorari* lacks sufficient legal justification and thus, must be corrected.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated January 31, 2017 and the Resolution dated September 11, 2017 of the Court of Appeals in CA-G.R. SP No. 09539 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated September 2, 2014 and the Order dated May 22, 2015 of the Department of Environment and Natural Resources, Region VII, in FPA No. 072226-27-F are **REINSTATED**.

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

  
**MARVIC M.V.F. LEONEN**  
*Associate Justice*  
*Chairperson*

(On official leave)  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**ROSALINDA D. CARANDANG**  
*Associate Justice*

  
**JHOSEP V. LOPEZ**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARVIC M.V.F. LEONEN**  
*Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

