

THIRD DIVISION

[G.R. No. 161881, July 31, 2008]

NICASIO I. ALCANTARA, PETITIONER, VS. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DENR SECRETARY ELISEA G. GOZUN, REGIONAL EXECUTIVE DIRECTOR MUSA C. SARUANG, DENR CENRO ANDREW B. PATRICIO, AND ROLANDO PAGLANGAN, ET AL., RESPONDENTS.

>HEIRS OF DATU ABDUL B. PENDATUN, REPRESENTED BY DATU NASSER B. PENDATUN, AL HAJ, HEIRS OF SABAL MULA AND GAWAN CLAN, REPRESENTED BY TRIBAL CHIEF-TAIN LORETO GAWAN, RESPONDENTS- INTERVENORS,

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking a reversal of the Decision^[1] of the Court of Appeals (CA) dated September 24, 2003 which affirmed the orders of the Department of Environment and Natural Resources (DENR), cancelling the Forest Land Grazing Lease Agreement (FLGLA) with Nicasio A. Alcantara (petitioner), ordering him to vacate the land subject of the cancelled FLGLA and directing the installation of members of a group composed of B'laan and Maguindanaoans, represented by Rolando Paglangan (private respondents) in the area; as well as the CA Resolution^[2] dated January 23, 2004 denying petitioner's Motion for Reconsideration.

The antecedent facts are as follows:

Petitioner is a lessee under FLGLA No. 542, issued by the DENR, of nine hundred twenty-three (923) hectares of public forest land ^[3] (subject land) located in the vicinity of Sitio Lanton, Barrio Apopong, General Santos City. ^[4]

The subject land, however, is being claimed as the ancestral land of the indigenous B'laan and Maguindanao people, who maintain that they and their predecessors have been cultivating, possessing and occupying it since time immemorial.^[5] They claim that Christian settlers (settlers) started occupying the area only after World War II. As a result, there was constant friction between the indigenous inhabitants and the settlers, with the disputes, at times, erupting in violence. Overpowered, the indigenous people eventually lost physical control of much of the land.^[6]

Petitioner, a son of one of the settlers, used to hold a pasture permit over the subject land, which was later on converted into FLGLA No. 542 covering the subject property.^[7] Petitioner claims that FLGLA No. 542 has been subsisting since 1983.^[8]

On April 10, 1990, private respondents, representing the B'laan and Maguindanao

tribes, filed a complaint^[9] against petitioner before the Commission on the Settlement of Land Problems (COSLAP) seeking the cancellation of FLGLA No. 542 and the reversion of the land to the indigenous communities.^[10]

Private respondents, the Heirs of Datu Abdul B. Pendatun and the Heirs of the Sabal Mula Gawan Clan (respondents-intervenors), claiming to represent the B'laan and Maguindanaoan tribes, aver that they have always possessed the land until the first settlers occupied the area.^[11] They claim that among those who took the land by force was petitioner's predecessor, Conrado Alcantara. They narrate that in 1962, some of their tribal leaders tried to re-take the land, but failed because the well-armed settlers repelled them.^[12] The incident, in fact, led to the killing of two of their leaders.^[13]

Petitioner filed an answer to the complaint questioning the authority of the COSLAP and alleged that it was the secretary of the DENR who should have jurisdiction to administer and dispose of public lands.^[14] Petitioner also contended that the COSLAP should suspend the hearing of the case, as the DENR was then hearing a similar controversy. ^[15]

In 1993, despite the pendency of the COSLAP case, and despite opposition from private respondents, petitioner was able to renew FLGLA No. 542 when it expired that year. ^[16] The renewal given to petitioner was for another 25 years, or until December 31, 2018.^[17]

Meanwhile, on October 29, 1997, Congress passed Republic Act No. 8371, or the Indigenous People's Rights Act (IPRA), which was intended to recognize and promote all the rights of the country's Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) within the framework of the Constitution.^[18]

On August 3, 1998, the COSLAP rendered its decision, the dispositive portion of which reads as follows:

WHEREFORE, the foregoing considered, judgment is hereby RENDERED in favour of the complainants and against the Respondents as follows:

1. Recommends to the Hon. Secretary of DENR the cancellation of respondent's renewed Forest Land Grazing Lease Agreement (FLGLA) No. 542;
2. Recommending to the DENR to the immediate segregation of the Three Hundred (300) hectares requested by complainants from the Nine Hundred Twenty Three (923) Hectares;
3. Recommending to the DENR to declare the entire area of the Nine Hundred Twenty Three (923) Hectares, the ancestral lands of the B'laans;
4. Recommending to the DENR after the Cancellation of FLGLA No. 542, to place in possession the petitioners in order to start cultivation and plant crops for their food and solve the on-going

famine and hunger being experience[d] at present by the Lumads.
[19]

In addition, the COSLAP made the following factual findings:

a) The subject land is the ancestral domain of the complainant indigenous people, whose possession was merely interrupted by the forcible and violent takeover of outside settlers. [20]

b) FLGLA No. 542 was issued by the DENR without giving due process to the indigenous communities as oppositors and in violation of existing laws such as Presidential Decree (P.D.) No. 410 and the Constitution. [21]

The COSLAP maintained that it had jurisdiction over the case by virtue of Executive Order (E.O.) No. 561, the law creating the COSLAP, which provides:

Sec. 3. *Powers and Functions.* - The Commission shall have the following powers and functions:

x x x x

2. Refer and follow-up for immediate action by the agency having appropriate jurisdiction any land problem or dispute referred to the Commission: *Provided*, That the Commission may, in the following cases, assume jurisdiction and resolve land problems or disputes which are critical and explosive in nature considering, for instance, the large number of the parties involved, the presence or emergence of social tension or unrest, or other similar critical situations requiring immediate action:

- (a) Between occupants/squatters and pasture lease agreement holders or timber concessioners;
- (b) Between occupants/squatters and government reservation grantees;
- (c) Between occupants/squatters and public land claimants or applicants;
- (d) Petitions for classification, release and/or subdivision of lands of the public domain; and
- (e) Other similar land problems of grave urgency and magnitude. [22]

Disagreeing with the ruling of COSLAP, petitioner filed a motion for reconsideration of the decision, which COSLAP denied.

Petitioner then filed before the CA a petition [23] for *certiorari* under Rule 65 to question the decision of the COSLAP. The CA, in its Decision dated June 22, 2000, affirmed *in toto* the decision of the COSLAP. [24]

Aggrieved, petitioner filed a petition for review on *certiorari* before the Court, docketed as G.R. No. 145838.

The Court, in its Decision dated July 20, 2001, upheld the CA and the COSLAP, holding that a) COSLAP had jurisdiction to decide the case; b) FLGLA No. 542 was issued in violation of the law, and; c) the 923 hectares covered by FLGLA No. 542 were ancestral land of the private respondents. [25]

When the decision of the Court attained finality, private respondents filed a motion for execution of the COSLAP's decision. Petitioner filed his opposition to the motion.

On July 29, 2002, the COSLAP issued a writ of execution of its decision, wherein it ordered the Secretary of the DENR to implement the August 3, 1998 decision as affirmed by the Supreme Court.^[26]

In a memorandum dated October 19, 2001, the Secretary of the DENR Heherson Alvarez (Sec. Alvarez), upon receipt of the writ of execution and before cancelling FLGLA No. 542, ordered the Office of the Regional Executive Director of DENR Region XII, in Koronadal City, to conduct a review and investigation of FLGLA No. 542.^[27] In compliance, the Officer in Charge (OIC)- Regional Executive Director conducted an investigation and review of the lease under the said FLGLA. One of the participants in the investigation was a representative of petitioner.^[28] Following the investigation, the team released its report,^[29] dated February 13, 2002, which found violations by petitioner of the terms of the FLGLA, as follows:

1. Failure to establish a food production area within the leased area;
2. Failure to undertake forage improvement within the leased area;
3. Failure to pay the full and or on time Annual Rental/User's Fee/ Government Share pursuant to section 28 and 29 of DAO No. 99-36 dated August 10, 1999 Re: Revised Rules and Regulations Governing the Administration, Management, Development and Disposition of Forest Lands Used for Grazing Purposes. Instead the lessee pay (sic) a partial payment of Php18,566 per O.R. [No.] 9640117 dated December 29, 2000 and Php147,680 per O.R. [No.] 9640246 dated February 1, 2001.
4. The 7-years (sic) Grazing Management Plan for CY 1987-1993 of the said lessee was expired. During our investigation, the lessee had failed to present the revised 7-years [sic] Grazing Management Plan for CY 1994-2000 and thereafter pursuant to item No. 23 of the aforesaid contract.
5. Annual report for year 2001 submitted by the lessee revealed that cattle stock of the leased area is only 249 heads; however, the investigation team observed that there were an excess of cattle stock present in the grazing area. The said excess cattle were (sic) allegedly came from [an] adjacent ranch own (sic) by Alejandro Alcantara.
6. The team noticed the presence of squatters within the leased area by [a] certain Asonto et al. and Jumawan et al.
7. FLGLA no. 542 having [sic] an area of 923 hectares which exceed to (sic) the limit of 500 hectares for individual holder [sic] pursuant to Section 3 Article XII of [the] 1987 Philippine Constitution as implemented by DAO No. 99-36 series of 1999.
8. Pursuant to Memorandum dated December 5, 2001 of the team leader Wahid Amella of CLCSI No. 6 the 478.08 hectares out of the 923 hectares of the

leased area is portion of PMD 5338 reverting it to the category of Forest Land. However, no Forestry Administrative Order issued. x x x^[30]

Thus, on August 15, 2002, Sec. Alvarez issued an order cancelling FLGLA No. 542 and subjecting the area under the DENR's authority pending final distribution to the concerned communities by the National Commission on Indigenous Peoples (NCIP) or the COSLAP.^[31]

Petitioner filed a motion for reconsideration of the order of cancellation. In an order dated November 21, 2002,^[32] Sec. Alvarez denied the motion for reconsideration and affirmed the order of cancellation dated August 15, 2002.

On November 22, 2002, Sec. Alvarez issued a memorandum to the Regional Executive Director of DENR Region XII, in Koronadal City, to implement the four recommendations of the COSLAP contained in its Order dated August 3, 1998; and issue the corresponding survey authority.^[33]

On November 26, 2002, Community Environment and Natural Resources Officer (CENRO) Andrew B. Patricio Jr. sent a letter to petitioner, advising him to vacate and remove all improvements in the area within 10 days from receipt of the letter.^[34] On even date, CENRO Patricio sent another letter which amended the first letter and advised petitioner to vacate the land *immediately*, instead of within 10 days as earlier advised.^[35]

On November 27, 2002, CENRO Patricio issued an Installation Order, which directed the immediate installation and occupation of the area, covered by the cancelled FLGLA No. 542, by the private respondents' indigenous communities.^[36]

On December 3, 2002, petitioner filed a petition for *certiorari* before the CA, docketed as CA G.R. SP No. 74166, praying for the annulment and setting aside of the orders of the public respondents, enumerated as follows:

- 1) The Order dated August 15, 2002 by Sec. Alvarez, which cancelled the FLGLA No. 542 issued to petitioner;
- 2) The Order dated November 21, 2002 by Sec. Alvarez denying petitioner's motion for reconsideration of the order of cancellation;
- 3) The Memorandum dated November 22, 2002 by Sec. Alvarez which orders Regional Office XII of the DENR to implement COSLAP's recommendations and to issue the corresponding survey authority;
- 4) The two Letters dated November 26, 2002 of CENRO Patricio ordering petitioner to immediately vacate and remove improvements in the subject area.
- 5) The Installation Order dated November 27, 2002 of CENRO Patricio authorizing the installation and occupation of the subject area by private respondents.