

EN BANC

[G.R. No. 167707, October 08, 2008]

THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, THE REGIONAL EXECUTIVE DIRECTOR, DENR-REGION VI, REGIONAL TECHNICAL DIRECTOR FOR LANDS, LANDS MANAGEMENT BUREAU, REGION VI PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICER OF KALIBO, AKLAN, REGISTER OF DEEDS, DIRECTOR OF LAND REGISTRATION AUTHORITY, DEPARTMENT OF TOURISM SECRETARY, DIRECTOR OF PHILIPPINE TOURISM AUTHORITY, PETITIONERS, VS. MAYOR JOSE S. YAP, LIBERTAD TALAPIAN, MILA Y. SUMNDAD, AND ANICETO YAP, IN THEIR BEHALF AND IN BEHALF OF ALL THOSE SIMILARLY SITUATED, RESPONDENTS.

G.R. NO. 173775

DR. ORLANDO SACAY AND WILFREDO GELITO, JOINED BY THE LANDOWNERS OF BORACAY SIMILARLY SITUATED NAMED IN A LIST, ANNEX "A" OF THIS PETITION, PETITIONERS, VS. THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, THE REGIONAL TECHNICAL DIRECTOR FOR LANDS, LANDS MANAGEMENT BUREAU, REGION VI, PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICER, KALIBO, AKLAN, RESPONDENTS.

D E C I S I O N

REYES, R.T., J.:

AT stake in these consolidated cases is the right of the present occupants of Boracay Island to secure titles over their occupied lands.

There are two consolidated petitions. The first is G.R. No. 167707, a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) affirming that^[2] of the Regional Trial Court (RTC) in Kalibo, Aklan, which granted the petition for declaratory relief filed by respondents-claimants Mayor Jose Yap, *et al.* and ordered the survey of Boracay for titling purposes. The second is G.R. No. 173775, a petition for prohibition, mandamus, and nullification of Proclamation No. 1064^[3] issued by President Gloria Macapagal-Arroyo classifying Boracay into reserved forest and agricultural land.

The Antecedents

G.R. No. 167707

Boracay Island in the Municipality of Malay, Aklan, with its powdery white sand

beaches and warm crystalline waters, is reputedly a premier Philippine tourist destination. The island is also home to 12,003 inhabitants^[4] who live in the bone-shaped island's three *barangays*.^[5]

On April 14, 1976, the Department of Environment and Natural Resources (DENR) approved the National Reservation Survey of Boracay Island,^[6] which identified several lots as being occupied or claimed by named persons.^[7]

On November 10, **1978**, then President Ferdinand Marcos issued Proclamation No. **1801**^[8] declaring Boracay Island, among other islands, caves and peninsulas in the Philippines, as **tourist zones and marine reserves** under the administration of the Philippine Tourism Authority (PTA). President Marcos later approved the issuance of **PTA Circular 3-82**^[9] dated September 3, 1982, to implement Proclamation No. 1801.

Claiming that Proclamation No. 1801 and PTA Circular No 3-82 precluded them from filing an application for judicial confirmation of imperfect title or survey of land for titling purposes, respondents-claimants

Mayor Jose S. Yap, Jr., Libertad Talapian, Mila Y. Sumndad, and Aniceto Yap filed a petition for declaratory relief with the RTC in Kalibo, Aklan.

In their petition, respondents-claimants alleged that Proclamation No. 1801 and PTA Circular No. 3-82 raised doubts on their right to secure titles over their occupied lands. They declared that they themselves, or through their predecessors-in-interest, had been in open, continuous, exclusive, and notorious possession and occupation in Boracay since June 12, 1945, or earlier since time immemorial. They declared their lands for tax purposes and paid realty taxes on them.^[10]

Respondents-claimants posited that Proclamation No. 1801 and its implementing Circular did not place Boracay beyond the commerce of man. Since the Island was classified as a tourist zone, it was susceptible of private ownership. Under Section 48(b) of Commonwealth Act (CA) No. 141, otherwise known as the Public Land Act, they had the right to have the lots registered in their names through judicial confirmation of imperfect titles.

The Republic, through the Office of the Solicitor General (OSG), opposed the petition for declaratory relief. The OSG countered that Boracay Island was an **unclassified land** of the public domain. It formed part of the mass of lands classified as "public forest," which was not available for disposition pursuant to Section 3(a) of Presidential Decree (PD) No. 705 or the Revised Forestry Code,^[11] as amended.

The OSG maintained that respondents-claimants' reliance on PD No. 1801 and PTA Circular No. 3-82 was misplaced. Their right to judicial confirmation of title was governed by CA No. 141 and PD No. 705. Since Boracay Island had not been classified as alienable and disposable, whatever possession they had cannot ripen into ownership.

During pre-trial, respondents-claimants and the OSG stipulated on the following facts: (1) respondents-claimants were presently in possession of parcels of land in Boracay Island; (2) these parcels of land were planted with coconut trees and other

natural growing trees; (3) the coconut trees had heights of more or less twenty (20) meters and were planted more or less fifty (50) years ago; and (4) respondents-claimants declared the land they were occupying for tax purposes.^[12]

The parties also agreed that the principal issue for resolution was purely legal: whether Proclamation No. 1801 posed any legal hindrance or impediment to the titling of the lands in Boracay. They decided to forego with the trial and to submit the case for resolution upon submission of their respective memoranda.^[13]

The RTC took judicial notice^[14] that certain parcels of land in Boracay Island, more particularly Lots 1 and 30, Plan PSU-5344, were covered by Original Certificate of Title No. 19502 (RO 2222) in the name of the Heirs of Ciriaco S. Tirol. These lots were involved in Civil Case Nos. 5222 and 5262 filed before the RTC of Kalibo, Aklan.^[15] The titles were issued on August 7, 1933.^[16]

RTC and CA Dispositions

On July 14, 1999, the RTC rendered a decision in favor of respondents-claimants, with a *fallo* reading:

WHEREFORE, in view of the foregoing, the Court declares that Proclamation No. 1801 and PTA Circular No. 3-82 pose no legal obstacle to the petitioners and those similarly situated to acquire title to their lands in Boracay, in accordance with the applicable laws and in the manner prescribed therein; and to have their lands surveyed and approved by respondent Regional Technical Director of Lands as the approved survey does not in itself constitute a title to the land.

SO ORDERED.^[17]

The RTC upheld respondents-claimants' right to have their occupied lands titled in their name. It ruled that neither Proclamation No. 1801 nor PTA Circular No. 3-82 mentioned that lands in Boracay were inalienable or could not be the subject of disposition.^[18] The Circular itself recognized private ownership of lands.^[19] The trial court cited Sections 87^[20] and 53^[21] of the Public Land Act as basis for acknowledging private ownership of lands in Boracay and that only those forested areas in public lands were declared as part of the forest reserve.^[22]

The OSG moved for reconsideration but its motion was denied.^[23] The Republic then appealed to the CA.

On December 9, 2004, the appellate court affirmed *in toto* the RTC decision, disposing as follows:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the appeal filed in this case and AFFIRMING the decision of the lower court.^[24]

The CA held that respondents-claimants could not be prejudiced by a declaration that the lands they occupied since time immemorial were part of a forest reserve.

Again, the OSG sought reconsideration but it was similarly denied.^[25] Hence, the present petition under Rule 45.

G.R. No. 173775

On May 22, 2006, during the pendency of G.R. No. 167707, President Gloria Macapagal-Arroyo issued Proclamation No. 1064^[26] classifying Boracay Island into four hundred (400) hectares of reserved forest land (protection purposes) and six hundred twenty-eight and 96/100 (628.96) hectares of agricultural land (alienable and disposable). The Proclamation likewise provided for a fifteen-meter buffer zone on each side of the centerline of roads and trails, reserved for right-of-way and which shall form part of the area reserved for forest land protection purposes.

On August 10, 2006, petitioners-claimants Dr. Orlando Sacay,^[27] Wilfredo Gelito,^[28] and other landowners^[29] in Boracay filed with this Court an original petition for prohibition, mandamus, and nullification of Proclamation No. 1064.^[30] They allege that the Proclamation infringed on their "prior vested rights" over portions of Boracay. They have been in continued possession of their respective lots in Boracay since time immemorial. They have also invested billions of pesos in developing their lands and building internationally renowned first class resorts on their lots.^[31]

Petitioners-claimants contended that there is no need for a proclamation reclassifying Boracay into agricultural land. Being classified as neither mineral nor timber land, the island is **deemed** agricultural pursuant to the Philippine Bill of 1902 and Act No. 926, known as the first Public Land Act.^[32] Thus, their possession in the concept of owner for the required period entitled them to judicial confirmation of imperfect title.

Opposing the petition, the OSG argued that petitioners-claimants do not have a vested right over their occupied portions in the island. Boracay is an unclassified public forest land pursuant to Section 3(a) of PD No. 705. Being public forest, the claimed portions of the island are inalienable and cannot be the subject of judicial confirmation of imperfect title. It is only the executive department, not the courts, which has authority to reclassify lands of the public domain into alienable and disposable lands. There is a need for a positive government act in order to release the lots for disposition.

On November 21, 2006, this Court ordered the consolidation of the two petitions as they principally involve the same issues on the land classification of Boracay Island.^[33]

Issues

G.R. No. 167707

The OSG raises the lone issue of whether Proclamation No. 1801 and PTA Circular No. 3-82 pose any legal obstacle for respondents, and all those similarly situated, to acquire title to their occupied lands in Boracay Island.^[34]

G.R. No. 173775

Petitioners-claimants hoist five (5) issues, namely:

I.

AT THE TIME OF THE ESTABLISHED POSSESSION OF PETITIONERS IN CONCEPT OF OWNER OVER THEIR RESPECTIVE AREAS IN BORACAY, SINCE TIME IMMEMORIAL OR AT THE LATEST SINCE 30 YRS. PRIOR TO THE FILING OF THE PETITION FOR DECLARATORY RELIEF ON NOV. 19, 1997, WERE THE AREAS OCCUPIED BY THEM PUBLIC AGRICULTURAL LANDS AS DEFINED BY LAWS THEN ON JUDICIAL CONFIRMATION OF IMPERFECT TITLES OR PUBLIC FOREST AS DEFINED BY SEC. 3a, PD 705?

II.

HAVE PETITIONERS OCCUPANTS ACQUIRED PRIOR VESTED RIGHT OF PRIVATE OWNERSHIP OVER THEIR OCCUPIED PORTIONS OF BORACAY LAND, DESPITE THE FACT THAT THEY HAVE NOT APPLIED YET FOR JUDICIAL CONFIRMATION OF IMPERFECT TITLE?

III.

IS THE EXECUTIVE DECLARATION OF THEIR AREAS AS ALIENABLE AND DISPOSABLE UNDER SEC 6, CA 141 [AN] INDISPENSABLE PRE-REQUISITE FOR PETITIONERS TO OBTAIN TITLE UNDER THE TORRENS SYSTEM?

IV.

IS THE ISSUANCE OF PROCLAMATION 1064 ON MAY 22, 2006, VIOLATIVE OF THE PRIOR VESTED RIGHTS TO PRIVATE OWNERSHIP OF PETITIONERS OVER THEIR LANDS IN BORACAY, PROTECTED BY THE DUE PROCESS CLAUSE OF THE CONSTITUTION OR IS PROCLAMATION 1064 CONTRARY TO SEC. 8, CA 141, OR SEC. 4(a) OF RA 6657.

V.

CAN RESPONDENTS BE COMPELLED BY MANDAMUS TO ALLOW THE SURVEY AND TO APPROVE THE SURVEY PLANS FOR PURPOSES OF THE APPLICATION FOR TITLING OF THE LANDS OF PETITIONERS IN BORACAY?^[35] (Underscoring supplied)

In capsule, the main issue is whether private claimants (respondents-claimants in G.R. No. 167707 and petitioners-claimants in G.R. No. 173775) have a right to secure titles over their occupied portions in Boracay. The twin petitions pertain to their right, if any, to judicial confirmation of imperfect title under CA No. 141, as