

SECOND DIVISION

[G.R. NO. 163118, April 27, 2007]

DORIS CHIONGBIAN-OLIVA, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE REGISTER OF DEEDS OF CEBU CITY, RESPONDENTS.

DECISION

QUISUMBING, J.:

This petition for certiorari assails (1) the Decision^[1] dated August 7, 2003 of the Court of Appeals in CA-G.R. CV. No. 74409, reversing the Decision^[2] dated December 13, 2001 of the Regional Trial Court of Cebu City, Branch 12 in SP. Proc. No. 10746-CEB, and (2) the Resolution^[3] dated March 17, 2004, denying the motion for reconsideration.

The following facts are undisputed.

Petitioner Doris Chiongbian-Oliva is the registered owner of a parcel of land in Talamban, Cebu City, as evidenced by Transfer Certificate of Title (TCT) No. 5455.^[4] This title originated from Original Certificate of Title (OCT) No. 1066 from a free patent granted on September 11, 1969 under Commonwealth Act No. 141,^[5] as amended. The free patent, OCT No. 1066, and TCT No. 5455 contained the condition that a forty-meter legal easement from the bank of any river or stream shall be preserved as permanent timberland.^[6]

On October 1, 2001, petitioner filed a petition for reduction of legal easement docketed as SP. Proc. No. 10746-CEB before the Regional Trial Court of Cebu City, Branch 12. Petitioner alleged that the property is residential as shown by the tax declaration^[7] and the Certification^[8] of the Office of the City Assessor. Thus, the applicable legal easement is only three meters pursuant to Department of Environment and Natural Resources (DENR) Administrative Order No. 99-21,^[9] and not forty meters, which applies to timberlands and forest lands. Petitioner also alleged that enforcing the forty-meter legal easement would virtually deprive her of the use and enjoyment of the property since it consists only of 1,000 square meters.

The DENR countered that the property is inalienable. It also claimed that the applicant agreed on the forty-meter legal easement when the free patent was applied for.

The trial court ruled in favor of petitioner. It said that there is no longer any reason for the forty-meter legal easement because the property had been transformed into residential land and the area where it is located has been reclassified as urban.

Applying DENR A.O. No. 99-21, the applicable legal easement is only three meters. The decision's decretal portion states:

WHEREFORE, premises considered, it is hereby ordered that the legal encumbrance of forty (40) meters for river bank protection annotated on Petitioner's Transfer Certificate of Title No. 5455 be reduced to the applicable legal easement of three (3) meters in accordance with law.

Accordingly, the Register of Deeds of Cebu City is hereby directed to cancel the above legal encumbrance of forty (40) meters annotated on Petitioner's Transfer Certificate of Title No. 5455 and in lieu thereof, annotate the applicable legal encumbrance of three (3) meters for river bank protection.

SO ORDERED.^[10]

On appeal, the Court of Appeals reversed the trial court's decision. It upheld the DENR's claim that the property was inalienable. Accordingly, a positive act of the government was necessary to declassify it from forest land to alienable land. Declaration of the property as residential in the tax declaration and reclassification of the area where it is located as urban were insufficient bases to reclassify the property. The *fallo* of the appellate court's decision reads:

WHEREFORE, premises considered, the Decision dated December 13, 2001, of the Regional Trial Court, 7th Judicial Region, Branch 12, Cebu City, in SP. PROC. NO. 10746-CEB, is hereby **REVERSED** and **SET ASIDE**. No pronouncement as to costs.

SO ORDERED.^[11]

The appellate court later denied petitioner's motion for reconsideration.

Petitioner now raises the following issues:

I.

WHETHER OR NOT PETITIONER'S LOT COVERED BY THE LEGAL ENCUMBRANCE IS A PUBLIC LAND/LAND OF THE PUBLIC DOMAIN (AND THUS, CANNOT BE RECLASSIFIED EXCEPT BY THE EXECUTIVE DEPARTMENT) OF THE GOVERNMENT, OR A PRIVATE LAND.

II.

WHETHER OR NOT THE TRIAL COURT IS CORRECT IN TAKING JUDICIAL NOTICE OF THE FACT THAT PETITIONER'S LOT COVERED BY TCT NO. 5455 IS SITUATED IN AN URBAN AREA AND NOT IN A FOREST AREA, AND IN THUS CONCLUDING THAT THE LEGAL EASEMENT APPLICABLE FOR RIVER BANK PROTECTION IS THREE (3) METERS AND NOT FORTY (40) METERS.

III.

WHETHER OR NOT SECTION 90(I) OF C.A. NO. 141 WHICH PROVIDES

FOR A UNIFORM EASEMENT OF FORTY (40) METERS FROM THE BANK ON EACH SIDE OF ANY RIVER, AND WHICH PRESERVES THE SAID 40-METER PORTION AS PERMANENT TIMBERLAND REGARDLESS OF WHETHER IT IS SITUATED IN A FOREST AREA OR AN URBAN AREA, IS STILL APPLICABLE TO LOTS SITUATED IN AN URBAN AREA IN THE LIGHT OF THE PROVISIONS OF SUBSEQUENT LEGISLATION, SPECIFICALLY SECTION 51 OF P.D. NO. 1067.^[12]

Simply stated, the issues are: (1) Is the property public or private land? and (2) Is the applicable legal easement forty or three meters?

On the *first* issue, C.A. No. 141, as amended, provides that lands of the public domain may be classified by the President, upon the recommendation of the Secretary of Environment and Natural Resources, into: (1) alienable or disposable; (2) timber; and (3) mineral lands.^[13] However, only alienable or disposable lands may be disposed of through any of the forms of concession enumerated in the law.^[14] A free patent is one of such concessions^[15] and once it is registered and the corresponding certificate of title issued, the land covered by them ceases to be part of the public domain and becomes private property.^[16]

Verily, by the issuance of a free patent on September 11, 1969, and the subsequent issuance of OCT No. 1066 and TCT No. 5455, the property in this case had become private land. It is inconsistent for an alienable land of the public domain to be covered by a free patent and at the same time retain its character as public land.

On the *second* issue, Section 90(i) of C.A. No. 141 requires that a forty-meter legal easement from the bank of any river or stream shall be preserved as permanent timberland. More specifically, it provides:

(i) That the applicant agrees that **a strip forty meters wide** starting from the bank on each side of any river or stream that may be found on the land applied for, **shall be demarcated and preserved as permanent timberland** to be planted exclusively to trees of known economic value, and that he shall not make any clearing thereon or utilize the same for ordinary farming purposes **even after patent shall have been issued to him** or a contract of lease shall have been executed in his favor. (Emphasis supplied.)

To implement this, the DENR promulgated A.O. No. 99-21 which provides the guidelines in the processing, verification, and approval of isolated and cadastral surveys. Pertinent to this case are the following provisions:

2.1 Original Surveys:

2.1.a Public Lands:

All alienable and disposable (A and D) lands of the public domain shall be surveyed pursuant to Section 1 Par. (1) of R.A. 1273 [C.A. No. 141, Section 90(i)] whereby a strip of forty (40) meters wide starting from the banks on each side of any river or stream that may be found on the land shall be demarcated and preserved as permanent