

EN BANC

[G.R. No. 80796, October 11, 2001]

PROVINCE OF CAMARINES NORTE, REPRESENTED BY HON. ROY A. PADILLA, JR., AS PROVINCIAL GOVERNOR, PETITIONER, VS. PROVINCE OF QUEZON, REPRESENTED BY HON. EDUARDO T. RODRIGUEZ, AS PROVINCIAL GOVERNOR, RESPONDENT. RE: URGENT PETITION TO CITE GOVERNOR EDUARDO T. RODRIGUEZ OF QUEZON PROVINCE, AND MAYOR JULIO U. LIM OF CALAUAG, QUEZON, IN CONTEMPT OF COURT.

[G.R. NO. 132885. OCTOBER 11, 2001]

THE PROVINCIAL GOVERNMENT OF QUEZON, REPRESENTED BY GOVERNOR EDUARDO T. RODRIGUEZ; MUNICIPALITY OF CALAUAG IN THE PROVINCE OF QUEZON, WIGBERTO E. TAÑADA, PEDRO C. INOFRE AND OSCAR F. FOLLOSO, PETITIONERS, VS. THE COMMISSION ON ELECTIONS, RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

On November 8, 1989, this Court, in an *En Banc* Decision in G.R. No. 80796,^[1] "*PROVINCE OF CAMARINES NORTE, Represented by HONORABLE ROY PADILLA, as Acting Provincial Governor, petitioner, vs. PROVINCE OF QUEZON, Represented by HONORABLE HJALMAR QUINTANA, as Acting Provincial Governor, respondent,*" resolved with finality the decade-long land boundary discord between the Provinces of Camarines Norte and Quezon,

The contending parties are back in this Court instituting two separate petitions. The present petition filed by the Province of Camarines Norte (docketed as **G.R. No. 80796**) prays that respondents Quezon Governor Eduardo T. Rodriguez and Mayor Julio U. Lim of Calauag, Quezon be cited in contempt of court for causing the removal of the monument marker erected on the disputed boundary line by the Department of Environment and Natural Resources in implementation of the November 8, 1989 Decision.

On the other hand, **G.R. No. 132885** is a petition for certiorari with prayer for a temporary restraining order wherein petitioners Quezon Province, *et al.* assail the validity of the Commission On Elections Resolution No. 97-2406 (dated July 10, 1997) and Resolution No. 97-3721 (dated November 27, 1997). Both Resolutions recognize nine (9) *barangays* as belonging to the territorial jurisdiction of Camarines Norte, no longer part of Calauag, Quezon, in view of the November 8, 1989 Decision of this Court in G.R. No. 80796.

The facts are not disputed:

As earlier mentioned, on **November 8, 1989**, this Court rendered a **Decision** in **G.R. No. 80796** ("1989 SC Decision," for brevity) which resolved the long-drawn boundary dispute between the Provinces of Camarines Norte and Quezon. The Decision upheld as binding upon the parties the **decision** of the then **Chief of the Executive Bureau** dated **June 16, 1922** ("1922 EB decision," for brevity) delineating and describing that portion of the boundary comprising a land area of approximately 8,762 hectares^[2] as belonging to Camarines Norte, not to Quezon Province. The pertinent portion of the 1989 SC Decision declares:

"In sum, we hold that the decision of the Chief of the Executive Bureau dated 16 June 1922 was lawfully issued and is binding upon the parties. We hold further that prohibition and mandamus will lie for the enforcement of that decision, an enforcement unjustifiably resisted and delayed for sixty-seven (67) years.

"WHEREFORE, the Petition for Mandamus and Prohibition is hereby GRANTED. Respondent Quezon Province is hereby ORDERED immediately to cease and desist, and perpetually to refrain, from exercising or performing any and all acts of jurisdiction or political authority over all or any part of the area here held to be part of the territory of the Province of Camarines Norte and forthwith to relinquish the same to petitioner Province of Camarines Norte.

"Let a copy of this decision be furnished to the Secretary of the Local Governments and the Office of the President **with the request that surveyors from the Bureau of Lands or other appropriate government agency be forthwith designated to survey and locate, by latitude and longitude and by metes and bounds, and to monument the Basiad Bay -Mt. Cadig line described in the 16 June 1922 decision of the Chief of the Executive Bureau.** Costs against respondent.

"SO ORDERED."^[3] (Emphasis ours)

The 1989 SC Decision became final and executory on March 19, 1990.^[4]

Pursuant to the directive in the dispositive portion of the 1989 SC Decision, the Province of Camarines Norte, through its Governor, Roy A. Padilla, Jr., asked the Secretary of the Department of Environment and Natural Resources (DENR) to undertake the survey of the boundary line between the two provinces based on the description^[5] in the 1922 EB decision. Acting favorably on the request, then Secretary Fulgencio Factoran, Jr. issued Special Order No. 1179^[6] creating a technical working group specifically tasked to make the delineation of the boundary separating the two provinces.

On January 31 1991, the DENR technical team informed Quezon Gov. Rodriguez about the survey it would undertake.^[7] However, Provincial Secretary Jorge Vargas (acting in behalf of Gov. Rodriguez) objected, claiming that the 1922 EB decision

should not be made the basis of the survey. He asserted that the survey should be done in conformity with the conditions set forth in Section 42, Article II of Act 2711 (The Revised Administrative Code of 1917).^[8] But the DENR technical team proceeded with the survey using as guide the 1922 EB decision.

On May 28, 1991, the DENR technical team went to *barangay* Tabugon, Calauag, Quezon and installed a monument marker along the boundary line determined in the survey. The marker indicates that the area consisting of 8,032 hectares then held as part of Calauag, Quezon actually falls within the territorial jurisdiction of Camarines Norte. This area comprises the nine (9) *barangays* of Kagtalaba, Plaridel, Kabuluan, Don Tomas, Guitol, Tabugon, Maualawin, Patag Ibaba and Patag Iraya.^[9]

On October 14, 1991, Quezon Gov. Eduardo Rodriguez and Calauag Mayor Julio U. Lim caused the bulldozing and removal of the boundary marker. The next day, the ***Manila Bulletin*** published an article entitled "**2 provinces in border row**,"^[10] with a photograph containing the following caption:

"Boundary dispute

"Quezon Gov. Eduardo T. Rodriguez (2nd from right) orders the removal of a boundary marker at barangay Tabugon in Calauag town placed by the Camarines Norte provincial government last May 29. Witnessing the bulldozing of the marker are Calauag Mayor Julio U. Lim (right) and other town officials. (JLJ)"

Aggrieved, Camarines Norte Gov. Roy Padilla, Jr. filed the present petition for contempt (docketed as G.R. No. 80796) against Gov. Rodriguez and Mayor Lim, alleging therein that by removing the monument marker, respondents-officials disobeyed the lawful judgment of this Court, which act is punishable as indirect contempt of court under Section 3, Rule 71, of the Revised Rules of Court (now 1997 Rules of Civil Procedure, as amended).

In their comment^[11] on the petition, respondents Gov. Rodriguez and Mayor Lim did not deny having ordered the removal of the monument marker installed by the DENR. They claimed, however, that the placing of the marker is illegal because (a) it was installed within the territory of Calauag, Quezon and (b) the survey conducted by the DENR technical team was without prior authority from the Office of the President, as required by the 1989 SC Decision. Thus, respondents Governor Rodriguez and Mayor Lim asserted that their action was a "reasonable use of force" justified under Article 429^[12] of the Civil Code to protect the territorial integrity of Quezon from a threatened physical invasion.

In a Resolution dated February 4, 1992, this Court directed Justice Alicia V. Sempio-Diy of the Court of Appeals to conduct hearing, receive evidence and submit a report and recommendation on the contempt proceedings. During the proceedings, Gov. Roy Padilla, Jr. and Engr. Mamerto Infante, head of the DENR technical team, testified for petitioner Camarines Norte. After petitioner has rested its case, respondent Gov. Rodriguez filed a *Demurrer to Evidence*^[13] contending that the

1989 SC Decision cannot be implemented and that, therefore, no valid survey can be made, in the light of Section 42 (of Act 2711) and Republic Act No. 5480 (An Act Creating the Municipality of Sta. Elena in the Province of Camarines Norte) which define the boundary between Camarines Norte and Quezon provinces.^[14] However, the Investigating Justice found no sufficient basis to sustain the demurrer to evidence and ordered further hearing to ascertain respondents' justification for removing the monument marker. Eventually, the parties submitted their respective memoranda. Upon the retirement of Justice Alice V. Sempio Diy, the contempt case was assigned to Court of Appeals Justice Teodoro P. Regino.

Thereafter, Justice Regino submitted to this Court his 29-page **Report and Recommendation** dated May 3, 2000. His recommendation reads:

"Under the facts and for the reasons stated above, the undersigned RECOMMENDS that the respondents (Eduardo T. Rodriguez and Julio U. Lim) be both held guilty of contempt (of court) to be sentenced the maximum penalty of six (6) months imprisonment and to pay jointly and severally a fine of one thousand pesos (PhP1,000.00), and to shoulder the costs of installing a new monument marker on the sight where the previous marker was removed."^[15]

Meanwhile, during the pendency of the contempt proceedings in the Court of Appeals, the Department of Budget and Management (DBM), obviously recognizing Camarines Norte's territorial jurisdiction over the subject nine (9) *barangays* as determined by the DENR survey, transferred the Internal Revenue Allotment (IRA) share of the 9 *barangays* from the Municipality of Calauag, Quezon to the Municipality of Sta. Elena, Camarines Norte starting the Fiscal Year 1994.^[16]

Likewise, other agencies of the government recognized the Province of Camarines Norte's jurisdiction over the 9 *barangays*. Thus, during the May 6, 1996 Sangguniang Kabataan Elections, the COMELEC sent the election paraphernalia of the 9 *barangays* to Sta. Elena, Camarines Norte. In its Resolution No. 96-1175 dated April 18, 1996, the COMELEC directed *inter alia* the Office of the Election Officer of Calauag, Quezon to refrain from exercising supervision relative to any political exercise in the 9 *barangays*.

Moreover, the Deputy Administrator of the Office of the Civil Registrar General, National Statistics Office, issued a Memorandum dated July 27, 1996 informing the Civil Registrar of Calauag, Quezon that the registration of vital events occurring in the subject 9 *barangays* should now be exercised by the Local Civil Registry of Sta. Elena, Camarines Norte. Also, on March 18 1997, the Department of Finance directed the Provincial Assessor and Provincial Treasurer of Quezon Province to transfer to Sta. Elena, Camarines Norte all the documents and records pertaining to the assessment and collection of realty taxes on the real property located in the 9 *barangays*.

On July 10, 1997, the COMELEC issued Resolution No. 97-2406,^[17] this time authorizing the Election Officer of Sta. Elena, Camarines Norte to: 1) change the address in the Voter Registration Records (VRR) of the subject 9 *barangays* from Calauag, Quezon to Sta. Elena, Camarines Norte and 2) notify the registered voters

concerned of such change of address.

This action by the COMELEC was opposed by the Sangguniang Bayan of Calauag, Quezon through Resolution No. 121^[18] dated September 12, 1997. On November 27, 1997, the COMELEC issued Resolution No. 97-3721^[19] noting and denying the Calauag Sangguniang Bayan Resolution with finality.

Hence, the present second petition for *certiorari*, docketed as **G.R. No. 132885**, challenging the COMELEC twin Resolutions. This case was consolidated with **G.R. No. 80796**.^[20]

Now to our resolution of the two petitions.

As regards the contempt proceedings (**G.R. No. 80796**), respondents Gov. Eduardo T. Rodriguez and Mayor Julio U. Lim aver that their act of removing the monument marker is in accordance with Article 429 of the Civil Code authorizing the owner or lawful possessor of a property to exclude any person from the enjoyment and disposal thereof. They claim that the survey conducted by the DENR technical team, as well as the subsequent setting up of the monument marker separating the two provinces, constitute usurpation of their territory because (1) the survey was made by the DENR without prior directive from the Office of the President and (2) the 1922 Executive Bureau decision, which was the basis of the survey, is technically inconsistent with and violative of: [a] Section 42, Article II of Act 2711 [Revised Administrative Code of 1917], [b] Republic Act No. 5480, [c] Section 10, Article X of the 1987 Constitution,^[21] and [d] Section 10 of Republic Act No. 7160.^[22]

In his **Report and Recommendation**, Justice Teodoro Regino found that respondents' act of removing the monument marker amounts to contumacious conduct defined under Section 3 (b), Rule 71 of the Revised Rules of Court (now 1997 Rules of Civil Procedure, as amended) which declares contemptuous any "**disobedience of or resistance to a lawful writ, process, order, or judgment or command of a court.**" He found valid and regular the DENR survey, stressing that the installation of the monument marker was in compliance with this Court's 1989 Decision. Further, he viewed respondents' persistent invocation of Section 42 of Act No. 2711 (Revised Administrative Code of 1917); Republic Act 5480; Section 10, Article X of the 1987 Constitution; and Section 10 of Republic Act 7160 as a continuing effort on their part to reopen settled issues in order to thwart the implementation of the 1989 SC Decision.

Justice Regino's findings are reproduced hereunder:

"The import of the (Nov. 8, 1989 SC Decision) need not be essayed. **The terms employed therein are clear.** In removing the monument marker, the objective of the respondents (Eduardo T. Rodriguez and Julio U. Lim) was to remove the proof that they no longer have any territorial jurisdiction over the area determined by the DENR survey group as belonging to the petitioner (Province of Camarines Norte). x x x. They perceived the installation of the monument marker as an attack on the territorial integrity of Quezon Province **despite the DENR technical working group's findings that the disputed area belongs to**