

## SECOND DIVISION

[ G.R. No. 115634, April 27, 2000 ]

**FELIPE CALUB AND RICARDO VALENCIA, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), CATBALOGAN, SAMAR, PETITIONERS, VS. COURT OF APPEALS, MANUELA T. BABALCON, AND CONSTANCIO ABUGANDA, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

For review is the decision.<sup>[1]</sup> dated May 27, 1994, of the Court of Appeals in CA-G.R. SP No. 29191, denying the petition filed by herein petitioners for certiorari, prohibition and mandamus, in order to annul the Order dated May 27, 1992, by the Regional Trial Court of Catbalogan, Samar. Said Order had denied petitioners' (a) Motion to Dismiss the replevin case filed by herein private respondents, as well as (b) petitioners' Motion for Reconsideration of the Order of said trial court dated April 24, 1992, granting an application for a Writ of replevin..<sup>[2]</sup>

The pertinent facts of the case, borne by the records, are as follows:

On January 28, 1992, the Forest Protection and Law Enforcement Team of the Community Environment and Natural Resources Office (CENRO) of the DENR apprehended two (2) motor vehicles, described as follows:

"1. Motor Vehicle with Plate No. HAK-733 loaded with one thousand and twenty six (1,026) board feet of illegally sourced lumber valued at P8,544.75, being driven by one Pio Gabon and owned by [a certain] Jose Vargas.

2. Motor Vehicle with Plate No. FCN-143 loaded with one thousand two hundred twenty four and ninety seven (1,224.97) board feet of illegally-sourced lumber valued at P9,187.27, being driven by one Constancio Abuganda and owned by [a certain] Manuela Babalcon. ...".<sup>[3]</sup>

Constancio Abuganda and Pio Gabon, the drivers of the vehicles, failed to present proper documents and/or licenses. Thus, the apprehending team seized and impounded the vehicles and its load of lumber at the DENR-PENR (Department of Environment and Natural Resources-Provincial Environment and Natural Resources) Office in Catbalogan..<sup>[4]</sup> Seizure receipts were issued but the drivers refused to accept the receipts..<sup>[5]</sup> Felipe Calub, Provincial Environment and Natural Resources Officer, then filed before the Provincial Prosecutor's Office in Samar, a criminal complaint against Abuganda, in Criminal Case No. 3795, for violation of Section 68 [78], Presidential Decree 705 as amended by Executive Order 277, otherwise known as the Revised Forestry Code..<sup>[6]</sup>

On January 31, 1992, the impounded vehicles were forcibly taken by Gabon and Abuganda from the custody of the DENR, prompting DENR Officer Calub this time to file a criminal complaint for grave coercion against Gabon and Abuganda. The complaint was, however, dismissed by the Public Prosecutor..<sup>[7]</sup>

On February 11, 1992, one of the two vehicles, with plate number FCN 143, was again apprehended by a composite team of DENR-CENR in Catbalogan and Philippine Army elements of the 802nd Infantry Brigade at Barangay Buray, Paranas, Samar. It was again loaded with forest products with an equivalent volume of 1,005.47 board feet, valued at P10,054.70. Calub duly filed a criminal complaint against Constancio Abuganda, a certain Abegonia, and several John Does, in Criminal Case No. 3625, for violation of Section 68 [78], Presidential Decree 705 as amended by Executive Order 277, otherwise known as the Revised Forestry Code..<sup>[8]</sup>

In Criminal Cases Nos. 3795 and 3625, however, Abegonia and Abuganda were acquitted on the ground of reasonable doubt. But note the trial court ordered that a copy of the decision be furnished the Secretary of Justice, in order that the necessary criminal action may be filed against Noe Pagarao and all other persons responsible for violation of the Revised Forestry Code. For it appeared that it was Pagarao who chartered the subject vehicle and ordered that cut timber be loaded on it..<sup>[9]</sup>

Subsequently, herein private respondents Manuela Babalcon, the vehicle owner, and Constancio Abuganda, the driver, filed a complaint for the recovery of possession of the two (2) impounded vehicles with an application for replevin against herein petitioners before the RTC of Catbalogan. The trial court granted the application for replevin and issued the corresponding writ in an Order dated April 24, 1992..<sup>[10]</sup> Petitioners filed a motion to dismiss which was denied by the trial court..<sup>[11]</sup>

Thus, on June 15, 1992, petitioners filed with the Supreme Court the present Petition for Certiorari, Prohibition and Mandamus with application for Preliminary Injunction and/or a Temporary Restraining Order. The Court issued a TRO, enjoining respondent RTC judge from conducting further proceedings in the civil case for replevin; and enjoining private respondents from taking or attempting to take the motor vehicles and forest products seized from the custody of the petitioners. The Court further instructed the petitioners to see to it that the motor vehicles and other forest products seized are kept in a secured place and protected from deterioration, said property being in *custodia legis* and subject to the direct order of the Supreme Court..<sup>[12]</sup> In a Resolution issued on September 28, 1992, the Court referred said petition to respondent appellate court for appropriate disposition..<sup>[13]</sup>

On May 27, 1994, the Court of Appeals denied said petition for lack of merit. It ruled that the mere seizure of a motor vehicle pursuant to the authority granted by Section 68 [78] of P.D. No. 705 as amended by E.O. No. 277 does not automatically place said conveyance in *custodia legis*. According to the appellate court, such authority of the Department Head of the DENR or his duly authorized representative to order the confiscation and disposition of illegally obtained forest products and the conveyance used for that purpose is not absolute and unqualified. It is subject to pertinent laws, regulations, or policies on that matter, added the appellate court.

The DENR Administrative Order No. 59, series of 1990, is one such regulation, the appellate court said. For it prescribes the guidelines in the confiscation, forfeiture and disposition of conveyances used in the commission of offenses penalized under Section 68 [78] of P.D. No. 705 as amended by E.O. No. 277..<sup>[14]</sup>

Additionally, respondent Court of Appeals noted that the petitioners failed to observe the procedure outlined in DENR Administrative Order No. 59, series of 1990. They were unable to submit a report of the seizure to the DENR Secretary, to give a written notice to the owner of the vehicle, and to render a report of their findings and recommendations to the Secretary. Moreover, petitioners' failure to comply with the procedure laid down by DENR Administrative Order No. 59, series of 1990, was confirmed by the admission of petitioners' counsel that no confiscation order has been issued prior to the seizure of the vehicle and the filing of the replevin suit. Therefore, in failing to follow such procedure, according to the appellate court, the subject vehicles could not be considered in *custodia legis*.<sup>[15]</sup>

Respondent Court of Appeals also found no merit in petitioners' claim that private respondents' complaint for replevin is a suit against the State. Accordingly, petitioners could not shield themselves under the principle of state immunity as the property sought to be recovered in the instant suit had not yet been lawfully adjudged forfeited in favor of the government. Moreover, according to respondent appellate court, there could be no pecuniary liability nor loss of property that could ensue against the government. It reasoned that a suit against a public officer who acted illegally or beyond the scope of his authority could not be considered a suit against the State; and that a public officer might be sued for illegally seizing or withholding the possession of the property of another..<sup>[16]</sup>

Respondent court brushed aside other grounds raised by petitioners based on the claim that the subject vehicles were validly seized and held in custody because they were contradicted by its own findings..<sup>[17]</sup> Their petition was found without merit.<sup>[18]</sup>

Now, before us, the petitioners assign the following errors..<sup>[19]</sup>

(1) THE COURT OF APPEALS ERRED IN HOLDING THAT MERE SEIZURE OF A CONVEYANCE PURSUANT TO SECTION 68-A [78-A] OF P.D. NO. 705 AS AMENDED BY EXECUTIVE ORDER 277 DOES NOT PLACE SAID CONVEYANCE IN *CUSTODIA LEGIS*;

(2) THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE OPERATIVE ACT GIVING RISE FOR THE SUBJECT CONVEYANCE TO BE IN *CUSTODIA LEGIS* IS ITS LAWFUL SEIZURE BY THE DENR PURSUANT TO SECTION 68-A [78-A] OF P.D. NO. 705, AS AMENDED BY E.O. NO. 277; AND

(3) THE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPLAINT FOR REPLEVIN AGAINST THE PETITIONERS IS NOT A SUIT AGAINST THE STATE.

In brief, the pertinent issues for our consideration are:

(1) Whether or not the DENR-seized motor vehicle, with plate number FCN 143, is in *custodia legis*.

(2) Whether or not the complaint for the recovery of possession of impounded vehicles, with an application for replevin, is a suit against the State.

We will now resolve both issues.

The Revised Forestry Code authorizes the DENR to seize all conveyances used in the commission of an offense in violation of Section 78. Section 78 states:

*Sec. 78. Cutting, Gathering, and or Collecting Timber, or Other Forest Products without License.* – Any person who shall cut, gather, collect, remove timber or other forest products from any forestland, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

This provision makes mere possession of timber or other forest products without the accompanying legal documents unlawful and punishable with the penalties imposed for the crime of theft, as prescribed in Articles 309-310 of the Revised Penal Code. In the present case, the subject vehicles were loaded with forest products at the time of the seizure. But admittedly no permit evidencing authority to possess and transport said load of forest products was duly presented. These products, in turn, were deemed illegally sourced. Thus there was a *prima facie* violation of Section 68 [78] of the Revised Forestry Code, although as found by the trial court, the persons responsible for said violation were not the ones charged by the public prosecutor.

The corresponding authority of the DENR to seize all conveyances used in the commission of an offense in violation of Section 78 of the Revised Forestry Code is pursuant to Sections 78-A and 89 of the same Code. They read as follows:

*Sec. 78-A. Administrative Authority of the Department Head or His Duly Authorized Representative to Order Confiscation.* -- In all cases of violation of this Code or other forest laws, rules and regulations, the Department Head or his duly authorized representative, may order the confiscation of any forest products illegally cut, gathered, removed, or possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense and to dispose of the same in accordance with pertinent laws, regulations or policies on the matter.

*Sec. 89. Arrest; Institution of criminal actions.* -- A forest officer or employee of the Bureau [Department] or any personnel of the Philippine Constabulary/Philippine National Police shall arrest even without warrant any person who has committed or is committing in his presence any of the offenses defined in this Chapter. He shall also *seize and confiscate, in*