

## SECOND DIVISION

[ G.R. No. 98045, June 26, 1996 ]

**DESAMPARADO VDA. DE NAZARENO AND LETICIA NAZARENO TAPIA, PETITIONERS, VS. THE COURT OF APPEALS, MR. & MRS. JOSE SALASALAN, MR. & MRS. LEO RABAYA, AVELINO LABIS, HON. ROBERTO G. HILARIO, ROLLEO I. IGNACIO, ALBERTO M. GILLERA AND HON. ABELARDO G. PALAD, JR., IN THEIR OFFICIAL AND/OR PRIVATE CAPACITIES, RESPONDENTS.**

### DECISION

**ROMERO, J.:**

Petitioners Desamparado Vda. de Nazareno and Leticia Nazareno Tapia challenge the decision of the Court of Appeals which affirmed the dismissal of petitioners' complaint by the Regional Trial Court of Misamis Oriental, Branch 22. The complaint was for annulment of the verification, report and recommendation, decision and order of the Bureau of Lands regarding a parcel of public land.

The only issue involved in this petition is whether or not petitioners exhausted administrative remedies before having recourse to the courts.

The subject of this controversy is a parcel of land situated in Telegrapo, Puntod, Cagayan de Oro City. Said land was formed as a result of sawdust dumped into the dried-up Balacanas Creek and along the banks of the Cagayan river.

Sometime in 1979, private respondents Jose Salasalan and Leo Rabaya leased the subject lots on which their houses stood from one Antonio Nazareno, petitioners' predecessor-in-interest. In the latter part of 1982, private respondents allegedly stopped paying rentals. As a result, Antonio Nazareno and petitioners filed a case for ejectment with the Municipal Trial Court of Cagayan de Oro City, Branch 4. A decision was rendered against private respondents, which decision was affirmed by the Regional Trial Court of Misamis Oriental, Branch 20.

The case was remanded to the municipal trial court for execution of judgment after the same became final and executory. Private respondents filed a case for annulment of judgment before the Regional Trial Court of Misamis Oriental, Branch 24 which dismissed the same. Antonio Nazareno and petitioners again moved for execution of judgment but private respondents filed another case for certiorari with prayer for restraining order and/or writ of preliminary injunction with the Regional Trial Court of Misamis Oriental, Branch 25 which was likewise dismissed. The decision of the lower court was finally enforced with the private respondents being ejected from portions of the subject lots they occupied.

Before he died, Antonio Nazareno caused the approval by the Bureau of Lands of the survey plan designated as Plan Csd-106-00571 with a view to perfecting his title

over the accretion area being claimed by him. Before the approved survey plan could be released to the applicant, however, it was protested by private respondents before the Bureau of Lands.

In compliance with the order of respondent District Land Officer Alberto M. Gillera, respondent Land Investigator Avelino G. Labis conducted an investigation and rendered a report to the Regional Director recommending that Survey Plan No. MSI-10-06-000571-D (equivalent to Lot No. 36302, Cad. 237) in the name of Antonio Nazareno, be cancelled and that private respondents be directed to file appropriate public land applications.

Based on said report, respondent Regional Director of the Bureau of Lands Roberto Hilario rendered a decision ordering the amendment of the survey plan in the name of Antonio Nazareno by segregating therefrom the areas occupied by the private respondents who, if qualified, may file public land applications covering their respective portions.

Antonio Nazareno filed a motion for reconsideration with respondent Rolleo Ignacio, Undersecretary of the Department of Natural Resources and Officer-in-Charge of the Bureau of Lands who denied the motion. Respondent Director of Lands Abelardo Palad then ordered him to vacate the portions adjudicated to private respondents and remove whatever improvements they have introduced thereon. He also ordered that private respondents be placed in possession thereof.

Upon the denial of the late Antonio Nazareno's motion for reconsideration, petitioners Desamparado Vda. de Nazareno and Leticia Tapia Nazareno, filed a case before the RTC, Branch 22 for annulment of the following: order of investigation by respondent Gillera, report and recommendation by respondent Labis, decision by respondent Hilario, order by respondent Ignacio affirming the decision of respondent Hilario and order of execution by respondent Palad. The RTC dismissed the complaint for failure to exhaust administrative remedies which resulted in the finality of the administrative decision of the Bureau of Lands.

On appeal, the Court of Appeals affirmed the decision of the RTC dismissing the complaint. Applying Section 4 of C.A. No. 141, as amended, it contended that the approval of the survey plan belongs exclusively to the Director of Lands. Hence, factual findings made by the Metropolitan Trial Court respecting the subject land cannot be held to be controlling as the preparation and approval of said survey plans belong to the Director of Lands and the same shall be conclusive when approved by the Secretary of Agriculture and Natural Resources.<sup>[1]</sup>

Furthermore, the appellate court contended that the motion for reconsideration filed by Antonio Nazareno cannot be considered as an appeal to the Office of the Secretary of Agriculture and Natural Resources, as mandated by C.A. No. 141 inasmuch as the same had been acted upon by respondent Undersecretary Ignacio in his capacity as Officer-in-Charge of the Bureau of Lands and not as Undersecretary acting for the Secretary of Agriculture and Natural Resources. For the failure of Antonio Nazareno to appeal to the Secretary of Agriculture and Natural Resources, the present case does not fall within the exception to the doctrine of exhaustion of administrative remedies. It also held that there was no showing of oppressiveness in the manner in which the orders were issued and executed.

Hence, this petition.

Petitioners assign the following errors:

I. PUBLIC RESPONDENT COURT OF APPEALS IN A WHIMSICAL, ARBITRARY AND CAPRICIOUS MANNER AFFIRMED THE DECISION OF THE LOWER COURT WHICH IS CONTRARY TO THE PREVAILING FACTS AND THE LAW ON THE MATTER;

II. PUBLIC RESPONDENT COURT OF APPEALS IN A WHIMSICAL, ARBITRARY AND CAPRICIOUS MANNER AFFIRMED THE DECISION OF THE LOWER COURT DISMISSING THE ORIGINAL CASE WHICH FAILED TO CONSIDER THAT THE EXECUTION ORDER OF PUBLIC RESPONDENT ABELARDO G. PALAD, JR., DIRECTOR OF LANDS, MANILA, PRACTICALLY CHANGED THE DECISION OF PUBLIC RESPONDENT ROBERTO HILARIO, REGIONAL DIRECTOR, BUREAU OF LANDS, REGION 10, THUS MAKING THE CASE PROPER SUBJECT FOR ANNULMENT WELL WITHIN THE JURISDICTION OF THE LOWER COURT.

The resolution of the above issues, however, hinges on the question of whether or not the subject land is public land. Petitioners claim that the subject land is private land being an accretion to his titled property, applying Article 457 of the Civil Code which provides:

"To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters."

In the case of Meneses v. CA,<sup>[2]</sup> this Court held that accretion, as a mode of acquiring property under Art. 457 of the Civil Code, requires the concurrence of these requisites: (1) that the deposition of soil or sediment be gradual and imperceptible; (2) that it be the result of the action of the waters of the river (or sea); and (3) that the land where accretion takes place is adjacent to the banks or rivers (or the sea coast). These are called the rules on alluvion which if present in a case, give to the owners of lands adjoining the banks of rivers or streams any accretion gradually received from the effects of the current of waters.

For petitioners to insist on the application of these rules on alluvion to their case, the above-mentioned requisites must be present. However, they admit that the accretion was formed by the dumping of boulders, soil and other filling materials on portions of the Balacanas Creek and the Cagayan River bounding their land.<sup>[3]</sup> It cannot be claimed, therefore, that the accumulation of such boulders, soil and other filling materials was gradual and imperceptible, resulting from the action of the waters or the current of the Balacanas Creek and the Cagayan River. In Hilario v. City of Manila,<sup>[4]</sup> this Court held that the word "current" indicates the participation of the body of water in the ebb and flow of waters due to high and low tide. Petitioners' submission not having met the first and second requirements of the