

## FIRST DIVISION

[ G.R. No. 168973, August 24, 2011 ]

**CITY OF DUMAGUETE, HEREIN REPRESENTED BY CITY MAYOR,  
AGUSTIN R. PERDICES, PETITIONER, VS. PHILIPPINE PORTS  
AUTHORITY, RESPONDENT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

Before Us is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> dated March 4, 2005 and Resolution<sup>[2]</sup> dated June 6, 2005 of the Court Appeals in CA-G.R. SP No. 64379, which granted the Petition for *Certiorari* and Prohibition of respondent Philippine Ports Authority and set aside the Orders dated December 7, 2000 and February 20, 2001 of the Regional Trial Court (RTC), Branch 44 of the City of Dumaguete in LRC Case No. N-201.

The antecedent facts are as follows:

On October 14, 1998, petitioner City of Dumaguete, through Mayor Felipe Antonio B. Remollo (Remollo), filed before the RTC an Application for Original Registration of Title over a parcel of land with improvements, located at Barangay Looc, City of Dumaguete (subject property), under the Property Registration Decree. The application was docketed as LRC Case No. N-201.

Petitioner alleged in support of its application:

1. That the applicant, City of Dumaguete through its Honorable Mayor Felipe Antonio B. Remollo, is the owner of the land subject of this application with all improvements and buildings comprising the Engineer's Compound where it is now situated and has been in continuous occupation and possession of the same for more than 30 years or from the year 1960 (Affidavit of Ownership executed by Felipe Antonio G. Remollo, the City Mayor, dated August 21, 1998 herein attached as ANNEX A). The said land consist of 5,410 square meters and is situated and bounded and described as shown on the plan (true and photostatic copies of the original plan marked Psu-07-006805 approved by the Regional Technical Director of the [Department of Environment and Natural Resources] DENR, Regional Office, Cebu City herein attached as ANNEX B) and technical descriptions attached hereto (technical description attached as ANNEX C) and made a part hereof;

2. That said land at the last assessment for taxation was assessed at P676,250, Philippine currency, with market value of P1,352,500.00, Philippine currency. (Declaration of Real Property with the assessed and

market values attached as ANNEX D);

3. That to the best of my knowledge and belief, there is no mortgage or encumbrance of any kind whatsoever affecting said land, nor another person having any estate or interest therein, legal or equitable, in possession, remainder, reversion or expectancy;

4. That the land was acquired by possessory title in open, continuous, adverse occupation and possession in the concept of owner for more than thirty years since 1960 (please refer to ANNEX A);

5. That the land is adjoined by the following:

NorthWest

NorthEast

SouthEast

All along line 1-2-3-4-5-6-7-8-9-10 by Flores Avenue, City Road and the Dumaguete Port Road

SouthWest - along line 10-1 by Plan Msi-V-20453

x x x x

8. That the land included is bounded on the West by Flores Avenue and on the North by the City Road, all public highways and on the East by the Dumaguete Port Road, a private road made part of the Port Zone.<sup>[3]</sup>

In an Order<sup>[4]</sup> dated October 23, 1998, the RTC noted that:

A perusal of the records of the case shows that the annexes lack the following copies:

- a) two blue print copies of the approved plan;
- b) two copies of the technical description of the lot sought to be registered;
- c) two copies of the Surveyor's certificate;
- d) a certificate in quadruplicate of the City Assessor of the assessed value of the land;
- e) all original muniments of title in the possession of the applicant which prove ownership of the land;
- f) two copies of the petition/application.

Further, the application did not state the number of the lot sought to be registered, the number of parcels applied for, the improvements found thereon, and indicate whether it claims a portion of the road which serves as a boundary line.

All these must be alleged in the petition so that the Court will know the nature of the property.

The RTC explained that the extra copies submitted by petitioner shall be forwarded by the RTC Clerk of Court to the Land Registration Commission (LRC) in Manila for comment. Only thereafter would the RTC set the application for hearing.

Petitioner filed its Compliance<sup>[5]</sup> with the above-mentioned Order, submitting additional copies of the required documents and clarifying thus:

1. The approved plan does not state the number of lot sought to be registered because it is a public land, thus, only PSU-07-006805 appears on the plan which is being applied for registration;
2. Only one (1) parcel of land is applied for by petitioners which consist of five thousand four hundred ten (5,410) square meters, more or less;
3. The City Engineer's Building within the City Engineer's compound are the only improvement found thereon; and
4. Petitioners do not claim any portion of the road which serves as a boundary line.

The RTC accordingly set the initial hearing of LRC Case No. N-201 on April 12, 1999, and sent notices to the parties.

The Republic of the Philippines, represented by the Director of Lands, and respondent, represented by the Office of the Government Corporate Counsel, filed separate Oppositions <sup>[6]</sup> to the application for registration of petitioner. Both the Republic and respondent averred that petitioner may not register the subject property in its name since petitioner had never been in open, continuous, exclusive, and notorious possession of the said property for at least 30 years immediately preceding the filing of the application; and the subject property remains to be a portion of the public domain which belongs to the Republic.

After several postponements of the scheduled hearings, petitioner presented the testimony of its first witness, Engineer Rilthe P. Dorado (Engr. Dorado), on January 14, 2000. Engr. Dorado's examination on the witness stand was terminated on April 7, 2000. The presentation of the other witnesses of petitioner was then scheduled to continue on June 2, 2000.<sup>[7]</sup>

However, before the next hearing, respondent filed a Motion to Dismiss,<sup>[8]</sup> seeking the dismissal of LRC Case No. N-201 on the ground that the RTC lacked jurisdiction to hear and decide the case. Respondent argued that Section 14(1) of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, refers only to alienable and disposable lands of the public domain under a *bona fide* claim of ownership. The subject property in LRC Case No. N-201 is not alienable and disposable, since it is a foreshore land, as explicitly testified to by petitioner's own witness, Engr. Dorado. A foreshore land is not registerable. This was precisely the reason why, respondent points out, that the subject property was included in Presidential Proclamation No. 1232 (delineating the territorial boundaries of the Dumaguete Port Zone), so that the same would be administered and managed by the State, through respondent, for the benefit of the people.

In its Terse Opposition to Oppositor's Motion to Dismiss, petitioner claimed that the subject property was a swamp reclaimed about 40 years ago, which it occupied openly, continuously, exclusively, and notoriously under a *bona fide* claim of ownership. The technical description and approved plan of the subject property showed that the said property was not bounded by any part of the sea. Petitioner invoked Republic Act No. 1899,<sup>[9]</sup> which authorizes chartered cities and municipalities to undertake and carry out, at their own expense, the reclamation of foreshore lands bordering them; and grants said chartered cities and municipalities ownership over the reclaimed lands. Presidential Proclamation No. 1232 is immaterial to the present application for registration because it merely authorizes respondent to administer and manage the Dumaguete Port Zone and does not confer upon respondent ownership of the subject property.<sup>[10]</sup>

Respondent filed a Reply/Rejoinder (To Applicant's Opposition to Oppositor's Motion to Dismiss), <sup>[11]</sup> asserting that there are no factual or legal basis for the claim of petitioner that the subject property is reclaimed land. Petitioner sought the original registration of its title over the subject property acquired through alleged continuous possession for 30 years under Section 14(1) of the Property Registration Decree, and not through the reclamation of the said property at its own expense under Republic Act No. 1899. The present claim of petitioner that the subject property is reclaimed land should not be allowed for it would improperly change the earlier theory in support of the application for registration. Respondent reiterated that the subject property is foreshore land which cannot be registered; and that Presidential Proclamation No. 1232 is very material to LRC Case No. N-201 because it confirms that areas within the Dumaguete Port Zone, including the subject property, are not alienable and disposable lands of the public domain.

On September 7, 2000, the RTC issued an Order<sup>[12]</sup> granting the Motion to Dismiss of respondent based on the following ratiocination:

The Court agrees with [herein respondent] Philippine Ports Authority that the basis of the [herein petitioner's] application for original registration of the subject lot is Section 14 of the Presidential Decree No. 1529, otherwise known as the Property Registration Decree. A circumspect scrutiny of said Section readily shows that it refers to alienable and disposable lands of the public domain as proper subjects of registration, provided the applicant has met the other requirements such as open, continuous, exclusive and notorious possession for at least thirty (30) years under a *bona fide* claim of ownership.

It having been shown by [petitioner's] own evidence that the lot subject of the application for original registration is a foreshore land, and therefore not registerable (*Dizon, et al. vs. Bayona, et al.*, 98 SCRA 942, 944), the application must be denied.

Again as correctly argued by [respondent], [petitioner's] reliance on Republic Act 1899 which authorizes all municipalities and chartered cities to undertake and carry out the reclamation by dredging, filling or other means of any foreshore lands bordering them and which confers ownership on them of the lands so reclaimed, is misplaced, as such has

never been alleged in the application. It is fundamental that a party cannot prove what it has not alleged in his complaint or application, as in this case.

The admission by Engr. Dorado that there is no formal declaration from the executive branch of government or law passed by Congress that the land in question is no longer needed for public use or special industries x x further militates against the application.

Moreover, the authority granted to municipalities and chartered cities to undertake and carry out at their own expense the reclamation by dredging, filling, or other means, of any foreshore lands bordering them is for the purpose of establishing, providing, constructing, maintaining, and repairing proper and adequate docking and harbor facilities as such municipalities and chartered cities may determine in consultation with the Secretary of Finance and the Secretary of Public Works and Communications.

By its own evidence, [petitioner] has utilized the subject property allegedly reclaimed by it as Office of the City Engineer and not as docking and harboring facilities. [Petitioner] has failed to show that such reclamation was undertaken by it in consultation with the Secretary of Finance and the Secretary of Public Works and Communications.<sup>[13]</sup>

The RTC decreed in the end that "the instant application for original registration is dismissed for lack of merit."<sup>[14]</sup>

In its Motion for Reconsideration<sup>[15]</sup> and Supplemental Motion for Reconsideration, <sup>[16]</sup> petitioner contended that the dismissal of its application was premature and tantamount to a denial of its right to due process. It has yet to present evidence to prove factual matters in support of its application, such as the subject property already being alienable and disposable at the time it was occupied and possessed by petitioner.

Petitioner also pointed out that its witness, Engr. Dorado, "testified only as to the physical status of the land in question at the time when the cadastral survey of Dumaguete was made sometime in 1916."<sup>[17]</sup> In fact, Engr. Dorado expressly testified that the subject property was "part of the shore or foreshore a long time ago[;]"<sup>[18]</sup> and he did not testify at all that the subject property was a foreshore lot at the time petitioner occupied and possessed the same. The physical state of the subject property had already changed since 1916. It is now within the "alienable and disposable area as per the Land Classification Map No. 674, Project No. 1-D, BL C-6, certified on July 3, 1927, of the Bureau of Lands, now Land Management Sector of the Department of Environment and Natural Resources[,]"<sup>[19]</sup> as verified and certified by the Chief of the Map Projection Section, Land Management Sector, DENR Regional Office in Cebu City, who has yet to take the witness stand before the RTC.

Petitioner insisted that the RTC should continue with the hearing of LRC Case No. N-201 and allow petitioner to present evidence that the subject property is reclaimed land. Petitioner sufficiently alleged in its application for registration that it has been