

## THIRD DIVISION

[ G.R. No. 159308, September 16, 2008 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
(DENR), PETITIONER, VS. PAGADIAN CITY TIMBER CO., INC.,  
RESPONDENT.**

### D E C I S I O N

**NACHURA, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court seeking to nullify and set aside the Decision<sup>[2]</sup> dated October 18, 2001 and the Resolution<sup>[3]</sup> dated July 24, 2003 of the Court of Appeals in CA-G.R. SP No. 59194 entitled "*Pagadian City Timber Co., Inc. v. Antonio Cerilles, as Secretary of the Department of Environment and Natural Resources (DENR) and Antonio Mendoza, as Regional Executive Director, DENR, Region IX.*"

The antecedent facts are as follows:

On October 14, 1994, petitioner, through the DENR, and respondent Pagadian City Timber Co., Inc. executed Industrial Forest Management Agreement (IFMA) No. R-9-040<sup>[4]</sup> whereby petitioner, represented by then Regional Executive Director (RED) for Region IX, Leonito C. Umali, authorized respondent, represented by its President Filomena San Juan, to develop, utilize, and manage a specified forest area covering 1,999.14 hectares located in *Barangays* Langapod, Cogonan, and Datagan, Municipality of Labangan, Zamboanga del Sur, for the production of timber and other forest products subject to a production-sharing scheme.

Respondent later submitted the required Comprehensive Development and Management Plan (CDMP) which the DENR approved on August 17, 1995.

On October 8, 1998, in response to the numerous complaints filed by members of the Subanen tribe regarding respondent's alleged failure to implement the CDMP, disrespect of their rights as an indigenous people, and the constant threats and harassment by armed men employed by respondent, RED Antonio Mendoza, DENR Region IX, issued Regional Special Order No. 217 creating a regional team to evaluate and assess IFMA No. R-9-040.

Thus, the DENR sent a letter dated October 22, 1998 to respondent, giving notice of the evaluation and assessment to be conducted on the area from October 22-30, 1998 covering the years 1997 and 1998. In the notice, the DENR requested any representative of the company to appear at the CENRO Office, Pagadian City, and bring with him documents and maps concerning its IFMA operations.

On October 23, 1998, a DENR Evaluation Team composed of Aniceto Wenceslao

(Forester, DENR, Zamboanga del Sur), Isabelo Mangaya-ay (Intern Chief, RCBF/MCO), Philidor Lluisma (Forester II, Regional Office), Chanito Paul Siton (C. Forester, CENRO-Pagadian City), Adelberto Rouillo (Forester, CENRO, Pagadian City), and Francisco Martin (Carto LEP, CENRO, Pagadian City) went to the IFMA site. After a briefing conference between the Evaluation Team and respondent's Operations Manager, Inocencio Santiago, actual field evaluation and assessment followed.

On October 29, 1998, an exit conference and dialogue on post evaluation and assessment of IFMA R-9-04 was held between DENR officials, namely, CENR Officer Maximo O. Dichoso, IFMA Regional Team Leader, Forester Isabelo C. Mangaya-ay, and IFMA Regional Team Member, Forester Philidor O. Lluisma, and IFMA Representative and Operations Manager Inocencio Santiago at the CENRO, Pagadian City.<sup>[5]</sup> The exit conference was called to order at 1:30 p.m. and was concluded at 3:00 p.m. Forester Mangaya-ay presented the representative results and findings of the Evaluation Team, to wit:

The presiding officer started with the mango plantation in the Noran, Langapod side. That out of the estimated number of seedlings planted of about 2,008 hills, within an equivalent area of 20 hectares, the result or finding of the inventory conducted at 100% intensity is only 98 hills of seedlings survived including the doubtful and badly deformed. The species planted along trails are Gmelina and Mahogany species. The said foot trail planted with the aforementioned species starts from the entrance of the IFMA where the notice billboard is posted up to the only existing look-out tower. The estimated average of percent survival for Gmelina is more or less 30%. There are also portions where higher percentage of survival is recorded at 56% and lower at 14%. There are areas planted declared by Kagawad Cerning Becagas of Barangay Cogonan now covered by CSC. The areas covered by CSC, a waiver is needed to be issued by the IFMA holder.

CENR Officer Maximo O. Dichoso commented that during a meeting held before, the IFMA holder was willing to give up the said areas.

The presiding officer continued that on the courtesy call made to the Barangay Chairman of Barangay Cogonan, Mr. Roberto Palaran recounted the assistance extended by the IFMA holder to his barangay as Community Assistance/service which includes electric generator, handheld radio and laborers for the repair of Noburan - Cogonan road and the repair of the hanging bridge at Sitio Tialaic to which the said Barangay Chairman issued a duly signed certification to this effect.

With regards, the seedling stock within the nursery, there are approximately a total number of about 44,460 seedlings of Gmelina species. That the infrastructure implemented or constructed, there exist only one look-out tower of the reported 4 look-out towers constructed. Moreover, the team had also noted only 1 bunkhouse and 1 stockroom or shedhouse. There is also 1 Multi-purpose shed and 1 dilapidated or neglected notice billboard poster at the entrance trail leading to the IFMA area. That with regards the concrete monument, there are only 2 recorded. The other corners visible are those located at junctions of creeks and rivers. But the others cannot be visibly or never planted for

the same cannot be pinpointed or shown to the team allegedly for lack of knowledge by the representative of the IFMA holder. Finally, the presiding officer reminded the herein IFMA representative Mr. Inocencio Santiago that per actual survey, inspection and ground verification, the team believes that the other reported areas planted are located outside the designated IFMA area particularly the Noburan and Langapod sides.<sup>[6]</sup>

After the presentation, Mangaya-ay asked Santiago if he had comments, suggestions, or questions regarding the matter and the manner of the conduct of the evaluation and assessment by the Evaluation Team. Santiago said he had none, but requested a copy of the report of the Evaluation Team. Mangaya-ay informed him that it was only RED Mendoza who may furnish him a copy of the report.

Later, the Evaluation Team submitted a report through a Memorandum<sup>[7]</sup> dated November 6, 1998 to the DENR-RED of Region 9, Zamboanga City, on the evaluation and assessment of respondent under IFMA No. R-9-040. The said Memorandum stated -

In compliance with Regional Special Order No. 217, Series of 1998, please be informed that the herein information is the result or findings of the team for the conduct of evaluation and assessment following the guidelines set forth under Department Administrative Order (DAO) No. 11, Series of 1995 of Pagadian Timber Co., Inc. under IFMA No. R9-040 against their actual accomplishment as mandated under the terms and conditions of the IFMA including other applicable laws, rules and regulations of the department on the matter.

At the onset, the team conducted a briefing conference and dialogue with the IFMA holder, the CENR Officer of Pagadian City and personnel concerned for the proper and orderly implementation and conduct of the evaluation and assessment (please see attached).

The team was composed of the Regional Evaluating Team, the CENRO and PENRO representatives and the representatives of the IFMA holder. The team proceeded to the western portion of the area of the herein IFMA particularly Barangay Cogonan, Labangan, Zamboanga del Sur. The evaluation and assessment was then conducted on the main nursery, the established plantation, the look-out towers, the boundary of ISF and claimed or occupied areas, natural or residual forest, the IFMA boundary, monuments planted, foot trails, other improvements introduced and the billboard and signboard posted. The inspection, evaluation and assessment conducted were all undertaken in the presence of the IFMA holder, representatives, laborers and other personnel on the area. (please see attached report, tall sheets, pictorials and map).

In the conduct of the same, the IFMA representatives or laborers that assisted the team could only show the subject area under evaluation but the other areas alluded to as accomplished or undertaken by the company appeared upon actual verification and inspection to be negative and non-existent thus dispelling their allegation.

With regard the information and dissemination conducted by the IFMA

holder including other services extended to the communities within the IFMA area and vicinities, it is noteworthy for recognition the donations made by the company. (Please see attached minutes of the dialogue with the barangay officials of Barangay Cogonan and pictorials).

The evaluation conducted on the nursery operations show that the facilities and other necessary implements were generally below par. An inventory of the seedlings stock of pure *Gmelina* species have already lapsed its plantability or have overgrown in the seedbed with an average grand total of about 44,460 within the established 2-hectare main nursery area. There was no other subsidiary nursery established in the area. Also noted is the enrichment planting conducted along both sides of the foot-trail which extends approximately 18 kms. From the entrance of the IFMA area going to the lookout tower of the four (4) lookout towers reported, only one (1) has been noted remaining in the area and the rest were destroyed or burned (pls. see attached pictorials). The signboard posted was unattended and in the state of disrepair. There were no monument planted or any marking along the IFMA boundary and in residual forest except the monuments found in the ISF boundaries within the IFMA area (please see attached pictorials). The plantation established is composed of *Gmelina* species with 4 x 4 spacing over a total of about 10.18 hectares. Basing on 5% estimate inventory, the result is 43% seedling survival.

Thereafter, the team also conducted evaluation and assessment at the eastern portion particularly at Langapod, Labangan, Zamboanga del Sur. The team inspected and verified on the ground the reported 20 hectares mango plantation with a spacing of 10 x 10 meters at 100% intensity inventory. The accounted number of mango seedlings planted of about 2,008 hills, only 98 seedlings survived. Wherefore, it generally represents 5% seedling survival. (Please see attached)

Finally, the team conducted an exit conference with the CENR Officer, and the IFMA holder where the tentative and general findings of the evaluation and assessment was laid-out and presented to the body. (Please see attached)<sup>[8]</sup>

On the basis of such findings, the Evaluation Team made the following recommendations -

1. The lessee should be required to explain why they failed to develop their IFMA area (Plantation Development) in accordance with the approved Comprehensive Development and Management Plan (CDMP);
2. The boundary and area coverage of IFMA No. R9-040 should be amended to exclude areas covered by Certificates of Stewardship Contracts (CSC) under the ISF Program with an area of 226.17 hectares, other areas previously identified as "*occupied/claimed*" and other conflict areas;

3. The amended boundary should be delineated/surveyed on the ground with a precise instrument and all corners appropriately marked/monumented;
4. The company should hire a full time forester.<sup>[9]</sup>

Acting on the Memorandum dated November 6, 1998, RED Antonio M. Mendoza, DENR-IX, Zamboanga City, submitted to the DENR Secretary a Memorandum<sup>[10]</sup> dated April 7, 1999 regarding the performance evaluation of IFMA No. R-9-040. The RED Memorandum reads -

This has reference with the instruction to validate the performance/accomplishment of IFMAs of Region IX, Western Mindanao. Validation of IFMAs is in accordance with the existing policy of the DENR, to determine the capabilities of the holders to develop their Lease areas in consonance with their submitted and approved Comprehensive Development Management Plan.

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On 6 November 1998, Foresters Isabelo C. Mangaya-ay and Philidor Lluisma, pursuant to Regional Special Order No. 217, Series of 1998, conducted the evaluation of the performance of IFMA No. R9-040 of Pagadian City Timber Company, Inc. located at Langapod and Cogonan, Municipality of Labangan and Datagan, Municipality of Sominot, all of Zamboanga del Sur. Result of the evaluation reveals that the holder violated the following DENR existing Rules and Regulations particularly Section 26 of DAO 97-04 GROUNDS FOR CANCELLATION of IFMA which provides that, "any of the following violations shall be sufficient grounds for the cancellation of IFMA."

1. Paragraph 26.5, *Section 26, DAO 97-04*, Series of 1997, provides that failure to implement the approved Comprehensive Development and Management Plan.

As of 1998, the 4<sup>th</sup> year of existence of IFMA No. R9-040, the holder must have developed a total of 1,597.0 hectares as per approved CDMP. However, based on the report submitted by the Evaluation Team only 365.2 hectares was planted which are about 22.8%. During the evaluation, however, the IFMA representative could not even pinpoint the planted areas.

Per report of the Pagadian *CENRO Composite Monitoring Team* conducted on 21 August 1998 the plantation area was burned resulting to the damage of about 300 hectares leaving only about 20.0 hectares undamaged. No report had been submitted/received since then.

In infrastructure, the holder managed to put up one (1) out of four (4) programmed look-out towers; developed one (1) out of two (2) forest nurseries and constructed only 6 km. foot trail which is only