

## THIRD DIVISION

[ G.R. NO. 146616, August 31, 2006 ]

**SIAIN ENTERPRISES, INC., PETITIONER, VS. F.F. CRUZ & CO.,  
INC., RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

Western Visayas Industrial Corporation (WESVICO) filed on September 18, 1973 a foreshore lease application over the foreshore land adjacent to certain lots registered in its name, located in Loboc, Lapuz, La Paz, Iloilo City, including Lot 3309. It eventually withdrew the application and filed on March 1976 a petition for registration over the same foreshore land with the then Court of First Instance of Iloilo. The case was, however, archived as WESVICO's representative could no longer be contacted.

It appears that WESVICO ceased to hold operations and its properties including Lot 3309 were foreclosed by the Development Bank of the Philippines (DBP) which later consolidated its ownership thereon.<sup>[1]</sup>

On July 7, 1983, F.F. Cruz & Co. (F.F. Cruz) filed with the Bureau of Lands, Iloilo City, District Land Office VI-1 a foreshore lease application<sup>[2]</sup> over a foreshore land, a portion of which is adjacent to Lot 3309. The application was docketed as FLA (VI-1) 176.

In the preliminary investigation report<sup>[3]</sup> on F.F. Cruz' FLA (VI-1) 176, Senior Special Investigator Ramon Torre who personally visited and examined the land applied for recommended that the application be given due course.

District Land Officer Norberto Bernas thereafter submitted to the Director of Lands a report,<sup>[4]</sup> together with relevant documents including the preliminary investigation report. The pertinent portion of Bernas' report reads:

. . . I personally visited the area applied for by the herein applicant and found that the same is actually occupied and used by them as a sanctuary of their marine equipment which they are using in their construction work of the Iloilo Port. The applicant has also introduced some facilities on the area applied for in the repair and maintenance of said equipment. **A portion of the land applied for has already been filled up by the applicant** as they are in need of a land area for the repair and maintenance of their equipment and in the loading and unloading of materials that they use in the construction of the Iloilo City Port.

x x x x<sup>[5]</sup> (Emphasis and underscoring supplied)

Petitioner Siain Enterprises Inc. (SIAIN), who purchased from the DBP the properties previously owned by WESVICO including Lot 3309,<sup>[6]</sup> filed on September 29, 1986 a foreshore lease application<sup>[7]</sup> over the foreshore land adjacent to the properties it bought from DBP.

Upon learning that 130 linear meters of the foreshore land subject of F.F. Cruz's foreshore lease application overlapped that covered by its foreshore lease application, SIAIN filed on January 9, 1987 a protest<sup>[8]</sup> alleging that it being the owner of the property adjoining the overlapping area, it should be given preference in its lease.

On March 6, 1987, the *Sangguniang Panglungsod* of Iloilo City, by Resolution No. 174,<sup>[9]</sup> approved the recommendation of its Committee on Finance that "for the mutual interest" of F.F. Cruz and SIAIN, SIAIN would get 70 linear meters and F.F. Cruz would get 60 linear meters of the disputed area, in light of its finding that, among other things, both SIAIN and F.F. Cruz would "contribute substantially to the economic growth of the City of Iloilo."

Concurring with the *Sangguniang Panglungsod*, the Land Management Bureau (LMB) through its Director, by Order<sup>[10]</sup> of July 15, 1989, dismissed SIAIN's protest in this wise:

. . . While it cannot be denied that protestant is now the registered owner of the property adjoining the foreshore in question, the disputed foreshore cannot be considered to have been built or formed by means of accretion but is a **reclaimed land made by respondent F.F. Cruz and Company** for the purpose of utilizing the same in the loading and unloading of their equipment and materials and for the repair and maintenance of said equipment which respondents use in the reclamation of the Iloilo City Port. This is supported by the findings of the District Land Officer Norberto Bernas who, in his letter dated February 18, 1984 to this Office, reported that he personally visited the foreshore in question and found that the same is **now actually occupied and used by the respondent company as a sanctuary** of its marine equipment which it is using in its construction work of the Iloilo City Port and that **a portion of the land applied for has already been filled up by the applicant** to be utilized in the repair and maintenance of its equipment and in the loading and unloading of materials it uses in the construction of the Iloilo City Port. It is therefore clear that the foreshore in question is neither an accretion nor an accessory to protestants' property. While protestant SEI appears to be owner of the property adjacent to the disputed foreshore, it cannot be considered as a riparian owner within the contemplation of the aforementioned law.<sup>[11]</sup> (Emphasis and underscoring supplied)

Accordingly, the LMB disposed:

WHEREFORE, it is ordered that the protest of SIAIN Enterprises, Inc. be, as it hereby it is, dismissed and this case, dropped from the records. Both Foreshore Lease Application Nos. (VI-5) 220 and (VI-1) 176 of SIAIN Enterprises, Inc. and F.F. Cruz and Co., Inc. respectively, shall be

amended in such a way that SIAIN's application shall cover SEVENTY (70) linear meters of the disputed foreshore adjoining Lot 3309 while F.F. Cruz's application shall cover SIXTY (60) linear meters thereof. Accordingly, both applications shall be give due course in accordance with the provisions of the Public Land Law, otherwise known as Commonwealth Act No. 141, as amended.<sup>[12]</sup> (Underscoring supplied)

SIAIN appealed to the Secretary of the Department of Environment and Natural Resources (DENR), arguing that the LMB:

1. . . . made [a] false assumption of fact when it considered the foreshore area under . . . controversy as reclaimed land;
2. . . . committed a grave error in not considering the preferential right of the riparian owner/littoral owner, . . . to apply for a lease over the foreshore under controversy; [and]
3. . . . erred in awarding sixty (60) linear meters of the foreshore under controversy to [F.F. Cruz].<sup>[13]</sup>

By Decision<sup>[14]</sup> of May 6, 1997, then DENR Acting Secretary Antonio G.M. La Viña set aside the LMB Order, the pertinent portions of which decision read:

It is blatant error to consider the contested area as reclaimed land as it has no basis in fact, in law and jurisprudence.

**The area in question is unquestionably a natural foreshore for which various applicants prior to the herein parties have applied. CRUZ's F.L.A. No. (VI-1) 176 itself which was filed on July 7, 1983, long after it had allegedly filled up the area undeniably shows CRUZ's admission that it is a foreshore and not something else.**

The assumption that the contested area is a reclaimed land runs smack against the provision of Article 5 of the Spanish Law on Waters of August 3, 1866 stating that:

"Lands reclaimed from the sea in consequence of works constructed by the State, or by provinces, pueblos or private persons, with proper permission, shall become the property of the party constructing such works, unless otherwise provided by the terms of the grant of authority."

We cannot find in the records anything to show that a "permission" was ever sought by or granted to, CRUZ for the alleged reclamation of the land in question.

x x x x

**It is by reason of the Director of Lands' erroneous classification of the contested area as "reclaimed" that he awarded 60 linear meters thereof to CRUZ. However, as heretofore discussed, the said area in question is clearly a natural foreshore and SIAIN is**

**correct in claiming it to be so.** Hence, the law that applies in this case is Section 32 of Lands Administrative Order No. 7-1 which was issued by the Secretary of the then Department of Agriculture and Natural Resources . . .

x x x x

It is an undisputed fact that SIAIN is the registered owner of the land adjoining the foreshore area in controversy. Hence SIAIN is the riparian/littoral owner insofar as the contested foreshore area is concerned and should **enjoy the preferential right to lease the entire one hundred thirty (130) linear meters** of said area adjoining its property, which includes the sixty (60) linear meters thereof awarded to CRUZ in the questioned Order.

x x x x<sup>[15]</sup> (Emphasis supplied; underscoring partly in the original and partly supplied)

The DENR Acting Secretary thus ordered that the application of F.F. Cruz be amended to exclude the disputed foreshore area adjacent to Lot 3309 and that SIAN's application be given due course.

F.F. Cruz appealed to the Office of the President, contending that the DENR Acting Secretary acted with grave abuse of discretion:

I. IN DISREGARDING THE FINDINGS OF THE DIRECTOR OF LANDS MANAGEMENT BUREAU THAT THE CONTROVERTED AREA IS A RECLAIMED LAND UNDERTAKEN BY APPELLANT F.F. CRUZ . . .

II. IN RULING THAT [SIAIN] HAS A PREFERENTIAL RIGHT OVER THE PROPERTY IN DISPUTE; [and]

III. IN ISSUING THE SUBJECT DECISION CONSIDERING THAT HE IS NOT EMPOWERED BY LAW OR RULE TO ISSUE THE SAME.<sup>[16]</sup>

By Decision<sup>[17]</sup> of March 12, 1999, the Office of the President, through then Executive Secretary Ronaldo B. Zamora, reversed the decision of the DENR Acting Secretary and reinstated that of the LMB in this wise:

Records reveal that **WESVICO, who may be considered as the real riparian owner, had previously availed itself of the preferential right to apply for the foreshore area adjacent to its property. However, it withdrew its application, and instead sought the titling of said property via a petition for registration filed with the court, which eventually archived the case for petitioner's lack of interest. In net effect, WESVICO's preferential right adverted to, albeit initially pursued, was thereafter abandoned due to its voluntary withdrawal of the corresponding application and its erroneous resort to some other mode of acquisition, i.e., the filing of a petition for registration. Consequent to such abandonment, it may be said that WESVICO had already waived its preferential right over the controverted area at the time SIAIN purchased the**