

## **SPECIAL SECOND DIVISION**

**[ G.R. NO. 156822, October 18, 2004 ]**

**EDGARDO J. ANGARA, PETITIONER, VS. FEDMAN DEVELOPMENT CORPORATION, RESPONDENT.**

### **R E S O L U T I O N**

**AUSTRIA-MARTINEZ, J.:**

Before the Court is petitioner's Motion for Reconsideration of our Resolution,<sup>[1]</sup> dated April 2, 2003, which denied his petition for review on certiorari for failure to sufficiently show that the Court of Appeals (CA) committed any reversible error in its Decision,<sup>[2]</sup> dated September 26, 2002, in CA-G.R. SP No. 69776, dismissing his petition for certiorari.

The antecedent facts are as follows:

On February 8, 1996, respondent filed a complaint for Accion Reinvidicatoria and/or Quieting of Title against petitioner before the Regional Trial Court, Branch 14, Nasugbu, Batangas (RTC), docketed as Civil Case No. 360.<sup>[3]</sup>

In its complaint, respondent alleges as follows:

It is the registered owner of several adjoining lots located at Barangay Balaytigue, Nasugbu, Batangas among which are three adjoining lots covered by Transfer Certificates of Title Nos. T-51824, T-51825, and T-51826 of the Registry of Deeds of Batangas with a total area of 67,500 square meters. Sometime in August 1995, respondent learned that petitioner fenced said parcels of land without its knowledge and consent. On August 28, 1995, respondent informed petitioner that the said lots the latter fenced are titled in its name. In deference to petitioner's position as Senator of the Philippines, respondent undertook a relocation survey of the said properties. The relocation survey disclosed that the subject lots fenced and occupied by petitioner are covered by the certificates of title of respondent. Despite demand made by respondent, petitioner refused to vacate the property in question. Respondent prays that petitioner and all persons claiming title under him be ordered to vacate the premises in question and surrender possession thereof to the former.

In his Answer with Compulsory Counterclaims, petitioner avers that: he is the lawful owner of four contiguous and adjacent parcels of land situated in Barangay Balaytigue, Nasugbu, Batangas covered by Transfer Certificates of Title Nos. T-23875, T-20526, T-25093 and T-25092; the said parcels of land do not encroach on respondent's property; and assuming that there is such an encroachment, he nevertheless had acquired title thereto by virtue of acquisitive prescription.

In the pre-trial held on January 26, 1999, the RTC opined that the primordial issue for resolution is whether the property of petitioner is outside or inside of the

property titled in the name of respondent.<sup>[4]</sup>

On March 4, 1999, at the instance of the parties, the RTC authorized the ground relocation survey of the adjoining lots of the parties by geodetic engineers.

On December 9, 1999, the RTC ordered the constitution of committee of three surveyors composed of Geodetic Engineer Esmael Bausas as representative of the petitioner, Geodetic Engineer Filemon Munar, as representative of respondent, and Geodetic Engineer Rodolfo Macalino of the Department of Environment and Natural Resources, Region IV, as chairman of the panel, mandated to conduct a relocation survey on the subject property.<sup>[5]</sup>

Sometime on February 2000, the members of the committee submitted their individual reports on the relocation survey conducted. <sup>[6]</sup>

On June 22, 2000, the RTC issued subpoena ad testificandum to the three Geodetic Engineers who composed the Board of Commissioners to testify in connection with their individual reports.<sup>[7]</sup> The RTC also reminded respondent that the case was filed as early as February 8, 1996, the pre-trial was conducted on January 20, 1999 and since then respondent has not even commenced presenting its evidence on the merits.

On September 27, 2000, the RTC ordered the dismissal of the case due to the failure of the respondent to prosecute its case for an unreasonable length of time. However, upon respondent's motion for reconsideration, the RTC reconsidered the order of dismissal.

On September 18, 2001, petitioner filed an Omnibus Motion praying that judgment be rendered on the basis of the commissioners' report and, alternatively, all other persons who will be adversely affected by the relocation survey be impleaded as parties.<sup>[8]</sup>

On November 13, 2001, RTC denied the said Omnibus Motion.<sup>[9]</sup> The RTC held that according to respondent there was no joint survey conducted by the commissioners as ordered by it and as agreed upon by the parties, hence the report of the commissioners cannot be the basis of the judgment. As regards the alternative prayer to implead the adjoining owners, the RTC ruled that it cannot be assumed that the adjoining owners have common defenses; the adjoining owners acquired their land from different sources hence they may have different defense; joining them as party defendants will only complicate the issues and prolong adjudication of the case.

Petitioner filed a motion for reconsideration but the same was denied by the RTC in its Order dated January 14, 2002.<sup>[10]</sup> The RTC held that the record is replete with explicit motions and orders of the court calling for joint survey and there is a big mistake for the petitioner to say that its orders were for the surveyor to merely coordinate in the survey to be done by them. Anent the alternative prayer to implead adjoining owners, the RTC ruled that the recommendation or observation by one witness or surveyor that the parties affected are all indispensable parties cannot be taken into consideration since the report of the surveyor is not in compliance with

its order to make a joint survey, and therefore cannot be a basis for concluding that there will be indispensable parties who will be affected. Besides, the RTC noted that petitioner did not name any of the supposed indispensable parties to be included in the case.

Ascribing grave abuse of discretion amounting to lack or in excess of jurisdiction upon the RTC in refusing to render judgment based on the commissioners' report as well as its refusal to direct respondent to implead adjoining property owners, petitioner filed a petition for certiorari before the CA, docketed as CA-G.R. SP No. 69776.

On September 26, 2002, the CA dismissed the petition for certiorari and affirmed the assailed orders of the RTC.<sup>[11]</sup> The CA declared that: the contention of petitioner regarding the conduct of the relocation survey is belied by the records of the case which is replete with explicit motions from the parties and orders from the RTC calling for a joint survey; and, the alleged owners of the adjacent lands may not be considered as indispensable parties in the light of Section 7 of Rule 3 of the Rules of Court.<sup>[12]</sup>

Petitioner moved for reconsideration of the said decision but the CA denied the same in a Resolution dated January 14, 2003.<sup>[13]</sup>

Hence, petitioner filed a petition for review on certiorari with this Court.<sup>[14]</sup> He claims that the CA erred in failing to declare that the orders of the RTC were rendered without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, in that: (a) there is no plausible and substantive explanation or justification for the RTC to completely ignore the report(s) of the panel of commissioners and to act or render judgment on the basis thereof; (b) the refusal of the RTC to alternatively direct respondent to implead the surrounding property owners in the former Hacienda Balaytigue who are directly affected by any judgment in the case as shown by the report(s) of the panel of commissioners contravenes Section 7 of Rule 3 and Section 2 of Rule 3 of the Rules of Court;<sup>[15]</sup> and (c) it is fair, desirable, practical, and in accord with the ends of law and the prompt administration of justice that the issue of the incorrect or overlapping boundaries be determined by the proper government agencies equipped with the technical expertise on the matter as suggested by respondent's own representative to the panel of commissioners.

In a Resolution<sup>[16]</sup> dated April 2, 2003, the Court denied the petition for review on certiorari for failure to sufficiently show that the CA committed any reversible error. Hence, the present Motion for Reconsideration.<sup>[17]</sup>

Petitioner posits that the case at bar can be resolved with dispatch if the Court will take a second look at his petition. According to petitioner, this is a "simple case of an alleged 'encroachment' or 'overlapping' of property boundaries." Considering that the issue involves principally a factual and technical matter for which the RTC, at the instance of the parties, created a Panel of Commissioners has done its job and the chairman submitted his report on the basis of his evaluation of the separate surveys conducted by the members. The RTC, however, simply ignored the report on the technical and lame excuse that the Panel of Commissioners did not conduct a "joint

survey.”

In its Comment to the motion for reconsideration,<sup>[18]</sup> respondent points out that the Commissioners’ Report was submitted as early as February 2000. After its submission, petitioner did not ask that a decision be rendered based on said report. Various hearings were held. It was only after respondent presented two witnesses who testified on the illegal encroachment of petitioner that petitioner suddenly asked the RTC not to continue with the proceedings and that judgment be rendered based on the Commissioners’ Report. Respondent also stresses that no joint survey was conducted and that no joint report was submitted as required by the RTC. Even assuming that the commissioners conducted a joint survey, it is clear from the joint manifestation and motion of the parties submitted on April 3, 1997 that “the results of the joint survey are by no means final and binding upon them, but will only serve to guide the lower court in resolving the issues of the case.” The records of the case are even replete with motions from the parties and orders for a joint survey report. It submits that the RTC is not a mere rubber stamp of the commissioners, and that is only after the parties had completed the presentation of their evidence that the RTC can intelligently decide the case, not before nor based only on the Commissioners’ Report.

Respondent avers that petitioner should not be allowed to implead all the property owners in Nasugbu, Batangas since the properties in this area have been the subject of requisite surveys by the proper government agencies and that no questions have been raised respecting the same up to the present. The properties of respondent and petitioner have a common tie line and were based on the same BLLM 1 as determined by the Bureau of Land. Respondent states that it is difficult to understand why petitioner would like to approach the survey based on historical occupancy of the land, which is not only difficult to trace and too subjective but will ultimately result in destroying the integrity of the torrens system. Respondent asserts that in his answer, petitioner never alleged massive movement of the lands to justify inclusion of the other parties. It is axiomatic that a defense not alleged in the answer is barred especially when trial has already commenced and no evidence has been adduced in support thereof. In the opinion of respondent, petitioner is muddling the issue.

In his Reply,<sup>[19]</sup> petitioner submits that the RTC cannot simply ignore the commissioners’ report without considering its merits simply because the parties agreed that the same is not final and binding. Petitioner asserts that respondent never impugned the integrity of the result of the relocation survey. It never alleged fraud, mistake or inexcusable negligence in its conduct. Petitioner argues that the RTC should have considered the merits of the report and acted on its recommendation instead of rejecting it outright without any cause or reason. As to the insistence of respondent that the RTC ordered a “joint survey”, petitioner submits that there is nothing in the order of the RTC defining or specifying what a “joint” survey is. It has various meanings. In this case, the commissioners acted together. They met, fixed and agreed on the rules and set out to do their jobs to attain a common objective. Petitioner reiterates his arguments in the petition that a joint survey, as understood by respondent, wherein the commissioners literally go out together, conduct a survey in the presence of one another, and prepare one report, could not have been contemplated by the RTC since the commissioners nominated by the parties insisted on two different methods or approaches for the

survey. The commissioner nominated by respondent never objected to the conduct of the survey nor interposed any objection to the result. Petitioner also claims that contrary to the representation of respondent, petitioner timely filed an omnibus motion for the RTC to decide or act on the survey report of the commissioners. It recounts the proceedings of the case, pointing out that unfortunately, the present counsel of respondent was not the same one who initially handled the case and as such, merely relied on the records of the case.

The motion for reconsideration was called for oral argument on October 15, 2003. Thereafter, the Court declared the motion submitted for resolution<sup>[20]</sup> and allowed the parties to submit their respective memoranda.<sup>[21]</sup>

A battle of semantics is principally being waged before this Court. Petitioner argues that undue emphasis was placed on the words "joint relocation survey, which literally means one that is conducted physically together or in the presence of one another." The order constituting the panel of commissioners, however, does not define what a joint relocation survey entails nor does it lay out the steps or procedures in conducting the same. Petitioner submits that the term "joint survey" does not rule out a survey that is coordinated and linked together resulting in a joint finding and recommendation. On the other hand, respondent subscribes to the pronouncement of the RTC that the record is replete with explicit motion and orders of the court calling for joint survey.

Anent the refusal to direct respondent to implead the adjoining property owners, petitioner claims that the RTC and the CA refused to acknowledge the observation of Engr. Macalino that the approach adopted by respondent in conducting the survey will cause significant movement in the position of petitioner's property as well as other lot owners. On the other hand, respondent posits that the RTC correctly denied the prayer to implead adjoining property owners since petitioner did not identify who these persons are or whether they will be affected by the outcome of the litigation.

It must be emphasized that the petition before the CA is a special civil action for certiorari under Rule 65 of the Rules of Court. Certiorari under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop.<sup>[22]</sup> It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction.<sup>[23]</sup> It can be invoked only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction.<sup>[24]</sup>

Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting.<sup>[25]</sup> Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.<sup>[26]</sup> Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in