

## THIRD DIVISION

[ G.R. No. 142595, October 15, 2003 ]

**RACHEL C. CELESTIAL, PETITIONER, VS. JESSE CACHOPERO,  
RESPONDENT.**

### DECISION

**CARPIO MORALES, J.:**

In the instant appeal by petition for review on *certiorari*,<sup>[1]</sup> petitioner Rachel Cachopero Celestial assails the February 15, 1999 Decision of the Court of Appeals in CA-G.R. SP No. 45927, "Jesse C. Cachopero v. Regional Executive Director of DENR, Region XII and Rachel C. Celestial," which reversed and set aside the Order of the Regional Trial Court (RTC) of Midsayap, Cotabato, Branch 18 dismissing respondent's petition for certiorari, prohibition and mandamus, and mandated the Regional Executive Director of the Department of Environment and Natural Resources (DENR), Region XII to process the Miscellaneous Sales Application (MSA) of respondent Jesse Cachopero in DENR Claim No. XII-050-90 to which petitioner filed a protest.

Respondent, brother of petitioner, filed an MSA (Plan No. (XII-6)- 1669) with the Bureau of Lands covering a 415 square meter parcel of land located at Barrio 8, Midsayap, Cotabato and formerly part of the Salunayan Creek in Katingawan, Midsayap.

In his MSA, respondent alleged that he had, since 1968, been occupying the land whereon he built a residential house and introduced other improvements.

Petitioner filed a protest against respondent's MSA, claiming preferential right over the land subject thereof since it is adjacent to, and is the only outlet from, her residential house situated at Lot No. 2586-G-28 (LRC) Psd-105462, Poblacion 8, Midsayap.

Following an ocular inspection, the Bureau of Lands, finding the land subject of respondent's MSA to be outside the commerce of man, dismissed petitioner's protest and denied respondent's MSA, to wit:

In the ocular inspection, it was verified that **the land in dispute with an area of 415 square meters was formerly a part of the Salunayan Creek that became dry as a result of the construction of an irrigation canal by the National Irrigation Administration.**

However, it was certified by Project Engineer Reynaldo Abeto of the said office in his certification dated May 19, 1982, that only a portion of the same containing an area of 59.40 square meters more or less was taken as part of the National Irrigation Administration service road. It was also ascertained that the P20,000.00 residential house wherein Jesse

Cachopero and his family are living is not within the 69-meters width of the national highway. **However, per the certification of the local office of the District Engineer for Public Works and Highways, the government may need the area where the house stands for expansion in the future. Moreover, it was also certified by the office of Municipal Mayor that the whole area covered by the miscellaneous sales application of Jesse Cachopero is needed by the municipal government for future public improvements.**

From the foregoing facts, it is clear **that the subject land is outside the commerce of man and therefore, not susceptible of private acquisition under the provision of the Public Land Act.** However, in keeping with the policy of our compassionate society in tilting the balance of social forces by favoring the disadvantaged in life, we may allow Jesse Cachopero to temporarily occupy the land in dispute, after excluding therefrom the portion needed for the existing right of way being claimed by Rachel Celestial to be [the] only adequate outlet to the public highway until such time that the land is needed by the government for expansion of the road.

WHEREFORE, it is ordered that this case, be, as hereby it is, dismissed and this case (*sic*), dropped from the records. The Miscellaneous Sales Application (New) of Jesse Cachopero is hereby rejected and in lieu thereof, he shall file a revocable permit application for the land in question after excluding from the southern part of the land the area of five (5) meters for right of way purposes as shown in the sketch drawn at the back of this order. The segregation survey of the area shall be at the pro-rata expense of the parties.

SO ORDERED.<sup>[2]</sup> (Emphasis and underscoring supplied)

Petitioner thereafter instituted an action for ejectment against respondent and his wife before the Municipal Trial Court of Midsayap, Cotabato, docketed as Civil Case No. 711. A judgment based on a compromise was rendered in said case under the following terms and conditions:

That Spouses Jesse Cachopero and Bema Cachopero, defendants in this case, are going to vacate the premises in question and transfer the old house subject of this ejectment case at the back of Lot No. 2586-G-28 (LRC) Psd-105462, located at 8, Midsayap, Cotabato, within eight (8) months from today, but not later than April 30, 1990;

xxx

That plaintiff is willing to give a two (2)-meter wide exit alley on the eastern portion of said lot as road-right-of-way up to the point of the NIA road on the west of Lot No. 2586-G-28, (LRC) Psd-105462;

That defendants hereby promise to remove all their improvements introduced fronting the residence of the plaintiff before August 31, 1989; and the plaintiff shall likewise remove all her existing improvements on the same area;

x x x<sup>[3]</sup> (Underscoring supplied)

Subsequently or on May 21, 1991, respondent filed **another MSA** with the DENR Regional Office of Cotabato involving a portion of the same lot subject of his first MSA, covering an area of **334 square meters**, more or less (the subject land), and docketed as DENR-XII-Claim No. 050-90. This time, the MSA was supported by a certification<sup>[4]</sup> dated January 9, 1989 issued by the Office of the Mayor of Midsayap and an Indorsement<sup>[5]</sup> dated January 16, 1989 by the District Engineer of the Department of Public Works and Highways stating that the subject land is suitable for residential purposes and no longer needed by the municipal government.

Petitioner likewise filed a protest against her brother-respondent's second MSA, alleging a preferential right over the subject land, she being the adjacent and riparian owner, and maintaining that it is her only access to the national highway. She thus reiterated her demand for a five (5)-meter road right of way through the land.

After another investigation of the subject land, DENR Regional Executive Director Macorro Macumbal issued an Order dated February 17, 1994 stating that it was suitable for residential purposes but that, in light of the conflicting interest of the parties, it be sold at public auction. Respondent's second MSA was accordingly dismissed, viz:

In the ocular investigation of the premises, it was established that **the said property is a dried bed of Salunayan Creek resulting from the construction of the irrigation canal by the National Irrigation Administration**; that it is **suitable for residential purpose** x x x

x x x

It is evident that under the law, property of the public domain situated within the first (1st) to fourth class municipalities are disposable by sales only. **Since municipality of Midsayap , Cotabato is classified as third (3rd) class municipality and the property in dispute, Lot no. (MSA-XII-6)-1669, is situated in the poblacion of Midsayap, Cotabato, and considering the conflicting interest of the herein parties, it is therefore equitable to dispose the same by sale at a public auction pursuant to Section 67, C.A. No. 141, as amended,** pertinent clause of which provides:

x x x sale shall be made through oral bidding; and adjudication shall be made to the highest bidder, xxx.

WHEREFORE, in view of all the foregoing, it is ordered as hereby is ordered that the instant protest is dismissed and dropped from the records, and the Miscellaneous Sales Application (New) of Jesse C. Cachopero is rejected and returned unrecorded. Accordingly, the CENR Officer of CENRO XII-4B shall cause the segregation survey of a portion of five (5) meters in width running parallel to line point C-1 of the approved survey plan (MSA-XII-6)- 1669, sketch is shown at the dorsal side hereof, as a permanent easement and access road for the occupants

of Lot No. 2386-G-28, (LRC) Psd-105462 to the national highway. Thereafter, and pursuant to paragraph G.2.3 of Department Administrative Order No. 38, Series of 1990, the CENRO XII 4B shall dispose the remaining area of the lot in question through oral bidding.

SO ORDERED."<sup>[6]</sup> (Emphasis and underscoring supplied)

Respondent filed a Motion for Reconsideration of the above-said order of the DENR Regional Executive Director, but it was denied by Order of February 27, 1995 by the OIC Regional Executive Director of Region XII, Cotabato City in this wise:

A meticulous scrutiny of the records disclosed that Civil Case No. 711 for ejectment, decided on the basis of compromise agreement of the parties dated August 10, 1989, involved "transfer of the house from Lot No. MSA XII-6-1669 to the litigant's parents' property situated at the back of protestant property, Lot No. 2586-G-28 (LRC), Psd-105462." Whereas the issue in DENR XII Claim No. 050-90 involved the disposition of lot no. (MSA XII-6)- 1669 a residential public land being exclusively vested with the Director of Lands (Sec. 4, C.A. 141).

The two (2) meters wide exit alley provided in the compromise agreement was established by the protestant from her private property (Lot No. 2586-G-28 (LRC), Psd-105462) for the benefit of her brother, herein respondent, upon his transfer to their parents property at the back of Lot No. 2586-G-28 (LRC), Psd-105462. Whereas the five (5) meters wide easement imposed on Lot No. (MSA-XII-6)-1669, a public land, provided in the decision in DENR Claim No. 050-90 is in accordance with Article 670 of the New Civil Code x x x

x x x

With all the above foregoing, we find no reversible error to reconsider our Order of February 17, 1994.

WHEREFORE, the instant motion for reconsideration is DENIED.<sup>[7]</sup>

Respondent thereupon filed on April 3, 1995 with the RTC of Midsayap, Cotabato a petition for *certiorari*, prohibition and *mandamus* with preliminary mandatory injunction and temporary restraining order assailing the Orders dated February 17, 1994 and February 27, 1995 of the DENR Regional Executive Director and OIC Regional Executive Director of Region XII, Cotabato, attributing grave abuse of discretion in the issuance thereof.

Petitioner moved for the dismissal of the petition, alleging lack of jurisdiction and non-exhaustion of administrative remedies.

By Order of March 26, 1997, the RTC denied respondent's petition for *certiorari* for lack of merit and non-exhaustion of administrative remedies, as it did deny his motion for reconsideration.

The Court of Appeals, before which respondent assailed the RTC orders by petition for *certiorari*, prohibition and *mandamus*, granted said petition, and accordingly

reversed and set aside the assailed orders of the RTC and ordered the DENR to process the MSA of respondent.<sup>[8]</sup>

Petitioner's Motion for Reconsideration<sup>[9]</sup> of the appellate court's decision having been denied by Resolution of March 2, 2000,<sup>[10]</sup> she lodged the present petition, alleging that the Court of Appeals acted contrary to law and jurisprudence 1) in holding that the RTC of Midsayap had jurisdiction over respondent's petition, the doctrine of exhaustion of administrative remedies was not applicable to the instant case, and the contested land is public land; and 2) in ordering the processing of respondent's MSA pursuant to R.A. 730.<sup>[11]</sup>

Petitioner contends that the RTC of Midsayap had no jurisdiction over respondent's petition for *certiorari* as (a) it "is in the nature of an appeal"<sup>[12]</sup> falling within the jurisdiction of the Court of Appeals under Section 9(3)<sup>[13]</sup> of Batas Pambansa Blg. 129 (B.P. 129), as amended; and (b) respondent failed to exhaust administrative remedies when he failed to appeal the questioned Orders to the Secretary of Environment and Natural Resources.<sup>[14]</sup>

Petitioner's petition fails.

Petitioner has apparently confused the separate and distinct remedies of an appeal (*i.e.* through a petition for review of a decision of a quasi-judicial agency under Rule 43 of the Rules of Court) and a special civil action for *certiorari* (*i.e.* through a petition for review under Rule 65 of the Rules of Court). In *Silverio v. Court of Appeals*,<sup>[15]</sup> this Court, speaking through then Chief Justice Claudio Teehankee, distinguished between these two modes of judicial review as follows:

The provisions of the Rules of Court permit an aggrieved party, in the general types of cases, to take a cause and apply for relief to the appellate courts by way of either of **two distinctly different and dissimilar modes - through the broad process of appeal or the limited special civil action of certiorari. An *appeal* brings up for review errors of judgment committed by a court with jurisdiction over the subject of the suit and the persons of the parties or any such error committed by the court in the exercise of its jurisdiction amounting to nothing more than an error of judgment. On the other hand, the *writ of certiorari* issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction.** The writ of certiorari "cannot legally be used for any other purpose." In terms of its function, the writ of certiorari serves "to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction" or to relieve parties from arbitrary acts of courts - acts which courts have no power or authority in law to perform.<sup>[16]</sup> (Italics, emphasis and underscoring supplied)

Concomitantly, appellate jurisdiction is separate and distinct from the jurisdiction to issue the prerogative writ of certiorari. An appellate jurisdiction refers to a process which is a continuation of the original suit and not a commencement of a new action. In contrast, to invoke a court's jurisdiction to issue the writ of certiorari