

EN BANC

[G.R. No. 115903, August 04, 1997]

ROBERTO CORDENILLO, PETITIONER, VS. HON. EXECUTIVE SECRETARY (OFFICE OF THE PRESIDENT), AND JOSE BOLIVAR, RESPONDENTS.

DECISION

HERMOSISIMA, JR., J.:

The nullification of two (2) Resolution promulgated by the Office of the President dated May 7, 1993^[1] and June 9, 1994,^[2] respectively, is sought by this petition, for the resolution ordered the Department of Agriculture and the Bureau of Fisheries and Aquatic Resources to process the fishpond lease application filed by private respondent Jose Bolivar covering a fishpond area of twenty (20) hectares, situated at Barrio Malag-it, Pontevedra, Capiz.

The following antecedent facts and proceedings are all undisputed:

1. Private respondent Jose Bolivar was granted by the Bureau of Forestry, now Bureau of Forest Development, on September 17, 1963, Nipa-Bacauan (NB) Permit No. 1897, covering 16.0 hectares in Pontevedra, Capiz, while [one] Julio de Jesus was issued by the defunct Philippine Fisheries Commission, now Bureau of Fisheries and Aquatic Resources (BFAR) Fishpond Permit No. 5423 on June 21, 1965, covering 35.0 hectares likewise located at Pontevedra, Capiz.
2. On August 13, 1963, petitioner Roberto Cordenillo filed with the Bureau of Lands, now Lands Management Bureau, a Miscellaneous Sales Application (MSA) over about 134.0 hectares in the same locality, which area included the areas under private respondent Jose Bolivar's NB Permit and Julio de Jesus' fishpond permit. Simultaneously, petitioner Roberto Cordenillo entered and occupied the area he applied for and, subsequently, constructed a fishpond on a ten (10)- hectare portion thereof. This ten (10)-hectare portion was later on found to be within the area under private respondent Jose Bolivar's NB Permit.
3. Both private respondents Jose Bolivar and Julio de Jesus filed protests against the MSA of petitioner Roberto Cordenillo. The protests were investigated and heard by the District Land Officer and District Forester of Roxas City and also by the Committee on Investigations of the then Department of Agriculture and Natural Resources (DANR). After the investigation and ocular inspection, said committee submitted its report on October 15, 1973, containing, among others, the following observation:

'1. That the area covered by the Nipa-Bacauan Permit No. 1897 of Jose Bolivar and the area covered by Fp.[No.] 5423 of Julio de Jesus are embraced and covered by the Miscellaneous lease application of Roberto Cordenillo.

2. That Roberto Cordenillo constructed a fishpond of approximately 10.0 hectares which is now fully developed and productive situated inside the Nipa-Bacauan permit of Jose Bolivar.

3. That Jose Bolivar and Julio de Jesus have updated their rentals. The Nipa-Bacauan permit of Jose Bolivar issued on September 17, 1963 to expire June 30, 1964 was, however, first extended on September 23, 1969; the Fp. No. 5423 of Julio de Jesus issued on June 21, 1965 was first extended on March 18, 1968.

4. There is no visible improvement in the area claimed by Julio de Jesus.

5. On September 17, 1963 the Bureau of Forestry issued a Nipa-Bacauan permit to Jose Bolivar but on November 6, 1964 it rejected the Nipa-Bacauan application of Roberto Cordenillo for lack of jurisdiction over the area.

6. That Roberto Cordenillo applied for a miscellaneous lease application with the Bureau of Lands and later also a N.B. permit with the Bureau of Forestry. When his application for N.B. permit with the Bureau of Forestry was rejected for lack of jurisdiction, he pursued his miscellaneous lease application with the Bureau of Lands.'

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4. Accordingly, then Undersecretary of DANR, Jose D. Drilon, Jr., after appropriate proceedings, issued an Order dated January 28, 1974, the dispositive portion of which reads as follows:

'WHEREFORE, in view of the foregoing, it is hereby ordered that:

1. The Nipa-Bacauan Permit No. 1897 issued in favor of Jose Bolivar covering approximately sixteen hectares be, as hereby it is, CANCELLED;

2. The Miscellaneous Lease Application of Roberto Cordenillo covering approximately 134 hectares be, as hereby it is, REJECTED.

3. Fishpond Permit No. 5423 issued in favor of Julio de Jesus be, as hereby it is, CANCELLED;

4. Roberto Cordenillo SECURE a fishpond lease agreement from the Bureau of Fisheries covering the area of approximately ten (10) hectares which he has developed as shown on the attached sketch;

5. The rest of the area applied by Roberto Cordenillo covered by his miscellaneous lease application which is suitable for fishpond purposes be RELEASED in favor of the Bureau of Fisheries for Disposition; and

6. Jose Bolivar be given PREFERENCE to apply with the Bureau of Fisheries for the

adjoining area suitable for fishpond purposes covering an area of twenty (20) hectares.

The Bureau of Forest Development is hereby ADMONISHED for having renewed the Nipa-Bacauan Permit of Jose Bolivar even after it had previously declared itself as having no jurisdiction over the area in question, which area is a part of the Tinagong Dagat Bay. The same Office is enjoined to exercise more caution and due diligence in acting on similar cases in the future to avoid damage or prejudice to innocent parties affected by such action, in this case, Mr. Bolivar. To repair the damage Mr. Bolivar may have suffered from the erroneous action of that Bureau, it is hereby reiterated that special preference be given by the Office and other agencies of this Department concerned in securing for him a similar permit over any adjoining or neighboring area.

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5. Not satisfied, private respondent Jose Bolivar sought a reconsideration of the above-mentioned order by filing the requisite motion and memorandum, dated February 25 and March 21, 1974, respectively. On the basis thereof, the then Minister of Natural Resources Jose Leido, Jr., issued an Order dated March 31, 1980, modifying the aforesaid Order dated January 28, 1974 of Undersecretary Jose D. Drilon, Jr., the dispositive portion of which reads as follows:

'PREMISES CONSIDERED, the Order of the then Undersecretary of Agriculture and Natural Resources, dated January 28, 1974, is hereby modified in the sense that Fishpond Permit No. 5423 in the name of Julio de Jesus and the miscellaneous sales application of Roberto Cordenillo shall remain cancelled and rejected, respectively; that Roberto Cordenillo illegally occupied and developed a portion of the area covered by Nipa-Bacauan Permit No. 1897 of Jose Bolivar and, accordingly, Roberto Cordenillo shall vacate said area occupied and all improvements introduced and found therein are forfeited in favor of the government and that Jose Bolivar is given preference over the area covered by his Nipa-Bacauan Permit No. 1897.

This Order shall be immediately executory.

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6. Petitioner Roberto Cordenillo filed a motion for reconsideration of the aforementioned Order dated March 31, 1980 of Minister Jose Leido, Jr., and the same motion was denied on September 4, 1980.

7. Accordingly, on September 25, 1980, petitioner Roberto Cordenillo appealed to the Office of the President the aforementioned Order dated March 31, 1980 of Minister Jose Leido, Jr.

8. On October 29, 1981, the Office of the President, through then Acting Presidential Executive Assistant Joaquin T. Venus, Jr., rendered a Decision, the dispositive portion of which reads as follows:

'WHEREFORE, THE Order of the Minister of Natural Resources dated March 31, 1980 is hereby set aside. In lieu thereof, the Order of then Undersecretary of Agriculture and Natural Resources Jose D. Drilon (sic), dated January 28, 1974, directing, inter alia that Roberto Cordenillo secure a fishpond lease agreement from the Bureau of Fisheries covering the area of approximately ten (10) hectare (sic) which he has developed, is hereby reinstated.

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9. On november 19, 1981, private respondent JOSE bolivar moved to reconsider the aforementioned Decision dated October 29, 1981. In a Resolution dated March 19, 1982, the Office of the President resolved to dismiss private respondent Jose Bolivar's motion for reconsideration and declared subject Decision dated October 29, 1981 as final.

10. Pursuant to the above-mentioned Resolution dated March 19, 1982 of the Office of the President, petitioner Roberto Cordenillo filed his Fishpond Application over an area of approximately ten (10) hectares on October 2, 1985, while private respondent Jose Bolivar filed the Fishpond Application covering the adjoining area of twenty (20) hectares on August 31, 1985.

11. Subsequently, or on October 8, 1985, petitioner Roberto Cordenillo sought clarification from the Office of the President on the correct or proper interpretation of its Decision dated October 29, 1981, specifically as to wether said Decision reinstated the whole dispositive portion of the Order of then Undersecretary of Agriculture and Natural Resources Jose D. Drilon, Jr. dated January 28, 1974, or only that part thereof, directing petitioner Roberto Cordenillo to secure a fishpond lease agreement from the Bureau of Fisheries covering the area approximately ten (10) hectares developed by him as stated in the subject Decision.

12. In reply, the Office of the President informed petitioner Roberto Cordenillo in its letter of April 2, 1986, that 'x x x the Decision of this Office in O.P. Case No. 1836 dated October 29, 1985 (sic), has the effect of reinstating the Order of then Undersecretary of Agriculture and Natural Resources Jose Drilon (sic), dated January 28, 1974, only insofar as it directed Roberto Cordenillo to secure a fishpond lease agreement from the Bureau of Fisheries covering the area of approximately ten (10) hectares which he has developed.'

13. Meanwhile, it appearing that the BFAR has not acted upon his fishpond application for the twenty (20)-hectare area mentioned in the Drilon Order dated January 28, 1974, which was reinstated in the O.P. Decision of October 29, 1981, and considering further that a portion thereof still remains in the possession of petitioner Roberto Cordenillo, private respondent Jose Bolivar filed with the Office of the President the instant 'Ex-PARTE MOTION (For Issuance of the Writ of Implementation)' on March 17, 1988, praying for the issuance of an Order directing BFAR

and the Department of Agriculture to issue to him (private respondent Jose Bolivar) a twenty-five (25)-year fishpond lease agreement over an area of twenty (20) hectares adjoining the ten (10) hectares shown in the sketch to the Drilon Order of January 28, 1974, and the Capiz P.C. Provincial Command to clear the aforesaid area of occupants and to deliver the physical possession thereof to private respondent Jose Bolivar.

14. In a 'SUPPLEMENTAL TO EX-PARTE MOTION (for the Issuance of an Order of Implementation),' dated June 2, 1988, private respondent Jose Bolivar, through counsel, adverted to the Memorandum of Fisheries Regional Director Matias A. Guieb dated October 29, 1985, finding petitioner Roberto Cordenillo to have acted in bad faith when he occupied the entire area of 47.9852 hectares covered by his rejected Fishpond Permit Application No. 36939 without the benefit of a lease agreement and with full knowledge of the pending controversy over the said area before the DANR. Additionally, private respondent Jose Bolivar prayed for a declaration that the entire decretal portion of the Drilon Order dated January 28, 1974, was reinstated or revived by the O.P. Decision dated October 29, 1981."^[3]

It is significant to point out at this juncture that prior to private respondent Bolivar's aforementioned twin Motions dated March 17, 1988 and June 2, 1988 praying for the issuance of a fishpond lease agreement covering the twenty (20) hectares adjoining petitioner Cordenillo's ten (10) hectares of fishpond, and for a categorical declaration that the entire decretal portion of Drilon Order dated January 28, 1974, was reinstated or revived by the Decision dated October 29, 1981 as rendered by Acting Presidential Executive Assistant Joaquin T. Venus, Jr. of the Office of the President, the Secretary and the Regional Director of the Department of Agriculture had already earlier made official issuances to the effect that the decretal portion of the Drilon Order dated January 28, 1974 was and should be deemed, reinstated or revived by the Venus Decision dated October 29, 1981.

In fact, these Department of Agriculture issuances, namely, two (2) Memoranda dated October 1, 1986 and February 28, 1989, respectively, issued by the Regional Director and a 4th Indorsement dated July 12, 1988 issued by the Secretary, both of said department, were the subject of a Petition for Injunction dated May 4, 1989 filed by petitioner before the Regional Trial Court of Roxas City.^[4] In that petition, the trial court was asked to restrain the Secretary of Agriculture, the Regional Director, and the Provincial Agricultural Officer of Capiz from implementing the aforesaid Memoranda and 4th Indorsement on the ground that "the approval by respondent Secretary of the application for issuance of a fishpond lease agreement in favor of the private respondent [covering] the subject 20-hectare fishpond would enable private respondent to appropriate the subject 20-hectare fishpond, thus depriving petitioner of the [land] and its improvements thereon without due process of law and would therefore unjustly enrich the private respondent at the expense of another."^[5]

The trial court denied the Petition for Injunction in an Order dated June 8, 1989. Aggrieved by said Order of denial, petitioner filed with this court a Petition for Certiorari^[6] docketed as G.R. No. 88814 seeking the nullification and setting aside of said Order of denial and the issuance of a temporary restraining order and/or a