

## TENTH DIVISION

[ CA-G.R. SP. NO. 61014[1], June 29, 2006 ]

**ELENA JOVEN ALLEN, REPRESENTED BY HER ATTORNEY-IN-FACT EUSEBIO GONZALO, JR., PETITIONER, VS. HEIRS OF TEODORA JOVEN TAMORIA, REPRESENTED BY ESTELA TAMORIA GUANLAO, RESPONDENTS.**

### DECISION

**PERLAS-BERNABE, E., J.:**

Before the Court is a petition for review of the Order<sup>[2]</sup> dated September 8, 2000 of the Secretary of the Department of Environment and Natural Resources, Quezon City (hereinafter DENR Secretary) in DENR Case No. 5267 which decreed:

**"WHEREFORE**, in the light of all the foregoing, the appeal is hereby **DISMISSED** for lack of merit and the Orders, dated June 23, 1998 and November 16, 1998, of the Regional Executive Director for DENR, Region III at San Fernando, Pampanga, are hereby **AFFIRMED**.

SO ORDERED."<sup>[3]</sup>

The facts are as follows:

Subject of the instant case is a 347-square meter parcel of land denominated as Lot No. 3446, TS-308 located at No. 17 Kessing St., New Asinan, Olongapo City which is declared in the name of petitioner Elena Joven Allen<sup>[4]</sup> (hereinafter Elena) for taxation purposes<sup>[5]</sup> and over which she has applied for a Miscellaneous Sales Application (MSA).

On April 10, 1985, Elena filed MSA No. 72346<sup>[6]</sup> before the Bureau of Lands of Olongapo City claiming that she had been a bonafide resident of Olongapo City since 1954, and had occupied the subject lot since 1958 by actual possession, over which she had introduced improvements consisting of a two-storey residential building. Respondent heirs filed a letter<sup>[7]</sup> dated November 6, 1996 before the Olongapo City Assessor's Office protesting the MSA filed by Elena on the ground that they are the registered owners of the building/structure constructed over the subject lot; that they have been the occupants and possessors thereof since 1960; and that Elena had already abandoned the subject property by migrating to the United States since 1965 and becoming a citizen thereof. After an *ex-parte* investigation, the OIC Community Environment and Natural Resources Officer (CENRO) of Olongapo City, finding that Elena had already become a naturalized American citizen, and that respondent heirs, not she, were in actual possession and occupation of the subject lot, issued an Order<sup>[8]</sup> on December 17, 1996, rejecting MSA No. 72346 of Elena and giving respondent heirs preference in the filing of MSA over the subject lot.

Counsel for Elena moved for reconsideration<sup>[9]</sup> of the above Order which the CENRO denied<sup>[10]</sup> on the ground that the intended sale of the subject property by Elena through the Special Power of Attorney (SPA)<sup>[11]</sup> executed by the latter in favor of Spouses Eusebio and Mary Ann Gonzalo is "barred by law and has the effect of annulling the sales application as if none had been filed."<sup>[12]</sup>

Elena appealed the foregoing Order to the Office of the Regional Executive Director asseverating that she was denied due process when the CENRO unilaterally rejected MSA No. 72346 without formal notice and giving her the opportunity to submit evidence to counter the claim of respondent heirs. She likewise claimed to have acquired the subject lot by acquisitive prescription, hence, the same had ceased to be part of the public domain and was beyond the authority of the Director of the Bureau of Lands to dispose.<sup>[13]</sup> The Regional Executive Director directed the CENRO to conduct a formal investigation over the matter<sup>[14]</sup> who, in turn, required respondent heirs to file their protest/opposition to MSA No. 72346 of Elena.<sup>[15]</sup>

In her "Affidavit of Protest,"<sup>[16]</sup> Estelita Tamoria Guanlao (hereinafter Estelita) claimed, *inter alia*, that the original owner of the subject lot was Raymundo D. Joven, the father of Elena and the deceased Teodora Joven Tamoria (hereinafter Teodora); that Elena had never stayed on the subject lot; that in 1960 or 1961, Estelita's father Honorato F. Tamoria (hereinafter Honorato) had built a nipa hut over the subject lot which was later on demolished in 1972 or 1973 with the construction of a semi-concrete residential house; that the spouses Honorato and Teodora have been in continuous, uninterrupted, peaceful, public and open possession of the subject lot in the concept of owner since 1961 or even earlier.

After re-investigation, the Regional Executive Director issued an Order<sup>[17]</sup> dated June 23, 1998 which decreed:

"WHEREFORE, premises considered, the protest filed by the Heirs of Teodora Joven Tamoria is hereby SUSTAINED and finding no compelling reason to disturb the two (2) questioned Orders of CENRO of Olongapo City dated December 17, 1996 and February 4, 1997, respectively, the same are hereby AFFIRMED in toto and that protestee-appellant's appeal is hereby ordered **DISMISSED** for utter lack of merit.

SO ORDERED."<sup>[18]</sup>

Elena's motion for reconsideration of the above Order not having been sustained,<sup>[19]</sup> she appealed to the DENR Secretary who rendered the assailed Order dated September 8, 2000. Aggrieved, Elena filed the instant petition on the grounds that the DENR Secretary:

1. Had clearly erred in not holding that Elena has long been occupying and possessing the subject lot;
2. Had likewise overlooked certain material facts which if properly considered would alter the outcome of the instant case;

3. Had grossly erred in disqualifying Elena from acquiring ownership of the said property for allegedly becoming an American citizen later on.<sup>[20]</sup>

*The petition is bereft of merit.*

At the outset, it bears to stress that the land in question is a public land. The fact that Elena filed her sales application with the Bureau of Lands covering the subject lot cannot but be deemed as an outright admission by her that the same is public land.<sup>[21]</sup> Moreover, the Sales Application provided that: "I understand that this application conveys no right to occupy the land prior to the award of the land to me, *that the land is of public domain*, and that any and all rights I may have with respect thereto by virtue of continuous occupation and cultivation are hereby relinquished to the government."<sup>[22]</sup> Accordingly, no private rights had yet accrued and become vested in her<sup>[23]</sup> and she is estopped from claiming otherwise.<sup>[24]</sup> This is so even if a sales application were already given due course by the Director of Lands as it is the award made by the Director of Lands to the applicant that confers upon him a certain right over the land, namely, "to take possession of the land so that he could comply with the requirements prescribed by law."<sup>[25]</sup> However, in such a case, the disposition is merely provisional because the applicant has still to comply with the requirements prescribed by law before any patent is issued.

Well-settled is the rule that no public land can be acquired by private persons without any grant, express or implied, from the government. It is indispensable that the person claiming title to public land should show that such title was acquired from the State or any other mode of acquisition recognized by law.<sup>[26]</sup> Under the Public Land Act, the presumption always is that the land applied for pertains to the State, and that the occupants and possessors only claim an interest over the same by virtue of their imperfect title or continuous, open, and notorious possession.<sup>[27]</sup> The Public Land Act, as amended, explicitly enumerates the means by which agricultural public lands may be disposed, as follows:

- (1) For homestead settlement;
- (2) By sale;
- (3) By lease;
- (4) By confirmation of imperfect or incomplete titles;
  - (a) By judicial legalization; or
  - (b) By administrative legalization (free patent).<sup>[28]</sup>

On the other hand, lands suitable for residential, commercial, industrial, or other productive purposes other than agricultural, may be disposed of or leased to any person, corporation, or association authorized to purchase or lease public lands for agricultural purposes, depending on the classification of land.<sup>[29]</sup> Republic Act (RA) No. 730<sup>[30]</sup> further provided that "(n)otwithstanding the provisions of sections sixty-one and sixty-seven<sup>[31]</sup> of Commonwealth Act Numbered One hundred forty-one, as amended by Republic Act Numbered Two hundred ninety-three, any Filipino citizen

of legal age who is not the owner of a home lot in the municipality or city in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is not needed for public service, shall be given preference to purchase at a private sale of which reasonable notice shall be given to him not more than one thousand square meters at a price to be fixed by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources. It shall be an essential condition of this sale that the occupants constructed his house on the land and actually resided therein. x x x.”

The subject lot is a public land classified as residential with an area of not more than one thousand square meters. Thus, in accordance with RA No. 730, Elena need only prove that she is a Filipino citizen of legal age; that she does not own a home lot in Olongapo City; and that she has constructed her house on the subject lot where she *actually* resides. In the instant case, however, the DENR Secretary affirmed the finding of the Regional Executive Director, and which remained undisputed, that Elena migrated to the United States of America in 1961 and had subsequently become an American citizen.<sup>[32]</sup> As defined, an immigrant is a person who removes into a country for the purpose of permanent residence.<sup>[33]</sup> Thus, Elena since becoming an immigrant in 1961 had lost actual residence in the country. That she had introduced improvements on the subject lot was not proven with certainty. While Elena claimed that her occupation and possession thereof started in 1954, the real estate tax payments she presented started only in the year 1987. Moreover, the tax declarations over the subject lot, *viz.*, TD No. 007-0460R,<sup>[34]</sup> and the building thereon, *viz.*, TD No. 007-0461R,<sup>[35]</sup> and the receipts<sup>[36]</sup> for real estate tax payments on both the lot and the building, *viz.*, Official Receipt (OR) Nos. 117325 and 117375, both dated September 8, 1992, OR Nos. 226303 and 226353, both dated September 24, 1996, and OR Nos. 227585 and 227635 both dated October 21, 1996, *all* issued by the Olongapo City Treasurer’s Office, are incompetent and insufficient to prove Elena’s occupation and possession,<sup>[37]</sup> and introduction of the claimed improvements, over the subject lot. Moreover, TD Nos. 007-0460R and 007-0461R both begin with the year 1994. The previous tax declaration which they cancelled, *viz.*, TD 007-0126 under which tax payments for the years 1987 to 1993 were made and the tax declarations prior thereto were not presented. The Court noted that while MSA No. 72346 mentioned about a “2 storey res. house, made of Cement, CHB, & Mix Wood,”<sup>[38]</sup> TD No. 007-0461R covers a “One storey Res. Bldg.”<sup>[39]</sup>

The Court is thus of the considered opinion that Elena was not able to present satisfactory proof to substantiate her claim of possession. Corollary thereto, Elena’s reliance in the case of *Republic vs. Court of Appeals*<sup>[40]</sup> to justify her entitlement to the award of the subject lot is likewise misplaced. The said case was premised on the fact that the land being claimed had already been converted *ipso jure* from an alienable public land into a *private land* by the open, continuous, exclusive and notorious possession of the claimant or his predecessor-in-interest for at least 30 years, which is not so in this case.

Thus, whether or not Elena became an American citizen in March 1966<sup>[41]</sup> or in March 1986<sup>[42]</sup> is of no moment. The subject lot is not a private land which former natural-born citizens are entitled to purchase. Moreover, Batas Pambansa (BP) Blg. 185,<sup>[43]</sup> which allows a natural-born citizen of the Philippines who has lost his