



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PILAR DEVELOPMENT G.R. No. 194336  
CORPORATION,  
Petitioner,

- versus -

RAMON DUMADAG, EMMA  
BACABAC, RONALDO  
NAVARRO, JIMMY  
PAGDALIAN, PAY DELOS  
SANTOS, ARMANDO  
TRILLOS, FELICISIMO  
TRILLOS, ARCANGEL  
FLORES, EDDIE MARTIN,  
PRESILLA LAYOG, CONRADO  
CAGUYONG, GINA  
GONZALES, ARLENE  
PEDROSA, JOCELYN  
ABELINO, ROQUE  
VILLARAZA, ROLANDO  
VILLARAZA, CAMILO  
GENOVE, NILDA ROAYANA,  
SUSAN ROAYANA, JUANCHO  
PANGANIBAN, BONG DE  
GUZMAN, ARNOLD ENVERSO,  
DONNA DELA RAZA, EMELYN  
HAGNAYA, FREDDIE DE  
LEON, RONILLO DE LEON,  
MARIO MARTINEZ, and  
PRECY LOPEZ,

Respondents.

Present:

VELASCO, JR., J., Chairperson,  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, JJ.

Promulgated:

March 11, 2013

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## DECISION

### PERALTA, J.:

Challenged in this petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure are the March 5, 2010 Decision<sup>1</sup> and October 29, 2010 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 90254, which affirmed the May 30, 2007 Decision<sup>3</sup> of the Las Piñas Regional Trial Court, Branch 197 (*trial court*) dismissing the complaint filed by petitioner.

On July 1, 2002, petitioner filed a Complaint<sup>4</sup> for *accion publiciana* with damages against respondents for allegedly building their shanties, without its knowledge and consent, in its 5,613-square-meter property located at Daisy Road, Phase V, Pilar Village Subdivision, Almanza, Las Piñas City. It claims that said parcel of land, which is duly registered in its name under Transfer Certificate of Title No. 481436 of the Register of Deeds for the Province of Rizal, was designated as an open space of Pilar Village Subdivision intended for village recreational facilities and amenities for subdivision residents.<sup>5</sup> In their Answer with Counterclaim,<sup>6</sup> respondents denied the material allegations of the Complaint and briefly asserted that it is the local government, not petitioner, which has jurisdiction and authority over them.

Trial ensued. Both parties presented their respective witnesses and the trial court additionally conducted an ocular inspection of the subject property.

On May 30, 2007, the trial court dismissed petitioner's complaint, finding that the land being occupied by respondents are situated on the sloping area going down and leading towards the Mahabang Ilog Creek, and within the three-meter legal easement; thus, considered as public property and part of public dominion under Article 502<sup>7</sup> of the New Civil Code (Code), which could not be owned by petitioner. The court held:

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<sup>1</sup> Penned by Associate Justice Michael P. Elbinias, with Associate Justices Rebecca De Guia-Salvador and Estela M. Perlas-Bernabe (now Supreme Court Associate Justice) concurring; *rollo*, pp. 21-28.

<sup>2</sup> *Id.* at 30-35.

<sup>3</sup> *Id.* at 46-52.

<sup>4</sup> *Id.* at 36-39.

<sup>5</sup> *Id.* at 11-12.

<sup>6</sup> *Id.* at 40-44.

<sup>7</sup> Art. 502 of the New Civil Code provides:

Art. 502. The following are of public dominion:

(1) Rivers and their natural beds;

(2) Continuous or intermittent waters of springs and brooks running in their natural beds and the beds themselves;

x x x The land title of [petitioner] only proves that it is the owner in fee simple of the respective real properties described therein, free from all liens and encumbrances, except such as may be expressly noted thereon or otherwise reserved by law x x x. And in the present case, what is expressly reserved is what is written in TCT No. T-481436, to wit “that the 3.00 meter strip of the lot described herein along the Mahabang Ilog Creek is reserved for public easement purposes. (From OCT 1873/A-50) and to the limitations imposed by Republic Act No. 440. x x x”<sup>8</sup>

The trial court opined that respondents have a better right to possess the occupied lot, since they are in an area reserved for public easement purposes and that only the local government of Las Piñas City could institute an action for recovery of possession or ownership.

Petitioner filed a motion for reconsideration, but the same was denied by the trial court in its Order dated August 21, 2007.<sup>9</sup> Consequently, petitioner elevated the matter to the Court of Appeals which, on March 5, 2010, sustained the dismissal of the case.

Referring to Section 2<sup>10</sup> of Administrative Order (A.O.) No. 99-21 of the Department of Environment and Natural Resources (DENR), the appellate court ruled that the 3-meter area being disputed is located along the creek which, in turn, is a form of a stream; therefore, belonging to the public dominion. It said that petitioner could not close its eyes or ignore the fact, which is glaring in its own title, that the 3-meter strip was indeed reserved for public easement. By relying on the TCT, it is then estopped from claiming ownership and enforcing its supposed right. Unlike the trial court, however, the CA noted that the proper party entitled to seek recovery of

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- (3) Waters rising continuously or intermittently on lands of public dominion;
  - (4) Lakes and lagoons formed by Nature on public lands, and their beds;
  - (5) Rain waters running through ravines or sand beds, which are also of public dominion;
  - (6) Subterranean waters on public lands;
  - (7) Waters found within the zone of operation of public works, even if constructed by a contractor;
  - (8) Waters rising continuously or intermittently on lands belonging to private persons, to the State, to a province, or to a city or a municipality from the moment they leave such lands;
  - (9) The waste waters of fountains, sewers and public establishments.

<sup>8</sup> *Rollo*, p. 51.

<sup>9</sup> *Id.* at 13.

<sup>10</sup> Sec. 2 of DENR A.O. No. 99-21 states as follows:

2.1 Original Surveys:

2.1.a Public Lands:

All alienable and disposable (A and D) lands of the public domain shall be surveyed pursuant to Section 1 Par. (1) of R.A. 1273 [C.A. No. 141, Section 90(i)] whereby a strip of forty (40) meters wide starting from the banks on each side of any river or stream that may be found on the land shall be demarcated and preserved as permanent timberland.

Likewise, to be demarcated are public lands along the banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest area, along their margins which are subject to the easement for public use in the interest of recreation, navigation, floatage, fishing and salvage.

possession of the contested portion is not the City of Las Piñas, but the Republic of the Philippines, through the Office of the Solicitor General (OSG), pursuant to Section 101<sup>11</sup> of Commonwealth Act (C.A.) No. 141 (otherwise known as *The Public Land Act*).

The motion for reconsideration filed by petitioner was denied by the CA per Resolution dated October 29, 2010, hence, this petition.

Anchoring its pleadings on Article 630<sup>12</sup> of the Code, petitioner argues that although the portion of the subject property occupied by respondents is within the 3-meter strip reserved for public easement, it still retains ownership thereof since the strip does not form part of the public dominion. As the owner of the subject parcel of land, it is entitled to its lawful possession, hence, the proper party to file an action for recovery of possession against respondents conformably with Articles 428<sup>13</sup> and 539<sup>14</sup> of Code.

We deny.

An easement or servitude is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his or her property, for the benefit of another person or tenement; it is *jus in re aliena*, inseparable from the estate to which it actively or passively belongs, indivisible, perpetual, and a continuing property right, unless extinguished by causes provided by law.<sup>15</sup> The Code defines easement as an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner or for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong.<sup>16</sup> There are two kinds of easement according to source: by law or by will of the owners – the

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<sup>11</sup> Sec. 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor-General or the officer acting in his stead, in the proper courts, in the name of the [Republic] of the Philippines.

<sup>12</sup> Art. 630. The owner of the servient estate retains the ownership of the portion on which the easement is established, and may use the same in such a manner as not to affect the exercise of the easement.

<sup>13</sup> Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

<sup>14</sup> Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof.

<sup>15</sup> *Villanueva v. Velasco*, 399 Phil. 664, 672 (2000) and *Quimen v. Court of Appeals*, 326 Phil. 969, 976-977 (1996).

<sup>16</sup> CIVIL CODE, Arts. 613 and 614.

former are called legal and the latter voluntary easement.<sup>17</sup> A legal easement or compulsory easement, or an easement by necessity constituted by law has for its object either public use or the interest of private persons.<sup>18</sup>

While Article 630 of the Code provides for the general rule that “[t]he owner of the servient estate retains the ownership of the portion on which the easement is established, and may use the same in such a manner as not to affect the exercise of the easement,” Article 635 thereof is specific in saying that “**[a]ll matters concerning easements established for public or communal use shall be governed by the special laws and regulations relating thereto,** and, in the absence thereof, by the provisions of this Title [Title VII on Easements or Servitudes].”

In the case at bar, the applicability of DENR A.O. No. 99-21 dated June 11, 1999, which superseded DENR A.O. No. 97-05<sup>19</sup> dated March 6, 1997 and prescribed the revised guidelines in the implementation of the pertinent provisions of Republic Act (R.A.) No. 1273 and Presidential Decree (P.D.) Nos. 705 and 1067, cannot be doubted. *Inter alia*, it was issued to further the government’s program of biodiversity preservation. Aside from Section 2.1 above-quoted, Section 2.3 of which further mandates:

### 2.3 Survey of Titled Lands:

#### 2.3.1 Administratively Titled Lands:

The provisions of item 2.1.a and 2.1.b shall be observed as the above. However, when these lands are to be subdivided, consolidated or consolidated-subdivided, the strip of three (3) meters which falls within urban areas shall be demarcated and marked on the plan for easement and bank protection.

The purpose of these strips of land shall be noted in the technical description and annotated in the title.

x x x x

#### 2.3.3 Complex Subdivision or Consolidation Subdivision Surveys for Housing/Residential, Commercial or Industrial Purposes:

When titled lands are subdivided or consolidated-subdivided into lots for residential, commercial or industrial purposes the

<sup>17</sup> CIVIL CODE, Art. 619. See also *Castro v. Monsod*, G.R. No. 183719, February 2, 2011, 641 SCRA 486, 493-494.

<sup>18</sup> CIVIL CODE, Art. 634, NCC. See also *Woodridge School, Inc. v. ARB Construction Co., Inc.*, G.R. No. 157285, February 16, 2007, 516 SCRA 176, 183; *Villanueva v. Velasco*, *supra* note 15; *La Vista Association, Inc. v. Court of Appeals*, 311 Phil. 30, 46 (1997) and *Quimen v. Court of Appeals*, *supra* note 15, at 977.

<sup>19</sup> Entitled *Procedures in the Retention of Areas Within Certain Distances Along the Banks of Rivers, Streams, and Shores of Seas, Lakes and Oceans for Environmental Protection*.

segregation of the three (3) meter wide strip along the banks of rivers or streams shall be observed and be made part of the open space requirement pursuant to P.D. 1216.

The strip shall be preserved and shall not be subject to subsequent subdivision. (Underscoring supplied)

Certainly, in the case of residential subdivisions, the allocation of the 3-meter strip along the banks of a stream, like the Mahabang Ilog Creek in this case, is required and shall be considered as forming part of the open space requirement pursuant to P.D. 1216 dated October 14, 1977.<sup>20</sup> Said law is explicit: open spaces are “for public use and are, therefore, beyond the commerce of men” and that “[the] areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable.”

Running in same vein is P.D. 1067 or *The Water Code of the Philippines*<sup>21</sup> which provides:

Art. 51. The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind. (Underscoring supplied)

Thus, the above prove that petitioner’s right of ownership and possession has been limited by law with respect to the 3-meter strip/zone along the banks of Mahabang Ilog Creek. Despite this, the Court cannot agree with the trial court’s opinion, as to which the CA did not pass upon, that respondents have a better right to possess the subject portion of the land because they are occupying an area reserved for public easement purposes. Similar to petitioner, respondents have no right or title over it precisely because it is public land. Likewise, we repeatedly held that squatters have no possessory rights over the land intruded upon.<sup>22</sup> The length of time that they may have physically occupied the land is immaterial; they are deemed to have entered the same in bad faith, such that the nature of their possession is presumed to have retained the same character throughout their occupancy.<sup>23</sup>

<sup>20</sup> P.D. 1216 is entitled *Defining "Open Space" in Residential Subdivisions and Amending Section 31 of Presidential Decree No. 957 Requiring Subdivision Owners to Provide Roads, Alleys, Sidewalks and Reserve Open Space for Parks or Recreational Use.*

<sup>21</sup> Entitled *A Decree Instituting a Water Code, thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources*, dated December 31, 1976.

<sup>22</sup> *D'Oro Land Realty and Development Corporation v. Claunan*, 545 Phil. 573, 583-584 (2007); *De Vera-Cruz v. Miguel*, 505 Phil. 591, 607 (2005); and *Pendot v. Court of Appeals*, 254 Phil. 19, 28 (1989).

<sup>23</sup> *D'Oro Land Realty and Development Corporation v. Claunan*, *supra* note 22, at 584.

As to the issue of who is the proper party entitled to institute a case with respect to the 3-meter strip/zone, We find and so hold that both the Republic of the Philippines, through the OSG and the local government of Las Piñas City, may file an action depending on the purpose sought to be achieved. The former shall be responsible in case of action for reversion under C.A. 141, while the latter may also bring an action to enforce the relevant provisions of Republic Act No. 7279 (otherwise known as the *Urban Development and Housing Act of 1992*).<sup>24</sup> Under R.A. 7279, which was enacted to uplift the living conditions in the poorer sections of the communities in urban areas and was envisioned to be the antidote to the pernicious problem of squatting in the metropolis,<sup>25</sup> all local government units (LGUs) are mandated to evict and demolish persons or entities occupying danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds.<sup>26</sup> Moreover, under pain of administrative and criminal liability in case of non-compliance,<sup>27</sup> it obliges LGUs to strictly observe the following:

Section 29. Resettlement. - Within two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places such as sidewalks, roads, parks and playgrounds. The local government unit, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of the affected families.

Section 30. Prohibition Against New Illegal Structures. - It shall be unlawful for any person to construct any structure in areas mentioned in the preceding section.

After the effectivity of this Act, the barangay, municipal or city government units shall prevent the construction of any kind or illegal dwelling units or structures within their respective localities. The head of any local government unit concerned who allows, abets or otherwise tolerates the construction of any structure in violation of this section shall be liable to administrative sanctions under existing laws and to penal sanctions provided for in this Act.

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<sup>24</sup> Approved on March 24, 1992 and published in the May 4, 1992 issue of the Official Gazette. (*Macasiano v. National Housing Authority*, G.R. No. 107921, July 1, 1993, 224 SCRA 236, 239).

<sup>25</sup> *Galay v. Court of Appeals*, 321 Phil. 224, 226 (1995).

<sup>26</sup> R.A. 7279, Sec. 28 (a).


<sup>27</sup> Dec. 45 of R.A. No. 7279 provides:

Section 45. *Penalty Cause.* - Any person who violates any provision of this Act shall be imposed the penalty of not more than six (6) years of imprisonment or a fine of not less than Five thousand pesos (₱5,000) but not more than One hundred thousand pesos (₱100,000), or both, at the discretion of the court: Provided, That, if the offender is a corporation, partnership, association or other juridical entity, the penalty shall be imposed on the officer or officers of said corporation, partnership, association or juridical entity who caused the violation.

Yet all is not lost for petitioner. It may properly file an action for *mandamus* to compel the local government of Las Piñas City to enforce with reasonable dispatch the eviction, demolition, and relocation of respondents and any other persons similarly situated in order to give flesh to one of the avowed policies of R.A. 7279, which is to reduce urban dysfunctions, particularly those that adversely affect public health, safety, and ecology.<sup>28</sup> Indeed, as one of the basic human needs, housing is a matter of state concern as it directly and significantly affects the general welfare.<sup>29</sup>

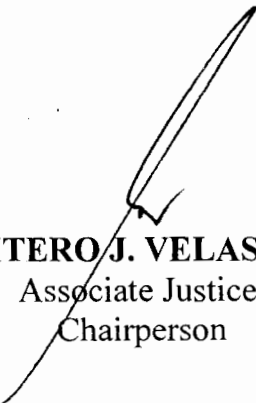
**WHEREFORE**, the petition is **DENIED**. The March 5, 2010 Decision and October 29, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 90254, which affirmed the May 30, 2007 Decision of the Las Piñas RTC, Branch 197, dismissing petitioner's complaint, is hereby **AFFIRMED**.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**ROBERTO A. ABAD**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice


<sup>28</sup> R.A. No. 7279, Sec. 2 (b) (4).

<sup>29</sup> *Sumulong v. Guerrero*, 238 Phil. 462, 467 (1987).



### ATTESTATION


I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice