Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES,
Petitioner,

- *versus* -

ZURBARAN REALTY AND DEVELOPMENT CORPORATION,
Respondent.

G.R. No. 164408

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

MAR 2 4 2014

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DECISION

BERSAMIN, *J.*:

An application for original registration of land of the public domain under Section 14(2) of Presidential Decree (PD) No. 1529 must show not only that the land has previously been declared alienable and disposable, but also that the land has been declared patrimonial property of the State at the onset of the 30-year or 10-year period of possession and occupation required under the law on acquisitive prescription. Once again, the Court applies this rule—as clarified in *Heirs of Mario Malabanan v. Republic*[1]—in reviewing the decision promulgated on June 10, 2004,[2] whereby the Court of Appeals (CA) granted the petitioner's application for registration of land.

Antecedents

On May 28, 1993, respondent Zurbaran Realty and Development Corporation filed in the Regional Trial Court (RTC) in San Pedro, Laguna an application for original registration covering a 1,520 square meter parcel

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1 G.R. No. 179987, April 29, 2009, 587 SCRA 172.

2 *Rollo*, pp. 26-32; penned by Associate Justice Eliezer R. de los Santos (retired/deceased), with Associate Justice Ruben T. Reyes (later Presiding Justice, and a Member of the Court, since retired) and Associate Justice Arturo D. Brion (a Member of this Court) concurring.

of land situated in Barrio Banlic, Municipality of Cabuyao, Province of Laguna, denominated as Lot 8017-A of Subdivision Plan CSD-04-006985-D, Cad. 455-D, Cabuyao Cadastre,[3] alleging that it had purchased the land on March 9, 1992 from Jane de Castro Abalos, married to Jose Abalos, for ₱300,000.00; that the land was declared for taxation purposes in the name of its predecessor-in-interest under Tax Declaration No. 22711; that there was no mortgage or encumbrance of any kind affecting the land, nor was there any other person or entity having any interest thereon, legal or equitable, adverse to that of the applicant; and that the applicant and its predecessors-in-interest had been in open, continuous and exclusive possession and occupation of the land in the concept of an owner.

Attached to the application were several documents, namely: (1) tracing cloth plan as approved by the Land Management Division of the Department of Environment and Natural Resources (DENR); (2) blue print copies of the tracing cloth plan; (3) copies of the technical description; (4) copies of Tax Declaration No. 2711; and (5) copies of the Deed of Sale dated March 9, 1992.

The Republic, represented by the Director of Lands, opposed the application, arguing that the applicant and its predecessors-in-interest had not been in open, continuous, exclusive and notorious possession and occupation of the land since June 12, 1945; that the muniments of title and tax declaration presented did not constitute competent and sufficient evidence of a *bona fide* acquisition of the land; and that the land was a portion of the public domain, and, therefore, was not subject to private appropriation.[4]

The RTC directed the Land Management Bureau, Manila; the Community Environment and Natural Resources Office (CENRO) of Los Baños, Laguna; and the Land Management Sector and Forest Management Bureau, Manila, to submit a status report on the land, particularly, on whether the land was covered by a land patent, whether it was subject of a previously approved isolated survey, and whether it was within a forest zone.[5]

In his memorandum to the DENR, Region IV (Lands Forestry Sector), and the Provincial Prosecutor of Laguna, a copy of which was furnished the trial court, CENRO Officer Arnulfo Hernandez stated that the land had been "verified to be within the Alienable and Disposable land under Land Classification Project No. 23-A of Cabuyao, Laguna, certified and declared as such pursuant to the provisions of Presidential Decree No. 705, as amended, under Forestry Administrative Order No. A-1627 dated September

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[3] Id. at 33-35.
[4] Id. at 37-38.
[5] Id. at 41.

28, 1981 per BFD Map LC-3004." Attached to the memorandum was the inspection report declaring that "the area is surrounded with concrete fence, three (3) buildings for employees' residence;" that the land was acquired through sale before the filing of the application; that the applicant and its predecessors-in-interest had been in "continuous, open and peaceful occupation" of the land, and that "no forestry interest is adversely affected."[6]

CENRO Land Management Inspector/Investigator Rodolfo S. Gonzales reported that: (1) the land was covered by a survey plan approved by the Regional Land Director/Land Registration Authority on May 25, 1988 pursuant to PD No. 239 dated July 9, 1975; (2) it consisted of 22,773 square meters and was located in Barangay Banlic, Cabuyao, Laguna; (3) the area was entirely within the alienable and disposable area; (4) it had never been forfeited in favor of the government for non-payment of taxes, and had not been confiscated in connection with any civil or criminal cases; (5) it was not within a previously patented property as certified to by the Register of Deeds, Calamba, Laguna; and (6) there was no public land application filed for it by the applicant or any other persons as per verification from the records unit of his office. The report further stated that a verification at the Office of the Municipal Assessor showed that: (1) the land was declared for the first time in 1960 under Tax Declaration No. 6712 in the name of Enrique Hemedez with an area of 23,073 square meters; (2) it was now covered by Tax Declaration No. 2253 issued in the name of the respondent; (3) the real property taxes had been paid since 1968; and (4) it had not been earmarked for public or quasi-public purposes per information from the District Engineer.

After inspection, it was also found that (1) the land was residential; (2) the respondent was in the actual occupation and possession of the land; and (3) the land did not encroach upon an established watershed, riverbank/bed protection, creek, right-of-way or park site or any area devoted to general use or devoted to public service.[7]

A certification was issued by the Records Management Division of the Land Management Bureau stating that it had no record of any kind of public land applications/land patents covering the parcel of land subject of the application.[8]

The respondent presented Gloria P. Noel, its Vice President and Treasurer, who testified that the respondent had purchased the land from Jane de Castro Abalos on March 9, 1992 for ₱300,000.00; that the land had been declared for taxation purposes in the name of Abalos under Tax Declaration No. 22711; that after the sale, a new Tax Declaration had been

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6 Id. at 41.
7 Id. at 41-42.
8 Id.

issued in the name of the respondent, who had meanwhile taken possession of the land by building a fence around it and introducing improvements thereon; that the respondent had paid the real property taxes thereon since its acquisition; that the respondent's possession had been continuous, open and public; and that the land was free from any lien or encumbrance; and that there was no adverse claimant to the land.[9]

Engr. Edilberto Tamis attested that he was familiar with the land because it was a portion of Lot No. 8017 of Subdivision Plan Cad-455-D of the Cabuyao Cadastre, owned by Corazon Tapalla who had acquired it from the Hemedez family; that Tapalla had sold a portion of Lot No. 8017 to Abalos and the remaining portion to him; and that he had witnessed the sale of the land to the respondent.[10]

The respondent's final witness was Armando Espela who declared that he was a retired land overseer residing in Barangay Banlic from birth; that he was familiar with the land which was part of a bigger parcel of land owned by the Hemedez family; that his father, Toribio Espela, with his assistance, and one Francisco Capacio worked on the land since 1960; that the entire landholding had originally been sugarland, but was later on subdivided, sold, and resold until it ceased to be agricultural land; that, in 1982, the land was sold to Corazon Tapalla who hired him as the overseer; that as the overseer, he fenced and cleared the area; that he was allowed to use the grassy portion for grazing purposes; that in 1987, Tapalla sold part of the land to Abalos and the remaining portion to Engr. Tamis; that he continued to oversee the land for the new owners; that Abalos then sold her portion to the respondent in 1992; that since then, the respondent took possession of the land, and he then ceased to be the overseer; that the possession by the Hemedez family and its successors-in-interest was open, continuous, public and under claim of ownership; and that he did not know any person who claimed ownership of the land other than those he and his father served as overseers.[11]

Decision of the RTC

On May 12, 1997, the RTC rendered its decision, holding that the respondent and its predecessors-in-interest had been in open, public, peaceful, continuous, exclusive and adverse possession and occupation of the land under a *bona fide* claim of ownership even prior to 1960 and, accordingly, granted the application for registration, *viz*:

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9 Id. at 42-43.
10 Id. at 43.
11 Id. at 43-44.

> WHEREFORE, taking into consideration the evidence submitted by the applicant, this Court hereby orders the confirmation and registration of title of the land described as Lot 8017-A of subdivision plan Csd-04-006985-D, being a portion of Lot 8017 of subdivision plan Cad-455-D, Cabuyao Cadastre situated at Barangay Banlic, Cabuyao, Laguna with an area of 1,520 square meters to be entered under the name of the applicant Zurbaran Realty and Development Corporation, a corporation organized and existing under the laws of the Philippines with office address at 33 M. Viola St., San Francisco del Monte, Quezon City by the Land Registration Authority. After the decision shall become final, let an order for the issuance of a decree of title be issued in favor of said applicant.
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> SO ORDERED.[12]

Judgment of the CA

The Republic appealed, arguing that the issue of whether the applicant and its predecessors-in-interest had possessed the land within the required length of time could not be determined because there was no evidence as to when the land had been declared alienable and disposable.

On June 10, 2004, the CA promulgated its judgment affirming the RTC, and concluded that the reports made by the concerned government agencies and the testimonies of those familiar with the land in question had buttressed the court *a quo*'s conclusion that the respondent and its predecessors-in-interest had been in open, public, peaceful, continuous, exclusive, and adverse possession and occupation of the land under a *bona fide* claim of ownership even prior to 1960.[13]

Issue

Hence, the Republic appeals the adverse judgment of the CA upon the following ground:

> THE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW WHEN IT AFFIRMED THE TRIAL COURT'S GRANT OF THE APPLICATION FOR ORIGINAL REGISTRATION DESPITE THE ABSENCE OF EVIDENCE THAT RESPONDENT AND ITS PREDECESSORS-IN-INTEREST HAVE COMPLIED WITH THE PERIOD OF POSSESSION AND OCCUPATION REQUIRED BY LAW.[14]

The Republic contends that the respondent did not establish the time when the land covered by the application for registration became alienable

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12 Id. at 44.
13 Id. at 31.
14 Id. at 13.

and disposable;[15] that such detail was crucial because the possession of the respondent and its predecessors-in-interest, for the purpose of determining whether it acquired the property by prescription, should be reckoned from the time when the land was declared alienable and disposable; and that prior to the declaration of the land of the public domain as alienable and disposable, it was not susceptible to private ownership, and any possession or occupation at such time could not be counted as part of the period of possession required under the law on prescription.[16]

The respondent counters that whether it established when the property was declared alienable and disposable and whether it complied with the 30-year required period of possession should not be entertained anymore by the Court because: (*a*) these issues had not been raised in the trial court and were being raised for the first time on appeal; and (*b*) factual findings of the trial court, especially when affirmed by the CA, were binding and conclusive on this Court. At any rate, the respondent insists that it had been in open, public, peaceful, continuous, and adverse possession of the property for the prescribed period of 30 years as evidenced by the fact that the property had been declared for taxation purposes in 1960 in the name of its predecessors-in-interest, and that such possession had the effect of converting the land into private property and vesting ownership upon the respondent.[17]

In reply, the Republic asserts that it duly opposed the respondent's application for registration; that it was only able to ascertain the errors committed by the trial court after the latter rendered its decision; and that the burden of proof in land registration cases rested on the applicant who must prove its ownership of the property being registered. The Republic maintains that the Court had the authority to review and reverse the factual findings of the lower courts when the conclusion reached was not supported by the evidence on record, as in this case.[18]

Ruling

The petition for review is meritorious.

Section 14 of P.D. No. 1529 enumerates those who may file an application for registration of land based on possession and occupation of a land of the public domain, thus:

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15 Id. at 16.
16 Id. at 20-21.
17 Id. at 57-61.
18 Id. at 84-87.

> Section 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
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> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
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> x x x x

An application for registration under Section14(1) of P.D. No. 1529 must establish the following requisites, namely: (*a*) the land is alienable and disposable property of the public domain; (*b*) the applicant and its predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of the land under a *bona fide* claim of ownership; and (*c*) the applicant and its predecessors-in-interest have possessed and occupied the land since June 12, 1945, or earlier. The Court has clarified in *Malabanan*[19] that under Section14(1), it is not necessary that the land must have been declared alienable and disposable as of June 12, 1945, or earlier, because the law simply requires the property sought to be registered to be alienable and disposable *at the time the application for registration of title is filed*. The Court has explained that a contrary interpretation would absurdly limit the application of the provision "to the point of virtual inutility."

The foregoing interpretation highlights the distinction between a registration proceeding filed under Section 14(1) of P.D. No. 1529 and one filed under Section 14(2) of P.D. No. 1529. According to *Malabanan*:

> **Section 14(1) mandates registration on the basis of possession, while Section 14(2) entitles registration on the basis of prescription. Registration under Section 14(1) is extended under the aegis of the Property Registration Decree and the Public Land Act while registration under Section 14(2) is made available both by the Property Registration Decree and the Civil Code.**[20]

In other words, registration under Section 14(1) of P.D. No. 1529 is based on possession and occupation of the alienable and disposable land of the public domain since June 12, 1945 or earlier, *without regard to whether the land was susceptible to private ownership at that time*. The applicant needs only to show that the land had already been declared alienable and disposable at any time prior to the filing of the application for registration.

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19 Supra note 1.
20 Id. at 206.

On the other hand, an application under Section 14(2) of P.D. No. 1529 is based on acquisitive prescription and must comply with the law on prescription as provided by the *Civil Code*. In that regard, only the patrimonial property of the State may be acquired by prescription pursuant to the *Civil Code*.[21] For acquisitive prescription to set in, therefore, the land being possessed and occupied must already be classified or declared as patrimonial property of the State. Otherwise, no length of possession would vest any right in the possessor if the property has remained land of the public dominion. *Malabanan* stresses that even if the land is later converted to patrimonial property of the State, possession of it prior to such conversion will not be counted to meet the requisites of acquisitive prescription.[22] Thus, registration under Section 14(2) of P.D. No. 1529 requires that the land had already been converted to patrimonial property of the State at the onset of the period of possession required by the law on prescription.

An application for registration based on Section 14(2) of P.D. No. 1529 must, therefore, establish the following requisites, to wit: (*a*) the land is an alienable and disposable, and patrimonial property of the public domain; (*b*) the applicant and its predecessors-in-interest have been in possession of the land for at least 10 years, in good faith and with just title, or for at least 30 years, regardless of good faith or just title; and (*c*) **the land had already been converted to or declared as patrimonial property of the State at the beginning of the said 10-year or 30-year period of possession**.

To properly appreciate the respondent's case, we must ascertain under what provision its application for registration was filed. If the application was filed under Section 14(1) of P.D. No. 1529, the determination of the particular date when the property was declared alienable and disposable would be unnecessary, inasmuch as proof showing that the land had already been classified as such at the time the application was filed would be enough. If the application was filed under Section 14(2) of P.D. No. 1529, the determination of the issue would not be crucial for, as earlier clarified, it was not the declaration of the land as alienable and disposable that would make it susceptible to private ownership by acquisitive prescription. *Malabanan* expounds thereon, thus

> …Would such lands so declared alienable and disposable be converted, under the Civil Code, from property of the public dominion into patrimonial property? After all, by connotative definition, alienable and disposable lands may be the object of the commerce of man; Article 1113 provides that all things within the commerce of man are susceptible to prescription; and the same provision further provides that patrimonial property of the State may be acquired by prescription.

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21 See Article 1113 of the *Civil Code*.

22 *Heirs of Mario Malabanan v. Republic*, supra note 1, at 205-206.

> Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription. After all, Article 420 (2) makes clear that those property "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when it is "intended for some public service or for the development of the national wealth."
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> Accordingly, there must be **an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial.** Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[23]

The respondent's application does not enlighten as to whether it was filed under Section 14(1) or Section 14(2) of P.D. No. 1529. The application alleged that the respondent and its predecessors-in-interest had been in open, continuous and exclusive possession and occupation of the property in the concept of an owner, but did not state when possession and occupation commenced and the duration of such possession. At any rate, the evidence presented by the respondent and its averments in the other pleadings reveal that the application for registration was filed based on Section 14(2), not Section 14(1) of P.D. No. 1529. The respondent did not make any allegation in its application that it had been in possession of the property since June 12, 1945, or earlier, nor did it present any evidence to establish such fact.

With the application of the respondent having been filed under Section 14(2) of P.D. No. 1529, the crucial query is whether the land subject of the application had already been converted to patrimonial property of the State. In short, has the land been declared by law as no longer intended for public service or the development of the national wealth?

The respondent may perhaps object to a determination of this issue by the Court for the same reason that it objects to the determination of whether it established when the land was declared alienable and disposable, that is, the issue was not raised in and resolved and by the trial court. But the

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[23] Id. at 202-203.

objection would be futile because the issue was actually raised in the trial court, as borne out by the Republic's allegation in its opposition to the application to the effect "that the land is a portion of the public domain not subject to prescription." In any case, the interest of justice dictates the consideration and resolution of an issue that is relevant to another that was specifically raised. The rule that only theories raised in the initial proceedings may be taken up by a party on appeal refers only to independent, not concomitant, matters to support or oppose the cause of action.[24]

Here, there is no evidence showing that the land in question was within an area expressly declared by law either to be the patrimonial property of the State, or to be no longer intended for public service or the development of the national wealth. The Court is left with no alternative but to deny the respondent's application for registration.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on June 10, 2004; and **DISMISSES** the respondent's application for original registration of Lot 8017-A of Subdivision Plan CSD-04-006985-D, Cad. 455-D, of the Cabuyao Cadastre.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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[24] *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta,* G.R. No. 165748, September 14, 2011, 657 SCRA 554, 594-595; *Borbon II v. Servicewide Specialists, Inc.,* G.R. No. 106418, July 11, 1996, 258 SCRA 634, 642.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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