Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PUERTO DEL SOL PALAWAN, INC., Petitioner,	**G.R. No. 212607**
	Present:
- versus -	CARPIO, *J., Chairperson,* PERLAS-BERNABE, CAGUIOA, J. REYES, JR., and LAZARO-JAVIER, *JJ.*
HON. KISSACK B. GABAEN, Regional Hearing Officer, Regional Hearing Office IV, National Commission on Indigenous Peoples and ANDREW ABIS, Respondents.	Promulgated: 27 MAR 2019

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DECISION

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Puerto Del Sol Palawan, Inc. (PDSPI) against public respondent Hon. Kissack B. Gabaen (Gabaen), in her capacity as Regional Hearing Officer of the Regional Hearing Office IV (RHO IV), National Commission on Indigenous Peoples (NCIP) and private respondent Andrew Abis (Abis), assailing the Resolution[2] dated April 3, 2013 and Resolution[3] dated May 20, 2014 (collectively, the assailed Resolutions) promulgated by the Court of Appeals (CA)[4] in CA-G.R. SP No. 129036, which denied petitioner PDSPI's Petition for *Certiorari*[5] (*Certiorari* Petition) dated March 4, 2013.

The Facts and Antecedent Proceedings

As culled from the records of the case, the essential facts and antecedent proceedings of the instant case are as follows:

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1 *Rollo*, pp. 9 to 24-A.
2 Id. at 26-28. Penned by Associate Justice Manuel M. Barrios with Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro, concurring.
3 Id. at 30-34.
4 Second Division and Former Second Division.
5 *Rollo*, pp. 77-85.

On August 15, 2011, Abis filed with the NCIP RHO IV a Complaint[6] entitled "*Andrew Abis v. Puerto Del Sol Resort/Michael Bachelor*" for "Unauthorized and Unlawful Intrusion with Prayer for TRO and Permanent Injunction with Damages." The case was docketed as NCIP Case No. 038-RIV-11.

In the said Complaint, Abis alleged that he and his predecessors-in-interest, who are all members of the Cuyunen Tribe, have been occupying and cultivating property located in Sitio Orbin, Brgy. Concepcion, Busuanga, Palawan as their ancestral land since time immemorial. It is claimed that PDSPI, through Michael Batchelor, entered the Cuyunen ancestral lands, put up a "no trespassing, private property" sign therein, installed armed security guards, destroyed crops and plants planted by the tribe, and occupied a portion of the Cuyunen ancestral lands. The Puerto del Sol Resort was subsequently developed in the Cuyunen ancestral lands.[7]

Finding the petition for Temporary Restraining Order (TRO) sufficient in form and substance, a TRO was issued by the NCIP RHO IV on August 22, 2011.[8]

On September 8, 2011, PDSPI filed an Answer,[9] denying the allegations of Abis. PDSPI maintained that the Puerto del Sol Resort is not in conflict and does not overlap with any ancestral domain.

On November 22, 2012, after assessing all the facts and evidence adduced by both parties, the NCIP RHO IV, through Gabaen, rendered its Decision[10] in favor of Abis, holding that the land wherein the Puerto del Sol Resort is situated in the ancestral lands of the Cuyunen Tribe. Further, the NCIP RHO IV found that PDSPI unlawfully intruded into the ancestral domain of the Cuyunen Tribe.

PDSPI received a copy of the Decision dated November 22, 2012 on **November 29, 2012**.[11]

A Motion for Reconsideration[12] dated December 10, 2012 was filed by PDSPI **fourteen (14) days from November 29, 2012 or on December 13, 2012**, which was eventually denied by the NCIP RHO IV in its Order[13] dated December 18, 2012.

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6 Id. at 35-37.
7 Id. at 35.
8 Id. at 53.
9 Id. at 38-42.
10 Id. at 43-54.
11 Id. at 55.
12 Id. at 55-57.
13 Id. at 58-59.

PDSPI received the NCIP RHO IV's Order denying its Motion for Reconsideration on **December 21, 2012**.[14]

Unsatisfied, PDSPI filed a Memorandum on Appeal[15] with the NCIP RHO IV on Monday, **January 7, 2013**, considering that the fifteenth (15th) day from December 21, 2012, *i.e.*, January 5, 2013, fell on a Saturday.

In its **Order**[16] **dated January 14, 2013**, the NCIP RHO IV, through Gabaen, denied due course the Memorandum on Appeal of PDSPI for being filed beyond the reglementary period.

According to the NCIP RHO IV, since PDSPI filed its Motion for Reconsideration a day before the end of the reglementary period to file an appeal of the NCIP RHO IV's Decision, PDSPI had only one (1) day remaining to file an appeal upon receipt of the NCIP RHO IV's Order denying its Motion for Reconsideration. Simply stated, according to the NCIP RHO IV, PDSPI was not granted a fresh period to appeal after it received a copy of the NCIP RHO IV's denial of its Motion for Reconsideration.

Feeling aggrieved, PDSPI filed its Petition for *Certiorari* dated March 4, 2013 before the CA, docketed as CA-G.R. SP No. 129036. PDSPI alleged that grave abuse of discretion was extant in the issuance of the NCIP RHO IV's Order dated January 14, 2013.

The Ruling of the CA

In its assailed Resolution, the CA denied outright PDSPI's *Certiorari* Petition. The dispositive portion of the assailed Resolution of the CA reads:

> **WHEREFORE**, foregoing considered, the instant petition is **DISMISSED** outright.
>
> **SO ORDERED**.[17]

The CA denied outright the *Certiorari* Petition of PDSPI, invoking the doctrine of exhaustion of administrative remedies. According to the CA, instead of filing a petition for *certiorari*, PDSPI should have first filed a motion for reconsideration of the NCIP RHO IV's Order dismissing outright its Memorandum on Appeal. Hence, the CA held that there was a plain, adequate, and speedy remedy available to PDSPI that precluded the institution of a *Certiorari* Petition.[18]

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14 Id. at 73.
15 Id. at 60-72.
16 Id. at 73-76.
17 Id. at 27-28.
18 Id. at 27.

In addition, the CA pointed out several formal defects of the *Certiorari* Petition, *i.e.*, (1) failure of PDSPI's counsel to indicate the date of issuance of his MCLE compliance number, and (2) defect in the *jurat* of the Verification and Certification of Non-Forum Shopping.[19]

PDSPI filed a Motion for Reconsideration[20] dated April 25, 2013, wherein PDSPI attached a photocopy of its counsel's MCLE certification,[21] as well as an affidavit[22] executed by its corporate representative, Ms. Edna V. Blach, affirming and authenticating her signature in the *jurat* of the Verification and Certification of Non-Forum Shopping.

The CA, in its assailed Resolution, denied PDSPI's Motion for Reconsideration, holding that, while PDSPI was able to cure the formal defects of its *Certiorari* Petition, the supposed violation of the doctrine of exhaustion of administrative remedies still warranted the dismissal of the *Certiorari* Petition.[23]

Hence, the instant Petition.

Abis filed his Comment[24] dated October 10, 2014, to which PDSPI responded with his Reply to Comment[25] dated January 26, 2017.

Issue

The central question to be resolved by the Court is whether or not the CA was correct in invoking the doctrine of exhaustion of administrative remedies to deny PDSPI's *Certiorari* Petition assailing the NCIP RHO IV's Order dated January 14, 2013.

The Court's Ruling

The instant Petition is meritorious. The Court rules in favor of PDSPI.

In the main, the CA posits the view that, since PDSPI supposedly had the available remedy of filing a motion for reconsideration against the NCIP RHO IV's Order dismissing outright PDSPI's Memorandum on Appeal, the *Certiorari* Petition could not prosper as there was still a plain, adequate, and speedy remedy at the disposal of PDSPI, invoking the doctrine of exhaustion of administrative remedies.

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19 Id. at 27.
20 Id. at 86-95.
21 Id. at 93.
22 Id. at 92.
23 Id. at 31.
24 Id. at 104-108.
25 Id. at 113-119.

First and foremost, the CA was incorrect in holding that a motion for reconsideration was an available remedy at the disposal of PDSPI in questioning NCIP RHO IV's Order dated January 14, 2013.

According to NCIP Administrative Circular No. 1, Series of 2003, or the Rules on Pleadings, Practice and Procedure Before the National Commission on Indigenous Peoples (2003 NCIP Rules of Procedure), the Rules of Procedure governing actions before NCIP at the time of the instant controversy, only one motion for reconsideration shall be entertained before the RHO.[26] In the instant case, PDSPI had already filed a Motion for Reconsideration dated December 10, 2012, barring it from filing another similar motion before the NCIP RHO IV.

Neither can it be validly argued that the NCIP RHO IV's Order denying due course to PDSPI's Memorandum on Appeal should have first been appealed before the NCIP *En Banc*.

According to Section 97, Rule XVII of the 2003 NCIP Rules of Procedure, the provisions of the Rules of Court shall apply in an analogous and suppletory character. Hence, following Section 1, Rule 41 of the Rules of Court, which states that an appeal may be taken only from a judgment or final order that completely disposes the case, and that an appeal may not be taken from an order disallowing an appeal, the NCIP RHO IV's Order denying due course to PDSPI's appeal cannot be subject of an appeal before the NCIP *En Banc*.

In any case, although the general rule states that the filing of a prior motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*, such rule is subject to well-recognized exceptions. Jurisprudence has held that the special civil action of *certiorari* will lie even without a party first availing itself of a motion for reconsideration if, among other exceptions, **the order challenged is a patent nullity** or where **the issue raised is one purely of law**.[27]

Moreover, while the general rule dictates that it must be first shown that all the administrative remedies prescribed by law have been exhausted before filing an extraordinary action for *certiorari* under the principle of exhaustion of administrative remedies, there are however exceptions to this rule, such as where **the issue is purely a legal one** or **where the controverted act is patently illegal**.[28]

Applying the foregoing to the instant case, the issue raised by PDSPI in the instant Petition, *i.e.*, the correct reglementary period applicable with

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[26] 2003 NCIP Rules of Procedure, Sec. 45.

[27] *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 136-137 (2010).

[28] *Industrial Power Sales, Inc. v. Sinsuat*, 243 Phil. 184, 185 (1988).

respect to appeals of RHO decisions before the NCIP *En Banc*, is a purely legal one.

Furthermore, the Court finds that the NCIP RHO IV's Order dated January 14, 2013 is patently in violation of the 2003 NCIP Rules of Procedure.

Clearly and unequivocally, Section 46, Rule IX of the 2003 NCIP Rules of Procedure states that a judgment rendered by the RHO shall become final only when no appeal is made within fifteen (15) days from receipt of the assailed decision or, when a motion for reconsideration was filed by the party, **within fifteen (15) days from the receipt of the order denying such motion for reconsideration**:

> **Section 46. Finality of Judgment. — A judgment rendered by the RHO shall become final upon the lapse of fifteen (15) days from receipt of the** decision, award or **order denying the motion for reconsideration**, and there being no appeal made. If the 15th day falls on a Saturday, Sunday or a Holiday, the last day shall be the next working day.[29]

To recall, PDSPI received a copy of the assailed Decision dated November 22, 2012 issued by the NCIP RHO IV on **November 29, 2012**. Within fourteen (14) days from such date, or on December 13, 2012, a Motion for Reconsideration dated December 10, 2012 was filed by PDSPI on **December 12, 2012**. The said Motion was eventually denied by the NCIP RHO IV in its Order dated December 18, 2012. PDSPI received the NCIP RHO IV's Order dated December 18, 2012 denying its Motion for Reconsideration on **December 21, 2012**.

With the fifteenth (15th) day from December 21, 2012, *i.e.*, January 5, 2013, falling on a Saturday, **according to Section 46, Rule IX of the 2003 NCIP Rules of Procedure, PDSPI had until Monday, January 7, 2013, to file its appeal. This is exactly what PDSPI did on such date**.

Therefore, NCIP RHO IV committed a palpable and manifest error, violating the 2003 NCIP Rules of Procedure in denying PDSPI's appeal due course on the ground that the reglementary period for the filing of an appeal had already passed, based on the erroneous theory that PDSPI had only one (1) day remaining to file an appeal upon receipt of the NCIP RHO IV's Order denying its Motion for Reconsideration.

To reiterate, Section 97, Rule XVII of the 2003 NCIP Rules of Procedure states that the rules of procedure under the Rules of Court shall apply suppletorily with respect to cases heard before the NCIP. Under the Rules of Court, with the advent of the *Neypes Rule*, otherwise known as the *Fresh Period Rule*, parties who availed themselves of the remedy of motion

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[29] Emphasis and underscoring supplied.

for reconsideration are now allowed to file an appeal within fifteen days from the denial of that motion.[30]

The Court is not unaware that jurisprudence has held that the *Neypes Rule* strictly applies only with respect to judicial decisions and that the said rule does not firmly apply to administrative decisions.

However, in the cases wherein the Court did not apply the *Neypes Rule* to administrative decisions, the specific administrative rules of procedure applicable in such cases explicitly precluded the application of the *Fresh Period Rule*.

For instance, in *Panolino v. Tajala*,[31] which involved an appeal of a decision of a Regional Executive Director of the Department of Environment and Natural Resources (DENR) before the DENR Secretary, the Court held that "Rule 41, Section 3 of the Rules of Court, as clarified in *Neypes*, being inconsistent with Section 1 of Administrative Order No. 87, Series of 1990, it may not apply to the case of petitioner whose motion for reconsideration was *denied*."[32] The Court did not apply the *Fresh Period Rule* because, according to Administrative Order No. 87, Series of 1990, which was the applicable rule of procedure in that case, "if a motion for reconsideration of the decision/order of the Regional Office is filed and such motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial."[33]

As another example, in *San Lorenzo Ruiz Builders and Developers Group, Inc. v. Bayang*,[34] the Court did not apply the *Fresh Period Rule* in an appeal of a decision of the Housing and Land Use Regulatory Board (HLURB) before the Office of the President (OP) because according to the applicable rule therein, *i.e.*, Section 2, Rule XXI of HLURB Resolution No. 765, Series of 2004, in relation to Paragraph 2, Section 1 of Administrative Order No. 18, Series of 1987, "in case the aggrieved party files a motion for reconsideration from an adverse decision of any agency/office, the said party has the only remaining balance of the prescriptive period within which to appeal, reckoned from receipt of notice of the decision denying his/her motion for reconsideration."[35]

Similarly, in *Jocson v. San Miguel*,[36] the *Fresh Period Rule* was also not applied in an appeal from a decision of the Provincial Adjudicator to the Department of Agrarian Reform Adjudication Board (DARAB) because,

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30 *Active Realty and Development Corp. v. Fernandez*, 562 Phil. 707, 721 (2007).
31 636 Phil. 313 (2010).
32 Id. at 319-320.
33 Administrative Order No. 87, Sec. 1(b) (1990).
34 758 Phil. 368 (2015).
35 Id. at 374.
36 783 Phil. 176 (2016).

under the 2003 DARAB Rules of Procedure, "[t]he filing of a Motion for Reconsideration shall interrupt the period to perfect an appeal. If the motion is denied, the aggrieved party shall have the remaining period within which to perfect his appeal. Said period shall not be less than five (5) days in any event, reckoned from the receipt of the notice of denial."[37]

In the instant case, there is no similar provision in the 2003 NCIP Rules of Procedure which states that in case the aggrieved party files a motion for reconsideration from an adverse decision of the RHO, the said party has only the remaining balance of the period within which to appeal, reckoned from receipt of notice of the RHO's decision denying the motion for reconsideration.

Oppositely, Section 46, Rule IX of the 2003 NCIP Rules of Procedure clearly adopts the *Fresh Period Rule*, stating that, in a situation wherein a motion for reconsideration was filed, a judgment rendered by the RHO shall become final only when no appeal is made within fifteen (15) days from receipt of the order denying such motion for reconsideration. **By issuing an Order that plainly and unmistakably goes against the above-stated rule, the Court finds that NCIP, RHO IV gravely abused its discretion**.

As a final note, the Court stresses that the dismissal of appeals purely on technical grounds is frowned upon and procedural rules ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims.[38] Indeed, while the right to appeal is merely statutory and not a natural right, the courts, as well as administrative bodies, are nonetheless enjoined to respect the minimum period laid down by the applicable Rules within which to allow an appeal. All litigants, to the extent allowed by the Rules, must be afforded the fullest opportunity for the adjudication of their cases on the merits.[39]

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. The Resolutions dated April 3, 2013 and May 20, 2014 promulgated by the Court of Appeals, Second Division and Former Second Division in CA-G.R. SP No. 129036 are **REVERSED** and **SET ASIDE**.

Accordingly, the Order dated January 14, 2013 issued by the National Commission on Indigenous Peoples, Regional Hearing Office IV is likewise **REVERSED** and **SET ASIDE**. The National Commission on Indigenous Peoples, Regional Hearing Office IV is hereby **ORDERED** to give due course to petitioner Puerto Del Sol Palawan, Inc.'s Memorandum on Appeal dated January 4, 2012.

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37 2003 DARAB Rules of Procedure, Rule X, Sec. 12.

38 *A-One Feeds, Inc. v. Court of Appeals*, 188 Phil. 577, 580 (1980).

39 *Pacific Life Assurance Corp. v. Sison*, 359 Phil. 332, 339 (1998).

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.

LUCAS P. BERSAMIN
Chief Justice