Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ARMED FORCES OF THE PHILIPPINES,
Petitioner,

G.R. No. 213753

- versus -

ENELINDA AMOGOD,
NICANOR ARADO,
MA. LEONORA ARBUTANTE,
DARIO ARBUTANTE,
MARCIANA ARBUTANTE,
MARFELINA ARBUTANTE,
CESAR ALFEREZ,
GERTRUDES AGURA,
ISIDRO BALAN,
MARY GRACE BACAS,
EMILIO BANTANG,
RUTH BULAY-OG,
FELIZA BARANODIN,
ERNESTO BASILIO,
SALVADOR CASTILLO,
AQUILLO CAGAMPANG,
JULIUS CORBETA,
PHILIP CORTES,
VICENTE CARULLU, JR.,
HENRY DELA CRUZ,
VIOLETA CRUZ,
JANICE CAINGAY,
MARCIANO DENAMARCA,
EMMANUEL DENAMARCA,
WILSON DOMINGO,
MARY DELORIA,
FLORANTE DAMO,
RODOLFO ESTRADA,
JORGE ESTRONE,
VIVENCIA ELEMANCO,
FELIX FABALLE,
ANITO FORTIZA,
JOVELYN FORTIZA,
ARSENIO GEVERO, SR.,
GREGORIA GEROCHI,
ROSEMARIE GABUTAN,

ANASTACIO GALVEZ,
FELIX GARCIA,
CARLOS GARCIA
VALENTINA GARCIA,
RICARDO GALIT,
RITA HERNANE,
VIVIAN ILAS,
ELIAS JARAMILLO,
ETHEL KAWALING,
ROBERTO LAMATA,
PRIMO LOBICO,
MAMERTO LUZON,
JEMUEL MABANAG,
RUTH MACAHILAS,
EDNA MACANOQUIT,
CANDIDO MANGLICMOT,
YOLANDA MANGLICMOT,
DANILO MANGLICMOT,
ARLENE MANTIS,
AQIOLINO MENDOZA,
JILL MACIBALO,
ANTONIA MANUEL MORTEJO,
NONITA NUAL,
GODOFREDO NAVAREZ,
PERFECTA NEYRA,
PEDRITO NALA,
PANCHITO NOB,
LUZ PIONAN,
JIMMY PERALES,
MARCELENO REYES,
CASIMIRO RAGUINE,
BERNABE SANGGUAL,
TERESITA SAGUING,
EDWINO SECILLO,
BENJAMIN TAGUD,
CESAR TACOGDOY,
JOSE TORAYNO,
SALVADOR TING,
ESPERANZA VALDEZ,
ZENAIDA VIGOR,
RODOLFO VALENCIA,
PAZ VALLECER,
JERIC VILLANUEVA,
CELSA BARORO,
BENJAMIN TAGUS, JR.,
MARIETTA EROLAN,

AMADO RECHA,
GERRICA NAVAREZ,
PEDRITO NALA,
AMARIO EROLAN,
FE DAWAL,
AMPARO MICANBALO,
ROGELIO SERQUIÑA,
ELIZABETH SUGANOB,
APOLONIO SUGANOB,
MELIA C. ASO,
HELEN D. CENTENO,
LORETO SALOMON,
EDUARDO SALOMON,
CRISTINA FIGUEROA,
JOSE ARLO FIGUEROA,
BENADETTE MENDAROS,
ARNOLD FIGUEROA,
TERESITA ESTIGOY,
EMPERATRIS CEBALLOS,
EDUARDO PAUMAR,
MARINA ACERO,
CESAR MANDALUCAY,
ROSITA LORENZO,
JOCELYN EMONG,
WILBUR MAMAWAG,
JOSEPHINE POGAY,
ROSALINO CUPAY,
GERONDIO TAPANGOT,
AURELIA GALINADA,
VICTORIANA T. ALJAS,
JOHNIEL POGAY,
CORAZON ESPINA,
MAMERTO SENERES,
FLORDELIZA DE JESUS,
ASUNCION JACALAN and
NICOLAS POGAY,
Respondents.

Present:

PERALTA, *C.J.*,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:
NOV 10 2020

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DECISION

GAERLAN, *J.*:

Subject to review under Rule 45 of the Rules of Court at the instance of petitioner Armed Forces of the Philippines (AFP), represented by Major

General Oscar T. Lactao, Armed Forces of the Philippines, Commanding General of the Fourth Infantry Division, Philippine Army, are the Decision[1] dated August 22, 2013 and the Resolution[2] dated July 30, 2014 in CA-G.R. CV No. 01833-MIN, whereby the Court of Appeals (CA) affirmed the Regional Trial Court's (RTC) Order[3] dated October 29, 2008 in Civil Case Nos. 2007-104 and 2007-152.

Antecedents

On May 7, 2007, Enelida Amogod, Nicanor Arado, Ma. Leonora Arbutante, Dario Arbutante, Marciana Arbutante, Marfelina Arbutante, Cesar Alferez, Gertrudes Agura, Isidro Balan, Mary Grace Bacas, Emilio Bantang, Ruth Bulay-og, Feliza Baranodin, Ernesto Basilio, Salvador Castillo, Aquillo Cagampang, Julius Corbeta, Philip Cortes, Vicente Carullu, Jr., Henry Dela Cruz, Violeta Cruz, Janice Caingay, Marciano Denamarca, Emmanuel Denamarca, Wilson Domingo, Mary Deloria, Florante Damo, Rodolfo Estrada, Jorge Estrone, Vivencia Elemanco, Felix Faballe, Anita Fortiza, Jovelyn Forteza, Arsenio Gevero, Jr., Arsenio Gevero, Sr., Gregoria Gerochi, Rose Marie Gabutan, Anastacio Galvez, Felix Garcia, Carlos Garcia, Valentina Garcia, Ricardo Galit, Rita Hernane, Vivian Ilas, Elias Jaramillo, Ethel Kawaling, Roberto Lamata, Primo Lubico, Mamerto Luzon, Jemuel Mabanag, Ruth Macahilas, Edna Macanoquit, Candido Manglicmot, Yolanda Manglicmot, Danilo Manglicmot, Arlene Mantis, Aqiolino Mendoza, Gil Micabalo, Antonina Manuel Mortejo, Nonito Nual, Godofredo Navarez, Perfecta Neyra, Pedrito Nala, Pablo Nala Panchito Nob, Luz Pionan, Jimmy Perales, Marceleno Reyes, Casimiro Raguine, Bernabe Sanggual, Teresita Saguing, Edwino Secillo, Benjamin Tagud, Cesar Tacogdoy, Jose Torayno, Salvador Ting, Esperanza Valdez, Zenaida Vigor, Rodolfo Valencia, Paz Vallecer, Jeric Villanueva, Celsa Baroro, Benjamin Tagus, Jr., Marietta Erolan, Amado Recha, Gerrica Navarez, Pedrito Nala, Amario Erolan, Fe Dawal, and Amparo Micanbalo (respondents), the actual occupants of the parcels of land located in Cagayan de Oro City and designated as Lot 2, Lot 45748 with an area of 69,974 square meters (sq.m.) and Lot 3, Lot 45749, with an area of 12,859 sq.m. filed a petition for injunction[4] (Civil Case No. 2007-104) against petitioner AFP, Fourth Infantry Division (4ID), Philippine Army (PA), Camp Edilberto Evangelista.

A separate petition[5] (Civil Case No. 2007-152), likewise for injunction, was filed on June 27, 2007 by respondents Rogelio C. Serquiña, Elizabeth Suganob, Apolonio Suganob, Melia C. Aso, Helen D. Centeno, Loreto

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1 *Rollo*, pp. 56-78; penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo A. Camello and Marie Christine Azcarraga-Jacob, concurring.
2 Id. at 79-83.
3 Id. at 388-438; penned by Judge Downey C. Valdevilla.
4 Id. at 103-111.
5 Id. at 135-147.

Salomon, Eduardo Salomon, Cristina Figueroa, Jose Arlo Figueroa, Bernadette Mendaros, Arnold Figueroa, Teresita Estigoy, Emperatris Ceballos, Eduardo Paumar, Marina Acero, Cesar Mandalucay, Rosita Lorenzo, Jocelyn Emong, Wilbur Mamawag, Josephine Pogay, Rosalino Cupay, Gerondio Tapongot, Aurelia Galanida, Victoriana T. Aljas, Johniel Pogay, Corazon Espina, Mamerto Señeres, Flordeliza de Jesus, Asuncion Jacalan and Nicolas Pogay, all actual occupants of Lot 4, Lot 45750 with an area of 1,417 sq.m., Lot 5, Lot 45751 with an area of 4,739 sq.m. and Lot 6, Lot 45752 with an area of 2,462 sq. m. of Lots 22052 and 4353, CAD 237, likewise located in Cagayan de Oro City, also against petitioner AFP, 4ID, PA.

In both petitions for injunction, respondents averred that they and their predecessors-in-interest are the lawful occupants of the subject parcels of land for more than 30 years; their lands are outside the Philippine Army's Camp Edilberto Evangelista, a 32-hectare land given to petitioner by the Velezes; and they, as early as November 9, 1995, filed a petition to the President of the Philippines for the segregation and release thereof on the ground that these are outside the property of the petitioner.[6]

Respondents further narrated that sometime in 2007, they received a notice to vacate their respective areas within a period of two months. Respondents, however, did not give heed to petitioner's demand. As a result, thereof, petitioner harrassed respondents and unceremoniously closed some of their stores. Respondents, thus, sought to enjoin petitioner from closing their stores and from disturbing their lawful and peaceful possession of the subject parcels of land.[7]

In its answer (with counterclaim),[8] petitioner contended that respondents are all squatters in a military reservation, hence, they are considered as nuisances *per se* and may be subjected to summary abatement.[9] Petitioner explained further that it is the lawful owner of the subject parcels of land considering that the land was sold to its favor by Apolinar Velez in 1936; and that such sale was acknowledged by the Velezes and Pinedas in their respective deeds of donation and quitclaim.[10]

RTC Ruling

The RTC rendered the October 29, 2008 Order[11] granting respondents'

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6 Id. at 106, 137.
7 Id. at 139.
8 Id. at 112-134.
9 Id. at 114.
10 Id. at 121.
11 Id. at 388-438.

petitions for injunction. It ratiocinated that based on the relocation/verification report of Engr. Arlene Galope and the supplemental report of Director Dichoso of the Department of Environment and Natural Resources (DENR), the subject parcels of land are not only outside the 36-hectare property of petitioner but are also considered alienable and disposable.[12] The trial court further concluded that since respondents are in actual possession of the subject parcels of land since time immemorial, they have a clear and unmistakable right over the subject property, which must be protected. The trial court, thus, disposed the case in this wise:

> *WHEREFORE*, in view of the foregoing, the injunctive writ prayed for by plaintiffs – prohibitory injunction is hereby GRANTED for being meritorious. Accordingly, defendants 4th Infantry Division, Philippine Army, represented by its Officers and personnel and defendants in their own rights, Major General Jose T. Barbieto, Jr., AFP Commanding General, 4th ID PA; Col. Augusto L. Tolentino, PA, Chief of Staff 4ID, PA; LTC Rex G. Gatiologo, PA, Camp Commander, 4ID, PA; LTC Silver P. Linsangan, PA, Division Adjutant; Major Crispin O. Mendoza, Jr., PA, Commanding Officer, Post Engineering Detachment (PED), 4ID, PA; and Capt. Eduardo Abaño, PA, Division Real Estate Officer (DREO), 4ID, PA, and all persons acting for and in their behalf, are hereby ordered to cease and desist in their summary eviction of plaintiffs, and cease and desist in harassing the plaintiffs; open all stores of some plaintiffs which were closed without due process and remove the wooden structures indicating the closure.
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> Considering that the main cause for action of the instant complaints/petitions is injunction, with the granting of the same by the Court, the bond put up by the plaintiffs in the sum of One Hundred Thousand (P100,000.00) pesos under Official Receipt No. 0847126A re: temporary restraining order issued by the Court dated July 8, 2008, is hereby ordered cancelled and returned to the bondsmen Enelida Amogod and Rogelio C. Serquiña.
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> SO ORDERED.[13]

Undaunted, petitioner filed an appeal to the CA.

CA Ruling

In a Decision promulgated on August 22, 2013, the CA affirmed the RTC Decision, the decretal portion of which reads:

> **WHEREFORE**, premises considered, the appeal is hereby **DENIED** for lack of merit. The assailed Decision rendered by the Regional Trial Court in Civil Case Nos. 2007-104 and 2007-152 is hereby **AFFIRMED**.

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12 Id. at 431.

13 Id. at 437-438.

No costs.

SO ORDERED.[14]

The CA based its decision mainly on the September 21, 2010 Order of the Regional Executive Director (RED) of DENR-Region X which granted respondents' petition for exclusion and segregation. In the said Order, the DENR concluded that, after evaluation of the documentary evidence of respondents, as well as the findings of the ocular inspection conducted over the lots in question, the subject parcels of land are deemed alienable and disposable. As such, respondents, being the actual occupants thereon, have the right to apply for segregation and exclusion. The DENR, likewise, found the deeds of donation and quitclaim executed by the Velezes and the Pinedas without value considering that no acceptance thereof was made by petitioner. Accordingly, the CA ruled that as between petitioner and respondents, the latter has a clear and unmistakable right over the subject parcels of land.[15]

Aggrieved, petitioner moved for reconsideration. It was, however, denied in a Resolution[16] dated July 30, 2014,

Hence, the instant petition for review on *certiorari* interposing a lone issue.

Issue

Whether or not the Court of Appeals, in CA-G.R. CV No. 01833-MIN, seriously erred in sustaining, through its herein challenged August 22, 2013 Decision and July 30, 2014 Resolution, the Regional Trial Court of Cagayan de Oro City, Branch 39 which, in Civil Case No. 2007-104 and 2007-152, granted (sic) the complaints/petitions below, through its October 29, 2008 and January 8, 2009 Orders.[17]

Court's Ruling

The petition is meritorious.

It must be stressed at the outset that the main issue involved in the instant petition is whether the issuance or non-issuance of a *writ* of injunction is warranted in the case. Notwithstanding, a determination as to who between the

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14 Id. at 77.
15 Id. at 69-75.
16 Id. at 79-83.
17 Id. at 32.

parties have the legal right over the subject property is necessary before arriving at a proper and legally sound conclusion.

In the instant petition, petitioner AFP, 4ID, PA insists that although the subject property is outside their military reservation, it is still within the area covered by the quitclaim and donation executed by the Velezes and Pinedas in its favor; this is confirmed by the Secretary of DENR in his August 8, 2013 Decision[18] which in turn, reversed the RED's September 21, 2010 Order. Petitioner further claims that with the issuance of the DENR Secretary's August 8, 2013 Decision, respondents' occupation of the subject property no longer has any legal basis, hence, a writ of injunction is no longer warranted; thus, petitioner may now summarily evict respondents therefrom.

Respondents, on the other hand, claim that the appeal to the DENR Secretary was made out of time. They further aver that the donation and quitclaim executed in petitioner's favor were invalid considering that it failed to make an acceptance thereof. Simply, respondents insist that they, being the actual occupants of the subject property, declared as disposable and alienable, have the right not to be disturbed from their peaceful possession of the disputed lands.[19]

This Court rules in favor of the petitioner.

Settled is the rule that a petition for injunction may be the principal action and not merely an ancillary to a main case. This has been the ruling of the Court in the case of *Sangguniang Panglunsod ng Baguio City v. Jadewell Parking Systems, Corporation*,[20] to wit:

> An action for injunction is a recognized remedy in this jurisdiction. It is a suit for the purpose of enjoining the defendant, perpetually or for a particular time, from committing or continuing to commit a specific act, or compelling the defendant to continue performing a particular act. It has an independent existence. The action for injunction is distinct from the ancillary remedy of preliminary injunction, which cannot exist except only as part or an incident of an independent action or proceeding.[21]

Now, Section 3, Rule 58 of the Rules of Court, enumerates the grounds for the issuance of a *writ* of preliminary injunction (WPI), whether prohibitive or mandatory, *viz.*:

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18 Id. at 545-567.
19 Id. at 616-624.
20 734 Phil. 53 (2014).
21 Id. at 100.

SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual."

Section 5 thereof further provides:

Sec. 5. Preliminary injunction not granted without notice; exception. - No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made may issue a temporary restraining order to be effective only for a period of twenty (20) days from notice to the party or person sought to be enjoined. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

> However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from notice to the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

From the foregoing provisions, it is clear that the following elements must be present before a writ of preliminary injunction or a writ of injunction may be issued, to wit: (a) extreme urgency, and (b) grave and irreparable injury will be suffered by the applicant.

In addition, the Court in the case of *European Resources and Technologies, Inc, et. al. v. Ingenieuburo Birkhahn + Nolte, et. al.*,[22] ruled that prior to the issuance of a WPI, the existence of some requirements must be proved, to wit:

> Before an injunctive writ can be issued, it is essential that the following requisites are present: (1) there must be a right in esse or the existence of a right to be protected; and (2) the act against which injunction to be directed is a violation of such right. The onus probandi is on movant to show that there exists a right to be protected, which is directly threatened by the act sought to be enjoined. Further, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent a serious damage. Thus, it is clear that for the issuance of the writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage.[23]

The foregoing requisites were synthesized in the case of *Lukang v. Pagbilao Development Corporation, et. al.*,[24] where the Court explained:

> A writ of preliminary injunction is a provisional remedy which is adjunct to a main suit, as well as a preservative remedy issued to maintain the status quo of the things subject of the action or the relations between the parties during the pendency of the suit. The purpose of injunction is to prevent threatened or continuous irremediable injury to the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the status quo until the merits of the case are fully heard. Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are established:

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22 479 Phil. 114 (2004).
23 Id. at 129.
24 728 Phil. 608 (2014).

> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.
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> Thus, a writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: **(a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.**"[25] (Emphasis supplied, citations omitted)

After a careful review and evaluation of the records of this case, *vis-a-vis* the arguments raised by the parties, this Court finds that the elements for the issuance of writ preliminary injunction and/or writ of injunction are wanting in this case.

Respondents have no clear and unmistakable right over the subject property.

To recall, respondents' right over the subject property is anchored on the fact that they are the actual occupants thereon, as well as, on their contention that such is outside the property of petitioner. While their actual possession of the subject property has been established, the ownership thereof is still the subject of litigation. The DENR Secretary, however, in his Decision dated August 8, 2013 made a pronouncement that petitioner, not the respondents, has a better right to the disputed subject property, *viz.*:

> The appealed Decision correctly pointed out that appellees are the actual occupants of the disputed lots. However, the records did not show that [respondent's] entry was legal. There was also no showing that [respondent's] possession was in the concept of an owner. Hence, it was erroneous for the RED to give appellees preferential rights to the disputed lots. The law giving preferential rights to actual occupants is not designed to encourage, condone and reward illegal settlers. Moreover, it must be stressed that the law on

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[25] Id. at 617-618.

> preferential rights of actual occupants was not designed to defeat or nullify the legal title or the vested right of the lawful possessor of the land involved, because it would [be] tantamount to a taking without just compensation.
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> Unlike appellees, appellant (petitioner herein) was able to adduce evidence to support its claim over the controverted lots. Appellant submitted the following evidence: (1) the Quitclaim Deed of the Heirs of Apolinar Velez dated 28 December 1951; (2) the Quitclaim Deed of Hernando Pineda dated 22 December 1951; (3) the invalid Deed of Donation executed by the Heirs of Apolinar Velez dated 20 September 1960; (4) the Tax Declaration No. 198089; (5) the Land History Card of Lot 4319 in the Cadastral Records showing Apolinar Velez as Cadastral Claimant of said lot; and (6) the Consolidation/Subdivision Plan No. 10-001013.
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> On the basis of the above evidence, it is the considered opinion of this Office that appellant has a better right to the disputed lots than appellees.[26]

Admittedly, while opinions of administrative bodies are not controlling to this Court, administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law.[27] Otherwise stated, unless it is shown that the DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration and similar reasons, this Court is inclined to be guided by the Secretary's conclusion. Moreover, the DENR Secretary, in the instant case, reviewed the evidence, both testimonial and documentary, submitted by both parties before arriving at the said ruling. It is worthy to note that this evidence were the same pieces of evidence adduced by the parties in the instant case to support their respective claims. Hence, this Court finds no reason to deviate from the DENR Secretary's ruling.

Be that as it may, even without considering the DENR Secretary's Decision, this Court is still constrained to overturn the ruling of the CA in respondents' favor.

To prove ownership over the subject parcels of land, petitioner presented and offered as evidence the following documents: (1) Quitclaim Deed executed by the Velezes;[28] (2) the Land History Card of Lot No. 4319;[29] (3) Tax Declaration No. 198089;[30] (4) Deed of Donation executed by the Velezes;[31] (5) Quitclaim Deed executed by the Pinedas;[32] (6) Consolidation/Subdivision Plan

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26 *Rollo*, pp. 556-557.
27 *Alecha v. Atienza, Jr.*, 795 Phil. 126, 141 (2016).
28 *Rollo*, pp. 84-85.
29 Id. at 86.
30 Id. at 87-88.
31 Id. at 89-91.
32 Id. at 92-93.

No. Ccs-10-001013[33] duly approved by the Land Management Services, DENR; and (7) Supplemental Relocation Survey Report.[34]

Based on the Quitclaim Deed[35] executed by the Velezes, as well as the Quitclaim Deed[36] executed by the Pinedas, both in 1951, the disputed parcels of land were already sold to petitioner AFP as early as 1936. It is for this reason that the Deed of Donation executed by the Velezes in 1960 are considered invalid. The object of their donation are the very same parcels of land already sold in 1936. Simply, the Velezes and the Pinedas could not have donated the disputed lands since as early as 1936, these subject properties were already sold to petitioner. Despite the invalidity of the donation, the sale of the subject properties in favor of petitioner was acknowledged in these deeds of donation. It, thus, supports the fact that a sale thereof was executed in favor of petitioner.

Further solidifying petitioner's claim of ownership is their consistent declaration of the subject property for tax purposes. While it is true that tax receipts and tax declarations are not incontrovertible evidence of ownership, they constitute credible proof of a claim of title over the property.[37]

Finally, the duly approved consolidation plan, *vis-a-vis* the Supplemental Relocation Survey Report from the DENR fortify petitioner's claim of ownership. The pertinent portion of the Survey Report reads:

> That it is hereby informed that the area subject of the relocation survey which is the Consolidation/subdivision plan of Lots 22052 and 4353, Cad 237, Ccs-10-001013 is outside the Military Reservation under Presidential Proclamation No. 265, which are Lot Nos. 4318, 4354 and 4357, all of Cad. 237, Cagayan Cadastre. However, the same relocated area covered by the Deed of Quitclaim by the Velez'es, Deed of Donations by the Velez'es and Affidavit of Quitclaim by Hermundo Pineda, all in favor of the Philippine Army, executed on December 26, 1951, September 20, 1960 and December 22, 1951, respectively, copies attached for reference. In fact, a previous plan Pcs-3919 was approved by the Bureau of Lands confirming the claims of the Armed Forces of the Philippines covering Lot 1. The same was surveyed for the Republic of the Philippines.
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> That Lot 2, identified to Lot 45748, Cad. 237; Lot 3, identical to Lot 45749, Cad. 237; Lot 7, identical to Lot 45753, Cad. 237; Lot 8, identical to Lot 45755, Cad. 237, all of plan Ccs-10-001013 are outside the Military Reservation under PP No. 265 but inside the area subject of the Deed of Quitclaim and Deeds of Donation by the Velez'es executed on December 26, 1951 and September 20, 1951. The same are occupied by as follows: the herein plaintiffs of Civil Case Nos. 2007-104 & 2007-38 utilized as their

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33 Id. at 94.
34 Id. at 95-96.
35 Id. at 84-85.
36 Id. at 92-93.
37 *Heirs of Spouse Suyam v. Heirs of Julaton*, G.R. No. 209081, June 19, 2019.

> residence for a long time, National Food Authority Bodega for a long time, Regional Training Division & Special Forces Company for a long time and 4th I.D. Used as a Mosque, respectively.
>
> That Lot 4, identical to Lot 45750, Cad. 237; Lot 5, identical to Lot 45752, Cad. 237, all of plan Ccs-10-001013 are outside the Military Reservation but inside the area subject of a Affidavit of Quitclaim by Hernando Pineda executed on December 22, 1951. The same area are occupied by herein plaintiffs of Civil Case No. 2007-152 and are utilized as their residence for a long period of time.[38]

Based on this Survey Report, the DENR confirmed that the disputed lands, while outside petitioner's Military Reservation, are the subject of Deeds of Quitclaim executed by the Velezes and Pinedas in favor of petitioner sometime in 1951.

Respondents, on the other hand, rely on acquisitive prescription contending that they have been in actual possession of the subject property for more than 30 years. While they are indeed the actual occupants of the disputed parcels of land, they, unfortunately, failed to establish that such possession was in the concept of an owner. Worse, records are bereft of any showing of the legality of their entry into the subject lands. Respondents likewise failed to state the date when they entered and occupied the subject property.

Despite having actual possession of the disputed lands allegedly for more than 30 years, however, respondents' possession did not and will not ripen to ownership. This is pursuant to the established rule that while acquisitive prescription is a mode of ownership, possession by mere tolerance does not start the running of the prescriptive period.[39] Thus, lawful owners have the right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated. This right is never barred by laches, because possession by mere tolerance does not start the running of the prescriptive period.[40] This was exhaustively explained in the case of *Heirs of Jarque v. Jarque*,[41] to wit:

> Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. **In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted.** Thus, mere possession with a juridical title, such as, to exemplify, by a usufructuary, a trustee, a lessee, an agent or a pledgee, not being in the concept of an owner, cannot ripen into ownership by acquisitive prescription, unless the juridical relation is first expressly repudiated and such repudiation has been communicated to the other party.

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38 *Rollo*, pp. 95-96.
39 *Estrella v. Robles, Jr.*, 563 Phil. 384, 398 (2007).
40 *Bishop v. Court of Appeals*, 284-A Phil. 125, 130 (1992).
41 G.R. No 196733, November 21, 2018, 886 SCRA 269.

> **Acts of possessory character executed due to license or by mere tolerance of the owner would likewise be inadequate. Possession, to constitute the foundation of a prescriptive right, must be *en concepto de duno*, or, to use the common law equivalent of the term, that possession should be adverse, if not, such possessory acts, no matter how long, do not start the running of the period of prescription.**[42] (Emphasis supplied)

Viewed in light of all the foregoing, as between petitioner and respondents, this Court holds and so rules that it is petitioner who has a better right over the subject parcels of land. Respondents, therefore, have no clear and unmistakable right over the subject properties. Corollarily, there is no invasion of a purported right that needs to be protected. A Writ of Injunction is, therefore, unwarranted in this case.

Petitioner cannot summarily abate or evict respondents from the disputed lands.

Petitioner contends that respondents' illegal occupation of the subject parcels of land is considered nuisance *per se*. Hence, it may be summarily abated even without judicial order. It further avers that under Section 28 of Republic Act (R.A.) No. 7279, or the Urban Development and Housing Act of 1992, petitioner may summarily evict respondents, and their homes summarily demolished.

These contentions, however, are unmeritorious.

Despite having the right of possession over the subject parcels of land, petitioner cannot summarily abate and/or evict respondents therefrom. Neither can petitioner close and padlock the stores of respondents.

Firstly, respondents cannot be considered nuisance *per se*. Article 694 of the Civil Code defines a nuisance as any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property.

The Court recognizes two kinds of nuisances. In *Knights of Rizal v. DMCI Homes, Inc.*,[43] the Court made this distinction, "nuisance *per se* is one

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42 Id. at 290-291 citing *Marcelo v. Court of Appeals*, 365 Phil. 354, 361-362 (1999).
43 809 Phil. 453 (2017).

recognized as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may be abated summarily under the undefined law of necessity. The second, nuisance *per accidens*, is that which depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing in law constitutes a nuisance."[44]

It can easily be gleaned that respondents' occupation of the disputed lands is not a nuisance *per se*. This Court agrees with the CA that the residential houses and stores built and occupied by respondents cannot be considered as a nuisance *per se* because, by their very nature, they are not a "direct menace to public health or safety." They were built merely for residential purposes. Thus, their summary abatement is unwarranted.

Secondly, under Section 28 of R.A. No. 7279, there are only three situations where summary eviction and demolition of underprivileged and homeless citizens and their residential structures may be allowed: (1) when persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds; (2) when government infrastructure projects with available funding are about to be implemented; and (3) when there is a court order for eviction and demolition. This case, however, does not fall within the ambit of any of these instances.

The disputed lands cannot be considered one of or similar to the enumerated danger areas. There is likewise no court order for eviction and/or demolition. Furthermore, records are bereft of any showing that the disputed lands are subject of an infrastructure project with available funding. While petitioner claimed that the subject lands were dedicated for the quarters of its personnel temporarily assigned to it, no evidence whatsoever was ever presented to prove that there was indeed a concrete plan to construct the said infrastructure project and that funds were already available therefor. Petitioner's assertion that it may summarily abate and evict respondents from the disputed lands, therefore, has no bases, both in fact and in law.

Section 1, Presidential Decree No. 1227 is inapplicable to this case.

Finally, petitioner claims that respondents violated and are violating Section 1 of Presidential Decree No. 1227 by entering and re-entering Camp Evangelista, where the subject parcels of land are located.

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[44] Id. at 541.

Such contention, however, is misplaced.

Section 1 of Presidential Decree No. 1227[45] proscribes and sanctions anyone who re-enters a military base after having been removed therefrom and ordered not to re-enter by the base commander. This provision, however, finds no application to the instant case.

The subject parcels of land are not within the premises of petitioner's military base. As clearly stated in the Supplemental Relocation Survey Report from the DENR, "the area subject of the relocation survey x x x is outside the Military Reservation under Presidential Proclamation No. 265 x x x." While the disputed lands belong to petitioner, they are not, at least for the time being, a part of its military base. Respondents' occupation of the subject parcels of land, therefore, is not tantamount to entry to a military base.

All told, the RTC and the CA committed reversible error when it granted respondents' petitions and issued a Writ of Injunction to enjoin petitioner from evicting respondents and demolishing their houses and stores. From the evidence presented, petitioner was able to prove that it has the legal right over the disputed lands. Meanwhile, respondents' possession thereof, despite the lapse of time, did not ripen to ownership. This, however, does not necessarily give petitioner the unbridled right to summarily abate and/or evict respondents from the disputed lands. Compliance with the pertinent laws and rules still needs to be observed.

WHEREFORE, in view of the foregoing premises, the instant petition for review on *certiorari* is **GRANTED**. The assailed Decision of the Court of Appeals dated August 22, 2013 and the Resolution dated July 30, 2014 in CA-G.R. CV No. 01833-MIN, are **REVERSED and SET ASIDE.**

The Petitions for Injunction are dismissed for lack of merit.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

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[45] Section 1. Any person who, without express or implied permission or authority of the base commander or his duly authorized representatives, shall re-enter by the base commander or his duly authorized representative, shall be punished for the first offense, with imprisonment of not more than ten (10) days or a fine not exceeding P100.00, or both; for the second offense, with imprisonment of not less than ten (10) days but not more than P200.00 or both; and for the third and subsequent offenses, with imprisonment of not less than one (1) month but not more than six (6) months or a fine of not less than P200.00 but not more than P1,000.00, or both.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
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.

DIOSDADO M. PERALTA
Chief Justice