



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 26, 2021** which reads as follows:*

“G.R. No. 217389 (Rosito Mirasol, Marcelo Pacla, Cornelio Pacla, Sotero Mabbayad, Pelagio Malta, Eugenio Malta, Edwin Mirasol, Henry Cancera, and Juan Alingod, represented by Cecilia Gazzingan, Cecilia Galang, and Celia Pacla, v. Anastacia Gonzales representing herself and Lilia Ruehle, Ruben Rodriguez, and Spouses Antonio and Crisanta Santiago). – This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeks to set aside the Resolution² dated November 14, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 137732, which dismissed outright the Petition for *Certiorari* (Rule 65) filed by petitioners for being an improper remedy, and the Resolution³ dated March 6, 2015 denying their motion for reconsideration for lack of merit.

Facts of the Case

The case stemmed from the execution of a Decision⁴ dated August 9, 2006 of the Regional Trial Court (RTC) of Cabagan, Isabela, Branch 22 involving a complaint for ownership, possession, and damages filed by respondents against petitioners. The RTC confirmed the ownership of respondents over the subject six parcels of land with an area of 191,774 square meters, more or less, located at Sitio Tuyung, Paculagu, Naganacan, Sta. Maria, Isabela, which had been registered and titled in their names; ordering petitioners to vacate the parcels of land and restore respondents’ possession thereof; and

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¹ Rollo, pp. 14-38.

² Penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Francisco P. Acosta and Myra V. Garcia-Fernandez; id. at 47-48.

³ Id. at 50-51.

⁴ Penned by Judge Felipe Jesus Torio III; id. at 110-116.

ordering petitioners to pay jointly and severally the following: ₱100,000.00 as temperate damages, and ₱15,000.00 attorney's fees.⁵ The RTC Decision became final and executory on September 5, 2006.⁶ On motion of respondents, a Writ of Execution was issued on November 8, 2006.⁷ In compliance with the writ, the Deputy Sheriff filed a Partial Implementation Report⁸ on November 29, 2006.

On March 30, 2012, respondents filed a Motion for the Issuance of an Alias Writ of Execution⁹ alleging that petitioners are still in possession and cultivation of the subject land. Said motion was granted and an Alias Writ of Execution¹⁰ was issued on May 18, 2012.

On August 10, 2012, petitioners filed a Motion to Quash/Recall Alias Writ of Execution with Urgent Prayer to Defer its Implementation.¹¹ Respondents, on the other hand, filed their Urgent Motion for Demolition.¹²

In its Resolution¹³ dated October 4, 2012, the RTC denied petitioners' Motion to Quash for lack of merit; and granted respondents' Motion for Demolition. The RTC ruled that a writ of demolition shall be issued authorizing the removal of improvements on the land only after petitioners shall have failed to effect such removal within 45 days from notice.¹⁴

Petitioners filed a Motion to Hold in Abeyance the Writ of Demolition¹⁵ manifesting that the Department of Environment and Natural Resources (DENR), through the Regional Executive Director, Regional Office (RO) No. II, Tuguegarao City, had issued an Order¹⁶ dated February 15, 2013 which declared null and void and of no legal effect respondents' titles (*i.e.*, Original Certificate of Title (OCT) Nos. P-62948, P-62949, P-62455, P-62456, P-62457 and P-62458) for

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⁵ Id. at 116.
⁶ Id. at 117.
⁷ Id. at 18.
⁸ Id. at 136.
⁹ Id. at 118.
¹⁰ Id. at 120.
¹¹ Id. at 122-126.
¹² Id. at 127-128.
¹³ Id. at 144-147.
¹⁴ Id. at 147.
¹⁵ Id. at 160-162.
¹⁶ Id. at 163-168.

embracing parcels of land classified as timberland.¹⁷ The report of the Geodetic Engineers showed that the lots adjudicated to respondents do not correspond to the lots actually occupied by herein petitioners which are located in Nagannacan, Sta. Maria, Isabela. The technical description of respondents' OCTs, when computed and plotted, would show that the areas stated are located in San Pablo, Isabela.¹⁸ The dispositive portion of the DENR Order¹⁹ dated February 15, 2013 reads:

WHEREFORE, in light of the foregoing, judgment is hereby rendered as follows:

1. The Protest filed by the protestants is given due course. After fifteen (15) days from finality of this Order, they are ordered to file their public land applications covering the subject lots; and

2. Declaring the Free Patent Applications and the Original Certificate of Titles Nos. P-62948, P-62949, P-62455, P-62456, P-62457 and P-62458 of herein respondents null and void and of no legal effect for embracing parcels of land classified as timberland. Upon finality of this Order, the Legal Division shall recommend to the Solicitor general the filing of the appropriate action for the cancellation and reversion of the above-patents and OCT's pursuant to Section 101 of the Public Land Act.

SO ORDERED.²⁰

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¹⁷ Id. at 289-306. On appeal by respondents, the Office of the Secretary of the DENR dismissed herein respondents' appeal and affirmed the DENR RO No. II Orders dated February 15, 2013 and June 17, 2013 (which denied the motion for reconsideration). The dispositive portion of Decision dated October 20, 2015 reads:

WHEREFORE, premises considered, the Appeal filed by Gonzales, et al. is DISMISSED, and the Orders dated 15 February 2013 and 17 June 2013, issued by then RED, DENR-RO No. II, Tuguegarao City, are AFFIRMED. Pacla et al. are given preference to apply for registration of the subject land, provided they meet the requirements of applicable laws and rules. DENR-RO No. II, Tuguegarao City, is directed to cancel GSS-023134-000368-D, and coordinate with the Office of the Solicitor general as regards the filing of reversion case against Gonzales, et al., as holders of OCT Nos. P-62948, P-62949, P-62455, P-62456, P-62457 and P-62458. With respect to the administrative aspect of this case on personnel-related issue, the same is endorsed to the office of the Assistant Secretary for Internal Audit and Anti-Corruption for further investigation.

SO ORDERED.

¹⁸ Id. at 167.

¹⁹ Id. at 163-168.

²⁰ Id. at 167-168.

It appears that petitioners filed a protest against the grant of Free Patents and OCTs of respondents involving the subject lands. They alleged that they are farmers who had been in actual possession and cultivation of their respective parts of the subject lands for the past 30 years or more, and that respondents' OCTs and free patents were fraudulently obtained.²¹

On March 18, 2013, the RTC issued a Resolution²² directing the Sheriff to conduct a relocation survey of the lands covered by respondents' titles (*i.e.*, Original Certificate of Title Nos. P-62748, P-62749, P-62455, P-62456, P-62457 and P-62458). The RTC held that the finality of its decision does not, in view of the new facts and circumstances, foreclose a relocation survey for the purpose of putting to rest any question as to the identity of the lands subject of the judgment and the writ issued pursuant thereto. It also took into account new circumstances which necessitate the conduct of a relocation survey as component part of the execution of the judgment in order to ensure once and for all the identity of the subject lands. The RTC cannot simply close its eyes to and negate an administrative finding by the DENR that the lands subject of the respondents' titles are classified as timberlands. In the same Resolution, the RTC granted petitioners' Motion to Hold in Abeyance the Writ of Demolition, pending the conduct and result of the relocation survey.²³

Upon motion²⁴ of respondents opposing the survey, the RTC issued another Order²⁵ dated July 17, 2013 directing the Sheriff to implement the Writ of Execution and the corresponding writs thereto in accordance with the Decision dated August 9, 2006 of the RTC taking into consideration the conduct of a relocation survey as integral part of the execution process to be conducted within a reasonable period of time and in an expedient manner.²⁶ In another Order²⁷ dated May 13, 2014, the RTC directed the Sheriff to implement the Writ of Demolition pursuant to the Writ of Execution and the final judgment of the court.²⁸

Petitioner then filed a Motion to Assist the Sheriff to Effect the Relocation Survey,²⁹ praying that the relocation survey be conducted

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²¹ Id. at 164.
²² Id. at 172-173.
²³ Id.
²⁴ Id. at 176-177.
²⁵ Id. at 178.
²⁶ Id.
²⁷ Id. at 181.
²⁸ Id.
²⁹ Id. at 190.

and that the same be done with the assistance of Engineer Loreto O. Tangonan, since the Sheriff failed to conduct a survey with any geodetic engineer after the lapse of a considerable period of time.³⁰ Respondents likewise filed an *Ex-Parte* Motion to Issue Order for Police Assistance,³¹ praying that the Philippine National Police, Provincial Office, Ilagan, Isabela be directed to assist the Sheriff in the enforcement of the demolition.³²

Ruling of the Regional Trial Court

On July 31, 2014, the RTC issued an Order:³³ (1) denying petitioners' Motion to Assist the Sheriff to Effect the Relocation Survey and the Manifestation with Urgent Prayer to Direct the Sheriff to Cease and Desist from Further Conducting Demolition on the Properties in the Possession of Defendants; and (2) granting respondents' *Ex-Parte* Motion to Issue Order for Police Assistance. It directed the Philippine National Police, through the Provincial Police Office, Ilagan City, Isabela and the Regional Police Office, RECOM II, Tuguegarao City, Cagayan, to render police assistance in the implementation of the Decision dated August 9, 2006 of the RTC and the writs emanating therefrom.³⁴

Petitioners moved for reconsideration but it was denied in the Order³⁵ dated August 27, 2014. It appears that petitioners filed three motions for reconsideration of the Decision of the RTC on the merits which has already become final and executory.

A Petition for *Certiorari*³⁶ under Rule 65 was thereafter filed by petitioners to the CA ascribing grave abuse of discretion on the part of the RTC in allowing demolition of petitioners' houses without the conduct of a relocation survey.³⁷

Ruling of the Court of Appeals

The CA dismissed the petition outright in its Resolution³⁸ dated November 14, 2014. The CA ruled that a special civil action of *certiorari* is an improper remedy, as petitioners should have filed an

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³⁰ Id.
³¹ Id. at 192-193.
³² Id. at 193.
³³ Id. at 107-108.
³⁴ Id.
³⁵ Id. at 109.
³⁶ Id. at 52-71.
³⁷ Id. at 63.
³⁸ Supra note 2.

appeal under Rule 41 of the Rules of Court from the RTC Decision dated August 9, 2006 and Order dated August 27, 2014. Instead of filing a timely appeal, petitioners filed three successive motions for reconsideration, resulting in the finality of the August 9, 2006 Decision, per Entry of Judgment dated September 5, 2006. The CA held that the present petition for *certiorari* cannot be a substitute for a lost appeal.³⁹

Petitioners moved for reconsideration⁴⁰ but it was denied for lack of merit in the Resolution⁴¹ dated March 6, 2015.

Hence, petitioners filed this Petition for Review on *Certiorari*⁴² before the Court.

Issue

The issue to be resolved is: whether the CA erred in dismissing outright the special civil action for *certiorari* (Rule 65) filed by petitioners for being an improper remedy.

Petitioners argue that the CA erred in holding that the petition for *certiorari* was an improper remedy. Petitioners claim that said petition is not an appeal of the Decision dated August 9, 2006 of the RTC. The subject of the petition is the failure of the RTC to implement its own Orders, which were issued after the finality of the Decision. What petitioners are assailing is the ruling of the RTC allowing the demolition of petitioners' houses without the conduct of a relocation survey. Petitioners are claiming grave abuse of discretion on the part of the RTC in issuing said Order dated July 31, 2014. Some of the petitioners' houses were wholly or partially demolished.⁴³

Respondents were required to Comment to the petition but did not file one even after the Court's Show Cause Order⁴⁴ dated November 20, 2017.

Petitioners also claim that they are entitled to the grant of a preliminary injunction and/or temporary restraining order. The Sheriff continues to implement the writ of demolition, which will eventually cause the irreversible destruction of all of petitioners' homes.⁴⁵

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³⁹ *Rollo*, p. 48.

⁴⁰ *Id.* at 199-203.

⁴¹ *Supra* note 3.

⁴² *Supra* note 1.

⁴³ *Rollo*, pp. 27-35.

⁴⁴ *Id.* at 334.

⁴⁵ *Id.* at 35-38.

Ruling of the Court

The petition is meritorious.

After a judicious review of the case, the Court holds that petitioners properly filed with the CA the special civil action for *certiorari* under Rule 65 of the Rules of Court. Petitioners are not assailing the final and executory Decision dated August 9, 2006 of the RTC but the RTC Order allowing the demolition of petitioners' houses even without the conduct of a relocation survey, which according to them, was necessary to determine the identity and boundaries of the lands.

A writ of demolition, similar to an order of execution, is not subject of appeal under Rule 41, Section 1(f) of the Rules of Court.

RULE 41

Appeal From The Regional Trial Courts

Section 1. Subject of appeal. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
 - (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
 - (c) An interlocutory order;
 - (d) An order disallowing or dismissing an appeal;
 - (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
 - (f) An order of execution;**
 - (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
 - (h) An order dismissing an action without prejudice.
- x x x (Emphasis supplied)

The remedy against an interlocutory order not subject of an appeal is *certiorari* under Rule 65, provided that the interlocutory

order is rendered without or in excess of jurisdiction or with grave abuse of discretion.⁴⁶

Hence, there is a need remand the case to the CA to resolve the merits of the petition – whether there was grave abuse of discretion on the part of the RTC in allowing the demolition of petitioners' houses without the conduct of a relocation survey. This involves factual issues, and since this Court is not a trier of facts, the Court remands the case to the CA for a speedy resolution on the merits.

Likewise, the Court **grants the issuance of a temporary restraining order** enjoining the Sheriff and any person representing them or acting under their authority from enforcing the writ of demolition pending the resolution of the petition for *certiorari* before the CA, to prevent further damage to petitioners' homes. Be it noted that initially, the RTC, in its Resolution dated March 18, 2013, directed the Sheriff to conduct a relocation survey of the lands covered by respondents' titles holding that the finality of its decision does not foreclose a relocation survey for the purpose of putting to rest any question as to the identity of the subject lands. The RTC also took into account the DENR Order which declared null and void respondents' titles since these include parcels of land classified as timberland. However, it overturned said Resolution when it issued the assailed Orders dated July 31, 2014 and August 27, 2014 directing the continuance of the enforcement of the writ of demolition. The Court likewise notes the Manifestation⁴⁷ filed by petitioners that the lands of respondents under their OCTs and the lands currently occupied by petitioners are two separate parcels of land situated in different locations.⁴⁸

WHEREFORE, premises considered, the Court **GRANTS** the instant petition. The case is **REMANDED** to the Court of Appeals to resolve on the merits the Petition for *Certiorari* under Rule 65. Further, a Temporary Restraining Order is hereby **ISSUED** enjoining the Sheriff, the Philippine National Police, and any person representing them or acting under their authority from enforcing and continuing to enforce the writ of demolition/writ of execution issued by the Regional Trial Court of Cabagan, Isabela, Branch 22 in Civil Case No. 22-864 pending the resolution of the Court of Appeals of the Petition for *Certiorari* filed by petitioners.

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⁴⁶ *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 335 (2011).

⁴⁷ *Rollo*, pp. 282-284.

⁴⁸ *Id.* at 283.

SO ORDERED.” *Peralta, C.J., no part; Inting, J., designated Additional Member per Raffle dated January 25, 2021.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
2021

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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