



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 19, 2021 which reads as follows:

“G.R. No. 252918 - Heirs of Lourdes Fantiyao otherwise known as Kayapon Tinmakcheg herein represented by Joseph Fantiyao, petitioners, versus Pablo Chopap-ing, Marie Belle Ofo-ob, Antonio Ofo-ob, Jr., and all other persons claiming right or interest under or from them, respondents. – The petitioners’ motion for an extension of thirty (30) days within which to file a petition for certiorari is **GRANTED**, counted from the expiration of the reglementary period.

Before the Court is a Petition for Certiorari¹ (Petition) under Rule 65 of the Rules of Court (Rules) assailing the Resolutions dated June 11, 2019² (First Resolution) and dated January 6, 2020³ (Second Resolution) of the Court of Appeals⁴ (CA) in CA-G.R. SP No. 160750, which dismissed petitioners’ Rule 42 petition for review and denied their motion for reconsideration, respectively.

For a *certiorari* petition to prosper, Section 1 of Rule 65 requires that the tribunal, board or officer exercising judicial or quasi-judicial functions must have acted without or in excess of its or his or her jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioners challenge the CA Resolutions for having been issued by the CA with grave abuse of discretion amounting to lack or

- over – five (5) pages ...

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¹ *Rollo*, pp. 10-46, excluding Annexes.

² *Id.* at at 52-56. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Pablito A. Perez and Louis P. Acosta concurring.

³ *Id.* at 57-62.

⁴ Special Fifth Division and Former Special Fifth Division.

excess of jurisdiction.⁵ Thus, they have the burden to show that the CA acted with grave abuse of discretion pursuant to the Court's pronouncement in *Yu v. Reyes-Carpio*,⁶ to wit:

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x⁷

If petitioners fail, then their *certiorari* petition must fail.

Petitioners' allegations of "grave abuse of discretion" committed by the CA are token and do not approximate the threshold of capriciousness or whimsicality, evasion of a positive duty or virtual refusal to perform a legal duty, and arbitrariness or despotism by reason of passion and hostility that jurisprudence mandates.

The CA anchored its First Resolution on Section 2, Rule 42, which requires that the petition for review "be accompanied by x x x pleadings and other material portions of the record as would support the allegations of the petition" and Section 3 of said Rule, which provides that the failure of the petitioner to comply with any of the requirements in Section 2 including "the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof."⁸ The CA noted that petitioners failed to append to their petition the following:

x x x Special Power of Attorney of Joseph Fantiyao;
Complaint for recovery of ownership and possession, annulment and cancellation of documents, and damages with prayer for the issuance of a temporary restraining order and a writ of preliminary

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⁵ *Rollo*, p. 12.

⁶ G.R. No. 189207, June 15, 2011, 652 SCRA 343.

⁷ *Id.* at 348. Citations omitted.

⁸ *Rollo*, pp. 53-54.

injunction; copies of tax declaration nos. 12510 and 04-0014-00831 and Certificate of non-tax delinquency; sketch map; Decision of the Court of Appeals in CA-G.R. SP No. 53608 dated 14 September 2001; the Decision dated 09 October 1998 of the MTC; Decision of the MTC in Civil Case No. 540; Decision of the MTC in Civil Case No. 527; Decision of the RTC in Civil Case No. 2016-3-23-19; RTC Resolution dated 24 April 2017; Entry of Judgment dated 10 July 2017; Notice to Vacate; photographs of alleged unlawful construction; Certification issued by the Office of the Municipal Engineer of Bontoc, Mountain Province; Tax Declaration No. 04-0014-01279; respondents' Answer; transcript of stenographic notes of all the witnesses; Death Certificate of Lourdes Fantiyao; Judicial Affidavit of Anacleto Tangilag in Civil Case No. 527; Notice of illegal construction; Judicial Affidavit of Joseph Fantiyao; Judicial Affidavit of Pablo Chopap-ing; and appeal filed before the RTC.⁹

The CA correctly observed that while petitioners have the initial discretion in selecting the relevant supporting documents that will be appended to the petition for review under Rule 42, the CA will ultimately determine if the supporting documents are sufficient to even make out a *prima facie* case, and the submission of supporting documents is not merely done perfunctorily.¹⁰ Also, the CA noted that an appeal by petition for review under Rule 42 is a discretionary appeal, which is taken from the decision or final order rendered by a court in the exercise of its primary appellate jurisdiction, and it may be disallowed by the superior court in its discretion.¹¹

Anent the Second Resolution, while the CA took into consideration the pleadings and documents which petitioners attached in their motion for reconsideration, it reiterated the dismissal of the petition for review. The CA stated: "It cannot be granted due course as it is patently without merit," citing Section 4 of Rule 42, which provides that the CA may "dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too insubstantial to require consideration."¹² The CA found no cogent reason to disturb the lower courts' finding that petitioners failed to prove that the disputed lot or land occupied by respondents is part of the property claimed by them under their Tax Declaration No. 04-0014-00831 (TD) with an area of 1,702 square meters. The Sketch Map submitted by petitioners does not show that the disputed lot encroached on the property being claimed by petitioners. The CA stressed that the MTC conducted an

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⁹ Id. at 54.

¹⁰ Id. at 54-55. Citations omitted.

¹¹ Id. at 53. Citation omitted.

¹² Id. at 58-59.

ocular inspection of the disputed lot, which is 200 square meters, more or less, and found that it is not inside the area covered by petitioners' tax declaration, and that "*the sketch of Lourdes Fantiyao in Civil Case No. 340 xxx is an admission that (the) 1,702-square meter riceland does not encompass the disputed [lot] in the present case.*"¹³ Furthermore, the CA noted that the MTC finding was not disturbed by the RTC in its Decision, dismissing the appeal for failure of petitioners to substantially prove their claim that the disputed lot is within their property covered by their TD.¹⁴ The CA even cited the RTC findings that while petitioners presented a sketch representing the 1,702-square meter land being claimed by them, it does not categorically point to the fact that the disputed lot is part of their tax-declared property; the letter of petitioner Joseph Fantiyao to the District Engineer of the DPWH-Mountain Province District Engineering Office inquiring whether the construction of respondents is within the road right of way is an acknowledgment by petitioners that they are not knowledgeable of the metes and bounds of their property; and respondent Pablo Chopap-ing and his successors-in-interest have long occupied the disputed lot to vest in them ownership thereof by acquisitive prescription.¹⁵

Given the foregoing, the Court finds that the CA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the First and Second Resolutions. Hence, the present Petition is hereby **DISMISSED**.

The petitioners are hereby required to **SUBMIT**, within five (5) days from notice hereof, a soft copy in compact disc, USB or e-mail containing the PDF file of the signed motion for extension of time to file a petition for review on certiorari pursuant to A.M. Nos. 10-3-7-SC and 11-9-4-SC.

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¹³ Id. at 60-61.

¹⁴ See id.

¹⁵ Id. at 61.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
9711

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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(Civil Case No. 541)

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