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THIRD DIVISION

[G.R. No. 134958, January 31, 2001]

**PATRICIO CUTARAN, DAVID DANGWAS AND PACIO DOSIL,
PETITIONERS, VS. DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES, HEREIN REPRESENTED BY SEC. VICTOR O.
RAMOS, OSCAR M. HAMADA AND GUILLERMO S. FIANZA, IN HIS
CAPACITY AS CHAIRMAN OF COMMUNITY SPECIAL TASK FORCE
ON ANCESTRAL LANDS (CSTFAL), BAGUIO CITY, RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

Before us is a petition for review of the decision rendered by the Court of Appeals on March 25, 1998 and the order dated August 5, 1998 in CA-G.R SP No. 43930, a petition for prohibition originally filed with the appellate court to enjoin the respondent DENR from implementing DENR Special Order Nos. 31, as amended by 31-A and 31-B, series of 1990, Special Order No. 25, series of 1993 and all other administrative issuances relative thereto, for having been issued without prior legislative authority.

In 1990 the Assistant Secretary for Luzon Operations of the DENR issued Special Order no. 31^[1] entitled "Creation of a Special Task force on acceptance, identification, evaluation and delineation of ancestral land claims in the Cordillera Administrative Region". The special task force created thereunder was authorized to accept and evaluate and delineate ancestral land claims within the said area, and after due evaluation of the claims, to issue appropriate land titles (Certificate of Ancestral Land Claim) in accordance with existing laws.^[2] On January 15, 1993 the Secretary of the DENR issued Special Order no. 25^[3] entitled "Creation of Special Task Forces provincial and community environment and natural resources offices for the identification, delineation and recognition of ancestral land claims nationwide" and Department Administrative Order no. 02,^[4] containing the Implementing Rules and Guidelines of Special Order no. 25.

In 1990, the same year Special Order no. 31 was issued, the relatives of herein petitioners filed separate applications for certificate of ancestral land claim (CALC) over the land they, respectively occupy inside the Camp John Hay Reservation. In 1996 the applications were denied by the DENR Community Special Task Force on Ancestral Lands on the ground that the Bontoc and Applai tribes to which they belong are not among the recognized tribes of Baguio City. Also pursuant to the assailed administrative issuances the Heirs of Apeng Carantes filed an application ^[5] for certification of ancestral land claim over a parcel of land also within Camp John Hay and overlapping some portions of the land occupied by the petitioners. Petitioners claim that even if no certificate of ancestral land claim has yet been issued by the DENR in favor of the heirs of Carantes, the latter, on the strength of

certain documents issued by the DENR, tried to acquire possession of the land they applied for, including the portion occupied by herein petitioners. Petitioners also allege that the heirs of Carantes removed some of the improvements they introduced within the area they actually occupy and if not for the petitioner's timely resistance to such intrusions, the petitioners would have been totally evicted therefrom.

Hence, this petition for prohibition originally filed with the Court of Appeals to enjoin the respondent DENR from implementing the assailed administrative issuances and from processing the application for certificate of ancestral land claim (CALC) filed by the heirs of Carantes on the ground that the said administrative issuances are void for lack of legal basis.

The Court of Appeals^[6] held that the assailed DENR Special Orders Nos. 31, 31-A, 31-B issued in 1990 prior to the effectivity of RA 7586 known as the National Integrated Protected Areas Systems (NIPAS) Act of 1992, are of no force and effect "for pre-empting legislative prerogative" but sustained the validity of DENR Special Order No. 25, and its implementing rules (DAO No. 02, series of 1993) by the appellate court on the ground that they were issued pursuant to the powers delegated to the DENR under section 13 of RA 7586, which reads:

"Section 13. Ancestral Lands and Rights over Them.- Ancestral lands and customary rights and interest arising therefrom shall be accorded due recognition. The DENR shall prescribe rules and regulations to govern ancestral lands within protected areas: Provided, that the DENR shall have no power to evict indigenous communities from their present occupancy nor resettle them to another area without their consent: Provided, however, that all rules and regulations, whether adversely affecting said communities or not, shall be subjected to notice and hearing to be participated in by members of concerned indigenous community."^[7]

The petitioners filed with this Court a petition for review of the appellate court's decision on the ground that the Court of Appeals erred in upholding the validity of Special Order No. 25 and its implementing rules. The petitioners seek to enjoin the respondent DENR from processing the application for certificate of ancestral land claim filed by the Heirs of Carantes. Petitioners contend that in addition to the failure of the DENR to publish the assailed administrative issuances in a newspaper of general circulation prior to its implementation, RA 7586, which provides for the creation of a National Integrated Protected Areas System, does not contain the slightest implication of a grant of authority to the DENR to adjudicate or confer title over lands occupied by indigenous communities. It is contended that the said law only grants DENR administrative and managerial powers over designated national and natural parks called "protected areas" wherein rare and endangered species of plants and animals inhabit.^[8] The petitioners further allege that the subsequent passage of in 1997 of Republic Act 8371, otherwise known as the Indigenous Peoples Rights Act, wherein the power to evaluate and issue certificates of ancestral land titles is vested in the National Commission on Indigenous Cultural Communities/ Indigenous People (NCIP) is unmistakable indication of the legislature's withholding of authority from the DENR to confer title over lands occupied by indigenous communities.^[9] Finally, the petitioners claim that the validity of the questioned DENR special orders cannot be based on the constitutional provisions regarding the

protection of cultural communities as the said provisions are policy statements to guide the legislature in the exercise of their law-making powers and by themselves are not self-executory.

The Solicitor-General filed memorandum in behalf of the respondent DENR praying for the affirmance of the appellate court's decision. The respondent argues that the subject DENR special orders were issued pursuant to the powers granted by RA 7586 to the DENR to protect the socio-economic interests of indigenous peoples. The land occupied by the petitioners is within a "protected area" as defined by the said law and is well within the jurisdiction of the DENR. The respondent likewise claims that the petitioners are estopped from contesting the validity of the DENR administrative issuances considering that their relatives applied for certificates of ancestral land claim (CALC) under the said special orders which applications were, however, denied. The petitioners should not be allowed to challenge the same administrative orders which they themselves previously invoked.

The respondents do not contest the ruling of the appellate court as regards the nullity of Special Order no. 31, as amended. The sole issue before us concerns the validity of DENR Special Order no. 25, series of 1993 and its implementing rules DAO no. 02. The petitioners' main contention is that the assailed administrative orders were issued beyond the jurisdiction or power of the DENR secretary under the NIPAS Act of 1992. They seek to enjoin the respondents from processing the application for ancestral land claim filed by the heirs of Carantes because if approved, the petitioners may be evicted from the portion of the land they occupy which overlaps the land applied for by the Carantes heirs.

From a reading of the records it appears to us that the petition was prematurely filed. Under the undisputed facts there is as yet no justiciable controversy for the court to resolve and the petition should have been dismissed by the appellate court on this ground.

We gather from the allegations of the petition and that of the petitioners' memorandum that the alleged application for certificate of ancestral land claim (CALC) filed by the heirs of Carantes under the assailed DENR special orders has not been granted nor the CALC applied for, issued. The DENR is still processing the application of the heirs of Carantes for a certificate of ancestral land claim, which the DENR may or may not grant. It is evident that the adverse legal interests involved in this case are the competing claims of the petitioners and that of the heirs of Carantes to possess a common portion of a piece of land. As the undisputed facts stand there is no justiciable controversy between the petitioners and the respondents as there is no actual or imminent violation of the petitioners' asserted right to possess the land by reason of the implementation of the questioned administrative issuances.

A justiciable controversy has been defined as, " a definite and concrete dispute touching on the legal relations of parties having adverse legal interests"^[10] which may be resolved by a court of law through the application of a law.^[11] Courts have no judicial power to review cases involving political questions and as a rule, will desist from taking cognizance of speculative or hypothetical cases, advisory opinions and in cases that has become moot.^[12] Subject to certain well-defined exceptions^[13] courts will not touch an issue involving the validity of a law unless

there has been a governmental act accomplished or performed that has a direct adverse effect on the legal right of the person contesting its validity.^[14] In the case of PACU vs. Secretary of Education^[15] the petition contesting the validity of a regulation issued by the Secretary of Education requiring private schools to secure a permit to operate was dismissed on the ground that all the petitioners have permits and are actually operating under the same. The petitioners questioned the regulation because of the possibility that the permit might be denied them in the future. This Court held that there was no justiciable controversy because the petitioners suffered no wrong by the implementation of the questioned regulation and therefore, they are not entitled to relief. A mere apprehension that the Secretary of Education will withdraw the permit does not amount to a justiciable controversy. The questioned regulation in the PACU case may be questioned by a private school whose permit to operate has been revoked or one whose application therefor has been denied.^[16]

This Court cannot rule on the basis of petitioners' speculation that the DENR will approve the application of the heirs of Carantes. There must be an actual governmental act which directly causes or will imminently cause injury to the alleged legal right of the petitioner to possess the land before the jurisdiction of this Court may be invoked. There is no showing that the petitioners were being evicted from the land by the heirs of Carantes under orders from the DENR. The petitioners' allegation that certain documents from the DENR were shown to them by the heirs of Carantes to justify eviction is vague, and it would appear that the petitioners did not verify if indeed the respondent DENR or its officers authorized the attempted eviction. Suffice it to say that by the petitioners own admission that the respondents are still processing and have not approved the application of the heirs of Carantes, the petitioners alleged right to possess the land is not violated nor is in imminent danger of being violated, as the DENR may or may not approve Carantes' application. Until such time, the petitioners are simply speculating that they might be evicted from the premises at some future time. Borrowing from the pronouncements of this Court in the PACU case, "They (the petitioners) have suffered no wrong under the terms of the law--and, naturally need no relief in the form they now seek to obtain."^[17] If indeed the heirs of Carantes are trying to enter the land and disturbing the petitioners possession thereof even without prior approval by the DENR of the claim of the heirs of Carantes, the case is simply one for forcible entry.

WHEREFORE, for lack of justiciable controversy, the decision of the appellate court is hereby set aside.

SO ORDERED.

Melo, Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

^[1] Subsequently amended by 31-A and 31-B.

^[2] Special Order no. 31, as amended, series of 1990 states:

"In the interest of the service and consistent with the Constitutional mandate for the recognition and protection of the rights of the indigenous

cultural communities to their ancestral lands to ensure their socio-economic and cultural well-being, a Special Task Force that is responsible for acceptance, identification, evaluation, and delineation of ancestral land claims in the Cordillera Administrative Region is hereby created to be composed of the following:

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The Special Task Force shall accept, identify, and evaluate all applications/petitions of ancestral land claims in the CAR and if found valid, delineate same by actual ground survey for plotting in a compilation map.

1. The Special Task Force shall coordinate with the Indigenous Community Affairs Division, Special Concerns Office, Regional Secretariat on Townsite Sales Applications and other actively involved concerned government agencies, private and/or non-governmental organizations on the verification of the authenticity of all ancestral land claims by taking into consideration the indigenous customs and practices regarding land use, ownership and management.
2. The compilation map of ancestral land claims prepared by the Survey Section, CENRO Baguio City together with all the pertinent documents thereof shall be turned over to the herein Special Task Force.
3. The Special Task Force shall prepare separate guidelines in the acceptance, identification, evaluation and delineation of ancestral land claims in Baguio City and the rest of the Cordillera Region. It shall classify the applications for ancestral land claims based on the prepared guidelines.
4. Paragraph 6 of DENR Special Order No. 31, Series of 1990 is hereby amended to read as follows:

"The Special Task Force after evaluating and delineating all ancestral land claims shall recommend en banc to the Secretary of the DENR through the Regional Executive Director of CAR and the indigenous community Affairs Division, special concerns Office, for the issuance of Certificates of Ancestral Domain/Land over those areas determined to be ancestral. " (CA *Rollo*, pp. 15-19).

[3] Special Order no. 25, series of 1993 states:

"In the interest of the service and consistent with the Constitutional mandate for the recognition and protection of the rights of the indigenous cultural communities to their ancestral lands and domains to ensure their economic, social and cultural well-being, a Provincial Special Task Force on Ancestral Domains and a Community Special Task Force on Ancestral Lands are hereby created in every Provincial Environment and Natural Resources Office (PENRO) and Community Environment and Natural Resources Office (CENRO), respectively, where there is known to exist a

concentration of said communities.

Each Provincial Task Force on Ancestral Domains shall effect the identification, delineation and recognition of ancestral domain claims of indigenous cultural communities in its area of jurisdiction as well as the formulation and execution of strategies and plans for the sustainable development of the natural resources in these territories. Accordingly, it shall determine, undertake and/or coordinate all activities necessary for the proper discharge of this function; provided, that the actual survey of ancestral domain claims shall be planned and executed by the Office of the Regional Executive Director concerned.

Likewise, each Community Special Task Force shall, on the basis of applications filed by individual or indigenous corporate (families or clans) claimants, cause the identification, delineation and recognition of ancestral land claims in its area of responsibility. For this purpose, it shall undertake and/or coordinate all activities necessary for the proper discharge of this function, including the investigation and ocular inspection of such claims. (CA *Rollo*, pp. 20-37).

[4] "Pursuant to Section 22, Article II; Section 5, Article XII and Section 6, Article XIII of the 1987 Constitution which provide for the recognition and protection of the rights of the indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being; Executive Order No. 192 which empowers DENR to exercise exclusive jurisdiction on the management and disposition of all lands of the public domain; and R.A. No. 7586 which provides for the due recognition of ancestral domains and other customary rights in protected areas, the following rules and regulations are hereby promulgated for the guidance of all concerned."

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Sec. 9. **Issuance of Certificates of Ancestral Land Claims.**- The Community Special Task Force on Ancestral Lands shall prepare and submit to the Provincial Special Task Force on Ancestral Domains a report on each and every application surveyed and delineated. Thereafter the PSTFAD, after evaluating the reports shall endorse valid ancestral land claims to the office of the Regional Executive Director for further review and evaluation. Should the office of the Executive Regional Director find such claims meritorious, it shall endorse the same through the Special concerns Office to the Secretary for the **issuance of Certificates of Ancestral Land Claims(CALC), declaring and certifying the claim of each individual or corporate (family or clan) claimant over ancestral lands.**"

[5] Application no. BG-J-319.

[6] Montoya, J., *ponente*, JJ. Vidallon-Magtolis and Cosico, concurring.

[7] Court of Appeals decision, pp. 4-5.

[8] Sections 2 and 10, RA 7586. (1992).

[9] Sections 38, 42 (e).

[10] Sinco, Philippine Political Law, 1962,ed., quoting from the U.S. Declaratory Judgment Act of 1934, p. 360.

[11] Macasiano vs. National Housing Authority, 224 SCRA 238; Bernas, The Constitution of the Republic of the Philippines: A Commentary, vol. II, 1988 ed., pp. 274-275.

[12] Cruz, Philippine Political Law, 1998 ed., p.257-259.

[13] Solicitor-General vs. MMA, December 11, 1991; Dumlao vs. Comelec, 95 SCRA 392.

[14] Tan vs. Macapagal, 43 SCRA 678.

[15] 97 Phil.806.

[16] Bernas, *supra*.

[17] PACU, *supra*., at p. 810.



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