Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **February 11, 2015,** *which reads as follows:*

"G.R. No. 167467 – FOUNDATION SPECIALISTS, INC., Petitioner, v. VIRGILIO T. IGNACIO, SR., Respondent, JOSEFINA IGNACIO MALLARI, EDNA IGNACIO STA. CRUZ, VIFEL IGNACIO GARCIA, AND VIC ROSSANO IGNACIO, Legal Representatives.

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Appeals' Decision[1] dated September 22, 2004 and Resolution[2] dated March 10, 2005 issued in CA-G.R. SP No. 77801, entitled "*Virgilio T. Ignacio, Sr. v. The Executive Secretary, Office of the President, and Foundation Specialists, Inc.*"

The undisputed facts leading to the filing of the case before the Court of Appeals are quoted from the Court of Appeals' decision as follows:

> Assailed in the instant petition for review under Rule 43 of the 1997 Rules of Civil Procedure is the Decision, as well as the Order of the Office of the President, through the Executive Secretary, dated December 27, 2002 and June 2, 2003, respectively.
>
> The parties do not dispute the facts leading to the present controversy, thus:

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1 *Rollo*, pp. 48-66; penned by Associate Justice Danilo B. Pine with Associate Justices Rodrigo V. Cosico and Celia C. Librea-Leagogo, concurring.

2 Id. at 45-46.

- over eleven (11) pages .....

Petitioner is the registered owner of a parcel of land described as Lot No. 8-B-1, PSD-267219, situated in Banculasi, Navotas, Metro Manila, and covered by Transfer Certificate of Title (TCT) No. R-54172 of the Registry of Deeds of Navotas, Metro Manila. The parcel of land has an area of 4,060 square meters, where petitioner operates a cold storage plant. On the southwestern boundary of said property is a foreshore land of Manila Bay with an area of 4,000 square meters.

In 1984, petitioner laid claim to this land and declared it for taxation purposes in his name under Tax Declaration No. 002-046781 issued by the Municipal Assessor of Navotas. Instead, however, of pursuing his claim, he took steps to acquire the land from the government. Thus, upon petitioner's request, the Regional Executive Director of the DENR-NCR, through the CENRO, issued to petitioner an authority to have the land surveyed by a private geodetic engineer, on the strength of the investigation report and favorable recommendation of Special Investigator Gregorio S. Cunanan. The investigation report was concurred in by Department of Public Works and Highways (DPWH) Regional Director Vicente B. Lopez and the Secretary of the DPWH.

On July 16, 1993, the survey was approved by the Regional Technical Director of the Department of Environment and Natural Resources (DENR), National Capital Region, under Plan SWO-007503-000-920. Armed with the approved survey, the petitioner filed a Miscellaneous Sales Application (MSA) No. 0075-03-07 for the subject land, which was accepted and given due course by the DENR. The land was then appraised at P500.00 per square meter by the Municipal Assessor of Navotas.

Before the DENR could sell the land at a public auction, private respondent Foundation Specialists, Inc. (FSI) filed a protest on July 21, 1993 against petitioner's MSA, on the ground that it has a prior tax declaration and occupation of the land, and that the land is an "industrial trust" from the use of its machines and equipment. It appears that FSI was engaged by the Philippine National Construction Corporation (PNCC) as a subcontractor to execute the board pile foundation works on the R-10/C5 project. Thus, a Joint Venture Agreement was entered into by FSI and PNCC on May 23, 1989, as well as a Memorandum of Agreement dated September 18, 1989. Notwithstanding the temporary nature of its possession, which was merely co-terminus with the joint venture agreement it entered with PNCC, the FSI declared the subject land for taxation purposes in 1980.

On **March 29, 1996**, the DENR Regional Executive Director of the NCR rendered a decision, dismissing private respondent's protest in the following wise:

> **"WHEREFORE, premises considered, the protest of the Foundation Specialist, Inc., should be, as hereby it is, dismissed for lack of merit. Accordingly, the protestant is hereby ordered to vacate the premises**

and to turn over the land including the improvements thereon to this Office for administration and disposition under the provisions of the Public Land Act. Conformably therewith, the Miscellaneous Sales Application No. 0075-03-7 of respondent Virgilio Ignacio, Sr., should be given further due course."

FSI's motion for reconsideration of the aforequoted decision was denied by the DENR Regional Executive Director in his Order dated October 17, 1996.

The private respondent appealed to the Secretary of the DENR **(hereinafter referred to as the Secretary)**, in the person of Victor O. Ramos, who rendered a decision dated **December 17, 1997,** dismissing the appeal, thereby **affirming in toto** the appealed March 29, 1996 decision of the Executive Regional Director. The Secretary rationated:

x x x. "Appellant's possession of the land materialized only because it was engaged by the Philippine National Construction Corporation (PNCC) as sub-contractor to execute the board pile foundation works on the R-10 project. The Joint Venture Agreement of May 23, 1989 and the Memorandum of Agreement, dated September 18, 1989, in fact confirmed the findings of the Regional Executive Director that appellant's possession of the land was merely incidental and, therefore, co-terminus with the joint venture agreement with PNCC. For possession to be a basis of a right, two (2) things must be present, namely: (1) occupancy, and (2) an interest to possess (animus possidendi). Absent in the appellant's claim to the land in question is the latter element.

x x x. With respect to the third assignment of error, appellant's contention that the appellee is not a riparian owner inasmuch as the land fronting the latter's property has already been reclaimed is likewise untenable. In short, according to appellant, there is no more river, shore, sea, ocean, or lake to speak of. This reasoning does not hold water. It is undisputed that appellee owns Lot 8-B-1, (LRC) Psd-267219. The survey plan unmistakably shows that Lot 8-B-1 is bounded on the southwest by Manila Bay. Clearly, therefore, the appellee is a riparian or littoral owner in relation to the Manila Bay. As such he is entitled to a preferential right to acquire such land of the public domain abutting his property as it is not needed by the government for public purposes under Section 32, L.A.O. No. 7-1, Series of 1936, as correctly ruled by the Regional Director. x x x."

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In a Resolution dated **May 18, 1998,** upon private respondent's motion for reconsideration, the Secretary **reversed** himself and **declared without any force and effect** his December 17, 1997 decision, as well as the March 29, 1996 decision of the Regional Executive Director, on the ground that **the land falls within the jurisdiction of the Public Estates Authority** (PEA). In concluding that the PEA had jurisdiction over the disputed land, the Secretary ruled that:

> **"We have already stated in our Decision that the land is a dried and filled-up portion of Manila Bay and is, particularly, a "reclaimed" portion of Manila Bay (Decision, p. 2). Likewise, the land is not marshy land because it is not covered with water and, although it was formerly foreshore land, it no longer is foreshore because it is not covered with water during the highest tide. This fact was highlighted by the RED's Decision when he stated that with the construction of the R-10/C-4 by the Foundation, the land has ceased to be foreshore land since it is no longer reached by the water as a consequence of the drying up and introduction of filling materials incident to the construction of R-10 (March 29, 1996 Decision, p. 4).**
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> **Consequently, we had been misled into adopting the erroneous theory of the RED that the disputed land falls under the category under Section 59 (d) of the Public Land Act which refers to land which is neither marshy, foreshore, nor reclaimed land. We now take the position, as a necessary consequence of the preceding discussion, that the land is "reclaimed" land under the classification of Section 59, subpar. (a).**
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> **x x x. Concededly, the disputed land being reclaimed land under the administrative jurisdiction and disposition of the PEA, can only be disposed by the PEA through lease or any other manner authorized under the pertinent legal issuances. Consequently, we must perforce bow to the superior dictates of the law and now abdicate jurisdiction as regards the administration and disposition of the disputed land." x x x.**

Petitioner again sought the reconsideration of the aforequoted resolution which, in an Order dated February 11, 1999, was partially granted when the Secretary, this time in the person of Antonio Cerilles, reconsidered and set aside the resolution, with the modification that petitioner's application shall be converted into a lease application, thus:

> **"In the questioned Resolution, while it is true that Secretary Ramos is not precluded from declaring without force or legal effect his previous stand on the matter because FSI had at the outset questioned the DENR's jurisdiction over the disputed land, yet it cannot be denied that FSI submitted itself to the DENR's jurisdiction and even participated in every state and all processes of this case in the DENR. Such is a clear indication that appellant FSI acknowledge the jurisdiction of the DENR in this case. The Supreme Court in the case of Crisostomo vs. CA (32 SCRA 54) and Director of Lands vs. CA (102 SCRA 376) held that "A party cannot be allowed by public policy to speculate on the fortunes of litigation and question the Court's jurisdiction only after losing in said court". This is but one of the many cases decided by the Supreme Court on the issue of jurisdiction. We therefore find it odd for this Office to abdicate its jurisdiction over this case which by law belongs to its functions.**
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> **x x x. As earlier pointed out, appellant's possession materialized only because it was engaged by the Philippine National Construction Corporation (PNCC) as a sub-contractor to execute board file foundation works on the R-10 project. x x x. After a careful evaluation of the records, we find the land in dispute to be a foreshore land and therefore falls under Sec. 59 (b) of the Public Land Act and can only be disposed under a Lease Agreement." x x x.**

Another motion for reconsideration was filed by FSI, claiming, among other things, that since the land in question is a reclaimed land, it has a better right to apply for the land by reason of its actual occupation since 1980. The DENR **allegedly** ordered an ocular inspection in order to properly resolve FSI's motion. The ocular inspection conducted by the DENR is, however, assailed as it was done without notice to, and the presence of petitioner. On the basis of the **undated** Investigation Report of the Fact Finding Team of the DENR, Secretary Cerilles issued another Order dated March 2, 2000, which set aside his February 11, 1999 order, and thereby reviving the May 18, 1998 Resolution, which rejected petitioner's MSA. He also ordered FSI to file its own MSA for the same land within sixty (60) days from notice. The Secretary ruled as follows:

> **"After a more thorough re-evaluation of the facts on record, the pleadings and arguments therein and the evidence of the parties, and findings in the ocular inspection, we have arrived at the conclusion that the land in dispute is a reclaimed land that resulted from various government activities that took place in the area.**

Although it used to be a part of Manila Bay or a foreshore thereof, it became what is now (*sic*) because of the many developments that happened in the vicinity, among which are: the construction of a new seawall or breakwater some 500 to 600 meters southwest from the existing R-10; reclamation of the site for the Navotas Fish Port Complex between the seawall and the R-10; filling up of the foundation for the R-10 and its eventual construction; and finally, the overspill of filling material during the construction of R-10 and dumping of all sorts of debris, thrash and dirt on the land after the R-10 was completed. Stated simply, the land rose to its present level because of damming whereby the water of the sea was prevented from reaching the land in question by the seawall, reclamation of the site of the Fish Port Complex and construction of the R-10 which has a mean level of 2.5 meters. As it was in fact the result of a reclamation, it should therefore be considered reclaimed land. This does not, however, place it under the jurisdiction of Public Estates Authority (PEA). As a reclaimed land resulting from dredging, filling and other means, it remains under the jurisdiction of this Office pursuant to Section[s] 59 and 61 of the Public Land Act. In fact, as may be gathered from earlier applications referred to the PEA for clearance covering lands situated in the same vicinity, PEA has refused to assume jurisdiction over those lands.

x x x. Having determined the correct and real character of the land in dispute, we now have to settle the issue of who has the preference right to apply therefore, the movant or the appellee. The appellee owns the land abutting the land in question on the southwest. This, however, does not entitle him to a preference right to apply for the land in question as the same is not accretion but one that came about because of various government activities in the area including reclamation of the site for the Fish Port Complex and foundation of the R-10, construction of a new seawall or breakwater, construction of new roads (R-10 and C-3) and filling up by man with all sort of materials and debris.

Movant (FSI), as the one in actual possession and occupation of the controverted area should be recognized as having preferential right to lease the same in line with the doctrine in the case of Leongzon vs. CA, et al., 49 SCRA 212:

> **"Where a party is admittedly in actual possession of the disputed lot, all presumptions are and all doubts must be resolved in his favor, it being a rule of law that the present possessor is to be preferred."**
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> **Movant (FSI) has occupied the land in question since 1980 with the permission of the DPWH, through the CDCP and later on, the PNCC which established a field office thereat; it has made improvements thereon consisting of one storey structures utilized as warehouse, canteen, quarters for laborers and cement batching plan not to mention the filling materials dumped in the premises; these improvements had been declared for taxation purposes and the corresponding taxes paid.**
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> **Appellee, whose property abuts the land in dispute never for an instance raised a howl of protest over the occupation of the land by the CDCP, PNCC, and finally, FSI. It was only in 1993 or after 13 long years that applicant began to entertain interest in the land in dispute when he caused the survey thereof and filed his miscellaneous sales application therefore. He can, therefore, be said to have slept on his right, if he has any.**
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> **Moreover, between one who possesses/occupies a land of the public domain and an applicant who has never possessed the same, the law prefers the former. He who is first in time is first in right."**

The petitioner appealed to the Office of the President. In the assailed Decision dated December 27, 2002, public respondent, through the Deputy Executive Secretary, dismissed the appeal and thus affirmed the Order of the Secretary dated March 2, 2000. The petitioner's motion for reconsideration was likewise denied in the OP's June 2, 2003 Order.[3]

The Court of Appeals rendered a decision in favor of respondent Virgilio T. Ignacio, Sr., the dispositive portion of which reads:

> **THE FOREGOING CONSIDERED,** the instant petition for review is hereby **GRANTED**, the Decision of the Office of the President is **REVERSED** and **SET ASIDE**. In lieu thereof, the Decision of the Regional Executive Director dated March 29, 1996, as affirmed by the Secretary of the DENR, in the person of former Sec. Victor Ramos, in

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[3] Id. at 48-57.

his Decision dated December 17, 1997, is **REINSTATED**. No pronouncement as to costs.[4]

The motion for reconsideration filed by petitioner Foundation Specialists, Inc. was denied by the Court of Appeals' Resolution promulgated on March 10, 2005.

Hence, this petition for review on *certiorari* was filed by petitioner on May 6, 2005. On July 18, 2005, the Court noted the Manifestation dated May 23, 2005 filed by the counsel for respondent, which informed the Court that: (a) respondent Virgilio T. Ignacio, Sr. passed away on May 2, 2005; (b) the legal representatives of the late respondent are his children Josefina Ignacio Mallari, *et al.*; and (c) respondent's children have engaged his services to continue as counsel of the respondent in the case.

The petition for review adduces the following grounds in support of the said petition:

I. THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT HAS THE PREFERENTIAL RIGHT TO ACQUIRE SUBJECT LAND FROM THE GOVERNMENT AS A RIPARIAN OWNER.

II. THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT'S RIGHT TO DUE PROCESS WAS VIOLATED WHEN THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES, ACTING AS QUASI-JUDICIAL OFFICER, CONDUCTED HIS INVESTIGATION OF THE CASE PENDING APPEAL, WITHOUT NOTICE TO OR PRESENCE OF RESPONDENT.

III. THE COURT OF APPEALS ERRED IN NOT RULING THAT THE DECISION OF THE OFFICE OF THE PRESIDENT DATED DECEMBER 27, 2002 HAS LONG BECOME FINAL AND EXECUTORY AND IN NOT DISMISSING OUTRIGHT RESPONDENT'S PETITION FOR REVIEW.[5]

Regarding the first ground, petitioner asserts that respondent cannot claim preferential right under paragraph 32 of the Lands Administrative Order (LAO) No. 7-1, series of 1936, which provides:

> 32. *Preference of Riparian Owner* – The owner of the property adjoining foreshore lands, marshy lands or lands covered with water bordering upon shores or banks of navigable lakes or rivers shall be given preference to apply for such lands adjoining his property as may

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4 Id. at 65.
5 Id. at 18-19.

> not be needed for the public service, subject to the laws and regulations governing lands of this nature, provided that he applies therefor within sixty (60) days from the date he receives a communication from the Director of Lands advising him of his preferential right.

Petitioner asserts that respondent is not a riparian owner and that the subject land is a reclaimed land. Petitioner cites the March 2, 2000 Order of DENR Secretary Cerilles which was based on the Ocular Investigation report of the Fact-Finding Teams created by said DENR Secretary. The latter ruled that the subject land ceased to be a foreshore land but a reclaimed land falling under paragraph (a), Section 59 of the Public Land Act, which can be disposed of by lease under Section 61 of said law.

We uphold the Court of Appeals decision that respondent is a riparian owner under Section 32 of LAO No. 7-1, series of 1936. It is not disputed that Lot No. 8-B-1 of respondent is bounded on the southwest by Manila Bay. In *Santulan v. The Executive Secretary*[6] the Court held:

> The word "*riparian*" in paragraphs 32 and 4 of the departmental regulations is used in a broad sense as referring to any property having a water frontage. Strictly speaking, "riparian" refers to rivers. A riparian owner is a person who owns land situated on the bank of a river.
>
> But in paragraphs 32 and 4, the term "riparian owner" embraces not only the owners of lands on the banks of rivers but also the littoral owners, meaning the owners of lands bordering the shore of the sea or lake or other tidal waters. The littoral is the coastal region including both the land along the coast and the water near the coast or the shore zone between the high and low watermarks. (Citation omitted.)

It is immaterial that the land is no longer reached by water as a consequence of the development undertaken, among others, in the R-10 and the Navotas Fish Port complex projects, mentioned in the decisions of the Secretary of DENR. *SIAIN Enterprises, Inc. v. F.F. Cruz & Co., Inc.*,[7] held that reclamation of the foreshore area does not remove it from its classification as foreshore area, which is subject to the preferential right to lease of the littoral owner.

The Court of Appeals also correctly ruled that the requisites for claiming ownership of land by accretion under Article 457 of the Civil Code are not applicable to the availment of the preference granted to the riparian owner under paragraph 32 of LAO No. 7-1, series of 1936. This preferential right of the riparian owner which is conferred by law cannot be

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6 170 Phil. 567, 575-576 (1977).
7 532 Phil. 109, 119 (2006).

overcome by the claimed prior possession of one where such possession did not emanate or arise from a legal right or a right conferred or recognized by law.

It is undisputed that initially petitioner's possession of the land in issue was by virtue of permission or tolerance of the government agencies that hired petitioner as subcontractor to do development projects in the vicinity and that after the completion of the project, petitioner on its own "transformed" such possession into a claim of ownership. Petitioner cites no provision of law to overturn the preference given to riparian owner under paragraph 32 of LAO No. 7-1, series of 1936. Hence, respondent as the riparian owner has the preference to apply for the land adjoining his property under the provisions of said paragraph 32.

We also find that the respondent timely filed his motion for reconsideration with the Office of the President within the fifteen-day period provided in Administrative Order No. 18, series of 1987.

The Court will not deal with the ground raised as to the alleged violation of respondent's right to due process, which will require the Court to evaluate the factual basis of the ruling of the Court of Appeals on this issue, as this Court is not a trier of facts.

In view of the foregoing, the Court of Appeals Decision dated September 22, 2004 and Resolution dated March 10, 2005, which reinstated the Decision of the Regional Executive Director of DENR dated March 29, 1996 as affirmed by former Secretary Victor Ramos of DENR in his Decision dated December 17, 1997 are **AFFIRMED**.

SO ORDERED."

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court

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