



Republic of the Philippines
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City
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E-mail: officeofuseccuna@denr.gov.ph; website www.denr.gov.ph

MEMORANDUM

TO : **THE REGIONAL EXECUTIVE DIRECTOR**
DENR Region IV-B (MIMAROPA)
6/F Unit E, DENR by the Bay Building;
1515, Roxas Blvd, Ermita, Manila, Metro Manila

FROM : **THE UNDERSECRETARY**
Field Operations-Luzon, Visayas and Environment

SUBJECT : **UNDATED LETTER FROM SPOUSES FELIPE ACOSTA AND
LUZVIMINDA ACOSTA RE: DENR CASE NO. 5904**

DATE : MAR 31 2023

This pertains to the undated letter of the spouses Felipe Acosta and Luzviminda Acosta, received by this Office on March 21, 2023, relative to DENR Case No. 5904 entitled "DIGNA MATALANG CONCHING, SPS. FELIPE ACOSTA AND LUZVIMINDA ACOSTA, APPELLANTS versus EMILIE L. BESAGA, APPELLEE" wherein a Decision was rendered by this Office on August 06, 2006 and which was upheld all the way to the Supreme Court in G.R. No. 194061.

Culled from the pertinent documents attached to the undated letter, the case stemmed from the Special Land Use Permits (SLUPs) separately filed by Emilie Besaga and and Spouses Felipe and Luzviminda Acosta (Sps. Acosta) over lots in Port Barton, San Vicente, Palawan. The lots applied for by Sps. Acosta overlapped with two of the three lots applied for by Besaga. In an Order dated 01 December 2003, your Office granted the application filed by Besaga and rejected that of the Sps. Acosta. Aggrieved, the letter appealed to the Honorable Secretary through a Memorandum of Appeal.

On 26 July 2004, your Office issued an Order declaring as final and executory the award of an SLUP to Besaga. Almost a year later, Besaga applied for the conversion of her SLUP to a Forest Land Use Agreement for Tourism Purposes (FLAgT). Thereafter, a FLAgT was awarded to Besaga for the specific purpose of operating a bathing establishment.

Meanwhile, on 06 August 2006, the Office of the Honorable Secretary rendered a Decision on the Appeal filed by Sps. Acosta ordering the amendment of Besaga's SLUP to cover only one lot and giving due course to the former's application. Besaga moved for the reconsideration of this Decision. Finding merit on the motion, the earlier Decision was set aside and issued a Resolution on 17 October 2006 reinstating your Order as final and executory.

Sps. Acosta then filed an Appeal before the Office of the President (OP) which granted the same in a Decision dated 13 August 2007. The DENR Resolution dated October 17, 2006 was thus overturned and the Decision dated August 06, 2006 reinstated. Besaga filed an Appeal before the Court of Appeals (CA). However, the latter dismissed the Appeal and affirmed the OP Decision. Undeterred, Besaga further appealed to the Supreme Court (SC). The Appeal, however, was again dismissed. The SC Decision affirming those of the OP and the CA became final and executory.

On 26 January, 2016, the Office of the Assistant Secretary for Legal Affairs (OASLA) issued a Memorandum directing the full implementation of the DENR Decision dated 06 August 2006. Besaga filed an Opposition against this Memorandum on March 03, 2016 on the ground that what should be executed is the OP Decision affirmed by the CA and the SC, and not the DENR Decision. Finding the same to be meritorious, the OASLA issued another Memorandum directing the implementation of the OP Decision.

Based on the pertinent documents attached to the letter, this office concludes that, indeed, the Decision dated August 13, 2007 of the OP reinstating the Decision of the DENR dated August 06, 2006 had already attained finality and it is incumbent upon your Office to implement the said final and executory decision.

Also, this Office takes cognizance of its Memorandum dated April 30, 2018 wherein the Forest Management Bureau found out that Emilie Besaga failed to submit FLAgT requirements, including, but not limited to, the Comprehensive Development and Management Plan, ECC, NCIP Clearance, and ORs documenting payment of annual rentals. In the same Memorandum, it was determined that Ms. Besaga has back rentals in the amount of ₱9,079,525.00 pursuant to DAO-2004-28.

In this regard, your Office is hereby directed to execute the DENR Decision dated August 06, 2006 which was reinstated in the Decision dated August 13, 2007 rendered by the Office of the President without further delay in accordance with existing laws, rules and regulation.

Submit a Complete Staff Work (CSW) of the implementation of the said Decision dated August 06, 2006 as well as the compliance to the aforementioned Memorandum dated April 30, 2018.

For immediate compliance.


ATTY. JUAN MIGUEL T. CUNA, CESO 

ATTY. JUAN MIGUEL T. CUNA
Undersecretary for Field Operations
Luzon, Visayas and Environment
DENR Visayas Avenue
Diliman Quezon City



RE: DENR Case No. 5904

SIR:

This pertains to DENR CASE NO. 5904 entitled "DIGNA MATALANG COCHING, SPS. FELIPE ACOSTA AND LUZVIMINDA ACOSTA, APPELLANTS versus EMELIE L. BESAGA, APPELEE" which was decided in favor of the Appellants, and which has already attained FINALITY. Thus on 27 December 2017, Natividad Y. Bernardino, CESE, OIC-Regional Director, issued an Order pertinent portion of which reads, to wit:

"Pursuant to the subject Decision of the Office of the President as affirmed by the Court of Appeals and the Supreme Court in their Decisions docketed as CA-G.R. SP No. 100616 and G.R. No. 194061 dated October 30 2009 and August 05, 2015 respectively, and in compliance with the instruction dated January 26, 2016 of the then DENR Acting Assistant Secretary for Legal Affairs to implement the August 06 2006 Decision rendered in DENR Case No. 5904, the Forest Land use Agreement for Tourism purposes issued to Emilie Besaga (FLAgT No. DENR IV- MIMAROPA-11302030-0002) is ordered, as hereby it is, AMENDED to cover Lot No. 4513 of Cad 860-D, San Vicente Cadastre and to exclude there-from Lots Nos. 4512 and 4514 of the said cadaster which pertain to and are covered by the FLAgT application of Luzviminda Acosta."

WHEREFORE, the CENRO in Roxas, Palawan is hereby directed to serve a copy of this Order to Emilie Besaga and Luzviminda Acosta and to ensure its full implementation. He shall submit a report of compliance hereto within fifteen (15) days upon receipt of this Order.

a photocopy of which is herewith attached for ready reference as Annex "A"

The above-quoted portion of the Order dated 27 December 2017 clearly states that "to implement the August 06, 2006 Decision rendered in DENR Case No. 5904, the Forest Land Use Agreement for Tourism purposes issued to Emilie Besaga (FLAgT No. DENR-IV-MIMAROPA-11302030-0002)" is ordered, as hereby it is, **AMENDED to cover only Lot No. 4513 of case 860-D, San Vicente Cadastre and to exclude there-from Lot Nos. 4512 and 4514 of said cadastre which pertains to and are covered by the FLAgT application of Luzviminda Acosta.**(Emphasis Ours)

In compliance with the Memorandum dated January 20, 2022 of the Regional Executive Director, a Relocation Survey was conducted on Lot 4512, 4513 and 4514 Cad. 860-D by a Team created under PENRO Special order No. 2022-018 and the Report thereof was submitted to the DENR-Region IVB in March 21, 2022. However, despite said submission delineating the specific metes and bounds of the three (3) lots nos. 4512, 4513 and 4514 Cad 860-D, STILL the FLAgT of Emilie Besaga HAS NOT BEEN AMENDED in compliance with a FINAL and EXECUTORY DECISION which was upheld by no less than the SUPREME COURT in GR No. 194061.

Emilie Besaga has employed all dilatory tactics to prevent the implementation of a final and executory decision evidenced by the Resolution dated 13 January 2016 of the Supreme Court, as well as the letters dated August 25, 2021 and January 20, 2022 from the Regional Executive Director, DENR Region IV-B MIMAROPA, hereto attached as Annexes "B" and "C", respectively.

Once a judgement becomes final and executory, it can no longer be disturbed, altered or modified in any respect except to correct clerical errors or to make a nunc pro tunc entries (Tamayo vs. People, 560 SCRA 312). A decision that has acquired finality becomes immutable and unalterable (Mocorro J vs. Ramirez 560 SCRA 362). After a decision is declared final and executory, vested rights are already acquired by the winning party XXX (Rivera vs. Court of Appeals, 544 SCRA 434). It should be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public Policy and the orderly administration of justice. (Landbank of the Philippines vs. Arceo, 559 SCRA 85).

Sir, DENR Case No. 5904 attained FINALITY per ENTRY OF JUDGEMENT on September 21, 2015 or more than seven (7) years already. All this time Emilie Besaga had been in the possession of the contested lots, in contravention with the decision and despite several issues related to non-payment of the correct rentals pursuant to your Memorandum dated 30 April 2018, a copy of which is hereto attached as Annex "D".


Thus, we seek the assistance of your good Office relative hereto. The final and executory order is very clear. FLAgT No. DENR IV-MIMAROPA 11302030-0002 should be amended. There is no other interpretation thereof, nor valid and legal reasons to prolong such amendment. The very inaction of Region IVB MIMAROPA is against public policy and the orderly administration of justice. Even the act of validation/relocation survey is not essential since the records of that Office contains the metes and bounds of Lots Nos. 4512 and 4514 which should be segregated from the FLAgT area. Without casting any aspersion, the relocation survey is a mere exercise in futility bordering on the dilatory execution of the judgement.

It would be negligence on our part if we would not point out that the FLAgT would expire on November 30, 2030 or in about seven (7) years. The longer the judgement is not executed, the longer Emilie Besaga would illegally hold on to the areas to be expunged/ craved out from her FLAgT, albeit with the help of your Regional Office, not to mention the issue of payment of the correct rentals thereon.

Sir, we plead your good Office to intercede and order the immediate amendment of the FLAGT No. DENR IV-MIMAROPA-11 3020230-0002 in the name of Emilie Besaga.

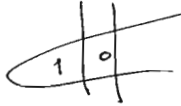
Your usual prompt action and favorable consideration shall be highly appreciate.

Very truly yours,


FELIPE ACOSTA
LUZVIMINDA ACOSTA
No. 12 Km3 WESCOM Road
Puerto princesa City

Note:

The Honorable Office shall have to look into consideration the observation and findings of Cad Lot 4513 bounds & meters within required easement of the LGU tourism non buildable zone. Thus the Doctrine void ab initio is highly recomendable, falsus in uno, falsus in omnibus, for the appellant

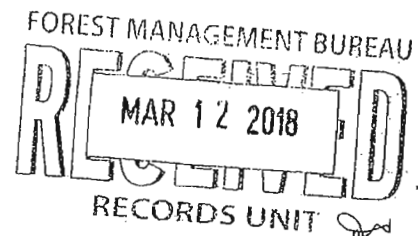




SUBJECT:

Implementation of the Decision dated August 13, 2007 of the Office of the President Docketed as O.P. Case No. 06-K-398 (DENR Case No. 5904) entitled "Digna Matalang Coching, Sps. Felipe and Luzviminda Acosta, Appellants versus Emelie L. Besaga, Appellee"

X -----X



ORDER

Pursuant to the subject Decision of the Office of the President as affirmed by the Court of Appeals and the Supreme Court in their Decisions docketed as CA-G.R. SP No. 100616 and G.R. No. 194061 dated October 30, 2009 and August 5, 2015, respectively, and in compliance with the instruction dated January 26, 2016 of the then DENR Acting Assistant Secretary for Legal Affairs to implement the August 6, 2006 Decision rendered in DENR Case No. 5904, the Forest Land Use Agreement for Tourism purposes issued to Emelie Besaga (FLAgT No. DENR IV-MIMAROPA-11302030-0002) is **ordered**, as hereby it is, **AMENDED** to cover only Lot No. 4513 of Cad 860-D, San Vicente Cadastre and to exclude there-from Lots Nos. 4512 and 4514 of the said cadastre which pertain to and are covered by the FLAgT application of Luzviminda Acosta.

WHEREFORE, the CENRO in Roxas, Palawan is hereby directed to serve a copy of this ORDER to Emelie Besaga and Luzviminda Acosta and to ensure its full implementation. He shall submit a report of compliance hereto within fifteen (15)^{days} upon receipt of this ORDER.

SO ORDERED, City of Manila, Philippines this 27th day of December 2017.


NATIVIDAD Y. BERNARDINO, CESE
POIC, Regional Director

COPY FURNISHED:

1. **Ms. Emelie Besaga** - Port Barton, San Vicente, Palawan
2. **Ms. Luzviminda Acosta** - 12 Km. 3 Wescom Road, Puerto Princesa City
3. **The CENRO** - Roxas, Palawan
4. **The PENRO**-Palawan, Sta. Monica, Puerto Princesa City
5. **The Director**, Forest Management Bureau, Diliman, Quezon City
6. **The Undersecretary for Field Operations**
DENR Central Office, Visayas Ave., Diliman, Quezon City
7. **The Assistant Secretary for Legal Services**
DENR Central Office, Visayas Ave., Diliman, Quezon City



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region

CERTIFIED TRUE / PHOTO COPY
9.7.12/22
ATTY. GANDHI G. FLORES
Chief, Legal Division
DENR MIMAROPA Region

MEMORANDUM

TO : The OIC, PENR Officer
Palawan

ATTENTION : *The CENR Officer
Roxas, Palawan*

FROM : The OIC, Regional Executive Director

SUBJECT : **DENR CASE NO. 5904 ENTITLED "DIGNA MATALANG COCHING, SPS. FELIPE ACOSTA AND LUZVIMINDA ACOSTA, APPELLANTS, VERSUS EMELIE L. BESAGA, APPELLEE"**

DATE : **JAN 29 2022**

This refers to the Memorandum dated January 6, 2022 from the Director of the Legal Affairs Service regarding the Motion to Quash filed by Emelie Besaga (*Besaga, for brevity*) relative to the above-captioned case.

In the Motion, Besaga seeks to quash the Order dated December 27, 2017 and the Notice to Vacate dated August 20, 2020.

In said Memorandum, the Director of the Legal Affairs Service recommends the denial of the Motion to Quash and that the Order dated December 27, 2017 and the Notice to Vacate dated August 20, 2020 are proper and should, thus, be maintained.

In relation thereto, an earlier letter dated August 25, 2021 addressed to Atty. Romeo Q. Artazo, Jr., collaborating counsel for Besaga, was already sent stating that our Office cannot favorably act on the Motion to Quash dated February 10, 2021 considering the finality of the case, which reached the Supreme Court.

In view of the legal advice contained in the subject Memorandum regarding the reimbursement of necessary expenses to Besaga as the FLAgT holder, as well as the option of the Spouses Acosta to refund Besaga of the same, we will be furnishing a copy of said Memorandum to the parties for their information and reference.

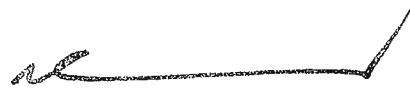
Based on the foregoing, the CENRO Roxas, Palawan is instructed to implement the Order dated December 27, 2017 in compliance with the Memorandum dated January 26, 2016 of the Office of the Assistant Secretary for Legal Affairs as well as the subject Memorandum, secure the assistance of the local government unit concerned and personnel of the Philippine National Police, and immediately submit a report of compliance hereof.

9.7.12/22
ATTY. GANDHI G. FLORES
 Chief, Legal Division
 DENR MIMAROPA Region

Attached hereto are the following:

1. Copy of the Order dated December 27, 2017 signed by then OIC, Regional Director Natividad Y. Bernardino;
2. Letter dated August 25, 2021 signed by then Regional Executive Director Maria Lourdes G. Ferrer, CESO III, addressed to Atty. Romeo Q. Artazo, Jr.; and,
3. Memorandum dated January 6, 2022 from the Director, Legal Affairs Service.

For immediate compliance.



LORMELYN E. CLAUDIO, CESO IV

Copy furnished:

The Undersecretary for Field Operations and Environment

The Director, Legal Affairs Service

The Assistant Regional Director for Technical Services


*The Municipal Mayor
 San Vicente, Palawan*

*The Chief of Police
 PNP Roxas, Palawan*

*Sps. Felipe and Luzviminda Acosta
 No. 12, Km. 3, WESCOM Road
 Puerto Princesa City*

*Atty. Romeo Q. Artazo, Jr.
 166 Sampaguita St., Villa Leticia Subdivision
 Tanzang Luma VI, Imus, Cavite*

*Ms. Emelie L. Besaga
 Purok Pag-asa, Brgy. Port Barton
 San Vicente, Palawan*

 Department of Environment
 and Natural Resources
 MIMAROPA Region



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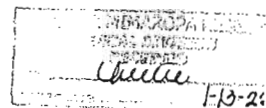
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JAN 06 2022
MEMORANDUM

FOR : THE REGIONAL EXECUTIVE DIRECTOR
DENR Region IV-B MIMAROPA

FROM : THE DIRECTOR
Legal Affairs Service

SUBJECT : DENR CASE NO. 5904 ENTITLED "DIGMA MATALANG
COCHING, SPS. FELIPE ACOSTA AND LUZVIMINDA
ACOSTA, APPELLANTS, VERSUS EMELIE L. BESAGA,
APPELLEE."



This refers to the Motion to Quash filed by a certain Emelie L. Besaga (Besaga) before your Office relative to the above-captioned case. In her Motion, Besaga seeks to quash the Order dated 27 December 2017 and the Notice to Vacate dated 20 August 2020, both issued by your Office.

The case stemmed from the Special Land Use Permits (SLUPs) separately filed by Besaga and Spouses Felipe and Luzviminda Acosta (Sps. Acosta) over lots in Port Barton, San Vicente, Palawan. The lots applied for by Sps. Acosta overlapped with two of the three lots applied for by Besaga. In an Order dated 01 December 2003, your Office granted the application filed by Besaga and rejected that of Sps. Acosta. Aggrieved, the latter appealed to the Honorable Secretary through a Memorandum of Appeal.

On 26 July 2004, your Office issued an Order declaring as final and executory the award of an SLUP to Besaga. Almost a year later, Besaga applied for the conversion of her SLUP to a Forest Land Use Agreement for Tourism Purposes (FLAgT). Thereafter, a FLAgT was awarded to Besaga for the specific purpose of operating a bathing establishment.

Meanwhile, on 06 August 2006, this Office rendered a Decision on the Appeal filed by Sps. Acosta ordering the amendment of Besaga's SLUP to cover only one lot and giving due course to the former's application. Besaga moved for the reconsideration of this Decision. Finding merit on the Motion, this Office set aside its earlier Decision and issued a Resolution on 17 October 2006 reinstating your Order as final and executory.

Sps. Acosta then filed an Appeal before the Office of the President (OP) which granted the same in a Decision dated 13 August 2007. The DENR Resolution was thus overturned. Besaga filed an Appeal before the Court of Appeals (CA). However, the latter dismissed the Appeal and affirmed the OP Decision. Undeterred, Besaga further appealed to the Supreme Court (SC). The Appeal, however, was once again dismissed. The SC Decision affirming those of the OP and the CA became final and executory.

On 26 January 2016, the Office of the Assistant Secretary for Legal Affairs (OASLA) issued a Memorandum directing the full implementation of the DENR Decision dated 06 August 2006. Besaga filed an Opposition against this Memorandum on 03 March 2016 on the ground that what should be executed is the OP Decision affirmed by the CA and the SC, and not the DENR Decision. Finding the same to be meritorious, the OASLA issued another Memorandum directing the implementation of the OP Decision. ✓

On 27 December 2017, your Office issued an Order directing the amendment of Besaga's FLAgT by dropping therefrom two lots, and on 20 August 2020, a Notice to Vacate the said lots. These are the two issuances now being assailed by Besaga in her Motion to Quash.

According to Besaga, in establishing her bathing business, she has already processed and secured the necessary permits, i.e. Environmental Compliance Certificate (ECC) from the Regional Office, Certificate of Business Name Registration from the Department of Trade and Industry (DTI), and Mayor's Permit from the Office of the Municipal Mayor, San Vicente, Palawan.

The issue now is whether the Motion to Quash filed by Besaga should be granted.

*On Whether the Assailed Orders are Consistent
with Past Issuances*

In order to ascertain if the assailed Order and Notice to Vacate are proper, this Office saw it fit to determine whether the same are consistent with the Decisions rendered by the OP, the CA and the SC, which have all attained finality.

In its Decision dated 13 August 2007, the OP ruled that Sps. Acosta cannot be faulted for filing an Appeal directly before the Office of the DENR Secretary instead of the Regional Office. It likewise held that this Office erred in upholding the Orders issued by your Office on the basis of an older Investigation Report; that the Tax Declaration presented by Besaga covers an entirely different property; and that the SLUP application of Sps. Acosta was coupled with several documentary evidence. The dispositive portion of the OP Decision reads:

WHEREFORE, the instant appeal is hereby GIVEN DUE COURSE, and the Resolution dated October 17, 2006 of the Secretary of Environment and Natural Resources hereby SET ASIDE.

SO ORDERED.

The CA, in affirming the ruling of the OP, held that rules of procedure before administrative bodies are liberally construed, and that the Orders issued by your Office have not attained finality. The dispositive portion of the CA Decision dated 30 October 2009 is hereunder quoted as:

WHEREFORE, the Petition is DISMISSED for lack of merit and the assailed decision of the Office of the President dated August 13, 2007 is hereby affirmed.

recognize their express authority under the provisions of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, specifically Book Three, Chapter 3, Article I, Section 444 (b)(3)(vi) thereof and similar provisions.

SO ORDERED.

It is apparent from the foregoing that the OP, the CA, the SC are all in agreement that the Resolution issued by this Office on 17 October 2006 should be reversed. Thus, what prevails now is the Decision of this Office dated 06 August 2006, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, the Orders, dated December 1, 2003 and July 26, 2004, of the Regional Executive Director for DENR-MIMAROPA are hereby REVERSED and it is hereby directed that the Special Land Use Permit (Bathing Establishment), now FLAgT of Appellee Emelie Besaga be AMENDED to cover only Lot No. 4513 and let the Special Land Use Permit Application of Appellant Luzviminda Acosta be GIVEN DUE COURSE to cover Lot Nos. 4512 and 4514, subject to the provisions of DENR Administrative Order No. 28, Series of 2004.

SO ORDERED. (*Emphasis supplied*)

*The Propriety of the Order dated 27 December 2017
and the Notice to Vacate dated 20 August 2020*

Seeing as the assailed Order and Notice to Vacate are consistent with the rulings of the OP, the CA, and the SC, this Office sees no error on their issuance. To reiterate, the amendment of the SLUP, now FLAgT, of Besaga and the accommodation of the SLUP application of Sps. Acosta is the prevailing judgment. This is the same judgment sought to be executed by the assailed Order and Notice to Vacate.

The last sentence of the first paragraph of the Order dated 27 December 2017 specifically defines which lot shall now be covered by Besaga's FLAgT and which shall be excluded therefrom. For being consistent with the judgment of the OP, the CA, and the SC, this Order should be retained.

The Notice to Vacate supports the assailed Order in that it directs Besaga to vacate the lots which have been excluded from her FLAgT by all the aforementioned issuances.

On Whether the Motion to Quash Should Be Given Due Course

The question before this Office now is whether the Motion to Quash should be given due course.

Besaga seeks to quash the Order dated 27 December 2017 and the Notice to Vacate dated 20 August 2020 on the following grounds:

1. The Order dated 17 December 2017 and the Notice to Vacate do not conform from the final Decision.

2. The Order dated 17 December 2017 and the Notice to Vacate was based on a wrong Memorandum dated 21 March 2016 issued by the Office of the Assistant Secretary for Legal Affairs (OASLA).
3. The Order dated 17 October 2017 and the Notice to Vacate is unjust to execute.
4. The OP Decision merely ordains the giving of due course to the appeal of Acosta from the MIMAROPA' Order dated 01 December 2003.

The first issue raised by Besaga has already been addressed in the first portion of this Memorandum. The assailed Order and Notice to Vacate conform to this Office's Decision, and those of the OP, the CA, and the SC.

In the Memorandum dated 21 March 2016 and mentioned under Item 2 above, then Acting Assistant Secretary for Legal Affairs Services Atty. Anselmo C. Abungan only clarified that what has to be implemented is the OP Decision dated 13 August 2007. This is also consistent with all past issuances. Hence, contrary to what Besaga claims, the 21 March 2016 Memorandum is not a wrong Memorandum.

Anent the third issue, this Office assumes that Besaga committed a typographical error in his Motion to Quash, and is actually referring to the Order dated 27 December 2017. This Office finds that no injustice will result in the execution of the assailed Order and the Notice to Vacate for they both conform to valid and affirmed rulings.

Besaga submits that she cannot be faulted for starting her bathing business and introducing improvements necessary for its operation. She worries that she will lose her investment and livelihood, which will most likely go to Sps. Acosta. In this sense, this Office agrees with Besaga.

This Office considers Besaga as a possessor in good faith, which has been defined by the Civil Code of the Philippines¹ as:

Article 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

When Besaga was issued a FLAgT, neither she nor your Office knew that the FLAgT will be ordered amended by this Office, the OP, the CA, or the SC. Thus, Besaga may not be faulted for the issuance of the FLAgT and the subsequent establishment of her business and improvements thereon. Besaga is thus a possessor in good faith during the time she began establishing her business and making such improvements.

The question that should be addressed now is what will happen to the bathing business of and improvements made by Besaga. The Civil Code of the Philippines², applied suppletory, provides that:

¹ Chapter 1, Title V of Republic Act (RA) No. 386

² Chapters 1 and 3, Title V of RA No. 386

Article 528. Possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully.

xxx

Article 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof. (453a)

Article 547. If the useful improvements can be removed without damage to the principal thing, the possessor in good faith may remove them, unless the person who recovers the possession exercises the option under paragraph 2 of the preceding article.

Applying the foregoing, it is clear that Besaga may be reimbursed for the necessary expenses incurred in the establishment of the bathing business from the time the FLAgT was issued until the time she was made aware that the same should be amended. Likewise, Sps. Acosta have the option to refund Besaga the useful expenses incurred. Should it be possible to remove the useful expenses, Besaga has the option to do so. Thus, the Decisions of this Office, the OP, the CA and the SC should not be disregarded for the reason that Besaga might incur damages, as there are remedies available to her.

Lastly, this Office cannot agree with Besaga that the OP Decision only ordains the giving of due course to the Appeal of Sps. Acosta. A perusal of the OP Decision shows that the OP carefully considered who should be awarded the SLUP.

Considering the foregoing, this Office recommends the denial of the Motion to Quash filed by Besaga. The Order issued by your Office on 27 December 2017 and the Notice to Vacate dated 20 August 2020 are proper and should be maintained. Likewise, the Memorandum issued by the OASLA on 26 January 2016 directing the full implementation of the DENR Decision dated 06 August 2006 should not be set aside.

For the Director's information and consideration.


NORLITO A. ENERAN LL.M., CESO III
M N

Copy furnished:

The Undersecretary
Legal, Administration, Human Resources, and Legislative Affairs

The Assistant Secretary
Legal Affairs

AUG 25 2021

ATTY. ROMEO Q. ARTAZO, JR.
Collaborating Counsel for Ms. Emelie L. Besaga
166 Sampaguita St., Villa Leticia Subdivision,
Tanzang Luma VI, Imus, Cavite

Dear Atty. Artazo,

This refers to your Motion to Quash dated February 10, 2021 re: Order dated 27 December 2017 and Notice to Vacate dated 20 August 2020.

Records show that a Decision was issued by the Supreme Court in G.R. No. 194061 entitled "*Emelie L. Besaga versus Spouses Felipe Acosta and Luzviminda Acosta and Digna Matalang Coching*". The same was declared final and executory per Entry of Judgment dated September 21, 2015 issued by Supreme Court – Deputy Clerk of Court and Chief, Judicial Records Officer Basilia T. Ringol.

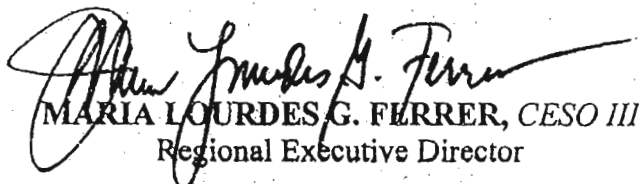
To implement the said Decision, an Order dated December 27, 2017 was issued by then OIC, Regional Director Natividad Y. Bernardino wherein the FLAGT No. DENR IV-MIMAROPA-11302030-0002 was amended to cover only Lot No. 4513, Cad. 860-D.

Records further show that Ms. Besaga filed a Motion for Reconsideration and/or Protest/Opposition to the Order dated December 27, 2017. This was denied per Resolution dated September 13, 2018 issued by then Regional Executive Director Henry A. Adornado.

A judgment that lapses into finality becomes immutable and unalterable. It can neither be modified nor disturbed by courts in any manner even if the purpose of the modification is to correct perceived errors of fact or law. Parties cannot circumvent this principle by assailing the execution of the judgment. What cannot be done directly cannot be done indirectly.¹

In this regard, we regret to inform you that we cannot act favorably on your Motion.

Very truly yours,


MARIA LOURDES G. FERRER, CESO III
Regional Executive Director

Copy furnished:

Sps. Luzviminda and Felipe Acosta
No. 12, Km. 3, WESCOM Road,
Puerto Princessa City

The Director, Legal Affairs Service

The Assistant Regional Director for Technical Services

Licenses, Patents and Deeds Division

PENRO Palawan

CENRO Roxas, Palawan

RECORDS:

Recd 9/1/21

- LAR 9-6-21

- MAR 9-3-21



Department of Environment
and Natural Resources
MIMAROPA Region



Doc ID: 43650

per
for
LGU

¹ Mercury Drug Corporation and Rolando J. Del Rosario v. Spouses Richard Y. Huang & Carmen G. Huang, and Stephen G. Huang, G.R. No. 197654, August 20, 2017
ARD-MS/LD 1515 L & S Building, Davao Boulevard, Davao City

Annex "H"



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region

FEB 28 2018

MEMORANDUM

TO : **The PENRO**
Sta. Monica, Puerto Princesa City

ATTENTION : **The CENRO**
Roxas, Palawan

FROM : **The OIC, Regional Director**

SUBJECT : **ORDER AMENDING THE FOREST LAND USE AGREEMENT FOR
TOURISM PURPOSES (FLAGT) ISSUED TO EMELIE L. BESAGA**

Pursuant to the decision dated August 13, 2007 of the Office of the President docketed as O.P. Case No. 06-K-398 (DENR Case No. 5904) entitled "Digna Matalang Coching, Sps. Felipe and Luzviminda Acosta, Appellants versus Emelie L. Besaga, Appellee", we are furnishing you herewith a copy of the subject ORDER amending the Forest Land Use Agreement for Tourism Purposes issued to Emelie Besaga to cover only Lot No. 4513 of Cad 860-D, San Vicente Cadastre and to exclude therefrom Lots No. 4512 and 4514 of the said cadastre.

Please serve a copy of the said ORDER to the parties and ensure its full implementation. Submit report of compliance within fifteen (15) days upon receipt of this memorandum.

For strict compliance.


NATIVIDAD Y. BERNARDINO, CESE

Copy furnished:

The Assistant Secretary for Legal Affairs
DENR, Quezon City

The Undersecretary for Field Operations
DENR, Quezon City



Department of Environment
and Natural Resources
REGION 4B



FN: lpdd/wrps/mggg

1515 L & S Building, Roxas Boulevard, Ermita, Manila 1000
DENR VOIP (632) 7553300/7553330 loc. 2700/2701



Republic of the Philippines
Department of Environment and Natural Resources
 Visayas Avenue, Diliman, 1100 Quezon City
 Tel. Nos. 929-6626 to 29; 929-6633 to 35
 929-7041 to 43; 929-6252; 929-1669
 Website: <http://www.denr.gov.ph> E-mail: web@denrgov.ph

MEMORANDUM

TO : The Regional Director
 DENR-MIMAROPA Region
 1515 L & S Building, Roxas Blvd., Ermita, Manila

FROM : The Undersecretary for Field Operations

SUBJECT : LETTER OF MS. EMELIE L. BESAGA DATED 26 FEBRUARY 2018, HOLDER OF FLAgT NO. DENR IV-MIMAROPA-11302030-0002 LOCATED AT PORT BARTON, SAN VICENTE, PALAWAN, COVERING 1.4 HECTARES OF FOREST LAND

DATE : 30 APR 2018

This refers to the letter of Ms. Emelie L. Besaga dated 26 February 2018 addressed to the Director of Forest Management Bureau (FMB) regarding the approved Forest Landuse Agreement for Tourism (FLAgT) No. DENR IV-MIMAROPA-11302030-0002 issued in her favor covering 1.4 hectares of forest land in Barangay Port Barton, San Vicente, Palawan. Said FLAgT was issued by the DENR Regional Executive Director Vicente S. Paragas on November 30, 2005 to expire on November 30, 2030.

Allegedly, Ms. Besaga is being harassed by a certain Barangay Captain of Port Barton, Felipe Acosta and his wife Luzviminda Acosta regarding the subject FLAgT area. A letter of Luzviminda Acosta addressed to former DENR Secretary Regina Paz Lopez dated 20 April 2017 was referred to FMB for appropriate action. The letter of Mrs. Acosta contains her request for the implementation of DENR Case No. 5904 which intends to amend the FLAgT issued to Ms. Besaga. The same letter was referred to the DENR Region 4B for appropriate action as the matter is within your area of concern.

Per scrutiny of documents available at FMB, it appears that the holder has not submitted the following FLAgT requirements listed as follows:

1. Application form duly accomplished and payment of application fee with official receipt (OR).
2. Map of the area and pertinent documents showing proof that the proponent is a legitimate entity qualified to be a holder of FLAgT.
3. Comprehensive Development and Management Plan (CDMP) and Tourism Development Plan of San Vicente, Palawan as required under Section 14.2, Chapter V of DAO 2004-28 and Memorandum Order No. 2011-02 dated 15 March 2011.
4. Environmental Compliance Certificate (ECC).
5. National Commission on Indigenous Peoples (NCIP) clearance.
6. Clearance from Palawan Council for Sustainable Development (PCSD).

Let's Go Green

7. OR's documenting the payment of annual rental made by the agreement holder and the performance bond posted for the purpose.
8. LGU's endorsement.

COMMENTS/DISCUSSION:

- A. Ms. Besaga was issued with SLUP for Bathing Establishment bearing the code No. DENR-IV-PENRO-12102005-0004 on December 10, 2004, and subsequently issued with FLaGT bearing the code No. DENR IV-MIMAROPA-11302030-0002 on November 18, 2005 and will expire on November 30, 2030. However, the validity of the FLaGT (2005-2030) is not appropriate because the SLUP was issued in 2004 prior to the approval of the FLaGT in 2005. The validity of the FLaGT should only cover 24 years as the one (1) year validity of the SLUP will be included in the 25 years duration that a land of the public domain can only be leased for a period not exceeding twenty five (25) years, renewable upon expiration thereof for a similar period or held under permit in accordance with the provisions of Article XII, Section 2 of 1987 Philippine Constitution and Section 57 of PD 705, as amended. Hence, the validity of the FLaGT should be rectified and should expire on December 4, 2029.
- B. Section XII of the FLaGT bearing the code No. DENR IV-MIMAROPA-11302030-0002, states that "The FLaGT holder shall pay the government share in the amount of P1,575.00 which is five (5%) percent of the most recent zonal value of the commercial zone within the barangay and shall be paid within thirty (30) days upon the issuance of the FLaGT and annually thereafter. Such computation made for the government share does not conform with the approved guidelines on the matter particularly Section 16 of DAO 2004-28. Using the approved BIR Zonal Valuation, the commercial zone within the subject barangay (Port Barton) is P1,000.00 per square meter.

Hence, the Annual Rental should be computed as:

Annual Rental = Area in square meters x zonal value (CR) x 5%

$$= 1.4 \text{ hectares} \times 10,000 \times \text{P}1,000.00 \times .05$$

$$= 14,000 \times \text{P}1,000 \times .05 = \text{P}700,000.00$$

Back Rental = from Dec. 10, 2004 to Dec. 10, 2017 or equivalent to 13 years

$$= (\text{P}700,000 - \text{P}1,575) \times 13 = \text{P}9,079,525.00$$

$$\text{Performance Bond} = \text{P}700,000.00 \times 2 = \text{P}1,400,000.00$$

The amount paid by Ms. Besaga for the period December 10, 2004 to December 10, 2017 is unknown. Hence, Ms. Besaga should provide the OR's as basis in determining the arrears or back rentals to be collected from her in accordance to the provisions of Section 16 of DAO 2004-28.

- C. The FLaGT holder shall pay the government, back rentals beginning from December 10, 2004 up to December 10, 2017 and post the required performance bond in the amount of P1,400,000.00. Should there be payment made by Ms. Besaga as her annual rental, such payment will be deducted from the P9,079,525.00 back rental from 2004-2017.



In view hereof, you are hereby instructed to:

- a. Coordinate with Ms. Emelie L. Besaga and appropriately inform her about the issues / concerns regarding the FLAgT issued in her favor. Remind her to submit the requirements listed as items nos. 1 to 8 above.
- b. Facilitate the submission of the OR's documenting the payment made by the FLAgT holder and remind the same to post the required performance bond.
- c. Facilitate the collection of the amount of P9,079,525 from Ms. Besaga as back rental and cause the same to post an amount of P1,400,000.00 as performance bond. Any annual rental paid by Ms. Besaga from 2004 onwards will be deducted from the P9,079,525.00.
- d. The Regional Office should ensure the compliance of Ms. Besaga with the requirements and the payment of actual annual rental and posting of the actual performance bond in order that her occupation over the area will be considered, otherwise, the FLAgT should be cancelled.
- e. Conduct a comprehensive performance evaluation to determine compliance of the FLAgT holder to the terms and conditions of the FLAgT. It appears that Ms. Besaga has failed to introduce improvements or develop the FLAgT area and utilize the same for the purpose it was granted.

The Regional/Field Offices shall explain why it failed to adhere with the pertinent provisions of DAO 2004-28, while said DAO was already issued or existing prior to the issuance of the SLUP on December 10, 2004 and FLAgT on November 30, 2005 by then Vicente S. Paragas, RED of DENR 4B. It is worthy to note that DAO 2004-28 dated 25 August 2004 provides the rules and regulations governing the use of forest lands for tourism purposes.

Submit a report in a CSW format to the undersigned within 15 days upon completion of your undertakings on the matter.

FOR STRICT COMPLIANCE.


ATTY. JUAN MIGUEL T. CUNA