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Document No: DENRCO - AS RMD-2022-013361 / 15833

Print Date: Monday, May 30, 2022

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Subject: LEGAL DTD 05/30/2022 NOTICE OF JUDGEMENT RE: G.R. NO. 195638 ANITA SANTOS, PETITIONER, VERSUS ATTY. KISSACK B. GABAEN, RICARDO D. SANGA, AND THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, RESPONDENTS. (W/ ENCLS)

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Encoder: Vallejos, Jhosua E.

Page 1 of 1

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LCPMD B3-226-3

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JUN 23 2022

MEMORANDUM FOR THE SECRETARY

THRU : **The Undersecretary**
Legal, Administration, Human Resources and Legislative Affairs

: **The Assistant Secretary**
Legal Affairs

FROM : **The Director**
Legal Affairs Service

SUBJECT : **SUPREME COURT NOTICE OF JUDGMENT AND DECISION
PROMULGATED ON 22 MARCH 2022 IN G.R. NO. 195638,
"ANITA SANTOS, PETITIONER, VERSUS ATTY. KISSACK B.
GABAEN, RICARDO D. SANGA, AND THE NATIONAL
COMMISSION ON INDIGENOUS PEOPLES, DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES,
RESPONDENTS."**



This refers to the Notice of Judgment¹ issued by Marife M. Lomibao-Cuevas, Clerk of Court, Supreme Court in G.R. No. 195638, "*Anita Santos, Petitioner, versus Atty. Kissack B. Gabaen, Ricardo D. Sanga, and the National Commission on Indigenous Peoples, Department of Environment and Natural Resources, Respondents.*" furnishing a copy of the Decision² of the Supreme Court in the said case promulgated on 22 March 2022.

The subject case pertains to the Petition for *Certiorari* and Prohibition with prayer for the issuance of a temporary restraining order under Rule 65 (Petition) filed by petitioner Anita Santos (Santos) against respondents including the DENR, assailing the Order dated 07 February 2011 and the Cease and Desist Order (CDO) dated 10 February 2011 of the NCIP-Regional Hearing Office (NCIP-RHO).

Please be informed that the Supreme Court resolved to dismiss the Petition on the grounds of non-observance of the doctrine of hierarchy of courts, and the absence of legal standing of Santos, *viz.*:

WHEREFORE, the Petition for *Certiorari* and Prohibition with prayer for the issuance of a temporary restraining order under Rule 65 of the Rules of Court filed by petitioner Anita Santos against respondents Atty. Kissack B. Gabaen, Ricardo D. Sanga, and the National Commission on Indigenous Peoples, Department of Environment and Natural Resources is **DISMISSED**.

SO ORDERED.

¹ Copy attached as ANNEX "A".

² Copy attached as ANNEX "B".

Facts of the case

The Decision states the antecedents of the case, as follows:

Pinagtibukan It Pala'wan, Inc. (PINPAL) is a people's organization of Pala'wan Indigenous Cultural Community in *Barangay* Punta Baja, Rizal, Palawan. It is the holder of Resource Use Permit (RUP) No. 001-09, which authorizes it to occupy, cut, collect, and remove 155,503.125 kilos of almaciga resin from the Certificates of Ancestral Domain Claims (CADC) area with CADC No. R4-CADC-100 located in the said *barangay*. Since time immemorial, Danny Erong (Erong), a *Pala'wan* Tribal Chieftain, of Purok Culapisan, *Barangay* Punta Baja, Rizal, Palawan, and his ancestors have been engaged in the gathering and selling of almaciga resin within the forest area.

Erong alleged that the DENR, through the City Environment and Natural Resources Office (CENRO) of Quezon, Palawan, granted PINPAL's RUP No. 001-09 without the required Certification Precondition (CP) under Section 59 of Republic Act (R.A.) No. 8371. Under this provision, all departments and government agencies are required to secure prior certification from the NCIP stating that the area affected does not overlap with an ancestral domain or that the Free and Prior Informed Consent (FPIC) of the affected Indigenous Cultural Community (ICC) or Indigenous Peoples (IP) has been obtained before any concession, license, or permit is granted.

Erong further claimed that PINPAL, as the holder of RUP No. 001-09, required him to sell his almaciga resin only to Santos, thereby allowing her to have monopoly over the market. When Erong found another buyer offering a better price than that given by Santos, he pleaded to PINPAL that he be allowed to gather and sell resin to his buyer of choice. However, PINPAL allegedly refused and even threatened to confiscate his almaciga resin and prohibited him from gathering and selling the same. **Hence, on October 15, 2010, Erong filed a complaint before the NCIP-RHO against PINPAL, represented by Naron T. Asura (Asura), and the DENR. Erong accused PINPAL and DENR of violating Section 59 of R.A. No. 8371 in issuing RUP No. 001-09.**

On November 17, 2010, Santos filed a Verified Motion to Intervene and her Answer-in-Intervention. x x x

On February 7, 2011, the NCIP-RHO received a call from its Field Office based in Abo-Abo, Sofronio, Palawan, reporting that a van coming from Punta Baja, Rizal will be used by PINPAL, particularly Asura, and will surreptitiously transport a full-load of almaciga resin out of the ancestral domain. x x x

x x x On the basis of Gabaen's instruction, the NCIP Field Office in Abo-abo, Palawan issued a memorandum dated February 6, 2011 enjoining the transport of the almaciga resin. At 1:30 p.m. on February 7, 2011, the elf truck that Santos sent to pick up the almaciga resin from the warehouse of PINPAL was apprehended by the Philippine Marines on the basis of the memorandum dated February 6, 2011 was shown to Nilo Ybanez, the person driving the truck. The vehicle and almaciga resin were then impounded.

Thereafter, in an Order dated February 7, 2011, the NCIP-RHO required the almaciga resin to remain in the custody of the NCIP until the resolution of the complaint and further instructed that they be deposited with the Abo-Abo Service Center. x x x

Subsequently, on February 10, 2011, the NCIP-RHO issued a Cease and Desist Order, the dispositive portion of which states:

WHEREFORE, the defendants x x x are hereby ordered to stay, refrain or CEASE and DESIST from further COERCING, INTIMIDATING AND THREATENING the NCIP employee of AboAbo who effected the seizure of the illegal forest products unlawfully taken from the ancestral domain and INTERVENING into the release of the seized almaciga.

And for the employees of the DENR Palawan, specifically, to cease and desist in intervening and disregarding the law and the jurisdiction of the NCIP over all ancestral domains and all the natural resources and forest products illegally transported without a CP or without going into the legal mandatory process of FPIC.

Further, the defendant DENR thru the PENRO and all its CENROs in Palawan to FURTHER CEASE AND DESIST IN IMPLEMENTING ALL ILLEGALLY ISSUED RESOURCE USE PERMITS GRANTED ALL OVER THE ANCESTRAL DOMAINS WITHIN PALAWAN, AND FOR ANITA SANTOS, JEFFRY CINCO, NILO YBANEZ AND ROSEVIANNE YBANES, WHOSE RIGHTS AS CONCESSIONERS, BUYERS AND SHIPPERS OF ALMACIGA EMANATED (sic) FROM AN ILLEGAL ISSUANCE OF RUPs, TO ABSOLUTELY STAY AND REFRAIN FROM CONTINUING TO USE AN ILLEGALLY OBTAINED RIGHT.

x x x

Based on the Cease and Desist Order, the NCIP-RHO enjoined the parties from coercing, threatening, and intimidating the NCIP personnel and from intervening in the release of the almaciga resin. The DENR and the CENRO were called out for issuing the RUP for the almaciga resins and consenting to their removal from the ancestral domains of the IPs without the requisite certification under Section 59 of R.A. No. 8371.

On February 15, 2011, Santos filed with the NCIP-RHO a notice of withdrawal of the Motion to Intervene, which she filed on November 17, 2010, stating that the proceedings in the case lack due process and that the almaciga resin were being held without jurisdiction. Thereafter, Santos filed a Petition for Certiorari and prohibition with prayer for the issuance of TRO with this Court.

In the present Petition for Certiorari and prohibition, Santos asks this Court *inter alia* to: (1) issue a TRO and a writ of

prohibition to enjoin Gabaen, the NCIP, the DENR, and all persons acting under its authority from implementing the Cease and Desist Order dated February 10, 2011; (2) issue a TRO and a writ of prohibition to enjoin Gabaen and the NCIP from ruling on the validity of the RUP in NCIP Case No. 28-RIV-10 during the pendency of the petition; (3) annul the Order dated February 7, 2011 and the Cease and Desist Order dated February 10, 2011 for lack of jurisdiction and for being contrary to law; and (4) declare unconstitutional Section 3(a) of R.A. No. 8371, and Section I, Part II, Rule III of the Implementing Rules and Regulations (IRR) of R.A. No. 8371 for violating Section 2, Article XII of the Constitution.

The Office of the Solicitor General, representing the government, NCIP, and Santos filed their respective Comment/Reply. The DENR filed its Comment as required by the Court, *viz.*:

After several extensions afforded by this Court to the DENR, it filed its Comment on August 25, 2020. It maintained that: (1) the RUP it issued is valid and is in line with its duties and responsibilities; (2) the NCIP does not have jurisdiction to invalidate the RUP DENR issued; and (3) the provisions in R.A. No. 8371 conferring right of ownership over ancestral domains are unconstitutional as it contravenes the Regalian Doctrine. (Emphasis supplied)

Issues

1. Whether the Petition is the proper remedy to question the orders of Atty. Kissack Gabaen of NCIP;
2. Whether Santos has legal standing to defend the validity of the RUP issued by the DENR to PINPAL; and
3. Whether the Court may take cognizance and rule on the constitutionality of the provisions of R.A. No. 8371 conferring ownership over ancestral domain and land to ICCs/IPs.

Ruling of the Supreme Court

Whether the Petition is the proper remedy to question the orders of Gabaen

The Court found that the requisites for a petition for *certiorari* and prohibition are present in the subject case, *viz.*:

Under Section 1, Rule 65 of the Rules of Court, the following requisites must be present in order for a petition for *certiorari* to prosper: (1) the writ is directed against a tribunal, a board, or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of jurisdiction amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

Meanwhile, in Section 2, Rule 65 of the Rules of Court, the following requisites must be established in the case of a petition for prohibition: (1) the writ is directed against a tribunal, corporation, board or person exercising functions, judicial,

quasi-judicial, or ministerial; (2) such tribunal, corporation, board, officer or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion; and (3) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.

In the present case, the first two requisites for a petition for *certiorari* and prohibition under Rule 65 are present because it is directed against orders of the NCIP issued in the exercise of its quasi-judicial function and are purportedly without or in excess of its jurisdiction, or with grave abuse of discretion. The third requisite – that there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law – is likewise present. To demonstrate this requisite within the context of the present case, it is imperative to discuss the mandate and jurisdiction of the NCIP.

x x x

Among the powers bestowed on the NCIP is the jurisdiction “to decide all appeals from the decisions and acts of all various offices with the Commission. This necessarily includes decisions and acts of the regional and field offices of the NCIP.

However, it must be clarified that the NCIP does not automatically have jurisdiction over all disputes involving ICCs/IPs. In *Unduran v. Aberasturi*, it was declared that Section 66 of R.A. No. 8371 does not confer on the NCIP exclusive and original jurisdiction over all claims and disputes involving rights of ICCs/IPs. This Court emphasized that the proper construction of the provision, particularly its qualifying *proviso*, is that the NCIP’s jurisdiction over such claims and disputes occur “only when they arise between or among parties belonging to the same ICC/IP.”

Here, it is undisputed that Santos does not belong to the ICC of Erong and PINPAL. The remedies the NCIP suggested are not available to Santos because she could not file a motion for reconsideration before the NCIP nor an appeal to the Court of Appeals (CA). She has no available remedy within the NCIP as it does not have jurisdiction over her claim. **Therefore, a petition under Rule 65 of the Rules of Court is the proper remedy to challenge the confiscation of the almaciga resins.** (Emphasis supplied)

Nonetheless, the court ruled that the Petition should still be dismissed for violating the doctrine of hierarchy of courts. The court explained that Santos failed to invoke any extraordinary circumstance to convince them to allow a deviation from the doctrine of hierarchy of courts. The pertinent portion of the Decision states:

Nevertheless, the petition should still be dismissed for violating the doctrine of hierarchy of courts. Under Section 5(1), Article VIII of the Constitution, this Court has original jurisdiction over petitions for *certiorari*, prohibition, and mandamus. x x x

x x x

To validly take cognizance of the present petition for *certiorari* and prohibition, Santos must specify the exceptional circumstance present in her case to warrant direct resort to this Court. x x x

A careful examination of the quoted statement above reveals that Santos failed to invoke any extraordinary circumstance to convince this Court to allow a deviation from the doctrine of hierarchy of courts. Merely stating the purported "chaotic consequence, magnitude and the extreme urgency of the matter," without anything more to substantiate her claim, does not automatically excuse her from observing the hierarchy of courts. (Emphasis supplied)

Whether Santos has legal standing to defend the validity of the RUP issued by the DENR to PINPAL

The Court found that Santos failed to comply with the requisites of judicial review because she has no legal standing to bring a suit defending the validity of the RUP of PINPAL since she failed to demonstrate that she possesses the requisite authority to represent PINPAL, to wit:

Even if the doctrine of hierarchy of courts is relaxed, **the petition of Santos failed to comply with the requisites of judicial review because she has no legal standing to bring a suit defending the validity of the RUP of PINPAL.**

x x x

x x x The same can be said about Santos. She could not simply institute a case defending the validity of the RUP of PINPAL without being authorized by the organization to sue on its behalf. Santos failed to demonstrate to this Court that she possesses the requisite authority to represent PINPAL.

x x x Since PINPAL has the more direct and specific interest in the validity of its RUP than Santos, her petition must be dismissed.

While Santos may have an indirect interest, as a buyer of the almaciga resins, this interest is only incidental as compared to the interest of PINPAL – the holder of the RUP. As pointed out by the OSG, her interest does not qualify as that contemplated to warrant the exercise of judicial review because it arises only from her alleged exclusive dealership with PINPAL, and not from the RUP itself. Santos has no direct or personal right prejudiced by the nullity of the RUP granted to PINPAL. Thus, she is not in the position to ask for injunctive relief against the proceedings for the validity of the RUP before NCIP-RHO. (Emphasis supplied)

Whether the Court may take cognizance and rule on the constitutionality of the provisions of R.A. No. 8371 conferring ownership over ancestral domain and land to ICCs/IPs

The Court refrained from deciding on the constitutionality of the provisions of R.A. No. 8371 as the grounds on non-observance of the doctrine of hierarchy of courts, and the absence of legal standing are enough reasons to dismiss the Petition, viz.:

Finally, on the question of constitutionality of Section 3(a) of R.A. No. 8371, in *Parcon-Song v. Parcon*, it was held that courts should avoid resolving the constitutionality of a law if the case can be ruled on other grounds. x x x

x x x

Here, this Court deems it proper to refrain from deciding on the constitutionality of Section 3(a) of R.A. No. 8371 and its counterpart provision in Section 1, Part II, Rule III of its IRR, as the grounds of non-observance of the doctrine of hierarchy of courts, and the absence of legal standing are enough reasons to dismiss the petition.

For your information and record.


NORLITO A. ENERAN, LL.M., CESO III
f R.

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