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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 162063. March 31, 2014]

LEONORA A. PASCUAL, represented by FLOREBHEE N. AGCAOILI, Attorney-In-Fact, *petitioner, vs.* **JOSEFINO L. DAQUIOAG, in his capacity as CENRO of BANGUI, ILOCOS NORTE; EMILIO R. D. DOLOROSO, in his capacity as LAND MANAGEMENT OFFICER III, DENR, CENRO-BANGUI, ILOCOS NORTE; ALBERTO B. BAGUIO, in his capacity as SPECIAL LAND INVESTIGATOR; RENATO C. TUMAMAO and NILO C. CERALDE, in their capacities as CARTOGRAPHERS/DPLIS, CENRO-BANGUI, ILOCOS NORTE; and CATALINA ALMAZAN-VILLAMOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EXECUTION OF; A JUDGMENT IS NOT CONFINED TO WHAT APPEARS ON THE FACE OF THE DECISION, FOR IT EMBRACES WHATEVER IS NECESSARILY INCLUDED THEREIN.— [T]he phrase "placing the winning party, Catalina Almazan Villamor in the premises of the land in question" was not expressly stated in the dispositive portion of the decision of the Regional Executive Director of the DENR. But the absence of that phrase did not render the directive to enforce invalid because the directive was in full consonance with the decision

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sought to be executed. A judgment is not confined to what appears on the face of the decision, for it embraces whatever is necessarily included therein or necessary thereto.

2. ID.; ID.; ID.; ID.; NOTWITHSTANDING THE ABSENCE OF EXPRESS MENTION IN THE DISPOSITIVE PORTION, THE DELIVERY OF POSSESSION WAS NECESSARILY INCLUDED IN THE DECISION CONSIDERING THAT THE CLAIM OF A PARTY HAD BEEN BASED ON OWNERSHIP.— Under the decision of the Regional Executive Director of the DENR, as upheld by the Secretary of the DENR and the OP, the three lots subject of Pascual's free patent application were covered by the *Titulo Propiedad* of Marcos Baria, the predecessor-in-interest of Almazan Villamor. x x x The denial of Pascual's free patent application was based on the recognition of Almazan Villamor's ownership of the subject properties. The consequence of the denial was the directive for Pascual to refrain from entering the property, and from possessing the subject property declared to be owned by Almazan Villamor. Upon the final finding of the ownership in the judgment in favor of Almazan Villamor, the delivery of the possession of the property was deemed included in the decision, considering that the claim itself of Pascual to the possession had been based also on ownership. Possession is an essential attribute of ownership. Whoever owns the property has the right to possess it. Adjudication of ownership includes the delivery of possession if the defeated party has not shown any right to possess the land independently of her rejected claim of ownership. In *Nazareno v. Court of Appeals*, the Court affirmed the writ of execution awarding possession of land, notwithstanding that the decision sought to be executed did not direct the delivery of the possession of the land to the winning parties. x x x Accordingly, Daquioag's memorandum placing Almazan-Villamor in possession of the properties was not inconsistent with the decision of the Regional Executive Director of the DENR, as affirmed by the OP. With the clear recognition of Almazan-Villamor's ownership, and in default of any credible showing by Pascual of any valid justification for her to continue in possession of the properties despite the denial of her free patent application, possession must be restored to Almazan-Villamor as the rightful owner and possessor of the properties. Hence, Daquioag's assailed memorandum could not be disparaged as having been issued

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with grave abuse of discretion amounting to lack or in excess of jurisdiction. The RTC correctly held that placing Almazan-Villamor in possession of the properties was necessary to give effect to the order requiring Pascual to refrain from entering the premises.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DISMISSAL OF THE PETITION DUE TO IMPROPRIETY OF THE CHOSEN REMEDY, UPHELD.— [W]e also conclude that the CA rightly sustained the RTC's dismissal of Pascual's petition for *certiorari* because of the impropriety of her chosen remedy. A special civil action for *certiorari* is the proper action to bring when a tribunal, board or officer exercising judicial or quasi-judicial function has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. The exercise of judicial function consists in the power to determine what the law is and what the legal rights of the parties are, and then to adjudicate upon the rights of the parties. The term quasi-judicial function applies to the action and discretion of public administrative officers or bodies that are required to investigate facts or to ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. However, the issuance by Daquioag of the assailed memorandum implementing the writ of execution did not derive from the performance of a judicial or quasi-judicial function. He was not thereby called upon to adjudicate the rights of the contending parties or to exercise any discretion of a judicial nature, but only performing an administrative duty of enforcing and implementing the writ.

APPEARANCES OF COUNSEL

E.A. Andres & Associates for petitioner.
Arthur C.K. Villaluz for private respondent.

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D E C I S I O N

BERSAMIN, *J.*:

The writ of execution issued upon a final judgment adjudicating the ownership of land to a party may authorize putting her in possession although the judgment does not specifically direct such act.

The Case

By this appeal, petitioner seeks the review and reversal of the decision promulgated on January 30, 2004,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on November 7, 2002 by the Regional Trial Court (RTC) in Laoag City dismissing the petition for *certiorari* filed by petitioner in Special Civil Action Case No. 12150-13 to assail the writ of execution and the execution proceedings in a land dispute decided by the Department of Environment and Natural Resources (DENR).[2]

Antecedents

On January 24, 1984, petitioner Leonora Pascual filed a Free Patent Application [(1-1)409] over Lot No. 13194, Lot No. 13212 and Lot No. 13214, Cad. 577-D of the Vintar Cadastre located at Barangay Number 7, Alejo Malasig (Pait), formerly Barangay No. 6, Parut, Vintar, Ilocos Norte. Respondent Catalina Almazan-Villamor presented a protest, claiming that Pascual had no right to apply for title over the properties.

In the decision dated September 7, 1992,[3] the Executive Director of Region I of the DENR in San Fernando, La Union gave due course to the protest of Almazan-Villamor, and rejected the free patent application of Pascual, *viz*:

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[1] *Rollo*, pp. 40-48; penned by Associate Justice Jose L. Sabio, Jr. (retired/deceased), with Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Hakim S. Abdulwahid concurring.

[2] *Id*. at 129-138; penned by Presiding Judge Philip G. Salvador.

[3] Records, pp. 126-129.

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WHEREFORE, premises considered, the protest of the herein Claimant-Protestant Catalina Almazan Villamor is hereby as it is given due course. The application of Leonora A. Pascual under Free Patent (1-1) 409 is hereby as it is rejected and dropped from the record of this office and ordered to refrain from entering the area.

Claimant-Protestant Catalina Almazan Villamor is advised to file Free Patent Applications immediately after the finality of this Decision.

SO ORDERED.[4]

Pascual appealed to the Secretary of the DENR, who affirmed the decision of the Regional Executive Director. Pascual thereafter appealed to the Office of the President (OP), which affirmed the decision of the Secretary of the DENR on August 10, 1998.[5] Still dissatisfied with the result, Pascual elevated the decision of the OP to the CA by petition for review, but the CA outrightly denied due course to her petition for review because of procedural lapses. The decision of the OP attained finality upon her failure to timely move for the reconsideration of the denial of due course by the CA.

On July 3, 2000, the Regional Executive Director of the DENR issued the writ of execution directing the Community Environment and Natural Resources Officer (CENRO) of Bangui, Ilocos Norte to execute the decision,[6] to wit:

WHEREFORE, pursuant to the provision of Executive Order No. 292 otherwise known as the Revised Administrative Code of 1987, you are hereby ordered to repair to the premises and execute the decision of the Office of the President under O. P. Case No. 5375. In complying therewith, the execution proceeding must be reduced to writing, signed by the parties themselves and their witnesses, so that it may be a basis by this Office to initiate criminal or civil

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[4] *Id*. at 129.

[5] *Id*. at 136-140.

[6] *Id*. at 19-21.

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action against any parties who may refuse to obey the Order. You are directed to submit report within 45 days from receipt hereof.

SO ORDERED.[7]

Accordingly, respondent CENRO Josefino L. Daquioag issued a memorandum dated July 19, 2000 directing respondents Land Management Officer III Emilio Doloroso, Special Land Investigator Alberto B. Baguio and Cartographers/DPLI Renato C. Tumamao and Nilo C. Geralde to implement the writ of execution against Pascual,[8] *viz*:

Received from the Office of the OIC, Regional Executive Director, DENR, Region I is the ORDER WRIT OF EXECUTION dated 03 July 2000, relative to the above-cited case, of which on the basis of Executive Order No. 292, you are mandated to execute the Decision of the Office of the President by placing the winning party, Catalina Almazan-Villamor in the premises of the land in question. In the process, you may request the assistance of the Chief Executive of the Municipality of Vintar together with the Philippine National Police (PNP) thereat who will also be a witness to the execution proceedings. Said proceedings must be reduced into writing, signed by the parties themselves and their witnesses, and also taking note of the demeanor of the parties concerned. The report of execution be submitted to this Office not later than August 1, 2000 to allow time for review for its indorsement to the Regional Executive Director.

For strict compliance.[9]

The execution proceedings were carried out on July 27, 2000.

Decision of the RTC

Assailing the issuance of the memorandum and the execution proceedings, Pascual brought a special civil action for *certiorari* with prayer for issuance of writ of injunction in the RTC, docketed as Case No. 12150-13 and assigned to Branch 13.[10] She claimed

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[7] *Id*. at 20-21.

[8] *Id*. at 22.

[9] *Id*.

[10] *Rollo*, pp. 49-62.

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in her petition that Daquioag had acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the memorandum to execute the decision "by placing Catalina Almazan-Villamor in possession of the premises in question" because the decision of the Regional Executive Director of the DENR did not authorize or direct such action; that placing Almazan-Villamor in possession of the properties would be tantamount to her being ejected without due process of law; that the CENRO and the Regional Director of the DENR had no power to order her ejectment from the properties, and the execution proceedings conducted were null and void for being done without or in excess of jurisdiction and carried out without notice to her and in her absence; and that she did not sign the execution report for its being in contravention of the writ of execution issued by the Regional Executive Director of the DENR.

On January 15, 2001, respondents Daquioag, Doloroso, Baguio, Tumamao and Ceralde filed their answer with counter-claim and with motion to dismiss,[11] maintaining that the writ of execution dated July 3, 2000 conformed to the provisions of the *Revised Administrative Code of 1987*; that efforts to cause personal service on Pascual had been made but she and her husband had both been out of the country based on the information provided by their neighbors and relatives; that the assailed memorandum had been regularly issued pursuant to the administrative official function of their agency and as the legal consequence of the resolution of the land claims and conflict; that they did not act with grave abuse of discretion because the execution complied with the directive of the Regional Executive Director of the DENR, and the phrase "placing the winning party" found in the memorandum was but the logical interpretation of the decision of said Regional Executive Director.

Almazan-Villamor also filed her answer,[12] asserting that Daquioag did not gravely abuse his discretion in issuing the memorandum because the decision of the OP had implied that

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[11] *Id*. at 91-98.

[12] *Id*. at 99-105.

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her possession of the properties be enforced because of her being adjudged the owner; that contrary to Pascual's position, notice to and presence of the losing party were not indispensable for the validity of the execution proceedings because otherwise the implementation of the decision would be left entirely to the will of the losing party who could frustrate and prevent the execution by simply making themselves scarce.

In its decision rendered on November 7, 2002,[13] the RTC dismissed Pascual's petition for *certiorari* for lack of merit, holding that because the ownership of Almazan-Villamor had been recognized with finality, the DENR came under the obligation to place her in possession, occupation and enjoyment of her properties; and that the memorandum issued by Daquioag placing Almazan-Villamor in possession had not been issued in grave abuse of discretion. It observed thusly:

> Definitely, the phrase "by placing the winning party, Catalina Almazan Villamor in the premises of the land in question" appears to be not in accordance with the dispositive portion of the Decision as this is not expressed therein. To the mind of the Court, however, it is not contrary to the decision. In fact, in the ultimate analysis, it is in compliance to (sic) the judgment which restricts the petitioner from entering the premises. It does not matter thereafter if the private respondent would be placed in possession of the land since that would then be the prerogative and function of the DENR as a consequence of its finding that the private respondent is the owner of the properties in question. In other words, the phrase is only objectionable because of how it is worded but the net result would be to give effect to the order requiring the petitioner to refrain from entering the premises especially since petitioner admittedly was then presently occupying the lands in question.
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> The Court does not therefore agree with the contention of the petitioner that public respondent Josefino L Daquioag acted with grave abuse of discretion amounting to lack or excess of jurisdiction when he issued the Memorandum ordering the placement of Catalina Almazan-Villamor in the premises in question. It is not persuaded that grave abuse of discretion attended the issuance of the assailed

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[13] *Id*. at 129-138.

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Memorandum as it cannot discern or see how the phrase "placing the respondent in *possession* of the subject properties" to be in discord with the real intent of the said Decision particularly the dispositive portion thereof. It is to be emphasized that ownership over the subject properties is no longer in issue in this forum as the same had already been settled during the proceedings before the Regional Director and which was affirmed by no less than the Secretary of the DENR and the President of the Republic. x x x[14]

As to Pascual's argument that the memorandum was not validly and properly implemented due to lack of notice to her and because the execution had been conducted in her absence, the RTC noted that she did not controvert the averment of respondents that efforts had been exerted to serve the notice on her on the 21st and 26th of July; that actual service could not be effected on her because she and her husband had been out of the country; and that actual notice to her and her presence during the execution proceedings were validly dispensed with.

Judgment of the CA

Nonetheless, Pascual appealed the decision of the RTC to the CA.[15]

On January 30, 2004, the CA promulgated its judgment,[16] declaring that the memorandum of Daquioag did not go beyond the clear import of the decision of the OP; hence, Daguioag did not act with grave abuse of discretion amounting to lack or excess of jurisdiction. It disposed as follows:

WHEREFORE, the foregoing premises considered, the instant appeal is DENIED. The assailed November 7, 2002 Decision and the January 22, 2003 Order of the Regional Trial Court (RTC) of Laoag City, Branch 13 in Special Civil Action Case No. 12150-13 are AFFIRMED.

SO ORDERED.[17]

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[14] *Id*. at 134-136.

[15] *Id*. at 17.

[16] *Id*. at 40-48.

[17] *Id*. at 48.

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Issues

In her appeal, Pascual raises the following issues:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT OF LAOAG CITY, BRANCH 13 AND THE ORDER DATED JANUARY 22, 2003 WHICH RULED THAT THE QUESTIONED MEMORANDUM ISSUED BY RESPONDENT HON. JOSEFINO L. DAQUIOAG, CENRO, DENR, BANGUI, ILOCOS NORTE IS VALID.

II. WHETHER OR NOT THE PUBLIC RESPONDENT HAS THE AUTHORITY TO ORDER THE EVICTION/ EJECTION OF THE PETITIONER FROM THE SUBJECT PARCELS OF LAND THROUGH THE QUESTIONED MEMORANDUM WITHOUT DUE PROCESS OF LAW.

In substantiation, Pascual argues that the writ of execution must conform to the judgment to be executed, particularly its dispositive portion; that the phrase ordering her "to refrain from entering the area" found in the dispositive portion of the decision of the Regional Executive Director of the DENR was merely a pronouncement of a prohibition for her to enter, and did not direct that Almazan-Villamor be put in possession of the properties or did not impliedly authorize her eviction from the properties; that the phrase should not be given additional meaning in order to justify the memorandum; that the tenor of the memorandum clearly exceeded the terms and clear import of the dispositive portion, and was a nullity for that reason; that Daquioag had no authority to alter the clear import of the decision in the guise of execution; that the CA erred in upholding the memorandum despite its being in contradiction with the September 7, 1992 decision; that the denial of her free patent application respecting the properties did not necessarily mean that she should now be evicted pursuant to the memorandum issued to enforce the decision; and that the memorandum had the effect of depriving her of her established right of possession without due process of law.

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In her comment,[18] Almazan-Villamor countered that the CA rightly sustained the RTC because the memorandum did not conflict with the decision sought to be enforced; that upon her being declared the owner, she became entitled to possess and enjoy the properties to the exclusion of other persons, including Pascual; and that no other interpretation could be made of the dispositive portion of the decision than that the intention was to place her in possession.

Daquioag, *et al.* filed their own comment,[19] stating that the purpose in implementing the decision was to place Almazan-Villamor in possession of the properties in a peaceful manner, and to put on record all the proceedings of the execution process; that the memorandum issued of Daquioag was anchored on the decision itself and on the order of execution issued by the Regional Executive Director of the DENR, and was thus presumed regularly issued in line with his directive and authority as CENR Officer; and that Pascual was using the courts to retain her possession that she had unlawfully seized from Almazan-Villamor.

In her reply,[20] Pascual contended that the September 7, 1992 decision did not declare Almazan-Villamor the owner of the properties; that Almazan-Villamor did not acquire a decree granting her ownership of the properties; that she (Pascual) held the better right to the properties by reason of her having been always in open, continuous and adverse possession following her purchase in the 1960s; and that she continuously paid the realty taxes due on the land.

Did the CA err in sustaining the decision of the RTC to dismiss the petition for *certiorari*?

Ruling

We deny the petition for review on *certiorari*.

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[18] *Id*. at 149-169.

[19] *Id*. at 179-193.

[20] *Id*. at 209-212.

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As a general rule, a writ of execution should strictly conform to every particular of the judgment to be executed, and not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed; the execution is void if it is in excess of and beyond the original judgment or award.[21]

Admittedly, the phrase "placing the winning party, Catalina Almazan Villamor in the premises of the land in question" was not expressly stated in the dispositive portion of the decision of the Regional Executive Director of the DENR. But the absence of that phrase did not render the directive to enforce invalid because the directive was in full consonance with the decision sought to be executed. A judgment is not confined to what appears on the face of the decision, for it embraces whatever is necessarily included therein or necessary thereto.[22]

Under the decision of the Regional Executive Director of the DENR, as upheld by the Secretary of the DENR and the OP, the three lots subject of Pascual's free patent application were covered by the *Titulo Propiedad* of Marcos Baria, the predecessor-in-interest of Almazan Villamor. Specifically, the final and executory decision of the OP ruled as follows:

> It is conclusively established that the appellee is the sole living compulsory heir of Marcos Baria, the title holder of the tract of land embracing or covering the lots in question. Evidence on record likewise substantiates sppellee's (sic) claim that she and her predecessor-in-interest have been in possession of the land since a '*Titulo de Propiedad'* was issued to appellee's forebear, Marcos Baria in 1895 up to the present. On the strength of Marcos Baria's Original Certificate of Title duly registered in the Register of Deeds of the Province of Ilocos Norte, the appellee and her predecessors were the ones who enjoyed exclusive and peaceful possession of the land, declared the same for taxation purposes,

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[21] *Tumibay v. Soro*, G.R. No. 152016, April 13, 2010, 618 SCRA 169, 175-176.

[22] *Jaban v. Court of Appeals*, G.R. No. 129660, November 22, 2001, 370 SCRA 221, 228.

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paid the corresponding real estate taxes and reaped the fruits derived from the land.

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In synthesis, the appellee, derives her claim from the title *'Titulo de Propiedad'* of her late [great] grandfather issued on June 14, 1895 which she inherited by operation of law, whereas, the appellant anchors his claim on the alleged deeds of sale executed in 1983 by third persons not related nor privy to appellee, covering the lots in question which are portions of the titled property one of which deeds of sale is even inexistent.

The above evidences preponderate in favor of appellee, not only in point of time but on the basis of their nature as a(sic) truthfulness and validity. The alleged deeds of sale executed in 1983 in favor of appellant by persons who have no known valid claim to the lots involved, which could not all be presented during the investigation, should pale in comparison to the Original Certificate of Title (*Titulo de Propiedad*) acquired by appellee's predecessor-in-interest eighty-eight (88) years earlier which has remained undisposed and unencumbered up to the present. This is specially so when appellee's claim of ownership is amply substantiated by credible and competent witnesses, Ambrosio and Angelito Malasig whose sworn statements offered in evidence were not disputed by the appellant despite ample opportunity to do so.[23]

The denial of Pascual's free patent application was based on the recognition of Almazan Villamor's ownership of the subject properties. The consequence of the denial was the directive for Pascual to refrain from entering the property, and from possessing the subject property declared to be owned by Almazan Villamor. Upon the final finding of the ownership in the judgment in favor of Almazan Villamor, the delivery of the possession of the property was deemed included in the decision, considering that the claim itself of Pascual to the possession had been based also on ownership.[24]

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[23] *Rollo*, pp. 118-119.

[24] *De Leon v. Public Estates Authority*, G.R. No. 181970, August 3, 2010, 626 SCRA 547, 560.

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Possession is an essential attribute of ownership.[25] Whoever owns the property has the right to possess it.[26] Adjudication of ownership includes the delivery of possession if the defeated party has not shown any right to possess the land independently of her rejected claim of ownership.[27] In *Nazareno v. Court of Appeals*,[28] the Court affirmed the writ of execution awarding possession of land, notwithstanding that the decision sought to be executed did not direct the delivery of the possession of the land to the winning parties. Citing *Perez v. Evite*,[29] the Court stated that:

> A case in point is *Perez v. Evite* wherein the lower court declared Evite as owner of the disputed land. When the judgment became final and executory, Evite moved for the issuance of a writ of execution which the trial court granted. Perez moved to quash the writ arguing that the writ was at variance with the decision as the decision sought to be executed merely declared Evite owner of the property and did not order its delivery to him. Perez argued citing the cases of *Jabon v. Alo* and *Talens v. Garcia* which held that adjudication of ownership of the land did not include possession thereof. In resolving in favor of Evite this Court held —
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> x x x Considering that herein plaintiff-appellants have no other claim to possession of the property apart from their claim of ownership which was rejected by the lower court and, consequently, has no right to remain thereon after such ownership was adjudged to defendant-appellees, the delivery of possession of the land should be considered included in the decision. Indeed, it would be defeating the ends of justice should we require that for herein appellees to obtain possession of the property duly adjudged to be theirs, from those who have no right to remain therein, they must submit to court litigations anew.[30]

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[25] *Gaitero v. Almeria*, G.R. No. 181812, June 8, 2011, 651 SCRA 544, 548.

[26] *Id*.

[27] *Supra* note 23.

[28] G.R. No. 131641, February 23, 2000, 326 SCRA 338.

[29] No. L-16003, March 29, 1961, 1 SCRA 953.

[30] *Id*. at 343-344.

Accordingly, Daquioag's memorandum placing Almazan-Villamor in possession of the properties was not inconsistent with the decision of the Regional Executive Director of the DENR, as affirmed by the OP. With the clear recognition of Almazan-Villamor's ownership, and in default of any credible showing by Pascual of any valid justification for her to continue in possession of the properties despite the denial of her free patent application, possession must be restored to Almazan-Villamor as the rightful owner and possessor of the properties.

Hence, Daquioag's assailed memorandum could not be disparaged as having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. The RTC correctly held that placing Almazan-Villamor in possession of the properties was necessary to give effect to the order requiring Pascual to refrain from entering the premises. We quote with approval the pertinent portion of the RTC's decision on this point:

> The claim of ownership by the herein petitioner had been rejected as in fact she was ordered to refrain from entering the premises. On the other hand, the application of the respondent was given due course and she was even advised to file her application for registration of title over the subject properties. This, to the mind of the Court, is tantamount to a recognition of her rightful ownership over the same which carries with it the right to possess and to enjoy her property. There can be no other interpretation as regard the dispositive portion of the Decision than to eventually place the respondent in possession of the same, her ownership over the same having already been upheld. While the Decision required her to file her application for free patent, it was not purposely for the acquisition of ownership as she had already found to be the owner of the lands. The eventual issuance of the certificate of title (free patent) would only affirm such ownership.[31]

Finally, we also conclude that the CA rightly sustained the RTC's dismissal of Pascual's petition for *certiorari* because of the impropriety of her chosen remedy. A special civil action for *certiorari* is the proper action to bring when a tribunal,

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[31] *Rollo*, p. 136.

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board or officer exercising judicial or quasi-judicial function has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[32] The exercise of judicial function consists in the power to determine what the law is and what the legal rights of the parties are, and then to adjudicate upon the rights of the parties.[33] The term quasi-judicial function applies to the action and discretion of public administrative officers or bodies that are required to investigate facts or to ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.[34] However, the issuance by Daquioag of the assailed memorandum implementing the writ of execution did not derive from the performance of a judicial or quasi-judicial function. He was not thereby called upon to adjudicate the rights of the contending parties or to exercise any discretion of a judicial nature, but only performing an administrative duty of enforcing and implementing the writ.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari* for its lack of merit; **AFFIRMS** the decision promulgated on January 30, 2004; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[32] *Philippine National Bank v. Perez*, G.R. No. 187640 & G.R. No. 187687, June 15, 2011, 652 SCRA 317, 331.

[33] *Ongsuco v. Malones*, G.R. No. 182065, October 27, 2009, 604 SCRA 499, 516.

[34] *Id.*