Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-24548. October 27, 1983]

WENCESLAO VINZONS TAN, petitioner-appellant, *vs.* THE DIRECTOR OF FORESTRY, APOLONIO RIVERA, THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES JOSE Y. FELICIANO, respondents-appellees, RAVAGO COMMERCIAL CO., JORGE LAO HAPPICK and ATANACIO MALLARI, intervenors.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; WHEN TRIAL COURT CAN PROPERLY DISMISS A COMPLAINT THEREON DUE TO LACK OF CAUSE OF ACTION EVEN WITHOUT A HEARING.— In Llanto *vs.* Ali Dimaporo, et al. (16 SCRA 601, March 31, 1966), this Court, thru Justice Conrado V. Sanchez, held that the trial court can properly dismiss a complaint on a motion to dismiss due to lack of cause of action even without a hearing, by taking into consideration the discussion in said motion and the opposition thereto.

2. ID.; ID.; APPEAL; ISSUES NOT RAISED IN THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Petitioner-appellant did not interpose any objection thereto, nor presented new arguments in his motion for reconsideration. This omission means conformity to said observation, and a waiver of his right to object, estopping him from raising this question for the first time on appeal. "Issues not raised in the trial court cannot be raised for the first time on appeal" (Matienzo *vs.* Servidad, Sept. 10, 1981, 107 SCRA 276).

3. ID.; RULES OF PROCEDURE; NOT TO BE APPLIED IN A VERY RIGID, TECHNICAL SENSE.— Petitioner-appellant cannot invoke the rule that, when the ground for asking dismissal is that the complaint states no cause of action, its sufficiency must be determined only from the allegations in the complaint. "The rules of procedure are not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated. Where the rules are merely secondary in importance are made to override

Supreme Court E-Library

the ends of justice; the technical rules had been misapplied to the prejudice of the substantial right of a party, said rigid application cannot be countenanced."

4. ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; FAILURE TO APPEAL ORDER OF SECRETARY OF AGRICULTURE AND NATURAL RESOURCES TO THE PRESIDENT OF THE PHILIPPINES, A FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.— Petitioner-appellant did not appeal the order of the respondent Secretary of Agriculture and Natural Resources to the President of the Philippines, who issued Executive Proclamation No. 238 withdrawing the area from private exploitation, and establishing it as the Olongapo Watershed Forest Reserve. Considering that the President has the power to review on appeal the orders or acts of the respondents-appellees, the failure of the petitioner-appellant to take that appeal is failure on his part to exhaust his administrative remedies.

5. REMEDIAL LAW; SPECIAL CIVIL ACTION; CERTIORARI; NOT A SUBSTITUTE FOR APPEAL.— This being a special civil action, petitioner-appellant must allege and prove that he has no other speedy and adequate remedy (Diego *vs.* The Court of Appeals, et al., 54 Off. Gaz., No. 4, 956). In the case at bar, petitioner-appellant's speedy and adequate remedy is an appeal to the President of the Philippines. Certiorari is not a substitute for appeal as held time and again by this Court (People *vs.* Villanueva, 110 SCRA 465), "it being a time honored and well known principle that before seeking judicial redress, a party must first exhaust the administrative remedies available" (Garcia *vs.* Teehankee, 27 SCRA 944, April 18, 1969).

6. POLITICAL LAW; STATE; IMMUNITY FROM SUIT; WHEN STATE'S IMMUNITY MAY BE VALIDLY INVOKED.— "The rule establishing State exemption from suits may not be circumvented by directing the action against the officers of the State instead of against the State itself. In such cases the State's immunity may be validly invoked against the action as long as it can be shown that the suit really affects the property, rights, or interests of the State and not merely those of the officer nominally made party defendant" (SINCO, Phil. Politicial Law, 10th ed., p. 35; Salgado *vs.* Ramos, 64 Phil. 724 and other cases cited).

Supreme Court E-Library

7. MUNICIPAL CORPORATIONS; TIMBER LICENSE; CONSTRUED.— A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.

8. ID.; LICENSE; GRANT THEREOF DOES NOT CREATE IRREVOCABLE RIGHTS, NEITHER IS IT PROPERTY OR A PROPERTY RIGHT.— "A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right nor, does it create a vested right; nor is it taxation" (37 C.J., 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights (People *vs.* Ong Tin, 54 O.G. 7576).

9. POLITICAL LAW; POLICE POWER; PROPER EXERCISE THEREOF CANNOT BE DEFEATED BY ANY FRANCHISE OR RIGHT.— The welfare of the people is the supreme law. Thus, no franchise or right can be availed of to defeat the proper exercise of police power (Surigao Electric Co., Inc. *vs.* Municipality of Surigao, 24 SCRA 898, Aug. 30, 1968). The State has inherent power enabling it to prohibit all things hurtful to comfort, safety, and welfare of society (Edu *vs.* Ericta, 35 SCRA 481, Oct. 24, 1970).

10. ID.; EXECUTIVE DEPARTMENT; POWER OF CONTROL; SECRETARY OF AGRICULTURE AND NATURAL RESOURCES HAS AUTHORITY TO REVOKE, ON VALID GROUNDS, TIMBER LICENSES ISSUED BY DIRECTOR OF FORESTRY.— The utilization and disposition of forest resources is directly under the control and supervision of the Director of Forestry. However, "while Section 1831 of the Revised Administrative Code provides that forest products shall be cut, gathered and removed from any forest only upon license from the Director of Forestry, it is no less true that as a subordinate officer, the Director of Forestry is subject to the control of the Department Head or the Secretary of Agriculture and Natural Resources (Sec. 79 [c], Rev. Adm. Code), who, therefore, may impose reasonable regulations in the exercise of the powers of the subordinate officer" (Director of Forestry *vs.* Benedicto, 104

Supreme Court E-Library

SCRA 309,May 5, 1981). The power of control of the Department Head over bureaus and offices includes the power to modify, reverse or set aside acts of subordinate officials (Province of Pangasinan *vs.* Secretary of Public Works and Communications, 30 SCRA 134, Oct. 31, 1969; Montano *vs.* Silvosa, 97 Phil. 143, 144, 147-148). Accordingly, respondent-appellee Secretary of Agriculture and Natural Resources has the authority to revoke, on valid grounds, timber licenses issued by the Director of Forestry. There being supporting evidence, the revocation of petitioner-appellant's timber license was a wise exercise of the power of the respondent-appellee (Secretary of Agriculture and Natural Resources) and therefore, valid.

APPEARANCES OF COUNSEL

Camilo V. Pefianco, Jr. for petitioner-appellant.
The Solicitor General for respondents-appellees.
Estelito P. Mendoza for Ravago Commercial Co.

DECISION

MAKASIAR, *J.*:

This is an appeal from the order dated January 20, 1965 of the then Court of First Instance of Manila, Branch VII, in Civil Case No. 56813, a petition for certiorari, prohibition and mandamus with preliminary prohibitory injunction (p. 2, rec.), which dismissed the petition of petitioner-appellant Wenceslao Vinzons Tan on the ground that it does not state a sufficient cause of action, and upon the respondents-appellees' (Secretary of Agriculture and Natural Resources and the Director of Forestry) motion to dismiss (p. 28, rec.).

Sometime in April 1961, the Bureau of Forestry issued Notice No. 2087, advertising for public bidding a certain tract of public forest land situated in Olongapo, Zambales, provided tenders were received on or before May 22, 1961 (p. 15, CFI rec.). This public forest land, consisting of 6,420 hectares, is located within the former U.S. Naval Reservation comprising 7,252 hectares of timberland, which was turned over by the United States Government to the Philippine Government (p. 99, CFI rec.).

On May 5, 1961, petitioner-appellant Wenceslao Vinzons Tan submitted his application in due form after paying the necessary

Supreme Court E-Library

fees and posting the required bond therefor. Nine other applicants submitted their offers before the deadline (p. 29, rec.).

Thereafter, questions arose as to the wisdom of having the area declared as a forest reserve or allow the same to be awarded to the most qualified bidder. On June 7, 1961, then President Carlos P. Garcia issued a directive to the Director of the Bureau of Forestry, which read as follows:

"It is desired that the area formerly covered by the Naval Reservation be made a forest reserve for watershed purposes. Prepare and submit immediately a draft of a proclamation establishing the said area as watershed forest reserve for Olongapo, Zambales. It is also desired that the bids received by the Bureau of Forestry for the issuance of the timber license in the area during the public bidding conducted last May 22, 1961 be rejected in order that the area may be reserved as above stated. . . . . .

(SGD.), CARLOS P. GARCIA"

(p. 98, CFI rec.)

On August 3, 1961, Secretary Cesar M. Fortich of Agriculture and Natural Resources sustained the findings and recommendations of the Director of Forestry who concluded that "it would be beneficial to the public interest if the area is made available for exploitation under certain conditions," and We quote:

"Respectfully forwarded to the Honorable, the Executive Secretary, Malacañang, Manila, inviting particular attention to the comment and recommendation of the Director of Forestry in the preceding indorsement in which this Office fully concurs.

"The observations of responsible forest officials are most revealing of their zeal to promote forest conservation and watershed protection especially in Olongapo, Zambales area. In convincing fashion, they have demonstrated that to declare that forest area involved as a forest reserve rather than open it for timber exploitation under license and regulation would do more harm than good to the public interest. To convert the area into a forest reserve without an adequate forest protection force, would make of it a 'Free Zone and Logging Paradise,' to the ever 'Problem Loggers' of Dinalupihan, Bataan. . . an open target of timber smugglers, kaingineros and other forms of forest vandals and despoilers. On the other hand to award the area, as

Supreme Court E-Library

planned, to a reputable and responsible licensee who shall conduct logging operations therein under the selective logging method and who shall be obliged to employ a sufficient number of forest guards to patrol and protect the forest conservation and watershed protection.

"Worthy of mention is the fact that the Bureau of Forestry had already conducted a public bidding to determine the most qualified bidder to whom the area advertised should be awarded. Needless to stress, the decision of the Director of Forestry to dispose of the area thusly, was arrived at after much thought and deliberation and after having been convinced that to do so would not adversely affect the watershed in that sector. The result of the bidding only have to be announced. To be sure, some of the participating bidders like Mr. Edgardo Pascual, went to much expense in the hope of winning a virgin forest concession. To suddenly make a turn about of this decision without strong justifiable grounds, would cause the Bureau of Forestry and this Office no end of embarrassment.

"In view of the foregoing, it is earnestly urged that the Director of Forestry be allowed to proceed with the announcement of the results of the bidding for the subject forest area" (p. 13, CFI rec.).

The Office of the President in its 4th Indorsement dated February 2, 1962, signed by Atty. Juan Cancio, Acting Legal Officer, "respectfully returned to the Honorable Secretary of the Department of Agriculture and Natural Resources for appropriate action," the papers subject of Forestry Notice No. 2087 which was referred to the Bureau of Forestry for decision (p. 14,.CFI rec.).

Finally, of the ten persons who submitted proposals, the area was awarded to herein petitioner-appellant Wenceslao Vinzons Tan, on April 15, 1963 by the Bureau of Forestry (p. 17, CFI rec.). Against this award, bidders Ravago Commercial Company and Jorge Lao Happick filed motions for reconsideration which were denied by the Director of Forestry on December 6, 1963.

On May 30, 1963, the Secretary of Agriculture and Natural Resources Benjamin M. Gozon -- who succeeded Secretary Cesar M. Fortich in office -- issued General Memorandum Order No. 46, series of 1963, pertinent portions of which state:

. . . . . .

Supreme Court E-Library

"SUBJECT: . . . . . .
(D)elegation of authority to the Director of Forestry to grant ordinary timber licenses.

"1. . . . . .

"2. The Director of Forestry is hereby authorized to grant (a) new ordinary timber licenses where the area covered thereby is not more than 3,000 hectares each; and (b) the extension of ordinary timber licenses for areas not exceeding 5,000 hectares each;

"3. This Order shall take effect immediately" (p. 267, CFI rec.).

Thereafter, Jose Y. Feliciano was appointed as Acting Secretary of Agriculture and Natural Resources, replacing Secretary Benjamin M. Gozon. Upon assumption of office, he immediately promulgated on December 19, 1963 General Memorandum Order No. 60, revoking the authority delegated to the Director of Forestry, under General Memorandum Order No. 46, to grant ordinary timber licenses, which order took effect on the same day, December 19, 1963. Pertinent portions of the said Order read as follows:

. . . . . .

"SUBJECT: Revocation of General Memorandum Order No. 46 dated May 30, 1963 --

"1. In order to acquaint the undersigned with the volume and nature of the work of the Department, the authority delegated to the Director of Forestry under General Memorandum Order No. 46, dated May 30, 1963, to grant (a) new ordinary timber licenses where the area covered thereby is not more than 3,000 hectares each; and (b) the extension of ordinary timber licenses for areas not exceeding 5,000 hectares each is hereby revoked. *Until further notice, the issuance of new licenses and renewals of licenses, including amendments thereto, shall be signed by the Secretary of Agriculture and Natural Resources.*

"2. This Order shall take effect immediately and all other previous orders, directives, circulars, memoranda, rules and regulations inconsistent with this Order are hereby revoked" (p. 268, CFI rec.; italics supplied).

On the same date that the above-quoted memorandum took effect, December 19, 1963, Ordinary Timber License No. 20-'64 (NEW) dated April 22, 1963, in the name of Wenceslao Vinzons

Supreme Court E-Library

Tan, was signed by then Acting Director of Forestry Estanislao R. Bernal without the approval of the Secretary of Agriculture and Natural Resources. On January 6, 1964, the license was released by the Office of the Director of Forestry (p. 30, CFI rec.; p. 77, rec.). It was not signed by the Secretary of Agriculture and Natural Resources as required by Order No. 60 aforequoted.

On February 12, 1964, Ravago Commercial Company wrote a letter to the Secretary of Agriculture and Natural Resources praying that, pending resolution of the appeal filed by Ravago Commercial Company and Jorge Lao Happick from the order of the Director of Forestry denying their motion for reconsideration, O.T.L. No. 20-'64 in the name of Wenceslao V. Tan be cancelled or revoked on the ground that the grant thereof was irregular, anomalous and contrary to existing forestry laws, rules and regulations.

On March 9, 1964, acting on the said representation made by Ravago Commercial Company, the Secretary of Agriculture and Natural Resources promulgated an order declaring Ordinary Timber License No. 20-'64 issued in the name of Wenceslao Vinzons Tan, as having been issued by the Director of Forestry without authority, and is therefore void *ab initio*. The dispositive portion of said order reads as follows:

"WHEREFORE, premises considered, this Office is of the opinion and so holds that O.T. License No. 20-'64 in the name of Wenceslao Vinzons Tan should be, as hereby it is, REVOKED AND DECLARED without force and effect whatsoever from the issuance thereof.

"The Director of Forestry is hereby directed to stop the logging operations of Wenceslao Vinzons Tan if there be any, in the area in question and shall see to it that the appellee shall not introduce any further improvements thereon pending the disposition of the appeals filed by Ravago Commercial Company and Jorge Lao Happick in this case" (pp. 30-31, CFI rec.).

Petitioner-appellant moved for a reconsideration of the order, but the Secretary of Agriculture and Natural Resources denied the motion in an Order dated March 25, 1964, wherein this paragraph appears:

Supreme Court E-Library

"In this connection, it has been observed by the Acting Director of Forestry in his 2nd indorsement of February 12, 1964, that the area in question composes of water basin overlooking Olongapo, including the proposed Olongapo Watershed Reservation; and that the United States as well as the Bureau of Forestry has earmarked this entire watershed for a watershed pilot forest for experiment treatment concerning erosion and water conservation and flood control in relation to wise utilization of the forest, denudation, shifting cultivation, increase or decrease of crop harvest of agricultural areas influenced by the watershed, etc. . . . ." (pp. 38-39, CFI rec.; p. 78, rec.).

On April 11, 1964, the Secretary of Agriculture and Natural Resources, acting on the separate appeals filed by Jorge Lao Happick and Ravago Commercial Company, from the order of the Director of Forestry dated April 15, 1963, awarding to Wenceslao Vinzons Tan the area under Notice No. 2087, and rejecting the proposals of the other applicants covering the same area, promulgated an order commenting that in view of the observations of the Director of Forestry just quoted, "to grant the area in question to any of the parties herein, would undoubtedly adversely affect public interest which is paramount to private interests," and concluding that, "for this reason, this Office is of the opinion and so holds, that without the necessity of discussing the appeals of the herein appellants, the said appeals should be, as hereby they are, dismissed and this case is considered a closed matter insofar as this Office is concerned" (p. 78, rec.).

On April 18, 1964, on the basis of the denial of his motion for reconsideration by the Secretary of Agriculture and Natural Resources, petitioner-appellant filed the instant case before the court *a quo* (Court of First Instance, Manila), Special Civil Action No. 56813, a petition for certiorari, prohibition and mandamus with preliminary prohibitory injunction (pp. 1-12, CFI rec.). Petitioner-appellant claims that the respondents-appellees "unlawfully, illegally, whimsically, capriciously and arbitrarily acted without or in excess of their jurisdiction, and/or with grave abuse of discretion by revoking a valid and existing timber license without just cause, by denying petitioner-appellant of the equal protection of the laws, by depriving him of his constitutional right

Supreme Court E-Library

to property without due process of law, and in effect, by impairing the obligation of contracts" (p. 6, CFI rec.). Petitioner-appellant prayed for judgment making permanent the writ of preliminary injunction against the respondents-appellees; declaring the orders of the Secretary of Agriculture and Natural Resources dated March 9, March 25, and April 11, 1964, as well as all his acts and those of the Director of Forestry implementing said orders, and all the proceedings in connection therewith, null and void, unlawful and of no force and effect; ordering the Director of Forestry to renew O.T.L. No. 20-'64 upon expiration; and sentencing the respondents, jointly and severally, to pay the petitioner-appellant the sum of Two Hundred Thousand Pesos (₱200,000.00) by way of pecuniary damage, One Hundred Thousand Pesos (₱100,000.00) by way of moral and exemplary damages, and Thirty Thousand Pesos (₱30,000.00) as attorney's fees and costs. The respondents-appellees separately filed oppositions to the issuance of the writ of preliminary injunction, Ravago Commercial Company, Jorge Lao Happick and Atanacio Mallari, presented petitions for intervention which were granted, and they too opposed the writ.

The Director of Forestry in his motion to dismiss dated April 24, 1964, alleges the following grounds: (1) that the court has no jurisdiction; (2) that the respondents may not be sued without their consent; (3) that the petitioner has not exhausted all available administrative remedies; (4) that the petition does not state a cause of action; and (5) that purely administrative and discretionary functions of administrative officials may not be interfered with by the courts. The Secretary of Agriculture and Natural Resources joined the motion to dismiss when in his answer of May 18, 1964, he avers the following special and affirmative defenses: (1) that the court has no jurisdiction to entertain the action for certiorari, prohibition and mandamus; (2) that the petitioner has no cause of action; (3) that venue is improperly laid; (4) that the State is immune from suit without its consent; (5) that the court has no power to interfere in purely administrative functions; and (6) that the cancellation of petitioner's license was dictated by public policy

Supreme Court E-Library

(pp. 172-177, rec.). Intervenors also filed their respective answers in intervention with special and affirmative defenses (pp. 78-79, rec.). A hearing was held on the petition for the issuance of writ of preliminary injunction, wherein evidence was submitted by all the parties including the intervenors, and extensive discussion was held both orally and in writing.

After the said hearing, on January 20, 1965, the court *a quo*, from the evidence received, resolved not only the question on the issuance of a writ of preliminary injunction but also the motion to dismiss, declared that the petition did not state a sufficient cause of action, and dismissed the same accordingly. To justify such action, the trial court, in its order dismissing the petition, stated that "the court feels that the evidence presented and the extensive discussion on the issuance of the writ of preliminary mandatory and prohibitory injunction should also be taken into consideration in resolving not only this question but also the motion to dismiss, because there is no reason to believe that the parties will change their stand, arguments and evidence" (p. 478, CFI rec.). His motion for reconsideration having been denied (p. 488, CFI rec.), petitioner-appellant Wenceslao Vinzons Tan appealed directly to this Court.

I

Petitioner-appellant now comes before this Court, claiming that the trial court erred in:

(1) holding that the petition does not state a sufficient cause of action; and

(2) dismissing the petition [p. 27, rec.].

He argues that the sole issue in the present case is, whether or not the facts in the petition constitute a sufficient cause of action (p. 31, rec.). Petitioner-appellant, in his brief, presented a lengthy discussion on the definition of the term cause of action wherein he contended that the three essential elements thereof -- namely, the legal right of the plaintiff, the correlative obligation of the defendants and the act or omission of the defendant in violation of that right -- are satisfied in the averments of this

Supreme Court E-Library

petition (pp. 31-32, rec.). He invoked the rule that when the ground for dismissal is that the complaint states no cause of action, such fact can be determined only from the facts alleged in the complaint and from no other, and the court cannot consider other matters *aliunde*. He further invoked the rule that in a motion to dismiss based on insufficiency of cause of action, the facts alleged in the complaint are deemed hypothetically admitted for the purpose of the motion (pp. 32-33, rec.).

A perusal of the records of the case shows that petitioner-appellant's contentions are untenable. As already observed, this case was presented to the trial court upon a motion to dismiss for failure of the petition to state a claim upon which relief could be granted (Rule 16 [g], Revised Rules of Court), on the ground that the timber license relied upon by the petitioner-appellant in his petition was issued by the Director of Forestry without authority and is therefore void *ab initio*. This motion suplanted the general demurrer in an action at law and, as a rule admits, for the purpose of the motion, all facts which are well pleaded. However, while the court must accept as true all well pleaded facts, the motion does not admit allegations of which the court will take judicial notice are not true, nor does the rule apply to legally impossible facts, nor to facts inadmissible in evidence, nor to facts which appear by record or document included in the pleadings to be unfounded (Vol. 1, Moran's Comments on the Rules of Court, 1970 ed., p. 505, citing cases).

It must be noted that there was a hearing held in the instant case wherein answers were interposed and evidence introduced. In the course of the hearing, petitioner-appellant had the opportunity to introduce evidence in support of the allegations in his petition, which he readily availed of. Consequently, he is estopped from invoking the rule that to determine the sufficiency of a cause of action on a motion to dismiss, only the facts alleged in the complaint must be considered. If there were no hearing held, as in the case of Cohen *vs.* U.S. (C.C.A. Minn., 1942, 129 F. 2d 733), "where the case was presented to District Court upon

Supreme Court E-Library

a motion to dismiss because of alleged failure of complaint to state a claim upon which relief could be granted, and no answer was interposed and no evidence introduced, the only facts which the court could properly consider in passing upon the motion were those facts appearing in the complaint, supplemented by such facts as the court judicially knew."

In Llanto *vs.* Ali Dimaporo, et al. (16 SCRA 601, March 31, 1966), this Court, thru Justice Conrado V. Sanchez, held that the trial court can properly dismiss a complaint on a motion to dismiss due to lack of cause of action even without a hearing, by taking into consideration the discussion in said motion and the opposition thereto. Pertinent portion of said decision is hereby quoted:

"Respondents moved to dismiss. Ground therefor is lack of cause of action. The Court below granted the motion, dismissed the petition. The motion to reconsider. Offshoot is this appeal.

"1. The threshold questions are these: Was the dismissal order issued 'without any hearing on the motion to dismiss'? Is it void?

"WE go to the record. The motion to dismiss was filed on February 1, 1961 and set for hearing on February 10 following. On February 8, 1961 petitioner's counsel telegraphed the court, '(r)equest postponement motion dismissal till written opposition filed.' He did not appear at the scheduled hearing. But on March 4, 1961, he followed up his wire, with his written opposition to the motion to dismiss. *Adverting to the 5-page motion to dismiss and the 6-page opposition thereto, we find that the arguments pro and con on the question of the board's power to abolish petitioner's position minutely discussed the problem and profusely cited authorities.* The May 15, 1961 8-page court order recited at length the said arguments and concluded that petitioner made no case.

"One good reason for the statutory requirement of hearing on a motion as to enable the suitors to adduce evidence in support of their opposing claims. But here the motion to dismiss is grounded on lack of cause of action. Existence of a cause of action or lack of it is determined by a reference to the facts averred in the challenged pleading. The question raised in the motion is purely one of law. This legal issue was fully discussed in said motion and the opposition thereto. In this posture, oral arguments on the motion are reduced to an unnecessary ceremony and should be overlooked. And,

Supreme Court E-Library

correctly so, because the other intendment of the law in requiring hearing on a motion, i.e., 'to avoid surprises upon the opposite party and to give to the latter time to study and meet the arguments of the motion,' has been sufficiently met. And then, courts do not exalt form over substance" (italics supplied).

Furthermore, "even if the complaint stated a valid cause of action, a motion to dismiss for insufficiency of cause of action will be granted if documentary evidence admitted by stipulation disclosing facts sufficient to defeat the claim enabled the court to go beyond disclosure in the complaint (LOCALS No. 1470, No. 1469, and No. 1512 of the International Longshoremen's Association *vs.* Sourther Pacific Co., 6 Fed. Rules Service, p. 107; U.S. Circuit Court of Appeals, Fifth Circuit, Dec. 7, 1952; 131 F. 2d 605). Thus, although the evidence of the parties were presented on the question of granting or denying petitioner-appellant's application for a writ of preliminary injunction, the trial court correctly applied said evidence in the resolution of the motion to dismiss. Moreover, in applying said evidence in the resolution of the motion to dismiss, the trial court, in its order dismissing the petition, pointed out that, "there is no reason to believe that the parties will change their stand, arguments and evidence" (p. 478, CFI rec.). Petitioner-appellant did not interpose any objection thereto, nor presented new arguments in his motion for reconsideration (pp. 482-484, CFI rec.). This omission means conformity to said observation and a waiver of his right to object, estopping him from raising this question for the first time on appeal. "Issues not raised in the trial court cannot be raised for the first time on appeal" (Matienzo *vs.* Servidad, Sept. 10, 1981, 107 SCRA 276).

Moreover, petitioner-appellant cannot invoke the rule that, when the ground for asking dismissal is that the complaint states no cause of action, its sufficiency must be determined only from the allegations in the complaint. "The rules of procedure are not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be

Supreme Court E-Library

defeated. Where the rules are merely secondary in importance are made to override the ends of justice; the technical rules had been misapplied to the prejudice of the substantial right of a party, said rigid application cannot be countenanced" (Vol. 1, Francisco, Civil Procedure, 2 ed., 1973, p. 157, citing cases).

What more can be of greater importance than the interest of the public at large, more particularly the welfare of the inhabitants of Olongapo City and Zambales province, whose lives and properties are directly and immediately imperilled by forest denudation.

The area covered by petitioner-appellant's timber license practically comprises the entire Olongapo watershed (p. 265, CFI rec.). It is of public knowledge that watersheds serves as a defense against soil erosion and guarantees the steady supply of water. As a matter of general policy, the Philippine Constitution expressly mandated the conservation and proper utilization of natural resources, which includes the country's watershed. Watersheds in the Philippines had been subjected to rampant abusive treatment due to various unscientific and destructive land use practices. Once lush watersheds were wantonly deforested due to uncontrolled timber cutting by licensed concessionaires and illegal loggers. This is one reason why, in paragraph 27 of the rules and regulations included in the ordinary timber license it is stated:

"The terms and conditions of this license are subject to change at the discretion of the Director of Forestry, and that this license may be made to expire at an earlier date, when public interests so require" (Exh. D, p. 22, CFI rec.).

Considering the overriding public interest involved in the instant case, We therefore take judicial notice of the fact that, on April 30, 1964, the area covered by petitioner-appellant's timber license has been established as the Olongapo Watershed Forest Reserve by virtue of Executive Proclamation No. 238 by then President Diosdado Macapagal, which in part read as follows:

"Pursuant to the provisions of Section 1824 of the Revised Administrative Code, as amended, I, Diosdado Macapagal, President of the Philippines

Supreme Court E-Library

do hereby withdraw from entry, sale, or settlement and establish as Olongapo Watershed Forest Reserve for watershed, soil protection, and timber production purposes, subject to private rights, if any there be, under the administration and control of the Director of Forestry, ... the following parcels of land of the public domain situated in the municipality of Olongapo, province of Zambales, described in the Bureau of Forestry map No. FR-132, to wit: . . . ." (60. O.G. No. 23, 3198).

Petitioner-appellant relies on Ordinary Timber License No. 20-'64 (NEW) for his alleged right over the timber concession in question. He argues thus: "The facts alleged in the petition show: (1) the legal right of the petitioner to log in the area covered by his timber license; (2) the legal or corresponding obligation on the part of the respondents to give effect, recognize and respect the very timber license they issued to the petitioner; and (3) the act of the respondents in arbitrarily revoking the timber license of the petitioner without giving him his day in court and in preventing him from using and enjoying the timber license issued to him in the regular course of official business" (p. 32, rec.).

In the light of petitioner-appellant's arguments, it is readily seen that the whole controversy hinges on the validity or invalidity of his timber license.

WE fully concur with the findings of the trial court that petitioner-appellant's timber license was signed and released without authority by then Acting Director Estanislao R. Bernal of Forestry, and is therefore void *ab initio*. WE hereby quote such findings:

"In the first place, in general memorandum order No. 46 dated May 30, 1963, the Director of Forestry was authorized to grant a new ordinary timber license only where the area covered thereby was not more than 3,000 hectares; the tract of public forest awarded to the petitioner contained 6,420 hectares (Exhs. 2-A and 2-B Ravago, embodied in Annex B; Exh. B). The petitioner contends that only 1,756 hectares of the said area contain commercial and operable forest; the authority given to the Director of Forestry to grant a new ordinary timber license of not more than 3,000 hectares does not state that the whole area should be commercial and operable forest. It should be taken into consideration that the 1,756 hectares containing commercial and operable forest must

Supreme Court E-Library

have been distributed in the whole area of 6,420 hectares. Besides the license states, 'Please see attached sketch and technical description,' gives an area of 6,420 hectares and does not state what is the area covered of commercial and operable forest (Exh. 1-Ravago). Also Annex B of the petition, which was marked as Exhibit B, states:

> " 'Under Notice No. 2087, a tract of public forest containing 6,420 hectares located in Olongapo, Zambales was declared available for timber utilization and development. Pursuant to this Notice, there were received bid proposals from the following persons:. . ..
>
> " 'Wherefore, confirming the findings of said Committee, the area described in Notice No. 2087 shall be awarded, as it is hereby awarded to Wenceslao Vinzons Tan, subject to the following conditions: . . . .'

"In the second place, at the time it was released to the petitioner, the Acting Director of Forestry had no more authority to grant any license. The license was signed by the Acting Director of Forestry on December 19, 1963, and released to the petitioner on January 6, 1964 (Exh. 1-Ravago). The authority delegated to the Director of Forestry to grant a new ordinary timber license was contained in general memorandum order No. 46 dated May 30, 1963. This was revoked by general memorandum order No. 60, which was promulgated on December 19, 1963. In view thereof, the Director of Forestry had no longer any authority to release the license on January 6, 1964, and said license is therefore void *ab initio*" (pp. 479-480, CFI rec.).

The release of the license on January 6, 1964, gives rise to the impression that it was ante-dated to December 19, 1963 on which date the authority of the Director of Forestry was revoked. But, what is of greatest importance is the date of the release or issuance, and not the date of the signing of the license. While petitioner-appellant's timber license might have been signed on December 19, 1963 it was released only on January 6, 1964. Before its release, no right is acquired by the licensee. As pointed out by the trial court, the Director of Forestry had no longer any authority to release the license on January 6, 1964. Therefore, petitioner-appellant had not acquired any legal right under such void license. This is evident on the face of his petition as supplemented by its annexes which includes Ordinary Timber License No. 20-'64 (NEW). Thus, in the case of World Wide Insurance & Surety Co., Inc. *vs.* Macrohon, et al. (105 Phil. 250, Feb. 28, 1959), this Court held that if from the face of the complaint, as supplemented by

Supreme Court E-Library

its annexes, plaintiff is not the owner, or entitled to the properties it claims to have been levied upon and sold at public auction by the defendants and for which it now seeks indemnity, the said complaint does not give plaintiff any right of action against the defendants. In the same case, this Court further held that, in acting on a motion to dismiss, the court cannot separate the complaint from its annexes where it clearly appears that the claim of the plaintiff to be the owner of the properties in question is predicated on said annexes. Accordingly, petitioner-appellant's petition must be dismissed due to lack of cause of action.

II

Petitioner-appellant, in his petition, alleged that he has exhausted all his administrative remedies to no avail as respondents-appellees have failed, neglected, refused and continue to refuse to allow petitioner-appellant to continue operation in the area covered by his timber license. He further alleged that he has neither recourse by way of appeal, nor any plain, speedy and adequate remedy in the ordinary course of law except thru this special civil action, as the last official act of the respondent-appellee Secretary of Agriculture and Natural Resources in declaring void the timber license referred to above after denying petitioner-appellant's motion for reconsideration, is the last administrative act. Petitioner-appellant relies on the case of Demaisip *vs.* The Court of Appeals, et al. (106 Phil. 237, Sept. 24, 1959), wherein it was held that the failure of the plaintiff to appeal from the adverse decision of the Secretary to the President cannot preclude the plaintiff from taking court action in view of the theory that the Secretary of a department is merely an alter-ego of the President. The presumption is that the action of the Secretary bears the implied sanction of the President unless the same is disapproved by the latter (Villena *vs.* the Secretary of Interior, 67 Phil. 451; p. 7, CFI rec.).

To this We cannot agree. Petitioner-appellant did not appeal the order of the respondent Secretary of Agriculture and Natural Resources to the President of the Philippines, who issued Executive Proclamation No. 238 withdrawing the area from

Supreme Court E-Library

private exploitation, and establishing it as the Olongapo Watershed Forest Reserve. Considering that the President has the power to review on appeal the orders or acts of the respondents-appellees, the failure of the petitioner-appellant to take that appeal is failure on his part to exhaust his administrative remedies. Thus, this Court, in the case of Calo *vs.* Fuertes (5 SCRA 399, 400, June 29, 1962), held that:

"At any rate, the appellant's contention that, as the Secretary of Agriculture and Natural Resources is the alter ego of the President and his acts or decisions are also those of the latter, he need not appeal from the decision or opinion of the former to the latter, and that, such being the case, after he had appealed to the Secretary of Agriculture and Natural Resources from the decision or opinion of the Director of Lands he had exhausted all the administrative remedies, is untenable.

"The withdrawal of the appeal taken to the President of the Philippines is tantamount to not appealing all thereto. Such withdrawal is fatal, because the appeal to the President is the last step he should take in an administrative case."

In 1912, in the case of Lamb *vs.* Phipps (22 Phil. 491-92, July 22, 1912), this Court stressed the doctrine of exhaustion of administrative remedies, thus:

"When a plain, adequate and speedy remedy is afforded by and within the executive department of the government, *the courts wil not interfere until at least that remedy has been exhausted.* (Jao Igco *vs.* Shuster, 10 Phil. Rep. 448 ; Ekiu *vs.* U.S., 142 U.S. 651; U.S *vs.* Sing Tuck, 194 U.S. 161; U.S. *vs.* Ju Toy, 198 U.S. 253; Chiu Yow *vs.* U.S., 28 Sup. Ct. Rep. 201). *The administrative remedies afforded by law must first be exhausted before resort can be had to the courts, especially when the administrative remedies are by law exclusive and final.* Some matters and some questions are by law delegated entirely and absolutely to the discretion of particular branches of the executive department of the government. When the law confers exclusive and final jurisdiction upon the executive department of the government to dispose of particular questions, their judgments or the judgments of that particular department are no more reviewable by the courts than the final judgment or decisions of the courts are subject to be reviewed and modified by them" (italics supplied).

Moreover, this being a special civil action, petitioner-appellant must allege and prove that he has no other speedy and adequate

Supreme Court E-Library

remedy (Diego *vs.* The Court of Appeals, et al., 54 Off. Gaz., No. 4, 956). In the case at bar, petitioner-appellant's speedy and adequate remedy is an appeal to the President of the Philippines.

Accordingly, "it is settled to the point of being elementary that the only question involved in certiorari is jurisdiction, either want of jurisdiction or excess thereof, and abuse of discretion shall warrant the issuance of the extraordinary remedy of certiorari when the same is so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined, or to act at all in contemplation of law" (F.S. Divinagracia Agro-Commercial Inc. *vs.* Court of Appeals, 104 SCRA 191 [April 21, 1981]). The foregoing is on the assumption that there is any irregularity, albeit there is none in the acts or omissions of the respondents-appellees. Certiorari is not a substitute for appeal as held time and again by this Court (People *vs.* Villanueva, 110 SCRA 465), "it being a time honored and well known principle that before seeking judicial redress, a party must first exhaust the administrative remedies available" (Garcia *vs.* Teehankee, 27 SCRA 944, April 18, 1969).

"Moreover, from the decision of the Secretary of Agriculture and Natural Resources complained of, petitioners had a plain, speedy and adequate remedy by appealing therefrom to the Chief Executive. In other words, before filing the present action for certiorari in the court below, they should have availed of this administrative remedy and their failure to do so must be deemed fatal to their case [Calo *vs.* Fuertes, et al., G.R. No. L-16537, June 29, 1962]. To place petitioners' case beyond the pale of this rule, they must show that their case falls -- which it does not -- within the cases where, in accordance with our decisions, the aggrieved party need not exhaust administrative remedies within his reach in the ordinary course of the law [Tapales *vs.* The President and the Board of Regents of the U.P., G.R. No. L-17532, March 30, 1963; Mangubat *vs.* Osmeña, G.R. No. L-12837, April 30, 1959; Baguio *vs.* Hon. Jose Rodriguez, G.R.

Supreme Court E-Library

No. L-11078, May 27, 1959; Pascual *vs.* Provincial Board, G.R. No. L-11959, Oct. 31, 1959; Marinduque Iron Mines, etc. *vs.* Secretary of Public Works, G.R. No. L-15982, May 31, 1963; Alzate *vs.* Aldaba, G.R. No. L-14407, Feb. 29, 1960 and Demaisip *vs.* Court of Appeals, G.R. No. L-13000, Sept. 25, 1959]" (Ganob *vs.* Ramas, 27 SCRA 1178, April 28, 1969).

III

Petitioner-appellant not only failed to exhaust his administrative remedies, but also failed to note that his action is a suit against the State which, under the doctrine of State immunity from suit, cannot prosper unless the State gives its consent to be sued (Kawananakoa *vs.* Polybank, 205 U.S. 349; Siren *vs.* U.S., 7 Wall. 152; Sec. 16, Art. XV, 1973 Constitution).

The respondents-appellees, in revoking the petitioner-appellant's timber license, were acting within the scope of their authority. Petitioner-appellant contends that "this case is not a suit against the State but an application of a sound principle of law whereby administrative decisions or actuations may be reviewed by the courts as a protection afforded the citizens against oppression" (p. 122, CFI rec.). But, piercing the shard of his contention, We find that petitioner-appellant's action is just an attempt to circumvent the rule establishing State exemption from suits. He cannot use that principle of law to profit at the expense and prejudice of the State and its citizens. The promotion of public welfare and the protection of the inhabitants near the public forest are property, rights and interest of the State. Accordingly, "the rule establishing State exemption from suits may not be circumvented by directing the action against the officers of the State instead of against the State itself. In such cases the State's immunity may be validly invoked against the action as long as it can be shown that the suit really affects the property, rights, or interests of the State and not merely those of the officer nominally made party defendant" (SINCO, Phil. Political Law, 10th ed., p. 35; Salgado *vs.* Ramos, 64 Phil. 724; see also Angat River Irrigation System *vs.* Angat River Workers' Union, G.R.

Supreme Court E-Library

No. L-10943-44, Dec. 28, 1957, 102 Phil. 789, 800-802; Mobil Phil. *vs.* Customs Arrastre Service, 18 SCRA 1120, 1121-1125; Bureau of Printing *vs.* Bureau of Printing Employees' Association, 1 SCRA 340, 341, 343).

Both the Secretary of Agricultrue and Natural Resources and the Director of Forestry acted in their capacity as officers of the State, representatives of the sovereign authority discharging governmental powers. A private individual cannot issue a timber license.

Consequently, a favorable judgment for the petitioner-appellant would result in the government losing a substantial part of its timber resources. This being the case, petitioner-appellant's action cannot prosper unless the State gives its consent to be sued.

IV

Granting *arguendo,* that petitioner-appellant's timber license is valid, still respondents-appellees can validly revoke his timber license. As pointed out earlier, paragraph 27 of the rules and regulations included in the ordinary timber license states: *"The terms and conditions of this license are subject to change at the discretion of the Director of Forestry, and that this license may be made to expire at an earlier date, when public interests so require"* (Exh. D, p. 22, CFI rec.). A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.

"A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right; nor is it taxation" (37 C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights (People *vs.* Ong Tin, 54 O.G. 7576). In the case of Pedro *vs.* Provincial Board of Rizal (56 Phil. 123), it was held that:

Supreme Court E-Library

. . .

"A license authorizing the operation and exploitation of a cockpit is not property of which the holder may not be deprived without due process of law, but a mere privilege which may be revoked when public interests so require."

The welfare of the people is the supreme law. Thus, no franchise or right can be availed of to defeat the proper exercise of police power (Surigao Electric Co., Inc. *vs.* Municipality of Surigao, 24 SCRA 898, Aug. 30, 1968). The State has inherent power enabling it to prohibit all things hurtful to comfort, safety, and welfare of society (Edu *vs.* Ericta, 35 SCRA 481, Oct. 24, 1970).

V

As provided in the aforecited provision, timber licenses are subject to the authority of the Director of Forestry. The utilization and disposition of forest resources is directly under the control and supervision of the Director of Forestry. However, "while Section 1831 of the Revised Administrative Code provides that forest products shall be cut, gathered and removed from any forest only upon license from the Director of Forestry, it is no less true that as a subordinate officer, the Director of Forestry is subject to the control of the Department Head or the Secretary of Agriculture and Natural Resources (Sec. 79[c], Rev. Adm. Code), who, therefore, may impose reasonable regulations in the exercise of the powers of the subordinate officer" (Director of Forestry *vs.* Benedicto, 104 SCRA 309, May 5, 1981). The power of control of the Department Head over bureaus and offices includes the power to modify, reverse or set aside acts of subordinate officials (Province of Pangasinan *vs.* Secretary of Public Works and Communications, 30 SCRA 134, Oct. 31, 1969; Montano *vs.* Silvosa, 97 Phil. 143, 144, 147-148). Accordingly, respondent-appellee Secretary of Agriculture and Natural Resources has the authority to revoke, on valid grounds, timber licenses issued by the Director of Forestry. There being supporting evidence, the revocation of petitioner-appellant's timber license was a wise exercise of the power of the respondent-appellee (Secretary of Agriculture and Natural Resources) and therefore, valid.

Supreme Court E-Library

Thus, "this Court had rigorously adhered to the principle of conserving forest resources, as corollary to which the alleged right to them of private individuals or entities was meticulously inquired into and more often than not rejected. We do so again" (Director of Forestry *vs.* Benedicto, supra). WE reiterate Our fidelity to the basic policy of conserving the national patrimony as ordained by the Constitution.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, THE ORDER APPEALED FROM IS HEREBY AFFIRMED *IN TOTO*. COSTS AGAINST PETITIONER-APPELLANT.

SO ORDERED.

Concepcion Jr., Guerrero, Abad Santos and *Escolin, JJ.*, concur.

Aquino, J., in the result.

De Castro, J., on leave.

FIRST DIVISION

[G.R. No. L-26746. October 27, 1983]

JUSTO ALCARAZ, MARIA ALCARAZ, FRANCISCA ALCARAZ, JOAQUIN ALCARAZ, VENANCIO ALCARAZ, and PATROCINIO ALCARAZ, plaintiffs-appellees, *vs.* RICARDO RACIMO and CLEOTILDE RACIMO, defendants-appellants.

SYLLABUS

1. REMEDIAL LAW; APPEAL; FACTUAL FINDINGS OF LOWER COURTS BINDING ON SUPREME COURT.— The first assignment of error questions the factual findings of the trial court. In their notice of appeal, the defendants made it clear that they were appealing to the Supreme Court, "the questions involved being purely of law." When the appellants bypassed the then Court of Appeals and went directly to this Court, they impliedly accepted the findings of fact of the trial court. Our examination of the records for any indication of