



Republic of the Philippines  
**Supreme Court**  
 Manila

CERTIFIED TRUE COPY  
*Welfredo V. Lapitan*  
 WELFREDO V. LAPITAN  
 Division Clerk of Court  
 Third Division  
 MAR 10 2016

**THIRD DIVISION**

**REPUBLIC OF THE  
 PHILIPPINES,**

Petitioner,

- versus -

**THE COURT OF APPEALS,  
 SPOUSES RODOLFO SY AND  
 BELEN SY, LOLITA SY, and  
 SPOUSES TEODORICO AND  
 LEAH ADARNA,**

Respondents.

**G.R. No. 210233**

Present:

VELASCO, JR., J.,  
*Chairperson,*  
 LEONARDO-DE CASTRO,\*  
 PERALTA,  
 PEREZ, and  
 REYES, JJ.

Promulgated:

**February 15, 2016**

x-----*Welfredo V. Lapitan*-----x

**DECISION**

**REYES, J.:**

Before the Court is a petition for *certiorari*<sup>1</sup> under Rule 65 of the Rules of Court assailing the following issuances of the Court of Appeals (CA) in CA-G.R. CV No. 02458, to wit: (1) Resolution<sup>2</sup> dated July 5, 2012, which dismissed the Republic of the Philippines' (Republic) appeal for failure to file brief; (2) Resolution<sup>3</sup> dated August 20, 2013, declaring its July 5, 2012 Resolution final and executory; and (3) the Entry of Judgment<sup>4</sup> dated August 21, 2012.

\* Designated Additional Member per Raffle dated February 18, 2015 *vice* Associate Justice Francis H. Jardeleza.

<sup>1</sup> *Rollo*, pp. 3-17.

<sup>2</sup> Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles concurring; *id.* at 31-32.

<sup>3</sup> *Id.* at 36-37.

<sup>4</sup> *Id.* at 35.

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### Facts

On March 29, 1988, the Republic, through the Office of the Solicitor General (OSG), instituted an action for the cancellation of miscellaneous sales patents and the corresponding certificates of title issued to the spouses Rodolfo Sy and Belen Sy, and Lolita Sy (respondents), and the reversion of the lands covered by them to the public domain on the ground of fraud and misrepresentation.<sup>5</sup>

The Regional Trial Court (RTC) of Cebu City, Branch 21, rendered judgment in favor of the respondents on October 10, 2007.<sup>6</sup> Its decision provides for the following dispositive portion:

**WHEREFORE**, all considered, the Court finds preponderance of evidence decisively in favor of the [respondents], for which reason the regularity and validity of the patents and corresponding titles in question are upheld and the complaint is therefore **DISMISSED**, without pronouncement as to costs.

**SO ORDERED.**<sup>7</sup>

The RTC decision was received on November 14, 2007 by Department of Environment and Natural Resources (DENR) Region VII-Legal Division, which was the OSG's deputized special counsel, while the OSG received its copy on April 1, 2008. The Republic, through the deputized legal counsel, subsequently filed a notice of appeal on November 23, 2007, which was given due course by the RTC in its order dated December 4, 2007.<sup>8</sup>

A notice to file brief was then sent by the CA to Atty. Ferdinand S. Alberca (Atty. Alberca), Special Counsel of the OSG, Legal Division, DENR, Region VII, Banilad, Mandaue City, and was received on December 1, 2009.<sup>9</sup> It appears, however, that no brief was filed, hence, the CA, in its Resolution dated May 6, 2011, dismissed the Republic's appeal "for failure x x x to file the required brief within the time provided by the Rules of Court."<sup>10</sup> A copy of the said resolution was received by the DENR Region VII-Legal Division on May 17, 2011.<sup>11</sup> On May 19, 2011, a copy of the resolution was transmitted by the DENR Region VII-Legal Division to the OSG, who filed a motion for reconsideration on June 1, 2011.<sup>12</sup>

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<sup>5</sup> Id. at 5-6, 19.

<sup>6</sup> Rendered by Presiding Judge Eric F. Menchavez; id. at 19-26.

<sup>7</sup> Id. at 26.

<sup>8</sup> Id. at 6.

<sup>9</sup> Id. at 27.

<sup>10</sup> Id.

<sup>11</sup> Id. at 7.

<sup>12</sup> Id.

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In its Resolution<sup>13</sup> dated September 14, 2011, the CA granted the OSG's motion and reinstated the appeal, to wit:

WHEREFORE, premises considered, the [Republic] is hereby **ORDERED** to file its Appellant's Brief within forty-five (45) days from notice to which the [respondents] may file their Appellee's Brief within forty-five (45) days from receipt of the brief of the [Republic]. The [Republic] may file its Appellant's Reply Brief within twenty (20) days from receipt of the Appellee's Brief.

**SO ORDERED.**<sup>14</sup>

The DENR Region VII-Legal Division was, again, furnished a copy of the resolution but the OSG was not.<sup>15</sup>

Subsequently, the CA issued its **Resolution dated July 5, 2012**, dismissing the appeal on account of the Republic's failure to file brief. There being no reconsideration interposed by the Republic, the dismissal of the appeal became final and executory and entry of judgment was made on **August 21, 2012**. A year after, the CA issued **Resolution dated August 20, 2013**, declaring its Resolution dated July 5, 2012 as having attained finality on August 21, 2012.

The OSG was not furnished with a copy of the CA Resolutions dated September 14, 2011, July 5, 2012 and August 20, 2013, and the Entry of Judgment dated August 21, 2012. It was only when the Regional Executive Director of the DENR Region VII sent its 1<sup>st</sup> Indorsement dated September 27, 2013 that the OSG was apprised of the subsequent incidents.<sup>16</sup>

In this petition, the OSG maintains that –

THE [CA] GRAVELY ABUSED ITS DISCRETION IN DISMISSING THE APPEAL OF THE REPUBLIC ALTHOUGH THE OSG WAS NOT NOTIFIED OF THE RESOLUTION GRANTING THE MOTION TO REINSTATE THE APPEAL AND GIVING THE REPUBLIC A NEW PERIOD OF FORTY-FIVE DAYS TO FILE ITS BRIEF.<sup>17</sup>

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<sup>13</sup> Id. at 27-28.

<sup>14</sup> Id. at 28.

<sup>15</sup> Id. at 8.

<sup>16</sup> Id. at 8-9.

<sup>17</sup> Id. at 9.

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The OSG argues that, being the Republic's statutory counsel, it should have been furnished with the CA's resolution reinstating its appeal, not the DENR Region VII-Legal Division. Consequently, there was a violation of the Republic's right to due process and the CA committed grave abuse of discretion in declaring the reglementary period within which to file its appellant's brief had lapsed.<sup>18</sup>

The respondents' counsel, on the other hand, sought excuse from filing a comment due to the refusal of the heirs of Leah Adarna to cooperate with him.<sup>19</sup>

### Ruling of the Court

The petition must be granted.

It is undisputed that it was the OSG who initiated Civil Case No. CEB-6785 for cancellation of miscellaneous sales patents and the corresponding certificates of title issued to the respondents.<sup>20</sup> As such, it is the counsel of record and remains to be so until the culmination of the case. More importantly, Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987, specifically empowers the OSG to “[r]epresent the Government in the Supreme Court and the [CA] in all criminal proceedings x x x and all other courts or tribunals **in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.**” Section 35(5), meanwhile, provides that the OSG shall “[r]epresent the Government in all land registration and related proceedings.” The CA was, in fact, well aware of this. In its Resolution dated September 14, 2011 reinstating the Republic's appeal, the CA recognized the role of the OSG as the principal counsel in the appellate proceedings, viz:

A closer scrutiny of the records of the case reveals that the Notice to File Brief was sent to and received by [Atty. Alberca], Special Counsel of the OSG, Legal Division, DENR, Region VII, Banilad, Mandaue City on December 01, 2009 as evidenced by the Registry Return Receipt.

Mindful of the provision in Section 35 (1), Chapter 12, Title III of the Administrative Code of 1987 which provides for the powers and functions of the [OSG] which is the official counsel for government agencies in cases before this Court, to wit:

x x x x<sup>21</sup>

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<sup>18</sup> Id. at 13.

<sup>19</sup> Id. at 45-47.

<sup>20</sup> Id. at 5-6, 19.

<sup>21</sup> Id. at 27-28.



It is therefore rather peculiar that the CA failed to furnish the OSG with a copy of its Resolution dated September 14, 2011, and even continued to neglect to furnish the OSG with copies of all its subsequent resolutions. Instead, it kept sending them to Atty. Alberca of the DENR Region VII- Legal Division. While the OSG may have deputized the DENR Region VII-Legal Division to assist it in the performance of its functions, it has not totally relinquished its position as counsel for the Republic. The deputized counsel is no more than the “surrogate” of the Solicitor General in any particular proceeding and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions. **Hence, any court order and decision sent to the deputy, acting as an agent of the Solicitor General, is not binding until it is actually received by the Solicitor General.**<sup>22</sup>

It must be stressed that “[t]he essence of due process is the opportunity to be heard, logically preconditioned **on prior notice**, before judgment is rendered.”<sup>23</sup> “Notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and together with the tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law.”<sup>24</sup> “Even the Republic as a litigant is entitled to this constitutional right, in the same manner and to the same extent that this right is guaranteed to private litigants.”<sup>25</sup>

Consequently, it is clear that the issuance of CA Resolutions dated July 5, 2012 and August 20, 2013, and the Entry of Judgment dated August 21, 2012 was tainted with grave abuse of discretion. In *Republic of the Philippines v. Heirs of Evaristo Tiotioen*,<sup>26</sup> the Court even emphatically ruled that “the belated filing of an appeal by the State, or even its failure to file an opposition, in a land registration case because of the mistake or error on the part of its officials or agents does not deprive the government of its right to appeal from a judgment of the court.”<sup>27</sup>

**WHEREFORE**, the petition is **GRANTED**. The Resolutions dated July 5, 2012 and August 20, 2013 of the Court of Appeals in CA-G.R. CV No. 02458 are hereby **ANNULLED** and **SET ASIDE**, and the Republic of the Philippines’ appeal is **REINSTATED**. Moreover, the Entry of Judgment dated August 21, 2012 is **ORDERED** stricken off from its Book of Entries of Judgment.

<sup>22</sup> *The Director of Lands v. Judge Medina*, 311 Phil. 357, 369 (1995).

<sup>23</sup> *Republic v. Caguioa*, G.R. No. 174385, February 20, 2013, 691 SCRA 306, 319.

<sup>24</sup> *San Andres v. CA*, G.R. No. 78341, August 3, 1992, 212 SCRA 1, 6.

<sup>25</sup> *Republic v. Caguioa*, supra note 23.

<sup>26</sup> 589 Phil. 145 (2008).

<sup>27</sup> *Id.* at 153.

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Let this case be remanded to the Court of Appeals for continuation of the appellate proceedings.

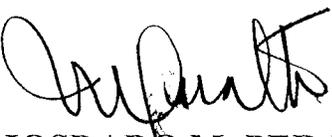
**SO ORDERED.**

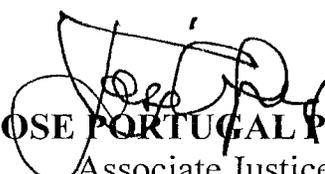
  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**ATTESTATION**

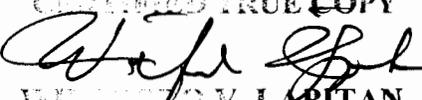
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
MARIA LOURDES P. A. SERENO  
Chief Justice

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WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

MAR 10 2016

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