Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CARMEN T. GAHOL, substituted by her heirs, RICARDO T. GAHOL, MARIA ESTER GAHOL PEREZ, JOSE MARI T. GAHOL, LUISITO T. GAHOL and ALCREJ CORPORATION, Petitioners,	**G.R. No. 187144** **Present:** VELASCO, JR., *J.*, *Chairperson,* PERALTA, VILLARAMA, JR., REYES, and JARDELEZA, *JJ.*
- versus –	**Promulgated:**
ESPERANZA COBARRUBIAS, Respondent.	September 17, 2014

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DECISION

PERALTA, *J.*:

Before us is a petition for review on *certiorari* which seeks to annul the Decision[1] dated October 6, 2008 and the Resolution[2] dated March 4, 2009 of the Court of Appeals in CA-G.R. SP No. 96144.

Carmen M. Tionko-Gahol (*Carmen*), petitioners' predecessor-in-interest, was the registered owner of a parcel of residential lot denominated as Lot 27-B-1 of LRC Psd-36727, situated in Residential Section "H," Baguio City, with an area of 243 sq. meters, covered by TCT No. T-24457,[3] The lot has a two-storey residential house. On May 2, 1997, Carmen filed a

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1 Penned by Associate Justice Rosmari D. Carandang, with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 89-100.

2 *Id.* at 119-120.

3 *Id.* at 36-37.

Townsite Sales Application (*TSA*)[4] with the Department of Environment and Natural Resources (*DENR*), Baguio City, for a 101 sq. meter land adjacent to her titled property with the purpose of using the land solely for additional and protection purposes.

On October 2, 1997, respondent Esperanza Cobarrubias filed a protest[5] against Carmen's TSA claiming that the late Esperanza Cascolan, respondent's mother, and her heirs are the actual occupants of the subject lot since 1970 and continuously having built thereon a residential building with a store and a barbecue stand; that they had also planted on the lot several fruit-bearing trees, a narra tree and plants; that the subject lot is likewise used as an access or as a road right of way being the only ingress to and egress from the properties of Apolonia Cascolan and Esperanza Cascolan; that Esperanza Cascolan was issued a tax declaration over the existing improvements on the said lot and has been religiously paying real estate taxes thereon; and that the earlier TSA filed by Esperanza Cascolan on a land which included the subject lot was not accepted by the Bureau of Lands on the ground that the said property was within the Health Center Reservation. Respondent also filed her own TSA over a 215 sq. meter-lot which included the subject lot.[6]

On March 21, 2000, the Regional Executive Director of the Department of Environment and Natural Resources-Cordillera Administrative Region (*DENR-CAR*) issued an Order[7] as follows:

> IN THE LIGHT OF THE FOREGOING, the instant protest is hereby DENIED. The Townsite Sales Application in the name of Carmen T. Gahol over a lot located at Res. Sec. "H", Teodora Alonzo Street, Baguio City be given further due course. Further, the subject lot shall be utilized strictly, solely, exclusively for gardening, beautification and driveway purposes only.[8]

The DENR-CAR held that to sustain respondent's argument that she is entitled to a direct award of the subject lot because of her and her predecessor's claims of long years of possession and occupation of the same was misplaced. It ruled that all lands within the limits of Baguio City are declared as Townsite Reservation disposable under *Chapter IX, Section 58,* in relation to *Section 79 of Commonwealth Act No. 141* (CA 141), as amended, which provides that such lands are sold by way of public auction to the highest bidder, and not as an agricultural public land disposable under Chapter VII, Section 44 of the Public Land Act or under the so called Free

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4 *Id.*.at 38.
5 *Id* at 39-40.
6 CA *rollo*, pp. 119-120.
7 *Rollo*, pp. 41-43; Per Atty. Roquesa E. de Castro.
8 *Id*. at 43.

Patent Application and/or confirmation of an imperfect complete title. The DENR-CAR further opined that it could not adjudicate the said lot to respondent based on Administrative Order (*A.O.*) No. 504 Clearing Committee *Resolution No. 93-1*, particularly *SITUATION B* which states:

> SITUATION B. Sandwiched between a road and a titled property
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> Policy: After providing for the required road-of-way (r.o.w.), minimum area must not be less than 200 sq.m.; and its minimum depth, measured perpendicularly from edge of right of way to titled property lot-line should not be less than 15 meters, otherwise, the subject area is reserved for greenbelt purposes.[9]

The DENR-CAR also found that Carmen's handwritten request for an increase from 101 sq. meters as appearing in the sketch plan attached on her TSA to 161 sq. meters cannot be given due course at this stage of the proceedings. but the matter can be tackled during the execution of the final survey to rectify any error.

Respondent filed a motion for reconsideration. which the DENR-CAR denied in its Order[10] dated October 9, 2000. Respondent appealed the Order to the DENR proper.

In an Order[11] dated May 21, 2004, the DENR dismissed the appeal. In so ruling, the DENR reiterated that the subject lot is part of the Baguio Townsite Reservation, disposable in accordance with *CA 141* which does not give preferential right to actual occupants of lots within townsite reservations. Further, the DENR said that respondent's actual occupation of the subject lot will not bar Carmen's TSA for the purpose of conducting a public bidding on the said lot. The DENR then ruled that respondent's TSA cannot be given due course based on A.O. No. 504 Committee *Resolutions 93-1* and *93-2*, and said:

> x x x Resolution No. 93-2 requires, as a general policy, that townsite sales applications for lots within the Baguio Townsite Reservation should have a minimum area of 200 square meters. Additionally, Resolution No. 93-1 of the Committee requires, as a general policy, that applications for lots sandwiched between a road and a titled property, should have a minimum area of 200 square meters and a depth of not less than 15 meters. Otherwise, the applications shall be returned unacted and unrecorded to the respective applicants, and the lots reserved for greenbelt purposes. x x x[12]

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9 *Id*. at 42.
10 *Id*. at 44.
11 *Id*. at 47-50; Docketed as DENR Case No. 5300; Per Secretary Elisea G.. Gozun.
12 *Id*. at 48.

The DENR found that respondent's application did not meet the area requirements under Resolution Nos. 93-1 and 93-2; and that respondent intended to use the subject lot for residential/commercial purposes when the above-cited Resolutions require that the same could be used for greenbelt purposes only. Thus, the DENR held that it was but reasonable to give due course to Carmen's TSA because the subject lot is narrow, fronts Carmen's property, and is to be used only for the purposes stated in the TSA.

Respondent's motion for reconsideration was denied in an Order[13] dated July 15, 2005. Dissatisfied, respondent filed an appeal to the Office of the President (*OP*).

In an Order[14] dated May 16, 2006, the OP dismissed the appeal, and reiterated the disquisitions made by the DENR-CAR and the DENR. It also denied respondent's motion for reconsideration in a Resolution[15] dated August 17, 2006.

Respondent filed with the CA a petition for review under Rule 43 seeking to set aside the OP decision. Carmen filed her Comment thereto and respondent her Reply.

On October 6, 2008, the CA issued its assailed decision which reversed the OP decision, the dispositive portion of which reads:

> **WHEREFORE**, the petition is **GRANTED**. The 16 May 2006 Decision of the Office of the President is hereby **SET ASIDE** and a new one is entered giving **DUE COURSE** to petitioner's PROTEST by declaring private respondent Carmen Gahol **DISQUALIFIED** from applying for a Townsite Sales Application over the subject property. [16]

In so ruling, the CA found that Carmen was a titled owner of a piece of land; thus, in accomplishing and filing her TSA form which carried the undertaking that she was not a lot owner, there was already a basis to have such application rejected. Moreover, the area applied for by Carmen was way below the minimum required area of 200 sq. meters set forth in Resolution Nos. 93-1 and 93-2 issued by A.O. 504 Clearing Committee of the DENR-CAR; and that she also stated in her TSA that the lot she was applying for "contains no improvements or indication of occupation or settlement except rip-rapping, plants with economic values" when the truth was that structures had been put by respondent's mother as early as 1974.

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13 *Id*. at 51-53; Per Secretary Michael T. Defensor.

14 *Id*. at 54-59; Docketed as O.P. Case No. 05-H-278; Per Deputy Executive Secretary for Legal Affairs Manuel B. Gaite.

15 *Id*. at 60-61.

16 *Id*. at 100.

Despite all these, the DENR-CAR, the DENR, and the OP did not discuss these matters of Carmen's disqualification and/or lack of certain qualifications. The CA found it surprising that the restrictions laid down in Resolution Nos. 93-1 and 93-2 of AO 504 Clearing Committee of the DENR-CAR were applied against respondent but not to Carmen when both were essentially applying for the same lot. The CA also found that contrary to the DENR's appreciation, the subject lot applied for was not fronting Carmen's property but located at its side.

The CA, however, ruled that it was precluded from resolving respondent's own TSA as the administrative agencies only resolved the denial of respondent's protest and the adjunct granting or giving due course to Carmen's TSA; and that the discussions of respondent's alleged disentitlement was merely for that purpose and no other.

In a Manifestation[17] dated October 29, 2008 and motion for reconsideration, notice was given of Carmen's death in 2007, and that she was being substituted by her children and the family-owned corporation, ALCREJ Corporation, now the registered owner of Carmen's property in Baguio, as petitioners. The motion for reconsideration was denied by the CA in a Resolution dated January 14, 2009.

Dissatisfied with the decision, petitioners filed the instant petition for review on the following issues, thus:

> A. THE DECISION OF THE HON. COURT OF APPEALS IS CONTRARY TO LAW IN THAT
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> > (1) it declared "Carmen Gahol DISQUALIFIED from applying for a Townsite Sales Application over the subject property, despite her qualification under the Public Land Act (C.A. 141) and Resolution Nos. 93-1 and 93-2 of A.O 504 Committee of the DENR-CAR, as correctly found and applied by the administrative agencies concerned, the DENR and the Office of the President of the Philippines;
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> > (2) it misapplied the laws or erred in not applying the applicable laws.
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> B. THE HON. COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVELY ABUSED ITS DISCRETION WHEN IT REVERSED, IF NOT DISREGARDED, WITHOUT ANY JUSTIFICATION THE FINDINGS OF FACT AND CONCLUSION OF LAW OF THE ADMINISTRATIVE AGENCIES CONCERNED IN THE CASE, IN CLEAR VIOLATION OF ESTABLISHED JURISPRUDENCE THAT:

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17 CA *rollo*, pp. 513-530.

> "courts will not interfere in matters which are addressed to the sound discretion of government agencies with the regulation of activities coming under their special technical knowledge and training of such agencies," since, "By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they were in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts."
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> C. THE HON. COURT OF APPEALS GRAVELY ERRED WHEN IT DID NOT RULE ON THE PROCEDURAL MATTERS RAISED BY PETITIONERS THAT THE PETITION FOR REVIEW FILED WITH IT BY RESPONDENT ESPERANZA COBARRUBIAS SHOULD NOT HAVE BEEN GIVEN DUE COURSE BUT DISMISSED OUTRIGHT.[18]

Petitioners raise both procedural and substantive issues.

Anent the procedural issue, petitioners point out that personal service to her counsel was the most practical mode of service as both counsels of respondent and petitioners reside and have their law offices in Baguio City, instead of mailing the copy for petitioner's counsel in Malacanang Post Office, Manila on October 4, 2006. Thus, the CA should not have given due course to the petition for violating Section 11, Rule 13 of the Rules of Court.

We are not persuaded.

Section 11, Rule 13 of the Rules of Court states:

> SEC. 11. *Priorities in modes of service and filing.* — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

Personal service of pleadings is the general rule, and resort to other modes of service is the exception, so that where personal service is practicable, in the light of the circumstances of time, place and person, personal service is mandatory.[19] Only when personal service is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. Based on this explanation will the court then determine whether personal service is indeed not practicable so that

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[18] *Rollo*, pp. 15-16. (Citations omitted)

[19] *Maceda v. Vda. de Macatangay*, 516 Phil. 755, 764 (2006); *Solar Team Entertainment, Inc. v. Ricafort*, 355 Phil. 404, 413-414 (1998).

resort to other modes is made.[20] At this stage, the judge exercises proper discretion but only upon the explanation given. In adjudging the plausibility of an explanation, the court shall consider not only the circumstances, the time and the place but also the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading involved.[21]

Here, both counsels for the parties have their law offices in Baguio City, thus, personal service to petitioner's counsel would have been more practicable than mailing the copy of the petition for petitioner's counsel in Manila. It appears, however, that the petition for review was filed in the CA, Manila by personal service, and the copies of the petition for the OP and DENR whose offices are located in Manila and Quezon City, respectively, were also personally served to them. The copy for petitioner's counsel was thus sent by registered mail from Manila on the same day the copies for the other agencies were served personally, thus a written explanation stating that the pleading was sent by registered mail due to time and distance constraints, as well as lack of office personnel. Based on such explanation, the CA can exercise its discretion on its plausibility which is ought to be guided by the principle that substantial justice far outweighs rules of procedure.[22] Thus, the CA accepted the petition taking into consideration the *prima facie* merit of the case sought to be expunged for violation of the rule.

As to the merits of the case, we find no error committed by the CA in granting the petition.

Petitioner Gahol applied for TSA over the 101 sq. meter lot located at Residential Section "H", Baguio City. One of the requirements for the issuance of a TSA form is a certificate of no homelot, but Carmen had not submitted any and was issued a TSA.

Also, the TSA to which Carmen affixed her signature, stated among others that:

> "I am not the owner of any lot in Baguio City, except the land applied for."
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> I have been upon and examined the land applied for and it contains no improvement or indication of occupation or settlement, except as follows: rip-rapping, plants with economic values and to the best of my

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[20] See *Solar Team Entertainment, Inc. v. Ricafort, supra* note 19, at 414; *Domingo v. Court of Appeals*, G.R. No. 169122, February 2, 2010, 611 SCRA 353, 364.

[21] *Pagadora v. Ilao*, G.R. No. 165769, December 12, 2011, 662 SCRA 14, 28, citing *Solar Team Entertainment, Inc. v. Ricafort, supra* note 19, at 414; *Domingo v. Court of Appeals, supra*.

[22] *Pagadora v. Ilao, supra* 21, at 28-29.

> knowledge and belief it is neither timber nor mineral land and contains no valuable deposit of guano, coal or salt.
>
> I understand that any applicant who willfully and knowingly submit false statements or executes affidavit in connection with his application shall be deemed guilty of perjury and punished accordingly, and that any person who, not being qualified to apply for public land, files an application or induces or permits another to file in his behalf shall be punished by a fine of not more than five thousand pesos and by imprisonment for not more than five years, or both, and in addition thereto, his application shall be rejected or canceled and all amounts paid on account thereof forfeited to the Government, and he shall not be entitled to apply for any public land in the Philippines.

When Carmen filed her TSA, she is the registered owner of a lot in Baguio. In fact, she is the titled owner of the lot adjacent to the subject lot. Therefore, there is no truth to the statement in the TSA that she does not own any lot in Baguio. We find apropos what the CA said, thus:

> In the instant petition, Cobarrubias persistently questioned the qualifications of Gahol to apply for TSA. And among the requisites of Administrative Order 504 Clearing Committee of the DENR-CAR is the Certificate of No-Homelot from the City Assessor's Office. This is found listed in the very mimeographed list of requirements distributed by DENR-CAR to prospective applicants. But this is more evident in the TSA form itself which requires every applicant to undertake or guarantee that he or she is "not the owner of any lot in Baguio City except the land applied for." Now, Gahol did not only fail to file such certificate, she in fact was a titled owner of a piece of land which is adjacent to the very subject property she is applying for in her TSA. And this fact was not unknown to DENR-CAR for it was reported by its own land investigator, a certain Mr. Victor Fernandez, that:
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> x x x Ocular inspection appears that lot is adjacent to her titled property. x x x[23]

Moreover, Carmen failed to state in her TSA the fact that there were signs of improvement or indication of occupation on the subject lot. The minutes[24] dated November 18, 1999 on the ocular inspection of the subject lot established such improvement and occupation, to wit:

> We arrived at the place at exactly 9:15 in the morning in the presence of the applicant-protestee Carmen Gahol and Atty. Maita Andres and the applicant-protestant Esperanza Cascolan. We observed a big narra tree standing at the north-east edge of the subject lot. Likewise, we could see two small structures where one serves also as a residence, which the protestee claimed to have been introduced by the protestant and the

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23 *Rollo*, p. 96.

24 CA *rollo*, p. 125.

> predecessor-in-interest. At the middle of the subject lot is an alley which traverse the subject lot measuring one and one half meters more or less.
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> At the edge of the subject lot is a cemented portion being used by the protestant Esperanza Cascolan as their parking space. There are also plants with economic value such as coffee, avocado tree and a guava tree and alnus tree are not being claimed and are not being claimed by the protestee, Mrs. Carmen Gahol.[25]

Carmen had also filed complaints for violations of PD 1096, National Building Code of the Philippines, and PD 772, anti-squatting and other similar acts, against Camilo Coscolan and Rolando Clemente with the end in view of evicting them from the subject lot which are indications of occupation of the subject lot.

Thus, pursuant to paragraph 10 of Carmen's TSA, her application should have been rejected at the first instance or canceled. However, as correctly observed by the CA:

> While Cobarrubias pointed all this out at the outset neither the DENR-CAR, the DENR, or the OP touched and discussed the matter of Gahol's disqualification and/or lack of certain qualifications. They simply denied the protest of the former and gave due course to the latter's TSA without any explanation as to how Gahol was able to hurdle these disqualifications and/or satisfy her lack of certain qualifications. x x x[26]

The DENR-CAR, DENR and OP denied respondent's TSA because of AO 504 Clearing Committee Resolution No. 93-1 and which we quote again for ready reference, to wit:

> Situation B. Sandwiched between a road and a titled property
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> Policy: After providing for the required road of way (r.o.w.), minimum area must not be less than 200 sq. m.; and its minimum depth, measured perpendicularly from edge of r.o.w. to titled property lot-line should not be less than 15 meters, otherwise, the subject area is reserved for greenbelt purposes.

The last paragraph of the same resolution reads:

> RESOLVED FINALLY, that any or all land applications, Town Site or Miscellaneous Sales, that fail to satisfy the prescribed requirements, hereinabove specified be returned unacted/unrecorded to the applicant/s concerned and such land shall be appropriated and reserved for

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25 *Id*.

26 *Rollo*, p. 98.

greenbelt purposes and/or conservation of both natural and boundaries and legal easements.

The DENR-CAR and DENR denied respondent's TSA based on said Resolution No. 93-1. The DENR concluded that respondent's application did not meet the area requirements and failed to show how it arrived at such conclusion. On the other hand, the area applied for by Carmen was only 101 sq. meters which was less than the minimum area required of the resolution, which was 200 sq. meters. She had also stated untruthful statements in her TSA. Thus, her TSA should have been rejected in the first place instead of giving due course to it.

WHEREFORE, the petition for review is **DENIED**. The Decision dated October 6, 2008 and the Resolution dated March 4, 2009 of the Court of Appeals in CA-G.R. SP No. 96144 are hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
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, Third Division

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