



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**LOURDES M. PADAYHAG (or  
 HEIRS OF LOURDES M.  
 PADAYHAG),**

Petitioner,

**G.R. No. 202872**

- versus -

**DIRECTOR OF LANDS and  
 SOUTHERN MINDANAO  
 COLLEGES, represented by its  
 President,**

Respondents.

X-----X

**SOUTHERN MINDANAO  
 COLLEGES (SMC), represented  
 by its President DR. ROMEO C.  
 HOFILEÑA, JR.,**

Petitioner,

- versus -

**THE HON. COURT OF  
 APPEALS, TWENTY-THIRD  
 DIVISION, Mindanao Station,  
 Cagayan de Oro City, and HEIRS  
 OF LOURDES M. PADAYHAG,**

Respondents.

**G.R. No. 206062**

Present:

**CARPIO, J., Chairperson,  
 PERALTA,  
 PERLAS-BERNABE,  
 CAGUIOA, and  
 REYES, JR.,\* JJ.**

Promulgated:

**22 NOV 2017**

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X-----X

**DECISION**

**CAGUIOA, J.:**

G.R. No. 202872 is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court while G.R. No. 206062 is a Petition<sup>2</sup> for *Certiorari*

\* On leave.

<sup>1</sup> *Rollo* (G.R. No. 202872), pp. 10-40.

<sup>2</sup> *Rollo* (G.R. No. 206062), pp. 5-26.

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under Rule 65. Both Petitions assail the Decision<sup>3</sup> of the Court of Appeals<sup>4</sup> (CA) dated July 31, 2012 in CA-G.R. CV No. 01642<sup>5</sup>.

In G.R. No. 202872 (Padayhag Petition), petitioner Lourdes M. Padayhag (or heirs of Lourdes M. Padayhag)<sup>6</sup> did not file a motion for reconsideration of the CA Decision and went directly to the Court. In G.R. No. 206062 (SMC Petition), petitioner Southern Mindanao Colleges (SMC) also assails the CA Resolution<sup>7</sup> dated January 10, 2013 denying the motion for reconsideration filed by SMC. The CA Decision dismissed SMC's appeal of the Decision<sup>8</sup> dated May 30, 2006 of the Regional Trial Court, 9<sup>th</sup> Judicial Region, Multi-Sala Station, Pagadian City (RTC) in Cadastral Case No. N-17 and ruled that the RTC Decision is void *ab initio* for having been rendered without jurisdiction.<sup>9</sup>

### ***Facts and Antecedent Proceedings***

The CA Decision states the following facts as culled from the records:

This case involves six (6) parcels of land identified as Lot Nos. 2883, 2888, 2921, 2922, 2102, and 2104. These lots are claimed by two (2) parties, namely: the Heirs of Lourdes Padayhag, and Southern Mindanao Colleges (SMC).

The first two lots (Lot Nos. 2102 and 2104 [Santa Lucia Lots]) are located at Jamisola Street, Santa Lucia District, Pagadian City. The other four lots (Lot Nos. 2883, 2888, 2921, and 2922 [Lumbia Lots]) are located at Lumbia District, Pagadian City.

The Director of Lands, acting for and in behalf of the Government, instituted with the then Court of First Instance of Zamboanga del Sur (now RTC of Pagadian City) Cadastral Case No. N-17, GLRO CAD Rec. No. N-468 pursuant to the government's initiative to place all lands under the Cadastral System.

On January 4, 1967, Lourdes Padayhag filed her Answer in Cadastral Case No. N-17.

On January 18, 1967, SMC filed its Answer in Cadastral Case No. N-17.

The Heirs of Lourdes Padayhag [Padayhags] claim that the Spouses Federico and Lourdes Padayhag are the original owners of [the Lumbia] Lots [(Lot Nos. 2883, 2888, 2921, and 2922)]. These lots are part of the 5-hectare landholding of their father, Federico Padayhag. On

<sup>3</sup> *Rollo* (G.R. No. 202872), pp. 42-49; *rollo* (G.R. No. 206062), pp. 28-35. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Maria Elisa Sempio Diy and Jhosep Y. Lopez concurring.

<sup>4</sup> Twenty Third Division.

<sup>5</sup> Also referred to as CA-G.R. No. 01642-MIN in other parts of the *rollo*.

<sup>6</sup> Hereinafter referred to as Padayhags.

<sup>7</sup> *Rollo* (G.R. No. 206062), pp. 37-39. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Jhosep Y. Lopez and Henri Jean Paul B. Inting concurring.

<sup>8</sup> *Rollo* (G.R. No. 202872), pp. 52-65. Penned by Executive Judge Harun Bagis Ismael.

<sup>9</sup> *Id.* at 48, 49; *rollo* (G.R. No. 206062), pp. 34, 35.

August 31, 1948, Spouses Federico and Lourdes Padayhag and Southern Mindanao Institute ([SMI,] now Southern Mindanao Colleges) entered into an Agreement Referring to Real Property conveying the possession of these lots to SMI in consideration of 30 shares of stock of SMI. When x x x [SMC] succeeded x x x SMI, x x x Lourdes Padayhag wanted to return the shares of stock issued to them so that the Padayhags could get back the land subject of the contract.

As for [the Sta. Lucia Lots (Lot Nos. 2102 and 2104)], the Padayhags [claim] that since 1927 they occupied 300 square meters of Lot [No.] 2102 and 412 square meters of Lot [No.] 2104. However, when a cadastral survey was made on [L]ot [N]os. 2102 and 2104, they were not able to object as they were not informed of such survey. They protested with the Bureau of Lands asserting that there was error in the survey of the boundaries.

On the other hand, x x x SMC argued that it bought [L]ot [N]o. 2102 from Mangacop Ampato evidenced by a Deed of Conveyance of Real Estate executed on January 22, 1960; and [L]ot [N]o. 2104 from Adriano Arang evidenced by a Deed of Absolute Sale executed on January 31, 1964. Likewise, the said conveyance was reflected in the Status Book of the Bureau of Lands.

On May 30, 2006, the RTC, sitting as Land Registration Court, rendered a Decision in favor of SMC, the dispositive portion of which reads as follows:

“WHEREFORE, this court sitting as cadastral court, adjudicates, as it hereby adjudicate and award Lot [N]os. 2102 [and] 2104, situated at corners Jamisola and Aquino Streets, Santa Lucia District, Pagadian City, and Lot [N]os. 2883, 2888, 2921 and 2922, all situated at Pagadian City, together with all the improvements thereon, to [c]laimant Southern Mindanao Colleges, thru its President, with principal office at Pagadian City.

SO ORDERED.”<sup>10</sup>

On July 19, 2006, the Padayhags filed a motion for reconsideration which was granted in a Resolution<sup>11</sup> dated December 27, 2007, the dispositive portion of which is quoted [below]:<sup>12</sup>

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered granting the Motion for Reconsideration of the [c]laimant Heirs of Lourdes Padayhag and

1. REVERSING the previous decision of this Court dated May 30, 2006 over subject Lot Nos. 2102, 2104, 2883, 2888, 2921, and 2922, Pls-119 awarding said lots to [c]laimant SMC, and awarding portions of Cadastral Lot Nos. 2102 and 2104, or Lot No. 2102-A and 2104-A, and

<sup>10</sup> Id. at 45, 65; id. at 31.

<sup>11</sup> Id. at 66-82. Penned by Presiding Reinerio (Abraham) B. Ramas.

<sup>12</sup> Id. at 43-45; id. at 29-31.

Cadastral Lot Nos. 2883, 2888, 2921, and 2922 to the [c]laimants-Heirs of Lourdes Padayhag;

2. Return of what has been receive[d], proceeding from the void Agreement Regarding Real Property, namely Cadastral Lot Nos. 2883, 2888, 2921, and 2922 to the [c]laimants-Heirs of Lourdes Padayhag, and the thirty shares of [stock] to [c]laimant SMC; and

3. Declaring the remaining portions of Cadastral Lot Nos. 2102 and 2104, namely Lot Nos. 2102-B and 2104-B as alienable lands of the public domain.

SO ORDERED.”<sup>13</sup>

Aggrieved by the RTC Decision, SMC appealed to the CA. The CA dismissed the appeal for lack of merit and ruled that:

In the present case, there being no indication at all from the records that notice of the Order for Initial Hearing was published in the *Official Gazette* and in a newspaper of general circulation, the decision rendered by the RTC of Pagadian City is void *ab initio* for having been rendered without jurisdiction.<sup>14</sup>

The dispositive portion of the CA Decision states:

**WHEREFORE**, the appeal is hereby DISMISSED for lack of merit.

**SO ORDERED.**<sup>15</sup>

SMC filed a Motion for Reconsideration,<sup>16</sup> which was denied by the CA in its Resolution dated January 10, 2013 while the Padayhags filed their Petition with the Court.

On February 5, 2013, SMC filed an “Urgent Motion for Extension of Time to File Petition for Review on Certiorari under Rule 45 of the Rules of Court” in UDK 14834.<sup>17</sup> In a Resolution dated August 12, 2013, the Court resolved to deny SMC’s motion for extension for lack of payment of docket fees pursuant to Sections 2 and 3, Rule 45 in relation to Section 5(c), Rule 56 of the 1997 Rules of Civil Procedure, as amended.<sup>18</sup> Thereafter, an Entry of Judgment was issued certifying that the said Resolution had become final and executory on November 8, 2013.<sup>19</sup>

On March 8, 2013, SMC filed a Petition for *Certiorari* (under Rule 65 of the Rules of Court).

<sup>13</sup> Id. at 82; see also id. at 42-43 and id. at 28-29.

<sup>14</sup> Id. at 48; id. at 34.

<sup>15</sup> Id. at 49; id. at 35.

<sup>16</sup> *Rollo* (G.R. No. 206062), pp. 40-46.

<sup>17</sup> *Rollo* (UDK 14834), pp. 2-5.

<sup>18</sup> Id. (unnumbered); *rollo* (G.R. No. 206062), p. 178.

<sup>19</sup> Id. (unnumbered); id. at 179.

Anent the Padayhag Petition, SMC filed a Comment<sup>20</sup> dated February 14, 2013. The Padayhags filed a Reply<sup>21</sup> dated February 18, 2013. Public respondent Director of Lands, through the Office of the Solicitor General (OSG), filed a Comment<sup>22</sup> dated April 15, 2013. The OSG argued that the CA did not err in setting aside the May 30, 2006 Decision and December 27, 2007 Resolution of the RTC for having been rendered without jurisdiction and pointed to the lack of publication in the Official Gazette of the notice of the initial hearing as required by Act No. (Act) 2259, the Cadastral Act.<sup>23</sup> The OSG cited as additional ground the deprivation of the State of its day in court because the OSG was allegedly not furnished with copies of the court orders, notices and decisions in the cadastral case.<sup>24</sup>

The Padayhags filed a Reply<sup>25</sup> dated May 16, 2013. They argued that the requirement of publication of the notice of initial hearing was complied with. They mentioned that they have attached the certified copies of the pertinent pages of the Official Gazette in their previous submissions<sup>26</sup> with the Court.

The Court in its Resolution<sup>27</sup> dated June 19, 2013 resolved to consolidate G.R. No. 206062 with G.R. No. 202872 to avoid conflicting decisions on related cases and to save the time and resources of the Court, both petitions involving the same parties, the same facts and issues and assail the same CA Decision.

The OSG on behalf of the public respondents filed a Comment<sup>28</sup> dated September 24, 2013 to the consolidated petitions. In the Comment, the OSG argued that SMC availed of the wrong remedy. SMC should have filed a Rule 45 petition instead of a Rule 65 *certiorari* petition,<sup>29</sup> and the assailed CA Decision and Resolution are not tainted with grave abuse of discretion.<sup>30</sup> The OSG also reiterated the lack of jurisdiction of the RTC due to the lack of publication of the notice of initial hearing.<sup>31</sup> Further, the OSG argued that it was not furnished with copies of the court orders, notices and decisions in the cadastral case and, thus, the State was deprived its day in court, rendering the RTC Decision void.<sup>32</sup>

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<sup>20</sup> *Rollo* (G.R. No. 202872), pp. 120-126.

<sup>21</sup> *Id.* at 128-139.

<sup>22</sup> *Id.* at 152-164.

<sup>23</sup> *Id.* at 156-159.

<sup>24</sup> *Id.* at 159-162.

<sup>25</sup> *Id.* at 165-169.

<sup>26</sup> See *id.* at 166. Certified copy of the first publication in the Official Gazette (OG) was attached as Annex "E" (*id.* at 83-86) to the Padayhag Petition and of the second publication in the OG was attached as Sub-Annex "E-1" (*id.* at 103-106) to their Manifestation with Motion to Substitute Heirs dated October 13, 2012 (*id.* at 97-102).

<sup>27</sup> *Rollo* (G.R. No. 206062), pp. 70-71.

<sup>28</sup> *Id.* at 80-96.

<sup>29</sup> See *id.* at 85.

<sup>30</sup> *Id.* at 86.

<sup>31</sup> *Id.* at 86-89.

<sup>32</sup> *Id.* at 90-93.

In their Supplemental Comment<sup>33</sup> dated October 25, 2013, the Padayhags alleged that the filing by SMC of its Rule 65 *certiorari* petition did not cure the jurisdictional defect of the earlier denial of SMC's "Urgent Motion for Extension of Time to File Petition for Review on Certiorari under Rule 45 of the Rules of Court" for failure to pay the appeal fee.<sup>34</sup>

SMC filed a Reply<sup>35</sup> dated May 19, 2014 to the Padayhags' Supplemental Comment wherein it explained the delay in the filing thereof, the choice of the remedy that it availed of, and the grave abuse of discretion amounting to lack of jurisdiction that CA committed.<sup>36</sup> SMC also filed a Reply<sup>37</sup> dated October 7, 2014 to the OSG's Comment, reiterating essentially the arguments that it raised in its earlier Reply.

The Padayhags filed their Reply<sup>38</sup> dated March 25, 2015. They stated therein that they agreed with the OSG that the remedy of *certiorari* under Rule 65 is not a substitute for lapsed appeal by *certiorari* under Rule 45.<sup>39</sup> Further, they argued that they complied with the publication of the notice of initial hearing requirement.<sup>40</sup>

The Padayhags filed their Memorandum<sup>41</sup> dated November 12, 2015. The OSG filed a Memorandum<sup>42</sup> dated December 28, 2015. SMC filed its Memorandum<sup>43</sup> dated November 24, 2015. The Padayhags subsequently filed on December 3, 2015 a Motion for Leave to File Amended Memorandum<sup>44</sup> dated December 2, 2015 and an Amended Memorandum<sup>45</sup> dated November 12, 2015.

### Issues

The pertinent issues raised in the consolidated Petitions are the following:

- (1) whether the CA erred in setting aside the RTC Decision and Resolution for want of jurisdiction;
- (2) whether the RTC's failure to notify the OSG of the cadastral proceedings and the orders therein deprived the State of due process and rendered the RTC Decision and Resolution void;

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<sup>33</sup> Id. at 107-111.

<sup>34</sup> Id. at 108.

<sup>35</sup> Id. at 116-125.

<sup>36</sup> Id. at 117-124.

<sup>37</sup> Id. at 140-150.

<sup>38</sup> Id. at 164-177.

<sup>39</sup> Id. at 166-167.

<sup>40</sup> Id. at 168-176.

<sup>41</sup> Id. at 265-312.

<sup>42</sup> Id. at 327-342.

<sup>43</sup> Id. at 359-383.

<sup>44</sup> Id. at 423-426.

<sup>45</sup> Id. at 427-476.

- (3) whether the CA erred in failing to decide on the nature of the “Agreement Referring to Real Property” which covers Lot Nos. 2883, 2888, 2921 and 2922;
- (4) whether there remain mixed questions of law and facts as to Lot Nos. 2102 and 2104 that should be remanded to the CA for its resolution; and
- (5) whether SMC’s *certiorari* petition under Rule 65 is the proper remedy to assail the CA Decision.

### The Court’s Ruling

To recall, the CA in the assailed Decision epigrammatically justified the dismissal of the appeal for lack of merit in this wise:

In the present case, there being no indication at all from the records that notice of the Order for Initial Hearing was published in the *Official Gazette* and in a newspaper of general circulation, the decision rendered by the RTC of Pagadian City is void *ab initio* for having been rendered without jurisdiction.<sup>46</sup>

The Padayhags counter the CA’s finding of lack of publication and assert that:

x x x the *Notice of Initial Hearing* for **Cadastral Case No. N-17, LRC Cadastral Record No. N-468** was published in successive issues of the *Official Gazette* on October 24 and 31, 1966. In particular, it was published in the **Official Gazette Volume 62, Number 43 and 44**. x x x The name of one of the Heirs of Lourdes Padayhag, Federico Padayhag, Jr. was even mentioned in **O.G. Vol. 62, No. 44** in *page 8314* thereto as one of the known claimants. The *Notice of Initial Hearing* was published in **OG Vol. No. 62[,] No. 43 pages 8044 to 8047 (Sub-Annexes E-1 and E-2, attached to the Motion for Leave to File Manifestation with Motion for Substitution of Heirs)** and **O.G. Vol. 62, No. 44, pages 8312 to 8315 (Annex “E,” attached to the Petition for Review on Certiorari under Rule 45)**.<sup>47</sup>

A verification of the documents adverted to by the Padayhags, which bear a certification by the University of the Philippines Library, Media Service Section, Diliman, Quezon City that they are microfilm print-outs of the *Official Gazette* issues concerned, reveals the presence of a *Notice of Initial Hearing* in **Cadastral Case No. N-17, LRC Cadastral Record No. N-468** before the then Court of First Instance of Zamboanga del Sur addressed to the Solicitor General, Adriano Arang, Mangacap Ampato, and Federico Padayhag, Jr. among others, stating that:

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<sup>46</sup> Id. at 34; *rollo* (G.R. No. 202872), p. 48.

<sup>47</sup> Id. at 502.

Whereas, a petition has been presented to said Court by the Director of Lands, praying that the titles to the following described lands or the various parcels thereof, be settled and adjudicated:

A parcel of land with the buildings and improvements thereon, containing an area of 236,6925 hectares, more or less, divided into 1,409 lots, situated in the Municipality of Pagadian, Province of Zamboanga del Sur, the same being designated as Pagadian Public Lands Subdivision Pls-119, Case 1 x x x.

You are hereby cited to appear at the Court of First Instance of Zamboanga del Sur, at its session to be held in the Municipality of Pagadian, Province of Zamboanga del Sur, Philippines, on the 16<sup>th</sup> day of January, 1967, at 8:00 o'clock in the forenoon, to present such claims as you may have to said lands or any portion thereof, and to present evidence if any you [may] have, in support of such claims.

And unless you appear at the time and place aforesaid, your default will be recorded and the title to the lands will be adjudicated and determined in accordance with the prayer of the petition and upon the evidence before the Court, and you will be forever barred from contesting said application or any decree entered thereon.

Witness the Hon. Antonio Montilla, Judge of said Court, the 2<sup>nd</sup> day of June, in the year 1966.<sup>48</sup>

The Notice was attested to by Antonio H. Noblejas, then Commissioner of Land Registration and issued at Manila on September 12, 1966.<sup>49</sup>

Act 2259 (The Cadastral Act, enacted on February 11, 1913) provides:

SEC. 7. Upon the receipt of the order of the court setting the time for initial hearing of the petition the Chief of the General Land Registration Office shall cause notice thereof to be **published twice, in successive issues of the Official Gazette**, in the English language. The notice shall be issued by order of the court, attested by the Chief of the General Land Registration Office, and shall be in form substantially as follows:

x x x x (Emphasis and underscoring supplied)

On the other hand, Act 496 (The Land Registration Act, approved on November 6, 1902) provides:

SEC. 31. Upon receipt of the order of the court setting the time for initial hearing of the application from the clerk of Court of First Instance, the Chief of the General Land Registration Office shall cause a notice thereof to be **published twice, in successive issues of the Official Gazette**, in the English language. The notice shall be issued by order of the court, attested by the Chief of the General Land Registration Office, and shall be in form substantially as follows:

x x x x (Emphasis and underscoring supplied)

<sup>48</sup> *Rollo* (G.R. No. 202872), pp. 86, 106.

<sup>49</sup> *Id.*



The above quoted provisions of The Cadastral Act and The Land Registration Act are amended by Republic Act No. (RA) 96, which took effect upon its approval on March 24, 1947.

Presidential Decree No. (PD) 1529 (the Property Registration Decree, done/approved on June 11, 1978) provides:

SEC. 23. *Notice of initial hearing, publication, etc.* — x x x

The public shall be given notice of the initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting.

1. By publication. —

Upon receipt of the order of the court setting the time for initial hearing, the Commissioner of Land Registration shall cause a notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: Provided, however, that the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. Said notice shall be addressed to all persons appearing to have an interest in the land involved including the adjoining owners so far as known, and "to all whom it may concern". Said notice shall also require all persons concerned to appear in court at a certain date and time to show cause why the prayer of said application shall not be granted.

2. By mailing. —

(a) Mailing of notice to persons named in the application. — The Commissioner of Land Registration shall also, within seven days after publication of said notice in the Official Gazette, as hereinbefore provided, cause a copy of the notice of initial hearing to be mailed to every person named in the notice whose address is known.

(b) Mailing of notice to the Secretary of Public Highways, the Provincial Governor and the Mayor. — If the applicant requests to have the line of a public way or road determined, the Commissioner of Land Registration shall cause a copy of said notice of initial hearing to be mailed to the Secretary of Public Highways, to the Provincial Governor, and to the Mayor of the municipality or city, as the case may be, in which the land lies.

(c) Mailing of notice to the Secretary of Agrarian Reform, the Solicitor General, the Director of Lands, the Director of Public Works, the Director of Forest Development, the Director of Mines and the Director of Fisheries and Aquatic Resources. — If the land borders on a river, navigable stream or shore, or on an arm of the sea where a river or harbor line has been established, or on a lake, or if it otherwise appears from the application or the proceedings that a tenant-farmer or the national government may have a claim adverse to that of the applicant, notice of the initial hearing shall be given in the same manner to the Secretary of Agrarian Reform, the Solicitor General, the Director of Lands, the Director of Mines and/or the Director of Fisheries and Aquatic Resources, as may be appropriate.

3. By posting. —

The Commissioner of Land Registration shall also cause a duly attested copy of the notice of initial hearing to be posted by the sheriff of the province or city, as the case may be, or by his deputy, in a conspicuous place on each parcel of land included in the application and also in a conspicuous place on the bulletin board of the municipal building of the municipality or city in which the land or portion thereof is situated, fourteen days at least before the date of initial hearing.

The court may also cause notice to be served to such other persons and in such manner as it may deem proper.

The notice of initial hearing shall, in form, be substantially as follows:

x x x x

Given that the initial hearing based on the published notice was scheduled on January 16, 1967, the applicable laws were Act 496 and Act 2259 which required only the notice of initial hearing to be published twice, in successive issues of the Official Gazette. Thus, it was erroneous for the CA to have required an additional publication of the said notice in a newspaper of general circulation. Such requirement was imposed only with the passage of PD 1529.

As proof of the publication in two successive issues of the Official Gazette of the Notice of Initial Hearing for Cadastral Case No. N-17, LRC Cadastral Record No. N-468, the Padayhags submitted to the Court microfilm print-outs of the issues of the Official Gazette on October 24 and 31, 1966, Volume 62, Number 43, pages 8044 to 8047, and Number 44, pages 8312 to 8315 certified by the University of the Philippines Library, Media Service Section, Diliman, Quezon City. Adriano Arang, Mangacap Ampato, and Federico Padayhag, Jr. appear in the said issues among the many claimants of the 1,409 lots with a combined area of 236,6925 hectares situated in the then Municipality of Pagadian, Province of Zamboanga del Sur and designated as Pagadian Public Lands Subdivision Pls-119, Case 1. Mangacap Ampato or "Mangacop Ampato" and Adriano Arang are allegedly predecessors-in-interest of SMC. The case in the RTC is docketed as "CADASTRAL CASE NO. N-17 LRC CAD. REC. NO. N-468 LOTS NOS. 2102, 2104, and 2883, 2888, 2921 and 2922, Pls-119."<sup>50</sup>

Given that Cadastral Case No. N-17, LRC Cad. Rec. No. N-468 does not only cover the six lots in dispute in this case, but around 1,409 lots, the copies of the issues of the Official Gazette where the Notice of the Order for Initial Hearing was published could have been included in the records of the cadastral proceedings of the other lots included therein. Thus, it was imprudent for the CA to rule that the Decision rendered by the RTC is void *ab initio* for having been rendered without jurisdiction. The repercussion of such pronouncement by the CA is far-reaching as it would cast doubt on the

<sup>50</sup> Rollo (G.R. No. 202872), p. 52.

validity of the cadastral proceedings of the 1,409 lots in the then Municipality of Pagadian. At the very least, the CA should have required the parties to present proof of the publication of the Order for Initial Hearing in the pertinent issues of the Official Gazette.

In *Republic v. CA*,<sup>51</sup> the Court noted that anent the publication requirement in reconstitution proceedings under Section 13,<sup>52</sup> RA 26, mere submission of the subject Official Gazette issues would evidence *only* the first element — publication in two consecutive issues of the Official Gazette, and what must be proved is *not* the content of the Order published in the Official Gazette but the fact of two-time publication in successive issues at least 30 days before the hearing date.<sup>53</sup> The Court further stated therein that it has consistently accepted the probative value of certifications of the Director of the National Printing Office in reconstitution cases.<sup>54</sup> The Court even quoted therein the lower court's observation that the Official Gazette is an official publication of the government and consequently, the Court can take judicial notice of its contents.<sup>55</sup>

In this case, no certification from the Director of the National Printing Office was presented. The certification alone without the copy of the Notice of Initial Hearing may not suffice. There is a need to verify the contents of the said Notice to ensure that the subject properties (6 lots) and parties/claimants are covered thereby. The Notice of Initial Hearing was not only for subject properties and parties/claimants, but for 1,409 lots and numerous claimants. If the Notice of Initial Hearing pertained to a specific registered property, as in the case of the reconstitution of a title, then a certification of publication from the Director of the National Printing Office in this wise would suffice:

Order relative to LRC No. F-504-84 In Re: Petition for Judicial Reconstitution of the Burned/Destroyed Original Copy of Transfer Certificate of Title No. T-304198, SPS. FERNANDO DAYAO and REMEDIOS NICODEMUS, x x x was published in the Official Gazette, to wit:

VOLUME	NUMBER	PAGES	DATE OF ISSUE
85	24		June 12, 1989
	25		June 19, 1989

June 19, 1989 issue was released for publication on June 28, 1989.<sup>56</sup>

<sup>51</sup> 317 Phil. 653 (1995).

<sup>52</sup> SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the *Official Gazette*, and to be posted on the main entrance of the municipality or city in which the land is situated, at the provincial building and of the municipal building at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. x x x The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

<sup>53</sup> *Republic v. CA*, supra note 51, at 660-661.

<sup>54</sup> *Id.* at 661.

<sup>55</sup> *Id.* at 658.

<sup>56</sup> *Id.* at 657.

It will be recalled that the Official Gazette was created by decree of Act 453, "An Act providing for the publication by the Insular Government of an Official Gazette, under the general direction of the Department of Public Instruction," which was enacted by the Philippine Commission on September 2, 1902, by authority of the United States of America. Vol. 1, No. 1 of the Official Gazette came out on September 10, 1902.<sup>57</sup> In March 5, 1903, Act 664 amended Act 453 to provide for publication of the Official Gazette weekly in two parts, one part in English and the other in Spanish, with each part issued separately and containing, among others, all legislative Acts and resolutions of a public nature of the Insular Legislature, all executive orders, such as decisions of the Supreme Court, the Court of Customs Appeals, and the Court of Land Registration.<sup>58</sup> Subsequently, Commonwealth Act No. 638, "An Act to provide for the uniform publication and distribution of the Official Gazette," was passed by the Third Session of the Second National Assembly on May 22, 1941 and subsequently approved by President Manuel L. Quezon on June 10, 1941.<sup>59</sup> The Administrative Code of 1987 requires publication of laws in the Official Gazette to take effect.<sup>60</sup>

Given that the Official Gazette is the official publication of the government, the Court can take judicial notice thereof pursuant to Section 2 of Rule 129, Rules of Court, which provides:

SEC. 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Thus, the Court takes judicial notice of the publication of the Notice of Initial Hearing for Cadastral Case No. N-17, LRC Cadastral Record No. N-468 in the issues of the Official Gazette on October 24 and 31, 1966, Volume 62, Number 43, pages 8044 to 8047, and Number 44, pages 8312 to 8315.

As to the alleged failure by the RTC to notify the OSG of the cadastral proceedings and the orders therein which purportedly deprived the State of due process and would render the RTC Decision and Resolution void, the Court finds it hard to reconcile the position taken by the OSG in this case with the nature of cadastral proceedings.

Sections 1 and 5 of the Cadastral Act (Act 2259) provides:

SECTION 1. When, in the opinion of the Governor-General (now the President), the public interests require that the title to any lands be

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<sup>57</sup> <[www.officialgazette.gov.ph/history-of-the-official-gazette](http://www.officialgazette.gov.ph/history-of-the-official-gazette)>, last accessed on October 26, 2017.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> Id.

settled and adjudicated, he may to this end order the Director of Lands to make a survey and plan thereof.

The Director of Lands shall, thereupon, give notice to persons claiming an interest in the lands, and to the general public, of the day on which such survey will begin, giving as full and accurate description as possible of the lands to be surveyed. Such notice shall be published in two successive issues of the Official Gazette, and a copy of the notice in the English and Spanish languages shall be posted in a conspicuous place on the chief municipal building of the municipality, township or settlement in which the lands, or any portion thereof, are situated. A copy of the notice shall also be sent to the president of such municipality, township, or settlement, and to the provincial board.

x x x x

SECTION 5. When the lands have been surveyed and platted, the Director of Lands represented by the Attorney-General (now Solicitor General), shall institute registration proceedings, by petition against the holders, claimants, possessors, or occupants of such lands or any part thereof, stating in substance that the public interests require that the titles to such lands be settled and adjudicated, and praying that such titles be so settled and adjudicated.

x x x x

Evidently, the herein cadastral proceedings were supposed to have been instituted by the then Director of Lands represented by the Solicitor General. For the OSG to now deny that it had no involvement in or that it had not been notified of the proceedings is not in keeping with the nature of cadastral proceedings. The Court is not prepared to nullify the cadastral proceedings involving the then municipality of Pagadian without due process being accorded to all the claimants involved therein and without the OSG going thoroughly over the records of the entire cadastral proceedings to verify whether it participated therein. It must be noted that in these petitions, the RTC Decision was finally rendered on May 30, 2006 after 40 years from June 2, 1966, the date of the Notice of Initial Hearing. To summarily nullify the cadastral proceedings at this juncture would be unjust. Suffice it say that for purposes of these cases, the Court is relying on the presumption that official duty has been regularly performed pursuant to Section 3(m), Rule 131 of the Rules of Court.

Regarding the third and fourth issues, these involve questions of fact and the CA should be given the opportunity to rule on them as the reviewer of facts.<sup>61</sup> In reviews on *certiorari*, the Court, not being a trier of facts, addresses only questions of law;<sup>62</sup> and since the CA has not resolved the cases on the merits, remand to the CA is in order. The consolidated cases are being remanded to the CA to enable the CA to rule on the factual issues of the consolidated cases.

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<sup>61</sup> See *Far Eastern Surety and Insurance Co. Inc. v. People*, 721 Phil. 760, 769 (2013).

<sup>62</sup> *Id.*

As to the fifth and last issue, both the Padayhags and the OSG are correct that SMC availed of the wrong remedy. A petition for review on *certiorari* before the Supreme Court under Rule 45 is the proper remedy of a party desiring to appeal by *certiorari* a judgment, final order or resolution of the CA.<sup>63</sup>

Also, SMC is not justified to avail itself of a Rule 65 *certiorari* petition after its earlier attempt to avail of a Rule 45 *certiorari* petition had failed. SMC, prior to the filing of the SMC Petition, attempted to comply with a Rule 45 *certiorari* petition when on February 5, 2013, it filed an “Urgent Motion for Extension of Time to File Petition for Review on Certiorari under Rule 45 of the Rules of Court” in UDK 14834.<sup>64</sup> However, in its Resolution dated August 12, 2013, the Court resolved to deny SMC’s motion for extension for lack of payment of docket fees pursuant to Sections 2 and 3, Rule 45 in relation to Section 5(c), Rule 56 of the 1997 Rules of Civil Procedure.<sup>65</sup> Thereafter, an Entry of Judgment was issued certifying that the said Resolution had become final and executory on November 8, 2013.<sup>66</sup>

Given that SMC resorted to successive Rule 45 and Rule 65 *certiorari* petitions to question the CA Decision and Resolution and that the Rule 45 *certiorari* petition had already been denied, the denial of the SMC Petition is in order because *certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence as in this case where the appeal was lost due to non-payment of docket fees.<sup>67</sup>

The denial of the SMC Petition is, however, of no moment since the instant cases are being remanded to the CA and the CA will have to pass upon the respective claims of the Padayhags and SMC on the lots in question in the resolution of the appeals before the CA on the merits.

**WHEREFORE**, the Petition in G.R. No. 202872 is hereby **GRANTED**. The Court of Appeals Decision dated July 31, 2012 and, consequently, Resolution dated January 10, 2013 in CA-G.R. CV No. 01642 are hereby **REVERSED** and **SET ASIDE**. The consolidated cases are **REMANDED** to the Court of Appeals for the resolution of the appeals on the merits.

**SO ORDERED.**

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

<sup>63</sup> RULES OF COURT, Rule 45, Sec. 1.

<sup>64</sup> *Rollo* (UDK 14834), pp. 2-5.

<sup>65</sup> *Id.* (unnumbered); *rollo* (G.R. No. 206062), p. 178.

<sup>66</sup> *Id.* (unnumbered); *id.* at 179.

<sup>67</sup> See *Spouses Dycoco v. Court of Appeals*, 715 Phil. 550, 562 (2013).

WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice

(On leave)

**ANDRES B. REYES, JR.**  
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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second 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

