

**PAUL AQUILO, BERNARD JOSEPH BERNALES, GLORIA BERNOS,
ROSITA DURANO AND MINERVA GALITA, PETITIONERS, VS. MARIA
D. ASECIO, ALICIA V. ROCES, CARLOS D. VLLAREAL, FLORA D.
TIOSECO,...**

SP No. 98221, February 28, 2008

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Petition for Review under Rule 43 of the Rules of Civil Procedure assailing the November 15, 2006[1] Decision of the Office of the President (OP) in OP Case No. 05-G-237 entitled " Maria Asension, et. al., rep. by Mauro Arce/Filomena Andaya vs. Paula Arquillo, Bernal Joseph Bernales, Gloria Bernos, Rosita Durano and Minerva Gaita", the dispositive portion of which states:

WHEREFORE, in view of all the foregoing considerations, the appealed DAR's Resolution and Order, dated June 15, 2004 and June 20, 2005, respectively, are reconsidered and set aside. The DAR Order dated January 18, 2001 is hereby reinstated, and the subject property is declared as not covered by Comprehensive Agrarian Reform Program.

SO ORDERED.

Also assailed is its February 15, 2007 Resolution[2] which denied herein petitioners' motion for reconsideration.

The facts:

Alfonso Doronila was the registered owner of a parcel of land containing an area of 12.7002 hectares located at Bgy. Macabud, Montalban (now Rodriguez), Rizal more particularly known as Lot 3-B-5-B, Psd-04-026921 and covered by Transfer Certificate of Title (TCT) No. 147577. On August 2, 1989, a Notice of Comprehensive Agrarian Reform Program (CARP) Coverage[3] was issued for the said parcel of land. Doronila died sometime in 1992. Due to his death TCT No. 147577 was canceled and in its place, the Register of Deeds issued TCT No. 224237[4] in the name of the Heirs of Alfonso Doronila, the herein respondents Maria Asencio, Alicia Rocas, Carlos Villareal, Flora Tioseco, Leon Doronila, Jose Doronila, Salvador Doronila, Benjamin Doronila and Manuel Asencio, Jr.

Sometime in 1995, a subdivision plan[5] was prepared for the said parcel-of land and the adjacent property (Lot 3-B-6, Psd 27851, TCT No. 224240) which was also owned by Doronila. The said subdivision plan mapped the location while the Lot Descriptions⁶ showed the total area Piloted to petitioner Rosita Durano and the predecessors-in-interests of petitioners Paul Aquilo, Bernard Joseph Bernales, Gloria Bernos, and Minerva Galita as actual occupant-tillers and identified CARP farmer-beneficiaries of the property.

On January 14, 2000, the Municipal Agrarian Reform Officer (MARO) presided over a conference between the petitioners and the representative of Romeo Arce, Jr[7] to whom the land was allegedly sold. The occupant-tillers rejected the offer of compensation by the representative and instead urged the MARO to expedite the implementation of the CARP Coverage over the land.

On June 22, 2000, respondent Heirs of Doronila, through their attorney-in-fact Mauro S. Arce, Jr., filed an

application for exemption from CARP coverage pursuant to Department of Agrarian Reform (DAR) Administrative Order (A.O.) No. 6, s. of 1994[8] and Department of Justice (DOJ) Opinion No. 44, s. of 1990.[9] They claimed that the land is within the "Deferred Land Use Zone" of the Comprehensive Zoning Regulation of Montalban, Rizal[10] as approved by the Human Settlements Regulatory Commission (HSRC) per HSRC Resolution dated July 18 1981.[11] In their Opposition dated July 21, 2000,[12] the occupant-tillers asseverated that the land is still agricultural; that the property is along the perimeter of the Manila Waterworks and Sewerage System (MWSS) watershed area; that the property is owned by the Heirs of Doronila and is not part of Arce's property although the land was rumored to have been sold by the former in 1997.[13] On August 1, 2000, a second Notice of CARP Coverage[14] was issued to the Heirs to confirm that the land had been placed under CARP. The notice also informed that the Land Bank would determine the value of the land.

On January 18, 2001, then DAR Secretary Horacio Morales, Jr. issued an Order[15] granting the Heirs' petition and exempting the property from CARP coverage. Secretary Morales gave weight to the clarification issued by the Housing and Land Use Regulatory Board (HLURB) that the "Deferred Use" zoning classification indicates that the property is no longer within the agricultural zone and is closely related to the Transition Zone[16] as defined in HLURB Resolution No. 558, s. of 1994. The occupant-tillers filed a motion for reconsideration[17] arguing that the classification is vague and meaningless; that the Secretary erred in giving weight to the HLURB interpretation that properties within the "Deferred Land Use Zone" are either commercial, industrial or residential; that the "Deferred Land Use" classification only meant that the municipality had decided not to act yet on the classification; and that this interpretation was validated when the municipality later on passed Municipal Ordinance No. 00-06[18] amending Municipal Order No. 2, s. of 1980 wherein the whole barangay of Macabud, where the property is located, is described as an Agricultural-CARP area.

On June 15, 2004, the succeeding DAR OIC-Secretary Jose Maria Ponce issued a Resolution[19] setting aside the January 18, 2001 Order of his predecessor, holding that the subject property is not exempted from CARP coverage since the term DEFERRED LAND USE ZONE/CLASSIFICATION[20] as defined by HLURB Resolution No. 695 dated May 21, 2001 pertains only to areas zoned as urban and intended for urban use. Moreover, the enactment of Municipal Order No. 00-06, s. of 2000 effectively confirms that subject property remains agricultural and was not reclassified to non-agricultural use prior to 15 June 1988.

The Heirs filed a motion for reconsideration[21] maintaining that the "Deferred Land Use" classification meant that the land is non-agricultural; that the DAR's reliance on Municipal Order No. 00-06 is misplaced since the municipality eventually reverted to "Deferred Land Use" classification when it enacted Kapasyahan 03-23 on February 13, 2003;[22] and that the HLURB has primary jurisdiction over issues involving the interpretation of zoning laws and regulations. The motion for reconsideration was denied by the succeeding DAR Secretary Rene Villa in an Order dated June 20, 2005 which affirmed the June 15, 2004 Resolution of the DAR OIC-Secretary Jose Maria Ponce. Secretary Villa did not give weight to the Kapasyahan, holding that there was no showing that the same was approved and authenticated by the HLURB or the Sangguniang Panlalawigan.

Aggrieved, the Heirs appealed[23] before the OP. On November 15, 2006, the OP rendered the assailed Decision in their favor, setting aside the DAR's June 15, 2004 Resolution (by OIC Sec. Ponce) and the June 20, 2005 Order (by Sec. Villa) and reinstating DAR Order dated January 18, 2001 issued by Secretary Morales exempting their property from CARP coverage. Petitioners' motion for reconsideration was denied in the assailed Order dated February 15, 2007.

Hence, this petition assigning the following as errors:[24]

I

WHETHER OR NOT THE OFFICE OF THE PRESIDENT ERRED IN RULING THAT THE SUBJECT PARCEL OF LAND HAS LOST ITS AGRICULTURAL CHARACTER PRIOR TO 15 JUNE 1988, HENCE EXEMPTED FROM CAPR(sic) COVERAGE.

II

WHETHER OR NOT RESPONDENTS' APPLICATION FOR EXEMPTION OUGHT TO BE DENIED OUTRIGHT DUE TO THE ILLEGAL SALE AND/OR TRANSFER OF THE SUBJECT PARCEL OF LAND INITIALLY TO RESPONDENTS AND SUBSEQUENTLY, BY RESPONDENTS TO RAMON S. ARCE, JR. ET. AL,

The threshold issue in this case is whether or not the subject landholding is exempt from the coverage of Republic Act. No. 6657 (RA No. 6657), otherwise known as the Comprehensive Agrarian Reform Law of 1998.

Section 4 of RA No. 6657 sets forth the coverage of the Comprehensive Agrarian Reform Program (CARP). It provides that the program shall:

"...cover regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.

More specifically, the following lands are covered by the Comprehensive Agrarian Reform Program:

- a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain;
- b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;
- c) All other lands owned by the Government devoted to or suitable for agriculture; and
- d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon."

Section 3 thereof defines agricultural land as land devoted to agricultural activity and not classified as either mineral, forest, residential, commercial or industrial land. Agricultural activity is defined in RA No. 6657 as the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities, and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical.

The meaning of agricultural lands covered by RA No. 6657 was explained further by the DAR in its AO No. 1, s. of 1990,[25] issued pursuant to Section 49[26] of the law, in this wise:

"... Agricultural land refers to those devoted to agricultural activity as defined in RA 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, and not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential, commercial or industrial use."(Emphasis Supplied).

Apropos thereto, it was held in *Natalia Realty, Inc. vs. Department of Agrarian Reform*[27] that lands not devoted to agricultural activity include lands previously converted to non-agricultural use prior to the effectivity of RA No. 6657.

On March 16, 1990, in DOJ Opinion No. 44, s. of 1990, then Justice Secretary Franklin Drilon opined that the authority of the DAR to approve conversions of agricultural lands to non-agricultural uses could be exercised only from the date of the effectivity of RA No. 6657 on June 15, 1988, viz:

"Based on the foregoing premises, we reiterate the view that with respect to conversions of agricultural lands covered by R.A. No. 6657 to non-agricultural uses, the authority of DAR to approve such conversions may be exercised from the date of the law's effectivity on June 15, 1988. This conclusion is based on a liberal interpretation of R.A. No. 6657 in the light of DAR's mandate and extensive coverage of the agrarian reform program."

In light of the foregoing DOJ Opinion, conversion clearances were no longer needed for lands already classified as non-agricultural before the enactment of RA No. 6657. Thereafter, DAR issued AO No. 6, s. of 1994 in order to streamline the issuance of exemption clearances.

In the present case, petitioners contend that "Deferred Land Use" classification used by the municipality of Montalban, Rizal in its zoning ordinance is not the classification contemplated under DOJ Opinion No. 44, s. of 1990 and DAR AO No. 6, s. of 1994 that would exempt such land from CARP coverage. On the other hand, respondents maintain that the land is exempted from the coverage of the CARP by reason of the said classification; that the zoning ordinance of the municipality which classified their property as within the "Deferred Land Use Zone" was approved by the Human Settlement Regulatory Commission (HSRC); that the interpretation by the HLURB that lands under deferred classification zone are no longer defined nor fall within the agricultural zone should be deemed controlling and binding on the DAR.

We find for the petitioners.

Under Sec. 4 of RA No. 6657, lands are categorized as either public or private. Under Sec. 3 (c) thereof, a land may either be mineral, forest, residential, commercial, industrial or agricultural. Since the term "Deferred Land Use" is not a land classification category, the inclusion of the subject property under the "Deferred Land Use Zone" did not change its nature as an agricultural land. In *Department of Agrarian Reform vs. Oroville Development Corporation*[28] where the property subject of the case was categorized as a "potential growth area" in the zoning certifications issued, the Supreme Court held that:

". . . The term "potential growth area" is not a land classification category. That the subject property was identified as a "potential growth area" does not denote that it has been reclassified as a mineral, forest, residential, commercial or industrial land to qualify it for exemption from CARP coverage."

It must be noted that RA No. 6657 was enacted as a social legislation pursuant to the policy of the State to pursue a Comprehensive Agrarian Reform Program.[29]

To those who seek its benefit, it is the means towards a viable livelihood and, ultimately, a decent life.[30] As explained in *Perez-Rosario vs. Court of Appeals*.[31]

"It is an established social and economic fact that the escalation of poverty is the driving force behind the political disturbances that have in the past compromised the peace and security of the people as well as the continuity of the national order. To subdue these acute disturbances, the legislature over the course of the history of the nation passed a series of laws calculated to accelerate agrarian reform, ultimately to raise the material standards of living and eliminate discontent. Agrarian reform is a perceived solution to social instability. The edicts of social justice found in the Constitution and the public policies that underwrite them, the extraordinary national experience, and the prevailing national consciousness, all command the great departments of government to tilt the balance in favor of the poor and underprivileged whenever reasonable doubt arises in the interpretation of the law. But annexed to the great and sacred charge of protecting the weak

is the diametric function to put every effort to arrive at an equitable solution for all parties concerned: the jural postulates of social justice cannot shield illegal acts, nor do they sanction false sympathy towards a certain class, nor yet should they deny justice to the landowner whenever truth and justice happen to be on her side. In the occupation of the legal questions in all agrarian disputes whose outcomes can significantly affect societal harmony, the considerations of social advantage must be weighed, an inquiry into the prevailing social interests is necessary in the adjustment of conflicting demands and expectations of the people, and the social interdependence of these interests, recognized."

The general policy under RA No. 6657 is to cover as much lands suitable for agriculture as possible.[32] Thus, in case of doubt as to the intention of the municipality relative to the area where the subject property is located, the interpretation should be in favor of the declared intention of the law. Thus, in *Sta. Rosa Realty Development Corporation vs. Amante*,[33] where the subject landholding was classified into a municipal park by an ordinance issued before the effectivity of RA No. 6657, it was held:

"The Court recognizes the power of a local government to reclassify and convert lands through local ordinance, especially if said ordinance is approved by the HLURB. Municipal Ordinance No. 110-54 dated November 3, 1979, enacted by the Municipality of Cabuyao, divided the municipality into residential, commercial, industrial, agricultural and institutional districts, and districts and parks for open spaces. It did not convert, however, existing agricultural lands into residential, commercial, industrial, or institutional. While it classified Barangay Casile into a municipal park, as shown in its permitted uses of land map, the ordinance did not provide for the retroactivity of its classification. In *Co vs. Intermediate Appellate Court* (162 SCRA 390), it was held that an ordinance converting agricultural lands into residential or light industrial should be given prospective application only, and should not change the nature of existing agricultural lands in the area or the legal relationships existing over such land. * * *

and in *Remman*[34] where the Supreme Court ruled that the reclassification of lands to non-agricultural cannot be applied to defeat vested rights of tenant-farmers under Presidential Decree No. 27.

In the instant case, there is no doubt that the subject land is agricultural. The Provincial Agrarian Reform Office, which has the primary jurisdiction and competence to establish the nature and character of the land, had twice issued a Notice of CARP Coverage thereon. Accordingly, We hold to be erroneous the Decision of the OP exempting the subject landholding from the coverage of the CARP.

Parenthetically, the failure of the respondents to request for a DAR clearance before transferring the property to Ramon Arce, Jr. is not a ground to outrightly dismiss their application for exemption from the coverage of the CARP absent a clear showing that absolute deed of sale dated September 13, 2000[35] was executed in violation of Section, 6, (4) of RA No. 6657[36] in relation to DAR Administrative Order No 5, s. of 2006.[37]

WHEREFORE, premises considered, the petition is granted. The appealed Decision dated November 15, 2006 and Resolution dated February 15, 2007 of the Office of the President are hereby reversed and set aside. The Resolution dated June 15, 2004 and Order dated June 20, 2005 of the Department of Agrarian Reform are Reinstated.

SO ORDERED.

Bersamin and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 46-52.

[2] *Id.*, pp. 53-54.

- [3] Certification from the Provincial Agrarian Reform Office dated September 24, 2002 Id., 55.
- [4] Id., p. 59.
- [5] Psd-045808-076785, Id., p. 56
- [6] Id., p. 56.
- [7] MARO Report dated October 25, 2000 Id p. 65.
- [8] Guidelines for the Issuance of Exemption Clearance based on Sec 3(c) of RA 6657 and the Department of Justice (DOJ) Opinion No. 44, Series of 1990.
- [9] Dated March 16, 1990. Issued by then DOJ Secretary Franklin Drilon which was addressed to then DAR Secretary Florencio Abad.
- [10] Municipal Ordinance No. 2, s. of 1980, Id., pp. 91-112.
- [11] As mentioned in the opposition filed by herein petitioners with the MARO, Id., p. 67 and in the January 18, 2001 Order of then DAR Secretary Horacio, Morales, Jr., Id., p. 69-70.
- [12] Id., p. 67-68.
- [13] The Deed of Absolute Sale in favor of Arce, et. al. was dated September 13, 2000, Id., pp. 61-64.
- [14] Id., p. 66.
- [15] Id., p. 69-74.
- [16] A non-built up area whether agricultural or otherwise which has already been zoned up as urban and is intended to be developed for urban use within the planning period specified in the approved development plan.
- [17] Id., pp. 75-82.
- [18] An Ordinance Revising the Zoning Regulations of the Municipality of Rodriguez and Providing for the Administration, Enforcement and Amendment thereof and for the Repeal of all Ordinances in conflict therewith, Id., pp. 135-140. The Ordinance was approved by the Sangguniang Panlalawigan of Rizal in its Resolution No. 01-82 (A Resolution Approving the Comprehensive Use Plan and Zoning Ordinance of the Municipality of Rodriguez, Rizal), Id., p. 129.
- [19] Id., pp. 146-150.
- [20] A non-built up area whether agricultural or otherwise which has been classified as urban but its actual use has been deferred in the meantime, provided, the land is a potential urbanized areas and/or suitable for urban use and not within the restricted area as defined by existing laws.
- [21] Id., pp. 151-159.
- [22] Id., pp. 160-162.
- [23] Id., pp. 180-182.
- [24] Petition for Review, Id., pp. 21.
- [25] Revised Rules and Regulations Governing Conversion of Private Agricultural Land to Non-Agricultural Uses, dated March 22, 1990.

[26] The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspaper of general circulation.

[27] 225 SCRA 278, 283 (1993).

[28] G.R. No. 170823, March 27, 2007 (519 SCRA 112, 119).

[29] Remman Enterprises, Inc. vs. Court of Appeals, G.R. No. 132073 and 132361, September 27, 2006 (503 SCRA 378, 390).

[30] Department of Agrarian Reform vs. Department of Education, Culture and Sports, 426 SCRA 217, 225 (2004).

[31] G.R. No. 140796, June 30, 2006 (494 SCRA 66, 92-93).

[32] Department of Agrarian Reform vs. Department of Education, Culture and Sports, 426 SCRA 217, 220.

[33] 453 SCRA 360, 459 (2005).

[34] Supra, at Note 29.

[35] Id., pp. 61-63.

[36] Section 6, (4) RA No. 6657 Provides:

Upon the effectivity of this Act, any sale disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of this Act shall be null and void. Provided, however, That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the Department of Agrarian Reform (DAR) within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

[37] * * *

5. In addition to compliance with the reglementary periods provided under existing rules, where applicable, no application for exemption, conversion, exclusion, and petition to lift CARP coverage, or any other protest or opposition against CARP coverage shall be accepted if the property is a subject of conveyance executed in violation of Section 6, par 4 of R.S. No. 6657.

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