

GILDA BADURIA-PETEGHEM, PETITIONER, VS. HON. MARY MAY B. DE LEOZ AS THE REGIONAL PROSECUTOR OF REGION V, HON. SERGIO RAMOS AS THE PROVINCIAL PROSECUTOR OF CAMARINES SUR, AND RAM...

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

This is a Petition for Certiorari under Rule 65 of the Revised Rules of Court seeking to annul and set aside the resolutions dated March 8, 2013[1] and April 19, 2013[2] of the Regional Prosecutor of Region V.

The antecedents of this case are as follows:

Marcial Kare, Jr. and Angela K. Garchitorena were the registered owners of two (2) parcels of land situated in Barangay San Antonio, Tigaon, Camarines Sur, covered by Transfer Certificate of Title (TCT) No. 19043[3] consisting of Sixty (60) hectares. The said land was classified as an agricultural land and has been covered by Operation Land Transfer (OLT), ten (10) hectares of which were segregated as retention area.

The petitioner bought the said retention area which is the subject land of this case, from the heirs of Marcial Kare, Jr. and Angela Garchitorena, as evidenced by the Contract to Sell[4] dated February 23, 2009. Despite the pendency of the registration of the said sale, the petitioner made construction activities such as the construction of a new building and introducing other improvements over the subject land.

The respondent Department of Agrarian Reform (DAR) Provincial Office of Camarines Sur, through its investigating officer, Edgar T. Amoranto, made an investigation report on the premature conversion of the subject land from agricultural use into non-agricultural use. With the construction activities made by the petitioner over the subject land, an urgent application for a cease and desist order was filed by DAR Provincial Office of Camarines Sur against her with the DAR Regional Office V which granted the said application in an order[5] dated August 22, 2011.

Despite the issuance of the cease and desist order, the petitioner continued the construction activities over the subject land. Two notices of violation dated April 19, 2011[6] and October 24, 2011[7], were sent to the petitioner. However, despite receipt of said notices, she ignored the same and still continued the construction activities. It was found out that the petitioner did not secure a building permit on the building constructed over the subject land, and there was no application for land conversion of the same with the DAR.

With the several violations made by the petitioner, the respondent DAR Provincial Office of Camarines Sur, through its officer Ramon B. Fuentebella, filed a criminal complaint against the petitioner with the Provincial Prosecutor for violation of Section 4 of Republic Act 8435 (Agriculture and Fisheries Modernization Act of 1997) on premature conversion. The respondent Provincial Prosecutor issued a resolution[8] dated October 27, 2012 finding probable cause on the offense charged. Thus, an information was filed. The petitioner's motion for reconsideration was denied in an order[9] dated December 12, 2012.

A petition for review was filed by the petitioner with the Regional Prosecutor which denied the petition in a resolution[10] dated March 8, 2013. The dispositive portion of the resolution reads:

“WHEREFORE, premises considered, the Petition for Review is hereby DENIED for lack of merit.

SO ORDERED.”[11]

The motion for reconsideration was denied in a resolution[12] dated April 19, 2013. The decretal portion of the resolution reads:

“WHEREFORE, premises considered, respondent-appellant's Motions are hereby DENIED for lack of merit.

SO ORDERED.”[13]

Hence, this petition for certiorari.

The issue in this case is whether or not the respondent Regional Prosecutor committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in finding probable cause to prosecute the petitioner for violation of Section 4 of Republic Act 8435 (Agriculture and Fisheries Modernization Act of 1997) on premature conversion despite the enactment of the zoning ordinance classifying the subject land within the residential zone.

THE PETITION IS DISMISSED.

There is no dispute that the subject land is classified as an agricultural land covered by Republic Act No. 6657 (The Comprehensive Agrarian Reform Law of 1988). Upon ocular inspection by the DAR Provincial Office, it was found out that concrete structures were built and other improvements were undertaken by the petitioner on the subject lot. The existing structures were admitted by the petitioner. She contended that despite the existence of the concrete structures and other improvements, only a small portion of the subject land was utilized and the rest can still be used and suitable for agricultural purposes. Thus, she cannot be charged for violation of Section 4 of Republic Act 8435 (Agriculture and Fisheries Modernization Act of 1997) on premature conversion.

Section 4 of Republic Act 8435 (Agriculture and Fisheries Modernization Act of 1997) provides the definition of the following terms:

Section 4. Definition of Terms. -

“Agricultural Lands” refers to lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of trees, raising of livestock , poultry, fish or aquaculture production, including the harvesting of such farm products, and other farm activities and practices performed in conjunction with such farming operations by persons whether natural or juridical and not classified by law as mineral land, forest land, residential land, commercial land, or industrial land.

“Premature Conversion of Agricultural Land” refers to the undertaking of any development activity, the results of which modify or alter the physical characteristics of the agricultural lands to render them suitable for non-agricultural purposes, without an approved order of conversion from the DAR.

Based on the foregoing definition, it is clear that the subject land as an agricultural land must be devoted or suitable for agricultural purposes. The structures therein such as the construction of a new building and the swimming pool, cannot be considered as other farm activities and practices performed in conjunction with farming operations. Thus, even if only a portion thereof was utilized, it cannot be denied that the said existing structures are somewhat modification or alteration of the characteristics of the subject land.

With the construction activities undertaken by the petitioner, she did not secure a building permit nor conversion

clearance from the DAR. It has been held that any reclassification of agricultural lands to residential, commercial, industrial or other non-agricultural uses either by the LGUs or by way of Presidential Proclamations enacted on or after 15 June 1988 must undergo the process of conversion, despite having undergone reclassification, before agricultural lands may be used for other purposes. Thus, the DAR conversion clearance or authority is required to change the current use of reclassified agricultural lands.[14] In this case, there was a zoning ordinance passed by the Municipality of Tigaon reclassifying the subject land as residential zone. The said zoning ordinance does not automatically convert the agricultural land into non-agricultural use because the power of the LGUs to reclassify agricultural lands is not absolute. The authority of the DAR to approve conversion of agricultural lands covered by Republic Act No. 6657 (The Comprehensive Agrarian Reform Law of 1988) to non-agricultural uses has been validly recognized by Section 20 of Republic Act No. 7160 (The Local Government Code of 1991) by explicitly providing therein that, "nothing in this section shall be construed as repealing or modifying in any manner the provisions of Republic Act No. 6657". Thus, even if there is a zoning ordinance reclassifying the subject land into non-agricultural use, the subject land is still subject to the requirements of land use conversion procedure or that DAR's approval or clearance must be secured to effect reclassification. Without securing the said DAR clearance, any undertaking thereof results in premature conversion.

On the finding of probable cause, the petitioner contended that the respondents' finding of probable cause was mere speculation and without basis. Probable cause has been defined as the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief — probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[15] The records show that the respondents based their finding of probable cause against the petitioner on the investigation report submitted by the DAR Provincial Office, and other evidence in support of their allegations. Thus, the finding of probable cause of the respondents cannot be said to be based on speculations, conjectures, and surmises.

In view of the foregoing considerations, the respondent Regional Prosecutor of Region V did not commit grave abuse of discretion amounting to lack of or in excess of jurisdiction in finding probable cause against the petitioner because with the evidence adduced by the parties, there was indeed a probability that the petitioner is guilty of premature conversion of the subject land in violation of Section 4 of Republic Act 8435 (Agriculture and Fisheries Modernization Act of 1997) on premature conversion.

WHEREFORE, premises considered, the petition is DISMISSED for utter lack of merit. The resolutions dated March 8, 2013 and April 19, 2013 of the public respondent Regional Prosecutor of Region V are AFFIRMED.

SO ORDERED.

Sorongon[*] and Corales,**] JJ., concur.

[*] Vice Justice Ricardo R. Rosario, per Raffle conducted on May 20, 2014.

[**] Vice Justice Leoncia R. Dimagiba, per Raffle conducted on May 20, 2014.

[1] Rollo, pp. 83-84.

[2] *ibid.*, p. 26.

[3] *ibid.*, p. 162.

[4] Rollo, pp. 163-164.

[5] *ibid.*, pp. 167-169.

[6] *ibid.*, pp. 173-174.

[7] *ibid.*, pp. 175-176.

[8] Rollo, pp. 111-115.

[9] *ibid.*, p. 102.

[10] *ibid.*, pp. 83-84.

[11] *ibid.*, p. 84

[12] *ibid.*, p. 26.

[13] *ibid.*

[14] Chamber of Real Estate and Builders Association, Inc. vs. Secretary of Agrarian reform, G.R. No. 183409, June 18, 2010.

[15] Ty vs. De Jemil, G.R. No. 182147, December 15, 2010.

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