

JOSE LUIS ROS, ANDONI F. ABOITIZ, XAVIER ABOITIZ, ROBERTO E. ABOITIZ, ENRIQUE ABOITIZ, MATTHIAS G. MENDEZONA, CEBU INDUSTRIAL PARK DEVELOPERS, INC. AND FBM ABOITIZ MARINE, INC.,...

G.R. NO. 132477. August 31, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Petitioners are the owners/developers of several parcels of land located in Arpili, Balamban, Cebu. By virtue of Municipal Ordinance No. 101 passed by the Municipal Council of Balamban, Cebu, these lands were reclassified as industrial lands.[1] On 03 April 1995, the Provincial Board of Cebu approved Balamban's land use plan and adopted en toto Balamban's Municipal Ordinance No. 101 with the passage of Resolution No. 836-95 and Provincial Ordinance No. 95-8, respectively.[2] As part of their preparation for the development of the subject lands as an industrial park, petitioners secured all the necessary permits and appropriate government certifications.[3]

Despite these permits and certifications, petitioner Matthias Mendezona received a letter from Mr. Jose Llames, Director of the Department of Agrarian Reform (DAR) Regional Office for Region 7, informing him that the DAR was disallowing the conversion of the subject lands for industrial use and directed him to cease and desist from further developments on the land to avoid the incurrence of civil and criminal liabilities.[4]

Petitioners were thus constrained to file with the Regional Trial Court (RTC) of Toledo City a Complaint dated 29 July 1996 for Injunction with Application for Temporary Restraining Order and a Writ of Preliminary Injunction, docketed as Civil Case No. T-590.[5] In an order[6] dated 12 August 1996, the RTC, ruling that it is the DAR which has jurisdiction, dismissed the Complaint for lack of jurisdiction.[7] It justified the dismissal in this wise:

A perusal of Section 20 of the Local Government Code expressly provides that the Municipalities through an Ordinance by the Sanggunian may authorize the reclassification of the agricultural land within their area into non-agricultural. Paragraph (e) of the aforesaid Section, provides further: that nothing in this Section shall be construed as repealing or modifying in any manner the provision of Republic Act 6657. In an opinion of the Secretary of Justice, quoted: With respect of (sic) conversion of agricultural land to non-agricultural uses the authority of the DAR to approve the same may be exercise (sic) only from the date of the effectivity of the Agrarian Reform Law on June 15, 1988. It appears that the petitioners had applied for conversion on June 13, 1995 and therefore the petitioner (sic) are estopped from questioning the authority and jurisdiction of the Department of Agrarian Reform. The application having been filed after June 15, 1988, the reclassification by the Municipal Council of Balamban was just a step in the conversion of the aforestated lands according to its purpose. Executive Order No. 129-A, Section 5, "The Department shall be responsible for implementing Comprehensive Agrarian Reform and for such purpose it is authorized to (J) approve or disapprove the conversion, restructuring or readjustment of agricultural land into non-agricultural uses." Said Executive Order amended Section 36 of Republic Act No. 3644 which clearly mandates that the DAR Secretary (sic) approve or disapprove conversion are not impliedly repealed. In fact, under Section 75 of Republic Act 6657 the above

laws and other laws not inconsistent of (sic) this act shall have suppletory effect. Further, Section 68 of Republic Act 6657 provides: No injunction, restraining order, prohibition or mandamus shall be issued by the lower court against the Department of Agrarian Reform, DENR and Department of Justice in their implementation of the program. With this provision, it is therefore clear (sic) when there is conflict of laws determining whether the Department of Agrarian Reform has been exclusively empowered by law to approve land conversion after June 15, 1988 and (sic) the final ruling falls only with the Supreme Court or Office of the President.

WHEREFORE, in view of the foregoing, the Application for Restraining Order is hereby ordered DENIED and the main case is DISMISSED, this Court having no jurisdiction over the same.[8]

In an order dated 18 September 1996, the trial court denied the motion for reconsideration filed by the petitioners.[9] Petitioners filed before this Court a Petition for Review on Certiorari with application for Temporary Restraining Order and Writ of Preliminary Injunction.[10] In a resolution[11] dated 11 November 1996, this Court referred the petition to the Court of Appeals.[12] Petitioners moved for a reconsideration of the said resolution but the same was denied in a resolution dated 27 January 1997.[13]

At the Court of Appeals, the public respondents were ordered[14] to file their Comments on the petition. Two sets of comments from the public respondents, one from the Department of Agrarian Reform Provincial Office[15] and another from the Office of the Solicitor General,[16] were submitted, to which petitioners filed their Consolidated Reply.[17]

On 02 December 1997, the Court of Appeals rendered a decision[18] affirming the Order of Dismissal issued by the RTC.[19] A motion for reconsideration filed by the petitioners was denied in a resolution dated 30 January 1998.[20]

Hence, this petition.

The following issues[21] are raised by the petitioners for resolution:

- (a) Whether or not the reclassification of the subject lands to industrial use by the Municipality of Balamban, Cebu pursuant to its authority under Section 20(a) of Republic Act No. 7160 or the Local Government Code of 1991 (the "LGC") has the effect of taking such lands out of the coverage of the CARL and beyond the jurisdiction of the DAR;
- (b) Whether or not the Complaint for Injunction may be dismissed under the doctrine of primary jurisdiction;
- (c) Whether or not the Complaint for Injunction is an appropriate remedy against the order of the DAR enjoining development works on the subject lands;
- (d) Whether or not the Regional Trial Court of Toledo City had authority to issue a writ of injunction against the DAR.

In sum, petitioners are of the view that local governments have the power to reclassify portions of their agricultural lands, subject to the conditions set forth in Section 20[22][23] of the Local Government Code. According to them, if the agricultural land sought to be reclassified by the local government is one which has already been brought under the coverage of the Comprehensive Agrarian Reform Law (CARL) and/or which has been distributed to agrarian reform beneficiaries, then such reclassification must be confirmed by the DAR pursuant to its authority under Section 6522 of the CARL, in order for the reclassification to become effective. If, however, the land sought to be reclassified is not covered by the CARL and not distributed to agrarian reform beneficiaries, then no confirmation from the DAR is necessary in order for the reclassification to become effective as such case would not fall within the DAR's conversion authority. Stated otherwise, Section 65 of the CARL

does not, in all cases, grant the DAR absolute, sweeping and all-encompassing power to approve or disapprove reclassifications or conversions of all agricultural lands. Said section only grants the DAR exclusive authority to approve or disapprove conversions of agricultural lands which have already been brought under the coverage of the CARL and which have already been distributed to farmer beneficiaries.

The petition lacks merit.

After the passage of Republic Act No. 6657, otherwise known as Comprehensive Agrarian Reform Program, agricultural lands, though reclassified, have to go through the process of conversion, jurisdiction over which is vested in the DAR. However, agricultural lands already reclassified before the effectivity of Rep. Act No. 6657 are exempted from conversion.

Department of Justice Opinion No. 44, Series of 1990, provides:

"... True, the DAR's express power over land use conversion is limited to cases in which agricultural lands already awarded have, after five years, ceased to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes. But to suggest that these are the only instances when the DAR can require conversion clearances would open a loophole in R.A. No. 6657, which every landowner may use to evade compliance with the agrarian reform program. Hence, it should logically follow from the said department's express duty and function to execute and enforce the said statute that any reclassification of a private land as a residential, commercial or industrial property should first be cleared by the DAR."

The requirement that agricultural lands must go through the process of conversion despite having undergone reclassification was underscored in the case of *Alarcon v. Court of Appeals*,^[24] where it was held that reclassification of land does not suffice:

In the case at bar, there is no final order of conversion. The subject landholding was merely reclassified. Conversion is different from reclassification. Conversion is the act of changing the current use of a piece of agricultural land into some other use as approved by the Department of Agrarian Reform. Reclassification, on the other hand, is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion. Accordingly, a mere reclassification of agricultural land does not automatically allow a landowner to change its use and thus cause the ejectment of the tenants. He has to undergo the process of conversion before he is permitted to use the agricultural land for other purposes.

Rep. Act No. 6657 took effect on 15 June 1988. Municipal Ordinance No. 101 of Balamban, Cebu, which reclassified the subject lands, was passed on 25 March 1992, and Provincial Ordinance No. 95-8 of the Provincial Board of Cebu, which adopted Municipal Ordinance No. 101, was passed on 03 April 1995, long after Rep. Act No. 6657 has taken effect. Section 4 of Rep. Act No. 6657 provides:

SEC. 4. Scope. - The Comprehensive Agrarian Reform Law of 1988 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.

...

(d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

To further clarify any doubt on its authority, the DAR issued Administrative Order No. 12 dated October 1994 which reads:

Administrative Order No. 12
Series of 1994

SUBJECT: CONSOLIDATED AND REVISED RULES AND PROCEDURES GOVERNING
CONVERSION OF AGRICULTURAL LANDS TO NON-AGRICULTURAL USES

I. PREFATORY STATEMENT

The guiding principles on land use conversion is to preserve prime agricultural lands. On the other hand, conversion of agricultural lands, when coinciding with the objectives of the Comprehensive Agrarian Reform Law to promote social justice, industrialization, and the optimum use of land as a national resource for public welfare, shall be pursued in a speedy and judicious manner.

To rationalize these principles, and by virtue of Republic Act (R.A.) No. 3844, as amended, Presidential Decree (P.D.) No. 27, P.D. No. 946, Executive Order (E.O.) No. 129-A and R.A. No. 6657, the Department of Agrarian Reform (DAR) has issued several policy guidelines to regulate land use conversion. This Administrative Order consolidates and revises all existing implementing guidelines issued by the DAR, taking into consideration, other Presidential issuances and national policies related to land use conversion.

II. LEGAL MANDATE

- The Department of Agrarian Reform (DAR) is mandated to "approve or disapprove applications for conversion, restructuring or readjustment of agricultural lands into non-agricultural uses," pursuant to Section 4(i) of Executive Order No. 129-A, Series of 1987.
- Section 5(i) of E.O. No. 129-A, Series of 1987, vests in the DAR, exclusive authority to approve or disapprove applications for conversion of agricultural lands for residential, commercial, industrial, and other land uses.
- Section 65 of R.A. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, likewise empowers the DAR to authorize under certain conditions, the reclassification or conversion of agricultural lands.
- Section 4 of Memorandum Circular No. 54, Series of 1993 of the Office of the President, provides that "action on applications for land use conversion on individual landholdings shall remain as the responsibility of the DAR, which shall utilize as its primary reference, documents on the comprehensive land use plans and accompanying ordinances passed upon and approved by the local government units concerned, together with the National Land Use Policy, pursuant to R.A. No. 6657 and E.O. No. 129-A."

III. DEFINITION OF TERMS

- Agricultural land refers to land devoted to agricultural activity and not classified as mineral, forest, residential, commercial or industrial land (Section 3[c], R.A. No. 6657).
- Conversion is the act of changing the current use of a piece of agricultural land into some other use.
- Reclassification of agricultural lands is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan. It also includes the reversion of non-agricultural lands to agricultural use.

...

V. COVERAGE

These rules shall cover all private agricultural lands as defined herein regardless of tenurial arrangement and commodity produced. It shall also include agricultural lands reclassified by LGUs into non-agricultural uses, after June 15, 1988, pursuant to Memorandum Circular (M.C.) No. 54, Series of 1993 of the Office of the President and those proposed to be used for livestock, poultry and swine raising as provided in DAR Administrative Order No. 9, Series of 1993.

In the case of *Advincula-Velasquez v. Court of Appeals*,^[25] we held:

Our ruling in the *Natalia* case was reiterated in *National Housing Authority v. Allarde* (318 SCRA 22 [1999]).

The Court of Appeals' reliance on DOJ Opinion No. 44, Series of 1990, is in order. In the said opinion, the Secretary of Justice declared, 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.

Following the DOJ opinion, the DAR issued Administrative Order No. 6, Series of 1994, stating that lands already classified as non-agricultural before the enactment of Rep. Act No. 6657 no longer needed any conversion clearance:

I. Prefatory Statement

In order to streamline the issuance of exemption clearances, based on DOJ Opinion No. 44, the following guidelines are being issued for the guidance of the DAR and the public in general.

II. Legal Basis

Sec. 3(c) of RA 6657 states that agricultural lands refers to the land devoted to agricultural activity as defined in this act and not classified as mineral, forest, residential, commercial or industrial land.

Department of Justice Opinion No. 44, series of 1990 has ruled that, with respect to the conversion of agricultural lands covered by RA No. 6657 to non-agricultural uses, the authority of DAR to approve such conversion may be exercised from the date of its effectivity, on June 15, 1988. Thus, all lands that are already classified as commercial, industrial, or residential before 15 June 1988 no longer need any conversion clearance.

The authority of the DAR to approve conversions of agricultural lands covered by Rep. Act No. 6657 to non-agricultural uses has not been pierced by the passage of the Local Government Code. The Code explicitly provides^[26] that "nothing in this section shall be construed as repealing or modifying in any manner the provisions of Rep. Act No. 6657."

It being settled that jurisdiction over conversion of land is vested in the DAR, the complaint for injunction was correctly dismissed by the trial and appellate courts under the doctrine of primary jurisdiction. This Court, in *Bautista v. Mag-isa Vda. De Villena*,^[27] found occasion to reiterate the doctrine of primary jurisdiction -

The doctrine of primary jurisdiction precludes the courts from resolving a controversy over which jurisdiction has initially been lodged with an administrative body of special competence. For agrarian reform cases, jurisdiction is vested in the Department of Agrarian Reform (DAR); more specifically, in the Department of Agrarian Reform Adjudication Board (DARAB).

Executive Order 229 vested the DAR with (1) quasi-judicial powers to determine and adjudicate agrarian reform matters; and (2) jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources. This law divested the regional trial courts of their general jurisdiction to try agrarian reform matters.

Under Republic Act 6657, the DAR retains jurisdiction over all agrarian reform matters. The pertinent provision reads:

"Section 50. Quasi-Judicial Powers of the DAR. - The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources.

"It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before it. . . ."

Finally, the third and fourth issues which may be summed up into whether or not an injunction is the appropriate remedy against the order of the DAR enjoining petitioners in developing the subject land, we rule in the negative. Section 68 of Rep. Act No. 6657 provides:

SEC. 68. Immunity of Government Agencies from Undue Interference. - No injunction, restraining order, prohibition or mandamus shall be issued by the lower courts against the Department of Agrarian Reform (DAR), the Department of Agriculture (DA), the Department of Environment and Natural Resources (DENR), and the Department of Justice (DOJ) in their implementation of the program.

Wherefore, premises considered, the instant petition is Denied for lack of merit. The decision of the Court of Appeals in CA-G.R. SP No. 42666 dated 02 December 1997 affirming the order dated 12 August 1996 of the Regional Trial Court of Toledo City, Branch 29, in Civil Case No. T-590 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Annex D; Rollo, pp. 60-61.

[2] Annexes E - E"1; Rollo, pp. 62-64.

[3] a. Balamban Municipal Planning and Development Coordinator's Certification dated May 11, 1995, certifying that the subject parcels were, in fact, classified as industrial lands by virtue of the municipal and provincial resolutions and ordinances abovementioned.

b. Housing and Land Use Regulatory Board's ("HLURB") letter dated August 3, 1995, granting its consent to the industrial development project to be undertaken by petitioners.

c. Balamban Municipal Planning and Development Coordinator's Certificate of Eligibility for Conversion dated August 10, 1995, certifying that petitioners' industrial development project conforms with Balamban's zoning and land use ordinance.

d. Certifications dated August 7, 1995 issued by the National Irrigation Administration ("NIA"), certifying that the subject lands were "outside irrigated lands and water is not available to support rice and other crop production."

e. Certificates of Eligibility for Conversion dated September 11, 1995 issued by the Department of Agriculture's ("DA") Regional Office, certifying that the subject lands were proper for conversion into industrial lands.

f. Environment Clearances issued by the Department of Environment and Natural Resources dated September 28, 1995, granting clearance for the conversion of the subject lands from agricultural to industrial.

g. Certification dated August 3, 1995 issued by the Municipal Agrarian Reform Officer ("MARO") of Balamban, certifying that "there are no CARPABLE AREAS and therefore no CARP Farmer-beneficiaries" within the subject lands.

[4] Annex N; Rollo, p. 93.

[5] Annex O; Rollo, pp. 96-107.

[6] Penned by Executive Judge Gualberto P. Delgado.

[7] Annex P; Rollo, pp. 109-112.

[8] Rollo, pp. 111-112.

[9] Annex Q; Rollo, pp. 113-114.

[10] Annex R; Rollo, p. 115.

[11] Rendered by the 1st Division.

[12] Annex S; Rollo, pp. 139-140.

[13] Annex T; Rollo, p. 141.

[14] 09 January 1997.

[15] Annex U; Rollo, p. 142.

[16] Annex V; Rollo, p. 163.

[17] Annex W; Rollo, p. 176.

[18] Docketed as CA-G.R. SP No. 42666, penned by Associate Justice (now Presiding Justice) Romeo A. Brawner with Associate Justices Ricardo P. Galvez and Marina L. Buzon, concurring.

[19] Rollo, pp. 41-54.

[20] Rollo, p. 57.

[21] Memorandum of the Petitioners; Rollo, pp. 360-361.

[22] Rep. Act No. 7160 (Local Government Code).

SEC. 20. Reclassification of Lands. - (a) A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2)

where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the sanggunian concerned: Provided, That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:

- (1) For highly urbanized and independent component cities, fifteen percent (15%);
- (2) For component cities and first to third class municipalities, ten percent (10%); and
- (3) For fourth to sixth class municipalities, five percent (5%): Provided, further, That agricultural lands distributed to agrarian reform beneficiaries pursuant to Republic Act Numbered sixty six hundred fifty seven (R.A. No. 6657), otherwise known as "The Comprehensive Agrarian Reform Law", shall not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.

[23] Rep. Act No. 6657 (Comprehensive Agrarian Reform Program)

SEC. 65. Conversion of Lands. - After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: Provided, That the beneficiary shall have fully paid his obligation.

[24] G.R. No. 152085, 08 July 2003, 405 SCRA 440, 448-449.

[25] G.R. No. 111387, 08 June 2004, 431 SCRA 165, 185-186.

[26] Sec. 20(e) of the Rep. Act No. 7160, Local Government Code.

[27] G.R. No. 152564, 13 September 2004, 438 SCRA 259, 262-263.

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