

HEIRS OF PEDRO ATEGA REPRESENTED BY VERONICA ATEGA-NABLE, PETITIONERS, VS. HON. ERNESTO D. GARILAO IN HIS CAPACITY AS SECRETARY OF AGRARIAN REFORM, HON. ISIDRO DUBLADO AS REGION...

G.R. No. 133806. April 20, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

THE HEIRS OF PEDRO ATEGA, petitioners herein, owned a parcel of land containing an area of 129.4615 hectares covered by OCT No. P-5 situated in Taligaman, Butuan City, Agusan del Norte. In December 1992 they received notice from the Provincial Agrarian Reform Office (PARO) that their land was subject of compulsory acquisition and distribution pursuant to RA 6657 otherwise known as the Comprehensive Agrarian Reform Law. They protested before the Municipal Agrarian Reform Office (MARO) the inclusion of their property in the Comprehensive Agrarian Reform Program (CARP) arguing that their land was classified as non-agricultural. Apparently, the MARO ignored their protest since the PARO sent petitioners on 9 September 1994 a Notice of Land Acquisition and Valuation.

In April 1996 petitioners filed with DAR-Region XIII an Application for Exemption from the coverage of CARP. But their application for exemption was denied on 27 November 1996 by respondent Regional Director Isidro Dublado on the ground that SP Ordinance No. 33-79 invoked by them was not submitted for approval to the Housing and Land Use Regulatory Board (HLURB) as required by DAR Administrative Order No. 6-94 and Department of Justice Opinion No. 44-90.

Petitioners thereafter filed with the Court of Appeals a Petition for Certiorari, Prohibition and Mandamus which assailed the Resolution of respondent Regional Director denying their Application for Exemption.

But the Court of Appeals dismissed the petition on the ground that petitioners acted prematurely in filing the petition before the appellate court. The appellate court held that petitioners should have first exhausted all the available administrative remedies, i.e., filing a motion for reconsideration of the Resolution of respondent Regional Director or appealing the same to the Secretary of Agrarian Reform before filing their petition with the Court of Appeals.[1] Corollarily, the appellate court ruled that respondent Regional Director did not abuse his discretion amounting to lack or excess of jurisdiction in denying the Application for Exemption.

The Court of Appeals opined that pursuant to DAR Adm. Order No. 9-94 Regional Directors are empowered to hear and decide all protests involving coverage under RA 6657, and that respondent Regional Director's finding that SP Resolution No. 33-79 of the City of Butuan was not submitted for approval to the HLURB was well within the ambit of his authority.

Petitioners moved for reconsideration but their motion was denied; hence, this petition.

Petitioners contend that the Court of Appeals erred in ruling that they acted prematurely in filing their petition for

certiorari without first filing a motion for reconsideration of the Resolution of respondent Regional Director or appealing to the Secretary of Agrarian Reform.

This contention is meritorious. Pursuant to DAR Administrative Orders Nos. 9-94, 10-94 and 12-94, the remedy of a party aggrieved by the decision of the Regional Director is to file a motion for reconsideration, and in the event the motion is denied, to appeal to the Secretary of Agrarian Reform. Nonetheless, we agree that in the instant case a motion for reconsideration of the Resolution of respondent Regional Director would have been useless. It appears that upon the issuance of the Resolution of respondent Regional Director denying petitioners' Application for Exemption on 27 November 1996 or thereabouts, the Secretary of Agrarian Reform proceeded to cancel their title over the disputed property and transferred it to designated beneficiaries through the issuance of a collective Certificate of Land Ownership Award No. 00059320 as far back as 26 November 1994, and petitioners learned of it only upon the issuance of the assailed Resolution. Hence, considering that the Secretary of Agrarian Reform had already canceled petitioners' title to the property and caused its distribution to designated beneficiaries even before the pending incidents with respondent Regional Director could be resolved, it would indeed be futile to expect the latter to reconsider his earlier posture and contradict or reverse the position taken by his superior, the Secretary of Agrarian Reform.

Certainly, certiorari will lie only if there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. The determination of what constitutes a plain, speedy and adequate remedy rests on judicial discretion and depends on the particular circumstances of each case.[2] In the case before us, we find that an appeal to the Secretary of Agrarian Reform would appear to be a useless exercise because he had already canceled petitioners' title to the property, which simply means, he concurred in the decision of respondent Regional Director denying the application for exemption; hence, an appeal would no longer be deemed an adequate remedy in the instant case.

Petitioners next insist that the Resolution of respondent Regional Director was a patent nullity as it was issued with grave abuse of discretion amounting to lack or excess of jurisdiction. They maintain that the Regional Director gravely abused his authority in ruling that SP Resolution No. 33-79 of the City of Butuan was not submitted to the HLURB for approval. They point out that per certification issued by the HLURB attached to their Motion for Reconsideration before the Court of Appeals, SP Resolution No. 33-79 was actually submitted to and approved by the HLURB.

This is misleading. A meticulous perusal of the records would reveal that the certification issued by the HLURB to the petitioners did not even mention, much less can it be fairly inferred therefrom, that what was submitted and approved was indeed SP Resolution No. 33-79, contrary to the assertion of petitioners.[3] SP Resolution No. 33-79 or the Resolution Amending the General Policy on Zonification and Land Use Plan, City of Butuan[4] was not the only town plan or zoning ordinance of the City of Butuan. In fact, SP Ordinance No. 102-78 or the Revised Zoning Ordinance of the City of Butuan and Providing for the Administration and Enforcement Thereof[5] was another town plan or zoning ordinance. Consequently, it could not be deduced that what was being referred to in the certification was SP Resolution No. 33-79.

In fact, we agree with the conclusion of respondent Regional Director that indeed SP Resolution No. 33-79 was not submitted to, much less approved by, the HLURB. His conclusion, apparently, was based on another certification issued by the HLURB which categorically stated that what was submitted to and approved by it was SP Ordinance No. 102-78.[6] According to DAR Adm. Order No. 6-94 and Department of Justice Opinion No. 44-90, an Application for Exemption from the coverage of CARP filed before the Regional Director must be accompanied by a certification from the HLURB that the pertinent zoning ordinance has been approved by the Board prior to 15 June 1988, the date when the CARL took effect. In the instant case, no such accompanying

certification from the HLURB was filed by petitioners.

Assuming for the sake of argument that SP Ordinance No. 102-78 which was submitted to and approved by the HLURB accompanied the Application for Exemption filed by petitioners before the DAR Regional Office, that fact, nonetheless, would not reverse our position. SP Ordinance No. 102-78 was a general zoning plan containing no categorical statement that the disputed property was classified as non-agricultural. In fact, a new ordinance was enacted reclassifying the disputed property from agricultural to non-agricultural. Thus, on 8 April 1994 the Sangguniang Panglungsod of Butuan City adopted SP Resolution No. 246-94 Reclassifying the Use of the Property Owned by the Heirs of Pedro Atega Situated at Taligaman, Butuan City, and for Other Purposes.[7] In sum, we rule that certiorari will lie because a motion for reconsideration before the Regional Director or an appeal to the Secretary of Agrarian Reform will not prove to be a speedy or adequate remedy. However, we find that the Regional Director did not commit any grave abuse of discretion in denying petitioners' Application for Exemption of their property from the CARP.

WHEREFORE, the assailed Decision of the Court of Appeals is MODIFIED insofar as it held that petitioners acted prematurely in filing the petition for certiorari but AFFIRMED insofar as it found that the Regional Director of DAR-Region XIII did not gravely abuse his discretion when he denied petitioners' Application for Exemption from the coverage of the Comprehensive Land Reform Program. Consequently, the instant Petition for Review on Certiorari is DENIED.

SO ORDERED.

Mendoza, Quisumbing, and Buena JJ., concur.
De Leon, Jr., J., on leave.

[1] Decision penned by Justice Quirino D. Abad Santos, Jr., concurred in by Justices Ruben T. Reyes and Hilarion L. Aquino; CA Rollo, pp. 153-161.

[2] SMI Development Corporation v. Republic of the Philippines, G.R. No. 137537, 28 January 2000.

[3] Rollo, p. 172.

[4] Id., p. 106.

[5] Id., p. 62.

[6] Id., p. 130.

[7] Id., p. 92.

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