

**REPUBLIC OF THE PHILIPPINES REP. BY THE DEPARTMENT OF
AGRARIAN REFORM, PETITIONER, VS. HON. COURT OF APPEALS
AND GREEN CITY ESTATE & DEVELOPMENT CORPORATION,
RESPONDENTS.**

G.R. No. 139592. October 05, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is a petition for review by certiorari of the Decision[1] of the Court of Appeals dated December 9, 1998 that reversed the Order of petitioner, the Department of Agrarian Reform (petitioner DAR), by exempting the parcels of land of private respondent Green City Estate and Development Corporation (private respondent) from agrarian reform. Also assailed in this instant petition is the Resolution dated May 11, 1998 issued by the same court that denied the Motion for Reconsideration of petitioner DAR.

The five parcels of land in issue has a combined area of approximately 112.0577 hectares situated at Barangay Punta, Municipality of Jala-Jala, Province of Rizal, covered by Transfer Certificates of Title Nos. M-45856, M-45857, M-45858, M-45859 and M-45860 of the Register of Deeds of Rizal. Private respondent acquired the land by purchase on May 26, 1994 from Marcela Borja vda. De Torres. The tax declarations classified the properties as agricultural.

On June 16, 1994, petitioner DAR issued a Notice of Coverage of the subject parcels of land under compulsory acquisition pursuant to Section 7, Chapter II of R.A. 6657 or the Comprehensive Land Reform Law of 1998 (CARL).

On July 21, 1994, private respondent filed with the DAR Regional Office an application for exemption of the land from agrarian reform, pursuant to DAR Administrative Order No. 6, series of 1994[2] and DOJ Opinion No. 44, series of 1990. Administrative Order No. 6 provides the guidelines for exemption from the Comprehensive Agrarian Reform Program (CARP) coverage while DOJ Opinion No. 44, Series of 1990, authorizes the DAR to approve conversion of agricultural lands covered by RA 6651 to non-agricultural uses effective June 15 1988.

In support of its application for exemption, private respondent submitted the following documents:

- Certified photocopies of the titles and tax declarations.
- Vicinity and location plans.
- Certification of the Municipal Planning and Development Coordinator of the Office of the Mayor of Jala-Jala.
- Resolution No. R-36, series of 1981 of the HLURB.
- Certification from the National Irrigation Administration.

On October 12, 1994, the DAR Regional Director recommended a denial of the said petition, on the ground that private respondent "failed to substantiate their (sic) allegation that the properties are indeed in the municipality's residential and forest conservation zone and that portions of the properties are not irrigated nor irrigable".

On February 15, 1995, private respondent filed an Amended Petition for Exemption/Exclusion from CARP coverage. This time, private respondent alleged that the property should be exempted since it is within the residential and forest conservation zones of the town plan/zoning ordinance of Jala-Jala. The amended petition for exemption showed that a portion of about 15 hectares of the land is irrigated riceland which private respondent offered to sell to the farmer beneficiaries or to the DAR. In support of its amended petition, private respondent submitted the following additional documents:

- Certification letter from the HLURB that the specific properties are within the residential and forest conservation zone.
- Certification from the HLURB that the town plan/zoning ordinance of Jala-Jala was approved on December 2, 1981 by the Human Settlements Commission.
- Undertaking that the landowner is ready and willing to pay disturbance compensation to the tenants for such amount as may be agreed upon or directed by the DAR.
- Vicinity plan.
- Amended survey plan which indicates the irrigated riceland that is now excluded from the application.
- Certification of the Jala-Jala Municipal Planning and Development Coordinator to the effect that the properties covered are within the residential and forest conservation areas pursuant to the zoning ordinance of Jala-Jala.

On October 19, 1995, the DAR Secretary issued an Order denying the application for exemption of private respondent, on the grounds that the land use plan of Jala-Jala, which differs from its land use map, intends to develop 73% of Barangay Punta into an agricultural zone; that the certification issued by the Housing and Land Use Regulatory Board (HLURB) is not definite and specific; and that the certification issued by the National Irrigation Authority (NIA) that the area is not irrigated nor programmed for irrigation, is not conclusive on the DAR, since big areas in the municipality are recipients of JICA-funded Integrated Jala-Jala Rural Development Projects. The motion for reconsideration filed by private respondent was likewise denied by the DAR Secretary.

Private respondent then appealed to the Court of Appeals. During the course of the appeal, said court created a commission composed of three (3) members tasked to conduct an ocular inspection and survey of the subject parcels of land and to submit a report on the result of such inspection and survey. To verify the report of the commission, the DAR constituted its own team to inspect and report on the property in question. The verification report of the DAR, duly filed with the Court of Appeals, objected to the report of the commission mainly due to the lack of specific boundaries delineating the surveyed areas.

On December 9, 1998, the Court of Appeals issued its Decision that reversed the assailed DAR orders, the dispositive portion of which reads:

"WHEREFORE, the Orders of the respondent Secretary dated October 19, 1995 and November 15, 1995 are hereby REVERSED, and judgement is hereby rendered declaring those portions of the land of the petitioner which are mountainous and residential, as found by the Courts (sic) commissioners, to be exempt from the Comprehensive Agrarian Reform Program, subject to their delineation. The records of this case are hereby ordered remanded to the respondent Secretary for further proceedings in the determination of the boundaries of the said areas."[3]

Hence this petition for review wherein petitioner DAR seeks the reversal of the foregoing decision on the ground that the honorable Court of Appeals erred:

- WHEN IT RULED THAT THERE WAS NO DEFINITE CLASSIFICATION OF THE PROPERTIES INVOLVED WHEN, PER THE CORRESPONDING TAX DECLARATIONS, THEY ARE GENERALLY CLASSIFIED AS AGRICULTURAL.
- WHEN IT RULED THAT THE PHYSICAL FEATURES OF THE LAND AS OF 1980 OR BEFORE AS APPEARING IN TABLE 3-3 OF THE ZONING ORDINANCE IS THE PRESENT CLASSIFICATION OF THE LANDHOLDINGS INVOLVED; and
- WHEN IT MADE A RULING ON HOW SUBJECT LANDHOLDING BE CLASSIFIED (WHETHER COVERED BY AGRARIAN REFORM FOR BEING AGRICULTURAL LAND OR NOT) AND DISPOSED OF SOLELY ON THE BASIS OF THE PHYSICAL CONDITION OF THE LAND IRRESPECTIVE OF THE LEGAL ISSUE RAISED ON THEIR LEGAL CLASSIFICATION, A FUNCTION THAT IS VESTED IN CONGRESS.[4]

The petition has no merit.

Republic Act No. 6657 otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1998 covers all public and private agricultural lands. The same law defines agricultural as "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land".[5]

Private respondent sought exemption from the coverage of CARL on the ground that its five parcels of land are not wholly agricultural. The land use map of the municipality, certified by the Office of the Municipal Planning and Development Coordinator (MPDC) of Jala-Jala and the report of the commission constituted by the Court of Appeals established that the properties lie mostly within the residential and forest conservation zone.

Petitioner DAR maintains that the subject properties have already been classified as agricultural based on the tax declarations.[6] The Office of the Solicitor General (OSG) and petitioner DAR are one in contending that the classification of lands once determined by law may not be varied or altered by the results of a mere ocular or aerial inspection.[7]

We are unable to sustain petitioner's contention. There is no law or jurisprudence that holds that the land classification embodied in the tax declarations is conclusive and final nor would proscribe any further inquiry. Furthermore, the tax declarations are clearly not the sole basis of the classification of a land. In fact, DAR Administrative Order No. 6 lists other documents, aside from tax declarations, that must be submitted when applying for exemption from CARP.[8] In *Halili vs. Court of Appeals*[9], we sustained the trial court when it ruled that the classification made by the Land Regulatory Board of the land in question outweighed the classification stated in the tax declaration. The classification of the Board in said case was more recent than that of the tax declaration and was based on the present condition of the property and the community thereat.[10]

In this case, the Court of Appeals was constrained to resort to an ocular inspection of said properties through the commission it created considering that the opinion of petitioner DAR conflicted with the land use map submitted in evidence by private respondent. Respondent court also noted that even from the beginning the properties of private respondent had no definite delineation and classification.[11] Hence, the survey of the properties through the court appointed commissioners was the judicious and equitable solution to finally resolve the issue of land classification and delineation.

The OSG stresses that to be exempt from CARP under DOJ Opinion No. 44, the land must have been classified as industrial/residential before June 15, 1988. [12] Based on this premise, the OSG points out that no such

classification was presented except the municipality's alleged land use map in 1980 showing that subject parcels of land fall within the municipality's forest conservation zone.[13] The OSG further argues that assuming that a change in the use of the subject properties in 1980 may justify their exemption from CARP under DOJ Opinion No. 44, such land use of 1980 was, nevertheless, repealed/amended when the HLURB approved the municipality's Comprehensive Development Plan for Barangay Punta for the years 1980 to 2000 in its Resolution No. 33, series of 1981.[14] The plan for Barangay Punta, where the parcels of land in issue are located, allegedly envision the development of the barangay into a progressive agricultural community with the limited allocation of only 51 hectares for residential use and none for commercial and forest conservation zone use.[15]

The foregoing arguments are untenable. We are in full agreement with respondent Court when it rationalized that the land use map is the more appropriate document to consider, thus:

"The petitioner (herein private respondent) presented a development plan of the Municipality of Jala-Jala, which was approved by the Housing and Land Use Regulatory Board (HLURB) on December 2, 1981. It also presented certifications from the HLURB and the Municipal Planning and Development Coordinator of Jala-Jala that the subject properties fall within the Residential and Forest Conservation zones of the municipality. Extant on the record is a color-coded land use map of Jala-Jala, showing that the petitioner's land falls mostly within the Residential and Forest Conservation zones. This notwithstanding, the respondent Secretary of Agrarian Reform denied the petitioner's application on the ground that the town plan of the municipality, particularly Table 4-4 thereof, shows that Barangay Punta is intended to remain and to become a progressive agricultural community in view of the abundance of fertile agricultural areas in the barangay, and that there is a discrepancy between the land use map which identifies a huge forest conservation zone and the land use plan which has no area classified as forest conservation.

However, a closer look at the development plan for the municipality of Jala-Jala shows that Table 4-4 does not represent the present classification of land in that municipality, but the proposed land use to be achieved. The existing land use as of 1980 is shown by Table 3-3, wherein Barangay Punta is shown to have a forest area of 35 hectares and open grassland (which was formerly forested area) of 56 hectares. The land use map is consistent with this."[16]

Moreover, the commissioner's report on the actual condition of the properties confirms the fact that the properties are not wholly agricultural. In essence, the report of the commission showed that the land of private respondent consists of a mountainous area with an average 28 degree slope containing 66.5 hectares; a level, unirrigated area of 34 hectares of which 5 to 6 hectares are planted to palay; and a residential area of 8 hectares.[17] The finding that 66.5 hectares of the 112.0577 hectares of land of private respondent have an average slope of 28 degrees provides another cogent reason to exempt these portions of the properties from the CARL. Section 10 of the CARL is clear on this point when it provides that "all lands with eighteen percent (18%) slope and over, except those already developed shall be exempt from the coverage of this Act".

Petitioner DAR and the OSG contest the finding of the Court of Appeals that the subject parcels of land have a mountainous slope on the ground that this conclusion was allegedly arrived at in a manner not in accord with established surveying procedures.[18] They also bewail the consideration given by the Court of Appeals to the "slope" issue since this matter was allegedly never raised before the DAR and the Court of Appeals.[19] Petitioner DAR and the OSG thus claim that laches had already set in.[20]

As pointed out earlier, the crux of the controversy is whether the subject parcels of land in issue are exempt from the coverage of the CARL. The determination of the classification and physical condition of the lands is therefore material in the disposition of this case, for which purpose the Court of Appeals constituted the commission to inspect and survey said properties. Petitioner DAR did not object to the creation of a team of commissioners[21] when it very well knew that the survey and ocular inspection would eventually involve the determination of the

slope of the subject parcels of land. It is the protestation of petitioner that comes at a belated hour. The team of commissioners appointed by respondent court was composed persons who were mutually acceptable to the parties.[22] Thus, in the absence of any irregularity in the survey and inspection of the subject properties, and none is alleged, the report of the commissioners deserves full faith and credit and we find no reversible error in the reliance by the appellate court upon said report.

WHEREFORE, the petition is hereby DENIED. The challenged Decision is AFFIRMED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Per Associate Justice Hector L. Hofileña and concurred in by Associate Justices Jainal D. Rasul and Hilarion L. Aquino (Former Fourteenth Division).

[2] "A. Any landowner or his duly authorized representative whose lands are covered by DOJ Opinion No. 44, s. 1990, and desires to have an exemption clearance from DAR, should file the application with the Regional Office of the DAR where the land is located.

B. The application should be duly signed by the landowner or his representative, and should be accompanied by the following documents:

- Duly notarized Special Power of Attorney, if the applicant is not the landowner himself;
- Certified true copies of the titles which is the subject of the application;
- Current tax declaration(s) covering the property;
- Location Map or Vicinity Map;
- Certification from the Deputized Zoning Administrator that the land has been reclassified to residential, industrial or commercial use prior to June 15, 1998;
- Certification from the HLURB that the pertinent zoning ordinance has been approved by the Board prior to June 15, 1988;
- Certification from the National Irrigation Administration that the land is not covered by Administrative Order No. 20 s. 1992, i.e., that the area is not irrigated, not scheduled for irrigation rehabilitation nor irrigable with firm funding commitment;
- Proof of payment of disturbance compensation, if the area is presently being occupied by farmers, or waiver/undertaking by the occupants that they will vacate the area whenever required."

[3] Rollo, p. 36.

[4] Ibid., p. 12.

[5] § 3 (c).

[6] Rollo, p. 13.

[7] Ibid., pp. 180-181.

[8] See note 2.

[9] 287 SCRA 465 (1998).

[10] Ibid., p. 471.

[11] Rollo, p. 35.

[12] Ibid., p. 181.

[13] Ibid.

[14] Ibid., pp. 181-182.

[15] Ibid., p. 182.

[16] Ibid., p. 33.

[17] Ibid. p. 35.

[18] Ibid. , p. 182.

[19] Ibid.

[20] Ibid.

[21] Records, p. 124.

[22] The team of commissioners was originally composed of Atty. Diosdado Saavedra, a representative of the Court of Appeals, Geodetic Engineer Nicandro A. Martinez and Geodetic Engineer Braulio Darum. Engineer Darum withdrew as commissioner at the last minute, hence Atty. Saavedra and Engineer Darum composed the team of commissioners who surveyed the properties in issue together with Mr. Carlo Claudio, a professional photographer who took the aerial and ground pictures of said properties.

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