

DEPARTMENT OF AGRARIAN REFORM REPRESENTED BY MR. VIRGILIO L. ALCOMENDRAS IN HIS CAPACITY AS CEBU PROVINCIAL AGRARIAN REFORM OFFICER, MR. JOSEPHUS M. GONZALES IN HIS CAPACITY AS C...

G.R. NO. 147479. September 26, 2005

Ponente: CARPIO, J.

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CARPIO, J.

The Case

This is a petition for review[1] of the Decision[2] dated 20 November 2000 of the Court of Appeals in CA-G.R. SP No. 43917 affirming the decision of the Department of Agrarian Reform Adjudication Board ("DARAB") with modification by deleting the disturbance compensation.

The Facts

In January 1994, Municipal Agrarian Reform Officer Patrocinia G. Mercado ("MARO Mercado")[3] of the Department of Agrarian Reform ("DAR") sent a letter to Paulino Franco ("Franco") through Franco's attorney-in-fact, Plaridel Seno ("Seno"). The letter requested Franco to attend a conference to discuss the terms and conditions of bringing under the agricultural leasehold system Franco's land located in Babag, Cebu City. Franco failed to attend the meeting and merely sent a letter-reply to MARO Mercado, objecting to the placement of his land under the coverage of Republic Act No. 6657 ("RA 6657") or the Comprehensive Agrarian Reform Law of 1988.

MARO Mercado prepared the documentation folders for Provisional Lease Rentals in favor of the following: Juana Alforque, Francisco Navarro, Eduardo Navarro, Arsenio Gabisay, Andres Labandero, Benedicto Gabisay, Edilberto Labandero, Lolita Dacayana, Celestino Rama, Numeriano Navarro, Bonifacio Lastimosa, Loretta Rama, Lourdes Arda, Leonardo Gabisay, and Normerta Bontilao ("private petitioners").[4] MARO Mercado found all the private petitioners bona fide tenants on Franco's land. The land, allegedly thus tenanted, had an aggregate area of 36.8 hectares. The folders contained the corresponding orders fixing the lease rentals for each occupant. On 7 March 1994, Acting Provincial Agrarian Reform Officer Buenaventura Pomida ("PARO Pomida")[5] approved the Provisional Lease Rentals recommended by MARO Mercado.

Franco filed with the DARAB, Region VII, Cebu City a petition to nullify the orders of MARO Mercado and PARO Pomida. The case was docketed as Reg. Case No. VI-516-C-94. Franco alleged that the land could not be placed under the agricultural leasehold system because Proclamation No. 2052[6] dated 30 January 1981 and Letter of Instruction No. 1256 ("LOI No. 1256") dated 14 July 1982 had already classified the land as non-agricultural. Proclamation No. 2052 declared the Barangays of Sibugay, Malubog, Babag and Sirao, including the proposed Lusaran Dam in the City of Cebu and the Municipalities of Argao and Dalaguete in the Province of Cebu, as tourist zones. Further, under Section 12 of RA 6657, in relation to DAR Administrative

Order No. 4, series of 1989, only tenanted agricultural lands can be brought under the leasehold system. Franco alleged that since his land is neither agricultural nor tenanted, private petitioners not having shared any produce of the land with him, the land could not be placed under the leasehold system.

Moreover, Franco claimed that the procedure under DAR Administrative Order No. 4 prescribing when the Municipal Agrarian Reform Officer may fix provisionally the leasehold rental even without the landowner's participation applies only in cases where the landowner disagrees with the amount of rental, but not when the landowner denies that his land is agricultural and tenanted. Thus, Franco prayed for the nullification of the Provisional Leasehold Rental Orders.

In their answer, private petitioners asserted that the issuance of the orders was in accordance with Section 12 of RA 6657,[7] in relation to Section 34 of Republic Act No. 3844 ("RA 3844"),[8] authorizing the Municipal Agrarian Reform Officer to fix the rentals on agricultural land. Accordingly, MARO Mercado sent notices for Leasehold Conference to Franco and private petitioners. Since Franco merely sent a letter-reply to the notice without appearing and presenting evidence to support his claim that his land is untenanted and is non-agricultural, MARO Mercado prepared the documentation folders for Provisional Lease Rentals as mandated by DAR Administrative Order No. 4, series of 1989. PARO Pomida later approved the Provisional Lease Rentals.

Thus, private petitioners assert that whatever acts done by MARO Mercado and PARO Pomida on the Provisional Lease Rentals on Franco's land were performed in accordance with their official duties and functions. Private petitioners further alleged that the exemption of Franco's land from the Operation Land Transfer coverage was by virtue of Proclamation No. 2052 and not because Franco's land was untenanted. Proclamation No. 2052, in placing certain barangays of Cebu City, including Barangay Babag, within the tourism zone, did not automatically change the classification of Franco's land from agricultural to non-agricultural.

On 30 June 1994, the Agrarian Reform Adjudicator ("Adjudicator") ruled in favor of Franco, declaring the assailed orders void.[9] Citing Proclamation No. 2052, LOI No. 1256, and the Order dated 16 September 1992 of then DAR Secretary Ernesto Garilao ("Secretary Garilao"), the Adjudicator held that Franco's land is excluded from the coverage of the Operation Land Transfer under Presidential Decree No. 27 and the Comprehensive Agrarian Reform Law under RA 6657. The dispositive portion of the decision of the Adjudicator reads:

WHEREFORE, in the light of the reasons above-cited, Decision is hereby rendered as follows, to wit:

- Declaring the challenged Orders (Annexes "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P" and "Q") as null and void for lack of legal and factual basis;
- Ordering the recall and cancellation of the aforesaid Orders for the reasons above-indicated;
- No pronouncement as to cost and damages.

Serve copies of this Decision to Atty. Hilario Baril, Atty. Florito Pozon/Mr. Ramon Araneta, Jr., MARO Patrocinia Mercado and all the parties hereof for their guidance and information.

SO ORDERED.[10]

On appeal, the DARAB rendered its Decision[11] dated 23 July 1996 affirming the decision of the Adjudicator. The DARAB held that Franco's land was not agricultural land at the time the questioned orders were issued. The DARAB cited two reasons: (1) Franco's land is within the tourism zone pursuant to Proclamation No. 2052, promulgated on 30 January 1981, and which preceded the enactment of RA 6657 which became effective on 15 June 1988; and (2) the purpose of Proclamation No. 2052 is manifested in the issuance of LOI No. 1256 which directed the DAR Secretary[12] to exempt the areas situated within the declared Tourist Zone from the

coverage of the Operation Land Transfer, and to suspend or cancel all processing for coverage of these areas under the land reform program.

In the Decision, one of the members of the DARAB, Lorenzo R. Reyes ("Reyes"), made a handwritten note under his signature stating: "Petitioner-appellee [Franco] will still have to apply for conversion and if granted appellants will be entitled to disturbance compensation." Secretary Garilao, as Chairperson of the DARAB, rendered a separate opinion stating that:

I concur, together with the Honorable DARAB Commissioners, with the outcome of this case.

I would like to reiterate however that the grant of exemption from coverage of the Comprehensive Agrarian Reform Program is within the exclusive jurisdiction of the Secretary of Agrarian Reform. The decision of this case should not, in any way, be construed as a grant of exemption. Petitioner must still comply with the administrative requirement of applying for exemption or conversion of his landholding.[13]

Franco filed a Motion for Reconsideration dated 19 August 1996 on the sole ground:

That the pronouncement therein made that petitioner-appellee will still apply for conversion, and if granted, appellants will be entitled to disturbance compensation, is not supported by any factual and legal basis.[14]

In a Resolution dated 11 February 1997, however, the DARAB denied the motion for lack of merit.[15]

Franco appealed to the Court of Appeals but private petitioners did not. In a Decision dated 20 November 2000, the Court of Appeals affirmed the DARAB decision with the modification that private petitioners have no right to disturbance compensation.

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals held that Franco did not have to apply for conversion of his land from agricultural to non-agricultural. However, in accordance with Section 3(d)[16] of DAR Administrative Order No. 01, series of 1999, Franco should apply for an exemption clearance with the DAR to exempt his land from the coverage of RA 6657.

On the issue of disturbance compensation, the Court of Appeals held that private petitioners are not entitled to any disturbance compensation absent any proof that they are tenants, farmers, or bona fide occupants of the land. Under Section 16 of DAR Administrative Order No. 01, series of 1999, disturbance compensation shall be paid to tenants, farmworkers, or bona fide occupants affected by the conversion. The Court of Appeals stated that the DARAB itself found no tenancy relationship between Franco and private petitioners.

The Issues

Petitioners raise the following issues:

- WHETHER PRESIDENTIAL PROCLAMATION NO. 2052 DECLARING THE WHOLE BARANGAY OF SIBUGAY, MALUBOG, BABAG AND SIRAO AND THE MUNICIPALITIES OF ARGAO AND DALAGUETE [AS TOURIST ZONES] HAS TAKEN OUTSIDE THE COVERAGE OF AGRARIAN REFORM ALL AGRICULTURAL LANDS INCLUDED WITHIN THE PRESIDENTIAL PROCLAMATION OR ONLY THOSE THAT ARE ACQUIRED AND DEVELOPED BY THE PTA FOR TOURISM PURPOSES.
- WHETHER BARANGAY BABAG WHERE THE LAND SUBJECT OF THIS CASE IS LOCATED IS NOT ANYMORE COVERABLE UNDER THE COMPREHENSIVE AGRARIAN REFORM PROGRAM

(CARP).

- WHETHER THE FINDINGS OF NON-TENANCY AS RULED BY THE COURT OF APPEALS IS PROPER INSPITE OF THE FACT THAT THE SAME HAS NOT BEEN FACTUALLY DETERMINED IN THE COURT A QUO.

- WHETHER THE RULING OF THE COURT OF APPEALS AS TO THE NON-PAYMENT OF DISTURBANCE COMPENSATION TO PRIVATE PETITIONERS-FARMERS IS VALID AND PROPER.[17]

The Ruling of the Court

The issues in this case originated from an appeal not on the decision of the DARAB but on the note made by one of the DARAB members. In the DARAB decision, DARAB member Reyes made a handwritten note under his signature stating: "Petitioner-Appellee [Franco] will still have to apply for conversion and if granted appellants will be entitled to disturbance compensation." This note by DARAB member Reyes is not part of the dispositive portion of the decision. It appears that Franco was under the misconception that the note of DARAB member Reyes formed part of the decision and thus appealed this note to the Court of Appeals when the DARAB denied his motion for reconsideration.

Section 12, Rule X of the DARAB 2003 Rules of Procedure states the grounds for reconsideration of the decision of the DARAB:

SECTION 12. Motion for Reconsideration. Within fifteen (15) days from receipt of the notice of order, resolution or decision of the Board or Adjudicator, a party may move for reconsideration of such order, resolution, or decision on the grounds that:

12.1 the findings of fact in the said decision, order or resolution are not supported by substantial evidence, or

12.2 the conclusions stated therein are contrary to law and jurisprudence.

x x x

In this case, Franco moved for reconsideration, not of the DARAB decision, but of the one-sentence handwritten note of DARAB member Reyes. Obviously, the handwritten note of DARAB member Reyes does not form part of the decision and cannot be the subject of a motion for reconsideration. Thus, it was proper for the DARAB to dismiss the motion for reconsideration, albeit the resolution denying the motion for reconsideration failed to mention the impropriety of the issue raised in such motion.

An appeal from a decision of the DARAB involving questions of fact, of law, or mixed questions of fact and law may be taken to the Court of Appeals.[18] If the Court of Appeals finds that the DARAB has committed errors of fact or law that would warrant reversal or modification of the judgment or decision, it may give due course to the petition; otherwise, it shall dismiss the same.[19]

The following issues were raised in the Court of Appeals:

- WHETHER OR NOT PETITIONER [FRANCO] WILL STILL BE SADDLED WITH THE RIGORS OF CONVERSION IN THE LIGHT OF THE RULING OF THE DARAB THAT THE LOT IN QUESTION IS NOT AN AGRICULTURAL LAND.

- WHETHER OR NOT PETITIONER [FRANCO] WILL STILL BE BURDENED WITH THE OBLIGATION TO PAY DISTURBANCE COMPENSATION.[20]

Again, Franco sought for review not the DARAB decision but the one-sentence handwritten note of DARAB

member Reyes, which is a mere opinion of a lone member of the DARAB and has no binding effect. The view expressed in the note is not the opinion of the DARAB and does not form part of the DARAB decision. Certainly, the note does not form part of the dispositive portion of the DARAB decision which could be subject to an appeal.

In the recent case of *Republic of the Philippines v. Nolasco*,^[21] this Court reiterated the difference between a judgment and an opinion:

More to the point is another well recognized doctrine, that the final judgment as rendered is the judgment of the court irrespective of all seemingly contrary statements in the decision. "A judgment must be distinguished from an opinion. The latter is the informal expression of the views of the court and cannot prevail against its final order or decision. While the two may be combined in one instrument, the opinion forms no part of the judgment. So, . . . there is a distinction between the findings of and conclusions of a court and its Judgment. While they may constitute its decision and amount to the rendition of a judgment, they are not the judgment itself. They amount to nothing more than an order for judgment, which must, of course, be distinguished from the judgment." (1 Freeman on Judgments, p. 6) At the root of the doctrine that the premises must yield to the conclusion is perhaps, side by side with the needs of writing *finis* to litigations, the recognition of the truth that "the trained intuition of the judge continually leads him to right results for which he is puzzled to give unimpeachable legal reasons." "It is an everyday experience of those who study judicial decisions that the results are usually sound, whether the reasoning from which the results purport to flow is sound or not." (The Theory of Judicial Decision, Pound, 36 Harv. Law Review, pp. 9, 51.) It is not infrequent that the grounds of a decision fail to reflect the exact views of the court, especially those of concurring justices in a collegiate court. We often encounter in judicial decisions, lapses, findings, loose statements and generalities which do not bear on the issues or are apparently opposed to the otherwise sound and considered result reached by the court as expressed in the dispositive part, so called, of the decision. (Emphasis supplied)

A separate opinion cannot be a proper subject of an appeal. More so in this case where what was appealed in the appellate court was a one-sentence handwritten note of a DARAB member. It is not even the opinion of the DARAB but is merely the personal view of a DARAB member. The appellate court should have dismissed the petition which appealed not the DARAB decision itself but a mere note of a DARAB member which is not part of the DARAB decision. As held in *Bernas v. Court of Appeals*,^[22] "courts of justice have no jurisdiction or power to decide a question not in issue and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid."

Indeed, the ruling of the appellate court that private petitioners have no right to disturbance compensation because they have not proven that they are tenants of Franco's land went beyond the DARAB decision being appealed. The determination of entitlement to disturbance compensation is still premature at this stage since this case originally involved only the issue of nullity of the Provisional Lease Rental Orders. Further, it is the DAR that can best determine and identify the legitimate tenants who have a right to disturbance compensation.

Significantly, on 30 August 1994, then DAR Secretary Garilao issued an Order setting aside his previous Order dated 16 September 1992. The Order reads:

IN RE: APPLICATION FOR EXEMPTION/EXCLUSION FROM LAND ACQUISITION AND REDISTRIBUTION UNDER THE CARP INVOLVING PARCELS OF LAND IN SIRAO, MALUBOG, BABAG AND SIBUGAY, ALL IN CEBU CITY,

PAULINO B. FRANCO, represented by
PLARIDEL SENO, Administrator,
Applicant.

x - - - - - x

MANUEL A. CANTOS

- versus -

REGIONAL DIRECTOR NEVINO CARDENTE, et al.

x ----- x

ORDER

For resolution is a Motion for reconsideration, dated October 5, 1992, filed by protestants-farmers, from the Order of this Department (DARCO), dated September 16, 1992, upholding the validity of Proclamation No. 2052 declaring the Barangays of Sibugay, Malubog, Babag and Sirao, including the proposed Lusaran Dam, in the City of Cebu, and the Municipalities of Argao and Dalaguete, in the province of Cebu as tourist zones, and declaring the landholdings covered by the Kang-Irag Sports Complex as excluded from Operation Land Transfer (OLT) and the Comprehensive Agrarian Reform Program (CARP).

x x x

However, the bone of contention in the case at bar centers on the extent of the area declared as exempted from the coverage of the agrarian reform program. If we are to take the words of the proclamation at its face value, it would appear that the entire four barangays, including the areas within the proposed Lusaran Dam and two other municipalities, would be exempted from CARP by virtue of this very law.

However, a closer reading of the proclamation would show that the PTA is mandated to identify well geographic areas within the tourism zone for purposes of development, to wit:

"NOW THEREFORE I, PRESIDENT FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby declare the areas comprising the Barangays of Sibugay, Malubog, Babag, and Sirao, including the proposed Lusaran Dam in the City of Cebu, and the municipalities of Argao and Dalaguete in the Province of Cebu, as tourist zones under the administration and control of the Philippine Tourism Authority, pursuant to Sec. 5 (d) of Presidential Decree No. 564.

The PTA shall identify well defined geographic areas within the zones with potential tourism value."

In other words, the specific intent of Proclamation No. 2052 is the identification of the areas for tourism with the implication that the other areas within the proclamation but no longer necessary for tourism development as determined by the PTA, in this case, could be transferred for agrarian reform purposes to the DAR.

In a series of consultations with the PTA, the DAR has requested the PTA to delineate and identify the areas needed for tourism development. In a letter dated August 4, 1993, the PTA, through its General Manager, Eduardo T. Joaquin, identified a total of 1,500 hectares, more or less, which are needed for tourism, 808 hectares of which are covered by a Master Plan. The said letter is accompanied by a map delineating these areas.

Though this Department, as an arm of the Executive Branch, supports the programs being implemented by its partner agencies (in this particular case, improve our tourism prospects) it remains steadfast on its commitment to the lowly farmers of the land. Inasmuch as the PTA has clearly delineated 808 hectares of land for tourism purposes, backed by a master plan, this Department is inclined to believe that this is more than enough for the implementation of its project and is well within its capability to develop.

This office is not inclined to exempt from CARP coverage the entire 1,500 hectares as intimated by the General Manager of the PTA since a substantial portion of this area is not supported by a master plan that would show that indeed they need the entire 1,500 hectares for its purposes. The remaining hectares would better serve the purposes of agricultural production and enhancement of the livelihood of the farmers in the area.

IN VIEW OF THE FOREGOING, the Order of this Office dated September 16, 1992, is hereby set aside and a

new Order issued, to wit:

- The area of 808 hectares, more or less, is hereby declared for tourism purposes and therefore deemed excluded from OLT or CARP coverage;
- The balance of the area which is covered under Proclamation No. 2052, which is a total of 2,192 hectares, more or less, is deemed covered under the Comprehensive Agrarian Reform Program, either through its land transfer or Integrated Social Forestry, and Handog Titulo components;
- DAR Regional Office VII is hereby directed to delineate the 808 hectares for tourism development with the assistance of the PTA, to determine with exactitude what areas will be covered by CARP;
- The legitimate farmer-beneficiaries within the 808 hectares shall be paid disturbance compensation pursuant to Section 36 of RA 3844, as amended by Sec. 7 of RA 6389;
- The DAR Regional Office VII is directed further to devise a comprehensive relocation/resettlement plan for the farmers that stand to be affected by the tourism development, which may include among others:
 - Temporary usufructuary agreements for the use of the land pending actual site development;
 - Permanent relocation sites in the areas outside the 808 hectares;
 - Provision of support services; and
 - Issuance of Certificates of Land Ownership Award or Certificates of Stewardship, or other appropriate tenurial instruments, corresponding to the relocation areas;
- Directing that any and all development activities, inclusive of preparatory site development, for the change of the 808 hectares from agricultural to non-agricultural use shall be suspended until after the payment of just compensation by the landowners concerned and the actual relocation of the farmers.

In the light of this Order, we deem the Petition of Mr. Manuel Cantos, dated December 15, 1992, and the Motion For Intervention, dated May 3, 1993, to be moot and academic, and are hereby dismissed.

SO ORDERED.[23] (Emphasis supplied)

Thus, the DAR Regional Office VII, in coordination with the Philippine Tourism Authority, has to determine precisely which areas are for tourism development and excluded from the Operation Land Transfer and the Comprehensive Agrarian Reform Program. And suffice it to state here that the Court has repeatedly ruled that lands already classified as non-agricultural before the enactment of RA 6657 on 15 June 1988 do not need any conversion clearance.[24]

New issues raised for the first time on appeal

Private petitioners raise for the first time on appeal the first two issues submitted for resolution. Private petitioners never appealed to the Court of Appeals the DARAB decision, affirming the Adjudicator's decision nullifying the Provisional Leasehold Rental Orders.

In *Sta. Rosa Realty Development Corporation v. Amante*,^[25] this Court held that the appellate court did not have jurisdiction to consider evidence in a petition for certiorari or petition for review on certiorari outside those submitted before the DARAB. Likewise, we cannot consider new issues raised at this very late stage in the proceedings as this would violate the basic principles of fair play, justice and due process.^[26]

In *Salafranca v. Philamlife (Pamplona) Village Homeowners Association, Inc.*,^[27] the Court held:

In the proceedings before the Labor Arbiter, it is noteworthy that private respondent never raised the issue of

compulsory retirement, as a cause for terminating petitioner's service. In its appeal before the NLRC, this ground was never discussed. In fact, private respondent, in justifying the termination of the petitioner, still anchored its claim on the applicability of the amended by-laws. This omission is fatal to private respondent's cause, for the rule is well-settled that matters, theories or arguments not brought out in the proceedings below will ordinarily not be considered by a reviewing court, as they cannot be raised for the first time on appeal. (Emphasis supplied)

Similarly, in this case, private petitioners should have raised the first two issues during the DARAB proceedings. Matters, theories or arguments not submitted before the DARAB will not be considered on appeal where they are raised for the first time. Well-settled is the rule that a party is not allowed to change his theory of the case or his cause of action on appeal.[28]

WHEREFORE, we SET ASIDE the Decision dated 20 November 2000 of the Court of Appeals in CA-G.R. SP No. 43917. We REINSTATE the Decision dated 23 July 1996 of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 2811, affirming fully the decision of the Adjudicator.

SO ORDERED.

Davide, Jr. (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Fermin A. Martin, Jr., with Associate Justices Oswaldo D. Agcaoili and Eriberto U. Rosario, Jr., concurring.

[3] Replaced by Mr. Josephus M. Gonzales.

[4] Andres Labandero and Benedicto Gabisay were included as respondents-appellants in the DARAB Case No. 2811, but were omitted when the case was appealed to the Court of Appeals and Supreme Court.

[5] Replaced by Mr. Virgilio L. Alcomendras.

[6] Proclamation No. 2052 reads:

Proclamation No. 2052

DECLARING THE BARANGAYS OF SIBUGAY, MALUBOG, BABAG AND SIRAO INCLUDING THE PROPOSED LUSARAN DAM IN THE CITY OF CEBU AND THE MUNICIPALITIES OF ARGAO AND DALAGUETE IN THE PROVINCE OF CEBU AS TOURIST ZONES AND FOR OTHER PURPOSES.

WHEREAS, certain areas in the sector comprising the Barangay[s] of Sibugay, Malubog, Babag and Sirao including the proposed Lusaran Dam in the City of Cebu and the Municipalities of Argao and Dalaguete in the province of Cebu have potential tourism value after being developed into resort complexes for the foreign and domestic market; and

WHEREAS, it is necessary to conduct the necessary studies and to segregate specific geographic areas for concentrated efforts of both the government and private sectors in developing their tourism potential.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby declare the areas comprising the Barangays of Sibugay, Malubog, Babag and Sirao including the proposed Lusaran Dam in the City of Cebu and the Municipalities of Argao and Dalaguete in the province of Cebu as tourist zones under the administration and control of the Philippine Tourism Authority pursuant to Section 5 (d) of Presidential Decree 564.

The PTA shall identify well-defined geographic areas within the zones with potential tourism value, wherein optimum use of natural assets and attractions, as well as existing facilities and concentration of efforts and limited resources of both government and private sector may be affected and realized in order to generate foreign exchange as well as other tourist receipts.

Any duly established military reservations existing within the zones shall be excluded from this proclamation.

All proclamations, decrees or executive orders inconsistent herewith are hereby revoked or modified accordingly.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 30[th] day of January, in the year of Our Lord, nineteen hundred and eighty-one.

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

[7] Section 12 of RA 6657 reads:

SEC. 12. Determination of Lease Rentals. – In order to protect and improve the tenurial and economic status of the farmers in tenanted lands under the retention limit and lands not yet acquired under this Act, the DAR is mandated to determine and fix immediately the lease rentals thereof in accordance with Section 34 of R.A. No. 3844, as amended: Provided, That the DAR shall immediately and periodically review and adjust the rental structure for different crops, including rice and corn, of different regions in order to improve progressively the conditions of the farmer, tenant or lessee.

[8] Section 34 of RA 3844 (Agricultural Land Reform Code) reads:

SEC. 34. Consideration for the Lease of Riceland and Lands Devoted to Other Crops. – The consideration for the lease of riceland and lands devoted to other crops shall not be more than the equivalent of twenty-five per centum of the average normal harvest or if there have been no normal harvests, then the estimated normal harvest during the three agricultural years immediately preceding the date the leasehold was established after deducting the amount used for seeds and the cost of harvesting, threshing, loading, hauling and processing, whichever are applicable: Provided, That if the land has been cultivated for a period of less than three years, the initial consideration shall be based on the average normal harvest or if there have been no normal harvests, then the estimated normal harvest during the preceding years when the land was actually cultivated, or on the harvest of the first year in the case of newly cultivated lands, if that harvest is normal harvest; the final consideration shall be based on the average normal harvest during these three preceding agricultural years.

In the absence of any agreement between the parties as to the rental, the Court of Agrarian Relations shall summarily determine a provisional rental in pursuance of existing laws, rules and regulations and production records available in the different field units of the department, taking into account the extent of the development of the land at the time of the conversion into leasehold and participation of the lessee in the development thereof. This provisional rental shall continue in force and effect until a fixed rental is finally determined. The court shall determine the fixed rental within thirty days after the petition is submitted for decision.

If the capital improvements are introduced on the farm not by the lessee to increase its productivity, the rental shall be increased proportionately to the consequent increase in production due to said improvements. In case of disagreement, the Court shall determine the reasonable increase in rental. (As amended by RA 6389)

[9] CA Rollo, pp. 40-49.

[10] Ibid., p. 49.

[11] Rollo, pp. 64-74.

[12] The pertinent provisions of LOI No. 1256 reads:

TO : The Minister of Education and Culture
The Minister of Human Settlements
The Minister of Natural Resources
The Minister of Public Works and Highways
The Minister of Transportation and Communication
The Minister of Agrarian Reform
The Administrator, National Electrification Administration
The President and Chief Executive Officer, National Power Corporation

In order to hasten the development and to ensure successful completion and implementation of the Kang-Irag Sports Complex and Development Project in Barangays Babag, Malubog, Sibugay and Sirao, Cebu City, undertaken by the Philippine Tourism Authority (PTA), you are hereby directed to perform the following duties and responsibilities, to wit:

x x x

VI. MINISTRY OF AGRARIAN REFORM

- Exempt the area from Operation Land Transfer.

- Suspend or cancel the processing of applications for coverage under Land Reform in the area affected by these instructions.

x x x

[13] CA Rollo, p. 62.

[14] Ibid., p. 63.

[15] Ibid., pp. 70-71.

[16] Section 3(d) of DAR Administrative Order No. 01, series of 1999 (Revised Rules and Regulations on the Conversion of Agricultural Lands to Non-Agricultural Uses) reads:

SEC. 3. Applicability of Rules. – These Rules shall apply to the following agricultural lands:

x x x

(d) Those reclassified to residential, commercial, industrial, or other non-agricultural uses on or after the effectivity of RA 6657 on June 15, 1988 pursuant to Section 20 of RA 7160 and other pertinent laws and regulations, and are to be converted to such uses. However, for those reclassified prior to June 15, 1988, the guidelines on securing exemption clearance shall apply.

[17] Rollo, p. 12.

[18] See Sections 1 and 2, Rule 43 of the 1997 Rules of Civil Procedure.

[19] See Section 10, Rule 43 of the 1997 Rules of Civil Procedure.

[20] Rollo, pp. 29-30.

[21] G.R. No. 155108, 27 April 2005 citing Contreras and Gingco v. Felix and China Banking Corp., 78 Phil. 570

(1947).

[22] G.R. No. 85041, 5 August 1993, 225 SCRA 119.

[23] Rollo, pp. 94-100.

[24] Advincula-Velasquez v. Court of Appeals, G.R. Nos. 111387 & 127497, 8 June 2004, 431 SCRA 165; Pasong Bayabas Farmers Association, Inc. v. Court of Appeals, G.R. Nos. 142359 & 142980, 25 May 2004, 429 SCRA 109; National Housing Authority v. Hon. Allarde, 376 Phil. 147 (1999); Natalia Realty, Inc. v. Department of Agrarian Reform, G.R. No. 103302, 12 August 1993, 225 SCRA 278. See also Ros v. Department of Agrarian Reform, G.R. No. 132477, 31 August 2005.

[25] G.R. No. 112526, 16 March 2005, 453 SCRA 432.

[26] See De Rama v. Court of Appeals, G.R. No. 131136, 28 February 2001, 353 SCRA 94.

[27] 360 Phil. 652 (1998).

[28] Bernas v. Court of Appeals, G.R. No. 85041, 5 August 1993, 225 SCRA 119.

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