

**DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY
SECRETARY HERNANI A. BRAGANZA, PETITIONER, VS. PABLO
BERENGUER, BELINDA BERENGUER, CARLO BERENGUER, ROSARIO
BERENGUER-LANDERS, AND ...**

G.R. No. 154094. March 09, 2010

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The Department of Agrarian Reform (DAR) appeals the adverse decision dated December 26, 2000[1] and resolution dated June 26, 2002[2] of the Court of Appeals (CA) in C.A.-G.R. SP No. 53174 entitled Pablo Berenguer, et al. v. Department of Agrarian Reform and Baribag Agrarian Reform Cooperative.

Antecedents

The respondents were the registered owners of several residential and industrial lands with a total area of 58.0649 hectares located in Barangay Bibincahan, Sorsogon, Sorsogon and covered by the following certificates of title (TCTs), to wit:

Remedios Berenguer-Lintag --TCT Nos. 49393, 49394, 49395, 49396, 49397, 49398, 49399, 49400, 49401, 49402, 49403, 49404, 49405, 25275, and 25284;

Carlo Berenguer and Belinda Berenguer-Aguirre--TCT Nos. 26085, 26087, 48655, 48656, 48658, 48659, 48660, 48661, 48662, 48663, 48664, 48665, and 48666;

Rosario Berenguer-Landers--TCT No. 28770, 28771, 28772, 28773, 28774, 28775, 28776, 28777, 28778, 28779, 28780, 28781, 28782, 28783, 28784, 28785, and 28786;

Pablo Berenguer--TCT No. 14998

In April 1998, the respondents received from the DAR notices of coverage of their said landholdings by the Government's Comprehensive Agrarian Reform Program (CARP) pursuant to Republic Act No. 6657 (Comprehensive Agrarian Reform Law, or CARL). They protested the notices of coverage, filing on October 5, 1998, in the office of DAR Regional Director Percival Dalugdug (Regional Director Dalugdug) in Legaspi City, their application for exclusion of their landholdings from CARP coverage, and praying for the lifting of the notices of coverage.[3]

In October and November 1998, the DAR Secretary, without acting on the respondents' application for exclusion, cancelled their titles and issued certificates of land ownership awards (CLOAs), covering their landholdings, to the members of the Baribag Agrarian Reform Beneficiaries Development Cooperative (Baribag), not to the respondents' workers on the landholdings, although Baribag was not impleaded in the respondents' application for exclusion.

In an order dated February 15, 1999, Regional Director Dalugdug denied the respondents' application for exclusion. Thus, they appealed the denial to the DAR Secretary.[4]

On March 9, 1999, pending resolution of the respondents' appeal to the DAR Secretary, Baribag filed in the office of DAR Regional Agrarian Reform Adjudicator (RARAD) for Legaspi City Isabel Florin (RARAD Florin) a petition seeking to implement the February 15, 1999 order of Regional Director Dalugdug (denying the respondents' application for exclusion), which was docketed as DARAB Case No. V-RC-05-339-99.

On March 15, 1999, RARAD Florin issued an implementing writ placing Baribag in possession of the respondents' landholdings. She denied the respondents' motion for reconsideration on March 22, 1999.[5]

On March 24, 1999, the respondents appealed before the Department of Agrarian Reform Adjudication Board by filing a notice of appeal with the office of RARAD Florin.

On April 6, 1999, then Acting DAR Secretary Conrado Navarro denied the respondents' appeal of the order of Regional Director Dalugdug denying their application for exclusion and petition to lift the notice of coverage.[6]

In an order dated April 8, 1999, RARAD Florin noted the respondents' notice of appeal, and issued the writ of possession sought by Baribag.

The respondents filed a petition for certiorari before the Court of Appeals (CA), which treated the petition as a petition for review. The respondents' petition maintained that the DAR Secretary had no jurisdiction over their landholdings, which were outside the coverage of the CARL due to their being originally devoted to pasture and livestock raising, and later being already classified as residential and industrial lands; that as early as 1981, the Housing and Land Use Regulatory Board had classified their landholdings as residential and industrial lands; and that pursuant to the decision in *Luz Farms v. the Secretary of DAR*, their landholdings were outside the coverage of the CARL.[7]

In support of their claim that their landholdings were already classified as residential and industrial, the respondents submitted the following documents, namely:[8]

- The certification dated May 18, 1999 issued by HLURB, stating, among others, that the Town Plan/Zoning Ordinance of Sorsogon, Sorsogon (classifying Barangay Bibincalan, where the respondents' properties were located, as a residential and commercial area), was approved by HLURB (then Human Settlements Commission/Human Settlements Regulatory Commission);
- An excerpt from the Comprehensive Development Plan of the Municipality of Sorsogon, Sorsogon, showing that Barangay Bibincalan was part of the Central Business District; hence, the respondents' landholdings in Bibincalan were classified as residential and industrial;
- Resolution No. 5 of the Sangguniang Bayan of Sorsogon, series of 1981, expanding the area of the poblacion to include Barangay Bibincalan, among others;
- The certification dated August 27, 1997 issued by the Office of the Zoning Administrator, Office of the Mayor, Sorsogon, Sorsogon, signed by Deputized Zoning Administrator Raul Jalmanzar, declaring that the respondents' landholdings were situated in Barangay Bibincalan within the Poblacion area of the Municipality of Sorsogon; and
- Department of Justice Opinion No. 44, series of 1990, stating that a parcel of land was considered non-agricultural, and, therefore, beyond the coverage of the CARP, if it had been classified as residential, commercial, or industrial in the City or Municipality Land Use Plan or Zoning Ordinance approved by HLURB before the effectivity of R.A. No. 6657 on June 15, 1988.

In its comment, the DAR asserted that the presence of heads of large cattle in respondents' landholdings of 58.06489 hectares was not a sufficient ground to consider the landholdings as being used for raising livestock.

For its part, Baribag claimed that the DAR Inspection Team had found that the respondents' landholdings were not devoted to cattle raising, and that the respondents' tax declarations stating that the landholdings were pasture lands were "contrived." [9]

The CA granted the petition, and reversed the DAR Secretary's April 6, 1999 order. The CA set aside the writ of execution and writ of possession issued by RARAD Florin; ordered the cancellation of Baribag's CLOAs; and directed the DAR Secretary to restore the respondents in the possession of their landholdings.

Hence, this appeal taken by the DAR.

Issues

The DAR insists that the CA erred: [10]

a)

When it ruled that the respondents' landholdings were exempt from the coverage of the CARP for not being agricultural, and were presumed due to their being part of the poblacion to have been reclassified into residential/commercial or non-agricultural area pursuant to Resolution No. 5, series of 1981, of the Sangguniang Bayan of Sorsogon, Sorsogon;

b)

When it ruled that there was error in the selection and designation of the farmer beneficiaries of the landholdings;

c)

When it ruled that because of the presence of cattle in the area, the landholdings were devoted to cattle raising and, therefore, exempt from CARP coverage under Luz Farms ruling;

d)

When it considered the respondents' petition for certiorari as a petition for review over their manifested insistence that their petition was one for certiorari under Rule 65, Rules of Court, and thereafter passed upon and ruled on the alleged errors of judgment in the decision/order of the DAR denying their petition for exemption from CARP coverage; inasmuch as there was no timely perfection of appeal, said DAR decision/order had become final and executory, and was thus removed from the CA's power of review.

Ruling

The appeal has no merit.

A

Procedural Issue: Treatment of Respondents' Petition for Certiorari as Petition for Review, Sustainable

The petitioner posits that the CA erred in not dismissing the respondents' erroneously filed petition for certiorari, and in treating the petition instead as a petition for review under Rule 43 of the Rules of Court and ultimately resolving the petition in the respondents' favor.

We cannot accept the petitioner's position.

The CA did not err in treating the petition for certiorari as a petition for review. There are precedents in that regard. In *Department of Education v. Cuanan*,^[11] this Court ruled that the petition for certiorari filed by therein respondent Cuanan with the CA within the 15-day reglementary period for filing a petition for review could be treated as a petition for review, for that would be in accord with the liberal spirit pervading the Rules of Court and in the interest of substantial justice. The Court had occasion to expound on the exceptions to the rule that a recourse to a petition for certiorari under Rule 65 rendered the petition dismissible for being the wrong remedy, thus:

The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. Recourse to a petition for certiorari under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. As will be shown forthwith, exception (c) applies to the present case.

Furthermore, while a motion for reconsideration is a condition precedent to the filing of a petition for certiorari, immediate recourse to the extraordinary remedy of certiorari is warranted where the order is a patent nullity, as where the court a quo has no jurisdiction; where petitioner was deprived of due process and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; where the proceeding was ex parte or one in which the petitioner had no opportunity to object. These exceptions find application to Cuanan's petition for certiorari in the CA.

At any rate, Cuanan's petition for certiorari before the CA could be treated as a petition for review, the petition having been filed on November 22, 2004, or thirteen (13) days from receipt on November 9, 2004 of CSC Resolution No. 041147, clearly within the 15-day reglementary period for the filing of a petition for review. Such move would be in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice.."

As will be demonstrated hereafter, exception (c), as recognized in *Department of Education v. Cuanan*, is applicable herein.

B

Substantive Issue: Respondents'
landholdings, not subject to CARP

In ruling that the respondents' landholdings were not devoted to cattle raising, the DAR relied on DAR Administrative Order (DAO) No. 9, series of 1993, which required that properties should be considered excluded from the coverage of the CARL only if it was established that as of June 15, 1988, the date of effectivity of the law, there existed the minimum ratio of one head of cattle to one hectare of land, and one head of cattle to 1.7815 hectares of infrastructure.

According to the DAR, only 15 heads of cattle were found within the 58 hectares sought to be excluded based on the semestral survey conducted in Sorsogon by the Bureau of Agricultural Statistics in the period from 1988 to 1992, which was in contravention of DAO No. 9, series of 1993.

The CA found, however, that heads of cattle were really being raised in the landholdings of the respondents. This finding was not disputed by the DAR. In view of the finding of the CA, we cannot now hold differently, for we are bound by the finding of fact of the CA. Verily, the insufficiency of the number of heads of cattle found during the semestral survey did not automatically mean that the landholdings were not devoted to the raising of livestock. We concur with the CA that there could be several reasons to explain why the number of cattle was below the

ratio prescribed under DAO No. 9 at the time of the survey, including pestilence, cattle rustling, or sale of the cattle.

That the Constitutional Commission never intended to include lands used for raising livestock and poultry, and commercial, industrial and residential lands within the coverage of the Agrarian Reform Program of the Government is already settled. In *Luz Farms v. Secretary of the Department of Agrarian Reform*,^[12] the Court pointed this out:

The transcripts of the deliberations of the Constitutional Commission of 1986 on the meaning of the word "agricultural" clearly show that it was never the intention of the framers of the Constitution to include livestock and poultry industry in the coverage of the constitutionally-mandated agrarian reform program of the Government.

xxx

It is evident from the foregoing discussion that Section II of R.A. 6657 which includes "private agricultural lands devoted to commercial livestock, poultry and swine raising" in the definition of "commercial farms" is invalid, to the extent that the aforementioned agro-industrial activities are made to be covered by the agrarian reform program of the State. There is simply no reason to include livestock and poultry lands in the coverage of agrarian reform.

Moreover, the policy objective of DAO No. 9 was to prevent landowners from taking steps to convert their agricultural lands to lands devoted to the raising of livestock, poultry, and swine in order to accord with *Luz Farms*.

Nonetheless, the CA also correctly clarified that the respondents' landholdings, even if they were not devoted to cattle raising, would still be excluded from the coverage of the CARL, because the DAR failed to establish that the landholdings were agricultural.

Resolution No. 5, passed on March 12, 1981 by the Sangguniang Bayan of Sorsogon, Sorsogon, showed that the limits of the poblacion area of the municipality included Barangay Bibinchahan, where the respondents' landholdings were situated. The significance of this fact cannot be overstated, for, thereby, the respondents' landholdings were presumed to be industrial and residential lands. Jurisprudence has been clear about the presumption. In *Hilario v. Intermediate Appellate Court*,^[13] the Court said:

The presumption assumed by the appellate court that a parcel of land which is located in a poblacion is not necessarily devoted to residential purposes is wrong. It should be the other way around. A lot inside the poblacion should be presumed residential, or commercial, or non-agricultural unless there is a clearly preponderant evidence to show that it is agricultural.

To the same effect was *Natalia Realty Corporation v. DAR*,^[14] thus:

We now determine whether such lands are covered by the CARL. Section 4 of R.A. 6657 provides that the CARL shall "cover, regardless of tenorial arrangement and commodity produced, all public and private agricultural lands." As to what constitutes "agricultural land," it is referred to as "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land." The deliberations of the Constitutional Commission confirm this limitation. "Agricultural lands" are only those lands which are "arable and suitable agricultural lands" and "do not include commercial, industrial and residential lands.

There is no dispute that as early as 1981, the respondents' landholdings have been part of the poblacion of Sorsogon, Sorsogon. Consistent with *Hilario* and *Natalia*, holding that the respondents' landholdings were non-agricultural, and, consequently, outside the coverage of the CARL, was fully warranted. In fact, the excerpt

from the Comprehensive Development Plan of Sorsogon, Sorsogon showed that Barangay Bibincahan was within the Central Business District of the municipality.

Likewise, the CA correctly concluded that the DAR erred in designating Baribag as the beneficiary of the landholdings.

In designating Baribag, the DAR did not show how its choice of Baribag as beneficiary, to the exclusion of the actual workers, could have accorded with Section 22 of the CARL, which provides:

Section 22. Qualified Beneficiaries. -- The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:

- (a) agricultural lessees and share tenants;
- (b) regular farmworkers;
- (c) seasonal farmworkers;
- (d) other farmworkers;
- (e) actual tillers or occupants of public lands;
- (f) collectives or cooperatives of the above beneficiaries; and
- (g) others directly working on the land.

Provided, however, that the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents: and provided, further, that actual tenant-tillers in the landholdings shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program.

A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to the landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

The only reason given by the DAR for not including the workers of the landholdings as farmer beneficiaries was that "it could be that either they have manifested lack/loss of interest in the property, as it has happened in many other areas placed under CARP coverage, because of their loyalty to the original landowner, like respondents, or because of fear or, simply, they refused to heed/answer the call of our field offices to submit to the screening process."^[15] Such reason is unacceptable. The CARL has set forth in mandatory terms in its Section 22, *supra*, who should be the qualified beneficiaries, but the DAR did not strictly comply with the law. Instead, the DAR excluded such workers based on its speculation and conjecture on why the actual workers on the landholdings had not shown interest and had not responded to the call of the DAR field officers during the screening process. As

such, the DAR did not really determine who were the lawful beneficiaries, failing even to present any documentary proof that showed that the respondents' workers genuinely lacked interest to be considered beneficiaries of the landholdings, or refused to subject themselves to the screening process.

There was also no evidence presented to justify that Baribag was a qualified beneficiary within the context of Section 22 of the CARL, and be entitled to be awarded the landholdings.

The highly irregular actuations of the DAR did not end with the unwarranted awarding of the landholdings to Baribag in violation of Section 22 of the CARL. The DAR also violated the respondents' right of retention under Section 6 of the CARL, which accorded to the respondents as the landowners the right to retain five hectares of their landholdings, and the right to choose the areas to be retained, which should be compact or contiguous. Thus, assuming that the respondents' landholdings were covered by the CARL, and that the DAR was correct in awarding the landholdings to Baribag, the DAR's cancellation of all of the respondents' TCTs effectively nullified the respondents' right of retention, thereby depriving them of their property without due process of law.

Lastly, RARAD Florin's issuance of the writ of execution in favor of Baribag was highly irregular. It must be noted, first of all, that because Baribag was not even a party in relation to the respondents' application for exclusion before Regional Director Dalugdug, RARAD Florin did not acquire jurisdiction over Baribag. As such, the legal authority of RARAD Florin to implement the award to Baribag by execution did not exist. Secondly, the denial of the respondents' application for exclusion was still pending review by the DAR Secretary when RARAD Florin issued the writ of execution to implement Regional Director Dalugdug's order to place Baribag in possession of the respondents' landholdings. Hence, the issuance of the writ of execution was premature and bereft of legal basis.

In fine, the appeal of the DAR cannot prosper. The CA properly acted in reversing and undoing the DAR's several violations of the letter and spirit of the CARL. It is timely to stress that the noble purpose of the CARL to emancipate the tenants from the bondage of the soil and to transfer to them the ownership of the lands they till should not be the guise to trample upon the landowners' rights by including lands that are unquestionably outside the coverage of the CARL. Neither should such noble intention be frustrated by designating beneficiaries who are neither the tenants or tillers of the land, nor otherwise qualified under the law to be the beneficiaries of land reform.

WHEREFORE, the petition for review on certiorari is denied. The decision dated December 26, 2000 and resolution dated June 26, 2002 of the Court of Appeals are affirmed.

The Secretary of the Department of Agrarian Reform is ordered to cancel the certificate of land ownership awards issued to Baribag Agrarian Reform Beneficiaries Development Corporative; to reinstate the respective transfer certificates of title of the respondents; and to immediately restore to the respondents the possession of their respective landholdings.

No pronouncement on costs of suit.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio Morales, Leonardo-De Castro, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 36-49.

[2] Id., p. 52.

- [3] Id., pp. 37-38.
- [4] Id., p. 38.
- [5] Id.
- [6] Id., p. 39.
- [7] Id., pp. 40-41.
- [8] Id., pp. 41-42.
- [9] Id., pp. 43-44.
- [10] Id., pp. 15-16.
- [11] G.R. No. 169013, December 16, 2008, 574 SCRA 41.
- [12] G.R. No. 86889, December 4, 1990, 192 SCRA 51.
- [13] G.R. No. L-70736, March 16, 1987, 148 SCRA 573.
- [14] G.R. No. 103302, August 12, 1993, 225 SCRA 278.
- [15] Rollo, p. 24.

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