

**FROILAN DE GUZMAN, ANGEL MARCELO AND NICASIO
MAGBITANG, PETITIONERS, VS. THE COURT OF APPEALS, OFFICE OF
THE PRESIDENT, AND THE MUNICIPALITY OF BALIUAG, BULACAN,
RESPONDENTS.**

G.R. NO. 156965. October 12, 2006

Ponente: TINGA, J.

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TINGA, J.:

On appeal via a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure are the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 55710. The Decision affirmed the Resolution dated 4 October 1999 of the Office of the President dismissing petitioners' appeal from the Order of the Secretary of Agrarian Reform declaring that the disputed property cannot be placed under the coverage of the agrarian reform program or the Operation Land Transfer.

The following factual antecedents are matters of record.

Petitioners Froilan De Guzman, Angel Marcelo and Nicasio Magbitang were among the tenants of a parcel of land situated at Barangay Pagala, Baliuag, Bulacan. The land, measuring six (6) hectares, was formerly owned by the Vergel De Dios family. Sometime in 1979, respondent Municipality of Baliuag, Bulacan (municipality) sought the expropriation of the land before the now defunct Court of Agrarian Relations. During the pendency of the expropriation proceedings, the municipality and petitioners entered into a compromise agreement, whereby petitioners irrevocably withdrew their opposition to the expropriation of the land in consideration of the payment of a disturbance compensation of P25,000.00 per hectare or P2.50 per square meter. Petitioners also waived "all claims and demands" against the municipality. The Court of Agrarian Relations approved said compromise agreement in its decisions dated 16 April 1979 and 9 August 1979.[3]

From the records, it can be gathered that the municipality eventually acquired ownership of the land through expropriation but allowed petitioners to continue cultivating their lots pending the construction of the Baliuag Wholesale Complex Market. For this arrangement, petitioners remitted rentals to the municipal treasurer. Despite the lapse of several years, construction of the market did not push through. This prompted petitioners, who had continually occupied and cultivated the land, to file in 1996 a petition with the Municipal Agrarian Reform Office (MARO) of Baliuag, praying that the land be placed under the Operation Land Transfer (OLT) in accordance with Presidential Decree (P.D.) No. 27.[4]

Following the filing of their petition for CARP coverage before the MARO, petitioners filed a complaint on 13 May 1997 with the Department of Agrarian Reform Adjudication Board (DARAB) against the municipality. In their complaint docketed as DARAB Case No. 03-02-5054'97, petitioners prayed for the issuance of a preliminary injunction or temporary restraining order to secure their peaceful possession over the land. The Provincial Adjudicator rendered judgment in favor of petitioners on 17 July 1997. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Board finds the plaintiffs a [sic] bona-fide farmer[-]beneficiaries of agrarian reform[.] [A]ccordingly, judgment is hereby rendered as follows:

- Directing the the [sic] respondent, Municipality of Baliuag, Bulacan[,] represented by Honorable Mayor Edilberto Tengco and all other persons acting in their behalf to permanently cease and desist from dumping garbage in the premises in question;
- Directing the respondent to maintain petitioners in peaceful possession over the disputed property.

SO ORDERED.[5]

On 6 January 1997, the Regional Director of the Department of Agrarian Reform (DAR) issued an order granting the petition and declaring the land as covered by OLT.[6] The municipality moved for its reconsideration in vain. Following the denial of its motion for reconsideration, the municipality elevated the matter to the DAR Secretary who, in his Order dated 8 August 1997, reversed the Order of 6 January 1997 of the Regional Director.[7] Petitioners, aggrieved this time, filed an appeal with the Office of the President. On 1 July 1999, Executive Secretary Ronaldo B. Zamora, by authority of the President, dismissed petitioners' appeal and affirmed the order of the DAR Secretary.[8]

Undaunted, petitioners filed a petition for review with the Court of Appeals, which prayed for the reversal of the Order of 1 July 1999 issued by the Office of the President on the grounds that the land remained agricultural and that the Office of the President erred in relying upon the certification issued by the Housing and Land Use Regulatory Board (HLURB) classifying the land as commercial. They also argued that under the provisions of Administrative Order (A.O.) No. 20, series of 1992, the conversion of the land for non-agricultural purposes was disallowed.

On 30 January, 2002, the Court of Appeals rendered the assailed Decision, dismissing petitioners' appeal. Upholding the non-agricultural classification of the land, the Court of Appeals ruled that the land could no longer be subject of the comprehensive agrarian reform law (CARL). The Court of Appeals also denied petitioners' motion for reconsideration in the assailed Resolution dated January 20, 2003.

Hence, the instant petition, imputing the following errors to the Court of Appeals:

I.

WITH ALL DUE RESPECT, THE COURT OF APPEALS COMMITTED GRAVE AND MANIFEST ERROR IN LAW WHEN IT FAILED TO CONSIDER THAT THE SUBJECT LANDHOLDING SHOULD HAVE BEEN COVERED BY OPERATION LAND TRANSFER PURSUANT TO P.D. NO. 27 DUE TO THE FAILURE OF THE LANDOWNER TO CARRY OUT ITS CONVERSION FROM AGRICULTURAL LAND FOR A LONG PERIOD OF TIME.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT UPHOLD (sic) THE RECLASSIFICATION OF THE SUBJECT LANDHOLDING.

III.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISREGARDED THE PROVISIONS OF THE O.P. ADMINISTRATIVE ORDER NO. 20 SERIES OF 1992 WHICH CLEARLY PROVIDES THE NON NEGOTIABILITY OF IRRIGATED PRIME AGRICULTURAL LANDS TO NON-AGRICULTURAL PURPOSES.[9]

Essentially, the main issue to be resolved is whether the subject land can be reclassified to agricultural after the purpose of its conversion to a non-agricultural land had not materialized.

Petitioners contend that despite the conversion of the land for a commercial purpose, they have remained tenants of the land devoting it for agricultural production. Though the earlier tenancy relationship had been terminated upon the payment of disturbance compensation pursuant to the 1979 compromise agreement, petitioners posit that a tenancy relationship was created anew between them and the municipality when the latter allowed petitioners to cultivate the land after the expropriation proceeding.

The petition has no merit.

Under Section 3(c) of Republic Act (R.A.) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), an agricultural land refers to land devoted to agricultural activity as defined therein 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." [10]

In *Natalia Realty, Inc. vs. Department of Agrarian Reform*, [11] it was held that lands not devoted to agricultural activity are outside the coverage of CARL including lands previously converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than the DAR. This rule has been reiterated in a number of subsequent cases. Despite claims that the areas have been devoted for agricultural production, the Court has upheld the "non-agricultural" classification made by the NHA over housing and resettlements projects, [12] zoning ordinances passed by local government units classifying residential areas, [13] and certifications over watershed areas issued by the Department of Environment and Natural Resources (DENR). [14]

The DAR itself has recognized the prospective application of R.A. No. 6657, insofar as it provides under Section 3(c) thereof that lands classified as non-agricultural prior to the effectivity of the CARL are not covered by the CARL. Thus, DAR Administrative Order No. 1, series of 1990 provides:

Agricultural land refers to those devoted to agricultural activity as defined in R.A. [No.] 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, and not classified in town plans and zoning ordinances as approved by the Housing Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential, commercial or industrial use. (Emphasis supplied.)

That the subject land had been reclassified from agricultural to non-agricultural is not disputed. The records reveal that as early as 1980, the municipality had passed a zoning ordinance which identified the subject land as the site of the wholesale market complex. As per certification issued by the HLURB, the land is within the zoning plan approved by the National Coordinating Council for Town Planning, Housing and Zoning.

Petitioners also theorize that they earned a vested right over the land when a tenancy relationship was established anew between them and the municipality subsequent to the latter's acquisition of the land. In support of this theory, petitioners cite minutes of meetings and resolutions passed by the municipality's Sanggunian, purportedly indicating the municipality's recognition of their status as tenants of the subject landholding.

Petitioners' theory does not persuade the Court.

A segment of the minutes of the meeting of the municipality's Sanggunian dated 27 May 1988, which petitioners cite to bolster their theory, is quoted below:

Tumindig din at namahayag ang ating Punong Bayan Kgg. Reynaldo S. del Rosario at sinabing sa kasulukuyan ay hindi pa naman kailangan ng Pamahalaang Bayan ang nasabing lupa ngunit kung ito ay kakailangan na ay kinakailangang umalis sila dito ng mahinusay, walang pasubali at maluwa sa kanilang kalooban, kung kaya't iminungkahi niya na gumawa ng isang nakasulat na kasunduan na ang nakasaad ay kusang-loob silang aalis sa

nasabing lupa pagdating ng panahon na ito ay kailanganin na ng Pamahalaang Bayan.[15]

The aforequoted minutes clearly show that petitioners' use and possession of the land was by mere tolerance of the municipality and subject to the condition that petitioners would voluntarily vacate the land when the need would arise. In the same minutes, the Sanggunian resolved to authorize then Mayor Reynaldo S. del Rosario to enter into an agreement in writing with petitioners concerning the latter's temporary cultivation of the land as hired labor.

As discussed earlier, the land had ceased to be classified as agricultural when the municipality extended petitioners' occupation of the land. After the municipality acquired ownership over the land through expropriation and passed the ordinance converting said land into a commercial area, any transaction entered into by the municipality involving the land was governed by the applicable civil law in relation to laws on local government. At this point, agrarian laws no longer governed the relationship between petitioners and the municipality. While it was not established whether the relationship between petitioners and the municipality was that of a lessor and lessee or that of an employer and laborer, as the supposed written agreement was not offered in evidence, the fact remains that the subject land had already been identified as commercial in the zoning ordinance.

Certainly, petitioners' occupation of the land, made possible as it was by the tolerance of the municipality, was subject to its peremptory right to terminate. As absolute owner of the land, the municipality is entitled to devote the land for purposes it deems appropriate.

It is noteworthy that even prior to its expropriation and reclassification, the land was never placed under the coverage of the agrarian reform program. Although it appears that petitioners had been tilling the land as tenants of the Vergel De Dios family, the municipality's predecessor-in-interest, the records do not show that petitioners had applied for coverage of the land under the agrarian reform program. Before a claimant becomes a qualified beneficiary of agrarian reform, the administrative process for coverage under the CARP must be initiated. The mere fact of cultivating an agricultural land does not ipso jure vest ownership right in favor of the tiller. Since petitioners had not applied for CARP coverage prior to the reclassification of the land to commercial, their occupation by mere tolerance cannot ripen into absolute ownership.

Petitioners further argue that the municipality's failure to realize the commercial project operates to reinstate the original status of the land as agricultural. In support of this theory, petitioners cite Section 36 (1) of R.A. No. 3844, or the Agriculture Land Reform Code, unaware that the provision had been amended by R.A. 6389, entitled, "An Act Amending Republic Act Numbered Thirty Eight Hundred and Forty Four, As Amended, Otherwise Known As the Agricultural Land Reform Code and For Other Purposes."

Before its amendment, Section 36 (1), R.A. No. 3844 provided:

Sec. 36. Possession of Landholding; Exceptions.—Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor, is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: Provided, further,

That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossessions.

With the enactment of the amendatory law, the condition imposed on the landowner to implement the conversion of the agricultural land to a non-agricultural purpose within a certain period was deleted. Section 36 (1), R.A. No. 3844, as amended, now reads:

Sec. 36. Possession of Landholding; Exceptions.— Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of gross harvests on his landholding during the last five preceding calendar years;

x x x x[16]

The amendment is the Legislature's recognition that the optimal use of some lands may not necessarily be for agriculture. Thus, discretion is vested on the appropriate government agencies to determine the suitability of a land for residential, commercial, industrial or other purposes. With the passage of the CARL, the conversion of agricultural lands to non-agricultural uses was retained and the imposition on the landowner to implement within a time frame the proposed non-agricultural use of the land was done away with.

Moreover, in *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*,^[17] the Court declared categorically that the failure of the landowner therein to complete the housing project did not have the effect of reverting the property to its classification as agricultural land, although the order of conversion issued by the then Minister of Agrarian Reform obliged the landowner to commence the physical development of the housing project within one year from receipt of the order of conversion.^[18] In said case, a vast tract of land claimed to be cultivated by its tenants formed part of the subdivision plan of a housing project approved by the National Planning Commission and Municipal Council of Carmona and subsequently declared by the Provincial Board of Cavite as composite of the industrial areas of Carmona, Dasmariñas, Silang and Trece Martirez. Because the reclassification of the property by the Municipal Council of Carmona to non-agricultural land took place before the effectivity of the CARL, the Court held that Section 65 of R.A. No. 6657 cannot be applied retroactively.^[19]

More importantly, the Court in *Pasong Bayabas* recognized the power of local government units to adopt zoning ordinances, citing Section 3 of R.A. No. 2264,^[20] to wit:

Section 3 of Rep. Act No. 2264, amending the Local Government Code, specifically empowers municipal and/or city councils to adopt zoning and subdivision ordinances or regulations in consultation with the National Planning Commission. A zoning ordinance prescribes, defines, and apportions a given political subdivision into specific land uses as present and future projection of needs. The power of the local government to convert or reclassify lands to residential lands to non-agricultural lands reclassified is not subject to the approval of the Department of Agrarian Reform. Section 65 of Rep. Act No. 6657 relied upon by the petitioner applies only to applications by the landlord or the beneficiary for the conversion of lands previously placed under agrarian reform law after the lapse of five years from its award. It does not apply to agricultural lands already converted as residential lands prior to the passage of Rep. Act No. 6657.^[21]

Thus, the zoning ordinance passed by the municipality sometime in 1980 reclassifying the subject land as

commercial and future site of a market complex operated to take away the "agricultural" status of the subject property. Subsequent events cited by petitioners such as their continuous tillage of the land and the non-commencement of the construction of the market complex did not strip the land of its classification as commercial.

Petitioners' reliance on the provisions of A.O. No. 20, series of 1992, issued by then President Fidel Ramos is misplaced. A.O. No. 20, which sets forth the guidelines to be observed by local government units and government agencies on agricultural land use conversion, cannot be applied to the subject land for the reason that the land had already been classified as commercial long before its issuance. Indeed, A.O. No. 20 cannot be applied retroactively.

WHEREFORE, the instant petition for review on certiorari is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 55710 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 28-39. Penned by Justice Amelita G. Tolentino and concurred in by JJ. Conrado M. Vasquez, Jr., Chairman, Tenth Division, and Andres B. Reyes, Jr.

[2] Id. at 41-49.

[3] Id. at 29-30.

[4] Id. at 30.

[5] Id. at 48.

[6] CA rollo, pp. 32-33.

[7] Id. at 42-47.

[8] Id. at 17-21.

[9] Rollo, p. 9.

[10] Natalia Realty, Inc. v. Department of Agrarian Reform, G.R. No. 103302, 12 August 1993, 225 SCRA 278, 283.

[11] G.R. No. 103302, 12 August 1993, 225 SCRA 278.

[12] National Housing Authority v. Hon. Allarde, 376 Phil. 147 (1999).

[13] Pasong Bayabas Farmers Association, Inc. v. Court of Appeals, G.R. No. 142359, 25 May 2004, 429 SCRA 109; Junio v. Garilao, G.R. No. 147146, 29 July 2005, 465 SCRA 173.

[14] Sta. Rosa Realty Development Corporation v. Court of Appeals, 419 Phil. 457 (2001).

[15] CA rollo, p. 48.

[16] R.A. No. 3844, Section 36 (1), as amended by R.A. No. 6389.

[17] Supra note 13.

[18] Supra note at 136.

[19] Supra note 13 at 135.

[20] Power to adopt zoning and planning ordinances. — Any provision of law to the contrary notwithstanding, Municipal Boards or City Councils in cities, and Municipal Councils in municipalities are hereby authorized to adopt zoning and subdivision ordinances or regulations for their respective cities and municipalities subject to the approval of the City Mayor or Municipal Mayor, as the case may be. Cities and municipalities may, however, consult the National Planning Commission on matters pertaining to planning and zoning.

[21] Pasong Bayabas Farmers Association, Inc. v. Court of Appeals, supra note 13 at 134-35.

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