

**NICANOR T. SANTOS DEVELOPMENT CORPORATION, PETITIONER,
VS. HON. SECRETARY, DEPARTMENT OF AGRARIAN REFORM, DAR
ADJUDICATION BOARD & MUNICIPAL AGRARIAN REFORM
OFFICE (ANDREA F. DA...**

G.R. No. 159654. February 28, 2006

Ponente: TINGA, J.

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TINGA, J.:

Before the Court is an appeal by certiorari under Rule 45 of the 1997 Rules of Civil Procedure, seeking the reversal of the Court of Appeals Decision in CA-G.R. SP No. 69267[1] which dismissed for lack of merit the petition for mandamus filed by herein petitioner Nicanor T. Santos Development Corporation against respondent officials of the Department of Agrarian Reform (DAR).

The following factual antecedents are matters of record.

Petitioner Nicanor T. Santos Development Corporation is a domestic corporation which owns a large tract of land known as the Santos Farm situated in Tabaan Valley, Tuba, Benguet. Santos Farm has an area of 103.8 hectares and is registered under Transfer Certificate of Title No. 19305 in the name of petitioner.

On June 22, 1992, Leo A. Salinas, then the Municipal Agrarian Reform Officer (MARO) of Tuba, Benguet informed petitioner through its counsel that a portion measuring 14 hectares of the Santos Farm would be placed under the coverage of the comprehensive agrarian reform program (CARP) for acquisition and distribution to prospective beneficiaries.[2]

In response to a letter from petitioner requesting exemption of the Santos Farm from the coverage of the CARP, the Bureau of Land Acquisition and Distribution (BALA) Director endorsed the matter to the DAR Regional Director for investigation and report on August 6, 1992.[3] Petitioner also sent a letter to the DAR Secretary dated March 17, 1994 reiterating its position that the Santos Farm should be excluded from the coverage of the CARP because it is not suitable for agriculture, is untenanted, and has a slope of over 18 degrees.

On September 12, 2000, respondent MARO Andrea F. Dalmacio sent petitioner a Notice of Coverage and Field Investigation Report, to confirm that the Santos Farm had been placed under the CARP. The notice also informed petitioner that the Land Bank of the Philippines would determine the value of the property.[4] On October 2, 2000, petitioner sent a letter to MARO Dalmacio expressing its position that the Santos Farm should be exempt from CARP coverage because the property is untenanted and mountainous and is not planted with rice and corn.[5]

Petitioner also wrote the DAR Secretary on February 2, 2001 insisting that the Santos Farm is exempted from the coverage of the CARP. Petitioner also requested that it be furnished application forms for exemption from the coverage of the CARP.

On March 30, 2001, DAR Regional Director Wilfredo B. Leano advised petitioner to pursue the exemption of the Santos Farm in accordance with the mandates of DAR Administrative Order (A.O.) No. 09, series of 1994 and DAR A.O. No. 06, series of 2000.[6]

Instead, petitioner filed a Protest on June 4, 2001 with the DAR arguing that the Santos Farm is exempted from the CARP coverage.[7] Also, on November 26, 2001, petitioner sent a protest letter to the DAR Secretary reiterating the same grounds for exemption.[8]

Petitioner also filed a Complaint dated December 2, 2001 before the DARAB importuning the Board to rule on the protest. The DARAB ruled that it had no jurisdiction to resolve the issue on petitioner's exemption. Thus, the DARAB referred the Complaint to the DAR Regional Director.[9] In a Memorandum dated January 21, 2002, Provincial Agrarian Reform Officer (PARO) Deogracias F. Almora dismissed the Complaint for being time-barred and for failure to observe proper formalities.[10]

Aggrieved, petitioner instituted a Petition for Mandamus with the Court of Appeals to compel the DAR, DARAB, and MARO to act on its petition for exemption of the Santos Farm from the CARP coverage. The Court of Appeals rendered the assailed Decision on January 30, 2003, dismissing the petition for lack of merit and for being the improper remedy. The appellate court also denied petitioner's Motion for Reconsideration in a Resolution issued on August 20, 2003.[11]

Hence, the present recourse imputing errors to the Court of Appeals quoted below:

- The Court of Appeals erred in finding that the petition for mandamus is not proper for non-exhaustion of administrative remedies.
- The Court of Appeals erred when it did not consider as null and void the notice of coverage and subsequent acts of the DAR officials for failure to meet the requirements under the administrative rules and regulations prescribing the procedure for acquisition of private lands under the compulsory scheme of R.A. 6657 (Comprehensive Agrarian Reform Program) is mandatory.[12]

The assigned errors involve only the issue of whether or not the petition for mandamus filed by petitioner with the Court of Appeals is proper in view of the appellate court's conclusion that petitioner failed to exhaust administrative remedies.

Petitioner insists that immediate judicial intervention is necessary in view of the inaction on the part of the DAR officials despite several follow-ups in respect to its petition for exemption. According to petitioner, as early as 1992, it had already applied for exemption of the Santos Farm from CARP coverage. Petitioner attached copies of endorsement letters from the DAR Secretary and the BALA Director to prove that its application for exemption had been pending as early as 1992.

The records of the case, however, do not indicate that petitioner complied with the administrative procedure for the application for exemption. Under Administrative Order No. 13, series of 1990,[13] the application must be initiated before the MARO by submitting ownership documents and other muniments of title and other evidence to support the application. The endorsement letters from the DAR Secretary and the BALA Director only indicate that petitioner's application for exemption was channeled to the wrong offices. Hence, the application was referred to the DAR Regional Director. The records do not show, however, that after the endorsement letters came out, petitioner pursued its application with the proper DAR office. Besides, the endorsement to the appropriate DAR office did not relieve petitioner of its duty to initiate the proper formal application for exemption.

At the time respondent MARO sent petitioner a Notice of Coverage on September 12, 2000, A.O. No. 09, series of 1994[14] and A.O. No. 06, series of 2000[15] were already in existence. The two (2) orders govern the

administrative procedure in respect to filing a protest against CARP coverage. In particular, under Section 7 of A.O. No. 06, series of 2000, the Regional Director shall exercise primary jurisdiction over protests against CARP coverage or petitions for lifting of notice of coverage. The jurisdiction, however, may be delegated to certain DAR officials in accordance with existing rules and regulations and/or as provided for in the order. Pursuant to A.O. No. 09, series of 1994, all protests against CARP coverage shall be filed with the MARO or the PARO currently processing the claim folder. Once the written protest is filed, the MARO or PARO shall comment on said protest and submit the same to the Regional Director who shall rule on the same.[16] A.O. No. 06, series of 2000, also prescribes, among others, the reglementary period within which to file the protest for the lifting of a Notice of Coverage, the form of the protest, and the recourse a party may avail in case of an adverse decision.[17]

The records of the case, however, show that petitioner did not pursue its protest in the manner required by the applicable administrative orders despite the advice of the DAR Regional Director. Instead, petitioner lodged its protest with the DAR Secretary and a complaint with the DARAB. Undeniably, these remedies were not prescribed by the applicable administrative orders. The letter dated October 2, 2000 sent by petitioner to respondent MARO was not under oath and was not accompanied by any documentary evidence relevant to its protest and, therefore, fell short of the requirement under A.O. No. 06, series of 2000. At best, it was a mere letter-objection to the Notice of Coverage. The Protest filed with the DAR and the follow-up letter sent to the DAR Secretary cannot even be strictly characterized as a protest because they were also not in the form prescribed by A.O. No. 06, series of 2000, they were filed beyond the reglementary period, and they were not accompanied by documentary evidence as required by the A.O. More importantly, they were not filed with the proper office.

As a general rule, before a party may be allowed to invoke the jurisdiction of the courts of justice, he is expected to have exhausted all means of administrative redress.[18] In the instant case, it is beyond dispute that petitioner failed to resort to proper administrative recourse in resisting the Notice of Coverage issued by respondent MARO. Unsuccessful in its attempt to oppose the Notice of Coverage when it lodged its protest with the incorrect administrative offices, petitioner resorted to a judicial remedy. The petition for mandamus, which it filed, however, was correctly denied by the Court of Appeals. Truly, a petition for mandamus is premature if there are administrative remedies available to petitioner.[19]

It is settled that mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its main objective. It does not lie to require anyone to fulfill a discretionary duty. It is essential to the issuance of a writ of mandamus that petitioner should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. It never issues in doubtful cases. While it may not be necessary that the duty be absolutely expressed, it must nevertheless be clear. The writ will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[20]

Petitioner anchors the instant petition on the exceptions to the rule on exhausting administrative remedies. It is true that there are instances when judicial action may be resorted to immediately. Among these exceptions are: (1) when the question raised is purely legal; (2) when the administrative body is in estoppel; (3) when the act complained of is patently illegal; (4) when there is urgent need for judicial intervention; (5) when the respondent acted in disregard of due process; (6) when the respondent is a department secretary whose acts, as an alter ego of the President, bear the implied or assumed approval of the latter; (7) when irreparable damage will be suffered; (8) when there is no other plain, speedy and adequate remedy; (9) when strong public interest is involved; (10) when the subject of the controversy is private land; and (11) in quo warranto proceedings.[21]

Specifically, petitioner contends that it has no plain, adequate and speedy remedy except to file the petition for

mandamus. According to petitioner, the PARO should not have dismissed its Complaint dated December 2, 2001 for being filed out of time because even this Court has relaxed the rules of procedure in the interest of substantial justice.

The Court is not persuaded. The Court cannot sanction petitioner's trivial regard of procedural rules. Rules of procedure may be relaxed if their strict enforcement will bring about failure of justice. However, this principle does not apply when it will allow petitioner to benefit from its unjustified violations of procedural rules.

Petitioner also would have the Court nullify the Notice of Coverage on the ground that the same was issued without complying with the procedural requirements under DAR A.O. No. 12, series of 1989, and its subsequent amendments, namely, A.O. No. 9, series of 1990, and DAR A.O. No. 1, series of 1993. These AOs outline the procedural steps to be undertaken before such notice of coverage may issue.

Suffice it to say that a petition for mandamus is not the proper remedy to assail the Notice of Coverage. The administrative rules of the DAR also provide for the appellate procedure to contest decisions and issuances of the MARO. The mandatory recourse to the administrative appeals process before any judicial remedy is invoked likewise falls within the ambit of the principle of exhaustion of administrative remedies.

WHEREFORE, the Petition for Review on Certiorari is DENIED and the Decision of the Court of Appeals in CA-G.R. SP No. 69267 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairman), Carpio and Carpio-Morales, JJ., concur.

[1] Penned by J. Andres B. Reyes, Jr. and concurred in by JJ. Delilah Vidallon-Magtolis, Chairman, and Regalado E. Maambong; rollo, pp. 58-69.

[2] CA Decision, p. 2; rollo, p. 59.

[3] Rollo, p. 87.

[4] Rollo, pp. 80-82.

[5] Id. at 89.

[6] CA Decision, p. 3; rollo, p. 13.

[7] Rollo, pp. 90-91.

[8] Id. at 92.

[9] Id. at 93.

[10] Id. at 96-97.

[11] Id. at 71-72.

[12] Id. at 36.

[13] IV. OPERATING PROCEDURES

A. MUNICIPAL AGRARIAN REFORM OFFICER (MARO)

- On his own initiative or upon representations by farmers/occupants, take initial steps to cover an area under CARP, particularly by issuing a Notice of Coverage (Ex-Form No. 1) to the owner or administrator of the property informing him that the area has been suitable for CARP coverage.
- Accept written application (Ex-Form No. 2). Said application shall be accompanied by the following:
 - ownership documents and other muniments of title
 - evidence to support application and convince DAR that the area qualifies for exemption under Section 10, RA 6657 such as: copy of proclamation, topographic map, sketch map, area development plan, affidavit, certification from relevant government agency, etc.
- Upon receipt of the application, conduct with the assistance of the BARC an investigation of the land to determine, among others, the ownership, legal status, and type and area of the land sought to be exempted (Ex-Form No. 3).
- Ascertain whether or not the land is actually, directly and exclusively used and necessary for the purpose stated in the application.
- Prepare Report of findings and recommendations (Ex-Form No. 3).
- Compile all relevant documents to form the Application for Land Exemption Folder (ALEF); and
- Transmit the ALEF to the Provincial Agrarian Reform Officer (Ex-Form No. 4).
- Perform the duties and functions enumerated above within 30 days from receipt of the application.

B. PROVINCIAL AGRARIAN REFORM OFFICER (PARO)

- Review and evaluate the ALEF and indicate his comments, findings and recommendations;
- If ALEF documentation is found in order, forward the same to the Regional Director; otherwise return the ALEF to MARO for further action (Ex-Form No. 4); and
- Perform the duties and functions enumerated above within ten (10) working days from receipt of the ALEF from the MARO.

C. REGIONAL DIRECTOR (RD)

- Approve or disapprove applications for exemption from CARP coverage of lands five (5) hectares and below.
- Upon his approval, furnish a copy of the Certificate of Exemption to the Undersecretaries for Field Operations and Legal Affairs, Management Information Service (MIS), Office of the Secretary (attention: BALA), and the PARO concerned.
- For lands exceeding five (5) hectares, evaluate the report and recommendation of the PARO and MARO and forward the ALEF to the Bureau of Agrarian Legal Assistance (BALA) together with his own recommendation.
- Perform the duties and functions enumerated above within ten (10) working days from receipt of the ALEF from the PARO.

D. BUREAU OF AGRARIAN LEGAL ASSISTANCE (BALA)

- Review the ALEF and, if warranted, prepare the Certificate of Exemption. If the application is for disapproval, prepare the directive to the PARO to cause the coverage of the land under CARP, subject to the guidelines on land acquisition and distribution.
- Forward to the Undersecretary for Legal Affairs the pertinent documents for his appropriate action.
- Perform the duties and functions enumerated above within 10 days from receipt of the ALEF from the Regional Director.
- Upon receipt of the signed documents approving or disapproving the application for exemption, furnish a copy of the same to the Undersecretary for Field Operations, MIS, Regional Director, and PARO.

E. UNDERSECRETARY FOR LEGAL AFFAIRS

- Review all ALEF's from BALA and approve or disapprove applications for exemption of lands not exceeding fifty (50) hectares.
- For applications covering areas exceeding fifty (50) hectares, forward the ALEF to the Office of the Secretary, indicating his recommendation thereon.
- Perform the duties and functions enumerated above within 10 working days from receipt of the ALEF from the BALA.

F. OFFICE OF THE SECRETARY

The Secretary shall approve or disapprove applications for exemption from CARP coverage for lands exceeding fifty (50) hectares.

[14] Entitled "Authorizing All Regional Directors (RDs) to Hear and Decide All Protests Involving Coverage Under R.A. No. 6657 or P.D. No. 27 and Defining the Appeal Process From the RDs to the Secretary." Issued on August 30, 1994.

[15] Entitled "Rules of Procedure for Agrarian Law Implementation (ALI) Cases." Issued on August 30, 2000.

[16] A.O. No. 09, series of 1994, III-A to B.

[17] SEC. 12. Commencement of Actions— All applications, petitions or complaints involving ALI cases shall be in writing and under oath following the prescribed form, if any, and filed by the affected party or his duly authorized representative before the office designated to receive the same in accordance with applicable rules and regulations. The documentary evidence required or relevant to the resolution of the action shall be simultaneously filed with the petition or application.

SEC. 13. Period to File Actions – Petitions for lifting of notice of coverage shall be filed within thirty (30) days from receipt of the Notice of Coverage by the affected party. xxx Failure by the affected party to file the protest or petition within the thirty (30)-day period shall be deemed a waiver of his right thereto. If the action is filed after the expiration of the thirty (30)-day period, the protest or petition shall no longer be entertained or shall be summarily dismissed by the MARO or the PARO except in the following instances: xxx

[18] Roxas & Co., Inc. v. Court of Appeals, 378 Phil. 727 (1999).

[19] Gualberto Castro v. Ricardo Gloria, 415 Phil. 645 (2001).

[20[]]Erlina C. Pefianco v. Ma. Luisa C. Moral, 379 Phil. 468 (2000).

[21]Roxas & Co., Inc. v. Court of Appeals, supra note 18 at 10.

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