

**LAUREANO V. HERMOSO, AS REPRESENTED BY HIS
ATTORNEY-IN-FACT FLORIDA L. UMANDAP, PETITIONER, VS. COURT
OF APPEALS AND HEIRS OF ANTONIO FRANCIA AND PETRA
FRANCIA, NAMELY: BENJAMIN...**

G.R. No. 166748. April 24, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated October 15, 2004 and the Resolution[2] dated January 19, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 77546.

The case involves parcels of land located at Malhacan, Meycauyan, Bulacan, identified as Lot No. 3257 owned by Petra Francia and Lot 3415 owned by Antonio Francia. The lots comprises an area of 2.5 and 1.5850 hectares, respectively, and forms part of a larger parcel of land with an area of 32.1324 hectares co-owned by Amos, Jr., Benjamin, Cecilia, Petra, Antonio and Rufo, all surnamed Francia.[3]

Since 1978, petitioner and Miguel Banag (Banag) have been occupying and cultivating Lot Nos. 3257 and 3415 as tenants thereof. They filed a petition for coverage of the said lots under Presidential Decree (P.D.) No. 27.[4] On July 4, 1995, the Department of Agrarian Reform (DAR) issued an order granting the petition, the dispositive portion of which reads:

WHEREFORE, foregoing facts and jurisprudence considered, Order is hereby issued:

- PLACING the subject two (2) parcels of land being tenanted by petitioners Laureano Hermoso and Miguel Banag situated at Malhacan, Meycauyan, Bulacan, owned by Amos Francia, et al. under the coverage of Operation Land Transfer pursuant to P.D. 27; and
- DIRECTING the DAR personnel concerned to process the issuance of emancipation patents in favor of said Laureano Hermoso and Miguel Banag after a parcellary mapping have been undertaken by the Bureau of Lands over the subject landholdings.

SO ORDERED.[5]

Respondents filed an omnibus motion for reconsideration and reinvestigation. On December 9, 1995, the DAR affirmed with modification the earlier order, and disposed of the case as follows:

WHEREFORE, all premises considered, ORDER is hereby issued AFFIRMING the first dispositive portion of the Order, dated July 4, 1995, issued in the instant case, but MODIFYING the second dispositive portion of the same now to read, as follows:

- PLACING the subject two (2) parcels of land being tenanted by petitioners Laureano Hermoso and Miguel Banag situated at Malhacan, Meycauyan, Bulacan, owned by Amos Francia, et al. under the coverage of

Operation Land Transfer pursuant to P.D. 27; and

- DIRECTING the DAR personnel concerned to hold in abeyance the processing of the emancipation patent of Miguel Banag until the issue of tenancy relationship in DARAB Cases Nos. 424-Bul'92 and 425-Bul'92 is finally resolved and disposed.

No further motion of any and/or the same nature shall be entertained.

SO ORDERED.[6]

In a separate development, petitioner and Banag filed with the Department of Agrarian Reform Adjudication Board (DARAB) consolidated Cases Nos. 424-BUL-92 and 425-BUL-92. The cases delved on whether both petitioner and Banag are tenants of respondents in the subject landholding. On June 3, 1996, the DARAB rendered a Decision[7] upholding the tenancy relationship of petitioner and Banag with the respondents. Respondents filed a motion for reconsideration but the same was denied. A petition for review on certiorari was filed before the CA. However, the petition was denied on technical grounds in a Resolution[8] dated October 9, 1996. A motion for reconsideration was filed, but the same was likewise denied in a Resolution[9] dated December 27, 1996. The case was eventually elevated to this Court in G.R. No. 127668. On March 12, 1997, the Court denied the petition for lack of verification,[10]and subsequently, also denied the motion for reconsideration in a Resolution[11] dated July 14, 1997.

Earlier, on January 20, 1997, Banag filed before the DAR, an urgent ex-parte motion for the issuance of an emancipation patent. On March 13, 1997, the DAR granted the motion.[12] On March 21, 1997, respondents filed a motion for reconsideration. They claimed that the lands involved have been approved for conversion to urban purposes in an Order[13] dated June 5, 1973 issued by the DAR Secretary. The conversion order stated that the Operation Land Transfer (OLT) under Presidential Decree (P.D.) No. 27 does not cover the subject parcels of land.[14] On March 10, 1998, the DAR issued an Order[15]affirming the March 13, 1997 order granting the motion for issuance of emancipation patent in favor of Banag. On March 30, 1998, respondents filed a notice of appeal and correspondingly filed their appeal memorandum.[16] On April 21, 2003, the Office of the President through the Deputy Executive Secretary rendered a Decision[17] denying respondents' appeal. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED and the questioned Order dated 10 March 1998 of the DAR Secretary AFFIRMED in toto.

Parties are required to INFORM this Office, within five (5) days from notice, of the dates of their receipt of this Decision.

SO ORDERED.[18]

Respondents then filed with the CA a petition for review under Rule 43 of the Rules of Court. They maintained that P.D. No. 27 does not cover the subject parcels of land pursuant to the June 5, 1973 Order of the DAR Secretary reclassifying the lands and declaring the same as suited for residential, commercial, industrial or other urban purposes. Furthermore, the Housing and Land Use Regulatory Board (HLURB) reclassified the lands as early as October 14, 1978.

On October 15, 2004, the CA rendered the assailed Decision,[19] the fallo of which reads:

WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the assailed decision of the Office of the President is hereby REVERSED and SET ASIDE. A new decision is hereby rendered dismissing the Petition for Coverage under P.D. No. 27 filed by respondents [now herein petitioner].

SO ORDERED.[20]

Petitioner filed a motion for reconsideration. On January 19, 2005, the CA rendered the assailed Resolution[21] denying the motion for reconsideration.

Hence, the instant petition.

The sole issue in this petition is whether Lot Nos. 3257 and 3415 are covered by P.D. No. 27.

Petitioner avers that the final and executory decision of this Court in G.R. No. 127668 affirming that he is a tenant of the landholding in question entitles him to avail of the right granted under PD 27. In other words, because of the finality of the decision declaring him a tenant of the landholding in question, in effect, the subject lots are considered as agricultural lands and are thus covered by P.D. No. 27. Parenthetically, we take judicial notice of the decision of the Court in G.R. No. 127668, in which the tenancy relationship between petitioner and respondents was upheld. That decision is already final and executory.

Respondents, for their part, claim that the lands were already declared suited for residential, commercial, industrial or other urban purposes in accordance with the provisions of Republic Act (R.A.) No. 3844 as early as 1973. Hence, they are no longer subject to P.D. No. 27.

We resolve to deny the petition.

Section 3, Article XII[22] of the Constitution mandates that alienable lands of the public domain shall be limited to agricultural lands.

The classification of lands of the public domain is of two types, i.e., primary classification and secondary classification. The primary classification comprises agricultural, forest or timber, mineral lands, and national parks. These are lands specifically mentioned in Section 3, Article XII of the Constitution. The same provision of the Constitution, however, also states that agricultural lands of the public domain may further be classified by law according to the uses to which they may be devoted. This further classification of agricultural lands is referred to as secondary classification.[23]

Under existing laws, Congress has granted authority to a number of government agencies to effect the secondary classification of agricultural lands to residential, commercial or industrial or other urban uses.

Thus, Section 65 of R.A. No. 6657 or the Comprehensive Agrarian Reform Law (CARL) of 1988, which took effect on June 15, 1988, explicitly provides:

Section 65. Conversion of Lands.—After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: Provided, That the beneficiary shall have fully paid his obligation.

On the other hand, Section 20 of R.A. No. 7160 otherwise known as the Local Government Code of 1991[24]states:

SECTION 20. Reclassification of Lands. —

(a)

A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their

utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the sanggunian concerned: Provided, That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:

(1)

For highly urbanized and independent component cities, fifteen percent (15%);

(2)

For component cities and first to the third class municipalities, ten percent (10%); and

(3)

For fourth to sixth class municipalities, five percent (5%): Provided, further, That agricultural lands distributed to agrarian reform beneficiaries pursuant to Republic Act Numbered Sixty-six hundred fifty-seven (R.A. No. 6657), otherwise known as "The Comprehensive Agrarian Reform Law", shall not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.

(b)

The President may, when public interest so requires and upon recommendation of the National Economic and Development Authority, authorize a city or municipality to reclassify lands in excess of the limits set in the next preceding paragraph.

(c)

The local government units shall, in conformity with existing laws, continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary and dominant bases for the future use of land resources: Provided, That the requirements for food production, human settlements, and industrial expansion shall be taken into consideration in the preparation of such plans.

(d)

Where the approval by a national agency is required for reclassification, such approval shall not be unreasonably withheld. Failure to act on a proper and complete application for reclassification within three (3) months from receipt of the same shall be deemed as approval thereof.

(e)

Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657.

But even long before these two trail-blazing legislative enactments, there was already R.A. No. 3844 or the Agricultural Land Reform Code, which was approved on August 8, 1963, Section 36 of which reads:

SECTION 36. Possession of Landholding; Exceptions.—Notwithstanding any agreement as to the period or future surrender, of the land, 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 that 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;

(2)

The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or force majeure;

(3)

The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;

(4)

The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;

(5)

The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;

(6)

The agricultural lessee does not pay the lease rental when it falls due: Provided, That if the non-payment of the

rental shall be due to crop failure to the extent of seventy-five per centum as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

(7)

The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.

The petitioner in the instant case claims that he is entitled to the issuance of an emancipation patent under P.D. No. 27. The said decree promulgated by then President Ferdinand E. Marcos, on October 21, 1972, is entitled, "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISMS THEREFOR". However, the law specifically applied "to tenant-farmers of private agricultural lands primarily devoted to rice and corn under a system of share tenancy or lease tenancy, whether classified as landed estate or not."

For the parcels of land subject of this petition to come within the coverage of P.D. No. 27, it is necessary to determine whether the land is agricultural. Section 3(c) of R.A. No. 6657 defines agricultural land, as follows:

(c) Agricultural Land refers to the land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land.

and Section 3(b) specifies agricultural activity as:

(b) Agriculture, Agriculture Enterprise or Agricultural Activity means cultivation of the soil, planting of crops, growing of fruit trees, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical.

On the basis of these definitions, the subject parcels of land cannot be considered as within the ambit of P.D. No. 27. This considering that the subject lots were reclassified by the DAR Secretary as suited for residential, commercial, industrial or other urban purposes way before petitioner filed a petition for emancipation under P.D. No. 27. The pertinent portions of the June 5, 1973 Order[25] read:

Pursuant to the provisions of Republic Act 3844, as amended, the said requests of the petitioners were referred to the National Planning Commission as well as to the Agrarian Reform Team Leader, Valenzuela, Bulacan for proper investigation.

The National Planning Commission in compliance therewith after due investigation and physical survey of the subject areas, favorably recommended the suitability of the same to residential, commercial, industrial or other urban purposes.

Similarly, the Agrarian Reform Team in Valenzuela, Bulacan after due investigation thereof found the parcels of land subject hereof highly suitable for conversion into urban purposes in view of his findings and verification of the location, facilities necessary for urban development and also, the low agricultural income thereof (unirrigated), of the said land. The Team Leader concerned in his recommendation submitted to this Office made mentioned (sic) that in his declaration of the suitability of the subject properties for urban purposes, he believes that the conformity of the tenants consisting of eleven (11) tenants are no longer needed so long as the petitioners are willing to pay the disturbance compensation as provided for by law. The petitioners manifested to the Team Leader concerned their willingness to pay each and every tenant the disturbance compensation according to law. To show further their sincerity to comply with the provisions of the law on disturbance compensation, and to show that their (petitioners) purpose of the instant request is not

to evade the provisions of Decree 27, they stated in their letter-request that they will not eject any tenants therefrom, nor dispossessed (sic) them of their landholdings until after they are fully and justly paid the disturbance compensation according to law.

The subject parcels of land are not included in the land transfer operation according to the team's report.

It maybe mentioned in this connection, that from the report of the National Planning Commission submitted to this Office, it appears that the subject properties are strategically located in the urban center of the town of Meycauayan wherein there are already existing developed and occupied residential subdivisions and even low cost housing projects subsidized by funds from government financial institution. Likewise, there are also industrial establishments in its vicinity according to the National Planning Commission's report.

In view of the foregoing, and considering the parcels of land subject hereof to be suited for residential, commercial, industrial or other urban purposes as found and recommended by the National Planning Commission and the Agrarian Reform Team concerned, and considering further that the said parcels of land by reason of their location and the existence of developed and occupied residential subdivisions and industrial establishments in the immediate vicinity maybe considered as one of the possible areas to be reserved for urban development as contemplated in the Letter of Instruction No. 46 of the President, and considering finally, that the right of the agricultural tenants therein will be fully compensated and there will be no ejectment of tenants until after full payment thereof, as manifested by the petitioners, the instant requests of the petitioners should be, as hereby it is, given due course and the parcels of land subject thereof are hereby declared suited for residential, commercial, industrial or other urban purposes in accordance with the provisions of Republic Act 3844, as amended.

It is understood however, that no agricultural tenants and/or lessees shall be ejected from or dispossessed of their landholdings by virtue of this Order not until after they are duly and justly paid the disturbance compensation according to law, the amount of which maybe determined and fixed by the proper court in the absence of any mutual agreement thereto by and between the agricultural lessees and the owner-petitioners.

SO ORDERED.[26]

The main contention of petitioner for the approval of the emancipation patent in his favor under P.D. No. 27 is the fact that respondents were not able to realize the actual conversion of the land into residential purposes. To bolster his claim, petitioner relies on Section 36 (1) of R.A. No. 3844, viz.:

SECTION 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.

xxxx[27]

However, the provision of R.A. No. 3844 had already been amended by R.A. No. 6389, as early as September 10, 1971. Section 36 (1) of R.A. No. 3844, as amended, now reads:

SECTION 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 the gross harvests on his landholding during the last five preceding calendar years;

xxxx[28]

Under R.A. No. 6389, the condition imposed on the landowner to implement the conversion of the agricultural land to non-agricultural purposes within a certain period was deleted. 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.[29] The remedy left available to the tenant is to claim disturbance compensation.

In *Natalia Realty, Inc. v. Department of Agrarian Reform*[30], the Court held that lands not devoted to agricultural activity and those that were previously converted to non-agricultural uses are outside the coverage of the CARL, viz.:

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 tenurial 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."

Based on the foregoing, it is clear that the undeveloped portions of the Antipolo Hills Subdivision cannot in any language be considered as "agricultural lands." These lots were intended for residential use. They ceased to be agricultural lands upon approval of their inclusion in the Lungsod Silangan Reservation. Even today, the areas in question continued to be developed as a low-cost housing subdivision, albeit at a snail's pace. This can readily be gleaned from the fact that SAMBA members even instituted an action to restrain petitioners from continuing with such development. The enormity of the resources needed for developing a subdivision may have delayed its completion but this does not detract from the fact that these lands are still residential lands and outside the ambit of the CARL.[31]

WHEREFORE, in view of the foregoing, the instant petition is DENIED for lack of merit. The Decision dated October 15, 2004 and the Resolution dated January 19, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 77546 are hereby affirmed. The case is remanded to the Provincial Agrarian Reform Adjudicator of Bulacan for the proper computation of the disturbance compensation of petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Peralta, JJ., concur.

[1] Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Regalado E. Maambong and Magdangal M. De Leon concurring; CA rollo, pp. 251-270.

[2] Id. at 371.

[3] Rollo, p. 24.

[4] Id. at 24.

[5] Id. at 25.

[6] Id. at 25-26.

[7] Penned by DAR Assistant Secretary Lorenzo R. Reyes, with Undersecretary Hector D. Soliman and Assistant Secretaries Augusto P. Quijano and Sergio B. Serrano concurring; id. at 59- 66.

[8] Penned by Associate Justice Portia Alino-Hormachuelos, with Associate Justices Artemon D. Luna and Ramon A. Barcelona concurring; CA rollo, pp. 139-141.

[9] Id. at 143-145.

[10] Id. at 146.

[11] Id. at 147.

[12] Rollo, pp. 27-28.

[13] Records, pp. 89-91.

[14] Rollo, p. 28.

[15] Penned by DAR Secretary Ernesto D. Garilao; id. at 53-56.

[16] Id. at 29.

[17] Penned by Deputy Executive Secretary Arthur P. Autea; id. at 76-79.

[18] Id. at 79.

[19] Supra note 1.

[20] CA rollo, p. 269

[21] Supra note 2.

[22] Section 3, Article XII of the Constitution reads in full:

"Sec. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

"Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be

acquired, developed, held, or leased and the conditions therefore."

[23] Agrarian Law and Jurisprudence, Department of Agrarian Reform-United Nations Development Programme, 2000 ed., p. 6.

[24] Approved on October 10, 1991.

[25] Supra note 13.

[26] Id.

[27] Section 36 (1), RA No. 3844; emphasis supplied.

[28] Section 36 (1), RA No. 3844, as amended by RA No. 6389.

[29] De Guzman v. Court of Appeals, G.R. No. 156965, October 12, 2006, 504 SCRA 238, 249.

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

[31] Id. at 282-283; citing Luz Farms v. Secretary of the Department of Agrarian Reform, G.R. No. 86889, December 4, 1990, 192 SCRA 51, 57.

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