

**DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY
PROVINCIAL AGRARIAN REFORM OFFICER STEPHEN M. LEONIDAS,
PETITIONER, VS. POLO COCONUT PLANTATION CO., INC.,
FLORENCIA D. REMOLLO, NO...**

G.R. No. 168787. September 03, 2008

Ponente: CORONA, J.

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CORONA, J.:

In the late 1990s, respondent Polo Coconut Plantation Co., Inc. (PCPCI) sought to convert 280 hectares of its Polo Coconut Plantation[7] (Polo estate) in Tanjay, Negros Oriental into a special economic zone (ecozone) under the Philippine Economic Zone Authority (PEZA). On December 19, 1998, PEZA issued Resolution No. 98-320 favorably recommending the conversion of the Polo estate into an ecozone[8] subject to certain terms and conditions including the submission of "all government clearances, endorsements and documents required under Rule IV, Section 3 of the Rules and Regulations to Implement Republic Act (RA) 7916."

The following year, PCPCI applied for the reclassification of its agricultural lands into mixed residential, commercial and industrial lands with the municipal government of Tanjay. After conducting the prescribed hearing, the Sangguniang Bayan of Tanjay adopted Resolution No. 344 granting PCPCI's application on November 3, 1999.

When Tanjay became a city, its Sangguniang Panglungsod adopted Resolution No. 16 approving Tanjay's Comprehensive Land Use Plan and Zoning Ordinance where PCPCI's real properties, including the Polo estate, were reclassified as mixed residential, commercial and industrial lands.[9]

Sometime in 2003, petitioner Department of Agrarian Reform (DAR), through Provincial Agrarian Reform Officer Stephen M. Leonidas, notified PCPCI that 394.9020 hectares of the Polo estate had been placed under the Comprehensive Agrarian Reform Program (CARP)[10] and would be acquired by the government.

Thereafter, Leonidas requested the Registrar of Deeds of Negros Oriental to cancel PCPCI's certificate of title and to issue a new one in the name of the Republic of the Philippines. He likewise asked Region VII Regional Agrarian Reform Adjudicator Arnold C. Arrieta to determine the just compensation due to PCPCI.[11]

On January 29, 2004, a new certificate of title was issued in the name of the Republic of the Philippines.[12] The next day, that title was cancelled and another was issued in the name of petitioners in G.R. No. 169271 (petitioners-beneficiaries).[13]

Meanwhile, on March 11, 2004, Arrieta approved the land valuation (P85,491,784.60)[14] of the Land Bank of the Philippines for the Polo estate. PCPCI moved for reconsideration but it was denied in an order dated March 30, 2004.

On July 16, 2004, Leonidas informed PCPCI that a relocation survey of the Polo estate would be conducted.

PCPCI moved for the suspension of the survey but it was denied.[15]

Aggrieved, PCPCI filed a petition for certiorari[16] in the Court of Appeals (CA) asserting that the DAR acted with grave abuse of discretion in placing the Polo estate under the CARP. It argued that the Polo estate should not be subjected to the CARP because Resolution No. 16 had already designated it as mixed residential, commercial and industrial land. Moreover, petitioners-beneficiaries were not qualified to receive land under the CARP.

In its February 16, 2005 decision, the CA found that the Polo estate was no longer agricultural land when the DAR placed it under the CARP in view of Resolution No. 16. Furthermore, petitioners-beneficiaries were not qualified beneficiaries as they were not tenants of PCPCI. Thus:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DECLARING as NOT VALID the acts of the [DAR] of subjecting PCPCI's [Polo estate] to the coverage of the CARP, of canceling and causing the cancellation of [PCPCI's] Transfer Certificate of Title No. T-2304 covering such land, of issuing or causing the issuance of Transfer Certificate of Title No. T-36318 for this land in the name of the Republic of the Philippines by way of transfer to it, of issuing or causing the issuance of Transfer Certificate of Title No. T-802 for the said land in the names of [petitioner-beneficiaries] in the case at bench by way of award of them of such land as purported farm beneficiaries and of doing other things with the end in view of subjecting [the Polo estate] to CARP coverage, SETTING ASIDE and ENJOINING such acts and the consequence thereof, ORDERING the [petitioner-beneficiaries] to vacate the premises of [the Polo estate] if they had entered such premises, and ORDERING the respondent Register of Deeds of Negros Oriental to cancel Transfer Certificate of Title Nos. T-36318 and T-802 and to reinstate Transfer Certificate of Title No. T-2304 in the name of petitioner PCPCI.

SO ORDERED.[17]

Both the DAR and petitioners-beneficiaries moved for reconsideration but they were denied.[18] Hence, this recourse.

The DAR asserts that the reclassification of the Polo estate under Resolution No. 16 as mixed residential, commercial and industrial land did not place it beyond the reach of the CARP. Petitioners-beneficiaries, on the other hand, insist that they were qualified beneficiaries. While they were neither farmers nor regular farmworkers of PCPCI, they were either seasonal or other farmworkers.

There is merit in these petitions.

NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES

Recourse to court action will not prosper until all remedies have been exhausted at the administrative level.[19]

Section 3, Rule II of the 2003 DARAB Rules of Procedure (DARAB Rules) provides:

Section 3. Agrarian Law Implementation Cases. The Adjudicator or Board shall have no jurisdiction over matters involving the implementation of RA 6657 otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other related agrarian laws enunciated by pertinent rules and administrative orders, which shall be under the exclusive prerogative of and cognizable by the Office of the Secretary of the DAR in accordance with his issuances to wit:

3.1. Classification and identification of landholdings for coverage under the agrarian reform program and the initial issuance of [certificates of land ownership award] and [emancipation patents], including protests or oppositions thereto and petitioners for lifting of such coverage;

3.2. Classification, identification, inclusion, exclusion, qualification or disqualification of potential/actual

farmer/beneficiaries; (emphasis supplied)

x x x x x x x x

Protests regarding the implementation of the CARP fall under the exclusive jurisdiction of the DAR Secretary. He determines whether a tract of land is covered by or exempt from CARP.[20] Likewise, questions regarding the eligibility of CARP beneficiaries must be addressed to him. The DAR Secretary decides to whom lands placed under the CARP shall be distributed.[21]

Before PCPCI filed its petition for certiorari in the CA, it did not file a protest or opposition questioning the propriety of subjecting the Polo estate to the CARP. Neither did it assail the eligibility of petitioners-beneficiaries before the DAR Secretary. There were available administrative remedies under the DARAB Rules but PCPCI did not avail of them.

Moreover, a special civil action for certiorari under Rule 65 of the Rules of Court can be availed of only in the absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law.[22] Here, recourse to the DAR Secretary was the plain, speedy and adequate remedy in the ordinary course of law contemplated by Rule 65.

NON-CONVERSION TO MIXED RESIDENTIAL, COMMERCIAL AND INDUSTRIAL LAND

In *Ros v. DAR*,[23] we held that reclassified agricultural lands must undergo the process of conversion in the DAR[24] before they may be used for other purposes.[25] Since the DAR never approved the conversion of the Polo estate from agricultural to another use, the land was never placed beyond the scope of the CARP.

The approval of the DAR for the conversion of agricultural land into an industrial estate is a condition precedent for its conversion into an ecozone.[26] A proposed ecozone cannot be considered for Presidential Proclamation unless the landowner first submits to PEZA a land use conversion clearance certificate from the DAR.[27] This PCPCI failed to do.

PEZA Resolution No. 98-320 expressly provides:

Resolved, that the application of [PCPCI] for (1) declaration of the 280-hectare property in Brgy. Polo, Municipality of Tanjay, Province of Negros Oriental as a Special Economic Zone, subject to Presidential Proclamation, henceforth to be known as POLO ECOCITY- SPECIAL ECONOMIC ZONE and (2) registration as the Developer/Owner of the said ECOZONE is hereby APPROVED subject to the following terms and conditions:

x x x x x x x x

2. Prior to PEZA's endorsement of the subject area to the President for proclamation as an ECOZONE, the PCPCI shall submit all government clearances, endorsements and documents required under Rule IV, Section 3 of the [Rules and Regulations to Implement RA 7916];

x x x x x x x x

This condition proves that the favorable recommendation of PEZA did not ipso facto change the nature of the Polo estate. The property remained as agricultural land and, for this reason, was still subject to the CARP.

In fact, Resolution No. 16 did not exempt PCPCI's agricultural lands (including the Polo estate) from the CARP. Section 20 of the Local Government Code[28] provides that a city or municipality can reclassify land only

through the enactment of an ordinance. In this instance, reclassification was undertaken by mere resolution;[29] thus, it was invalid.

QUALIFICATION OF CARP BENEFICIARIES

Section 22 of the CARL provides:

Section 22. Qualified Beneficiaries. - The lands covered by the CARP shall be distributed as much as possible to landless residents of the same baranggay, 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 abovementioned beneficiaries and
- (g) others directly working on the land.

x x x x x x x x

A basic qualification of a beneficiary is 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 [Presidential Agrarian Reform Council].

x x x x x x x x

This provision enumerates who are qualified beneficiaries of the CARP. Determining whether or not one is eligible to receive land involves the administrative implementation of the program. For this reason, only the DAR Secretary can identify and select CARP beneficiaries. Thus, courts cannot substitute their judgment unless there is a clear showing of grave abuse of discretion.[30]

Section 22 of the CARL does not limit qualified beneficiaries to tenants of the landowners. Thus, the DAR cannot be deemed to have committed grave abuse of discretion simply because its chosen beneficiaries were not tenants of PCPCI.

WHEREFORE, the petitions are hereby GRANTED. The February 16, 2005 decision and June 29, 2005 resolution of the Court of Appeals in CA-G.R. CEB-SP No. 00043 are REVERSED and SET ASIDE.

The March 11, 2004, March 30, 2004 and August 30, 2004 orders of Region VII Regional Agrarian Reform Adjudicator Arnold C. Arrieta in RARAD Case No. VII-N-1284-2004 are REINSTATED. Transfer Certificate of Title No. T-802 and Certificate of Land Ownership Award No. 00114438 are declared VALID.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio , Azcuna, and Leonardo-de Castro, JJ., concur.

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- [1] Also referred to as "Nole C. Alcantara" in some parts of the records.
- [2] Also referred to as "Jovenal T. Mendez" in some parts of the records.
- [3] Also referred to as "Anotonio Dedeles" in some parts of the records.
- [4] Also referred to as "Jovenciano Reyes" in some parts of the records.
- [5] Also referred to as "Melina B. Sedigo" in some parts of the records.
- [6] Also referred to as "Robert C. Bajana" in some parts of the records.
- [7] Described as Lot 3478-D of Psd-30972 with a total area of 431 hectares and covered by Transfer Certificate of Title (TCT) No. T-2304.
- [8] Annex "Y," rollo (G.R. No. 169271), pp. 97-100.
- [9] Approved by the Sangguniang Panlalawigan of Negros Oriental in Resolution No. 312 on July 12, 2001.
- [10] In its earlier letter to PCPCI, DAR stated that the September 16, 1991 notice of coverage subjecting "lands covered by TCT Nos. T-1187, etc." to the CARP included the Polo estate (which was covered by TCT No. T-2304). Annex "J," rollo (G.R. No. 169271) p. 76. Subsequently, this was reiterated in letters signed by Leonidas (dated April 23, 2003 and May 5, 2003, respectively). Annexes "K," and "L," id., pp. 77-78.
- [11] Docketed as RARAD Case No. VII-N-1284-2004.
- [12] TCT No. T-36318.
- [13] TCT No. T-802/ Certificate of Land Ownership Award No. 00114438. Annex "C," rollo (G.R. No. 169271), pp. 62-68.
- [14] Annex "M," id., p. 79.
- [15] Signed by regional adjudicator Arnold C. Arrieta. Dated August 20, 2004. Annex "N," id., pp. 80-82.
- [16] Docketed as CA-G.R. CEB-SP No. 00043.
- [17] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Pampio A. Abarintos and Vicente L. Yap (retired) of the Special Twentieth Division of the Court of Appeals. Dated February 16, 2005. Rollo (G.R. No. 168787), pp. 32-45 and rollo (G.R. No. 169271), pp. 46-59.
- [18] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Pampio A. Abarintos and Sesinando E. Villon of the Former Special Twentieth Division of the Court of Appeals. Dated June 29, 2005. Rollo (G.R. No. 168787), pp. 48-49 and rollo (G.R. No. 169271), pp. 60-61.
- [19] Board of Commissioners v. de la Rosa, 274 Phil. 1156 (1991).
- [20] See DAR v. Philippine Communication Satellite Corporation, G.R. No. 152640, 15 June 2006, 490 SCRA 729.
- [21] See Lercanda v. Jalandoni, 426 Phil. 319, 328-329 (2002) and Joson v. Mendoza, G.R. No. 144705, 25 August 2005, 468 SCRA 95, 105-107.
- [22] Equitable PCI Bank v. Ng Sheung Ngor, G.R. No. 171545, 19 December 2007.
- [23] G.R. No. 132477, 31 August 2005, 468 SCRA 471.

[24] See DAR Administrative Order No. 01, s. 1999 and DA Administrative Order No. 37, s. 1999.

[25] *Ros v. DAR*, supra note 23 at 478-479.

[26] Republic Act (RA) 7916, Sec. 5 provides:

Section 5. Establishment of ECOZONES.--To ensure the viability and geographic dispersal of ECOZONES through a system of prioritization, the following areas are initially identified as ECOZONES, subject to the criteria specified of section 6:

x x x x x x x x

(mm) Any private industrial estate which shall voluntarily apply for conversion into an ECOZONE. (emphasis supplied)

x x x x x x x x

See also DAR Administrative Order No. 1, s. 1999, Sec. 6(e) which provides:

Section 6. Priority Development Areas.--In accordance with EO 124, s. 1993, EO 84, s. 1994 and RA 7916, the following are priority development areas for land conversion:

x x x x x x x x

(e) Agricultural areas intended for ECOZONE Projects pursuant to RA 7916.

x x x x x x x x

[27] Rules and Regulation to Implement RA 7916. Part III, Rule IV, Sec. 3 provides:

Section 3. Development of the Areas/ Documentary Requirements. - x x x x x x x x

The proposed ECOZONE shall not be considered for Presidential Proclamation unless the following sets of documents have been submitted directly to PEZA:

(1) Set A- Pertinent land use/clearances/certificates to be secured from the concerned Regional Land Use Committee (RLUC) member-agencies as follows:

- Land Use Conversion Clearance Certificate from the Department of Agrarian Reform (DAR);

- Certification from the Department of Agriculture (DA) that the proposed area is not covered by Administrative Order No. 20 and that such land has ceased to be economically feasible for agricultural purposes;

x x x x x x x x

[28] Local Gov't Code, 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 x x x x x x x x

[29] A municipal ordinance is different from a resolution. An ordinance is a law, but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary in nature. Additionally, the two are enacted differently - a third reading is necessary for an ordinance, but not for a resolution, unless decided otherwise by a

majority of all the Sanggunian members. (Municipality of Parañaque v. V.M. Realty Corporation, G.R. 127820, 20 July 1998, 292 SCRA 678.)

[30] Joson v. Mendoza, supra note 21 at 102-104. (citations omitted).

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