

**DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY OIC
-SECRETARY NASSER C. PANGANDAMAN, PETITIONER, VS. VICENTE
K. UY, RESPONDENT.**

G.R. NO. 169277. February 09, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court of the Amended Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 70541 and the Resolution[3] of the appellate court denying the motion for reconsideration thereof. The CA reversed and set aside the Decision[4] of the Office of the President (OP) which had affirmed the Order[5] of the Department of Agrarian Reform (DAR) exempting only a portion (219.50 hectares) of respondent Vicente K. Uy's 349.9996-ha landholding from the coverage of the Comprehensive Agrarian Reform Program (CARP).

On December 4, 1990, this Court promulgated its decision in *Luz Farms v. Secretary of the Department of Agrarian Reform*[6] where it declared unconstitutional Sections 3(b), 11, 13 and 32 of Republic Act (R.A.) No. 6657.[7] The nullified provisions pertain to the inclusion of land used in raising livestock, poultry, and swine in the coverage of the law. The Court likewise nullified the Implementing Rules and Guidelines promulgated in accordance therewith.[8]

On December 27, 1993, the DAR issued Administrative Order (A.O.) No. 9, Series of 1993[9] primarily to curb the pernicious practice of landowners who convert their lands from agricultural to livestock and poultry in order to circumvent the law. The prefatory statement reads:

x x x, the Supreme Court held that lands devoted to the raising of livestock, poultry and swine are excluded from the coverage of R.A. No. 6657. Following the said decision, numerous reports have been received that some landowners had taken steps to convert their agricultural lands to livestock, poultry and swine raising.

In order to prevent circumvention of the Comprehensive Agrarian Reform Program and to protect the rights of the [a]grarian reform beneficiaries, specifically against their possible unlawful ejectment due to the unauthorized change or conversion or fraudulent declaration of areas actually, directly, and exclusively used for livestock, poultry and swine raising purposes, the following rules and regulations are hereby prescribed for the guidance of all concerned.[10]

The DAR also declared that as of June 15, 1988, the date R.A. No. 6657 took effect, the following rules shall apply in determining the "areas qualified for exclusion":

- Private Agricultural lands or portions thereof exclusively, directly and actually used for livestock, poultry and swine raising as of 15 June 1998 shall be excluded from the coverage of CARP.
- In determining the areas qualified for exclusion under this Administrative Order, the following ratios of land, livestock, poultry and swine raising shall be adopted:

1.0 Grazing

1.1 Cattle, Carabao [11] and Horse Raising

- cattle, carabao and horse (regardless of age) - the maximum ratio is one (1) head to one (1) hectare

x x x x

2.0 Infrastructure

2.1 Cattle, Horses and Carabao Raising - a ratio of 21 heads for every 1.7815 hectares of infrastructure x x x. [12]

Dr. Vicente K. Uy, Wellington K. Ong, Jaime Chua, and Daniel Sy, among others, are owners of a 349.9996-ha parcel of land located in Barangay Camaflora, Barrio of San Andres, Municipality of San Narciso, Province of Quezon. The property is covered by Transfer Certificate of Title (TCT) No. 160988.

Sometime in 1993, some 44 farmers who occupied portions of the property filed petitions in the DAR, seeking to be declared as owners- beneficiaries. On December 20, 1994, the DAR issued a Notice of Coverage under the CARP over the property. For his part, respondent, in behalf of the co-owners, filed an Application for Exclusion[13] in the form of a letter dated May 10, 1995, through Provincial Agrarian Reform Officer (PARO) Durante L. Ubeda. To substantiate his request to exclude their landholding from CARP coverage under the Luz Farms ruling, respondent declared that their property had been exclusively used for livestock-raising for several years prior to June 15, 1988. According to the applicants, they had 400 heads of cattle, 5 horses, and 25 carabaos in the landholding and -

Our private landholding has been devoted and actually used for cattle and/or livestock raising, together with raising of carabaos, and horses continuously from the time it was owned by our predecessors-in-interest, Emitterio Florido, and even when we acquired title over the property in 1979, we continually devoted and actually used the said landholding for cattle raising from 1979 up to the present.[14]

On May 10, 1995, the Provincial Task Force on Exclusion led by Municipal Agrarian Reform Officer (MARO) Belen T. Babalcon conducted an ocular inspection of the property and an actual "headcount" was conducted. The following were present to witness the inspection: the Mayor of San Andres, the Barangay Agrarian Reform Committee Chairman, Legal Officer III James Carigo, and representatives of the applicants, farmers-beneficiaries, the Provincial Agrarian Reform Office, and the Philippine National Police. The findings of the Task Force are contained in the Investigation Report:

Registered Owner/s: (If deceased, indicate name of heirs)

OWNER

- Dr. Vicente K. Uy
- Wellington K. Ong, mrd. to So Ngo Grace Ong
- Jaime Chua, mrd. to Letty Ong Chua
- Daniel Sy, mrd. to Carolyn T. Ngo
- Nancy Ong Uy
- Emily Ong Uy
- Lucy Ong
- Wilson Ong

- John Ong Uy

E. Actual Land Use No. of Animal heads/birds Actual Area (has.) used for grazing Approximate Area used for infrastructure Topography

1. Livestock

1.1 cattle

1.2 horse

1.3 carabao

401)

20)

8)

346.00

hectares

more or less

3.00 more or less

Flat to undulating

2. Goat

Sheep

allegedly owned by FBs and overseer

3. Swine none

4. Poultry

4.1 layers

4.2 broilers

none

F. Other Land Uses Agriculture

Crops Planted No. of Has.

No. of Tenants

No. of FWs & employees

1. Coconut and auxillary crops 346.00 more or less and 44 presently utilized for pasture and grazing of livestock. more than 29

Others (specify)

20 hectares more or less are sporadically planted to coconut with "aroma shrubs" also utilized for pasture at sitio Ipil.

G. Improvements and Infrastructures. Describe the kind of improvements and infrastructures whether constructed with strong or light materials and indicate the date constructed.

2 corral made of coco lumber. The old one have constructed in 1980 and the other one constructed sometime on February 1995. Barb wire and fences on the perimeter of the area, wooden primary and secondary gate, feed storage, embankments. Cayab and potot creek are utilized for drinking purposes of the livestock.

H. Finishing.

The landholding are entirely planted to bearing coconut trees "tenanted by more or less 44 FBs with sharing arrangement of 60:40 in favor of the landowner. The tenanted coconut land are presently used as pasture and grazing of the livestock." Landowner alleged that they are engaged in livestock raising prior to June 15, 1988. FBs are now petitioning for the acquisition and distribution of their occupied area under CARP coverage.[15]

The Task Force made the following declaration:

I. Comments/Remarks/Recommendations:

The density required on commercial farming as far as the number of livestock is concerned have been met; however, the necessary infrastructure and facilities like paddocks, dike, water trough and others were not present much more per information revealed by farmers in the area majority of the cattles were only brought in the early part of this year. Therefore, it is recommended that the areas actually cultivated and occupied by the tenants be covered by CARP and only areas not affected be excluded from CARP coverage.[16]

Thus, on the basis of the aforesaid findings, MARO Belen Babalcon made a Final Report, declaring that 346.000 ha, more or less, is devoted to coconut and livestock farming; the registered owner is Dr. Vicente K. Uy; 346 ha is used for grazing and 3 ha for infrastructure. She declared that while a total of 429 livestock heads (401 cows, 20 horses, 8 carabaos) are being raised in the property, "the total area for exclusion is undetermined because there are portions occupied by tenants which should not be excluded from CARP coverage." [17]

Meanwhile, PARO Durante L. Ubeda submitted a separate Report[18] dated July 4, 1995 where he declared:

1)

THAT the total number of Certificate[s] of Ownership is 434 which is more than the actual headcount of 401;

2)

THAT the number of cattle 7 years old and above totaled 134 heads with 13 males and 121 females as of date of certification;

3)

THAT 300 cattles were of ages 6 years old and below with 76 males and 234 females, [also as of the date of certification.][19]

Ubeda's basis for exclusion is the Certificate of Ownership of Large Cattle issued by the Municipal Treasurer of San Andres on May 12-29, 1995, submitted by the landowner, which, according to Ubeda is "more conclusive" (although issued fairly recently). He recommended the exclusion from CARP coverage a total of 219.50 has: 134 has. for cattle-grazing, 28 has. for horse and carabao grazing, 12.5 has. for infrastructure and 45 has. for retention of nine landowners.

The applicants, through Uy, wrote a letter[20] to DAR Region IV Director Percival C. Dalugdug dated July 18, 1995, requesting for a reinvestigation of the Report of PARO Ubeda. This request was reiterated in an August 11, 1995 letter[21] where the applicants requested, for the first time, the exclusion of another parcel of land - 22.2639 ha and covered by TCT No. T-11948 - which is contiguous to the 349.9996-ha lot covered by their earlier application.

On August 14, 1995, the Regional Director issued an Order affirming the findings and recommendation of PARO Ubeda. Respondent and his co-owners appealed the order to the DAR Secretary on August 28, 1995. They argued that the properties have been devoted to livestock-raising even prior to 1977. Thus, the landholdings should be excluded from CARP coverage.[22] They further argued that for purposes of determining the area for exclusion under A.O. No. 9, the entire number of livestock should be credited in applying the ratio of one head to one hectare. Considering that the landholdings totaled only 370 ha and there are 429 heads of livestock, they have more than complied with A.O. No. 9, Series of 1993.[23]

On March 15, 1996, the DAR issued an Order suspending the processing and issuance of Certificates of Land Ownership Awards to the farmers-beneficiaries of the landholding covered by TCT No. 160988 pending the resolution of the appeal.[24]

On October 7, 1996, the DAR issued an Order[25] partially granting the application for exclusion. It held that, in accordance with the Luz Farms ruling and A.O. No. 9, private agricultural lands are considered excluded from the CARP if already devoted to livestock, poultry, and swine-raising as of June 15, 1988. According to the DAR, this means that the livestock must have been in the area at the time the law took effect. Since the Certificates of Ownership of Large Cattle were issued only on May 12 to 29, 1995, only those livestock which are seven years of age or more can be presumed to be within the area as of June 15, 1988. Consequently, following the animal to land ratio provided in A.O. No. 9 for 134 cattle and 28 horses and carabaos, only 162 ha should be exempted from CARP coverage.

The DAR also ruled that additional exemptions include 12.50 ha for infrastructure (following the ratio 21 heads for every 1.7815 ha) and 45 ha for retention of nine landowners, for a total of 219.50 ha. The dispositive portion of the Order reads:

WHEREFORE, premises considered, Order is hereby issued:

- GRANTING the instant application for exclusion/exemption from CARP coverage pursuant to Administrative Order No. 09 Series [o]f 1993 but only with respect to a total of TWO HUNDRED NINETEEN POINT FIFTY (219.50) hectares. The remainder of ONE HUNDRED THIRTY POINT FOUR NINE NINE SIX (130.4996) hectares are hereby placed under CARP coverage;
- Directing the MARO/PARO concerned to cause the survey of the entire area for purposes of segregating the areas which are covered from those which are excluded.

SO ORDERED.[26]

On October 15, 1996, the applicants appealed the order to the OP via an Appeal with Prayer for Status Quo/Stay of Execution. The case was docketed as OP Case No. 98-D-8316.

On April 13, 1998, the President, through then Deputy Executive Secretary Renato C. Corona (now a member of the Court), rendered a decision dismissing the appeal for lack of merit, as follows:

The language of DAR Administrative Order No. 09 appears to be quite explicit: "Private agricultural lands or portions thereof exclusively, directly and actually used for livestock, poultry and swine raising as of 15 June 1988 shall be excluded from the coverage of CARP." By simple reading, it is obvious that the livestock, poultry and swine, in order to be included in the computation of the area to be exempted from CARP coverage, should have been existing in the area sought to be exempted at the time of the effectivity of RA 6657, which is June 15, 1988. Thus, in ascertaining the animal/land ratio, the age of the cattle should be reckoned with. From the certification of the Municipal Treasurer of San Andres, Quezon, it appears that only 134 of the 434 cattles are found to be at least seven years of age. Accordingly, only 162 hectares (134 for the cattle and 28 for the horses and carabaos) are exempted from CARP coverage following the one hectare per one head of cattle ratio

provided under the same administrative order. This, of course, does not include the retention area of the appellants-landowners and the area reserved for the infrastructures.[27]

Respondent and his co-owners filed a Motion for Reconsideration dated May 21, 1998 of the decision. In an Order dated September 15, 1998 signed by the then Executive Secretary Ronaldo Zamora, by authority of the President, the appeal was denied for being devoid of substantial merit.[28]

However, on October 5, 1998, then Chief Presidential Legal Adviser Harriet Demetriou submitted the following Memorandum to the President:

1. For total exemption:

Administrative Order No. 9 provides that the maximum ratio in determining areas to be exempted is one head to one hectare "regardless of age."

Hence, if Administrative Order No. 9 does not distinguish, neither should we.

The use of age as a reference when not so required is arbitrary and very dangerous because it would then variably depend on the arbitrary decision of the DAR on when to conduct an inspection, and this is no fault of the landowner. Thus, the more recent the inspection is made, the higher the age requirement will be just to reckon the animals' existence from 15 June 1988. The ultimate result is that an owner will never be able to augment his herd, or replace lost or deceased livestock, after 1988, which is absurd and an undue limitation of property rights.

The arbitrary use of age to determine the number of head of livestock as of 15 June 1988 is based on an unwieldy theory that the business of raising livestock involves a fixed number of head of livestock. At any rate, Mr. Uy's land admittedly has always been devoted to livestock. Therefore, there should be no apprehension that the land was merely converted to circumvent the application of the CARL. Hence, in the absence of collusion or intent to circumvent the law, the number of heads of livestock should be counted as of the date of inspection.

Finally, we would like to inform the following that the dispute is pending resolution before the Office of the President to which the case was elevated. Hence, the case also merits the opinion of Hon. Secretary Ronaldo B. Zamora as the final reviewing authority.[29]

On October 19, 1998, the respondent and his co-owners filed a Second Motion for Reconsideration of the decision of the OP. On April 16, 2002, the President, through Deputy Executive Secretary Arthur P. Autea, issued an Order denying the October 19, 1998 second motion for reconsideration for being a prohibited pleading and for lack of merit.[30] Citing *Ortigas and Company Limited Partnership v. Velasco*,[31] the OP also declared that the Second Motion for Reconsideration was a prohibited pleading. Furthermore, Section 7 of A.O. No. 18 dated February 12, 1987 allows only one motion for reconsideration save for exceptionally meritorious cases.

On December 22, 2002, the OP, through Executive Secretary Ronaldo B. Zamora, issued a Memorandum[32] for DAR Secretary Horacio Morales referring the case for the Secretary's final disposition, on the matter of exemption from CARP coverage the subject landholding, as indicated in the aforesaid Memorandum of the Chief Presidential Legal Adviser to the President.[33]

Respondent for himself and in behalf of other owners then filed a "Petition for Review with Application/Prayer for Status Quo and/or Stay of Execution"[34] before the CA, docketed as CA-G.R. SP. No. 70541. They alleged that the OP committed the following errors:

I

IT UNILATERALLY RE-ASSUMED JURISDICTION OVER THE CASE AND ISSUED THE ORDER OF

APRIL 16, 2002, DENYING THE SECOND MOTION FOR RECONSIDERATION AND FOR RULING THAT IT WAS NOT "EXCEPTIONALLY MERITORIOUS ENOUGH," EITHER OF WHICH CONSTITUTES GRAVE ABUSE OF DISCRETION AND/OR EXCESS OF JURISDICTION, AND THEREFORE, REVERSIBLE.[35]

II

IT DECLINED TO PASS UPON A JURISDICTIONAL ISSUE RAISED; THAT IS THE ASSUMPTION OF JURISDICTION BY DAR OVER SUBJECT LANDHOLDING/S, POPULARLY KNOWN AND ACCEPTED AS DEVOTED TO LIVESTOCK RAISING DESPITE JURISPRUDENCE EXPLICITLY DECLARING IT, TOGETHER WITH POULTRY AND SWINE RAISING, AS NOT COVERED BY THE AGRARIAN REFORM PROGRAM OF THE GOVERNMENT, THEREFORE, BEYOND THE OFFICIAL COMPETENCE OF DAR.[36]

III

IT UPHELD DAR ADMINISTRATIVE ORDER NO. 9, SERIES OF 1993, BUT, IN EFFECT, ONLY AS TO THE GENERAL RULE PRESCRIBED, FOR IT DISREGARDED THE CONDITIONS AND/OR QUALIFICATIONS ATTACHED THERETO [AND] THEREBY CONSTITU[TING] AN ARBITRARY AND DISCRIMINATORY APPLICATION OF THE RULE, A GRAVE ABUSE OF DISCRETION.[37]

The appellate court rendered judgment affirming the decision of the OP and, consequently, the October 7, 1996 DAR Order. According to the appellate court -

The DAR has the power to establish and promulgate operational policies, rules and regulations and priorities for agrarian reform implementation (Executive Order 129-A, Section 5(c), July 26, 1987). The Comprehensive Agrarian Reform Law (R.A. 6657) itself mandates that:

"SECTION 49. Rules and Regulations. - The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation."

Thus, applying DAR Administrative Order No. 9, Series of 1993, and based on the ocular inspection and Certificate of Ownership of Large Cattle issued by the Municipal Treasurer, the DAR exempted 219.50 hectares of the subject landholding from CARP coverage. It was found that of the 434 heads of cattle, only 134 were over seven years of age. Added to this number of cattle were the 28 heads of horses and carabaos, totaling 162 heads. Accordingly, pursuant to the one hectare per one head ratio, 162 hectares were exempted. The retention areas of the landowners amounting to 45 hectares and the 12.50 hectares allotted for infrastructure was also exempted.

Such application by the DAR is in accordance with the spirit of the law and its aim of preventing unlawful conversion of agricultural lands to escape coverage under the CARP.

It is well-settled that factual findings of administrative agencies, which have acquired expertise in their field, are generally binding and conclusive upon the Court. (Cagayan Robina Sugar Milling Co. v. Court of Appeals, 342 SCRA 663)[38]

Respondent and his co-owners filed a motion for reconsideration of the decision, praying that the entire 349.9996 ha be exempted from CARP coverage.

On May 24, 2004, the CA rendered an Amended Decision[39] reversing and setting aside its previous decision. The fallo reads:

WHEREFORE, based on the foregoing premises, the instant motion for reconsideration is hereby GRANTED. The Decision of this Court promulgated on February 18, 2003 is accordingly RECONSIDERED and SET

ASIDE. Consequently, the April 13, 1998 Decision of the Office of the President is REVERSED and the areas under TCT No. T-160988 and T-111948 are declared EXEMPTED from CARP coverage.

SO ORDERED.[40]

This time the CA declared that A.O. No. 9, Series of 1993, requires that the landholding be devoted to cattle-raising when R.A. No. 6657 took effect. It also pointed out that Section III-B of the A.O. provides that in determining the areas qualified for exclusion, the ratio shall be one head of livestock to one hectare of land, regardless of age. Neither the law nor the A.O. requires that the livestock during inspection should be those that already existed on the landholding on or before June 15, 1988. Consequently, the appellate court declared that in order to determine the area for exclusion, the counting of livestock should be, as stated in the administrative order, "regardless of age" during actual inspection. The appellate court concluded that all 434 heads of cattle present in the subject property should have been considered in determining the exempt area used for livestock raising.

On June 21, 2004, the DAR, represented by the Secretary of Agrarian Reform, filed a motion for reconsideration[41] of the appellate court's amended decision. It reiterated that the pronouncement by this Court that "the law only requires that for exemption of CARP to apply, the subject landholding should be devoted to cattle-raising as of June 15, 1988" is not entirely correct, for the law requires that it be exclusively, directly and actually used for livestock as of June 15, 1988. Under A.O. No. 9, Series of 1993, two conditions must be established:

1)

It must be shown that the subject landholding was EXCLUSIVELY, DIRECTLY AND ACTUALLY used for livestock, poultry or swine on or before June 15, 1988; and

2)

The farm must satisfy the ratios of land to livestock.[42]

It must be shown that the entire landholding, and not just portions of it, should be devoted to livestock raising. The words "regardless of age" in the order should be interpreted to mean only those heads of cattle existing as of June 15, 1988. Accordingly, the ratio of land to livestock should be based on those livestock found existing in the landholding at the time R.A. No. 6657 took effect on June 15, 1988. This is consistent with the intent of the law to prevent fraudulent declaration of areas actually, directly and exclusively used for livestock as well as to protect the rights of agrarian beneficiaries therein.

It was not proven that the entire landholding was exclusively used for livestock as of June 15, 1988. In fact, the ocular inspection of the property conducted by the Provincial Task Force on Exclusion reported that about 20 ha were planted with coconuts. It also revealed that the topography is flat and undulated, and that 44 farmers-beneficiaries occupied portions of the said landholding. On these bases alone, it is hard to imagine how the said landholding could have been "exclusively, directly and actually used for livestock as of June 15, 1988."

Moreover, out of the 434 heads of cattle found in the subject landholding as of May 1995, only 134 heads of cattle and 28 horses and carabaos could have been present in the subject landholding. This is based on the finding that only 134 heads of cattle were 7 years and older, and, consequently, were the only ones that could have existed as of June 15, 1988. Hence, they could not be made as basis for the computation of the areas qualified for exclusion, for to do so would clearly violate the first condition that the heads of cattle must be in existence as of June 15,

1988.[43]

The appellate court was not persuaded and resolved to deny, for lack of merit, the motion for the reconsideration of its amended decision.[44]

The DAR, now the petitioner, filed the instant petition for review, alleging that the appellate court erred as follows:

I

IT GAVE DUE COURSE AND GRANTED RESPONDENT'S [DR. UY] PETITION DESPITE BEING FILED OUT OF TIME.[45]

II

IT DECLARED THE ENTIRE 349.9996 HECTARE-PROPERTY OF RESPONDENT AS EXEMPT FROM COVERAGE OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM.[46]

Thus, the pivotal issues to be resolved here are (1) whether or not the second motion for reconsideration filed by respondent tolled the reglementary period to appeal; and (2) whether or not the phrase "regardless of age" in Section III-B of DAR A.O. No. 9, Series of 1993 should be reckoned from June 15, 1988, or from the date of inspection.

On the first issue, petitioner claims that, under the OP Rules of Procedure, specifically the second paragraph of Section 7, A.O. No. 18, Series of 1987, only one motion for reconsideration is allowed except in meritorious cases. Hence, the period to file the petition for review had already expired 15 days after the denial of the first motion for reconsideration. Petitioner insists that the filing of the second motion for reconsideration is of no consequence since the OP had already concluded that the case was "not exceptionally meritorious to justify additional motions for reconsiderations."

On the second issue, petitioner contends that in the Luz Farms case, the entire property therein was devoted to livestock and poultry prior to June 15, 1988; in the present case, only a minimal portion of the property involved is so devoted. It further insists that the report of the Task Force on Exclusion revealed that 20 ha are planted with coconut trees while undetermined portions are occupied by 44 farmers-beneficiaries. Thus, the 20 ha planted with coconuts were not intended for cattle grazing, neither do they serve the purpose of shade and fodder for the bovines. The presence of farmers-beneficiaries who tend to the trees indicates that respondent is also engaged in the coconut industry, belying the fact that the entire 349.9996 ha is exclusively devoted to livestock-raising. Petitioner further claims that Luz Farms was a corporation engaged in the livestock and poultry business even before 1988. On the other hand, respondent did not present any business permit or articles of incorporation to prove that the entire 349.9996 ha is devoted to the livestock business.

Petitioner further avers that it had received reports that A.O. No. 9 was issued to prescribe the rules for exclusion of the land used for livestock production. Petitioner posits that the order is curative in nature and retroactive in application; and the phrase "regardless of age" refers to heads of cattle in the year 1988 and not during actual inspection. Petitioner argues that if the phrase were to be given any other meaning, landowners could easily fill their land with livestock and apply for exemption, defeating the purpose of agrarian reform. Thus, during actual inspection, the headcount should be based on the existence of the animals in 1988 through available records; if there be none, then the tallying must be done according to the age of the animals alive at that time.

By way of Comment,[47] respondent maintains that Section 7 of A.O. No. 18, Series of 1987 does not totally rule out a second motion for reconsideration; the governing principle in the resolution of the case is its merits. Citing a

plethora of cases, he avers that substantial justice should overrule rules of procedure. Respondent further points out that even his predecessor-in-interest was engaged in the business of livestock raising on the landholding. This livestock business was evident during the ocular inspection of the Task Force on Exclusion. Contrary to petitioner's claim, he does have a business permit, and the absence of the articles of incorporation is irrelevant because no corporate personality is involved here.

Respondent further asserts that the 20 ha planted with coconut trees is a minimal part of the 349.9996 ha. The diminutive size of the area is in keeping with the purpose of providing shade to the animals and the young leaves used as fodder when grasses are scarce during dry weather. Respondent also asserts that the DAR interpretation of the phrase "regardless of age" referring to the year 1988 is an "amendment under the guise of interpretation." He emphasized that since the law does not distinguish, petitioner should not distinguish. He argues that the DAR interpretation falls short of acceptability even on practical considerations, because in the business of raising livestock, the inventory is never fixed at any given time especially for long periods, i.e., seven years. It constantly changes either due to natural causes prevalent in the business or the interplay of market forces or the peace and order condition within the area.

The petition is partially granted.

In *Land Car, Inc. v. Bachelor Express Inc. and Vallacar Transit, Inc.*,^[48] the Court ruled that the doctrine of exhaustion of administrative remedies empowers the OP to review any determination or disposition of a department head. In fact, the doctrine requires an administrative decision to first be appealed to the administrative superiors up to the highest level before it may be elevated to a court of justice for review. Thus, if a remedy within the administrative machinery can still be had by giving the administrative officer concerned every opportunity to decide on the matter that comes within his jurisdiction, then such remedy should be priorly exhausted before the court's judicial power is invoked.^[49]

Appeals to the OP are governed by A.O. No. 18, Series of 1987. Section 7 thereof, provides the rule on filing a motion for reconsideration:

Sec. 7 Decisions/resolutions/orders of the Office of the President shall, except as otherwise provided for by special laws, become final after the lapse of fifteen (15) days from receipt of a copy thereof by the parties, unless a motion for reconsideration thereof is filed within such period.

Only one motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases.

It is clear then that only one motion for reconsideration is allowed to be filed from a decision, resolution or order of the OP. However, the filing of a second motion for reconsideration is not absolutely prohibited. A second motion for reconsideration is allowed in exceptionally meritorious cases.^[50]

Furthermore, the explanation of the OP that the second motion for reconsideration deserves scant merit because the "grounds therein are not substantially different from the same ones discussed in the first motion for reconsideration" is untenable.

A rehash of arguments may not necessarily be pro forma per se. In *Security Bank and Trust Company, Inc. v. Cuenca*,^[51] the Court declared that a motion for reconsideration is not pro forma just because it reiterated the arguments earlier passed upon and rejected by the appellate court; a movant may raise the same arguments precisely to convince the court that its ruling was erroneous.^[52] The Court also held that the pro forma rule will not be applicable if the arguments were not sufficiently passed upon and answered in the decision sought to be reconsidered, and elucidated the *raison d'être* of the pro forma principle as follows:

x x x a pro forma motion had no other purpose than to gain time and to delay or impede the proceedings. Hence, "where the circumstances of a case do not show an intent on the part of the movant merely to delay the proceedings, our Court has refused to characterize the motion as simply pro forma." x x x

We note finally that because the doctrine relating to pro forma motions for reconsideration impacts upon the reality and substance of the statutory right of appeal, that doctrine should be applied reasonably, rather than literally. The right to appeal, where it exists, is an important and valuable right. Public policy would be better served by according the appellate court an effective opportunity to review the decision of the trial court on the merits, rather than by aborting the right to appeal by a literal application of the procedural rules relating to pro forma motions for reconsideration.

Respondent certainly did not intend to delay the proceedings here; in fact, it would adversely affect his cause if he were to delay his appeal to the regular courts because he would certainly lose vast tracts of land which are integral elements of his trade. In this case, not only was a second motion for reconsideration allowed by the OP rules, more importantly, the OP decision and the order denying the first motion for reconsideration failed to provide its basis in law. The ends of justice would have been served if the OP decision did more than copy the DAR order and turned toward the important issues presented before it.

In any event, even if we considered the second motion for reconsideration as pro forma or not "exceptionally meritorious," the argument of petitioner would still be untenable. It is settled that rules of procedure are, as a matter of course, construed liberally in proceedings before administrative bodies. Thus, technical rules of procedure imposed in judicial proceedings are unavailing in cases before administrative bodies. Administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. Rules of procedure are not to be applied in a very rigid and technical manner, as they are used only to help secure and not to override substantial justice.[53]

It bears stressing that the threshold substantive issue is the validity and implementation of DAR Administrative Order No. 9, Series of 1993 on the respondent's landholding of more or less 472 ha in light of the ruling of this Court in *Department of Agrarian Reform v. Sutton*,[54] where DAR Administrative Order No. 9, Series of 1993 was declared unconstitutional.

The fundamental rule in administrative law is that, to be valid, administrative rules and regulations must be issued by authority of law and must not contravene the provisions of the Constitution. The rule-making power of an administrative agency may not be used to abridge the authority given to it by Congress or by the Constitution. Nor can it be used to enlarge the power of the administrative agency beyond the scope intended. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by administrative agencies and the scope of their regulations.

In the case at bar, we find that the impugned A.O. is invalid as it contravenes the Constitution. The A.O. sought to regulate livestock farms by including them in the coverage of agrarian reform and prescribing a maximum retention limit for their ownership. However, the deliberations of the 1987 Constitutional Commission show a clear intent to exclude, inter alia, all lands exclusively devoted to livestock, swine and poultry-raising. The Court clarified in the *Luz Farms* case that livestock, swine and poultry-raising are industrial activities and do not fall within the definition of "agriculture" or "agricultural activity." The raising of livestock, swine and poultry is different from crop or tree farming. It is an industrial, not an agricultural, activity. A great portion of the investment in this enterprise is in the form of industrial fixed assets, such as: animal housing structures and facilities, drainage, waterers and blowers, feedmill with grinders, mixers, conveyors, exhausts and generators, extensive warehousing facilities for feeds and other supplies, anti-pollution equipment like bio-gas and digester plants augmented by lagoons and concrete ponds, deepwells, elevated water tanks, pumphouses, sprayers, and other technological appurtenances.

Clearly, petitioner DAR has no power to regulate livestock farms which have been exempted by the Constitution from the coverage of agrarian reform. It has exceeded its power in issuing the assailed A.O.

The subsequent case of *Natalia Realty, Inc. v. DAR* reiterated our ruling in the *Luz Farms* case. In *Natalia Realty*, the Court held that industrial, commercial and residential lands are not covered by the CARL. We stressed anew that while Section 4 of R.A. No. 6657 provides that the CARL shall cover all public and private agricultural lands, the term "agricultural land" does not include lands classified as mineral, forest, residential, commercial or industrial. Thus, in *Natalia Realty*, even portions of the Antipolo Hills Subdivision, which are arable yet still undeveloped, could not be considered as agricultural lands subject to agrarian reform as these lots were already classified as residential lands.

A similar logical deduction should be followed in the case at bar. Lands devoted to raising of livestock, poultry and swine have been classified as industrial, not agricultural, lands and thus exempt from agrarian reform. Petitioner DAR argues that, in issuing the impugned A.O. it was seeking to address the reports it has received that some unscrupulous landowners have been converting their agricultural lands to livestock farms to avoid their coverage by the agrarian reform. Again, we find neither merit nor logic in this contention. The undesirable scenario which petitioner seeks to prevent with the issuance of the A.O. clearly does not apply in this case. Respondents' family acquired their landholdings as early as 1948. They have long been in the business of breeding cattle in Masbate which is popularly known as the cattle-breeding capital of the Philippines. Petitioner DAR does not dispute this fact. Indeed, there is no evidence on record that respondents have just recently engaged in or converted to the business of breeding cattle after the enactment of the CARL that may lead one to suspect that respondents intended to evade its coverage. It must be stressed that what the CARL prohibits is the conversion of agricultural lands for non-agricultural purposes after the effectivity of the CARL. There has been no change of business interest in the case of respondents.

Moreover, it is a fundamental rule of statutory construction that the reenactment of a statute by Congress without substantial change is an implied legislative approval and adoption of the previous law. On the other hand, by making a new law, Congress seeks to supersede an earlier one. In the case at bar, after the passage of the 1988 CARL, Congress enacted R.A. No. 7881 which amended certain provisions of the CARL. Specifically, the new law changed the definition of the terms "agricultural activity" and "commercial farming" by dropping from its coverage lands that are devoted to commercial livestock, poultry and swine-raising. With this significant modification, Congress clearly sought to align the provisions of our agrarian laws with the intent of the 1987 Constitutional Commission to exclude livestock farms from the coverage of agrarian reform.

In sum, it is doctrinal that rules of administrative bodies must be in harmony with the provisions of the Constitution. They cannot amend or extend the Constitution. To be valid, they must conform to and be consistent with the Constitution. In case of conflict between an administrative order and the provisions of the Constitution, the latter prevails. The assailed A.O. of petitioner DAR was properly stricken down as unconstitutional as it enlarges the coverage of agrarian reform beyond the scope intended by the 1987 Constitution.[55]

The Report[56] of MARO Babalcon clearly declared that 346 ha are used for grazing of the 429 heads of livestock; and indicated that the density required on commercial farming as far as the number of livestock is concerned was satisfied. This was confirmed in the DAR Order stating that the land has been devoted to livestock-raising since its acquisition in 1979, and that the 20 ha planted with coconut trees are simultaneously used as pasture land. These facts are borne by the records and undisputed by the parties. The courts generally accord great respect, if not finality, to factual findings of administrative agencies because of their special knowledge and expertise over matters falling under their jurisdiction.[57]

It is not uncommon for an enormous landholding to be intermittently planted with trees, and this would not necessarily detract it from the purpose of livestock farming and be immediately considered as an agricultural land.

It would be surprising if there were no trees on the land. Also, petitioner did not adduce any proof to show that the coconut trees were planted by respondent and used for agricultural business or were already existing when the land was purchased in 1979. In the present case, the area planted with coconut trees bears an insignificant value to the area used for the cattle and other livestock-raising, including the infrastructure needed for the business. There can be no presumption, other than that the "coconut area" is indeed used for shade and to augment the supply of fodder during the warm months; any other use would be only be incidental to livestock farming. The substantial quantity of livestock heads could only mean that respondent is engaged in farming for this purpose. The single conclusion gathered here is that the land is entirely devoted to livestock farming and exempted from the CARP.

This Court's ruling in the Luz Farms case and Natalia Realty, Inc. v. DAR[58] was emphatic on the exemption from CARP of land devoted to residential, commercial and industrial purposes without any other qualifications. Moreover, after the passage of the 1988 CARL, Congress enacted R.A. No. 7881, amending certain provisions of the CARL. Specifically, the new law changed the definition of the terms "agricultural activity" and "commercial farming" by dropping from its coverage lands that are devoted to commercial livestock, poultry and swine-raising. With this significant modification, Congress clearly sought to align the provisions of our agrarian laws with the intent of the 1987 Constitutional Commission to exclude livestock farms from the coverage of agrarian reform.[59]

Notably, however, a careful review of the records of the case reveal that the Notice of Coverage, the Investigation Report by MARO Babalcon and Report of PARO Ubeda, the DAR Order, and the OP Decision referred only to the 349.9996-ha landholding covered by TCT No. 160988. There is no showing in the records that the landholding covered by TCT No. 11948 had been included for CARP coverage; or that any investigation had been conducted by the MARO or PARO on whether such landholding is exempt from CARP coverage. The Court notes that respondent sought exemption of their property covered by TCT No. 11948 only in their letter dated August 11, 1995 when they appealed from the Report of the PARO. Absent any evidence showing that this land was investigated by the DAR, there can be no basis as to whether the said landholding is exempt from CARP coverage or not.

IN LIGHT OF THE FOREGOING, the instant petition is **PARTIALLY GRANTED**. The Amended Decision of the Court of Appeals in CA-G.R. SP No. 70541 exempting the parcel of land under TCT No. T-160988 with an area of 349.9996 hectares from coverage of the Comprehensive Agrarian Reform Law is **AFFIRMED**. However, the Amended Decision exempting the 22.2639-hectare landholding covered by TCT No. 11948 from the coverage of the CARP is **REVERSED** and **SET ASIDE**.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] On September 27, 2004, President Gloria Macapagal Arroyo signed Executive Order No. 364, and the Department of Agrarian Reform was renamed to Department of Land Reform. This EO also broadened the scope of the department, making it responsible for all land reform in the country. On August 23, 2005, President Arroyo signed Executive Order No. 456 and renamed the agency "Department of Agrarian Reform," since the Comprehensive Agrarian Reform Law "goes beyond just land reform and includes the totality of all factors and support services designed to lift the economic status of the beneficiaries."

[2] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Conrado M. Vasquez, Jr. and Rosalinda Asuncion-Vicente, concurring; rollo, pp. 31-34.

[3] Rollo, p. 35.

[4] By Renato C. Corona, in his capacity as Chief Presidential Legal Counsel/Deputy Executive Secretary, id. at 45-50.

[5] By Ernesto D. Garilao, in his capacity as Secretary; id. at 40-44.

[6] G.R. No. 86889, December 4, 1990, 192 SCRA 51.

[7] Otherwise known as Comprehensive Agrarian Reform Law of 1988.

[8] Supra note 6, at 59.

[9] Entitled "Rules and Regulations Governing the Exclusion of Agricultural Lands Used for Livestock, Poultry and Swine-Raising From the Coverage of the Comprehensive Agrarian Reform Program (CARP)"; CA rollo, pp. 141-147.

[10] Id. at 141.

[11] Water buffalo.

[12] CA rollo, p.143. (emphasis supplied)

[13] Id. at 87-88.

[14] Id. at 88.

[15] Id. at 135-136. (emphasis supplied)

[16] Id. at 137. (emphasis supplied)

[17] Id. at 138. (emphasis supplied)

[18] Id. at 139-140.

[19] Id. at 140.

[20] Id. at 95-96.

[21] Id. at 97-98.

[22] Id. at 89-91.

[23] Id. at 90.

[24] Id. at 69-70, by Atty. Hector D. Soliman, Undersecretary - LAFMA.

[25] Rollo, pp. 40-44.

[26] Id. at 44.

[27] CA rollo, p. 54.

[28] Id. at 56-57.

[29] Id. at 67-68.

[30] Rollo, pp. 54-56.

[31] G.R. No. 109645, March 4, 1996, 254 SCRA 234.

- [32] CA rollo, p. 66.
- [33] Id.
- [34] Id. at 11-49.
- [35] Rollo, p. 68.
- [36] Id. at 68-69.
- [37] Id. at 69.
- [38] Id. at 112.
- [39] Id. at 31-34.
- [40] Id. at 33.
- [41] Id. at 133-140.
- [42] Id. at 135.
- [43] CA rollo, pp. 261-267.
- [44] Rollo, p. 35.
- [45] Id. at 18.
- [46] Id.
- [47] Id. at 150-163.
- [48] G.R. No. 154377, December 8, 2003, 417 SCRA 307.
- [49] Id. at 312.
- [50] Amadore v. Romulo, G.R. No. 161608, August 9, 2005, 466 SCRA 397, 410.
- [51] G.R. No. 138544, October 3, 2000, 341 SCRA 781.
- [52] Id. at 794.
- [53] Supra note 50, at 412-413.
- [54] G.R. No. 12070, October 19, 2005, 473 SCRA 392.
- [55] Id. at 399-402.
- [56] Supra note 17.
- [57] Junio v. Garilao, G.R. No. 147146, July 29, 2005, 465 SCRA 173, 186.
- [58] G.R. No. 103302, August 12, 1993, 225 SCRA 278.
- [59] Supra note 54, at 401.

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