

**A.Z. ARNAIZ REALTY, INC. REPRESENTED BY CARMEN Z. ARNAIZ,
PETITIONER, VS. OFFICE OF THE PRESIDENT; DEPARTMENT OF
AGRARIAN REFORM; REGIONAL DIRECTOR, DAR REGION V,
LEGASPI CITY; ...**

G.R. No. 170623. July 07, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari assailing the Decision[1] dated August 11, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 73687 and the Resolution[2] dated November 24, 2005 denying petitioner's Motion for Reconsideration.

The procedural and factual antecedents are as follows:

Petitioner A. Z. Arnaiz Realty, Inc. filed a Petition for Exclusion from the Comprehensive Agrarian Reform Program (CARP) coverage dated April 25, 1994 before the Regional Director of the Department of Agrarian Reform (DAR), Region V over three (3) parcels of land under Transfer Certificate of Title (TCT) Nos. T-3543, T-6929, and T-3542 having an area of 362.4929 hectares, 109.8385 hectares, and 371.0676, respectively, or an aggregate area of 843.3990 hectares, situated at Barangay Asid, Sinalugan, Masbate, Masbate on the basis that (1) the said parcels of land had been devoted to cattle-ranching purposes since time immemorial; (2) said lands are not tenanted; and (3) said lands have more than 18% slopes.

On January 24, 1995, the DAR Regional Director issued an Order[3] denying the petition, to wit:

In view of the foregoing, the instant petition for Exclusion is denied and it is hereby ordered that the acquisition of the properties under the coverage of CARP be pursued subject to the retention right of the landowner accordant with existing laws, rules, regulations and DAR policies.

SO ORDERED.

It was established that a portion of the subject landholdings was previously leased by the petitioner to Monterey Farms Corporation for a period of ten years from July 15, 1981 to July 15, 1991. During the subsistence of the lease agreement, petitioner sold its entire herd of cattle to Monterey Farms Corporation for P900,000.00. Before the expiration of the lease agreement, the petitioner denied Monterey's request to extend the lease with a ten percent (10%) increase in rentals and informed Monterey to vacate the premises at the expiration of the contract.

The DAR Regional Director also found that the property covered by TCT No. T-3542 was no longer owned by the petitioner, but by Nuestra Señora del Carmen Marble, Inc. and a new TCT (T-6930) was already issued in its name.

In denying the petition, the DAR Regional Director concluded, among other things, that (1) the properties were not directly, actually, and exclusively used for pasture; (2) based on the documents presented, there was no clear

and convincing proof that petitioner intended or manifested its intention of maintaining the whole area for cattle ranching; (3) petitioner sold its entire herd of cattle to Monterey Farms Corporation when the latter leased the property from the petitioner; (4) the peace and order situation due to the presence of NPA rebels in Masbate at that time was not the primary reason for the discontinuance of any business activity in the area, considering that it did not prevent Monterey from leasing the property and its subsequent offer to renew the contract of lease after its termination; and (5) the petitioner does not have the authority from the current owner of the property previously covered by TCT-3542 to file the petition in its behalf.

Petitioner filed a Motion for Reconsideration, which was denied in the Order[4] dated December 8, 1995.

Petitioner then appealed the Order to the Secretary of Agrarian Reform. Petitioner also filed two separate motions for ocular inspections dated April 3, 1996 and August 8, 1996. On October 23, 1996, the Secretary of Agrarian Reform issued an Order[5] dismissing the appeal for lack of merit, the decretal portion of which reads:

WHEREFORE, IN VIEW OF ALL THE ABOVE, the assailed Order of [the] DAR Regional Director, Region V[,] dated December 8, 1995[,] is accordingly, MODIFIED as follows:

- Dismissing the instant Appeal for lack of merit;
- Ordering the coverage of all the subject lands under the Comprehensive Agrarian Reform Program. Accordingly, the MARO concerned, with the assistance of the DA representative, should identify the portions and areas which are not suited for agriculture and exclude the same from the coverage of the program;
- Directing the MARO, through the PARO of Masbate, Masbate, to send Notices of Coverage to AS Arnaiz Realty, Inc. and the Nuestra Señora del Carmen Marble, Inc.;
- Ordering the MARO concerned with the assistance of the BARC concerned, to identify the qualified beneficiaries over the subject lands;
- Directing the DAR Regional Director, Region V, to send a survey team to conduct the necessary survey of the areas of the subject lands which are suited for agriculture and the respective areas which will be allocated to qualified beneficiaries;
- Ordering the DAR employees and officers to respect the landowner's right to retention, if qualified[,] pursuant to existing agrarian laws and allied issuances; and
- Denying the Motion for Ocular Inspection dated April 3, 1996 and reiterated on August 8, 1996 for lack of merit.

SO ORDERED.[6]

Petitioner filed a Motion for Reconsideration, but it was denied in the Order[7] dated February 13, 1998.

Aggrieved, petitioner sought recourse before the Office of the President (OP). On September 19, 2001, the OP rendered a Decision[8] dismissing the appeal, to wit:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED and the appealed order of then DAR Secretary Ernesto D. Garilao dated February 13, 1998, sustaining his earlier order of October 23, 1996 in its entirety, is hereby AFFIRMED.

SO ORDERED.

Petitioner filed a Motion for Reconsideration with Earnest Prayer for Reinvestigation or Ocular Inspection, which was denied in the Resolution[9] dated October 15, 2002.

Undeterred, petitioner appealed the dismissal before the CA arguing that:

- THE OFFICE OF THE PRESIDENT SERIOUSLY ERRED IN AFFIRMING IN TOTO THE DECISION OF THE DEPARTMENT OF AGRARIAN REFORM DENYING HEREIN PETITIONER-APPELLANT'S PETITION FOR EXCLUSION OF HER CATTLE RANCH FROM THE COVERAGE OF THE COMPREHENSIVE AGRARIAN REFORM LAW IN COMPLETE DISREGARD OF THE RULING OF THE SUPREME COURT IN THE CASE OF "LUZ FARMS VS. HON. DAR SECRETARY."
- THE OFFICE OF THE PRESIDENT SERIOUSLY ERRED IN NOT EXCLUDING THE SUBJECT LANDS FROM THE COVERAGE OF THE LAND REFORM PROGRAM, CONSIDERING THAT THEY ARE BESTOWED WITH SLOPES OF 18% OR MORE.[10]

On August 11, 2005, the CA rendered a Decision[11] dismissing the petition, the dispositive portion of which reads:

WHEREFORE, premises considered, the Petition for Review is DENIED DUE COURSE and ordered DISMISSED. The Decision and Resolution of the Office of the President dated 19 September 2001 and 15 October 2002, respectively, are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

In dismissing the petition, the CA ratiocinated that the findings of fact of the OP, the Secretary of Agrarian Reform, and the DAR Regional Director, Region V were supported by substantial evidence. Petitioner did not establish that the subject parcels of land were directly, actually, and exclusively used for pasture nor did petitioner establish that the subject lands have been devoted for commercial livestock raising. Moreover, it was found that the subject properties were predominantly cultivated below 18% slope, the area being planted with corn, coconut, and other crops, with only 44.2470 hectares above 18% slope and that the property under TCT No. T-3453 is occupied, cultivated, and planted with upland crops since May 1992 by almost 150 farmers.

Petitioner filed a Motion for Reconsideration, which was denied in the Resolution[12] dated November 24, 2005.

Hence, the petition raising the following arguments:

- petitioner was not accorded the requisite due process.[13]
- the luz farms ruling, as well as the delia Sutton case, should be applied in the instant case.[14]
- the subject lands are not suitable for agriculture and they are not tenanted aside from the fact that they contain slopes of more than 18%.[15]

Petitioner argues that it was not accorded the opportunity to present its case. It insists that it was denied due process when, without any hearing, the DAR Regional Director denied its petition for exclusion. Also, petitioner contends that it should have been allowed to participate in the ocular inspection conducted by the DAR and its request for ocular inspection should have been granted by the former. Being the owner of the subject properties, it knows its topography, boundary, and other characteristics. The presence of its authorized representative is necessary to insure that the DAR conducted the ocular examination on the subject properties or actually conducted an ocular inspection.

Petitioner maintains that the cases of Luz Farms v. Secretary of the Department of Agrarian reform[16] and Department of Agrarian Reform v. Sutton[17] constitute formidable precedents in the present case. Consequently, petitioner's properties should be excluded from the coverage of the CARP.

Petitioner asserts that the DAR failed to establish that the properties, more particularly the parcel of land covered

by TCT No. T-3543, was occupied by almost 150 farmers and that the same was occupied, cultivated, and planted by the latter with upland crops since May 1992. Petitioner claims that if there were indeed farmers occupying the subject properties, they were occupying it not to till the soil, but simply to deprive the petitioner of its properties. Petitioner contends that if there were farmers occupying the subject landholdings, they are armed farmers who are members of the New Peoples Army (NPA). Also, the farmers could just be kaingeros or slash-and-burn farmers; thus, mere trespassers who have no intention of remaining on the subject properties after exploiting the land.

Finally, petitioner posits that Republic Act (R.A.) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988, expressly excludes from its coverage lands with 18% slopes or over. Petitioner stresses that the subject properties were bestowed with 18% slopes or higher; thus, the land is not suitable for agriculture and is, therefore, excluded from its coverage.

For its part, respondents maintain that petitioner has been accorded due process when its petition for exclusion was denied, even without any hearing and that the subject landholdings are not exempt from the coverage of the CARP.

The petition is bereft of merit.

Due process, as a constitutional precept, does not always, and in all situations, require a trial-type proceeding. Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments.[18] The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. It is, therefore, not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties.[19]

Even if no formal hearing took place, it is not sufficient ground for petitioner to claim that due process was not afforded it. In the present case, petitioner was given all the opportunity to prove and establish its claim that the subject properties were excluded from the coverage of the CARP. Petitioner actively participated in the proceedings by submitting various pleadings and documentary evidence. In fact, petitioner filed motions for reconsideration in every unfavorable outcome of its actions in all tiers of the administrative and judicial process - from the Order of the DAR Regional Director up to the Decision of the Court of Appeals.

This Court has consistently held that the essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of.[20] And any seeming defect in its observance is cured by the filing of a motion for reconsideration. Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.[21] Undoubtedly, the requirement of the law was afforded to petitioner.

Anent the findings that the subject properties are not excluded from the coverage of the CARP, this Court agrees with the conclusion of the CA. As aptly found by the CA:

It was also found that petitioner, as lessor, entered into a Contract of Lease dated July 11, 1981 with Monterey Farms Corporation ("Monterey Farms," for brevity), as lessee, over two (2) parcels of land covered by TCT No. 3542 and TCT No. 3543 with an area of seven million three hundred thirty-five thousand six hundred five (7,335,605) square meters for a period of ten (10) years commencing from 15 July 1981. In their Supplemental Agreement of even date executed by the parties, it was stipulated therein that 433 hectares are devoted to marble, gold and other mineral quarry activities of petitioner-lessor, while the coconut and mango trees existing within the leased area shall be maintained and nurtured by the lessee Monterey Farms. During the continuance of the lease agreement with Monterey Farms, petitioner disposed its entire herd (cattle) for

Php900,000.00 as admitted in the letter dated 08 May 1990. The subject parcels of land are not directly, actually and exclusively used for pasture. Neither was it shown that, indeed, a herd of cattle for raising purposes existed over the subject lands of petitioner nor was the necessary proof of ownership of any cattle over the same land submitted at the time of filing of the petition for exclusion. In fact, it was found by Secretary Garilao that petitioner's cattle were only acquired recently as shown by the Certificate of Ownership of Large Cattle (in the name of petitioner: in 1996, 78 heads-one year old and 50 heads-three years old; and in 1995, 12 heads-one and a half years old), and that some Certificates were even issued to various owners and not to petitioner.

As noted by the Office of the President, none of the recent documents attached to petitioner's motion for reconsideration would tend to disprove the findings of fact of the DAR Regional Director and the DAR Secretary that at the time of filing of the petition for exclusion from CARP coverage, the subject parcels of land were not devoted to livestock purposes. Clearly, the claim of petitioner that they have been engaged in cattle raising since time immemorial is untenable. Even the photocopies of the purported Certificates of Ownership of Large Cattle attached to herein Petition as Annexes "O" to "O-77" show that they were all issued to petitioner only in 1998, while the photocopies of the other purported Certificates of Ownership of Large Cattle dated "August 11, 197" (Annexes "O-78" to "O-89") are in the name of another person, and not the petitioner.

The contention of petitioner that the presence of the NPAs, bad elements, trespassers and squatters further diminished the land area of the subject lands used by petitioner as pasture land is untenable, because as found by the respondents, this situation did not prevent Monterey Farms from vacating or pulling out of the area before the expiration of the lease agreement and even offered to renew the contract and increase the rentals of the areas occupied by 10% of the lease rate, which offer to renew was, however, denied by petitioner's Board of Directors in a letter dated 08 May 1990.

Hence, from the foregoing disquisitions, petitioner's contention that the respondents failed to apply the doctrine laid down in *Luz Farms v. Secretary of the Department of Agrarian Reform* is without merit. In said *Luz Farms* case, it was held that Section 11 of R.A. 6657 which includes "private agricultural lands devoted to commercial livestock, poultry and swine-raising" in the definition of "commercial farms" is invalid, to the extent that the aforecited agro-industrial activities are made to be covered by the agrarian reform program of the State. Thus, the High Court declared as null and void, for being unconstitutional, Sections 3(b), 11, 13 and 32 of Republic Act No. 6657 insofar as the inclusion of the raising of livestock, poultry and swine in its coverage, as well as the Implementing Rules and Guidelines promulgated in accordance therewith. As clearly found by the respondents, the petitioner, in the instant case, failed to show that the subject lands have been devoted for commercial livestock-raising. (Emphasis supplied.)[22]

Also, contrary to petitioner's contention, it was established that the subject lands, specifically Lot 3 of TCT No. T-3543 is predominantly cultivated below 18% slope, the area being planted with corn, coconut, and other crops, with only 44.2470 hectares above 18% slope.

Moreover, petitioner cannot argue that the findings of the DAR Regional Director, the DAR Secretary, and the OP were unfounded, baseless, and unjustifiable. A perusal of the Order of the DAR Regional Director denying the petition for exclusion would reveal that it was based on the findings of the Chief of Regional Field Task Force V, the Municipal Agricultural Officer, the representative of the Land Bank of the Philippines, the Provincial Director of the Philippine National Police, and various documents. Surely, these institutions did not whimsically conclude not to exclude the properties of petitioner from the coverage of the CARP. It is noteworthy that as early as in the Order of the DAR Regional Director, the rationale behind the denial of the petition for exclusion was clearly outlined and discussed point by point, to wit:

First. From the foregoing narration of facts, it is established that the properties were not directly, actually,

exclusively used for pasture.

Second. *Luz Farms v. Honorable Secretary of Agrarian Reform* meritoriously provides that livestock or poultry-raising is not similar to crop or tree planting. Land is not the primary source in this undertaking and represents no more than five percent (5%) of the total investments of commercial livestock and poultry raisers. Lands support the buildings and other amenities attendant to the raising of animals and birds. The use of the land is incidental to, but not the principal factor or consideration in, this industry (Rollo p. 11).

The facts, as stated, shows that not all of the portions of the properties leased to Monterey Farms Corp. were devoted to, or actually, directly, exclusively used for, allegedly, as a cattle feed lot/nor for the raising of livestock. In fact, the landholding covered by TCT-6930 is presently owned by another juridical person, the *Nuestra Señora del Carmen Marble, Inc.* The Field Investigation Report dated June 3, 1993 by the Municipal Agrarian Reform Officer and [the] Land Bank of the Philippines on Lot 3, TCT T-3543, provides that it is predominantly cultivated, below 18% slope with only 44.2470 hectares above 18% slope. The area is planted to corn, coconut and other crops.

Third. Based on the documents presented, there is no clear and convincing proof that [AZ] Arnaiz Realty intended and manifested its intention of maintaining, utilizing the whole area for cattle ranching, when it established a realty corporation with its primary purpose to acquire by purchase lease, or otherwise, lands and interest in lands and to own, hold improve, develop and manage agricultural land or real estate so acquired for the purpose of mortgaging, leasing and disposing such lands and by transferring the aforementioned parcel of land to another juridical person. In fact, when it leased the property to Monterey Farms Corp. it disposed and/or sold the entire herd (cattle) for P900,000.00 as admitted in a letter to Monterey Farms dated May 8, 1992.

Fourth. The Certifications issued by the PNP Provincial Director, dated December 9, 1993, that the Province of Masbate has been under CTs/NPAs expanded area from 1983-1992, may be true. However, this situation did not prevent the Monterey Farms from vacating or pulling out of the area before the expiration of lease agreement. It offered to renew the contract and increase the rentals of the areas occupied by 10% of the present lease rate. This was denied by the Board of Directors in a letter dated May 8, 1990. After the Corporation vacated the leased premises, tillers actually occupied the areas as reported by Carlos Grande, Regional Field Task Force Chief, DAR V. This is a clear indication that the peace and order situation in Masbate was not the primary reason for the discontinuance of any business activity in the area, nor it can be attributed to force majeure. From 1991 until early part of 1994, no activity insofar as livestock raising have been instituted by the [AZ] Arnaiz Realty Corporation. The alleged resumption of operations of [AZ] Arnaiz Realty in 1994, after the issuance of the Adm. Order No. 9-94 is not substantiated by clear and convincing set of evidence. Proof of ownership of livestock, Certification from the Director, Department of Agriculture, that the livestock project is of greater economic value than the present agricultural use were not submitted before this Office. Its present use by herein petitioner of 109.8385 hectares is, therefore, unauthorized, under Adm. Order No. 9-94, for no Petition for Exclusion was approved by this Office.

Fifth. The Corporation s

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