

AYALA LAND, INC. AND CAPITOL CITIFARMS, INC., PETITIONERS, VS. SIMEONA CASTILLO, LORENZO PERLAS, JESSIELYN CASTILLO, LUIS MAESA, ROLANDO BATIQUIN, AND BUKLURAN MAGSASAKA NG TIBI...

G.R. No. 178110. January 12, 2016

Ponente: SERENO, C.J.

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SERENO, C.J.:

To grant this Motion for Reconsideration is to reverse several doctrines that build up a stable judicial system.

First, the doctrine of finality of judgment. The doctrine is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law.

On 29 August 1995, the Supreme Court in G.R. Nos. 85960 and 92610 allowed the Bangko Sentral ng Pilipinas, as receiver, to sell the assets of the Manila Banking Corporation (MBC), including the subject property, to a third party.[1] It may be recalled that the property was earlier mortgaged to the MBC by Capitol Citifarms, Inc. (CCFI), and was later awarded to the former in an auction sale. Pursuant to the Court's Resolution, a "Deed of Absolute Sale"[2] over the property was executed in favor of Ayala Land, Inc. (ALI) in December 1995.[3]

In a Resolution dated 27 July 1999, the Court considered G.R. Nos. 85960 and 92610 closed and terminated.[4]

On 13 August 2003, Case No. A-9999-04-CV-203-00 — or the Petition for Revocation filed by Lamberto Javier et al. — was also deemed closed as far as the Department of Agrarian Reform (DAR) was concerned.[5] The Bureau of Agrarian Legal Assistance was also directed to issue a Certificate of Finality of the Order dated 26 September 2002 issued by former DAR Secretary Hernani Braganza reversing the revocation of the Conversion Order.

Second, the rule that he who alleges must prove. Rule 131, Section 1 of the Rules of Court, places the burden of proof on the alleging party to present evidence on the facts in issue necessary to establish the claim or defense.

It is simply not the role of the Court to apply the missing Notice of Acquisition in perpetuity. Even the Dissent concedes that the records are bereft of any trace of the Notice of Acquisition. This is not a case of a feudal landowner unjustly enriched by the hard work of a long-suffering tenant. ALI is in the precarious position of having been that third-party buyer that offered the terms and conditions most helpful to, ultimately, the BSP. Prior to that acquisition, there was absolutely no relationship between ALI and the farmers. Respondents, on the other hand, are residents who have not yet established any claim — let alone substantial rights — over the land. On the contrary, what has been duly established is that they have received disturbance compensation.[6]

Respondents never raised the issue regarding the existence or effect of a Notice of Acquisition. Their arguments revolved on the alleged illegality of the sale and the submission of a Sangguniang Bayan resolution, instead of an ordinance. Their brief was primarily on the form in which the local government's action was contained. We also

note that they were specifically ordered by the Court of Appeals (CA) to submit a copy of the Notice of Acquisition, but they failed to comply.[7] They made no attempt at all to explain their inability to present a copy of the Notice of Acquisition.

Third, the duty of the Court to correct reversible errors of law committed by the CA. It was a grave error on the part of the CA to base its ruling on a conclusion of fact that is not supported by the records of the case. It is settled that issues raised for the first time on appeal and not raised in the proceedings below ought not to be considered by a reviewing court. Points of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppel. Especially, as in this case, when the document being cited is not in the record.

Fourth, the doctrine of primary jurisdiction. We reiterate what has been said in the Decision. That is, even assuming that the Notice of Acquisition did exist, considering that CCFI and ALI have had no chance to controvert the CA finding of its legal bar to conversion, this Court is unable to ascertain the details of the Notice of Acquisition at this belated stage, or rule on its legal effect on the Conversion Order duly issued by the DAR, without undermining the technical expertise of the DAR itself. This whole controversy was reviewed and the Conversion Order validated by no less than two DAR Secretaries.

The doctrine of primary jurisdiction holds that if a case is such that its determination would require the expertise, specialized training, and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resorting to the courts, even if the matter may well be within the latter's proper jurisdiction.

Fifth, the great weight and respect accorded to factual findings of administrative agencies. The factual findings of the DAR Secretary, who, by reason of his official position, has acquired expertise in specific matters within his jurisdiction, deserve full respect. Except for a justifiable reason, these findings ought not to be altered, modified or reversed.

FACTS SUBSEQUENT TO THE DECISION

On 15 June 2011, this Court promulgated a Decision[8] granting the Petition for Review on Certiorari[9] filed by ALI and CCFI, and reversing the CA Decision in CA-G.R. SP No. 86321.[10] The Court thereby upheld the Conversion Order[11] issued by then DAR Secretary Ernesto Garilao on 31 October 1997, as well as the Decision[12] of the Office of the President (OP) affirming the Order.

Respondents Simeona Castillo et al. filed a Motion for Reconsideration[13] presenting the same arguments they raised in their Comment,[14] viz:

- The CARP coverage is not a new issue or matter on appeal, as it was previously raised before the DAR and the OP, hence, the CA is not barred from entertaining the claim.
- Under DAR Administrative Order No. 12, series of 1994 (DAR A.O. 12-94), the guiding principle is to preserve prime agricultural land.
- The Petition for Revocation is not barred by prescription.
- Petitioners committed a misrepresentation, because there was no reclassification zoning ordinance.
- Conversion is not a legal mode to exempt the property from the coverage of CARP.

In a Resolution[15] dated 3 August 2011, the members of the Special Third Division referred the case to the Court En Banc. On 16 August 2011, the Court En Banc resolved to accept the case.[16] The Court then issued a Resolution[17] requiring petitioners, the BSP and the DAR, which was represented by the Office of the Solicitor General (OSG), to file their respective Comments on the Motion for Reconsideration.

On 10 January 2012, the general counsel of the BSP submitted a Manifestation.[18] It explained that its interest in the case stemmed from its receivership-liquidation of the MBC, particularly the settlement of the latter's obligations to the BSP.[19] As discussed in our Decision, the Supreme Court in G.R. No. 85960 allowed petitioner CCFI, as the mortgage debtor of MBC, to sell its assets, including the subject landholding, "at their fair market value, under the best terms and condition and for the highest price under current real estate appraisals." [20] Counsel for the BSP posited that its interest in the case ended upon the sale of the subject land to ALI, after which the BSP entered into settlement scheme with MBC.[21]

On the same date, petitioner ALI filed its Opposition[22] to the Motion for Reconsideration. The OSG's Comment[23] was filed on 10 February 2012; respondents' Comment,[24] on 14 May 2012.

We note, as a preliminary matter, petitioner ALI's Manifestation and Motion[25] apprising the Court that several individuals who affixed their signatures to the verification portion of the Motion for Reconsideration were NOT petitioners in the Petition for Revocation filed with the DAR.[26] According to petitioners, these repeated defects in the pleadings filed by respondents show a blatant disregard for the rule requiring proper verification, and which justify the outright denial of the Motion for Reconsideration.[27]

Respondents failed to this address issue of improper verification in their Comment. Instead, they merely rehashed their arguments in the Motion for Reconsideration. However, since the ends of justice would be better served if the core issues are squarely addressed, this Court writes *finis* to the present controversy on substantive grounds.

We DENY the Motion for Reconsideration.

With the repeated refutation of their theory that the Conversion Order should be revoked because the sale between CCFI and ALI was illegal and CCFI committed misrepresentation in its application for conversion, respondents have based their arguments by simply latching on to a baseless phrase found in the CA Decision: "no less than the cited DAR Administrative Order No. 12 enjoins the conversion of lands directly under a notice of acquisition."

A careful reading shows that the CA did not discuss or even refer to the provision that allegedly disallows applications for conversion. It may have relied on paragraph VI, subparagraph E of A.O. No. 12-94, which reads:

VI. POLICIES AND GOVERNING PRINCIPLES

x x x x

E. No application for conversion shall be given due course if 1) the DAR has issued a Notice of Acquisition under the Compulsory Acquisition (CA) process x x x

In our Decision, we have emphatically ruled that a mere principle cannot be interpreted as an absolute proscription on conversion. From a reading of subparagraph E in isolation, it may be culled that what bars conversion is a notice of acquisition, not a notice of coverage. Assuming *arguendo* that a conversion order may be revoked if a notice of acquisition has already been issued, we still cannot grant respondent's MR, because what has been presented before the DAR, the OP, the CA, and this Court is just the notice of coverage.

I. The CA committed reversible error when it decided an issue raised for the first time on appeal and based its ruling merely on respondents' self-serving allegation.

Respondents argue that they raised the issue regarding the Notice of Acquisition in their Petition for Revocation, particularly in paragraph 5 thereof, which states:

That the subsequent application for conversion filed by respondents was a mere ploy to cover up the said illegal transaction and to evade the coverage of the property under the Comprehensive Agrarian Reform Program (CARP).[28]

Respondents cannot gloss over the fatal defect of its claim from the nonexistence of the Notice of Acquisition just by reducing the issue to "CARP coverage." As stated above, they are contending that petitioners' application for conversion was a ploy to cover up the illegality of the Deed of Absolute Sale and Partial Redemption between CCFI and ALI. What they repeatedly claimed was that ALI fraudulently concealed the sale agreement from the DAR. Three DAR Secretaries, including Secretary Garilao who issued the Conversion Order, rightly found these allegations baseless. This point was also raised and judiciously passed upon in the OP Order dated 26 September 2003. In contrast, the Notice of Acquisition is a separate issue altogether which has never been raised in the proceedings below.

The grounds relied upon by respondents in their Petition for Revocation are as follows:

3. That the respondents[29] grossly violated the Conversion Order because instead of developing the land within five years from the issuance of the Order, it sold said land to the present possessor, Ayala Land, Inc. xxx[30]

xxxx

6. That the respondents likewise committed gross misrepresentation of the fact in that they made it appear before the DAR that the landholding in question has been duly reclassified from agricultural uses such as residential, commercial and industrial, when in truth and in fact, the Municipality of Silang does not have an approved town plan/zoning ordinance as of 24 October 1997 as per Certification issued by CAROLINA A, CASAJE, Officer-In-Charge, Board Secretariat of the Housing and Land Use Regulatory Board (HLURB).[31]

xxxx

8. That the respondents likewise failed to comply with the undertaking to pay/effect complete payment of the disturbance compensation of tenant-farmers in the subject landholding xxx[32]

While the Decision has extensively discussed the error committed by the CA in passing upon and ruling on a new issue on appeal, we did not grant the Petition for Review on this technical ground alone. We went over the records and found no admissible proof presented to support respondents' claim that a Notice of Acquisition had been issued. What was attached to the Petition for Review filed before the CA was a mere photocopy of the Notice of Coverage. The purported Notice of Acquisition was never offered in evidence before the DAR and never became part of the records even at the proceedings a quo. Hence, we found that the CA committed reversible error when it gave credence to a mere assertion of the tenant-farmers.

As a prelude to our ruling that new issues cannot be raised for the first time on appeal, we contemplated the scenario in which the farmers had submitted the proper document to the CA. We then said, assuming arguendo they did, the appellate court could not have reversed the OP Decision based on nothing more than this submission, as the issue of the Notice of Acquisition had never been raised before the administrative agency concerned.

As contended by the OSG and as exhaustively discussed in our Decision, the CA decided an issue raised for the first time on appeal. It held that the DAR had issued a Notice of Acquisition, which served as a perpetual ban on the conversion of the subject lands. However, respondents never attached a copy, certified or otherwise, to their 1) Petition for Revocation, 2) Motions for Reconsideration in the proceedings a quo, or 3) Appeal Memorandum to the OP. This is because they never raised the purpose of the notice as an issue in their Petition for Revocation of the Conversion Order or in their Motion for Reconsideration before the OP. What they repeatedly argued was that

fraud had been perpetrated by CCFI and ALI.

Respondents expressed their agreement with the point made by Justice Martin S. Villarama, Jr. in his Dissenting Opinion that the coverage of the land under CARL was confirmed by the following documents:

- (1) the stipulation/condition in the Deed of Partial Redemption and Deed of Absolute Sale, both dated August 25, 1995, in which CCFI undertook to obtain DAR approval for CARP exemption or conversion to non-agricultural use;
- (2) CCFI's letter-request dated May 7, 1996 addressed to the DAR Regional Director for the lifting of the Notice of Acquisition;
- (3) BSP's request in 1995 made in behalf of MBC for exemption of the subject property from CARL coverage, and the letter-denial of DAR Secretary who directed the distribution of the land to qualified farmer beneficiaries;
- (4) the Decision dated October 11, 1996 of Executive Secretary Ruben D. Torres on the appeal of BSP from the DAR Secretary's denial of its request for exemption, in which the DAR was directed to defer proceeding with the distribution of lands already covered by CARL and petitioner was granted the opportunity to present proof that the lands are qualified for exemption or conversion; and
- (5) MBC's request for DAR clearance in October 1997 to sell its landholdings placed under CARL coverage, which includes the subject property.[33]

With the exception of item 2, there was no reference to a Notice of Acquisition in any of these documents. According to the Dissent of Justice Villarama, considering the attendant circumstances, the letter-request of CCFI for the lifting of the Notice of Acquisition constituted an admission against interest of the fact that the notice was issued.

The concept of admissions against interest is governed by Section 26 of Rule 130 of the Rules of Court, which provides:

Sec. 26. Admissions of a party. - The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

The above rule considers admissions against interest as admissible evidence, but does not dispense with the requirement that the admission be offered in evidence. In this case, precisely because respondents did not raise the issue at all, petitioners did not have any opportunity to inspect or question the authenticity and due execution of the documents. It would be offensive to the basic rules of fair play, justice, and due process to suddenly reverse the decisions of three DAR Secretaries and the Office of the President based on an alleged document - especially if that document has not been presented, authenticated, or offered in evidence — without giving the other party any opportunity to contradict the purported admission.

CCFI, much less ALI, cannot be bound to whatever inference is being made only now on the purported CCFI letter requesting the lifting of the Notice of Acquisition. They had never been apprised throughout the administrative proceedings of its alleged existence, nor of the inference sought to be drawn therefrom. They were never given the chance to inspect the document as any piece of evidence should be so subjected.

Further, it must be noted that the letter does not identify the document itself, i.e., the Notice of Acquisition, as to date, as to signatory, as to amount tendered. It only asks that the Notice of Acquisition be lifted. It is probable, if this letter is genuine, that the alleged representative of CCFI was referring to the Notice of Coverage, which is an admitted fact, and is precisely the reason why the Bangko Sentral ng Pilipinas had to ask for, and was granted, permission by this Court in G.R. Nos. 85960 and 92610 to sell the land.

It is serious error for the CA to base its ruling on a conclusion of fact not supported by the records of this case - whether before us, the CA, the OP, or the DAR. This point becomes all the more crucial, as the CA admitted it would have upheld the findings of the DAR and the OP, were it not for the Notice of Acquisition:

At the concluding part of its discussion, it alluded to another memorandum circular of the DAR (Memorandum Circular No. 11-79) that land use conversion may be allowed when it is by reason of the changes in the predominant land use brought about by urban development. It then pointed to the fact that the close proximity of the province of Cavite to Metro Manila has opened it to the effects of modernization and urbanization. It warned that we would only succeed in hindering progress if under these conditions we would still insist on CARP coverage.

The argument is valid if the agricultural land is still not subjected to compulsory acquisition under CARP. But as we saw, there has already been a notice of coverage and notice of acquisition issued for the property.[34] (Emphasis supplied.)

The OP rightly ruled that:

xxx Appellants' lapses in not raising the issues before the DAR which has the expertise to resolve the same and in a position to conduct due hearings and reception of evidence from contending parties pertaining to the issue, puts the appellants in estoppel to question the same for the first time on appeal. Jurisprudence dictates the following:

The petitioner for the first time, to allow him to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court - which is supposed to review administrative determinations - would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior authority to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal. (*Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue & Court of Tax Appeals*, 112 SCRA 136).[35] (Emphasis supplied.)

This Court has already established that issues raised for the first time on appeal and not raised in the proceedings below ought not to be considered by a reviewing court. Points of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppel.[36] The rule becomes crucial in this particular case. Here, DAR is the most competent agency that can make a factual determination regarding the Notice of Acquisition and its effect on the Conversion Order long issued by Secretary Garilao. As it stands, none of the DAR Secretaries was ever given the opportunity to dwell on this issue. On the contrary, Secretary Pagdanganan issued an Order on 13 August 2003 ruling that Secretary Braganza's Order affirming the conversion had become final.

Basic considerations of fairness and due process also impel this rule, which according to the Court, is but a logical effect of the regard for due process:

A perusal of the questions raised in the SAC and the CA shows that the issue on the existence of a consummated sale between the DAR and petitioners was not among the issues therein. Hence, this issue is being raised for the first time on appeal.

It is a fundamental rule that this Court will not resolve issues that were not properly brought and ventilated in the lower courts...An issue, which was neither averred in the complaint nor raised during the trial in the lower courts, cannot be raised for the first time on appeal because it would be offensive to the basic rule of fair play and justice, and would be violative of the constitutional right to due process of the other party.[37]

II. Assuming that respondents

properly raised the above issue before the DAR, the proscription on conversion is a mere guiding principle, because DAR A.O. 12-94 specifies that it is not applicable to lands which have not been proven to be "prime agricultural lands."

Respondents reassert their stand that the guiding principle of DAR A.O. No. 12-1994 is to preserve prime agricultural lands, which under paragraph VI-D is considered non-negotiable for conversion. In our view, this principle alone does not justify reversing the conversion order. Even if we ignore the lapses of the CA and assume that a Notice of Acquisition did exist, it cannot serve as a perpetual bar on conversion, which is merely a guiding principle; and second, this principle applies only to prime agricultural lands.

The claim that a prior notice of acquisition bars the issuance of a conversion order is found under paragraph VI (e) of DAR A.O. 12-94. Yet the said paragraph falls under heading VI, "Policies and Guiding Principles." By no stretch of the imagination can a mere policy or principle be interpreted as an absolute ban on conversion, such policy having been formulated by the same agency which ordered the conversion. Paragraph VI-E cannot operate to diminish the authority and jurisdiction of the DAR over the land.

As rightly pointed out by the OSG and respondents themselves, the guiding principle governs only prime agricultural lands.[38] The findings of the DAR - which are binding on this Court - and those of the Central Land Use Planning Policy and Implementation (CLUPPI), as well as the Municipal Agrarian Reform Officer (MARO), are as follows:

- a) The property is about 10 kilometers from the Provincial Road.
- b) The land sits on a mountainside overlooking Santa Rosa technopark.
- c) The topography of the landholding is hilly and has an average slope of more than 18%. It is undeveloped and mostly covered with a wild growth of vines, bushes, and secondary growth of forest trees.
- d) The dominant use of the surrounding area is its industrial/ forest growth as the landholding is sitting on a mountain slope overlooking the Sta. Rosa Technopark.
- e) The area is not irrigated and no irrigation system was noted in the area.[39]

Clearly, the DAR had long investigated and ruled that the property was not suitable for agricultural use, as it had remained undeveloped without any source of irrigation. Hence, it is not "prime agricultural land" as contemplated under A.O. 12-94. Additionally, Republic Act 6657 or the Comprehensive Agrarian Law states that all lands with a slope of 18% and over, and undeveloped, shall be exempt from the Act.[40] If the said landholding has been developed for any other purpose - e.g., residential, commercial, or industrial - then it will not fall under the coverage of CARP.[41]

This Court has held that before the DAR could place a piece of land under CARP coverage, there must first be a showing that the land is an agricultural land, i.e., devoted or suitable for agricultural purposes.[42] In this determination, we cannot substitute our own judgment for that of the DAR. To do so would run counter to another basic rule that courts will not resolve a controversy involving a question that is within the jurisdiction of an administrative tribunal prior to the latter's resolution of that question. Since the DAR's findings herein are supported by substantial evidence, and affirmed by the OP, our only course is to sustain it. In *Heirs of Castro, Sr. v. Lozada*,[43] the Court held as follows:

It has been peremptorily determined by OP and, before it, by the DAR, acting on investigations reports of its provincial (Batangas) office, as reviewed and validated by its regional office, that the OLT coverage of the disputed landholdings was erroneous, it being established that the lands covered are not primarily devoted to rice and corn and that the tenancy relationship has not been clearly established. Absent palpable error by both agencies, of which this Court finds none, their determination as to the use of the property and/or to the dubious status of petitioners as de jure tenants is controlling.

x x x[I]t is settled that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence, a situation that obtains in this case. The factual findings of the Secretary of Agrarian Reform, who, by reason of his official position, has acquired expertise in specific matters within his jurisdiction, deserve full respect, and without justifiable reason, ought not to be altered, modified or reversed. (Emphasis supplied.)

On the issue of conversion, this Court must respect the findings of the DAR, which is the only agency charged with the mandate of approving or disapproving applications for conversion.[44] The CA Decision effectively enfeebls the Orders of no less than three Secretaries of the DAR and the policy pronouncements of the OP. The rule that conversion orders, once final and executory, may no longer be questioned is contradicted by the actions of respondents: accepting disturbance compensation for the land; seeking petitioners' compliance with the terms of the Conversion Order; then reversing themselves by assailing the Order itself long after the proper period has prescribed.

III. The Petition for Revocation was barred by prescription.

The argument of respondents that the Petition for Revocation was not barred by prescription was anchored on the interpretation of Secretary Morales in his Order dated 18 December 2000. He opined therein that the provisions of DAR A.O. No. 1, series of 1999 (DAR A.O 1-99), particularly Section 34[45] on prescription, was not applicable. He quoted the Civil Code provision on the non-retroactivity of laws. On the other hand, the Dissent volunteered that DAR A.O 1-99 expressly provides for the remedy of cancellation or revocation of a conversion order within a five-year period, if the petition is based on a violation of relevant rules and regulations of the DAR.

As to respondents' contention, we reproduce and underscore the relevant portion of the Decision:

Respondents assume that the rule to be applied is that prevailing at the time of the issuance of the Conversion Order. This is incorrect. The rule applicable in determining the timeliness of a petition for cancellation or withdrawal of a conversion order is the rule prevailing at the time of the filing of that petition, and not at the time of the issuance of the Conversion Order. It is axiomatic that laws have prospective effect, as the Administrative Code provides. While A.O. 01-99 was not yet promulgated at the time of the issuance of the Conversion Order, it was already published and in effect when the Petition for Revocation was filed on 19 May 2000.

Regarding the question on when the one-year prescription period should be reckoned, it must be still be resolved in conformity with the prospective character of laws and rules. In this case, the one-year period should be reckoned from the date of effectivity of A.O. 1-99, which is 31 March 1999. Therefore, no petition for cancellation or withdrawal of conversion of lands already converted as of 30 March 1999 may be filed after 1 March 2000.

The Petition for Revocation was filed on 19 May 2000.

We now address the contention raised in the Dissent. The alleged violations of rules and regulations of the DAR pertain to the "non-compliance with the condition of developing the area within five years, the illegal sale transaction made by CCFI to evade coverage under CARL, and CCFI's gross misrepresentation before the DAR that the land subject of conversion had already been reclassified to non-agricultural uses." These violations,

according to respondents, paved the way for the extended prescriptive period of five years. It must be noted, however, that Secretary Morales gave due course to, and even granted, the Petition for Revocation. He resolved the substantial issues raised and made a categorical factual finding that there had been no misrepresentation.[46] As regards the alleged illegal sale, we have extensively discussed the issue in the Decision.

IV. Conversion was still possible despite the nonexistence of a zoning ordinance.

Respondents insist that there was a clear misrepresentation committed by CCFI when it submitted a resolution instead of an ordinance. They proffer the argument that the submission of a zoning ordinance as approved by the HLURB was a requirement for the approval of the application for conversion under DAR A.O. No. 12-94.[47] They quote paragraph 6, Part VII (A) of the administrative issuance:

A. Requirements for all applicants:

xxxx

6. Zoning Certification from the HLURB Regional Office when the subject land is within a city/municipality with a land use plan (zoning ordinance approved and certified by the HLURB (LUC Form No. 2, Series 1994).

They, however, conveniently ignore paragraph 4 of Part VI (B), which states:

4. If the city/municipality does not have a comprehensive development plan and zoning ordinance duly approved by HLURB/SP but the dominant use of the area surrounding the land subject of the application for conversion is no longer agricultural, or if the proposed use is similar to, or compatible with the dominant use of the surrounding areas as determined by the DAR, conversion may be possible.

Respondents themselves point to a certification[48] dated 23 July 2003 by the board secretary of the HLURB stating that, to date, the Municipality of Silang does not have an approved town plan/zoning ordinance/comprehensive land use plan.[49] They also admit that the submission of an ordinance was by recommendation of the CLUPPI-1, and that the ordinance has not been adopted by Secretary Garilao.[50]

V. The property is exempt from CARL coverage.

Respondents "beg the kind indulgence" of the Court to take judicial notice of Section 20[51] of R.A. 7160 that land covered by CARP shall not be affected by the reclassification and conversion of that land.

Respondents insist that the land in question is covered by CARP. However, the DAR has already conclusively found that the topography is hilly and has an average slope of more than 18%. Hence, the land is exempt from CARP coverage under Section 10 of R.A. 6657:

SECTION 10. Exemptions and Exclusions. —Lands actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds, and mangroves, national defense, school sites and campuses including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production centers, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed shall be exempt from the coverage of the Act. (Emphasis supplied)

The Court is not a trier of facts. It relies on the expertise of administrative agencies. In *Roxas & Co., Inc. v. Court of Appeals*,[52] it declared the DAR to be in a better position to resolve a petition for revocation. DAR is the

primary agency that possesses the necessary expertise on the matter:

The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. Respondent DAR is in a better position to resolve petitioner's petition for revocation, being primarily the agency possessing the necessary expertise on the matter. The power to determine whether Haciendas Palico, Banilad and Caylaway are non-agricultural, hence, exempt from the coverage of the CARL lies with the DAR, not with this court. (Emphasis supplied.)

Lastly, respondents claim that their failures are mere technicalities that cannot prevail over their substantive rights as farmers, who should have "more in law." This statement is a gross oversimplification of the issue. The Notice of Acquisition which was mentioned in passing and only at a late stage, has no evidentiary support available in the records. The DAR and the OP have both ruled for CCFI and ALI, and the CA itself has admitted that the stand of CCFI and ALI would have been valid if not for the issuance of the alleged Notice of Acquisition. The CA should have therefore been more circumspect in verifying whether anything on record remotely supported the self-serving claim of the farmers. Even the Notice of Coverage that they presented does not vest substantive rights, as it does not automatically transfer ownership of the land to them. A notice of coverage does not ipso facto render the land subject thereof a land reform area.[53]

In *Puyat & Sons v. Alcaide*,[54] both a Notice of Coverage and a Notice of Acquisition were already issued over the subject property. More crucially, the existence of the Notice of Acquisition was properly raised and proved before the trial court. Yet, the CA Decision favoring the farmer-beneficiaries was reversed on the ground that they must still comply with procedural rules:

Time and again, it has been held that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules, failing in which the right to appeal is lost.

We understand the plight of prospective farmer-beneficiaries all over the country; nevertheless, we cannot see the alleged injustice in this particular case. While it is true that litigation is not a game of technicalities, it is equally true that elementary considerations of due process require that petitioners in this case be duly apprised of a claim against them before judgment may be rendered.[55]

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby DENIED with FINALITY.

No further pleadings or motions will be entertained.

Let entry of judgment be made in due course.

SO ORDERED.

Carpio, Velasco, Jr., Brion, Del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, and JJ.[*], concur.
Leonardo-De Castro, Peralta, Bersamin, and Leonen, JJ., joins the dissent of J. Villarama Jr.
Villarama, Jr., J., pls. see dissenting opinion.
Jardeleza, J., no part.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on January 12, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on January 18, 2016 at 10:12 a.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] On 29 August 1995, the Supreme Court issued a Resolution in G.R. Nos. 85960 and 92610; rollo, pp. 644-645.

[2] Although denominated as such, the sale was not absolute, but conditional, i.e. subject to terms and conditions other than the payment of the price and the delivery of the titles. According to the Deed, the MBC was to continue to have custody of the corresponding titles for as long as any obligation to the MBC remained due.

[3] CA Rollo, p. 140.

[4] Rollo, p. 659.

[5] Order issued by DAR Secretary Roberto Pagdanganan; id. at 158-163.

[6] In his Order dated 18 December 2000, Secretary Morales ruled that CCFI and ALI did not fail to pay/effect payment of disturbance compensation; rollo, p. 118.

[7] In a Resolution dated 16 November 2004; CA Rollo, p. 98.

[8] Id. at 468-496,

[9] Id. at 14-53.

[10] Id. at 58-66.

[11] Id. at 332-334.

[12] Id. at 202-208.

[13] Id. at 532-549.

[14] Id. at 280-282.

[15] Id. at 579.

[16] Id. at 557.

[17] Dated 6 September 2011; id. at 623.

[18] Id. at 637-643.

[19] Id. at 639.

[20] Resolution dated 29 August 1995; id. at 470, 644-655.

[21] Id. at 640-642.

[22] Id. at 663-681.

[23] Id. at 740-765.

[24] Id. at 810-834.

[25] Id. at 723-725.

[26] Id. at 551-554.

[27] Id. at 724.

[28] Id. at 536, 729.

[29] Pertaining to CCFI and ALI, respondents in the Petition for Revocation.

[30] Rollo, p. 99.

[31] Id. at 100.

[32] Id. at 101.

[33] Id. at 516.

[34] Rollo, pp. 391-392.

[35] OP Decision; id. at 206.

[36] Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue, 190 Phil. 195 (1981).

[37] Heirs of Vidad v. Land Bank, 634 Phil. 9 (2010) citing Fuentes v. Caguimbal, 563 Phil. 339 (2007) and Sanchez v. The Hon. Court of Appeals, 345 Phil. 155, 186 (1997).

[38] OSG Comment; rollo, p. 748.

[39] Cited in the 15 June 2011 Decision of this Court, pp. 21-22; id. at 488-489.

[40] Republic Act No. 6657, Sec. 10.

[41] DAR Opinion No. 59-97, issued on 2 June 1997. The relevant paragraph reads: "Anent your second query, a qualification should be made. It is provided under R.A. No. 6657 that a landholding having a slope of 18% or more and undeveloped is not within the ambit of the CARP. Thus, if such has been developed for the purpose for which the CARP has been enacted (agricultural purposes), regardless of who developed it (i.e., landowner or farmer), the same shall be covered by the said law. On the other hand, if said landholding has been developed for any other purpose, e.g., residential, commercial, or industrial, then said landholding will not fall within the coverage of CARP."

[42] Puyat & Sons v. Alcaide, 680 Phil. 609 (2012).

[43] 693 Phil. 431 citing Aninao v. Aslurias Chemical Industries Inc., 502 Phil. 766 (2005)

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

[45] SECTION 34. Filing of Petition. — A petition for cancellation or withdrawal of the conversion order may be filed at the instance of DAR or any aggrieved party before the approving authority within ninety (90) days from

discovery or facts which would warrant such cancellation but not more than one (1) year from issuance of the order: Provided, that where the ground refers to any of those enumerated in Sec. 35 (b), (e), and (f), the petition may be filed within ninety (90) days from discovery of such facts but not beyond the period for development stipulated in the order of conversion: Provided, further, that where the ground is lack of jurisdiction, the petition shall be filed with the Secretary and the period prescribed herein shall not apply.

[46] Rollo, p. 118.

[47] Id. at 545.

[48] Id. at 152.

[49] Id. at 820-821.

^[50]Id. at 545.

[51] 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 approval by a national agency is required for rectification, 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.

[52] 378 Phil. 727 (1999).

[53] Sps. Pasco v. Pison-Arceo Agricultural and Development Corporation, 520 Phil. 387 (2006).

[54] Supra note 34.

[55] Titan Construction Corporation v. David, 629 Phil. 346 (2010).

DISSENTING OPINION

VILLARAMA, JR., J.:

This resolves the motion for reconsideration[1] of our Decision[2] promulgated on June 15, 2011 which granted the petition for certiorari filed by Ayala Land, Inc. (ALI) and Capitol Citifarms, Inc. (CCFI) and reversed the Decision dated January 31, 2007 of the Court of Appeals (CA) in CA-G.R.SP No. 86321.

In their Motion for Reconsideration, respondents argued that the majority ruling failed to take cognizance of the following:

- (1) The Comprehensive Agrarian Reform Program (CARP) coverage is not a new issue or matter on appeal as it was previously raised before the Department of Agrarian Reform (DAR) and the Office of the President (OP). Hence, the CA is not barred from entertaining the claim;
- (2) Under DAR Administrative Order (AO) No. 12, Series of 1994, the guiding principle is to preserve prime agricultural land. Petitioners must strictly comply with the said AO.
- (3) The petition for revocation is not barred by prescription.
- (4) There is no reclassification zoning ordinance. Hence, there was a clear misrepresentation on the part of petitioners.
- (5) For lands covered under the CARP, conversion is not the legal mode to exempt the property as only two cases of exemption or exclusion is provided in Section 10 of R.A. No. 6657.[3]

Petitioner ALI filed its Opposition wherein it emphasized that the CA had decided an issue raised for the first time on appeal by the respondents, i.e., the purported issuance of notices of coverage and acquisition of the subject land. It is also pointed out that photocopies of the said notices appeared only for the first time in the petition in CA-G.R. SP No. 86321 as an "exhibit." As to the significance of the "guiding principle" in DAR AO No. 12, Series of 1994 "to preserve prime agricultural land," ALI asserts that the subject property is not prime agricultural land to begin with, as found by the Center for Land Use Policy, Planning and Implementation-1 (CLUPPI-1) Executive Committee and cited in the Conversion Order.

ALI likewise maintains that the petition for revocation/cancellation of the conversion order is already barred by prescription under Section 34 of DAR AO No. 1, Series of 1999. On respondents' continuing claim of lack of compliance with the requirements of a valid reclassification, ALI contends that this Court correctly rejected such argument when it ruled that conversion and reclassification are two separate and distinct procedures. Respondents' invocation of Section 20 of R.A. No. 7160 is thus misplaced considering that what took place was not the reclassification of the subject property but its conversion.

In its Comment, the Office of the Solicitor General stated that the motion for reconsideration should be denied as it fully concurs with the findings and conclusions contained in the Decision rendered by this Court.

Upon reexamination of the facts on record and applicable laws and jurisprudence, the Court resolves to grant the motion for reconsideration.

The issuance of Notice of

Acquisition is an admitted fact

In the Decision, the Court ruled that even assuming the proper document had been submitted to the CA, the issuance of a Notice of Acquisition over the land subject of this controversy could not have, by nothing more than such submission, reversed the OP Decision because the matter had never been raised before the DAR as in fact records show that "this issue was not raised in the original Petition for Revocation in the second Motion for Reconsideration filed by the farmers before the DAR, and that no Notice of Acquisition was attached to their Appeal Memorandum to the OP."^[4] The Decision thus pointed out that Secretaries Pagdanganan, Braganza and Morales did not have the opportunity to dwell on this issue as what the respondents persistently alleged is the concealment by petitioners of the sale of the subject land to ALI.

After taking a second look on this case, we find that based on records of the DAR, the fact of issuance of the Notice of Coverage and Notice of Acquisition pertaining to the 221.3048 hectares of agricultural land in the name of CCFI under Transfer Certificate of Title (TCT) No. 128672 was never disputed by petitioners during the proceedings before the DAR. While it is true that the exhibits attached to respondents' petition before the CA were plain photocopies, the totality of documentary evidence indisputably established that the property was already placed under CARP coverage through the issuance by DAR of a Notice of Coverage and Notice of Acquisition in 1989. Such was the actual status of the subject land notwithstanding the absence of reference to these issuances in the Morales Order.^[5] Clearly, the proceedings for acquisition of private agricultural lands had formally commenced with the issuance of Notice of Coverage and Notice of Acquisition, and CCFI thereafter exhausted the available administrative remedies which effectively delayed their implementation.

That the subject lands have already been placed under CARP coverage even before the Manila Banking Corporation (MBC), CCFI's creditor-mortgagee, acquired the subject property is further confirmed by the following documentary evidence: (1) the stipulation/condition in the Deed of Partial Redemption and Deed of Absolute Sale, both dated August 25, 1995, whereby CCFI undertook to obtain DAR approval for CARP exemption or conversion to non-agricultural use; (2) CCFI's letter-request dated May 7, 1996 addressed to the DAR Regional Director for the lifting of the Notice of Acquisition; (3) BSP's request in 1995 made in behalf of MBC for exemption of the subject property from Comprehensive Agrarian Reform Law (CARL) coverage, and the letter-denial of DAR Secretary who directed the distribution of the land to qualified farmer beneficiaries; (4) the Decision dated October 11, 1996 of Executive Secretary Ruben D. Torres on the appeal of BSP from the DAR Secretary's denial of its request for exemption, in which the DAR was directed to defer proceeding with the distribution of lands already covered by CARL and petitioner was granted the opportunity to present proof that the lands are qualified for exemption or conversion; and (5) MBC's request for DAR clearance in October 1997 to sell its landholdings placed under CARL coverage, which included the subject property.

Indeed, records bear out that CCFI through counsel wrote the DAR Regional Director to request the lifting of the Notice of Acquisition.^[6] Said letter dated May 7, 1996 reads:

In behalf of our client, CAPITOL CITIFARMS, INC., we wish to request for the lifting of the Notice of Acquisition on their property situated in Barangay Munting-ilog, Silang, Cavite covered by Transfer Certificate of Title No. 128672 issued by the Register of Deeds of the Province of Cavite.

The subject property has been reclassified by the Municipal Council of Silang, Cavite from agricultural to residential, commercial and industrial area, a certified true copy of the said Municipal Resolution is hereto attached.

The subject property is not serviced by the National Irrigation Administration, a xerox copy of the Certification is hereto attached. The Philippine Coconut Authority has certified that the area is not planted to coconut trees, a xerox copy of the said certification is hereto attached. The Department of Agriculture based on these

certifications and the ocular inspection conducted by the Technical Group certified that the subject property is eligible for land conversion, a xerox copy of this certification is hereto attached.

The subject property is not tenanted although there are occupants in the property. These occupants has executed a Waiver of Rights and an endorsement for the lifting of the Notice of Acquisition after they have been paid their disturbance compensation. Copies of these individual Waivers are hereto attached.

We are also enclosing herewith a certified true copy of Transfer Certificate of Title No. 128672, Tax Declaration No. 6800 and a parcellary map of the property showed actual occupancy by Farmers/Occupants.

We trust that you will give this request your kind consideration.

Very truly yours,

(Sgd.)

ELADIO S. PASAMBA

Under Indorsement[7] dated February 25, 1997, DAR Assistant Regional Director for Operations Renato B. Alano referred CCFI's request for the lifting of Notice of Acquisition to Atty. Ibra D. Omar, Al Haj., Chief of the Legal Division, DAR Region IV, for the latter's appropriate action. Acting on the said request, Atty. Victor B. Baguilat set the matter for hearing and sent a letter[8] to Atty. Pasamba inviting him to appear at DAR Provincial Office, Legal Division, Capitol Compound, Trece Martires City on March 25, 1997 and further instructing him to bring pertinent documents in support of CCFI's claim. However, in his letter-reply[9] dated March 24, 1997, Atty. Pasamba informed Atty. Baguilat that he will not be able to attend the scheduled hearing and requested for a resetting on April 7 or 8, 1997. Apart from these communications, there seems to be no further action taken by DAR on CCFI's request for the lifting of the Notice of Acquisition. What appears from the records is the transmittal[10] dated May 23, 1997 sent by Regional Director Eugenio B. Bernardo in compliance with a memorandum order issued by DAR, which was addressed to the Head, CLUPPI-2 Secretariat forwarding the Case Folder pertaining to the subject land labelled as "Protest on Coverage (A.O. No. 09, Series of 1994)" by applicant CCFI.

It may be recalled that CCFI's request for the lifting of the Notice of Acquisition was made following the denial by Secretary Ernesto Garilao of BSP's (statutory receiver of MBC) request for a DAR order exempting the subject lands from the coverage of CARP, under letters dated February 14, 1995 and June 13, 1995.[11] While said orders were appealed to the OP, CCFI, under the Deed of Absolute Sale with ALI, remained duty-bound to fulfill the condition precedent to the direct payment of down payment to MBC (equivalent to payment of down payment due to CCFI under the contract of sale), that is, to obtain an order of exemption or land conversion from DAR. In other words, prior to the filing of an application for conversion, CCFI first sought the lifting of the Notice of Acquisition after it failed to secure from Secretary Garilao an order of exemption from CARP coverage. There was clearly no dispute as to the existence of the said Notice of Acquisition. In fact, by resorting to various legal remedies, petitioners succeeded in delaying the implementation by the DAR of the subject landholding under the Compulsory Acquisition scheme.

Even prior to the aforesaid requests for exemption and lifting of the Notice of Acquisition, MBC filed a motion for the issuance of an order granting it a period of five years within which to seek conversion of its landholdings to non-agricultural use. On October 11, 1996, then Executive Secretary Ruben D. Torres ordered the remand of the case to the DAR for the purpose of receiving evidence on the question of which among the parcels of land, are exempt from the coverage of the CARL, which lands may be converted into non-agricultural uses, and which may be subjected to compulsory coverage.[12] DAR moved for reconsideration but the OP denied it.[13]

Notwithstanding the favorable ruling of Executive Secretary Torres, MBC still sought DAR clearance to sell all

its foreclosed assets which have been placed under CARP coverage. This further confirms that the subject lands have already been subjected to compulsory acquisition under R.A. No. 6657. Secretary Garilao in his Order^[14] dated October 3, 1997 clarified that despite the sale to be effected by MBC, which is allowed under Section 73-A of R.A. No. 6657, as amended by R.A. No. 7881, the subject lands remain subject to compulsory transfer pursuant to Section 71 of said law, and also directed that only those parcels not yet covered by Certificate of Land Ownership Awards or Emancipation Patents may be sold or conveyed by MBC. Apparently, MBC and CCFI did not disclose that the subject lands have already been sold by CCFI to ALI as early as December 1995. While Secretary Garilao acknowledged the fact that a cease and desist order was issued by the OP, he nevertheless maintained that the landholdings remained subject to the provisions on acquisition under CARL although the acquisition of petitioners' properties was thereby suspended. The clearance to sell requested by MBC was thus granted simply because the sale and/or transfer of agricultural land in case such sale, transfer or conveyance is made necessary as a result of a bank's foreclosure of the mortgaged land, is permitted under Section 73-A, R.A. No. 6657, as amended by R.A. No. 7881. But such clearance was granted to enable MBC, the foreclosing mortgagee bank, to sell the subject lands as a consequence of foreclosure under the law and not for their disposition by CCFI. Indeed, conveyance or sale by the original landowner is subject to restrictions or limitations under the CARL.

In view of the circumstances, we hold that CCFI's May 1996 request for the lifting of Notice of Acquisition constitutes an admission against interest of the fact that such notice had been issued following the earlier issuance of Notice of Coverage over its landholdings. Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness.^[15] An admission against interest is the best evidence that affords the greatest certainty of the facts in dispute, based on the presumption that no man would declare anything against himself unless such declaration is true.^[16] ALI being the successor-in-interest of CCFI was therefore bound by such admission and may not be allowed at this stage to dispute the issuance of the Notices of Coverage and Acquisition.

It may be that respondents in their appeal to the OP raised a new argument in support of their position that the Conversion Order was validly revoked by Secretary Morales when they contended that since Notices of Coverage and Acquisition have already been issued, the DAR erred in granting CCFI's application for conversion, citing as basis AO No. 12, Series of 1994, VI (E), which provides:

E. No application for conversion shall be given due course if 1) the DAR has issued a Notice of Acquisition under the compulsory acquisition (CA) process; 2) Voluntary Offer to Sell (VOS), or an application for stock distribution covering the subject property has been received by DAR; or 3) there is already a perfected agreement between the landowner and the beneficiaries under Voluntary Land Transfer (VLT). (Emphasis supplied)

However, jurisprudence has laid down certain exceptions to the general rule that points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Though not raised below, the following issues may be considered by the reviewing court: lack of jurisdiction over the subject matter, as this issue may be raised at any stage; plain error, jurisprudential developments affecting the issues; or the raising of a matter of public policy.^[17] We have also held that in the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.^[18]

In this case, the CA found merit in the argument raised by respondents pertaining to the violation of AO No. 12,

Series of 1994, VI (E) and considered the matter of issuance of Notices of Coverage and Acquisition sufficiently established in the DAR records. Finding such ground to be crucial in resolving the issue of whether or not the OP erred in sustaining the Braganza and Pagdanganan orders which reversed the Morales Order revoking the conversion order issued in favor of CCFI, the CA ruled that the OP committed a reversible error in upholding a conversion order that permits the circumvention of agrarian laws because CCFI's application should not have been entertained in the first place.

Assuming therefore, that the issue was raised by respondents only before the OP, the CA's findings and conclusion on the validity of the revocation of the conversion order cannot be assailed as serious error or grave abuse of discretion.

DAR violated AO No. 12,
Series of 1994 when it issued
the Conversion Order

In the Decision, the Court declared that DAR AO 12, Series of 1994, paragraph VI (E) is a "mere principle" which cannot be interpreted as an absolute proscription on conversion. The CA was faulted for "favoring a principle over the DAR's own factual determination of the propriety of conversion." [19] It was further noted that while the CA agreed with the OP that land use conversion may be allowed when it is by reason of changes in the predominant use brought about by urban development, said court nevertheless set aside the OP Decision.

The Decision was emphatic in saying that Paragraphs E and B (3) were set merely as guidelines in issues of conversion as evidently the intent of DAR AO 12, Series of 1994 is to make the DAR the principal agency in deciding questions on conversion, vesting the said agency with exclusive authority to approve or disapprove applications for conversion of agricultural lands for residential, commercial, industrial, and other land uses. And in the implementation of CARL, DAR shall thus take into account current land use as governed by the needs and political will of the local government and its people. The Court further said:

However, under the same heading VI, on Guiding Principles, is paragraph B (3), which reads:

"If at the time of the application, the land still falls within the agricultural zone, conversion shall be allowed only on the following instances:

- a) When the land has ceased to be economically feasible and sound for agricultural purposes, as certified by the Regional Director of the Department of Agriculture (DA) or
- b) When the locality has become highly urbanized and the land will have a greater economic value for residential, commercial and industrial purposes, as certified by the local government unit."

The thrust of this provision, which DAR Secretary Garilao rightly took into account in issuing the Conversion Order, is that even if the land has not yet been reclassified, if its use has changed towards the modernization of the community, conversion is still allowed.

As DAR Secretary, Garilao had full authority to balance the guiding principle in paragraph E against that in paragraph B (3) and to find for conversion. Note that the same guiding principle which includes the general proscription against conversion was scrapped from the new rules on conversion, DAR A.O. 1, Series of 2002, or the "Comprehensive Rules on Land Use Conversion." It must be emphasized that the policy allowing conversion, on the other hand, was retained. This is a complex case in which there can be no simplistic or mechanical solution. The Comprehensive Agrarian Reform Law is not intractable, nor does it condemn a piece of land to a single use forever. With the same conviction that the state promotes rural development, it also "recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed

investments."[20] (*Italics supplied*)

The above pronouncement failed to consider that those landholdings which have already been placed under CARP through compulsory acquisition or Voluntary Offer to Sell (VOS) were expressly excluded from conversion such that DAR officials were explicitly directed not to give due course to applications for conversion over these lands. There was no ambiguity in the terminology used in paragraph VI (E) of AO No. 12, Series 1994. Paragraph B (3) (b) applies only if the lands were not yet subjected to CARP under either compulsory acquisition or VOS process. This is evident from the opening statement of paragraph B setting forth certain criteria as bases for approving applications for conversion.

- DAR acknowledges the need of society for other uses of land, but likewise recognizes the need for prudence in the exercise of its authority to approve conversions and hereby adopts the following criteria as bases for the approval of applications for conversion:

- Agricultural lands classified or zonified for non-agricultural uses by LGUs and approved by the HLRB before June 15, 1988, shall be governed by DAR Administrative Order No. 6, Series of 1994.

- Conversion may be allowed if at the time of the application, the lands are reclassified as commercial, industrial and residential in the new or revised town plans promulgated by the local government unit (LGU) and approved by the Housing and Land Use Regulatory Board (HLRB) or by the Sangguniang Panlalawigan (SP) after June 15, 1988 in accordance with Section 20 of R.A. No. 7160, as implemented by M.C. No. 54, and Executive Order No. 72 Series of 1993 of the Office of the President.

- If at the time of the application, the land still falls within the agricultural zone, conversion shall be allowed only on the following instances:

- a) when the land has ceased to be economically feasible and sound for agricultural purposes, as certified by the Regional Director of the Department of Agricultural (DA); or

- b) when the locality has become highly urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, as certified by the local government unit.

- If the city/municipality does not have a comprehensive development plan and zoning ordinance duly approved by HLRB/SP but the dominant use of the area surrounding the land subject of the application for conversion is no longer agricultural, or if the proposed use is similar to, or compatible with the dominant use of the surrounding areas as determined by the DAR, conversion may be possible.

- In all cases, conversion shall be allowed only if DENR issues a certification that the conversion is ecologically sound.

Paragraph VI (E) is a separate provision mandating the exclusion of all landholdings already subjected to CARP under compulsory acquisition or VOS from the exercise of administrative power to approve conversion applications. Hence, the statement that Secretary Garilao had authority to "balance the guiding principle in paragraph E against that in paragraph B (3) and to find for conversion"[21] undermines the true intent of AO No. 12, Series of 1994 considering that, as a matter of policy, the government already exempted those landholdings from the Secretary's approving authority. This interpretation is more consistent with paragraph A under the same Policies and Guiding Principles stating that "DAR's primary mandate is to acquire and distribute agricultural lands to as many qualified beneficiaries as possible."

From another perspective, the pronouncement in the Decision could set an undesirable precedent as it provides landowners engaged in protracted litigation with farmer-beneficiaries with yet another legal weapon to derail the process of land distribution by invoking the exercise of administrative discretion and permit conversion even on

landholdings already subjected to CARP. In the face of competing interests between the foreclosing creditors of landowners and the marginalized farmers, the implementors of CARL are called upon to give meaning to the policy enshrined in our Constitution[22] that "[t]he welfare of the landless farmers will receive the highest consideration to promote social justice and to move the nation toward sound agricultural development and industrialization."

The Petition for Cancellation/
Revocation of Conversion
Order is not time-barred

Section 34 of DAR AO No. 1, Series of 1999 states:

Article VII

Cancellation or Withdrawal of Conversion Orders

SEC. 34. Filing of Petition. - A petition for cancellation or withdrawal of the conversion order may be filed at the instance of DAR or any aggrieved party before the approving authority within ninety (90) days from discovery of facts which would warrant such cancellation but not more than one (1) year from issuance of the order: Provided, that where the ground refers to any of those enumerated in Sec. 35 (b), (e), and (f), the petition may be filed within ninety (90) days from discovery of such facts but not beyond the period for development stipulated in the order of conversion: Provided, further, That where the ground is lack of jurisdiction, the petition shall be filed with the Secretary and the period prescribed herein shall not apply. (Emphasis supplied)

In the Decision, the Court ruled that respondents may no longer question the Conversion Order which had attained finality considering that the action for its cancellation was filed almost three years after the said order had been in force and effect. This is based on the one-year prescriptive period laid down in Section 34 of DAR AO No. 1, Series of 1999.

However, the same provision allows the filing of a petition for cancellation/withdrawal of conversion order within the period of development provided in the order of conversion if the ground refers to any of those mentioned in Section 35 (b), (e) and (f):

x x x x

(b) Non-compliance with the conditions of the conversion order;

x x x x

(e) Conversion to a use other than that authorized in the conversion order; and/or

(f) Any other violation of relevant rules and regulations of DAR. (Emphasis supplied)

The October 31, 1997 Conversion Order likewise contained the following condition:

4. The DAR reserves the right to cancel or withdraw this order for misrepresentation of facts integral to its issuance and for violation of the rules and regulation on land use conversion.[23]

Respondents raised as main grounds for the revocation or cancellation of the conversion order the non-compliance with the condition of developing the area within five years, the illegal sale transaction made by CCFI to evade coverage under CARL, and CCFI's gross misrepresentation before the DAR that the land subject of conversion had already been reclassified to non-agricultural uses when in fact the Municipality of Silang does not have an approved town plan/zoning ordinance as of October 24, 1997 and what was passed was a mere resolution and not an ordinance, and the pressure exerted on the tenant-farmers left them with no alternative but to accept partial payments and sign waivers. Such misrepresentation of facts and violation of the rules and regulations on land

conversion were legally sufficient for the filing of a petition to revoke or cancel the October 31, 1997 Conversion Order, and to exempt the same from the one-year prescriptive period laid down in DAR AO No. 1, Series of 1999. Hence, the petition was timely filed in May 2000, well within the five-year development period provided in the Conversion Order.

Mortgaged agricultural lands foreclosed by banks remain under CARP Coverage

The closing statement of the Decision expressed the majority's view that its ruling on this case simply adhered to the government's policy decisions insofar as the buy-out transaction between CCFI, MBC and ALI.

CARL cannot be used to stultify modernization. It is not the role of the Supreme Court to apply the missing notice of acquisition in perpetuity. This is not a case wherein a feudal landowner is unjustly enriched by the plantings of a long-suffering tenant. ALI is in the precarious position of having been that third-party buyer who offered the terms and conditions most helpful to CCFI, MBC, and effectively, the BSP, considering the 85% portion of the total debt of MBC that BSP owns. What this Court can do positively is to contribute to policy stability by binding the government to its clear policy decisions borne over a long period of time.[24]

The foregoing confirms that the majority ruling on the main issue of whether the CA erred in sustaining the revocation of the Conversion Order tenaciously hinged on the supposed absence of a Notice of Acquisition. After scrutinizing anew the entire records of the DAR, such claim was plainly revealed as an afterthought on the part of petitioners to defeat respondents' cause. As earlier discussed, it was not the intent of DAR AO 12, Series of 1994 to grant unbridled discretion to the DAR Secretary in cases where lands applied for conversion have already been placed under CARP. Thus, Secretary Garilao, who made a complete turnaround from his earlier denial of BSP/MBC's request for exemption from CARP coverage when he eventually issued the Conversion Order, cannot violate DAR's own rules and disregard the declared policy in Paragraph VI (E).

As to the Decision's perceived "contribution to policy stability by binding the government to its clear policy decisions borne over a long period of time," particularly with respect to the buy-out arrangement between CCFI, MBC and ALI, with the concurrence of the Receiver, BSP, we find that the scheme actually runs counter to DAR's established policy on the matter.

We recall that the OP remanded the case to the DAR for further proceedings in order to give the petitioners opportunity to prove that their landholdings are qualified for exemption and/or conversion, as a matter of due process highlighted by the public interest involved (i.e., rehabilitation of financially distressed MBC). The OP underscored the need to "balance the interest between the petitioner bank (under receivership by the BSP), its creditors [including the BSP to which MBC was indebted in the total amount of P8,771,893,000 representing 85% of its total indebtedness] and the general public on one hand, and the faithful implementation of agrarian reform program on the other, with the view of harmonizing them and ensuring that the objectives of the CARP are met and satisfied." Nonetheless, such pronouncement did not serve as imprimatur for disregarding the rules on land conversion promulgated by DAR. As far as the DAR is concerned, its decisions are primarily guided by its constitutional mandate as it declared that: "[S]ince RA. No. 6657 is a social welfare legislation, the rules on exemptions, exclusions and/or conversions must be interpreted restrictively and any doubt as to the applicability of the law should be resolved in favor of inclusion." [25]

Accordingly, in those instances where the mortgaged agricultural lands are foreclosed, the defaulting landowner alone should bear the loss in case of deficiency because the foreclosure buyer is merely substituted to the landowner entitled only to just compensation pursuant to R.A. No. 6657 and its implementing rules.[26] While Sec. 73-A of the law was amended by R.A. No. 7881 to permit the sale of mortgaged agricultural lands made necessary as a result of a bank's foreclosure, it did not exempt the land sold from the operation of CARP.

DAR Opinion No. 09, Series of 2008[27] states this unchanged policy with respect to mortgaged agricultural lands foreclosed by a bank, which applies even if the latter is under receivership/liquidation:

FORECLOSURE BY PRIVATE BANK PLACED UNDER RECEIVERSHIP/LIQUIDATION STILL UNDER ACQUISITION AND DISTRIBUTION TO QUALIFIED BENEFICIARIES

- Private bank's foreclosed assets, regardless of the area, are subject to existing laws on their compulsory transfer under the General Banking Act as a consequence of foreclosure and acquisition under Section 16 of R.A. No. 6657. As long as the subject property is agricultural, the same shall still be subjected to acquisition and distribution to qualified beneficiaries pursuant to the provisions of the CARL. Private bank may sell to third parties their foreclosed asset, as a consequence of foreclosure, but still subject to acquisition under CARP.

- Even if the subject foreclosed property was placed under receivership or liquidation by the BSP, the same shall still be subjected to acquisition under CARL. In case said foreclosed property was sold or will be sold as a consequence of liquidation or receivership by the BSP, the same will still be subjected to acquisition and eventual distribution to agrarian reform beneficiaries pursuant to CARL. (Emphasis supplied)

In this case, MBC sought authority from this Court to sell its acquired assets in G.R. No. 85960 in view of the injunction issued enjoining the BSP from liquidating MBC pending the outcome of Civil Case No. 87-40659 pending in the RTC of Manila, Branch 23. The Court authorized the intended sale "under the best terms and conditions" to enable the MBC to settle its obligations to BSP. Records fail to show that MBC at that time disclosed to this Court that among those assets requested to be sold are agricultural lands already covered by CARP.

Summarizing, the Court holds that the CA correctly sustained the Morales Order cancelling the Conversion Order issued to CCFI as it contravened the directive in DAR AO 12, Series of 1994, VI (E) that lands already issued a Notice of Acquisition shall not be given due course.

CCFI as landowner may not stall the acquisition proceedings started as early as 1989, dragging it for several years and later seek exemption on the ground that the land had already ceased to be economically feasible for agricultural purposes. Precisely, the CARL had envisioned the advent of urbanization that would affect lands awarded to the farmers.

Section 65 of RA 6657 thus provides:

SEC. 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. (Emphasis supplied)

Here, however, the CARP was never given the chance to be implemented as a result of the landowner's legal maneuvers until conditions of the land had so changed with the lapse of time. The unabated land-use conversion from agricultural to industrial, commercial, residential or tourist purposes has been aptly described as "systematically reversing land reform in a way that was never foreseen by the framers of CARL." [28]

With the FOREGOING, I therefore VOTE -

- To GRANT the motion for reconsideration of respondents SIMEONA CASTILLO, et al.;
- To SET ASIDE the Decision promulgated by the then Third Division of this Court on June 15, 2011; and

- That a new judgment be entered AFFIRMING the Decision dated January 31, 2007 of the Court of Appeals in CA-G.R. SP No. 86321.

[1] Rollo, pp. 532-550.

[2] Ayala Land, Inc. v. Castillo, G.R. No. 178110, June 15, 2011, 652 SCRA 143.

[3] Rollo, pp. 535-536.

[4] Supra note 2, at 157.

[5] Rollo, pp. 336-352.

[6] DAR records, folder #1 of 3, pp. 525-526.

[7] Id. at 523.

[8] Id. at 522.

[9] Id. at 519.

[10] Id. at 517.

[11] Rollo, pp. 326-331.

[12] DAR records, folder #3 of 3, pp. 1481-1490.

[13] Id. at 1491-1493.

[14] Id. at 1494-1497.

[15] Lazaro v. Agustin, G.R. No. 152364, April 15, 2010, 618 SCRA 298, 308, citing Unchuan v. Lozada, G.R. No. 172671. April 16, 2009, 585 SCRA 421, 435.

[16] Taghoy v. Tigol, Jr., G.R. No. 159665, August 3, 2010, 626 SCRA 341, 350, citing Heirs of Miguel Franco v. Court of Appeals, 463 Phil. 417, 425 (2003); Yulionsiu v. PNB, 130 Phil. 575, 580 (1968); Republic v. Bautista, G.R. No. 169801, September 11, 2007, 532 SCRA 598, 609; and Bon v. People, 464 Phil. 125, 138(2004).

[17] Villaranda v. Villaranda, G.R. No. 153447, February 23, 2004, 423 SCRA 571, 589-580.

[18] Ramos v. Philippine National Bank, G.R. No. 178218, December 14, 2011, 662 SCRA 479, 496, citing Lianga Lumber Company v. Liang Timber Co., Inc., 166 Phil. 661, 687 (1977).

[19] Supra note 2, at 160.

[20] Id. at 160-161.

[21] Id. at 161.

[22] Art. XIII, Sec. 1, 1987 Constitution; Sec. 2, RA 6657.

[23] CA rollo, p. 40.

[24] Supra note 2, at 174.

[25] See DAR Opinion No. 18, s. 2003, September 17, 2003.

[26] See DAR Administrative Order No. 1, Series of 2000 entitled "REVISED RULES AND REGULATIONS ON THE ACQUISITION OF AGRICULTURAL LANDS SUBJECT OF MORTGAGE OR FORECLOSURE."

[27] Dated April 14, 2008.

[28] Antonio Ma. Nieva, "Agrarian 'Reform,' Ramos Style" based on a series of articles published by the Philippine Daily Inquirer, source: <http://www.multinationalmonitor.org/hyper/issues/1994/01/nieva.html>.

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