

MILESTONE FARMS, INC., PETITIONER, VS. OFFICE OF THE PRESIDENT, RESPONDENT.

G.R. No. 182332. February 23, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Amended Decision[2] dated October 4, 2006 and its Resolution[3] dated March 27, 2008.

The Facts

Petitioner Milestone Farms, Inc. (petitioner) was incorporated with the Securities and Exchange Commission on January 8, 1960.[4] Among its pertinent secondary purposes are: (1) to engage in the raising of cattle, pigs, and other livestock; to acquire lands by purchase or lease, which may be needed for this purpose; and to sell and otherwise dispose of said cattle, pigs, and other livestock and their produce when advisable and beneficial to the corporation; (2) to breed, raise, and sell poultry; to purchase or acquire and sell, or otherwise dispose of the supplies, stocks, equipment, accessories, appurtenances, products, and by-products of said business; and (3) to import cattle, pigs, and other livestock, and animal food necessary for the raising of said cattle, pigs, and other livestock as may be authorized by law.[5]

On June 10, 1988, a new agrarian reform law, Republic Act (R.A.) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), took effect, which included the raising of livestock, poultry, and swine in its coverage. However, on December 4, 1990, this Court, sitting en banc, ruled in *Luz Farms v. Secretary of the Department of Agrarian Reform*[6] that agricultural lands devoted to livestock, poultry, and/or swine raising are excluded from the Comprehensive Agrarian Reform Program (CARP).

Thus, in May 1993, petitioner applied for the exemption/exclusion of its 316.0422-hectare property, covered by Transfer Certificate of Title Nos. (T-410434) M-15750, (T-486101) M-7307, (T-486102) M-7308, (T-274129) M-15751, (T-486103) M-7309, (T-486104) M-7310, (T-332694) M-15755, (T-486105) M-7311, (T-486106) M-7312, M-8791, (T-486107) M-7313, (T-486108) M-7314, M-8796, (T-486109) M-7315, (T-486110) M-9508, and M-6013, and located in Pinugay, Baras, Rizal, from the coverage of the CARL, pursuant to the aforementioned ruling of this Court in *Luz Farms*.

Meanwhile, on December 27, 1993, the Department of Agrarian Reform (DAR) issued Administrative Order No. 9, Series of 1993 (DAR A.O. No. 9), setting forth rules and regulations to govern the exclusion of agricultural lands used for livestock, poultry, and swine raising from CARP coverage. Thus, on January 10, 1994, petitioner re-documented its application pursuant to DAR A.O. No. 9.[7]

Acting on the said application, the DAR's Land Use Conversion and Exemption Committee (LUCEC) of Region IV conducted an ocular inspection on petitioner's property and arrived at the following findings:

[T]he actual land utilization for livestock, swine and poultry is 258.8422 hectares; the area which served as infrastructure is 42.0000 hectares; ten (10) hectares are planted to corn and the remaining five (5) hectares are devoted to fish culture; that the livestock population are 371 heads of cow, 20 heads of horses, 5,678 heads of swine and 788 heads of cocks; that the area being applied for exclusion is far below the required or ideal area which is 563 hectares for the total livestock population; that the approximate area not directly used for livestock purposes with an area of 15 hectares, more or less, is likewise far below the allowable 10% variance; and, though not directly used for livestock purposes, the ten (10) hectares planted to sweet corn and the five (5) hectares devoted to fishpond could be considered supportive to livestock production.

The LUCEC, thus, recommended the exemption of petitioner's 316.0422-hectare property from the coverage of CARP. Adopting the LUCEC's findings and recommendation, DAR Regional Director Percival Dalugdug (Director Dalugdug) issued an Order dated June 27, 1994, exempting petitioner's 316.0422-hectare property from CARP.[8]

The Southern Pinugay Farmers Multi-Purpose Cooperative, Inc. (Pinugay Farmers), represented by Timiano Balajadia, Sr. (Balajadia), moved for the reconsideration of the said Order, but the same was denied by Director Dalugdug in his Order dated November 24, 1994.[9] Subsequently, the Pinugay Farmers filed a letter-appeal with the DAR Secretary.

Correlatively, on June 4, 1994, petitioner filed a complaint for Forcible Entry against Balajadia and company before the Municipal Circuit Trial Court (MCTC) of Teresa-Baras, Rizal, docketed as Civil Case No. 781-T.[10] The MCTC ruled in favor of petitioner, but the decision was later reversed by the Regional Trial Court, Branch 80, of Tanay, Rizal. Ultimately, the case reached the CA, which, in its Decision[11] dated October 8, 1999, reinstated the MCTC's ruling, ordering Balajadia and all defendants therein to vacate portions of the property covered by TCT Nos. M-6013, M-8796, and M-8791. In its Resolution[12] dated July 31, 2000, the CA held that the defendants therein failed to timely file a motion for reconsideration, given the fact that their counsel of record received its October 8, 1999 Decision; hence, the same became final and executory.

In the meantime, R.A. No. 6657 was amended by R.A. No. 7881,[13] which was approved on February 20, 1995. Private agricultural lands devoted to livestock, poultry, and swine raising were excluded from the coverage of the CARL. On October 22, 1996, the fact-finding team formed by the DAR Undersecretary for Field Operations and Support Services conducted an actual headcount of the livestock population on the property. The headcount showed that there were 448 heads of cattle and more than 5,000 heads of swine.

The DAR Secretary's Ruling

On January 21, 1997, then DAR Secretary Ernesto D. Garilao (Secretary Garilao) issued an Order exempting from CARP only 240.9776 hectares of the 316.0422 hectares previously exempted by Director Dalugdug, and declaring 75.0646 hectares of the property to be covered by CARP.[14]

Secretary Garilao opined that, for private agricultural lands to be excluded from CARP, they must already be devoted to livestock, poultry, and swine raising as of June 15, 1988, when the CARL took effect. He found that the Certificates of Ownership of Large Cattle submitted by petitioner showed that only 86 heads of cattle were registered in the name of petitioner's president, Misael Vera, Jr., prior to June 15, 1988; 133 were subsequently bought in 1990, while 204 were registered from 1992 to 1995. Secretary Garilao gave more weight to the certificates rather than to the headcount because "the same explicitly provide for the number of cattle owned by petitioner as of June 15, 1988."

Applying the animal-land ratio (1 hectare for grazing for every head of cattle/carabao/horse) and the infrastructure-animal ratio (1.7815 hectares for 21 heads of cattle/carabao/horse, and 0.5126 hectare for 21 heads

of hogs) under DAR A.O. No. 9, Secretary Garilao exempted 240.9776 hectares of the property, as follows:

1. 86 hectares for the 86 heads of cattle existing as of 15 June 1988;
2. 8 hectares for infrastructure following the ratio of 1.7815 hectares for every 21 heads of cattle;
3. 8 hectares for the 8 horses;
4. 0.3809 square meters of infrastructure for the 8 horses; [and]
5. 138.5967 hectares for the 5,678 heads of swine.[15]

Petitioner filed a Motion for Reconsideration,[16] submitting therewith copies of Certificates of Transfer of Large Cattle and additional Certificates of Ownership of Large Cattle issued to petitioner prior to June 15, 1988, as additional proof that it had met the required animal-land ratio. Petitioner also submitted a copy of a Disbursement Voucher dated December 17, 1986, showing the purchase of 100 heads of cattle by the Bureau of Animal Industry from petitioner, as further proof that it had been actively operating a livestock farm even before June 15, 1988. However, in his Order dated April 15, 1997, Secretary Garilao denied petitioner's Motion for Reconsideration.[17]

Aggrieved, petitioner filed its Memorandum on Appeal[18] before the Office of the President (OP).

The OP's Ruling

On February 4, 2000, the OP rendered a decision[19] reinstating Director Dalugdug's Order dated June 27, 1994 and declared the entire 316.0422-hectare property exempt from the coverage of CARP.

However, on separate motions for reconsideration of the aforesaid decision filed by farmer-groups Samahang Anak-Pawis ng Lagundi (SAPLAG) and Pinugay Farmers, and the Bureau of Agrarian Legal Assistance of DAR, the OP issued a resolution[20] dated September 16, 2002, setting aside its previous decision. The dispositive portion of the OP resolution reads:

WHEREFORE, the Decision subject of the instant separate motions for reconsideration is hereby SET ASIDE and a new one entered REINSTATING the Order dated 21 January 1997 of then DAR Secretary Ernesto D. Garilao, as reiterated in another Order of 15 April 1997, without prejudice to the outcome of the continuing review and verification proceedings that DAR, thru the appropriate Municipal Agrarian Reform Officer, may undertake pursuant to Rule III (D) of DAR Administrative Order No. 09, series of 1993.

SO ORDERED.[21]

The OP held that, when it comes to proof of ownership, the reference is the Certificate of Ownership of Large Cattle. Certificates of cattle ownership, which are readily available - being issued by the appropriate government office - ought to match the number of heads of cattle counted as existing during the actual headcount. The presence of large cattle on the land, without sufficient proof of ownership thereof, only proves such presence.

Taking note of Secretary Garilao's observations, the OP also held that, before an ocular investigation is conducted on the property, the landowners are notified in advance; hence, mere reliance on the physical headcount is dangerous because there is a possibility that the landowners would increase the number of their cattle for headcount purposes only. The OP observed that there was a big variance between the actual headcount of 448 heads of cattle and only 86 certificates of ownership of large cattle.

Consequently, petitioner sought recourse from the CA.[22]

The Proceedings Before the CA and Its Rulings

On April 29, 2005, the CA found that, based on the documentary evidence presented, the property subject of the application for exclusion had more than satisfied the animal-land and infrastructure-animal ratios under DAR A.O. No. 9. The CA also found that petitioner applied for exclusion long before the effectivity of DAR A.O. No. 9, thus, negating the claim that petitioner merely converted the property for livestock, poultry, and swine raising in order to exclude it from CARP coverage. Petitioner was held to have actually engaged in the said business on the property even before June 15, 1988. The CA disposed of the case in this wise:

WHEREFORE, the instant petition is hereby GRANTED. The assailed Resolution of the Office of the President dated September 16, 2002 is hereby SET ASIDE, and its Decision dated February 4, 2000 declaring the entire 316.0422 hectares exempt from the coverage of the Comprehensive Agrarian Reform Program is hereby REINSTATED without prejudice to the outcome of the continuing review and verification proceedings which the Department of Agrarian Reform, through the proper Municipal Agrarian Reform Officer, may undertake pursuant to Policy Statement (D) of DAR Administrative Order No. 9, Series of 1993.

SO ORDERED.[23]

Meanwhile, six months earlier, or on November 4, 2004, without the knowledge of the CA - as the parties did not inform the appellate court - then DAR Secretary Rene C. Villa (Secretary Villa) issued DAR Conversion Order No. CON-0410-0016[24] (Conversion Order), granting petitioner's application to convert portions of the 316.0422-hectare property from agricultural to residential and golf courses use. The portions converted - with a total area of 153.3049 hectares - were covered by TCT Nos. M-15755 (T-332694), M-15751 (T-274129), and M-15750 (T-410434). With this Conversion Order, the area of the property subject of the controversy was effectively reduced to 162.7373 hectares.

On the CA's decision of April 29, 2005, Motions for Reconsideration were filed by farmer-groups, namely: the farmers represented by Miguel Espinas[25] (Espinas group), the Pinugay Farmers,[26] and the SAPLAG.[27] The farmer-groups all claimed that the CA should have accorded respect to the factual findings of the OP. Moreover, the farmer-groups unanimously intimated that petitioner already converted and developed a portion of the property into a leisure-residential-commercial estate known as the Palo Alto Leisure and Sports Complex (Palo Alto).

Subsequently, in a Supplement to the Motion for Reconsideration on Newly Secured Evidence pursuant to DAR Administrative Order No. 9, Series of 1993[28] (Supplement) dated June 15, 2005, the Espinas group submitted the following as evidence:

- 1) Conversion Order[29] dated November 4, 2004, issued by Secretary Villa, converting portions of the property from agricultural to residential and golf courses use, with a total area of 153.3049 hectares; thus, the Espinas group prayed that the remaining 162.7373 hectares (subject property) be covered by the CARP;
- 2) Letter[30] dated June 7, 2005 of both incoming Municipal Agrarian Reform Officer (MARO) Bismark M. Elma (MARO Elma) and outgoing MARO Cesar C. Celi (MARO Celi) of Baras, Rizal, addressed to Provincial Agrarian Reform Officer (PARO) II of Rizal, Felixberto Q. Kagahastian, (MARO Report), informing the latter, among others, that Palo Alto was already under development and the lots therein were being offered for sale; that there were actual tillers on the subject property; that there were agricultural improvements thereon, including an irrigation system and road projects funded by the Government; that there was no existing livestock farm on the subject property; and that the same was not in the possession and/or control of petitioner; and
- 3) Certification[31] dated June 8, 2005, issued by both MARO Elma and MARO Celi, manifesting that the subject property was in the possession and cultivation of actual occupants and tillers, and that, upon inspection, petitioner maintained no livestock farm thereon.

Four months later, the Espinas group and the DAR filed their respective Manifestations.[32] In its Manifestation dated November 29, 2005, the DAR confirmed that the subject property was no longer devoted to cattle raising. Hence, in its Resolution[33] dated December 21, 2005, the CA directed petitioner to file its comment on the Supplement and the aforementioned Manifestations. Employing the services of a new counsel, petitioner filed a Motion to Admit Rejoinder,[34] and prayed that the MARO Report be disregarded and expunged from the records for lack of factual and legal basis.

With the CA now made aware of these developments, particularly Secretary Villa's Conversion Order of November 4, 2004, the appellate court had to acknowledge that the property subject of the controversy would now be limited to the remaining 162.7373 hectares. In the same token, the Espinas group prayed that this remaining area be covered by the CARP.[35]

On October 4, 2006, the CA amended its earlier Decision. It held that its April 29, 2005 Decision was theoretically not final because DAR A.O. No. 9 required the MARO to make a continuing review and verification of the subject property. While the CA was cognizant of our ruling in *Department of Agrarian Reform v. Sutton*,[36] wherein we declared DAR A.O. No. 9 as unconstitutional, it still resolved to lift the exemption of the subject property from the CARP, not on the basis of DAR A.O. No. 9, but on the strength of evidence such as the MARO Report and Certification, and the Katunayan[37] issued by the Punong Barangay, Alfredo Ruba (Chairman Ruba), of Pinugay, Baras, Rizal, showing that the subject property was no longer operated as a livestock farm. Moreover, the CA held that the lease agreements,[38] which petitioner submitted to prove that it was compelled to lease a ranch as temporary shelter for its cattle, only reinforced the DAR's finding that there was indeed no existing livestock farm on the subject property. While petitioner claimed that it was merely forced to do so to prevent further slaughtering of its cattle allegedly committed by the occupants, the CA found the claim unsubstantiated. Furthermore, the CA opined that petitioner should have asserted its rights when the irrigation and road projects were introduced by the Government within its property. Finally, the CA accorded the findings of MARO Elma and MARO Celi the presumption of regularity in the performance of official functions in the absence of evidence proving misconduct and/or dishonesty when they inspected the subject property and rendered their report. Thus, the CA disposed:

WHEREFORE, this Court's Decision dated April 29, 2005 is hereby amended in that the exemption of the subject landholding from the coverage of the Comprehensive Agrarian Reform Program is hereby lifted, and the 162.7373 hectare-agricultural portion thereof is hereby declared covered by the Comprehensive Agrarian Reform Program.

SO ORDERED.[39]

Unperturbed, petitioner filed a Motion for Reconsideration.[40] On January 8, 2007, MARO Elma, in compliance with the Memorandum of DAR Regional Director Dominador B. Andres, tendered another Report[41] reiterating that, upon inspection of the subject property, together with petitioner's counsel-turned witness, Atty. Grace Eloisa J. Que (Atty. Que), PARO Danilo M. Obarse, Chairman Ruba, and several occupants thereof, he, among others, found no livestock farm within the subject property. About 43 heads of cattle were shown, but MARO Elma observed that the same were inside an area adjacent to Palo Alto. Subsequently, upon Atty. Que's request for reinvestigation, designated personnel of the DAR Provincial and Regional Offices (Investigating Team) conducted another ocular inspection on the subject property on February 20, 2007. The Investigating Team, in its Report[42] dated February 21, 2007, found that, per testimony of petitioner's caretaker, Rogelio Ludivices (Roger),[43] petitioner has 43 heads of cattle taken care of by the following individuals: i) Josefino Custodio (Josefino) - 18 heads; ii) Andy Amahit - 15 heads; and iii) Bert Pangan - 2 heads; that these individuals pastured the herd of cattle outside the subject property, while Roger took care of 8 heads of cattle inside the Palo Alto area;

that 21 heads of cattle owned by petitioner were seen in the area adjacent to Palo Alto; that Josefino confirmed to the Investigating Team that he takes care of 18 heads of cattle owned by petitioner; that the said Investigating Team saw 9 heads of cattle in the Palo Alto area, 2 of which bore "MFI" marks; and that the 9 heads of cattle appear to have matched the Certificates of Ownership of Large Cattle submitted by petitioner.

Because of the contentious factual issues and the conflicting averments of the parties, the CA set the case for hearing and reception of evidence on April 24, 2007.[44] Thereafter, as narrated by the CA, the following events transpired:

On May 17, 2007, [petitioner] presented the Judicial Affidavits of its witnesses, namely, [petitioner's] counsel, [Atty. Que], and the alleged caretaker of [petitioner's] farm, [Roger], who were both cross-examined by counsel for farmers-movants and SAPLAG. [Petitioner] and SAPLAG then marked their documentary exhibits.

On May 24, 2007, [petitioner's] security guard and third witness, Rodolfo G. Febrada, submitted his Judicial Affidavit and was cross-examined by counsel for fa[r]mers-movants and SAPLAG. Farmers-movants also marked their documentary exhibits.

Thereafter, the parties submitted their respective Formal Offers of Evidence. Farmers-movants and SAPLAG filed their objections to [petitioner's] Formal Offer of Evidence. Later, [petitioner] and farmers-movants filed their respective Memoranda.

In December 2007, this Court issued a Resolution on the parties' offer of evidence and considered [petitioner's] Motion for Reconsideration submitted for resolution.[45]

Finally, petitioner's motion for reconsideration was denied by the CA in its Resolution[46] dated March 27, 2008. The CA discarded petitioner's reliance on Sutton. It ratiocinated that the MARO Reports and the DAR's Manifestation could not be disregarded simply because DAR A.O. No. 9 was declared unconstitutional. The Sutton ruling was premised on the fact that the Sutton property continued to operate as a livestock farm. The CA also reasoned that, in Sutton, this Court did not remove from the DAR the power to implement the CARP, pursuant to the latter's authority to oversee the implementation of agrarian reform laws under Section 50[47] of the CARL. Moreover, the CA found:

Petitioner-appellant claimed that they had 43 heads of cattle which are being cared for and pastured by 4 individuals. To prove its ownership of the said cattle, petitioner-appellant offered in evidence 43 Certificates of Ownership of Large Cattle. Significantly, however, the said Certificates were all dated and issued on November 24, 2006, nearly 2 months after this Court rendered its Amended Decision lifting the exemption of the 162-hectare portion of the subject landholding. The acquisition of such cattle after the lifting of the exemption clearly reveals that petitioner-appellant was no longer operating a livestock farm, and suggests an effort to create a semblance of livestock-raising for the purpose of its Motion for Reconsideration.[48]

On petitioner's assertion that between MARO Elma's Report dated January 8, 2007 and the Investigating Team's Report, the latter should be given credence, the CA held that there were no material inconsistencies between the two reports because both showed that the 43 heads of cattle were found outside the subject property.

Hence, this Petition assigning the following errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT LANDS DEVOTED TO LIVESTOCK FARMING WITHIN THE MEANING OF LUZ FARMS AND SUTTON, AND WHICH ARE THEREBY EXEMPT FROM CARL COVERAGE, ARE NEVERTHELESS SUBJECT TO DAR'S CONTINUING VERIFICATION AS TO USE, AND, ON THE BASIS OF SUCH

VERIFICATION, MAY BE ORDERED REVERTED TO AGRICULTURAL CLASSIFICATION AND COMPULSORY ACQUISITION[;]

II.

GRANTING THAT THE EXEMPT LANDS AFORESAID MAY BE SO REVERTED TO AGRICULTURAL CLASSIFICATION, STILL THE PROCEEDINGS FOR SUCH PURPOSE BELONGS TO THE EXCLUSIVE ORIGINAL JURISDICTION OF THE DAR, BEFORE WHICH THE CONTENDING PARTIES MAY VENTILATE FACTUAL ISSUES, AND AVAIL THEMSELVES OF USUAL REVIEW PROCESSES, AND NOT TO THE COURT OF APPEALS EXERCISING APPELLATE JURISDICTION OVER ISSUES COMPLETELY UNRELATED TO REVERSION [; AND]

III.

IN ANY CASE, THE COURT OF APPEALS GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE PROPERTY IN DISPUTE IS NO LONGER BEING USED FOR LIVESTOCK FARMING.[49]

Petitioner asseverates that lands devoted to livestock farming as of June 15, 1988 are classified as industrial lands, hence, outside the ambit of the CARP; that Luz Farms, Sutton, and R.A. No. 7881 clearly excluded such lands on constitutional grounds; that petitioner's lands were actually devoted to livestock even before the enactment of the CARL; that livestock farms are exempt from the CARL, not by reason of any act of the DAR, but because of their nature as industrial lands; that petitioner's property was admittedly devoted to livestock farming as of June 1988 and the only issue before was whether or not petitioner's pieces of evidence comply with the ratios provided under DAR A.O. No. 9; and that DAR A.O. No. 9 having been declared as unconstitutional, DAR had no more legal basis to conduct a continuing review and verification proceedings over livestock farms. Petitioner argues that, in cases where reversion of properties to agricultural use is proper, only the DAR has the exclusive original jurisdiction to hear and decide the same; hence, the CA, in this case, committed serious errors when it ordered the reversion of the property and when it considered pieces of evidence not existing as of June 15, 1988, despite its lack of jurisdiction; that the CA should have remanded the case to the DAR due to conflicting factual claims; that the CA cannot ventilate allegations of fact that were introduced for the first time on appeal as a supplement to a motion for reconsideration of its first decision, use the same to deviate from the issues pending review, and, on the basis thereof, declare exempt lands reverted to agricultural use and compulsorily covered by the CARP; that the "newly discovered [pieces of] evidence" were not introduced in the proceedings before the DAR, hence, it was erroneous for the CA to consider them; and that piecemeal presentation of evidence is not in accord with orderly justice. Finally, petitioner submits that, in any case, the CA gravely erred and committed grave abuse of discretion when it held that the subject property was no longer used for livestock farming as shown by the Report of the Investigating Team. Petitioner relies on the 1997 LUCEC and DAR findings that the subject property was devoted to livestock farming, and on the 1999 CA Decision which held that the occupants of the property were squatters, bereft of any authority to stay and possess the property.[50]

On one hand, the farmer-groups, represented by the Espinas group, contend that they have been planting rice and fruit-bearing trees on the subject property, and helped the National Irrigation Administration in setting up an irrigation system therein in 1997, with a produce of 1,500 to 1,600 sacks of palay each year; that petitioner came to court with unclean hands because, while it sought the exemption and exclusion of the entire property, unknown to the CA, petitioner surreptitiously filed for conversion of the property now known as Palo Alto, which was actually granted by the DAR Secretary; that petitioner's bad faith is more apparent since, despite the conversion of the 153.3049-hectare portion of the property, it still seeks to exempt the entire property in this case; and that the fact that petitioner applied for conversion is an admission that indeed the property is agricultural. The

farmer-groups also contend that petitioner's reliance on Luz Farms and Sutton is unavailing because in these cases there was actually no cessation of the business of raising cattle; that what is being exempted is the activity of raising cattle and not the property itself; that exemptions due to cattle raising are not permanent; that the declaration of DAR A.O. No. 9 as unconstitutional does not at all diminish the mandated duty of the DAR, as the lead agency of the Government, to implement the CARL; that the DAR, vested with the power to identify lands subject to CARP, logically also has the power to identify lands which are excluded and/or exempted therefrom; that to disregard DAR's authority on the matter would open the floodgates to abuse and fraud by unscrupulous landowners; that the factual finding of the CA that the subject property is no longer a livestock farm may not be disturbed on appeal, as enunciated by this Court; that DAR conducted a review and monitoring of the subject property by virtue of its powers under the CARL; and that the CA has sufficient discretion to admit evidence in order that it could arrive at a fair, just, and equitable ruling in this case.[51]

On the other hand, respondent OP, through the Office of the Solicitor General (OSG), claims that the CA correctly held that the subject property is not exempt from the coverage of the CARP, as substantial pieces of evidence show that the said property is not exclusively devoted to livestock, swine, and/or poultry raising; that the issues presented by petitioner are factual in nature and not proper in this case; that under Rule 43 of the 1997 Rules of Civil Procedure, questions of fact may be raised by the parties and resolved by the CA; that due to the divergence in the factual findings of the DAR and the OP, the CA was duty bound to review and ascertain which of the said findings are duly supported by substantial evidence; that the subject property was subject to continuing review and verification proceedings due to the then prevailing DAR A.O. No. 9; that there is no question that the power to determine if a property is subject to CARP coverage lies with the DAR Secretary; that pursuant to such power, the MARO rendered the assailed reports and certification, and the DAR itself manifested before the CA that the subject property is no longer devoted to livestock farming; and that, while it is true that this Court's ruling in Luz Farms declared that agricultural lands devoted to livestock, poultry, and/or swine raising are excluded from the CARP, the said ruling is not without any qualification.[52]

In its Reply[53] to the farmer-groups' and to the OSG's comment, petitioner counters that the farmer-groups have no legal basis to their claims as they admitted that they entered the subject property without the consent of petitioner; that the rice plots actually found in the subject property, which were subsequently taken over by squatters, were, in fact, planted by petitioner in compliance with the directive of then President Ferdinand Marcos for the employer to provide rice to its employees; that when a land is declared exempt from the CARP on the ground that it is not agricultural as of the time the CARL took effect, the use and disposition of that land is entirely and forever beyond DAR's jurisdiction; and that, inasmuch as the subject property was not agricultural from the very beginning, DAR has no power to regulate the same. Petitioner also asserts that the CA cannot uncharacteristically assume the role of trier of facts and resolve factual questions not previously adjudicated by the lower tribunals; that MARO Elma rendered the assailed MARO reports with bias against petitioner, and the same were contradicted by the Investigating Team's Report, which confirmed that the subject property is still devoted to livestock farming; and that there has been no change in petitioner's business interest as an entity engaged in livestock farming since its inception in 1960, though there was admittedly a decline in the scale of its operations due to the illegal acts of the squatter-occupants.

Our Ruling

The Petition is bereft of merit.

Let it be stressed that when the CA provided in its first Decision that continuing review and verification may be conducted by the DAR pursuant to DAR A.O. No. 9, the latter was not yet declared unconstitutional by this Court. The first CA Decision was promulgated on April 29, 2005, while this Court struck down as unconstitutional DAR

A.O. No. 9, by way of Sutton, on October 19, 2005. Likewise, let it be emphasized that the Espinas group filed the Supplement and submitted the assailed MARO reports and certification on June 15, 2005, which proved to be adverse to petitioner's case. Thus, it could not be said that the CA erred or gravely abused its discretion in respecting the mandate of DAR A.O. No. 9, which was then subsisting and in full force and effect.

While it is true that an issue which was neither alleged in the complaint nor raised during the trial cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice, and due process,[54] the same is not without exception,[55] such as this case. The CA, under Section 3,[56] Rule 43 of the Rules of Civil Procedure, can, in the interest of justice, entertain and resolve factual issues. After all, technical and procedural rules are intended to help secure, and not suppress, substantial justice. A deviation from a rigid enforcement of the rules may thus be allowed to attain the prime objective of dispensing justice, for dispensation of justice is the core reason for the existence of courts.[57] Moreover, petitioner cannot validly claim that it was deprived of due process because the CA afforded it all the opportunity to be heard.[58] The CA even directed petitioner to file its comment on the Supplement, and to prove and establish its claim that the subject property was excluded from the coverage of the CARP. Petitioner actively participated in the proceedings before the CA by submitting pleadings and pieces of documentary evidence, such as the Investigating Team's Report and judicial affidavits. The CA also went further by setting the case for hearing. In all these proceedings, all the parties' rights to due process were amply protected and recognized.

With the procedural issue disposed of, we find that petitioner's arguments fail to persuade. Its invocation of Sutton is unavailing. In Sutton, we held:

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

Clearly, petitioner DAR has no power to regulate livestock farms which have been exempted by the Constitution from the coverage of agrarian reform. It has exceeded its power in issuing the assailed A.O.[59]

Indeed, as pointed out by the CA, the instant case does not rest on facts parallel to those of Sutton because, in Sutton, the subject property remained a livestock farm. We even highlighted therein the fact that "there has been no change of business interest in the case of respondents." [60] Similarly, in *Department of Agrarian Reform v. Uy*, [61] we excluded a parcel of land from CARP coverage due to the factual findings of the MARO, which were confirmed by the DAR, that the property was entirely devoted to livestock farming. However, in *A.Z. Arnaiz Realty, Inc., represented by Carmen Z. Arnaiz v. Office of the President; Department of Agrarian Reform; Regional Director, DAR Region V, Legaspi City; Provincial Agrarian Reform Officer, DAR Provincial Office, Masbate, Masbate; and Municipal Agrarian Reform Officer, DAR Municipal Office, Masbate, Masbate*, [62] we denied a similar petition for exemption and/or exclusion, by according respect to the CA's factual findings and its reliance on the findings of the DAR and the OP that the subject parcels of land were not directly, actually, and exclusively used for pasture. [63]

Petitioner's admission that, since 2001, it leased another ranch for its own livestock is fatal to its cause.[64] While petitioner advances a defense that it leased this ranch because the occupants of the subject property harmed its cattle, like the CA, we find it surprising that not even a single police and/or barangay report was filed by petitioner to amplify its indignation over these alleged illegal acts. Moreover, we accord respect to the CA's keen observation that the assailed MARO reports and the Investigating Team's Report do not actually contradict one another, finding that the 43 cows, while owned by petitioner, were actually pastured outside the subject property.

Finally, it is established that issues of Exclusion and/or Exemption are characterized as Agrarian Law Implementation (ALI) cases which are well within the DAR Secretary's competence and jurisdiction.[65] Section 3, Rule II of the 2003 Department of Agrarian Reform Adjudication Board Rules of Procedure provides:

Section 3. Agrarian Law Implementation Cases.

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

x x x x

3.8 Exclusion from CARP coverage of agricultural land used for livestock, swine, and poultry raising.

Thus, we cannot, without going against the law, arbitrarily strip the DAR Secretary of his legal mandate to exercise jurisdiction and authority over all ALI cases. To succumb to petitioner's contention that "when a land is declared exempt from the CARP on the ground that it is not agricultural as of the time the CARL took effect, the use and disposition of that land is entirely and forever beyond DAR's jurisdiction" is dangerous, suggestive of self-regulation. Precisely, it is the DAR Secretary who is vested with such jurisdiction and authority to exempt and/or exclude a property from CARP coverage based on the factual circumstances of each case and in accordance with law and applicable jurisprudence. In addition, albeit parenthetically, Secretary Villa had already granted the conversion into residential and golf courses use of nearly one-half of the entire area originally claimed as exempt from CARP coverage because it was allegedly devoted to livestock production.

In sum, we find no reversible error in the assailed Amended Decision and Resolution of the CA which would warrant the modification, much less the reversal, thereof.

WHEREFORE, the Petition is DENIED and the Court of Appeals Amended Decision dated October 4, 2006 and Resolution dated March 27, 2008 are AFFIRMED. No costs.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Villarama, Jr.,[*] JJ., concur.

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Raffle dated February 21, 2011.

[1] Rollo, pp. 67-98.

[2] Penned by Associate Justice Noel G. Tijam, with Associate Justices Jose L. Sabio, Jr. and Japar B. Dimaampao, concurring; id. at 26-45.

[3] Id. at 47-63.

[4] CA rollo, p. 103.

[5] Id. at 105-109.

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

[7] CA rollo, p. 102.

[8] Id. at 620-621.

[9] Id. at 624-626.

[10] Id. at 901.

[11] Docketed as CA-G.R. SP No. 43678, penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Buenaventura J. Guerrero and Remedios A. Salazar-Fernando, concurring; id. at 916-929.

[12] Id. at 931-932.

[13] Entitled "An Act Amending Certain Provisions of Republic Act No. 6657, Entitled `An Act Instituting A Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and for Other Purposes.'"

[14] CA rollo, pp. 656-662.

[15] Id. at 660.

[16] Id. at 665-676.

[17] Id. at 750-761.

[18] Id. at 762-780.

[19] Id. at 82-89.

[20] Id. at 74-81.

[21] Id. at 80.

[22] Id. at 11-71.

[23] Rollo, pp. 23-24.

[24] CA rollo, pp. 1281-1291.

[25] Id. at 1099-1108.

[26] Id. at 1110-1112.

[27] Id. at 1117-1125.

[28] Id. at 1174-1180.

[29] Supra note 24.

[30] CA rollo, pp. 1184-1185.

[31] Id. at 1186.

[32] Id. at 1321-1324 and 1330-1332.

[33] Id. at 1359-1360.

[34] Id. at 1406-1409 and 1410-1416.

[35] Supra note 28, at 1180.

[36] 510 Phil. 177 (2005).

[37] CA rollo, p. 1353.

[38] Id. at 1464-1467.

[39] Supra note 2, at 45.

[40] CA rollo, pp.1502-1514.

[41] Exhibit "D-2"; CA's Folder of Exhibits.

[42] Exhibits "E-1 to E-3"; id.

[43] Also referred to as Roger Lobedesis in other pleadings and documents.

[44] CA rollo, p. 1656.

[45] Supra note 3, at 52-53.

[46] Supra note 3.

[47] Sec. 50 of R.A. No. 6657 provides:

Sec. 50. Quasi-judicial Powers of the DAR. -- The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

[48] Supra note 3, at 61.

[49] Supra note 1, at 79-80.

[50] Id.

[51] Rollo, pp. 2223-2237.

[52] Id. at 2512-2558.

[53] Id. at 2473-2481 and 2602-2615.

[54] Dosch v. NLRC, et al., 208 Phil. 259, 272 (1983).

[55] DOH v. C.V. Canchela & Associates, Architects (CVCAA), 511 Phil. 654, 670 (2005).

[56] Section 3 of Rule 43 of the 1997 Rules of Civil Procedure provides:

SEC. 3. Where to appeal. - An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

[57] Phil. Coconut Authority v. Corona International, Inc., 395 Phil. 742, 750 (2000), citing Acme Shoe, Rubber and Plastic Corp. v. CA, G.R. No. 103576, August 22, 1996, 260 SCRA 714, 719.

[58] *Zacarias v. National Police Commission*, G.R. No. 119847, October 24, 2003, 414 SCRA 387, 393.

[59] *Supra* note 36, at 183-184. (Emphasis supplied.)

[60] *Id.* at 185.

[61] G.R. No. 169277, February 9, 2007, 515 SCRA 376, 401-402.

[62] G.R. No. 170623, July 7, 2010.

[63] This Court takes note that DAR, with respect to our ruling in *Sutton*, issued DAR A.O. No. 07, Series of 2008, entitled "Guidelines relative to the Supreme Court Ruling on the *Sutton* Case regarding lands which are actually, directly and exclusively used for Livestock Raising," which provides that the property must be actually, directly and exclusively used as a livestock farm for it to be exempted.

[64] TSN, April 24, 2007, pp. 18 and 76.

[65] *Sta. Ana v. Carpo*, G.R. No. 164340, November 28, 2008, 572 SCRA 463, 482.

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