

CHAMBER OF REAL ESTATE AND BUILDERS ASSOCIATIONS, INC. (CREBA), PETITIONER, VS. THE SECRETARY OF AGRARIAN REFORM, RESPONDENT.

G.R. No. 183409. June 18, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

This case is a Petition for Certiorari and Prohibition (with application for temporary restraining order and/or writ of preliminary injunction) under Rule 65 of the 1997 Revised Rules of Civil Procedure, filed by herein petitioner Chamber of Real Estate and Builders Associations, Inc. (CREBA) seeking to nullify and prohibit the enforcement of Department of Agrarian Reform (DAR) Administrative Order (AO) No. 01-02, as amended by DAR AO No. 05-07,[1] and DAR Memorandum No. 88,[2] for having been issued by the Secretary of Agrarian Reform with grave abuse of discretion amounting to lack or excess of jurisdiction as some provisions of the aforesaid administrative issuances are illegal and unconstitutional.

Petitioner CREBA, a private non-stock, non-profit corporation duly organized and existing under the laws of the Republic of the Philippines, is the umbrella organization of some 3,500 private corporations, partnerships, single proprietorships and individuals directly or indirectly involved in land and housing development, building and infrastructure construction, materials production and supply, and services in the various related fields of engineering, architecture, community planning and development financing. The Secretary of Agrarian Reform is named respondent as he is the duly appointive head of the DAR whose administrative issuances are the subject of this petition.

The Antecedent Facts

The Secretary of Agrarian Reform issued, on 29 October 1997, DAR AO No. 07-97,[3] entitled "Omnibus Rules and Procedures Governing Conversion of Agricultural Lands to Non-Agricultural Uses," which consolidated all existing implementing guidelines related to land use conversion. The aforesaid rules embraced all private agricultural lands regardless of tenurial arrangement and commodity produced, and all untitled agricultural lands and agricultural lands reclassified by Local Government Units (LGUs) into non-agricultural uses after 15 June 1988.

Subsequently, on 30 March 1999, the Secretary of Agrarian Reform issued DAR AO No. 01-99,[4] entitled "Revised Rules and Regulations on the Conversion of Agricultural Lands to Non-agricultural Uses," amending and updating the previous rules on land use conversion. Its coverage includes the following agricultural lands, to wit: (1) those to be converted to residential, commercial, industrial, institutional and other non-agricultural purposes; (2) those to be devoted to another type of agricultural activity such as livestock, poultry, and fishpond — the effect of which is to exempt the land from the Comprehensive Agrarian Reform Program (CARP) coverage; (3) those to be converted to non-agricultural use other than that previously authorized; and (4) those reclassified to residential, commercial, industrial, or other non-agricultural uses on or after the effectivity of

Republic Act No. 6657[5] on 15 June 1988 pursuant to Section 20[6] of Republic Act No. 7160[7] and other pertinent laws and regulations, and are to be converted to such uses.

On 28 February 2002, the Secretary of Agrarian Reform issued another Administrative Order, i.e., DAR AO No. 01-02, entitled "2002 Comprehensive Rules on Land Use Conversion," which further amended DAR AO No. 07-97 and DAR AO No. 01-99, and repealed all issuances inconsistent therewith. The aforesaid DAR AO No. 01-02 covers all applications for conversion from agricultural to non-agricultural uses or to another agricultural use.

Thereafter, on 2 August 2007, the Secretary of Agrarian Reform amended certain provisions[8] of DAR AO No. 01-02 by formulating DAR AO No. 05-07, particularly addressing land conversion in time of exigencies and calamities.

To address the unabated conversion of prime agricultural lands for real estate development, the Secretary of Agrarian Reform further issued Memorandum No. 88 on 15 April 2008, which temporarily suspended the processing and approval of all land use conversion applications.

By reason thereof, petitioner claims that there is an actual slow down of housing projects, which, in turn, aggravated the housing shortage, unemployment and illegal squatting problems to the substantial prejudice not only of the petitioner and its members but more so of the whole nation.

Hence, this petition.

The Issues

In its Memorandum, petitioner posits the following issues:

I.

WHETHER THE DAR SECRETARY HAS JURISDICTION OVER LANDS THAT HAVE BEEN RECLASSIFIED AS RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR FOR OTHER NON-AGRICULTURAL USES.

II.

WHETHER THE DAR SECRETARY ACTED IN EXCESS OF HIS JURISDICTION AND GRAVELY ABUSED HIS DISCRETION BY ISSUING AND ENFORCING [DAR AO NO. 01-02, AS AMENDED] WHICH SEEK TO REGULATE RECLASSIFIED LANDS.

III.

WHETHER [DAR AO NO. 01-02, AS AMENDED] VIOLATE[S] THE LOCAL AUTONOMY OF LOCAL GOVERNMENT UNITS.

IV.

WHETHER [DAR AO NO. 01-02, AS AMENDED] VIOLATE[S] THE DUE PROCESS AND EQUAL PROTECTION CLAUSE[S] OF THE CONSTITUTION.

V.

WHETHER MEMORANDUM NO. 88 IS A VALID EXERCISE OF POLICE POWER.[9]

The subject of the submission that the DAR Secretary gravely abused his discretion is AO No. 01-02, as amended, which states:

Section 3. Applicability of Rules. - These guidelines shall apply to all applications for conversion, from agricultural to non-agricultural uses or to another agricultural use, such as:

x x x x

3.4 Conversion of agricultural lands or areas that have been reclassified by the LGU or by way of a Presidential Proclamation, to residential, commercial, industrial, or other non-agricultural uses on or after the effectivity of RA 6657 on 15 June 1988, x x x. [Emphasis supplied].

Petitioner holds that under Republic Act No. 6657 and Republic Act No. 8435,[10] the term agricultural lands refers to "lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by a person whether natural or juridical, and not classified by the law as mineral, forest, residential, commercial or industrial land." When the Secretary of Agrarian Reform, however, issued DAR AO No. 01-02, as amended, he included in the definition of agricultural lands "lands not reclassified as residential, commercial, industrial or other non-agricultural uses before 15 June 1988." In effect, lands reclassified from agricultural to residential, commercial, industrial, or other non-agricultural uses after 15 June 1988 are considered to be agricultural lands for purposes of conversion, redistribution, or otherwise. In so doing, petitioner avows that the Secretary of Agrarian Reform acted without jurisdiction as he has no authority to expand or enlarge the legal signification of the term agricultural lands through DAR AO No. 01-02. Being a mere administrative issuance, it must conform to the statute it seeks to implement, i.e., Republic Act No. 6657, or to the Constitution, otherwise, its validity or constitutionality may be questioned.

In the same breath, petitioner contends that DAR AO No. 01-02, as amended, was made in violation of Section 65[11] of Republic Act No. 6657 because it covers all applications for conversion from agricultural to non-agricultural uses or to other agricultural uses, such as the conversion of agricultural lands or areas that have been reclassified by the LGUs or by way of Presidential Proclamations, to residential, commercial, industrial or other non-agricultural uses on or after 15 June 1988. According to petitioner, there is nothing in Section 65 of Republic Act No. 6657 or in any other provision of law that confers to the DAR the jurisdiction or authority to require that non-awarded lands or reclassified lands be submitted to its conversion authority. Thus, in issuing and enforcing DAR AO No. 01-02, as amended, the Secretary of Agrarian Reform acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner further asseverates that Section 2.19,[12] Article I of DAR AO No. 01-02, as amended, making reclassification of agricultural lands subject to the requirements and procedure for land use conversion, violates Section 20 of Republic Act No. 7160, because it was not provided therein that reclassification by LGUs shall be subject to conversion procedures or requirements, or that the DAR's approval or clearance must be secured to effect reclassification. The said Section 2.19 of DAR AO No. 01-02, as amended, also contravenes the constitutional mandate on local autonomy under Section 25,[13] Article II and Section 2,[14] Article X of the 1987 Philippine Constitution.

Petitioner similarly avers that the promulgation and enforcement of DAR AO No. 01-02, as amended, constitute deprivation of liberty and property without due process of law. There is deprivation of liberty and property without due process of law because under DAR AO No. 01-02, as amended, lands that are not within DAR's jurisdiction are unjustly, arbitrarily and oppressively prohibited or restricted from legitimate use on pain of administrative and criminal penalties. More so, there is discrimination and violation of the equal protection clause of the Constitution because the aforesaid administrative order is patently biased in favor of the peasantry at the expense of all other sectors of society.

As its final argument, petitioner avows that DAR Memorandum No. 88 is not a valid exercise of police power for it is the prerogative of the legislature and that it is unconstitutional because it suspended the land use conversion without any basis.

The Court's Ruling

This petition must be dismissed.

Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum.[15] In *Heirs of Bertuldo Hinog v. Melicor*,[16] citing *People v. Cuaresma*,[17] this Court made the following pronouncements:

This Court's original jurisdiction to issue writs of certiorari is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[18] (Emphasis supplied.)

The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.[19]

This Court thus reaffirms the judicial policy that it will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances, such as cases of national interest and of serious implications, justify the availment of the extraordinary remedy of writ of certiorari, calling for the exercise of its primary jurisdiction.[20]

Exceptional and compelling circumstances were held present in the following cases: (a) *Chavez v. Romulo*,[21] on citizens' right to bear arms; (b) *Government of [the] United States of America v. Hon. Purganan*,[22] on bail in extradition proceedings; (c) *Commission on Elections v. Judge Quijano-Padilla*,[23] on government contract involving modernization and computerization of voters' registration list; (d) *Buklod ng Kawaning EIIB v. Hon. Sec. Zamora*,[24] on status and existence of a public office; and (e) *Hon. Fortich v. Hon. Corona*,[25] on the so-called "Win-Win Resolution" of the Office of the President which modified the approval of the conversion to agro-industrial area.[26]

In the case at bench, petitioner failed to specifically and sufficiently set forth special and important reasons to justify direct recourse to this Court and why this Court should give due course to this petition in the first instance, hereby failing to fulfill the conditions set forth in *Heirs of Bertuldo Hinog v. Melicor*. [27] The present petition should have been initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts. Failure to do so is sufficient cause for the dismissal of this petition.

Moreover, although the instant petition is styled as a Petition for Certiorari, in essence, it seeks the declaration by this Court of the unconstitutionality or illegality of the questioned DAR AO No. 01-02, as amended, and Memorandum No. 88. It, thus, partakes of the nature of a Petition for Declaratory Relief over which this Court has only appellate, not original, jurisdiction.[28] Section 5, Article VIII of the 1987 Philippine Constitution provides:

Sec. 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.

(2) Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question. (Emphasis supplied.)

With that, this Petition must necessarily fail because this Court does not have original jurisdiction over a Petition for Declaratory Relief even if only questions of law are involved.

Even if the petitioner has properly observed the doctrine of judicial hierarchy, this Petition is still dismissible.

The special civil action for certiorari is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.[29]

The essential requisites for a Petition for Certiorari under Rule 65 are: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[30]

Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer, is not authorized and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting.[31] Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.[32] Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[33]

In the case before this Court, the petitioner fails to meet the above-mentioned requisites for the proper invocation of a Petition for Certiorari under Rule 65. The Secretary of Agrarian Reform in issuing the assailed DAR AO No. 01-02, as amended, as well as Memorandum No. 88 did so in accordance with his mandate to implement the land use conversion provisions of Republic Act No. 6657. In the process, he neither acted in any judicial or quasi-judicial capacity nor assumed unto himself any performance of judicial or quasi-judicial prerogative. A Petition for Certiorari is a special civil action that may be invoked only against a tribunal, board, or officer exercising judicial functions. Section 1, Rule 65 of the 1997 Revised Rules of Civil Procedure is explicit on this matter, viz.:

SECTION 1. Petition for certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial

functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment must be rendered annulling or modifying the proceedings of such tribunal, board or officer.

A tribunal, board, or officer is said to be exercising judicial function where it has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function, on the other hand, is "a term which applies to the actions, discretion, etc., of public administrative officers or bodies x x x required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature." [34]

Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the respective rights of the contending parties. [35]

The Secretary of Agrarian Reform does not fall within the ambit of a tribunal, board, or officer exercising judicial or quasi-judicial functions. The issuance and enforcement by the Secretary of Agrarian Reform of the questioned DAR AO No. 01-02, as amended, and Memorandum No. 88 were done in the exercise of his quasi-legislative and administrative functions and not of judicial or quasi-judicial functions. In issuing the aforesaid administrative issuances, the Secretary of Agrarian Reform never made any adjudication of rights of the parties. As such, it can never be said that the Secretary of Agrarian Reform had acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing and enforcing DAR AO No. 01-02, as amended, and Memorandum No. 88 for he never exercised any judicial or quasi-judicial functions but merely his quasi-legislative and administrative functions.

Furthermore, as this Court has previously discussed, the instant petition in essence seeks the declaration by this Court of the unconstitutionality or illegality of the questioned DAR AO No. 01-02, as amended, and Memorandum No. 88. Thus, the adequate and proper remedy for the petitioner therefor is to file a Petition for Declaratory Relief, which this Court has only appellate and not original jurisdiction. It is beyond the province of certiorari to declare the aforesaid administrative issuances unconstitutional and illegal because certiorari is confined only to the determination of the existence of grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner cannot simply allege grave abuse of discretion amounting to lack or excess of jurisdiction and then invoke certiorari to declare the aforesaid administrative issuances unconstitutional and illegal. Emphasis must be given to the fact that the writ of certiorari dealt with in Rule 65 of the 1997 Revised Rules of Civil Procedure is a prerogative writ, never demandable as a matter of right, "never issued except in the exercise of judicial discretion." [36]

At any rate, even if the Court will set aside procedural infirmities, the instant petition should still be dismissed.

Executive Order No. 129-A [37] vested upon the DAR the responsibility of implementing the CARP. Pursuant to the said mandate and to ensure the successful implementation of the CARP, Section 5(c) of the said executive order authorized the DAR to establish and promulgate operational policies, rules and regulations and priorities for agrarian reform implementation. Section 4(k) thereof authorized the DAR to approve or disapprove the conversion, restructuring or readjustment of agricultural lands into non-agricultural uses. Similarly, Section 5(l) of the same executive order has given the DAR the exclusive authority to approve or disapprove conversion of agricultural lands for residential, commercial, industrial, and other land uses as may be provided for by law.

Section 7 of the aforesaid executive order clearly provides that "the authority and responsibility for the exercise of the mandate of the [DAR] and the discharge of its powers and functions shall be vested in the Secretary of Agrarian Reform x x x."

Under DAR AO No. 01-02, as amended, "lands not reclassified as residential, commercial, industrial or other non-agricultural uses before 15 June 1988" have been included in the definition of agricultural lands. In so doing, the Secretary of Agrarian Reform merely acted within the scope of his authority stated in the aforesaid sections of Executive Order No. 129-A, which is to promulgate rules and regulations for agrarian reform implementation and that includes the authority to define agricultural lands for purposes of land use conversion. Further, the definition of agricultural lands under DAR AO No. 01-02, as amended, merely refers to the category of agricultural lands that may be the subject for conversion to non-agricultural uses and is not in any way confined to agricultural lands in the context of land redistribution as provided for under Republic Act No. 6657.

More so, Department of Justice Opinion No. 44, Series of 1990, which Opinion has been recognized in many cases decided by this Court, clarified that after the effectivity of Republic Act No. 6657 on 15 June 1988 the DAR has been given the authority to approve land conversion.[38] Concomitant to such authority, therefore, is the authority to include in the definition of agricultural lands "lands not reclassified as residential, commercial, industrial or other non-agricultural uses before 15 June 1988" for purposes of land use conversion.

In the same vein, the authority of the Secretary of Agrarian Reform to include "lands not reclassified as residential, commercial, industrial or other non-agricultural uses before 15 June 1988" in the definition of agricultural lands finds basis in jurisprudence. In *Ros v. Department of Agrarian Reform*,[39] this Court has enunciated that after the passage of Republic Act No. 6657, agricultural lands, though reclassified, have to go through the process of conversion, jurisdiction over which is vested in the DAR. However, agricultural lands, which are already reclassified before the effectivity of Republic Act No. 6657 which is 15 June 1988, are exempted from conversion.[40] It bears stressing that the said date of effectivity of Republic Act No. 6657 served as the cut-off period for automatic reclassifications or rezoning of agricultural lands that no longer require any DAR conversion clearance or authority.[41] It necessarily follows that any reclassification made thereafter can be the subject of DAR's conversion authority. Having recognized the DAR's conversion authority over lands reclassified after 15 June 1988, it can no longer be argued that the Secretary of Agrarian Reform was wrongfully given the authority and power to include "lands not reclassified as residential, commercial, industrial or other non-agricultural uses before 15 June 1988" in the definition of agricultural lands. Such inclusion does not unduly expand or enlarge the definition of agricultural lands; instead, it made clear what are the lands that can be the subject of DAR's conversion authority, thus, serving the very purpose of the land use conversion provisions of Republic Act No. 6657.

The argument of the petitioner that DAR AO No. 01-02, as amended, was made in violation of Section 65 of Republic Act No. 6657, as it covers even those non-awarded lands and reclassified lands by the LGUs or by way of Presidential Proclamations on or after 15 June 1988 is specious. As explained in Department of Justice Opinion No. 44, series of 1990, it is true that the DAR's express power over land use conversion provided for under Section 65 of Republic Act No. 6657 is limited to cases in which agricultural lands already awarded have, after five years, ceased 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. To suggest, however, that these are the only instances that the DAR can require conversion clearances would open a loophole in Republic Act No. 6657 which every landowner may use to evade compliance with the agrarian reform program. It should logically follow, therefore, from the said department's express duty and function to execute and enforce the said statute that any reclassification of a private land as a residential, commercial or industrial

property, on or after the effectivity of Republic Act No. 6657 on 15 June 1988 should first be cleared by the DAR.[42]

This Court held in *Alarcon v. Court of Appeals*[43] that reclassification of lands does not suffice. Conversion and reclassification differ from each other. Conversion is the act of changing the current use of a piece of agricultural land into some other use as approved by the DAR while reclassification is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, and commercial, as embodied in the land use plan, subject to the requirements and procedures for land use conversion. In view thereof, a mere reclassification of an agricultural land does not automatically allow a landowner to change its use. He has to undergo the process of conversion before he is permitted to use the agricultural land for other purposes.[44]

It is clear from the aforesaid distinction between reclassification and conversion that agricultural lands though reclassified to residential, commercial, industrial or other non-agricultural uses must still undergo the process of conversion before they can be used for the purpose to which they are intended.

Nevertheless, emphasis must be given to the fact that DAR's conversion authority can only be exercised after the effectivity of Republic Act No. 6657 on 15 June 1988.[45] The said date served as the cut-off period for automatic reclassification or rezoning of agricultural lands that no longer require any DAR conversion clearance or authority.[46] Thereafter, reclassification of agricultural lands is already subject to DAR's conversion authority. Reclassification alone will not suffice to use the agricultural lands for other purposes. Conversion is needed to change the current use of reclassified agricultural lands.

It is of no moment whether the reclassification of agricultural lands to residential, commercial, industrial or other non-agricultural uses was done by the LGUs or by way of Presidential Proclamations because either way they must still undergo conversion process. It bears stressing that the act of reclassifying agricultural lands to non-agricultural uses simply specifies how agricultural lands shall be utilized for non-agricultural uses and does not automatically convert agricultural lands to non-agricultural uses or for other purposes. As explained in DAR Memorandum Circular No. 7, Series of 1994, cited in the 2009 case of *Roxas & Company, Inc. v. DAMBA-NFSW and the Department of Agrarian Reform*,[47] reclassification of lands denotes their allocation into some specific use and providing for the manner of their utilization and disposition or the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, or commercial, as embodied in the land use plan. For reclassified agricultural lands, therefore, to be used for the purpose to which they are intended there is still a need to change the current use thereof through the process of conversion. The authority to do so is vested in the DAR, which is mandated to preserve and maintain agricultural lands with increased productivity. Thus, notwithstanding the reclassification of agricultural lands to non-agricultural uses, they must still undergo conversion before they can be used for other purposes.

Even reclassification of agricultural lands by way of Presidential Proclamations to non-agricultural uses, such as school sites, needs conversion clearance from the DAR. We reiterate that reclassification is different from conversion. Reclassification alone will not suffice and does not automatically allow the landowner to change its use. It must still undergo conversion process before the landowner can use such agricultural lands for such purpose.[48] Reclassification of agricultural lands is one thing, conversion is another. Agricultural lands that are reclassified to non-agricultural uses do not ipso facto allow the landowner thereof to use the same for such purpose. Stated differently, despite having reclassified into school sites, the landowner of such reclassified agricultural lands must apply for conversion before the DAR in order to use the same for the said purpose.

Any reclassification, therefore, of agricultural lands to residential, commercial, industrial or other non-agricultural uses either by the LGUs or by way of Presidential Proclamations enacted on or after 15 June 1988 must undergo

the process of conversion, despite having undergone reclassification, before agricultural lands may be used for other purposes.

It is different, however, when through Presidential Proclamations public agricultural lands have been reserved in whole or in part for public use or purpose, i.e., public school, etc., because in such a case, conversion is no longer necessary. As held in *Republic v. Estonilo*,^[49] only a positive act of the President is needed to segregate or reserve a piece of land of the public domain for a public purpose. As such, reservation of public agricultural lands for public use or purpose in effect converted the same to such use without undergoing any conversion process and that they must be actually, directly and exclusively used for such public purpose for which they have been reserved, otherwise, they will be segregated from the reservations and transferred to the DAR for distribution to qualified beneficiaries under the CARP.^[50] More so, public agricultural lands already reserved for public use or purpose no longer form part of the alienable and disposable lands of the public domain suitable for agriculture.^[51] Hence, they are outside the coverage of the CARP and it logically follows that they are also beyond the conversion authority of the DAR.

Clearly from the foregoing, the Secretary of Agrarian Reform did not act without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in (1) including lands not reclassified as residential, commercial, industrial or other non-agricultural uses before 15 June 1988 in the definition of agricultural lands under DAR AO No. 01-02, as amended, and; (2) issuing and enforcing DAR AO No. 01-02, as amended, subjecting to DAR's jurisdiction for conversion lands which had already been reclassified as residential, commercial, industrial or for other non-agricultural uses on or after 15 June 1988.

Similarly, DAR AO No. 01-02, as amended, providing that the reclassification of agricultural lands by LGUs shall be subject to the requirements of land use conversion procedure or that DAR's approval or clearance must be secured to effect reclassification, did not violate the autonomy of the LGUs.

Section 20 of Republic Act No. 7160 states that:

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:

x x x x

(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.

x x x x

(e) Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657.

The aforequoted provisions of law show that the power of the LGUs to reclassify agricultural lands is not absolute. The authority of the DAR to approve conversion of agricultural lands covered by Republic Act No. 6657 to non-agricultural uses has been validly recognized by said Section 20 of Republic Act No. 7160 by explicitly

providing therein that, "nothing in this section shall be construed as repealing or modifying in any manner the provisions of Republic Act No. 6657."

DAR AO No. 01-02, as amended, does not also violate the due process clause, as well as the equal protection clause of the Constitution. In providing administrative and criminal penalties in the said administrative order, the Secretary of Agrarian Reform simply implements the provisions of Sections 73 and 74 of Republic Act No. 6657, thus:

Sec. 73. Prohibited Acts and Omissions. - The following are prohibited:

x x x x

(c) The conversion by any landowner of his agricultural land into any non-agricultural use with intent to avoid the application of this Act to his landholdings and to disposes his tenant farmers of the land tilled by them;

x x x x

(f) The sale, transfer or conveyance by a beneficiary of the right to use or any other usufructuary right over the land he acquired by virtue of being a beneficiary, in order to circumvent the provisions of this Act.

x x x x

Sec. 74. Penalties. - Any person who knowingly or willfully violates the provisions of this Act shall be punished by imprisonment of not less than one (1) month to not more than three (3) years or a fine of not less than one thousand pesos (P1,000.00) and not more than fifteen thousand pesos (P15,000.00), or both, at the discretion of the court.

If the offender is a corporation or association, the officer responsible therefor shall be criminally liable.

And Section 11 of Republic Act No. 8435, which specifically provides:

Sec. 11. Penalty for Agricultural Inactivity and Premature Conversion. - x x x.

Any person found guilty of premature or illegal conversion shall be penalized with imprisonment of two (2) to six (6) years, or a fine equivalent to one hundred percent (100%) of the government's investment cost, or both, at the discretion of the court, and an accessory penalty of forfeiture of the land and any improvement thereon.

In addition, the DAR may impose the following penalties, after determining, in an administrative proceedings, that violation of this law has been committed:

a. Consolation or withdrawal of the authorization for land use conversion; and

b. Blacklisting, or automatic disapproval of pending and subsequent conversion applications that they may file with the DAR.

Contrary to petitioner's assertions, the administrative and criminal penalties provided for under DAR AO No. 01-02, as amended, are imposed upon the illegal or premature conversion of lands within DAR's jurisdiction, i.e., "lands not reclassified as residential, commercial, industrial or for other non-agricultural uses before 15 June 1998."

The petitioner's argument that DAR Memorandum No. 88 is unconstitutional, as it suspends the land use conversion without any basis, stands on hollow ground.

It bears emphasis that said Memorandum No. 88 was issued upon the instruction of the President in order to address the unabated conversion of prime agricultural lands for real estate development because of the worsening rice shortage in the country at that time. Such measure was made in order to ensure that there are enough

agricultural lands in which rice cultivation and production may be carried into. The issuance of said Memorandum No. 88 was made pursuant to the general welfare of the public, thus, it cannot be argued that it was made without any basis.

WHEREFORE, premises considered, the instant Petition for Certiorari is DISMISSED. Costs against petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo De-Castro, and Del Castillo, JJ., concur.

[1] Rollo, pp. 182-183.

[2] Id. at 185.

[3] Id. at 42-59.

[4] Id. at 77-110.

[5] Otherwise known as "The Comprehensive Agrarian Reform Law of 1988."

[6] 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 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 reclassification, 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.

[7] Otherwise known as "The Local Government Code of 1991."

[8] Particularly Sections 3.1 and 6.2 of DAR AO No. 01-02.

[9] Rollo, p. 272.

[10] Otherwise known as "The Agriculture and Fisheries Modernization Act of 1997."

[11] 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.

[12] Section 2.19. Reclassification of Agricultural Lands refers to the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as, residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion, undertaken by a Local Government Unit (LGU) in accordance with Section 20 of RA 7160 and Joint Housing and Land Use Regulatory Board (HLURB), DAR, DA, and Department of Interior and Local Government (DILG) MC-54-1995. It also includes the reversion of non-agricultural lands to agricultural use.

[13] Section 25. The State shall ensure the autonomy of local governments.

[14] Section 2. The territorial and political subdivisions shall enjoy local autonomy.

[15] Heirs of Bertuldo Hinog v. Melicor, G.R. No. 140954, 12 April 2005, 455 SCRA 460, 470.

[16] Id.

[17] 254 Phil. 418 (1989).

[18] Heirs of Bertuldo Hinog v. Melicor, supra note 15 at 471.

[19] Liga ng mga Barangay National v. City Mayor of Manila, 465 Phil. 529, 543 (2004); Santiago v. Vasquez, G.R. Nos. 99289-90, 27 January 1993, 217 SCRA 633, 652.

[20] Tano v. Hon. Gov. Socrates, 343 Phil. 670, 700 (1997).

[21] G.R. No. 157036, 9 June 2004, 431 SCRA 534.

[22] 438 Phil. 417 (2002).

[23] 438 Phil. 72 (2002).

[24] 413 Phil. 281 (2001).

[25] 352 Phil. 461 (1998).

[26] Heirs of Bertuldo Hinog v. Melicor, supra note 15.

[27] Id.

[28] Philnabank Employees Association v. Estanislao, G.R. No. 104209, 16 November 1993, 227 SCRA 804, 811.

[29] *People v. Court of Appeals*, 468 Phil. 1, 10 (2004).

[30] *Rivera v. Hon. Espiritu*, 425 Phil. 169, 179-180 (2002).

[31] *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 785 (2003).

[32] *Id.*

[33] *Id.* at 786.

[34] *Ligan ng mga Barangay National v. City Mayor of Manila*, *supra* note 19 at 541.

[35] *Id.*

[36] *Mayor Balindong v. Vice Gov. Dacalos*, 484 Phil. 574, 579 (2004).

[37] Otherwise known as "The Reorganization Act of the Department of Agrarian Reform," which was approved on 26 July 1987.

[38] In the said Opinion, the Secretary of Justice declared, viz: Based on the foregoing premises, we reiterate the view that with respect to conversions of agricultural lands covered by Republic Act No. 6657 to non-agricultural uses, the authority of DAR to approve such conversions may be exercised from the date of the law's effectivity on 15 June 1988. This conclusion is based on a liberal interpretation of Republic Act No. 6657 in the light of DAR's mandate and the extensive coverage of the agrarian reform program.

[39] G.R. No. 132477, 31 August 2005, 468 SCRA 471.

[40] *Junio v. Garilao*, G.R. No. 147146, 29 July 2005, 465 SCRA 173, 182-183.

[41] *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals*, G.R. No. 149621, 5 May 2006, 489 SCRA 590, 606-607.

[42] *Ros v. Department of Agrarian Reform*, *supra* note 39 at 483.

[43] 453 Phil. 373, 382-383 (2003).

[44] *Id.*

[45] *Junio v. Garilao*, G.R. No. 147146, 29 July 2005, 465 SCRA 173, 181-182.

[46] *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals*, *supra* note 41.

[47] G.R. Nos. 149548, 167505, 167540, 167543, 167845, 169163 and 179650, 4 December 2009.

[48] *Roxas & Company, Inc. v. DAMBA-NFSW and the Department of Agrarian Reform*, *id.*

[49] G.R. No. 157306, 25 November 2005, 476 SCRA 265, 274.

[50] Section 1.A of Executive Order No. 506 dated 18 February 1992.

[51] *Department of Agrarian Reform v. Department of Education, Culture and Sports*, 469 Phil. 1083, 1092-1093 (2004) citing *Central Mindanao University v. Department of Agrarian Reform Adjudication Board*, G.R. No. 100091, 22 October 1992, 215 SCRA 86, 99.

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