

DANILO ALMERO, TERESITA ALAGON, CELIA BULASO, LUDY RAMADA, REGINA GEGREMOSA, ISIDRO LAZARTE, THELMA EMBARQUE, FELIPE LAZARTE, GUILERMA LAZARTE, DULCESIMA BENIMELE, PETITIONERS, ...

G.R. No.199008. November 19, 2014

Ponente: BRION, J.

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BRION, J.:

Before this Court is a petition for review on certiorari[1] filed under Rule 45 of the Rules of Court directly assailing the February 16, 2011 decision[2] and July 19, 2011 resolution[3] of the Office of the President (OP) in OP Case No. 10-C-152. The OP recalled and cancelled the Certificate of Land Ownership Awards (CLOAs) issued to the petitioners covering certain homestead lots that formed part of the Pacquing Estate, a 23.6272-hectare property located in Cuambogan, Tagum City.

Factual Antecedents

Miguel Pacquing acquired agricultural lands (the property) with a total area of 23.6272 hectares in Cuambogan, Tagum City through Homestead Patent No. V-33775. These lands were registered on January 6, 1955 with the Register of Deeds under Original Certificate of Title No. (P-2590) P-653.

The records show that, on August 5, 1991, the Municipal Agrarian Reform Officer (MARO) sent Miguel's representative a Notice of Coverage placing the Pacquing Estate under the Comprehensive Agrarian Reform Program (CARP). Miguel failed to reply to the notice and, instead filed a Voluntary Offer to Sell (VOS) with the Department of Agrarian Reform (DAR) on August 31, 1991. Miguel, however, died during the pendency of the VOS proceedings. Miguel's wife, Salome, had died five years earlier.

In January 1992, respondent Linda Pacquing-Fadrilan, sole heir of the spouses Pacquing, executed an affidavit adjudicating to herself ownership of the property. In August of the same year, she filed an application for retention with the DAR Regional Director who denied Linda's application in an order dated December 14, 1993. The order denying Linda's application for retention later became final and executory.

On June 25, 1994, certain individuals, including the present petitioners who were earlier identified as farmer-beneficiaries of the subject land, were issued CLOAs over their respective cultivated portions of the property.

On October 20, 1999, Linda, through her attorney-in-fact, Samuel Osias, filed with the Office of the Provincial Adjudicator in Tagum City a petition to cancel the petitioners' CLOAs. The Provincial Adjudicator later dismissed the petition due to Linda's failure to file her position paper. She appealed the dismissal with the Department of Agrarian Reform Adjudication Board (DARAB).

It appears that, in the meantime, Transfer Certificates of Title (TCTs) covering portions of the property were issued to Napoleon Villa Sr., et al. who had been contracted by Linda, under an agricultural leasehold agreement,

to cultivate the lands.

In a resolution dated June 29, 2001, the DARAB nullified the TCTs issued to Napoleon Villa Sr. et. al. and reinstated Linda's title to the property. At the same time, the DARAB ordered the generation and issuance of titles to the petitioners and other farmer-beneficiaries of the subject land. In a subsequent resolution dated September 28, 2001, the DARAB validated the TCTs issued to the following individuals: Danilo Almero, Celia Bulaso, Ludy Ramada, Isidro Lazarte, Cepriano Lazarte, Thelma Emorque, Domingo Juanico, Candido Labeste and Renato Benimate.

Root of the present petition: Petition to Recall and Cancel the petitioners' CLOAs

Linda again sought to recall and cancel the petitioners' CLOAs by filing a petition with the DAR, which the latter endorsed to the DAR Regional Office. Linda argued that the DARAB erred in distributing portions of the land to the petitioners because the entire property was supposed to be exempt from CARP coverage. The petitioners opposed Linda's petition.

In an order dated December 18, 2008, the DAR Regional Director ruled that the Pacquing Estate was subject to CARP and that the CLOAs issued to the petitioners were valid. Linda filed an appeal to the DAR Secretary.

In an order dated August 18, 2009, former DAR Secretary Nasser C. Pangandaman denied Linda's appeal under the following terms:

"xxx, under Section 6 of R.A. No. 6657, there are two requisites to exempt homestead lands from CARP coverage. First, the homestead grantee or his direct compulsory heir(s) still own the original homestead at the time of the effectivity of R.A. No. 6657 on 15 June 1988; and second, the original homestead grantee or his direct compulsory heir(s) was cultivating the homestead as of 15 June 1988 and continues to cultivate the same.

In this case, it is undisputed that the subject landholdings were still owned by the original homestead grantees at the time of the effectivity of R.A. No. 6657. However, the said homestead grantees no longer cultivate the same. Therefore, on this score, the subject landholdings cannot be exempted from CARP coverage." (Emphasis ours)

Linda appealed the DAR Secretary's August 18,2009 order to the OP.

In a decision dated February 16, 2011, the OP, through Executive Secretary Paquito N. Ochoa Jr., reversed the DAR Secretary's August 18, 2009 Order and recalled and cancelled the petitioners' CLOAs. The OP held that:

"xxx, the fact that petitioners-appellants (referring to the respondent Linda), since the beginning, have always protested the issuance of the CLOAs to the respondents-appellees (referring to the petitioners) is a clear demonstration of their willingness to continue with the cultivation of the subject landholdings, or to start anew with the cultivation or even to direct the management of the farm.

Given the foregoing, petitioners-appellants should be given the chance to exercise their rights as heirs of the homestead grantee to continue to cultivate the homestead lots either personally or directly managing the farm pursuant to the pronouncement in the Paris case. They still own the original homestead issued to their predecessor-in-interest and have manifested their intention to continue with the cultivation of the homestead lots."[4] (Emphasis supplied)

The petitioners moved to reconsider the decision, but the OP denied their motion in a resolution[5] dated July 19, 2011.

With no appeal or petition for review filed with the Court of Appeals within the fifteen (15) - day appeal period,

the DAR Bureau of Agrarian Legal Assistance issued on August 22, 2011 a Certificate of Finality[6] declaring as final and executory the OP's February 16, 2011 decision and July 19, 2011 resolution. The petitioners, however, contest the finality of the OP's decision and allege that their counsel only received a certified copy of the OP's resolution denying their motion for reconsideration on September 29, 2011.

On November 14, 2011, the petitioners directly filed with this Court a petition for review on certiorari under Rule 45 assailing the subject OP's decision and resolution.

The Petition

The petitioners raise the following issues:

I- WHO WILL ISSUE A CERTIFICATE OF FINALITY OF THE DECISION WHEN THE DECISION OF THE ADMINISTRATIVE AGENCY IS REVERSE (sic) ON APPEAL BY THE OFFICE OF THE PRESIDENT?

II- ARE LANDS UNDER THE HOMESTEAD GRANT, EXEMPT FROM AGRARIAN REFORM COVERAGE UNDER SECTION 6 OF R.A. 6657, EVEN IF THE HEIR OF THE PATENTEE IS NOT CULTIVATING THE LAND, BUT AND HAD EVEN OFFERED THE SAME UNDER THE VOLUNTARY OFFER TO SELL SCHEME?

III- IN CARP COVERAGE, IS DEPOSIT OF LANDOWNER'S COMPENSATION WITH LAND BANK OF THE PHILIPPINES ENOUGH TO TRANSFER TITLE TO THE STATE, EVEN IF THE OWNER DOES NOT ACCEPT THE SAME?[7] (Emphasis supplied)

Pleadings Subsequent to the Petition

In her comment dated March 16, 2012,[8] Linda counter-argues that the present petition should be denied outright for being an improper mode of appeal: the appeal from the OP's assailed decision and resolution should have been filed with the CA via a petition for review under Rule 43 and not directly with this Court via a petition for review on certiorari under Rule 45.

The petitioners filed their counter-comment/reply[9] asking this Court to decide the present case not on technicalities but based on its merits, and that the Court, instead, treat their petition as a special civil action for certiorari under Rule 65.

OUR RULING

We see MERIT in the present petition.

First, we address the procedural issue raised by the respondent.

Under Rule 43 of the Rules of Court, an appeal from the awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency such as the Office of the President, in the exercise of its quasi-judicial functions shall be filed to the CA[10] within a period of fifteen (15) days from notice of, publication or denial of a motion for new trial or reconsideration.[11] The appeal may involve questions of fact, of law, or mixed questions of fact and law.[12]

A direct resort to this Court, however, may be allowed in cases where only questions of law are raised.[13] A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.[14]

In the present petition, the petitioners raised valid questions of law that warranted the direct recourse to this Court.

Basically, they question the OP's application of the law and jurisprudence on the issue of whether the Pacquing Estate should be exempt from CARP coverage. In this case, no further examination of the truth or falsity of the facts is required. Our review of the case is limited to the determination of whether the OP has correctly applied the law and jurisprudence based on the facts on record.

We now proceed to the merits of the case.

R.A. No. 6657 or the Comprehensive Agrarian Reform Law (CARL) of 1988 covers all public and private agricultural lands as provided in Proclamation No. 131[15] and E.O. No. 229,[16] including other lands of the public domain suitable for agriculture. Section 4 of R.A. 6657, as amended,[17] specifically lists the lands covered by the CARP, which include:

(a)

All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain;

(b)

All lands of the public domain in excess to the specific limits as determined by Congress in the preceding paragraph;

(c)

All other lands owned by the Government devoted to or suitable for agriculture; and

(d)

All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

And Section 10 of R.A. 6657, as amended,[18] expressly provides for the lands exempted or excluded from the CARP, namely:

(a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves shall be exempt from the coverage of this Act;

(b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: Provided, that said prawn farms and fishponds have not been distributed and Certificate of Land Ownership (CLOA) issued under the Agrarian Reform Program; and

xxxx

(c) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farms stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production centers, church sites and covenants 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 this Act.

The subject land, being agricultural in nature, is clearly not exempt from CARP coverage.

But Linda argues that the subject land is exempt from CARP primarily because it was acquired by her father via a

homestead patent. She claims that the rights of homestead grantees have been held superior to those of agrarian reform tenants and, thus, her right to the subject land must be upheld. The OP, agreeing with the respondent, stated that:

"There can be no question that, weighed against each other, the rights of a homesteader prevail over the rights of the tenants guaranteed by agrarian reform laws.

As early as the case of *Patricio v. Bayug*, it has been held that the more paramount and superior policy consideration is to uphold the right of the homesteader and his heirs to own and cultivate personally the land acquired from the State without being encumbered by tenancy relations.

Just right after the promulgation of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), the doctrine enunciated in *Patricio* was applied in *Alita v. Court of Appeals* where it was held that Presidential Decree No. 27 cannot be invoked to defeat the very purpose of the enactment of the Public Land Act or Commonwealth Act No. 141. It was further pointed out that even the Philippine Constitution respects the superiority of the homesteaders' rights over the rights of the tenants guaranteed by the Agrarian Reform statute."^[19] (Citations omitted.)

The right of homestead grantees to retain or keep their homestead is, however, not absolutely guaranteed by law. Section 6 of R.A 6657 provides that:

"Section 6. Retention Limits.-Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: provided, that landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the areas originally retained by them thereunder: provided, further, that original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead. (Emphasis ours)

Thus, in order for the homestead grantees or their direct compulsory heirs to retain or keep their homestead, the following conditions must first be satisfied: (a) they must still be the owners of the original homestead at the time of the CARL's effectivity, and (b) they must continue to cultivate the homestead land.

In this case, Linda, as the direct compulsory heir of the original homestead grantee, is no longer cultivating the subject homestead land. The OP misinterpreted our ruling in *Paris v. Alfeche*^[20] when it held that Linda's mere expression of her desire to continue or to start anew with the cultivation of the land would suffice to exempt the subject homestead land from the CARL. On the contrary, we specifically held in *Paris v. Alfeche* that:

"Indisputably, homestead grantees or their direct compulsory heirs can own and retain the original homestead, only for "as long as they continue to cultivate" them. That parcels of land are covered by homestead patents will not automatically exempt them from the operation of land reform. It is the fact of continued cultivation by the original grantees or their direct compulsory heirs that shall exempt their lands from land reform coverage."^[21] (Emphasis supplied)

WHEREFORE, in view of the foregoing, we hereby:

(a)

REVERSE and SET ASIDE the February 16, 2011 Decision and July 19, 2011 Resolution of the Office of the

President in OP Case No. 10-C-152;

(b)

RECALL and REVOKE the August 22, 2011 Certificate of Finality issued by the Department of Agrarian Reform Bureau of Agrarian Legal Assistance; and

(c)

AFFIRM the August 18, 2009 Order of the Department of Agrarian Reform Secretary in DARCO Order No. MS-0908-295 Series of 2009 A-999-10-CLT-028-09.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, and Mendoza, JJ, concur.

Leonen, J., see dissenting opinion.

[1] Dated November 11, 2011; rollo, pp. 35-49.

[2] Id. at 51-55.

[3] Id. at 68-69.

[4] Id. at 11.

[5] Supra note 3.

[6] Rollo, pp. 73-74.

[7] Id. at 41.

[8] Id. at 188-192.

[9] Dated June 10, 2013; Rollo, pp. 211-213.

[10] Section 1, Rule 43 of the Rules of Court.

[11] Section 4, Rule 43 of the Rules of Court.

[12] Section 3, Rule 43 of the Rules of Court.

[13] Section 2 (c), Rule 41 of the Rules of Court.

[14] Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co., G.R. No. 161882, July 8, 2005, 463 SCRA 222, 233.

[15] Instituting a Comprehensive Agrarian Reform Program; Approved July 22, 1987.

[16] Providing the Mechanism for the Implementation of the Comprehensive Agrarian Reform Program; Approved July 22, 1987.

[17] As amended by R.A. No. 9700.

[18] As amended by R.A. No. 7881

[19] Rollo, p. 10.

[20] G.R. No. 139083, August 30, 2001, 364 SCRA 110.

[21] Id. at 118.

DISSENTING OPINION

LEONEN, J.:

I dissent on two points. First, the Office of the President's February 16, 2011 Decision[1] is already final and executory. This court, therefore, may no longer review the Decision.

Second, the property in this case is covered by a homestead patent. Thus, it is exempt from agrarian reform coverage. The heirs of the original homesteader must be given the chance to cultivate their land.

I

This court may no longer review the final and executory Decision of the Office of the President

Under Rule 43 of the Rules of Court, decisions of the Office of the President are appealed before the Court of Appeals through a Petition for Review raising questions of fact, of law, or mixed questions of fact and law.[2] The Appeal must be filed within 15 days from notice of the decision or resolution denying the Motion for Reconsideration as provided in Rule 43, Sections 1 and 4:

Section 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

Sec. 4. Period of appeal. The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

Petitioners Danilo Almero, Teresita Alagon, Celia Bulaso, Ludy Ramada, Regina Gegremosa, Isidro Lazarte, Thelma Embarque, Felipe Lazarte, Guilerma Lazarte, and Dulcesima Benimele (Almero, et al.) availed themselves of the wrong remedy against the Office of the President's Decision. Instead of directly appealing before this court, Almero, et al. should have filed a Petition for Review before the Court of Appeals under Rule 43.

It is true that a Petition for Review on Certiorari may be directly filed before this court if the Petition raises pure questions of law.[3] However, even assuming that Almero, et al.'s Petition raises pure questions of law, this court

should have dismissed outright Almero, et al.'s Petition for having been filed out of time. Under Rule 45, Section 2 of the Rules of Court, a Petition for Review on Certiorari must be filed within 15 days from notice of the assailed Decision or Resolution:

Sec. 2. Time for filing; extension. The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

Almero, et al. had notice of the Office of the President's Resolution denying their Motion for Reconsideration on September 29, 2011. Thus, Almero, et al. had until October 14, 2011 to file their Appeal. Yet, Almero, et al. appealed before this court only on November 14, 2011, which was beyond 15 days from their notice of the Resolution denying their Motion for Reconsideration. Their filing of the Petition, therefore, did not toll the reglementary period for filing an appeal. The Decision of the Office of the President has become final and executory as of October 15, 2011, and this court may no longer review the Decision.

II

The property is exempt from coverage of the Comprehensive Agrarian Reform Program

Agrarian reform is the "redistribution of lands, regardless of crops or fruits produced, to farmers and regular farmworkers who are landless." [4] It includes not only the physical redistribution of lands but also other alternative arrangements, such as production or profit-sharing, labor administration, and the redistribution of shares of stock all aimed to lift the economic status of the property's farmer-beneficiaries. [5]

As a general rule, all agricultural lands, whether public or private, are covered by the Comprehensive Agrarian Reform Program. [6] An agricultural land refers to land devoted to any of the following agricultural activities: 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 persons whether natural or juridical. [7] Section 4 of the Comprehensive Agrarian Reform Law enumerates properties covered by the Comprehensive Agrarian Reform Program:

SEC. 4. Scope. The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.

More specifically, the following lands are covered by the Comprehensive Agrarian Reform Program:

- All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain;
- All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;
- All other lands owned by the Government devoted to or suitable for agriculture; and
- All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that 'can be raised thereon.

As for the properties exempt from agrarian reform coverage, Section 10 of the Comprehensive Agrarian Reform Law provides:

SEC. 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 this Act.

In the present case, the majority ruled that the property of the Heirs of Manuel Pacquing is covered by the Comprehensive Agrarian Reform Program, the property being an agricultural land.

I disagree with the majority. The property in this case is exempt from agrarian reform, having been granted to Manuel Pacquing through a homestead patent.

Although a social justice measure,[8] agrarian reform is subject to limitations. Under Article XIII, Section 6 of the Constitution, distribution of lands through agrarian reform is "subject to prior rights, homestead rights of small settlers, and the rights of indigenous cultural communities to their ancestral lands":

Section 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including land of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous cultural communities to their ancestral lands. (Emphasis supplied)

Chapter IV of Commonwealth Act No. 141 or the Public Land Act governs the grant of homestead patents. Under Section 12 of the law, an applicant "may enter a homestead of not exceeding twenty-four hectares of agricultural land of the public domain." A homestead patent or title to the homestead is issued only if the applicant has improved and cultivated at least one-fifth of the agricultural land applied for. Section 14 of the Public Land Act provides:

Sec. 14. No certificate shall be given or patent issued for the land applied for until at least one-fifth of the land has been improved and cultivated. The period within which the land shall be cultivated shall not be less than one nor more than five years from and after the date of the approval of the application. The applicant shall, within the said period, notify the Director of Lands as soon as he is ready to acquire the title. If at the date of such notice, the applicant shall prove to the satisfaction of the Director of Lands, that he has resided continuously for at least one year in the municipality in which the land is located, or in a municipality adjacent to the same, and has cultivated at least one-fifth of the land continuously since the approval of the application, and shall make affidavit that no part of said land has been alienated or encumbered, and that he has complied with all the requirements of this Act, then upon the payment of five pesos, as final fee, he shall be entitled to a patent.

The state grants homestead rights "to encourage residence upon and the cultivation and improvement of [agricultural lands] of the public domain." [9] In *Jacson v. Soriano*, [10] this court further explained the purpose of granting and protecting homesteads:

[The object of homestead laws] is to provide a home for each citizen of the Government, where his family may shelter and live beyond the reach of financial misfortune, and to inculcate in individuals those feelings of independence which are essential to the maintenance of free institutions. Furthermore, the state itself is concerned that the citizens shall not be divested of a means of support, and reduced to pauperism.

The conservation of a family home is the purpose of homestead laws. The policy of the state is to foster families as the factors of society, and thus promote general welfare. The sentiment of patriotism and independence, the spirit of free citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own home, with a sense of its protection and durability.[11] (Citations omitted)

In 1982, this court had the opportunity to resolve the issue of who has the better right to a homestead-the homesteader or the tenant tilling the land. In *Patricio v. Bayog*,[12] this court said that "the more paramount and superior policy consideration is to uphold the right of the homesteader and his heirs to own and cultivate personally the land acquired from the State without being encumbered by tenancy relations." [13]

In *Alita v. Court of Appeals*,[14] this court categorically ruled that lands obtained through homestead patents are not covered by the agrarian reform program, the rights of homesteaders being "superior"[15] to the rights of tenants. This court said that the provisions of Presidential Decree No. 72, Series of 1972, then governing agrarian reform, "cannot be invoked to defeat the very purpose of the enactment of the Public Land Act or Commonwealth Act No. 141." [16] Citing *Patricio*:

The Homestead Act has been enacted for the welfare and protection of the poor. The law gives a needy citizen a piece of land where he may build a modest house for himself and family and plant what is necessary for subsistence and for the satisfaction of life's other needs. The right of the citizens to their homes and to the things necessary for their subsistence is as vital as the right to life itself. They have a right to live with a certain degree of comfort as become human beings, and the State which looks after the welfare 'of the people's happiness is under a duty to safeguard the satisfaction of this vital right.[17]

In ruling for the homesteader in *Alita*, this court relied on Article XIII, Section 6 of the Constitution. This court went on to state that even the Comprehensive Agrarian Reform Law of 1988 recognizes the "inapplicability of [agrarian reform laws] to lands covered by homestead patents." [18] This court referred to the proviso in Section 6 of the Comprehensive Agrarian Reform Law:

Section 6. Retention Limits. Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: Provided, That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder: Provided further, That original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead (Emphasis supplied)

However, contrary to the *Alita* ruling, this court used Section 6 as legal basis to rule that homesteads are covered by the agrarian reform program. In the 2001 case of *Paris v. Alfeche*,[19] the state granted Florencia Paris a homestead patent over a parcel of land in Paitan, Quezon, Bukidnon. Emancipation patents were subsequently issued to the tenants tilling her property, depriving Paris and her children of their right to personally cultivate their property.

To recover her property, Paris filed an application to retain at least five (5) hectares of her property in Bukidnon. Since her property was covered by a homestead patent, Paris argued, among others, that she and her children have the better right to cultivate their land as this court ruled in *Patricio* and *Alita*.

The Department of Agrarian Reform Adjudicator ruled in favor of Paris and cancelled the emancipation patents issued to the tenants. On appeal, however, the Department of Agrarian Reform Adjudication Board reversed the Adjudicator and declared the tenants as "full owners of the land they till." [20] The Court of Appeals agreed with the Department of Agrarian Reform Adjudication Board and affirmed its Decision.

This court affirmed the Court of Appeals' Decision, ruling that "parcels of land . . . covered by homestead patents [are] not automatically exempt . . . from the operation of land reform." Section 6 of the Comprehensive Agrarian Reform Law allows homesteaders to retain their land "as long as they continue to cultivate [their] homestead." [21] Therefore, "it is the fact of continued cultivation by the original grantees or their direct compulsory heirs that shall exempt their lands from land reform coverage." [22]

Finding that Paris and her children were not personally cultivating their homestead, this court denied Paris' application for retention.

On Paris' contention that she and her children, as homesteaders, had the better right to cultivate their land, this court held that Patricio and Alita did not apply to Paris' case: The homesteaders in Patricio and Alita showed their intention to continue cultivating their homesteads. [23] Thus, this court allowed the homesteaders to retain their properties in Patricio and Alita.

Unlike the homesteaders in Patricio and Alita, this court found that Paris and her children never personally cultivated their homestead, and they never expressed their intention to do so. For these reasons, this court denied Paris' application for retention and surmised that Paris and her children would "undoubtedly continue to be absentee landlords": [24]

[T]he rulings in both Patricio and Alita, which are in line with the state objective of fostering owner cultivatorship and of abolishing tenancy, would be inapplicable to the present case. Since petitioner and her heirs have evinced no intention of actually cultivating the lands or even directly managing the farm, they will undoubtedly continue to be absentee landlords. Therefore, to blindly and indiscriminately apply the ruling in the cited cases would be tantamount to encouraging feudalistic practices and going against the very essence of agrarian reform. This we cannot sanction. [25] (Citation omitted)

Despite this court's ruling in Paris, I maintain that the property should be exempt from agrarian reform. As this court held in Patricio and Alita, the right of tenants to own the land they till through agrarian reform is subject to the right of homesteaders to personally cultivate their property. This right of homesteaders is guaranteed by no less than the Constitution.

In providing that homesteaders may retain their land "as long as they continue to cultivate said homestead," Section 6 of the Comprehensive Agrarian Reform Law is unconstitutional. The Constitution does not require homesteaders to show their intention to cultivate their land before their properties are exempted from agrarian reform coverage. Under the law, homestead patents are granted only if the applicants have proven to the satisfaction of the Director of Lands that they have entered, improved, and cultivated the land applied for. [26] It must therefore be presumed that grantees of homestead patents cultivate their land.

In any case, the Heirs of Manuel Pacquing must be allowed to retain their homestead, similar to the homesteaders in Patricio and Alita. As this court declared in Paris, homesteaders are allowed to retain their property if they show their intention to continue cultivating their property. [27] As the Office of the President found, the Heirs of Manuel Pacquing have shown their intention to continue cultivating their property by protesting the issuance of certificates of land ownership award to Almero, et al. The Heirs of Manuel Pacquing "should be given the chance to exercise their rights as heirs of the homestead grantee to continue to cultivate the homestead lots either personally or directly managing the farm pursuant to the pronouncement in the Paris case." [28]

III

This case must be elevated to the court en banc

In the alternative, this case must be elevated to the court en banc considering that the constitutionality of Section 6 of the Comprehensive Agrarian Reform Law is at issue in this case. Rule 2, Section 3(a) of the Internal Rules of the Supreme Court provides:

Section 3. Court en banc matters and cases.- The Court en banc shall act on the following matters and cases:

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

IN VIEW OF THE FOREGOING, I vote to DENY the Petition for Review on Certiorari. The Office of the President's Decision dated February 16, 2011 must be AFFIRMED.

[1] Rollo, pp. 8-12.

[2] RULES OF COURT, Rule 43, sec. 3.

[3] RULES OF COURT, Rule 41, sec. 2(c).

[4] Rep. Act No. 6657, sec. 3(a).

[5] Rep. Act No. 6657, sec. 3(a).

[6] Rep. Act No. 6657, sec. 4.

[7] Rep. Act No. 6657, sec. 3(b).

[8] Association of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform, 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

[9] Patricio v. Bayog, 197 Phil. 728, 733 (1982) [Per J. Aquino, Second Division], citing Aquino v. Director of Lands, 39 Phil. 850, 861 (1919) [Per J. Malcolm, En Banc].

[10] 45 Phil. 375 (1923) [Per J. Johnson, En Banc].

[11] Id. at 379.

[12] 197 Phil. 728 (1982) [Per J. Aquino, Second Division].

[13] Id. at 732-733.

[14] 252 Phil. 733 (1989) [Per J. Paras, Second Division].

[15] Id. at 735.

[16] Id.

[17] Id.

[18] Id. at 736.

[19] 416 Phil. 473 (200 I) [Per J. Panganiban, Third Division].

[20] Id. at 478.

[21] Id. at 484.

[22] Id.

[23] Id. at 485.

[24] Id. at 486.

[25] Id. at 486-487.

[26] Public Land Act, sec. 14.

[27] *Paris v. Alfeche*, 416 Phil. 473,485 (2001) [Per J. Panganiban, Third Division].

[28] Rollo, p. 11. Office of the President's Decision dated February 16, 2011.

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