CELESTINO SANTIAGO SUBSTITUTED BY LAURO SANTIAGO AND ISIDRO GUTIERREZ SUBSTITUTED BY ROGELIO GUTIERREZ, PETITIONERS, VS. AMADA R. ORTIZ-LUIS SUBSTITUTED BY JUAN ORTIZ-LUIS, JR. ...

G.R. Nos. 186184 & 186988[1]. September 20, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioners Lauro Santiago and Rogelio Gutierrez, in substitution of their now deceased respective fathers Celestino Santiago and Isidro Gutierrez, challenge the August 22, 2008 Decision of the Court of Appeals[2] respecting the retention rights under Republic Act No. 6657[3] (R.A. 6657) of Amada R. Ortiz-Luis (Amada), substituted by her son-herein respondent Juan, Jr.

Juan and Amada Ortiz Luis (Spouses Ortiz Luis)were the owners of 7.1359 hectares of tenanted riceland situated in Barangay San Fernando Sur, Cabiao, Nueva Ecija and covered by TCT No. NT-10798 (the property).

Pursuant to Presidential Decree No. 27 (P.D. No. 27), "Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to them the Ownership of the Land they Till and Providing the Instruments and Mechanism Therefor," which took effect on October 21, 1972, the property was placed under Operation Land Transfer (OLT).

Despite the inclusion of the property under the OLT, the Spouses Ortiz-Luis, by Deed of Absolute Sale dated June 16, 1979, transferred it to their children Rosario, Teresita, Simplicio and Antonio, all surnamed Ortiz-Luis. The children were able to have the property transferred under their names on June 25, 1992.

The children later filed an Application for Retention under P.D. No. 27 before the Department of Agrarian Reform Regional Office (DARRO) which was denied by Order dated February 28, 1997 in this wise:

> It bears stressing that the Transfer Certificate of Title evidencing the conveyance in favor of herein petitioners-appellants was registered only on 25 June 1992, hence the subject land is still considered under the ownership of Spouses Ortiz Luis (pursuant to Memorandum dated January 9, 1973 and Department Memorandum Circular No. 8, Series of 1974) insofar as coverage under OLT is concerned.
>
> x x x x
>
> Upon conducting a careful investigation of the records presented, this Office concludes beyond any iota of doubt that the landholding in issue was indeed conveyed to petitioners-appellants after October 21, 1972 which is a clear violation of agrarian laws, rules and regulations.[4] (underscoring supplied)

In light of the denial of her children's application for retention, Amada filed on July 14, 1999 an Application for Retention over the property under R.A. 6657 before the DARRO.

By Decision of November 24, 1999, the Provincial Agrarian Reform Adjudicator (PARAD), to which the

application was referred for determination of the validity of TCT No. NT-189843 issued to the children, ordered the cancellation of said title and reinstated the spouses' Ortiz-Luis' title. Amada's application for retention was thus given due course by DARRO.

Provincial Agrarian Reform Officer (PARO) Rogelio M. Chavez recommended the denial of Amada's application upon the ground that "an owner of tenanted rice and corn lands may not retain those lands if he, as of October 21, 1972, owned more than 24 hectares of tenanted rice or corn lands."[5] It appears that Spouses Ortiz Luis owned 178.8092 hectares, only 88.4513 of which were placed under OLT.

The PARO's recommendation notwithstanding, DARRO, by Order of May 23, 2000,[6] granted Amada's application for retention, it holding that her failure to exercise her retention rights under P.D. No. 27 entitled her to the benefit of retention under R.A. 6657.

Farmer-beneficiaries Celestino (petitioner Lauro's father) and Isidro (petitioner Rogelio's father), having been granted on May 20, 1994 emancipation patents covering 2.9424 hectares and 2.0238 hectares of the property, respectively, moved for reconsideration of the DARRO May 23, 2000 Order. DARRO denied the motion by Order of October 4, 2000. On the assumption that no appeal was filed, DARRO issued a Memorandum dated October 24, 2000 to implement its Orders.

Amada subsequently filed on March 2, 2001 a petition for cancellation of Celestino and Isidro's emancipation patents before the PARAD. The farmer-beneficiaries did not file their Answer, despite notice, and failed to appear during the hearings of the petition. After the ex-parte presentation of Amada's evidence, Adjudicator Napoleon Baguilat, by Decision of April 11, 2001,[7] ordered the cancellation of Celestino and Isidro's Emancipation Patents:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> - Declaring the private respondents[-herein petitioners] as lessees over the retained area of the petitioner;
>
> - Declaring [herein petitioners'] TCT Nos. EP 74278 and 74276 to have lost its force and effect upon the rendition of this decision;
>
> - Declaring the Municipal Agrarian Reform Office of Cabiao, Nueva Ecija to cause the execution of leasehold contract between the petitioner and the private respondents[-herein petitioners];
>
> - Directing the Register of Deeds for the Province of Nueva Ecija to cancel the TCT Nos. EP 74278 and 74276 registered in the names of Celestino Santiago and Isidro Gutierrez."[8]

Two (2) days after the issuance of the PARAD April 11, 2001 Decision or on April 14, 2001, Celestino and Isidro filed their Answer/Motion for Reconsideration which was denied by Order of June 21, 2001.

On appeal, the Department of Agrarian Reform Adjudication Board (DARAB), by Decision of April 5, 2005, ruled in favor of petitioners:

> Under Administrative Order No. 4, Series of 1991, the authority to issue a certificate of retention on landholdings covered under R.A. 6657 lies exclusively with the Regional Director. It likewise provides that "the Order of the Regional Director approving or denying the application for retention shall become final fifteen (15) days from receipt of the same, unless appeal is made to the DAR Secretary." In the case at bar, Private Respondents (petitioners) were able to appeal the Order of Retention issued by Regional Director Atty. Acosta to the DAR Secretary. The appeal is still pending before the Office of the Director of the Bureau of Agrarian Legal Assistance (BALA), Department of Agrarian Reform, Diliman, Quezon City, as per certification dated February 21, 2005.

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> In view thereof, the cancellation of subject EPs is not warranted on the ground that the Order of Retention has not attained finality.[9] (emphasis and underscoring supplied)

Juan Ortiz-Luis, Jr. (respondent), who substituted for Amada after she passed away on December 8, 2001, filed a petition for review before the Court of Appeals following the denial by the DARAB of his motion for reconsideration of its April 5, 2005 Decision. The petition was docketed as CA-G.R. SP No. 97071.

In time, Celestino and Isidro's appeal to the DAR Secretary respecting the DARRO Orders which granted retention rights to Amada was denied by DAR Secretary Roberto Pagdanganan by Order of October 24, 2003 (Pagdanganan Order).[10] Celestino and Isidro filed a motion for reconsideration. Pending resolution of the motion, Celestino died[11] and was thereupon substituted by petitioner Lauro.

Secretary Pagdanganan's successor-in-interest, Secretary Nasser Pangandaman, granted Celestino and Isidro's Motion for Reconsideration and accordingly reversed the Pagdanganan Order by Order of October 24, 2005 (Pangandaman Order) in this wise:[12]

> It must be stressed that when spouses Juan and Amada Ortiz-Luis filed an Application for Retention on 14 July 1999, PARO Rogelio M. Chavez of South Nueva Ecija recommended for the denial of the said Application for Retention pursuant to M.C. No. 18-81 and A.O. No. 4, Series of 1991, considering the fact also that the spouses owned an aggregate landholding of 178.8092 hectares where the 7.1358 hectare subject landholdings from the aggregate 88. 5413 hectares of which are rice and corn land were already covered under OLT pursuant to P.D. No. 27 and E.O. No. 228.
>
> L.O.I. No. 474 clearly finds application to the present case, and, having established that applicants-appellees own other agricultural lands seven (7) hectares or more, there can be no question that they are not entitled to retention under P.D. No. 27.[13]

His motion for reconsideration having been denied, respondent appealed to the Office of the President (OP) which, by Decision of May 9, 2007, reversed and set aside the Pangandaman Order and reinstated the Pagdanganan Order upholding the grant to Amada of her retention rights.

Petitioners thereupon elevated the matter to the Court of Appeals via petition for review, docketed as CA-G.R. SP No. 100439. This petition was consolidated with respondent's above-mentioned petition in CA-G.R. SP No. 97071 (assailing the DARAB Resolution setting aside the cancellation of petitioners' E[mancipation] P[atents].

By the assailed Decision of August 22, 2008, the Court of Appeals, in CA-G.R. SP No. 100439, upheld the Decision of the OP, clarifying, however, that:

> x x x in the implementation of this Decision, the Department of Agrarian Reform through the Municipal Agrarian Reform Office (MARO) is hereby ORDERED to fully accord ARBs Celestino Santiago and Isidro Gutierrez as substituted by Lauro Santiago and Rogelio Gutierrez, respectively, their rights under Section 6 of Republic Act No. 6657 and DAR Administrative Order No. 05-00 as already discussed.[14] (underscoring supplied)

The appellate court dismissed CA-G.R. No. 97071 which respondent did not challenge.

In the present petition, petitioners assail the appellate court's upholding of Amada's right of retention in CA-G.R. SP No. 100439 and citing DAR Administrative Order (AO) No. 05, Series of 2000.[15]

The petition is impressed with merit.

The relevant provision of AO No. 05, Series of 2000 reads:

> SEC. 9. Retention Area - The area allowed to be retained by the landowner shall be as follows:

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> (a) Landowners covered by PD 27 are entitled to retain seven (7) hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under OLT. An owner of tenanted rice and corn lands may not retain those lands under the following cases:
>
> - If he, as of 21 October 1972, owned more than twenty-four (24) hectares of tenanted rice and corn lands; or
>
> - By virtue of Letter of Instruction (LOI) No. 474, if he, as of 21 October 1972, owned less than twenty-four (24) hectares of tenanted rice and corn lands but additionally owned the following:
>
> - other agricultural lands of more than seven (7) hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or
>
> - lands used for residential, commercial, industrial or other urban purposes from which he derives adequate income to support himself and his family.
>
> x x x x
>
> (d) Landowners who filed their applications after the 27 August 1985 deadline and did not comply with LOI No. 41, 45 and 52 shall only be entitled to a maximum of five (5) hectares as retention area. Landowners who failed to qualify to retain under paragraph (a) of this Section shall also be allowed to retain a maximum of five (5) hectares in accordance with RA 6657. (underscoring supplied)

The right of retention, as protected and enshrined in the Constitution, balances the effect of compulsory land acquisition by granting the landowner the right to choose the area to be retained subject to legislative standards.[16]

The legislative standards are set forth in Section 6 of R.A. 6657, thus:

> 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, 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 land have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder, Provided further, That the original homestead grantees or 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.
>
> The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner. Provided, however, That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a lease-holder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention. (underscoring supplied)

Section 6 implies that the sole requirement in the exercise of retention rights is that the area chosen by the landowner must be compact or contiguous. In the recent case of Heirs of Aurelio Reyes v. Garilao,[17] however, the Court held that a landowner's retention rights under R.A. 6657 are restricted by the conditions set forth in Letter of Instruction (LOI) No. 474 issued on October 21, 1976 which reads:

> To: The Secretary of Agrarian Reform.
>
> WHEREAS, last year I ordered that small landowners of tenanted rice/corn lands with areas of less than twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they own other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families;
>
> WHEREAS, the Department of Agrarian Reform found that in the course of implementing my directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families;
>
> WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein.
>
> NOW, THEREFORE, I, PRESIDENT FERDINAND E. MARCOS, President of the Philippines, do hereby order the following:
>
> "1. You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families." (underscoring supplied)

DAR Memorandum Circular No. 11, Series of 1978[18] provided for the implementing guidelines of LOI No. 474:

> Tenanted rice/corn lands with areas of seven hectares or less shall be covered by Operation Land Transfer if those lands belong to the following landowners:
>
> a.) Landowners who own other agricultural lands of more than seven hectares in aggregate areas, whether tenanted or not, cultivated or not, and regardless of the income derived therefrom;
>
> b.) Landowners who own lands used for residential, commercial, industrial or other urban purposes from which they derive an annual gross income of at least five thousand (P5,000.00) pesos. (underscoring supplied)

In Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,[19] the Court held that landowners who have not yet exercised their retention rights under P.D. No. 27 are entitled to "new retention rights provided for by R.A. No. 6657 . . ."[20] In Heirs of Aurelio Reyes v. Garilao, however, the Court held that the limitations under LOI No. 474 still apply to a landowner who filed an application under R.A. 6657.

Amada is thus not entitled to retention rights. As noted by the PARO in recommending denial of her application which was eventually heeded in the Pangandaman Order, while Spouses Ortiz Luis owned aggregate landholdings equivalent to 178.8092 hectares, only a portion thereof â”€ 88.5413 hectares â”€ were placed under OLT. A Certification dated May 7, 2001[21] issued by the Municipal Agrarian Reform Office (MARO) affirms that as of even date, Spouses Ortiz Luis still owned 162.1584 hectares of land in Cabiao, Nueva Ecija.

Letter of Instruction (LOI) No. 474 amended P.D. No. 27 by removing "any right of retention from persons who own other agricultural lands of more than 7 hectares, or lands used for residential, commercial, industrial or other purpose from which they derive adequate income to support themselves and their families."[22]

Section 9 (d) of DAR Administrative Order No. 05, on which the Court of Appeals in part anchored its ruling, is inconsistent with P.D. No. 27, as amended by LOI No. 474, insofar as it removed the limitations to a landowner's

retention rights.

It is well-settled that administrative officials are empowered to promulgate rules and regulations in order to implement a statute. The power, however, is restricted such that an administrative regulation cannot go beyond what is provided in the legislative enactment. It must always be in harmony with the provisions of the law, hence, any resulting discrepancy between the two will always be resolved in favor of the statute.[23]

WHEREFORE, the challenged Court of Appeals Decision dated August 22, 2008 in C.A.-G.R. S.P. No. 100439 is REVERSED and SET ASIDE. The Order dated October 24, 2005 of Agrarian Reform Secretary Nasser Pangandaman is REINSTATED.

SO ORDERED.

Peralta,[*] Bersamin, Villarama, Jr., and Sereno, JJ., concur.

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[1] This petition only pertains to G.R. No. 186184. As per inquiry with the Court's Docket Section, G.R. No. 186988 was inadvertently assigned since the challenged decision of the Court of Appeals stemmed from consolidated cases.

[*] Additional member per Special Order No. 885 dated September 1, 2010 in lieu of Associate Justice Arturo D. Brion.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos with the concurrence of Associate Justices Hakim S. Abdulwahid and Teresita Dy-Liacco Flores, rollo, pp. 17-41.

[3] Otherwise known as "Comprehensive Agrarian Reform Law."

[4] CA rollo (CA-G.R SP. No. 100439), pp. 54-55.

[5] CA rollo (CA-G.R SP. No. 100439), p. 58.

[6] Id. at 58-59.

[7] CA rollo (C.A. - G.R. SP No. 97071), pp. 46-50.

[8] Id. at 49.

[9] DARAB records, p. 196.

[10] CA rollo (CA-G.R SP. No. 100439), pp. 62-67.

[11] Id. at 15.

[12] Id. at 74-81.

[13] Id. at 78-79.

[14] Rollo, p. 40.

[15] REVISED RULES AND PROCEDURES FOR THE EXERCISE OF RETENTION RIGHT BY LANDOWNERS.

[16] Article XIII, Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and

undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental or equity considerations and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

[17] G.R. No. 136466, November 25, 2009, 605 SCRA 294.

[18] Issued on April 21, 1978.

[19] G.R. Nos. 78742, 79310, 79744 and 79777, July 14, 1989, 175 SCRA 343.

[20] Id. at 392

[21] CA rollo, (CA-G.R. S.P. 100439), p. 73.

[22] Vide note 17, at 305, citing Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 362.

[23] Commissioner of Internal Revenue v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160.

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