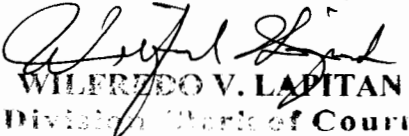


SPECIAL THIRD DIVISION
Agenda of October 19, 2016
Item No. 9

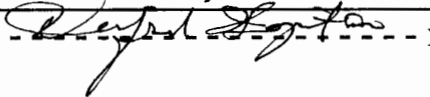
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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

OCT 25 2016

G.R. No. 167952 (*Gonzalo Puyat & Sons, Inc. v. Ruben Alcaide (deceased), substituted by Gloria Alcaide, representative of the Farmer-Beneficiaries*).

Promulgated:

October 19, 2016

x -----  ----- x

DISSENTING OPINION

PERALTA, J.:

Before this Court is a Motion for Reconsideration¹ and Supplement to Respondent's Motion for Reconsideration² filed by respondents of the Decision dated February 1, 2012, which reversed and set aside the Decision dated February 17, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 86069, and reinstated the Order dated August 8, 2003 of the Office of the President in O.P. Case No. 01-K-184.

Respondent seeks reconsideration of the Decision buttressed on the grounds that: (1) the Court erred in ruling that the Order of the Department of Agrarian Reform (DAR), dated June 8, 2001, has not become final and executory; and (2) the Court erred when it ruled that the Municipal Agrarian Reform Officer (MARO) failed to comply with the Pre-ocular inspection requirements of DAR Administrative Order No. 01, Series of 1998.³

With due respect to my colleagues, the Motion for Reconsideration and the Supplement to Respondent's Motion for Reconsideration have no merit and should be denied.

At the outset, it must be stressed that the assailed Decision did not determine whether or not the subject property could be placed under the coverage of the Comprehensive Agrarian Reform Program (CARP). It does not resolve the parties' respective contentions that the subject landholdings are either industrial or agricultural. Rather, the Court found that the

¹ *Rollo*, pp. 487-507.

² *Id.* at 509-545.

³ *Id.* at 488.



administrative process in the acquisition proceedings has not yet run its regular course and that due process was not accorded to petitioner.

As clearly discussed in the assailed Decision of the Court, an examination of the pertinent pleadings and documents reveal that, indeed, petitioner was not properly served with a copy of the Order dated June 8, 2001.

The DAR Secretary confirmed this fact in his Order denying petitioner's motion for reconsideration, dated November 5, 2001, when he categorically stated that petitioner was not furnished a copy of the June 8, 2001 Order, the pertinent part of which reads:

This Office notes of the Certification of B. De Paz, Officer-in-Charge of this Department's Records Management Division stating that petitioner-movant's counsel **was not served a copy of the disputed 8 June 2001 Order** due to change in address. In any case, this matter has been addressed with the service of said Order upon petitioner-movant's counsel at his new address.⁴

From the foregoing, it was clearly admitted that petitioner was not properly served a copy of the disputed Order and this oversight by the DAR was rectified by subsequently serving a copy of the Order upon petitioner's counsel at his new address. This belated service to petitioner's counsel was coursed through a Letter⁵ dated September 4, 2001, from Director Delfin B. Samson of the DAR informing him that the case has already been decided and an order of finality issued. Worthy of note is the statement, "[a]ttached, for reference, are copies thereof being transmitted at your new given address," which, taken together with the statements made by the DAR Secretary in his November 5, 2001 Order, was a manifest indication that petitioner was being served a copy of the June 8, 2001 Order for the first time.

Thus, contrary to the conclusion of the CA, the June 8, 2001 Order of the DAR Secretary has not attained finality. The Office of the President, therefore, validly entertained petitioner's appeal when the DAR Secretary denied its motion for reconsideration.

Consequently, the determination of whether or not petitioner's landholdings are agricultural land is still pending resolution. As correctly found by the Office of the President in its August 8, 2003 Decision, before the DAR could place a piece of land under CARP coverage, there must first

⁴ CA rollo, pp. 54-55. (Emphasis ours)

⁵ Rollo, p. 86.



be a showing that it is agricultural land, *i.e.*, devoted or suitable for agricultural purposes. An essential part in determining its classification is the procedure outlined in DAR Administrative Order No. 01, Series of 2003, or the 2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657.⁶ In the case at bar, it should be stressed that no proper preliminary ocular inspection was conducted as required by the Administrative Order. The importance of which cannot be understated, since it is one of the steps designed to comply with the requirements of administrative due process. As correctly discussed by the Office of the President in its Decision, *viz.* :

In other words, before the MARO sends a Notice of Coverage to the landowner concerned, he must first conduct a preliminary ocular inspection to determine whether or not the property may be covered under CARP. The foregoing undertaking is reiterated in the latest DAR AO No. 01, s. of 2003, entitled “2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657.” Section 1 [1.1] thereof provides that:

“1.1 Commencement by the Municipal Agrarian Reform Officer (MARO) – After determining that a landholding is coverable under the CARP, and upon accomplishment of the Pre-Ocular Inspection Report, the MARO shall prepare the NOC (CARP Form No. 5-1).”
(NOC stands for Notice of Coverage)

Found on the records of this case is a ready-made form Preliminary Ocular Inspection Report (undated) signed by the concerned MARO. Interestingly, however, the check box allotted for the all-important items “Land Condition/Suitability to Agriculture” and “Land Use” was not filled up. There is no separate report on the record detailing the result of the ocular inspection conducted. These circumstances cast serious doubts on whether the MARO actually conducted an on-site ocular inspection of the subject land. Without an ocular inspection, there is no factual basis for the MARO to declare that the subject land is devoted to or suitable for agricultural purposes, more so, issue Notice of Coverage and Notice of Acquisition.

The importance of conducting an ocular inspection cannot be understated. In the event that a piece of land sought to be placed from CARP coverage is later found unsuitable for agricultural purposes, the landowner concerned is entitled to, and the DAR is duty bound to issue, a certificate of exemption pursuant to DAR Memorandum Circular No. 34, s. of 1997, entitled “Issuance of Certificate of Exemption for Lands Subject of Voluntary Offer to Sell (VOS) and Compulsory Acquisition (CA) Found Unsuitable for Agricultural Purposes.”



⁶ Comprehensive Agrarian Reform Law of 1988.

More importantly, the need to conduct ocular inspection to determine initially whether or not the property may be covered under the CARP is one of the steps designed to comply with the requirements of administrative due process. The CARP was not intended to take away property without due process of law (Development Bank of the Philippines vs. Court of Appeals, 262 SCRA 245. [1996]). The exercise of the power of eminent domain requires that due process be observed in the taking of private property. In Roxas & Co., Inc. v. Court of Appeals, 321 SCRA 106 [1999], the Supreme Court nullified the CARP acquisition proceedings because of the DAR's failure to comply with administrative due process of sending Notice of Coverage and Notice of Acquisition of the landowner concerned.

Considering the claim of appellant that the subject land is not agricultural because it is unoccupied and uncultivated, and no agricultural activity is being undertaken thereon, there is a need for the DAR to ascertain whether or not the same may be placed under CARP coverage.⁷

To recapitulate, before a piece of land could be placed under the coverage of the CARP, there must first be a showing that the land is an agricultural land or one devoted or suitable for agricultural purposes. In the instant case, there is no final determination yet whether the subject property may be placed under the coverage of the CARP. Verily, the procedural requirements that would validate the taking of land for the purposes of the CARP were not complied with. To be sure, such steps and procedures are part of due process. No less than the Bill of Rights provides that “[n]o person shall be deprived of life, liberty or property without due process of law.”

As an exercise of police power, the expropriation of private property under Republic Act No. 6657 puts the landowner, not the government, in a situation where the odds are practically against him.⁸ Nevertheless, the Comprehensive Agrarian Reform Law was not intended to take away property without due process of law.⁹ The exercise of the power of eminent domain requires that due process be observed in the taking of private property.¹⁰ Thus, the directive of the Office of the President for the Department of Agrarian Reform to ascertain whether or not petitioner's landholdings may be placed under the CARP was just and proper. In fine, the taking of properties for agrarian reform purposes should not be at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws.¹¹

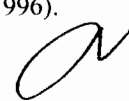
⁷ *Rollo*, pp. 120-121.

⁸ *Land Bank of the Philippines v. Orilla*, 578 Phil. 663, 673 (2008).

⁹ *Development Bank of the Philippines v. Court of Appeals*, 330 Phil. 801, 809 (1996).

¹⁰ *Roxas & Co., Inc. v. Court of Appeals*, 378 Phil. 727, 763 (1999).

¹¹ *Land Bank of the Philippines v. Spouses Chico*, 600 Phil. 272, 291 (2009).



Ultimately, the arguments raised by the respondent in the Motion for Reconsideration and Supplement to Respondent's Motion for Reconsideration were substantially answered and passed upon in the assailed Decision and should, therefore, be **DENIED**.



DIOSDADO M. PERALTA
Associate Justice

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