Republic of the Philippines
SUPREME COURT
Manila

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 28 2017

SPECIAL THIRD DIVISION

GONZALO PUYAT & SONS, INC., Petitioner,	**G.R. No. 167952**
	Present:
- versus -	VELASCO, JR., *J.*, Chairperson, PERALTA, MENDOZA, REYES, and PERLAS-BERNABE, *JJ.*
RUBEN ALCAIDE (deceased), substituted by GLORIA ALCAIDE, representative of the Farmer-Beneficiaries, Respondent.	Promulgated: July 5, 2017

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RESOLUTION

VELASCO, JR., *J.*:

For consideration of the Court is an Omnibus Motion[1] dated November 21, 2016 filed by petitioner Gonzalo Puyat & Sons, Inc. praying that the Resolution dated October 19, 2016 be set aside and reconsidered and that the Decision dated February 1, 2005 of the Court of Appeals in CA-G.R. SP No. 86069 be reinstated or, in the alternative, its Motion for Reconsideration be referred to this Honorable Court En Banc.

An examination of the issues raised in the Motion for Reconsideration readily reveals that the same are a mere rehash of the basic issues raised in the petition and which were already exhaustively passed upon, duly considered and resolved in the assailed Resolution.

In its Omnibus Motion, petitioner once again moves for the reconsideration of this Court's Resolution on the following grounds:

I.

THE DEPARTMENT OF AGRARIAN REFORM'S (DAR) ORDER DATED JUNE 8, 2001 DID NOT ATTAIN FINALITY; AND

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[1] *Rollo*, pp. 651-675.

II.

THE DAR FAILED TO COMPLY WITH THE PRE-OCULAR INSPECTION REQUIREMENTS OF DAR ADMINISTRATIVE ORDER NO. 1 OF 1998, WHICH VIOLATES GPSI'S CONSTITUTIONAL RIGHT TO DUE PROCESS.

Anent the first ground relied upon by petitioner in its Omnibus Motion, We reiterate that this Court, in its Resolution dated October 19, 2016, had already explained that the DAR Order dated June 8, 2001 had attained finality, to wit:

x x x x

As can be derived from the foregoing, the June 8, 2001 Order of the DAR has already attained finality for several reasons. ***First,*** as aptly observed by the CA, petitioner's motion for reconsideration of the June 8, 2001 Order of the DAR was filed only on September 14, 2001, after an order of finality has already been issued by the DAR.

In its Motion to Lift Order of Finality dated August 20, 2001, petitioner's counsel expressly admitted that he received said order only on August 17, 2001.Granting that petitioner's counsel was forthright in making such an admission, then petitioner had only until September 1, 2001 within which to file its motion for reconsideration. Having filed its motion for reconsideration only on September 14, 2001, way beyond the 15-day reglementary period, the order sought to be reconsidered by petitioner has already attained finality.

Second, even if this Court overlooks the admission of petitioner's counsel that he already received the June 8, 2001 Order on August 17, 2001, still, said order was already deemed to have been served upon petitioner when it failed to notify DAR of its counsel's change of address. On this point, the DAR issued an Order dated August 3, 2001, stating, *inter alia*:

> Per certification of the Records Management Division, **the counsel of petitioner has moved out without leaving any forwarding address** and, the petitioner's address is insufficient that it could not be located despite diligent efforts.
>
> WHEREFORE, premises considered, **the Order of June 8, 2001 is deemed to have been served** and let Order of Finality be issued.
>
> SO ORDERED. (emphasis supplied)

Failure of petitioner's counsel to officially notify the DAR of its change of address is an **inexcusable neglect** which binds his client.

x x x x

Considering that petitioner's counsel moved out of its previous address without leaving any forwarding address, the DAR was correct in

> issuing the Order dated August 3, 2001 where it was ruled that "the Order of June 8, 2001 is deemed to have been served" upon petitioner and which correspondingly led to the issuance of the order of finality. To be sure, such omission or neglect on the part of petitioner's counsel is inexcusable and binding upon petitioner.
>
> And ***third,*** this Court is not unaware of the time-honored principle that "actual knowledge" is equivalent to "notice." Thus, when petitioner, through its counsel, filed its Motion to Lift Order of Finality dated August 20, 2001 with the DAR, this indubitably indicates that petitioner and its counsel already had prior "actual knowledge" of the June 8, 2001 Order, which "actual knowledge" is equivalent to "notice" of said order. As a matter of fact, in the said motion, petitioner even quoted the dispositive portion of the June 8, 2001 Order of the DAR. Inevitably, this leads to no other conclusion than that petitioner already had actual knowledge of the denial of its petition at the time said motion had been drafted and/or filed. Since the motion to lift order of finality was drafted and/or filed on August 20, 2001, it can be said that at the latest, petitioner had until September 4, 2001 within which to file its motion for reconsideration. Consequently, the filing of the motion for reconsideration only on September 14, 2001 was certainly way beyond the reglementary period within which to file the same.
>
> Significantly, when a decision becomes final and executory, the same can, and should, no longer be disturbed. x x x x
>
> Considering the foregoing, it was clearly erroneous on the part of the OP to have taken cognizance of the appeal filed by petitioner given that the June 8, 2001 Order of the DAR has already attained finality and, thus, should no longer be disturbed.

With respect to the second ground relied upon by the petitioner, We find it worthy to reiterate the following parts of the above-mentioned Resolution:

> x x x x
>
> The conclusion arrived at by the majority is flawed for two reasons. *First*, the fact that the MARO issued CARP Form No. 3.a, entitled "Preliminary Ocular Inspection Report," belies the majority's conclusion that no preliminary ocular inspection was conducted by the DAR. Strikingly, almost all the other details under said report were filled up or marked. Said report was also signed by the persons who conducted the inspection and attested by Flordeliza DP Del Rosario, the MARO in-charge. In this regard, it should be noted that with the issuance of the Preliminary Ocular Inspection Report, the MARO is presumed to have regularly performed his or her duty of conducting a preliminary ocular inspection, in the absence of any evidence to overcome such presumption.
>
> To my mind, the failure to mark the checkboxes pertaining to "Land Condition/Suitability to Agriculture" and "Land Use" does not constitute as evidence that may overcome the presumption of regularity in the performance of official duty. If at all, such failure merely constitutes inadvertence that should not prejudice the farmers in the instant case.

Interestingly, a perusal of the Preliminary Ocular Inspection Report would reveal that the checkboxes pertaining to the sub-categories under "Land Condition/Suitability to Agriculture" and "Land Use" do not negate the finding that the subject landholding is an agricultural land, which led to the issuance of the notice of coverage over said property. Particularly, the following are the sub-categories and the checkboxes which the MARO failed to mark:

2. Land Condition/Suitability to Agriculture (Check Appropriate Parenthesis)

   ( ) Subject property is presently being cultivated/suitable to agriculture

   ( ) Subject property is presently idle/vacant

x x x x

4. Land Use (Check Appropriate Parenthesis)

   ( ) Sugar land ( ) Unirrigated Riceland

   ( ) Cornland ( ) Irrigated Riceland

   ( ) Others (Specify) _____

Evidently, none of the abovementioned description of land would negate the determination of the DAR that the subject landholding is indeed an agricultural land. Whether the subject landholding is presently being cultivated or not or whether the same is sugarland, cornland, un-irrigated or irrigated riceland is of no moment. The primordial consideration is whether the subject landholding is an agricultural land which falls within the coverage of CARP.

Moreover, any doubt as to the conduct of an ocular inspection and as to the nature and character of the subject landholding should be obviated with the issuance of the Memorandum dated March 3, 2005 addressed to Luis B. Bueno, Jr., Assistant Regional Director for Operations of DAR Regional Office Region IV-A, and prepared by Catalina D. Causaren, Provincial Agrarian Reform Officer (PARO) of Laguna, where it was stated that an ocular inspection has been conducted and that the subject landholding is indeed an agricultural land. xxx

Clearly, MARO's failure to mark any of the checkboxes for "Land Condition/Suitability to Agriculture" and "Land Use" to indicate whether the subject properties were sugarland, cornland, un-irrigated riceland, irrigated riceland, or any other classification of agricultural land leading to the lifting of the notice of coverage over the subject landholding, without prejudice to the conduct of an ocular inspection to determine the classification of the land, is totally uncalled for.

And *second*, petitioner has miserably failed to present any evidence that would support its contention that the subject landholding has already been validly reclassified from "agricultural" to "industrial" land. According to petitioner, the subject landholding has already been reclassified as industrial land by the Sangguniang Bayan of the

> Municipality of Biñan, and that pursuant to such reclassification, petitioner has been assessed, and is paying, realty taxes based on this new classification.
>
> Indeed, the subject landholding had been reclassified under Kapasiyahan Blg. 03-(89) dated January 7, 1989 of the Municipality of Biñan, Laguna. It is worth noting, however, that said reclassification has not been approved by the Housing and Land Use Regulatory Board based on its Certification dated October 16, 1997. x x x x
>
> Neither was there any showing that said reclassification has been authorized by the DAR as required under Section 65 of Republic Act No. 6657 of the *Comprehensive Agrarian Reform Law*.
>
> Aside from the reclassification by the Sangguniang Bayan of the Municipality of Biñan, petitioner also relies on the tax declaration purportedly reclassifying the subject landholding as industrial. However, as petitioner itself admitted, what was indicated in said tax declaration was merely "proposed industrial." Evidently a "proposal" is quite different from "reclassification." Thus, petitioner cannot also rely on said tax declaration to bolster its contention that the subject landholding has already been reclassified from "agricultural" to "industrial."

As aptly explained in the said Resolution, DAR sufficiently complied with the prescribed procedure under DAR Administrative Order No. 1 of 1998, which afforded petitioner its right to due process.

We, therefore, find no cogent reason to deviate from Our earlier Resolution and deem it unnecessary to grant petitioner's prayer to refer the case to this Court's *En Banc*. In *Apo Fruits Corporation and Hijo Plantation, Inc. v. Court of Appeals*,[2] this Court already ruled:

> **x x x x The Supreme Court sitting En Banc is not an appellate court vis-à-vis its Divisions, and it exercises no appellate jurisdiction over the latter. Each division of the Court is considered not a body inferior to the Court en banc, and sits veritably as the Court en banc itself. It bears to stress further that a resolution of the Division denying a party's motion for referral to the Court en banc of any Division case, shall be final and not appealable to the Court en banc.** Since, at this point, the Third Division already twice denied the motion of LBP to refer the present Petition to the Supreme Court en banc, the same must already be deemed final for no more appeal of its denial thereof is available to LBP.[3] (Emphasis supplied)

WHEREFORE, the instant Omnibus Motion is **DENIED**. The Resolution of this Court dated October 19, 2016 is hereby **AFFIRMED *IN TOTO***. No further pleadings will be entertained. Let Entry of Judgment be **ISSUED**.

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[2] G.R. No. 164195, April 30, 2008, 553 SCRA 237.
[3] Id. at 248.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

See Dissenting Opinion

DIOSDADO M. PERALTA
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 28 2017

MARIA LOURDES P. A. SERENO
Chief Justice

SPECIAL THIRD DIVISION
Agenda of July 5, 2017
Item No. 13

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

Promulgated:

July 5, 2017

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DISSENTING OPINION

PERALTA, *J*.:

With due respect to my colleagues, I vote to grant the Omnibus Motion dated November 21, 2016, filed by the petitioner, set aside the Court's Resolution dated October 19, 2016, and reinstate our Decision dated February 1, 2012, or at the very least, refer the resolution of petitioner's Motion for Reconsideration to the Court *En Banc*.

As I have earlier opined, the Order dated June 8, 2001 of then DAR Secretary Hernani A. Braganza, declaring that the subject properties are agricultural land, has not become final and executory because the petitioner was not properly served a copy of the said Order. To recall, petitioner's counsel received a copy of the Order dated June 8, 2001 and the Order of Finality dated August 6, 2001 only when he received the letter of Director Delfin B. Samson on September 10, 2001. The sequence of events which led to petitioner actually receiving a copy of the said Orders was outlined in the Court's earlier Decision, to wit:

> On June 8, 2001, then DAR Secretary Hernani A. Braganza issued an Order in favor of the respondent declaring that the subject properties are agricultural land; thus, falling within the coverage of the CARP, the decretal portion of which reads:
>
> x x x x
>
> On July 24, 2001, respondents filed a Motion for the Issuance of an Order of Finality of Judgment praying that an Order of Finality be issued for petitioner's failure to interpose a motion for reconsideration or an appeal from the order of the DAR Secretary.

On August 3, 2001, the DAR issued an Order granting the motion and directing that an Order of Finality be issued. Consequently, on August 6, 2001, an Order of Finality quoting the dispositive portion of the June 8, 2001 Order of the DAR Secretary was issued.

On August 17, 2001, petitioner received a copy of the Orders dated August 3 and 6, 2001. Thereafter, on August 20, 2001, petitioner filed a Motion to Lift Order of Finality.

On August 28, 2001, petitioner's counsel filed a Manifestation with Urgent *Ex-Parte* Motion for Early Resolution informing the DAR of his new office address and praying that the petition be resolved at the earliest convenient time and that he be furnished copies of dispositions and notices at his new and present address.

In a Letter sent to the new address of petitioner's counsel, dated September 4, 2001, Director Delfin B. Samson of the DAR informed petitioner's counsel that the case has been decided and an order of finality has already been issued, copies of which were forwarded to his last known address. Nevertheless, Director Samson attached copies of the Order dated June 8, 2001 and the Order of Finality dated August 6, 2001 for his reference.

On September 14, 2001, petitioner filed a Motion for Reconsideration with Manifestation, questioning the Orders dated June 8, 2001 and August 6, 2001 and praying that the said Orders be set aside and a new one issued granting the petition.

On September 21, 2001, the DAR issued an Order directing the parties to submit their respective memoranda.

On November 5, 2001, the DAR issued an Order denying the motion for reconsideration, which was received by petitioner's counsel on November 15, 2001.

Aggrieved, petitioner filed an appeal before the Office of the President which was received by the latter on November 21, 2001.[1] The case was docketed as O.P. Case No. 01-K-184.[2]

Consequently, based on the foregoing and the chronological order of events that transpired leading to the filing of petitioner's motion for reconsideration on September 14, 2001, it was apparent that petitioner was not properly served a copy of the disputed Order and that the DAR rectified such failure by subsequently serving a copy of the Order upon petitioner's counsel at his new address.

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1 *Id.*

2 *Gonzalo Puyat & Sons, Inc. v. Alcaide*, 680 Phil. 609, 614-615 (2012). (Emphasis supplied)

This belated notification was made through the Letter[3] of Director Delfin B. Samson, dated September 4, 2001, informing petitioner's counsel that the case has already been decided and an order of finality was already 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 the Order denying petitioner's motion for reconsideration dated November 5, 2001,[4] was proof that petitioner was only furnished a copy of the June 8, 2001 Order when it received the letter of Director Samson.

Hence, contrary to the conclusion of the CA, the June 8, 2001 Order of the DAR Secretary has not attained finality. Petitioner's consequent appeal to the Office of the President, upon denial of its motion for reconsideration, was filed on time and it was proper for the Office of the President to have entertained the appeal.

Accordingly, the determination of whether or not petitioner's landholdings are agricultural land is left to be determined upon proper compliance with the procedure set forth by law. As properly concluded 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 be a showing that it is an agricultural land, *i.e.*, devoted or suitable for agricultural purposes. An important 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*.[5] In the case at bar, it must be underscored that proper preliminary ocular inspection was not conducted as required by the Administrative Order. Being an essential part in the process of subjecting privately-owned land for distribution under the government's agrarian reform program, compliance therewith ensures that administrative due process was accorded to a landowner prior to its taking by the government for distribution to qualified beneficiaries. 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:

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3 *Rollo*, p. 86.
4 *Id.* at 103.
5 Comprehensive Agrarian Reform Law of 1988.

> *"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."

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.[6]

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." Verily, 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 present case, there is still no conclusive determination if the subject property can be placed under the

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6 *Rollo*, pp. 120-121.

coverage of the government's agrarian reform program because the procedural requirements that would validate the taking of land for purposes of the CARP were not fully complied with. To be sure, complying and adherence to the procedures outlined by law are part of due process, which should be accorded to the landowner before being divested of his property.

Verily, being an exercise of police power, the expropriation of private property under RA 6657 puts the landowner, not the government, in a situation where the odds are practically against him.[7] Nevertheless, the Comprehensive Agrarian Reform Law was not intended to take away property without due process of law.[8] The exercise of the power of eminent domain requires that due process be observed in the taking of private property.[9] Therefore, the Order of the Office of the President directing the Department of Agrarian Reform to determine whether or not petitioner's landholdings may be placed under the coverage of the CARP was just and proper.

As a final note, while the agrarian reform program was undertaken primarily for the benefit of our landless farmers, this undertaking should, however, not result in the oppression of landowners. Indeed, although the taking of properties for agrarian reform purposes is a revolutionary kind of expropriation, it should not be carried out at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws.[10]

DIOSDADO M. PERALTA
Associate Justice

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Division Clerk of Court
Third Division

JUL 28 2017

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7 *Land Bank of the Philippines v. Orilla*, 578 Phil. 663, 673 (2008).
8 *Development Bank of the Philippines v. Court of Appeals*, 330 Phil. 801, 809 (1996).
9 *Roxas & Co., Inc. v. Court of Appeals*, 378 Phil. 727, 763 (1999).
10 See *Land Bank of the Philippines v. Lajom*, G.R. Nos. 184982 and 185048, August 20, 2014, 733 SCRA 511, 526; *Land Bank of the Philippines v. Chico*, 600 Phil. 272, 291 (2009).