Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HEIRS OF RAMON ARCE, SR.,
Petitioners,

- versus -

DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY SECRETARY VIRGILIO DELOS REYES,
Respondent.

G.R. No. 228503

Present:

*LEONARDO-DE CASTRO,
Acting Chairperson,
DEL CASTILLO,
JARDELEZA,
TIJAM, and
**GESMUNDO, *JJ.*

Promulgated:

JUL 25 2018

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DECISION

TIJAM, *J.*:

We resolve this petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated August 5, 2016 and the Resolution[3] dated November 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 140755.

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*Designated Acting Chairperson, pursuant to Special Order No. 2559 dated May 11, 2018.
**Designated Acting Member, pursuant to Special Order No. 2560 dated May 11, 2018.
[1] *Rollo* (Vol. 2), pp. 557-584.
[2] Penned by Justice Romeo F. Barza, with the concurrence of Justices Andres B. Reyes, Jr. and Agnes Reyes-Carpio. Id. at 590-600.
[3] Id. at 601-603.

The Antecedent Facts

As early as the 1950s, even before the advent of Republic Act (RA) No. 6657,[4] otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988, through which the State implements its policy for a Comprehensive Agrarian Reform Program (CARP), the Heirs of Ramon Arce, Sr., namely, Eulalio Arce, Lorenza Arce, Ramon Arce, Jr., Mauro Arce and Esperanza Arce, (petitioners) were registered owners of a parcel of land located in Brgy. Macabud, Montalban, Rizal with an area of 76.39 hectares (ha.), covered by Transfer Certificates of Title Nos. T-442673, 442674, 442675, and 442676 (referred to as subject lands). The subject lands were utilized as pasture lands for the petitioners' cattle, i.e., buffaloes, carabaos and goats (hereinafter referred to as livestock), for milk and dairy production in the manufacture of Selecta Carabao's Milk and Ice Cream (now Arce Dairy Ice Cream).[5] The farming method adopted by the petitioners was known as "feedlot operation" where the animals were confined and fed on a cut-and-carry basis or zero grazing.[6]

Sometime in 1998, the Philippine Carabao Center-Department of Agriculture (PCC-DA) recommended that petitioners' livestock be transferred to avoid the liver fluke infestation in the area. In compliance with PCC-DA's recommendation, petitioners transferred the older and milking livestock, which are susceptible to infection, to their feedlot facility located in Novaliches, Quezon City (Novaliches property). The younger cattle, which are not susceptible to the fluke infection, remained in the subject lands.[7]

Notwithstanding the transfer of some of their livestock, petitioners continued to plant and grow napier grass in the subject lands. The napier grass were then cut, carried and used as fodder for their livestock which were maintained both in the subject lands and in the Novaliches property.[8]

On August 6, 2008, the Provincial Agrarian Reform Officer (PARO) of Teresa, Rizal issued a Notice of Coverage (NOC)[9] over the subject lands under the CARP. In response, petitioners sent a letter[10] dated October 17, 2008 to the PARO of DAR Region IV-A, seeking to exclude and exempt the subject lands from the NOC considering that it has been utilized for livestock raising even before the enactment of the CARP. To prove this, the

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[4] Effective June 15, 1988.
[5] Id. at 557-558.
[6] Id. at 1153.
[7] Id. at 558.
[8] Id.
[9] Id. at 591, 607 and 1009.
[10] Id. at 1010.

petitioners enclosed documents,[11] among them were: Certificates of Ownership of Large Cattle registered under the name of Mauro Arce; Photocopy of Livestock Inventory as of December 1987 stating that they have 102 registered cattle, 125 unregistered cattle and 212 heads of goats; Current photos taken on September 17, 2008 of the Arce livestock farm, feeding, and milking techniques, the milk processing and ice cream making machinery at the Arcefoods Plant on Selecta Drive in Balintawak, Quezon City; Current (2008) Certificates of Ownership of 104 heads of cattle under the name of Mauro Arce/Selarce Farms, Inc; and, Photocopy of Livestock Inventory in the Year 2008 showing 150 heads of large cattle. The PARO of DAR Region IV-A considered the letter as a Petition for Exclusion from CARP Coverage.[12]

On December 2, 2008, Municipal Agrarian Reform Officer (MARO) of DAR Region IV-A, issued a Report and Recommendation and recommended the grant of the Petition for Exclusion from CARP Coverage. The Report stated, among others, that:

> xxx the method of farming practiced by the Arce Farm is by feed rearing. This means that the animals are not freely grazing in the open field but instead are confined separately in a feedlot where they are fed and milked; xxx pasture grass of 76 hectares subject landholdings serve as food production area to provide the feed requirements of the animals reared in a separate area; xxx the existence of large cattle is evidently proven by Certificates of Ownership of Large Cattle presented by the landowners, the existence of such cover the years 1981 to present; xxx inspection conducted at the feedlot facility xxx at Novaliches xxx there exists 7 buildings where different livestock are fed/housed. xxx.[13]

> xxx the clear scenario xxx is that (the subject property) has been a livestock farm and it continues to exist until now under the exclusive operation and management of its owner, regardless of the method (traditional or modern) of farming xxx.[14]

On March 4, 2009, the Legal Division of the DAR Provincial Office (DARPO) issued an Evaluation Report and Recommendation and likewise recommended the grant of the Petition for Exclusion from CARP Coverage. The Evaluation Report stated, among others, that:

> xxx the subject properties, which are undulating in topography and predominantly more than 18% slope are registered in the names of Heirs of Ramon Arce, Sr., and is not devoted to any agricultural activity by any person, but actually and directly devoted to the production of napier grass for feeding purposes by Selarce Farms, owned by the applicant Heirs;[15] xxx there were employees of the applicant who were actually gathering

[11] Id. at 611-612.
[12] Id. at 563 and 1010.
[13] Id. at 563.
[14] Id. at 612-613.
[15] Id. at 564.

> napier grasses on the subject properties to meet the daily needs of the cattles, buffaloes and goats in the Feed and Fattening Facility which they declared that they used to cut and gather napier grass at the volume of 6 tons of napier grasses daily;[16] xxx the aggregate area of the property of 76.3964 hectares has been actually, directly, exclusively devoted to livestock (cattle, buffaloes/*carabaos*, and goats) for milk and dairy production since the 1960s, or long before the advent of the CARP Law in 1988;[17] xxx the applicant has fully complied with all the requirements under DAR A.O. No. 7, Series of 2008 and A.O. No. 9, Series of 1993;[18] and xxx the confinement of cattles, buffalos/carabaos and goats in a separate place other than the herein subject properties are but necessary for health and sanitary reasons, there is the chain of connection of the utilization of the livestocks exclusively and directly from farm to livestock facility; xxx[19]

On September 30, 2009, the petitioners filed a Manifestation to Lift Notice of Coverage with the PARO, which was treated as a petition and docketed as Case No. A-0400-0250-09 of DAR Regional Office IV-A with the PARO.[20] This was anchored on the ground that petitioners were in the business of livestock raising, and were using the subject lands as pasture lands for their buffaloes which produce the carabao milk for their ice cream products. The petitioners claimed that the NOC is contrary to the 1987 Philippine Constitution which provides that livestock farms are not among those described as agricultural lands subject to land reform.

On November 20, 2009, Rommel Bote, Attorney II of DARPO, submitted a Memorandum addressed to DARPO's Chief of Legal Divsion, indicating therein that the petition is meritorious and thus, recommending the lifting of the NOC upon the subject lands.[21]

Based on these findings, DAR Regional Director Antonio G. Evangelista (RD Evangelista) issued an Order[22] dated December 22, 2009, granting the Petition to Lift Notice of Coverage, the dispositive portion of which reads, thus:

> WHEREFORE, premises considered, the Petition for Lifting of Notice of Coverage filed by the Heirs of Ramon S. Arce, Sr. represented by Rodolfo S. Arce, namely: 1. Eulalio Arce, 2. Lorenza Arce, 3. Ramon Arce, Jr., 4. Mauro Arce, and 5. Esperanza Arce involving four (4) parcels of land covered by TCT Nos. 442673 (17.3645 hectares), 442674 (40.5424 hectares), 442675 (15.6485 hectares), and 442676 (2.8410 hectares), with an aggregate area of 76.3964 located at Brgy. Macabuid, Rodriguez, Rizal is hereby **GRANTED**.[23]

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[16] Id. at 565.
[17] Id. at 613.
[18] Id.
[19] Id. at 565.
[20] Id. at 607.
[21] Id. at 608.
[22] Id. at 671-675.
[23] Id. at 675.

On April 29, 2011, RD Evangelista issued a Certification,[24] stating that the Order dated December 22, 2009 had become final and executory, considering that no motion for reconsideration and/or appeal was filed.

Meanwhile, Joevin M. Ucag (Ucag) of DAR Region IV-A submitted an Ocular Inspection Report dated May 12, 2011 to the MARO, stating that "there was no livestock/cattle found in the area of Macabud, Rodriguez, Rizal".[25]

Subsequently, the Samahan ng mga Magsasakang Nagkakaisa sa Sitio Calumpit (SAMANACA), through their leaders, sent letters dated March 2, 2011 and June 14, 2011, to DAR Secretary Virgilio R. De Los Reyes (Secretary De Los Reyes), seeking to annul RD Evangelista's Order dated December 22, 2009. The letters were treated as a Petition to Annul an Invalid Resolution by the Regional Director.[26]

On November 8, 2011, petitioners filed their Comment and countered that RD Evangelista's Order dated December 22, 2009 had become final and executory and that the subject lands were within the retention limit. Thus, they prayed for the dismissal of SAMANACA's Letters-Petition.[27]

On December 7, 2012, DAR Secretary De Los Reyes issued an Order,[28] denying petitioners' Petition for Exclusion from CARP Coverage. The DAR ruled, among others, that while it is true that the subject lands had been a livestock farm prior to the CARP's enactment, the petitioners failed to prove that the said lands are actually, directly, exclusively and continuously used for livestock activity up to the present. According to the DAR, there were no longer cattle and livestock facilities within the subject lands.

Petitioners filed a Motion for Reconsideration (with Motion for Ocular Inspection)[29] dated January 15, 2013; a Supplemental Motion for Reconsideration[30] dated January 28, 2013; and, a Second Supplemental Motion for Reconsideration[31] dated March 18, 2013 of the DAR's Order. In these motions, the petitioners, alleged, among others that their right to due process were violated when the alleged ocular inspection on the subject lands was conducted by Ucag without prior notice to them, thereby depriving them the right to refute such findings. They averred that Ucag never entered the gated premises of the subject lands and that, had there

[24] Id. at 670.
[25] Id. at 614.
[26] Id. at 608-609.
[27] Id. at 566 and 609.
[28] Id. at 604-621.
[29] Id. at 648-669.
[30] Id. at 681-691.
[31] Id. at 696-702.

been an inspection, he must have conducted the same only from outside the premises. Petitioners likewise averred that it is unlikely that Ucag could have spotted the livestock therein considering that the same were lying on a sloping plain, combined with the tall napier grasses.

Thereafter, petitioners filed an Appeal Memorandum[32] with the Office of the President (OP) and averred, among others, as follows: (1) DAR Secretary De Los Reyes erred in reversing RD Evangelista's Order dated December 22, 2009 after it already attained finality; (2) the subject lands were presently and exclusively utilized for livestock raising; (3) only a number of livestock (older and milking) were transferred from the subject lands to the Novaliches facility at the instance of the PCC-DA, while the younger livestock remained in the subject lands; and, (4) SAMANACA has no legal standing to assail RD Evangelista's Order dated December 22, 2009 since they were never in possession of the subject lands and they were not tenants, farmers and tillers thereon.

On April 29, 2015, the OP rendered its Decision,[33] and ruled that petitioners' subject lands were exempted from the coverage of CARP. The dispositive portion of its decision reads, thus:

> WHEREFORE, premises considered, the Order dated 7 December 2012 of the Secretary of the Department of Agrarian Reform is hereby REVERSED AND SET ASIDE. The petition for exclusion from CARP coverage with respect to the 76.3964 hectares of lands, located in Brgy. Macabud, Montalban, Rizal, owned by the Heirs of Ramon Arce, is hereby GRANTED.
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> SO ORDERED.[34]

The DAR filed a Petition for Review[35] with the CA and prayed for the reversal of the OP's April 29, 2015 Decision. The CA granted the same in its assailed Decision[36] dated August 5, 2016. The CA held, among others, that petitioners failed to refute or deny that since 1998, there were no longer cattle in the subject lands and that the same were no longer used as grazing lands.

Their Motion for Reconsideration,[37] having been denied in the CA's November 28, 2016 Resolution,[38] petitioners filed this instant petition, anchored on the following grounds:

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[32] Id. at 704-729.
[33] Id. at 772-776.
[34] Id. at 776.
[35] Id. at 777-794.
[36] Id. at 590-600
[37] Id. at 1081-1088.
[38] Id. at 601-602.

A.

THE ASSAILED DECISION AND RESOLUTION WERE NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT CONSIDERING THAT THE COURT OF APPEALS ERRONEOUSLY UPHELD THE FINDINGS OF FACTS OF THE DAR SECRETARY WHICH WERE BASED ON PROCEEDINGS UNDERTAKEN IN BLATANT VIOLATION OF PETITIONERS' BASIC RIGHTS TO ADMINISTRATIVE DUE PROCESS AND DESPITE PETITIONERS' PRESENTATION OF SUBSTANTIAL EVIDENCE SHOWING PRESENCE OF LIVESTOCK IN THE SUBJECT PROPERTIES.

B.

THE ASSAILED DECISION AND RESOLUTION WERE NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT CONSIDERING THAT THE COURT OF APPEALS ERRONEOUSLY RULED THAT THE SUBJECT PROPERTIES ARE NO LONGER ACTUALLY, DIRECTLY, AND EXCLUSIVELY USED FOR LIVESTOCK RAISING PURPOSES DESPITE THE FACT THAT THE SUBJECT PROPERTIES ARE UTILIZED TO SUSTAIN THE FEEDLOT OPERATIONS/INTENSIVE SYSTEM OF FARMING OF PETITIONERS.

C.

THE ASSAILED DECISION AND RESOLUTION WERE NOT MADE IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT CONSIDERING THAT THE COURT OF APPEALS HAD ERRONEOUSLY GIVEN DUE COURSE TO RESPONDENT'S PETITION FOR REVIEW DESPITE THE NON-OBSERVANCE OF THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.[39]

Meanwhile, on March 20, 2018, SAMANACA filed an *Ex-parte* Motion for Leave (for Intervention and for Admission of Comment),[40] arguing that its members have already been identified as qualified beneficiaries of the subject lands and hence, has the right to participate and air its side of the controversy.

This Court's Ruling

The petition is granted.

This case falls under the recognized exceptions to the rule that this Court is not a trier of facts –

As a general rule, factual issues are not within the province of this Court. However, if the factual findings of the government agency and the

[39] Id. at 569-570.

[40] Id. at 1162-1164.

CA are conflicting,[41] or the evidence that was misapprehended was of such nature as to compel a contrary conclusion if properly appreciated,[42] the reviewing court may delve into the records and examine for itself the questioned findings.

Here, considering the disparity between the findings of fact of the OP, on the one hand, and that of the DAR Secretary and the CA on the other hand, with respect to the following issues on whether the petitioners' subject lands were used for livestock raising on or before June 15, 1988; and, whether there were still livestock grazing in the subject lands up to the present, We are constrained to re-examine the facts of this case based on the evidence presented by both parties.

The subject lands are devoted to livestock raising; thus, they remain to be exempted from the coverage of the CARP –

Contrary to the rulings of the DAR and the CA, the subject lands are exempted from the coverage of the CARP.

The CARP shall cover all public and private agricultural lands, including other lands of the public domain suitable for agriculture, regardless of tenurial arrangement and commodity produced.[43] Section 3(c) thereof defines "agricultural land" as land devoted to agricultural activity and not classified as mineral, forest, residential, commercial or industrial land.[44]

In *Luz Farms v. The Honorable Secretary of the Department of Agrarian Reform*,[45] the Court declared unconstitutional the CARL provisions[46] that included lands devoted to livestock under the coverage of the CARP. The transcripts of the deliberations of the Constitutional Commission of 1986 on the meaning of the word "agricultural" showed that ***it was never the intention of the framers of the Constitution to include the***

[41] *Department of Agrarian Reform v. Estate of Pureza Herrera*, 501 Phil. 413-428 (2005).

[42] *Andaya v. NLRC*, 502 Phil. 151, 157 (2005).

[43] Section 4 of RA 6657 provides:

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:(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 of 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; xxx

[44] Section 3(c) of RA 6657.

[45] 270 Phil. 151 (1990).

[46] CARL, Sections 3(b), 11, 13 and 32.

livestock and poultry ***industry in the coverage of the constitutionally mandated agrarian reform program of the government.***[47] (Emphasis ours)

Reiterating Our ruling in the *Luz Farms* case, We held in *Natalia Realty and Estate Developers and Investors Corp. Inc. v. Department of Agrarian Reform Sec. Benjamin T. Leong and Dir. Wilfredo Leano, DAR-REGION IV*,[48] that industrial, commercial and residential lands are not covered by the CARL. In the same case, We stressed that while Section 4 of R.A. No. 6657 provides that the CARL shall cover all public and private agricultural lands, the term "agricultural land" does not include lands classified as mineral, forest, residential, commercial or industrial.

Guided by the foregoing, lands devoted to the raising of livestock, poultry and swine have been classified as industrial, not agricultural, and thus, exempted from agrarian reform.[49]

A thorough review of the records reveals that there is substantial evidence to show that the entirety of the petitioners' subject lands were devoted to livestock production since the 1950s, *i.e.*, even before the enactment of the CARL on June 15, 1988. No less than the DAR, who has the competence to determine the status of the land,[50] acknowledged this when it held that:

> It cannot be denied that the Arce properties [subject lands] had been a livestock farm. The documentary evidence presented by the Applicants [petitioners] established the existence of livestock activity in the landholding prior (sic) the enactment of the CARL on 15 June 1988, such as Certificates of Ownership of Large Cattle issued from 1981 to 1988, Certification from the Philippine Carabao Center attesting that the Selarce Farm is a cooperator of the Center as early as 1982, and the Technical Paper published by the Philippine Council for Agriculture and Resources Research featuring the Arce Farm in the "Philippines Recommends for Carabao Production 1978." These documents were positively affirmed by DARPO personnel in their investigation report and recommending for the exclusion of the said landholdings.[51]

Indeed, the subject lands are utilized for livestock raising, and as such, classified as industrial, and not agricultural lands. Thus, they are exempted from agrarian reform.

This notwithstanding, the DAR denied petitioners' Petition for Exclusion from CARP Coverage. The DAR ruled that the subject lands were no longer being utilized for livestock purposes since there were no longer

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[47] *Luz Farms v. Sec. Of DAR*, supra note 45, id. at 158.
[48] 296-A Phil. 271, 278 (1993).
[49] *Department of Agrarian Reform v. Court of Appeals, et al.*, 718 Phil. 232, 247 (2013).
[50] Supra at 249.
[51] *Rollo* (Vol. 2), pp. 614-615.

livestock grazing in the area of Brgy. Macabud, Rizal, based on an Ocular Inspection Report conducted by Ucag of DAR Region IV-A. The CA, relying on the DAR's pronouncement and in the case of *Department of Agrarian Reform v. Vicente K. Uy*,[52] pointed out that the status of the subject lands as an industrial land was not maintained because these were no longer exclusively, directly and actually devoted to livestock activity up to the present.

We differ.

First, the records disclosed that sometime in 1998, the PCC-DA recommended that the livestock in the subject lands be transferred to petitioners' Novaliches property due to a fluke infection in Macabud, Montalban, Rizal. While the petitioners followed the recommendation and transferred the older and milking livestock to the Novaliches property, the younger cattle, which were not susceptible to the fluke infection, remained in the subject lands.[53] Petitioners proved this by the submission, among others, of photographs of livestock freely grazing in the subject lands. Contrary to the DAR's and CA's findings, the transfer of some of petitioners' livestock to the Novaliches property, did not detract from the usage of the subject lands which was for the breeding of livestock. As correctly observed by the OP:

> xxx. The confinement of the cattles, buffalos, carabaos and goats in a separate facility other than the subject landholdings is of no moment since ***the transfer, as established, was necessary for health and sanitary considerations having been recommended*** by the Executive Director of the Philippine Carabao Center of the Department of Agriculture (PCC-DA). Such ***transfer is temporary in nature and did not divert the use thereof from the purpose of livestock farming***. Thus, the DAR Secretay committed an error in immediately considering the subject properties as agricultural. xxx[54] (Emphasis ours)

Second, upon petitioners' filing of the Petition for Exclusion from CARP Coverage, both the MARO and the DARPO issued their respective reports on the inspection over the subject lands and recommended that the the petition be granted for being meritorious.

As the primary official in charge of investigating the land sought to be exempted as livestock land, the MARO's findings on the use and nature of the land, if supported by substantial evidence on record, are to be accorded greater weight, if not finality.[55]

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[52] 544 Phil. 308 (2007).
[53] *Rollo* (Vol.2), p. 572.
[54] Id. at 774.
[55] *Rep. of the Phils. v. Salvador N. Lopez Agri-Business Corp.*, 654 Phil. 44, 58 (2011).

In its ocular inspection, the MARO found, among others, that the subject lands were devoted for livestock farm up to the present and that there were large cattle thereon as proven by Certificates of Ownership of Large Cattle presented by the petitioners, the existence of such, cover the years 1981 to the present. The DARPO's report was more explicit in that it stated that the subject lands have been actually, directly and exclusively utilized for livestock raising long before the advent of the CARL.

Unfortunately, the DAR and the CA gave little weight to these reports. Instead, they relied on the ocular inspection conducted by Ucag, to the effect that there were no longer livestock grazing in the area of Macabud, Rodriguez, Rizal.

The reliance is erroneous.

For one thing, Ucag's ocular inspection was done without the knowledge and prior notice to the petitioners. Aside from the fact that the Ocular Inspection Report did not specify the area over which the alleged inspection was made, there was dearth of evidence that Ucag was permitted to enter the gated premises of the subject lands. Had there been indeed an inspection, the same must have been conducted only from outside the premises. As such, it is likely that Ucag failed to spot the livestock therein. As pointed out by the petitioners, there could have no vantage point from where Ucag could fully inspect the subject lands considering that the same were lying on a sloping plain, combined with the tall napier grasses, which could have easily hidden the livestock. For another thing, the records did not show that petitioners were given the opportunity to submit their respective sets of evidence against Ucag's Ocular Inspection Report so as to be duly considered and taken into account by the DAR in arriving at its ruling.

Third, the subject lands remained to be non-agricultural, despite the fact that they were being used, not only as a grazing pasture, but as a production area where napier grass were grown to supply food for the livestock maintained in the subject lands and in the Novaliches property.

"Feedlot operation", the method adopted by the petitioners in rearing their livestock, was recognized by the DAR, in Administrative Order No. 01, Series of 2004 (AO No. 01-04).[56] As explained by the MARO, this means that the animals were not freely grazing in the open field but instead were confined separately in a feedlot where they were fed and milked.

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[56] Section 2. *Definition of Terms:*

xxx 2.26. *Feedlot Operation (Intensive System)* is a type of cattle raising where the animals are confined and are fed on a cut-and-carry basis or zero grazing. A good pasture is developed and maintained to ensure the regular supply of feeds. The feedlot operation mostly involves animals at their finishing stage two to three (2-3) years of age.

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Indeed, the subject lands have been utilized as an exclusive source for the food requirements of all the petitioners' livestock, *i.e.*, those occupying the subject lands and those that were transferred to the Novaliches facility. Without the subject lands where napier grass were grown, petitioners could not have raised the livestock which were necessary in breeding their livestock.

Contrary to the DAR's averment,[57] the mere fact that petitioners were sowing napier grass in the subject lands did not automatically make the same an agricultural land so as to be covered under the CARP. It would be surprising if there were no napier grass on the subject lands considering that the same has been used as a grazing pasture for petitioners' livestock. Also, the DAR did not adduce any proof to show that the napier grass were planted and used for agricultural business. There can be no other presumption, other than that the napier grass was used to augment the supply of fodder for the petitioners' livestock which was in line with petitioners' method of farming. As aptly observed by the OP:

> xxx the records are bereft of any evidence showing that there are agricultural activities in the subject area. To be covered, private lands should be devoted to or suitable for agriculture and/or presently occupied and tilled by farmers. What is evident, however, is that the landholdings are covered and planted with napier grass which is gathered by employees of appellants to meet the daily needs of the cattle, buffalos and goats that were transferred to Novaliches, instead of just allowing the said livestock to graze in the area at the risk of getting diseases like liver fluke infections as warned by the Executive Director of PCC-DA. Evidently, the subject properties have always been maintained as a pasture land only with napier grass.
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> xxx the records are likewise bereft of any evidence showing that the land is suitable for agriculture. What is clear in the ocular inspection of the MARO and the DARPO Legal is that the subject landholdings are undulating in topography and predominantly with a slope of more than 18 percent. As provided in the CARP Law, all lands with 18% slope and over shall be exempt from the coverage of the said law. xxx the Certification dated 23 June 2014 issued by the Bureau of Soils and Water Management of the Department of Agriculture and the finding in the Highlight of Accomplishment by Bureau of Soils and Water Management of the Department of Agriculture dated 18 June 2014, revealed that the subject land is idled, underutilized, and not suitable for agriculture.[58]

Fourth, the CA misread Our pronouncement in the *Uy* case. On page 8 of its decision, the CA cited the following passages from the *Uy* case, thus:

> xxx the law only requires that for exemption of CARP to apply, the subject landholding should be devoted to cattle-raising as of June 15, 1988 is not entirely correct, for the law requires that it be exclusively, directly

[57] *Rollo* (Vol. 2), p. 1131.
[58] Id. at 774-775.

> and actually used for livestock as of June 15, 1988. Under A.O. No. 9, Series of 1993, two conditions must be established: 1) it must be shown that the subject landholding was EXCLUSIVELY, DIRECTLY AND ACTUALLY used for livestock, poultry or swine on or before June 15, 1988; and, 2) the farm must satisfy the ratios of land to livestock.[59]

The aforecited paragraph, however, was merely a part of the "facts", and not indicated in the "decision" portion of the *Uy* case. We did not declare in the *Uy* case that the two conditions set forth in A.O. No. 09, Series of 1993 (quoted above), should first be established in order that a land be excluded from the coverage of the CARP. Contrariwise, in the *Uy* case, We held that we have already strucked down A.O. No. 09-93 in the *Department of Agrarian Reform v. Sutton*.[60] for being unconstitutional. Thus, We explained:

> xxx the threshold substantive issue is the validity and implementation of DAR Administrative Order No. 9, Series of 1993 on the respondent's landholding of more or less 472 ha. in light of the ruling of this Court in *Department of Agrarian Reform v. Sutton*, where DAR Administrative Order No. 9, Series of 1993 was declared unconstitutional.[61]
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> xxx *to be valid, administrative rules and regulations* must be issued by authority of law and *must not contravene the provisions of the Constitution.* The rule-making power of an administrative agency may not be used to abridge the authority given to it by Congress or by the Constitution. *Nor can it be used to enlarge the power of the administrative agency beyond the scope intended.* xxx.[62]
>
> xxx we find that the impugned A.O. is invalid as it contravenes the Constitution. The A.O. sought to regulate livestock farms by including them in the coverage of agrarian reform and prescribing a maximum retention limit for their ownership. However, *the deliberations of the 1987 Constitutional Commission show a clear intent to exclude, inter alia, all lands exclusively devoted to livestock, swine and poultry-raising.* The Court clarified in the *Luz Farms* case that livestock, swine and poultry-raising are industrial activities and do not fall within the definition of "agriculture" or "agricultural activity." The raising of livestock, swine and poultry is different from crop or tree farming. It is an industrial, not an agricultural, activity. xxx.[63]

In the *Sutton* case, We discussed that what A.O. No. 09-93 sought to address were the reports that some unscrupulous landowners have been converting their agricultural lands to livestock farms to avoid their coverage from the agrarian reform. In that case, as well as in the present one, the odious scenario which A.O. No. 09-93 seeks to prevent is clearly non-

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[59] Id. at 597.
[60] 510 Phil. 177 (2005).
[61] *DAR v. Uy,* supra note 52, id. at 330.
[62] *DAR v. Sutton,* supra note 60, id. at 183.
[63] Id.

existent. Recall that petitioners acquired their landholdings as early as the 1950s. Since then, they have long been utilizing the subject lands covered by napier grass for the raising of their livestock. Evidently, there was no evidence on record that petitioners have just recently engaged in or converted to the raising of livestock after the enactment of the CARL that may lead to the suspicion that petitioners had the intention of evading its coverage. Stated differently, the usage of the subject lands for livestock raising, has been a going concern by the petitioners even before the passage of the CARL.

Lastly, We stress that what the CARL prohibits is the conversion of agricultural lands for non-agricultural purposes after the effectivity of the CARL.[64] Here, there was no showing that the subject lands which were devoted for livestock raising prior to the CARL, had been converted to an agricultural land, after its passage. Thus, the petitioners' subject lands remained to be non-agricultural, *i.e.,* devoted to livestock raising, and thus, excluded from the coverage of the CARP.

SAMANACA's Motion for Leave (for Intervention and for Admission of Comment) cannot be given due course –

Intervention under Rule 19 of the Rules of Court is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings.[65]

In *Hon. Executive Secretary, Commissioner of Custom and the District Collector of Customs of the Port of Subic v. Northeast Freight Forwarders, Inc.*,[66] We explained the rationale of this remedy, in this wise:

> Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. However, notwithstanding the

[64] *Department of Agrarian Reform v. Sutton*, supra note 60.
[65] *Hi-Tone Marketing Corp. v. Baikal Realty Corporation*, 480 Phil. 545 (2004).
[66] 600 Phil. 789 (2009).

> presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding."[67]

Keeping these factors in mind, SAMANACA may not be allowed to intervene.

SAMANACA's allegation that its members have a substantial interest in the outcome of the present case, since they have been identified to be the qualified beneficiaries of the subject lands is not sufficient. The records show that the members of SAMANACA were never in possession of the subject lands nor were they, at one time or another, tenants, farmers, or tillers thereon. Likewise, SAMANACA failed to substantiate their claim that they have been identified as qualified beneficiaries of the subject lands under the CARP. No shred of evidence was ever submitted to prove this claim.

Clearly, SAMANACA's assertions do not amount to a direct and immediate legal interest, so much so that they will either gain or lose by the direct legal operation of the court's judgment. At most, their interest, if any, is characterized as inchoate, contingent and expectant – which could not have justified intervention.

After an assiduous review of the records of this case, this Court concludes that petitioners' subject lands are beyond the coverage of the agrarian reform program.

WHEREFORE, premises considered, the August 5, 2016 Decision and the November 28, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 140755, are **REVERSED** and **SET ASIDE**, and a new one entered upholding the exemption of the subject lands from the coverage of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

[67] Id. at 799.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

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

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

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

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R. A. 296,
The Judiciary Act of 1948, as amended)