

SPECIAL SECOND DIVISION

[G.R. No. 171836, October 02, 2017]

DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY HON. NASSER C. PANGANDAMAN, IN HIS CAPACITY AS DAR-OIC SECRETARY, PETITIONER, VS. SUSIE IRENE GALLE, RESPONDENT.

[G.R. No. 195213]

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. SUSIE IRENE GALLE, SUBSTITUTED BY HER HEIRS, NAMELY HANS PETER, CARL OTTO, FRITZ WALTER, AND GEORGE ALAN, ALL SURNAMED RIETH, RESPONDENTS.

R E S O L U T I O N

DEL CASTILLO, J.:

On August 11, 2014, the Court issued a Decision^[1] in the instant case, decreeing as follows:

WHEREFORE, the Court resolves as follows:

1. The Petition in G.R. No. 171836 is DENIED. The assailed September 23, 2004 Decision and February 22, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 80678 are AFFIRMED;
2. The Petition in G.R. No. 195213 is GRANTED IN PART. The assailed July 27, 2010 Consolidated Decision and January 19, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 00761-MIN and CA-G.R. SP No. 00778-MIN are REVERSED and SET ASIDE;
3. Civil Case No. 4436-2K3 is REMANDED to the Court of Appeals, which is directed to receive evidence and immediately determine the just compensation due to Susie Irene Galle's estate/heirs - including all applicable damages, attorney's fees and costs, if any - in accordance with this Decision, taking into consideration Section 17 of Republic Act No. 6657, the applicable Department of Agrarian Reform Administrative Orders, including Administrative Order No. 6, Series of 1992, as amended by Administrative Order No. 11, Series of 1994, and prevailing jurisprudence. The Court of Appeals is further directed to conclude the proceedings and submit to this Court a report on its findings and recommendations within 90 days from notice of this Decision; and
4. The petitioner Land Bank of the Philippines is ORDERED to PAY Susie Irene Galle's estate or heirs - herein respondents - the amount of SEVEN

MILLION FIVE HUNDRED THIRTY FOUR THOUSAND SIXTY THREE AND 91/100 PESOS (P7,534,063.91), in cash, immediately upon receipt of this Decision.

SO ORDERED.^[2]

On September 22, 2014, petitioner Land Bank of the Philippines (LBP) filed a Motion for Reconsideration^[3] arguing that it was improper for this Court to declare null and void the October 15, 1996 Decision in DARAB Case No. JC-RIX-ZAMBO-0011-CO, which fixed just compensation on the basis of outdated 1991 data instead of valuation criteria as of 1993, the time of taking of the subject property; that said October 15, 1996 DARAB Decision is already final and executory and thus beyond judicial review, even by this Court; and that even if it were to be assumed that said DARAB Decision is null and void, it nonetheless cannot be the subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court.

Petitioner Department of Agrarian Reform (DAR) likewise filed a Motion for Reconsideration^[4] insisting that the October 15, 1996 DARAB Decision is correct; that the 1991 valuation is accurate since the actual taking of Galle's property for purposes of fixing just compensation may be said to have occurred at that time when the Notice of Coverage was served upon Galle; that a property valuation discrepancy of three years is not significant in the determination of just compensation due to the owner of expropriated property; and that the October 15, 1996 DARAB Decision, being correct and having attained finality, shall prevail as regards the amount of just compensation to be paid for Galle's expropriated property.

On September 15, 2015, the Court of Appeals (CA) submitted its Report and Recommendation,^[5] stating as follows:

Simply put, in the crucial choice of the applicable formula for determination of the land value of the subject properties, We need to ascertain whether the three (3) factors are present, relevant, and applicable.

The Capitalized Net Income (CNI) factor

This refers to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%, expressed in the following equation form:

$$\text{CNI} = \frac{(\text{AGP} \times \text{SP}) - \text{CO}}{.12}$$

Before proceeding to the computation proper, We noted the following significant circumstances:

- 1) There was non-compliance by the DAR with the rules prescribed by Section 16 of RA 6657, to wit: a) failure of the DAR, after having identified the land, the landowners and the beneficiaries, *to send out a notice to acquire the land* to the owners by personal delivery or registered mail and post the

same in the municipal building and barangay hall of the place where the property is located; b) lack of actual inspection by LBP and DAR;

- 2) LBP, in its Petition for Review on Certiorari dated March 7, 2011 filed before the Supreme Court docketed as G.R. No. 195213, declared that in November 1995, a re-evaluation of the Galle property was made by LBP taking into consideration the factors under DAR Administrative Order (AO) No. 06, series of 1992 as amended by AO No. 11, series of 1994 where the valuation was Php7,534,063.91;
- 3) In its Petition for Review dated December 29, 2005 before this Court docketed as CA-G.R. SP No. 00761, LBP made the same declaration that the just compensation for Galle must be computed in accordance in [sic] AO 6, Series of 1992, as amended.
- 4) In this final stage of the case, however, particularly in their Memorandum filed before this Court, LBP would now insist that the applicable Administrative Order is AO 2 Series of 2009, claiming that the basic formula of AO 6, as amended, and AO 2 are the same. No explanation was given by LBP for their sudden shift to AO 2 instead of AO 6 in their determination of just compensation. This change of theory of the case results in undue surprise to the opposite party, and offends the basic rules of fair play Justice, and due process.

DAR Administrative Order 02-09 pertains to Rules and Procedures Governing the Acquisition and Distribution of Agricultural Lands under Republic Act No. 6657, as amended by Republic Act No. 9700. It seeks to strengthen the comprehensive reform program and provides for the continuing acquisition and distribution of agricultural lands covered under the Comprehensive Agrarian Reform Program (CARP) for a period of five (5) years under various phases, and the simultaneous provision of support services and the delivery of agrarian justice to Agrarian Reform Beneficiaries (ARBs).

x x x x

Obviously out of that coverage are Galle's properties which had already been taken as far back as 1993. This fact, to Our mind, effectively rules out LBP's suggestion that DAR AO 2-09 should control the computation of just compensation. In shorty in determining the just compensation due to Galle, AO 02-09 did not have the effect of changing the basic formula to be used in the valuation: it continues to be governed by AO 6, as amended, as LBP itself had always insisted all throughout this litigation, until its recent change of tune.

Now back to Administrative Order No. 6 which computes AGP *as the latest available 12 month's gross production immediately preceding the date of offer in case of VOS or date of notice of coverage in case of CA while SP is reckoned as the average of the latest available 12 month's*

selling prices prior to the date of receipt of the claimfolder by LBP for processing. It should be particularly noted that the *date of receipt* of the claimfolder by LBP from DAR is mandated to mean the very date when the claimfolder is officially determined by LBP to be *complete*, that is, with all the required documents and valuation inputs duly verified and validated and ready *for computation and processing*.

As a matter of record, Galle's properties were compulsorily acquired (CA). Yet, the date of coverage of her properties has remained uncertain. Nowhere in the records is it shown that Galle had been notified pursuant to Section 16(a) of RA 6657. This omission had remained unexplained, even as it had remained undisputed by DAR and LBP. Surprisingly, a Notice of Coverage was submitted by LBP. A notice of land valuation dated August 25, 1992 in the amount of P6,083,545.26 was allegedly offered and it further states that the Notice of Acquisition is dated January 21, 1991 or 19 months earlier, contrary to the law's mandate that the Notice of Acquisition should state the specific offer of compensation. In the notice of land valuation, mention was made of a notice of acquisition dated January 22, 1991, which actually was a postdate, a date that was yet to come more than a year into the future. Such a gross failure of the government agency concerned to notify Galle pursuant to Section 16 of RA 6657 had rendered computation of the AGP uncertain, speculative, and unreliable - especially when made to depend on the basis of the date submitted by LBP, considering that the date of notice of coverage is uncertain to begin with. AGP is the one year's Average [G]ross Production *immediately preceding the date of offer in case of Voluntary [O]ffer to [S]ell (VOS) or date of notice of coverage in case of compulsory acquisition (CA)*. We therefore opine that the failure of DAR to notify [the] landowner as mandated by law had effectively and unduly prevented the [landowner] from submitting the required statement of income and other proofs to show the clear financial condition of the estate. Securing and unduly relying on indirect, tangential, and largely secondary information definitely create a significant impact on the CNI factor and its reliability and fairness.

Assuming *arguendo* that LBP received the claimfolder of Galle from DAR on October 4, 1991, then We cannot help agreeing with the respondents' position that it does not necessarily mean that the claimfolder was already complete with the essential requirements and ready for processing. DAR AO No. 11, series of 1994, clearly provides that:

For purposes of this Administrative Order, the date of receipt of claimfolder by LBP from DAR shall mean *the date when the claimfolder is determined by the LBP to be complete with all the required documents and valuation inputs duly verified and validated, and is ready for final computation/processing*.

LBP secured a certification from PC A on selling prices of copra on July 21[,] 1995, thus it is fair to assume that [on] October 4, 1991 date of receipt, the claimfolder was yet to be completed. It was not at all complete and ready for processing.

In sum, considering that the [date] of the notice of coverage and the date of receipt of the claimfolder by LBP cannot be determined with certainty, it is now impossible to arrive at the *relevant average gross production* and selling prices as well as the cost of operations. [This is] because respondents had been prevented from submitting - as and when pertinent data and statistics were still fresh and available - an accurate and realistic statement of income. And all these, because of the unexplained and unjustifiable failure or omission of DAR to notify the [landowner] of the subject land acquisition as expressly mandated by law. The so-called industry figure used by LBP as the cost of operations in lieu of a statement of net income which Galle allegedly failed to submit could not be appreciated against the innocent [landowner] Galle, and in favor of the erring state agency. Because of want of reliable data, through no fault of the [landowner], CNI could not be accurately ascertained.

Considering that CNI factor is not present, We find it proper to use the following formula in AO 6, as amended, in computing just compensation for Galle:

When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

$$LV = (CS \times 0.9) + (MV \times 0.1)$$

Respondents Galle presented Resolutions of the City Government of Zamboanga City showing the payment for properties expropriated by the City as determined by the City Appraisal Committee fixing the value of private lands for its acquisitions or expropriations for governmental purposes. These were resolutions between years 2000 and 2003. Respondents brought down the values of the properties to the year 1993 using the appreciation and conversely depreciation rate factor of 5% employed by bank appraisers. The barangays mentioned in the resolutions are near barangay Patalon, where Galle's properties [are] located and taken in 1993.

(Summary of the 5 Resolutions issued by the City Government of Zamboanga)

YEAR	PATALON	TALISAYAN	TALISAYAN	SINUBUNGTALISAYAN	TALISAYAN
2003	152.52				
2002	144.89				
2001	137.65	200.00	200.00		
2000	130.77	200.00	200.00	200.00	200.00
1999	124.23	190.00	190.00	190.00	190.00
1998	118.02	180.50	180.50	180.50	180.50
1997	112.12	171.48	171.48	171.48	171.48
1996	106.51	162.90	162.90	162.90	162.90
1995	101.19	154.76	154.76	154.76	154.76
1994	96.13	147.02	147.02	147.02	147.02
1993	91.32	139.67	139.67	139.67	139.67

We opted to use the 3 Resolutions instead of 5 since the Talisayan area had the same appraised value.