

## SECOND DIVISION

[ G.R. No. 188299, January 23, 2013 ]

**HEIRS OF LUIS A. LUNA AND REMEGIO A. LUNA, AND LUZ LUNA-SANTOS, AS REPRESENTED BY THEIR ATTORNEY-IN-FACT, AUREA B. LUBIS, PETITIONERS, VS. RUBEN S. AFABLE, TOMAS M. AFABLE, FLORANTE A. EVANGELISTA, LEOVY S. EVANGELISTA, JAIME M. ILAGAN, ET. AL., RESPONDENTS.**

### DECISION

**PEREZ, J.:**

The power of local government units to convert or reclassify lands from agricultural to non-agricultural prior to the passage of Republic Act (RA) No. 6657 – the Comprehensive Agrarian Reform Law (CARL) – is not subject to the approval of the Department of Agrarian Reform (DAR).<sup>[1]</sup> In this sense, the authority of local government units to reclassify land before 15 June 1988 – the date of effectivity of the CARL – may be said to be absolute.

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 13 March 2009 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 101114 and its 10 June 2009 Resolution<sup>[3]</sup> denying petitioners' motion for reconsideration.

#### *The Facts*

Petitioners are co-owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. J-7205 (T-54199), with an area of 158.77 hectares, located in *Barangay* Guinobatan, Calapan City, Oriental Mindoro.<sup>[4]</sup> 100.2856 hectares of the landholding was subjected to compulsory acquisition under the Comprehensive Agrarian Reform Program (CARP) through a Notice of Land Valuation and Acquisition dated 20 August 1998 issued by the Provincial Agrarian Reform Officer (PARO) and published in a newspaper of general circulation on 29, 30 and 31 August 1998.<sup>[5]</sup>

Respondents were identified by the DAR as qualified farmer-beneficiaries; hence, the corresponding Certificates of Land Ownership Award (CLOAs) were generated, issued to respondents and duly registered in their names on 12 October 1998.<sup>[6]</sup>

On 21 October 1998, petitioners filed before the DAR Adjudication Board (DARAB) Oriental Mindoro a Petition for "Cancellation of CLOAs, Revocation of Notice of Valuation and Acquisition and Upholding and Affirming the Classification of Subject Property and Declaring the same outside the purview of RA No. 6657."<sup>[7]</sup> The petition was anchored mainly on the reclassification of the land in question into a light intensity industrial zone pursuant to Municipal Ordinance No. 21, series of 1981, enacted by the *Sangguniang Bayan* of Calapan, thereby excluding the same

from the coverage of the agrarian law.

### ***The Ruling of the DARAB Calapan City***

In a Decision dated 26 August 1999, the DARAB disposed of the petition in the following manner:

IN THE LIGHT OF the foregoing, judgment is hereby rendered[:]

1. Ordering the Cancellation of Certificates of Land Ownership Award x x x issued by the Department of Agrarian Reform in favor of private respondents pursuant to RA No. 6657 covering the subject parcel of land under TCT No. 5-7205 [sic] (T-54199) of the Registry of Deeds for the Province of Oriental Mindoro, in the name of Luis Luna, et. al.,
2. Upholding and affirming the classification of the subject parcel of land into residential, commercial and institutional uses pursuant to RA No. 2264 (Autonomy Act of 1959) and the Local Government Code of 1991;
3. Declaring the farmholding in question outside the purview of Republic Act No. 6657;

x x x x<sup>[8]</sup>

The DARAB found that petitioners' property is exempt from the CARP as it has been reclassified as non-agricultural prior to the effectivity of Republic Act (RA) No. 6657. According to the DARAB, the records of the case indicate that subject parcel of land was classified as within the residential, commercial and industrial zone by the *Sangguniang Bayan* of Calapan, Oriental Mindoro through Resolution No. 139, Series of 1981, enacted on 14 April 1981 as Municipal Ordinance No. 21. Moreover, the Office of the City Assessor has also classified the property as residential, commercial and industrial in use under the tax declaration covering the same. Finally, the Office of the Deputized Zoning Administrator, Urban Planning and Development Office, Calapan City, issued a Certification on 25 September 1998 stating that "under Article III, Section 3, No. 7 of Resolution No. 139, Municipal Ordinance No. 21, Series of 1981, areas covered by this [sic] provisions has [sic] been declared as Light Intensity Industrial Zone prior to the approval of RA 6657 x x x."<sup>[9]</sup>

The DARAB cited Department of Justice (DOJ) Opinion No. 44, Series of 1990, which provides that a parcel of land is considered non-agricultural and, therefore, beyond the coverage of the CARP, if it had been classified as residential, commercial, or industrial in the city or municipality where the Land Use Plan or zoning ordinance has been approved by the Housing and Land Use Regulatory Board (HLURB) before 15 June 1988, the date of effectivity of RA No. 6657. The aforementioned Opinion of the DOJ further states that all lands falling under this category, that is, lands already classified as commercial, industrial or residential, before 15 June 1988 no longer need any conversion clearance from the DAR.<sup>[10]</sup>

Aggrieved, respondents appealed to the DARAB Central Office.

### ***The Ruling of the DARAB Central Office***

The Central Office of the DARAB found that its local office in Calapan City erred in declaring petitioners' property outside the coverage of the CARP by relying solely on the assertion of the landowners that the land had already been reclassified from agricultural to non-agricultural prior to 15 June 1988.<sup>[11]</sup>

The DARAB held that the local Adjudicator misconstrued DOJ Opinion No. 44, Series of 1990 and, in the process, overlooked DAR Administrative Order (AO) No. 2, Series of 1994 which provides the grounds upon which CLOAs may be cancelled, among which is that the land is found to be exempt or excluded from CARP coverage or is to be part of the landowner's retained area as determined by the Secretary of Agrarian Reform or his authorized representative. Thus, the DARAB concluded, the issue of whether or not petitioners' land is indeed exempt from CARP coverage is still an administrative matter to be determined exclusively by the DAR Secretary or his authorized representative. In short, an exemption clearance from the DAR is still required. In this connection, DAR AO No. 6 was issued on 27 May 1994 setting down the guidelines in the issuance of exemption clearance based on Section 3(c) of RA No. 6657 and DOJ Opinion No. 44, Series of 1990. Pursuant thereto, "[a]ny landowner or his duly authorized representative whose lands are covered by DOJ Opinion No. 44-S-1990, and desires to have an exemption clearance from the DAR, should file the application with the Regional Office of the DAR where the land is located."<sup>[12]</sup> (Underlining omitted)

Accordingly, the DARAB set aside the Decision dated 26 August 1999 of the DARAB Calapan City for lack of jurisdiction and referred<sup>[13]</sup> the case to the Regional Office of DAR Region IV for final determination as to whether the land covered by TCT No. J-7205 (T-54199) in the names of Luis Luna, et al. is exempt from CARP coverage.<sup>[14]</sup>

In an apparent response to the above ruling of the DARAB holding that petitioners still need an exemption clearance from the DAR, petitioners filed an application for exemption from CARP coverage of subject land.

### ***The Ruling of the DAR (On Petitioners' Application for Exemption from CARP coverage)***

In an Order dated 16 December 2003, then DAR Secretary Roberto M. Pagdanganan (Pagdanganan) granted petitioners' application for exemption based on the following findings:

In a joint ocular inspection and investigation conducted by the representatives of the [Municipal Agrarian Reform Office] MARO, PARO and [Regional Center for Land Use Policy, Planning and Implementation] RCLUPPI on September 18 2003, disclosed the following findings:

1. The documents (HLURB and [Deputized Zoning Administrator] DZA Certifications) show that the whole 158 hectares is exempted from the coverage of RA 6657;

2. It is not irrigated;
3. The area where subject property is located can be considered as already urbanizing; and
4. The topography is generally flat and the property is traversed by a concrete highway hence accessible to all means of land transportation.

x x x x

DOJ Opinion No. 44, Series of 1990 and the case of Natalia Realty vs. Department of Agrarian Reform (12 August 1993/225 SCRA 278) opines (sic) that with respect to the conversion of agricultural lands covered by RA No. 6657 to non-agricultural uses, the authority of the Department of Agrarian Reform to approve such conversion maybe [sic] exercised from the date of its effectivity on 15 June 1988. Thus, all lands that are already classified as commercial, industrial or residential before 15 June 1988 no longer need any conversion clearance. Moreover, Republic Act No. 6657 or the Comprehensive Agrarian Reform Law (CARL), Section 3, Paragraph (c) defines "agricultural land" as referring to "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land." The case before this Office clearly reveals that the subject property is not within the agricultural zone prior to 15 June 1988.

The subject property has been zoned as light-industrial prior to the enactment of the Comprehensive Agrarian Reform Program as shown by the various certifications issued by the HLURB<sup>[15]</sup> and CPDC of Calapan City, Mindoro stating that the subject properties were reclassified to light-industrial zone by the City of Calapan, Mindoro and approved by the Human Settlements Regulatory Commission (now HLURB) per Resolution No. R-39-04 on 31 July 1980.

In view of the foregoing, this Office finds the application to have fully complied with all the documentary requirements for exemption set forth under DAR A.O. 6 Series of 1994 guidelines. x x x.<sup>[16]</sup>

The application for exemption was, therefore, granted subject to the condition, among others, that disturbance compensation shall be paid to affected tenants, farm workers, or bona fide occupants of the land.<sup>[17]</sup>

Predictably, respondents filed a motion for reconsideration of the Order of exemption.

***The Ruling of the DAR  
(On Respondents' Motion for Reconsideration)***

In a Resolution dated 15 June 2004, former DAR Officer-in-Charge (OIC)-Secretary Jose Mari B. Ponce (Ponce) granted respondents' motion for reconsideration based

on the following considerations:

Resolution No. R-39-4 Series of 1980 of the then Municipality of Calapan as conditionally approved by Human Settlement Regulatory Commission (now HLURB) did not categorically place the entire landholding for light-industrial. Section 1(f), Art. III of said resolution provided that:

“(f) I-1 Zone – Light Industrial are the following: All lots 100 meters deep east and 200 meters deep west of Sto. Niño-Lumangbayan-Sapul Road from the Teachers’ Village down to Barangay Guinobatan.”

Resolution No. 151, City Ordinance No. 6 which declared the whole area of Barangay Guinobatan into residential, commercial and institutional uses was approved by the Calapan City Council only on 23 June 1998. Furthermore, the Comprehensive Land Use Plan and Zoning for Calapan City was approved by the Sangguniang Panlalawigan only in 2001 through Resolution No. 218, Series of 2001.

x x x x

x x x. Hence, in the case at hand, subject property is still within the ambit of the Comprehensive Agrarian Reform Program since the same were [sic] reclassified only in 1998 through Resolution No. 151, City Ordinance No. 6, and was approved by the Sangguniang Panlalawigan only in 2001 through Resolution No. 218, Series of 2001 long after the effectivity of RA 6657.<sup>[18]</sup>

Thus, the Order dated 16 December 2003 issued by DAR Secretary Pagdanganan was set aside, revoked and cancelled.<sup>[19]</sup>

Petitioners filed a motion for reconsideration of this Resolution.

***The Ruling of the DAR  
(On Petitioners’ Motion for Reconsideration)***

On 21 June 2006, the DAR, through then OIC Secretary Nasser C. Pangandaman (Pangandaman), issued an Order denying petitioners’ motion for reconsideration on the following grounds:

On 13 October 2005, the CLUPPI Inspection Team, accompanied by the Municipal Agrarian Reform Officer (MARO), Provincial Agrarian Reform Officer (PARO) and other DAR Field Personnel, conducted an ocular inspection of the subject landholding and noted the following:

- The landholding is composed of four (4) parcels embraced under TCT No. J-7205, with an area of