635 Phil. 283

FIRST DIVISION

[G.R. No. 183409, June 18, 2010]

CHAMBER OF REAL ESTATE AND BUILDERS ASSOCIATIONS, INC. (CREBA), PETITIONER, VS. THE SECRETARY OF AGRARIAN REFORM, RESPONDENT.

D E C I S I O N

PEREZ, J.:

This case is a Petition for *Certiorari* and Prohibition (with application for temporary restraining order and/or writ of preliminary injunction) under Rule 65 of the 1997 Revised Rules of Civil Procedure, filed by herein petitioner Chamber of Real Estate and Builders Associations, Inc. (CREBA) seeking to nullify and prohibit the enforcement of Department of Agrarian Reform (DAR) Administrative Order (AO) No. 01-02, as amended by DAR AO No. 05-07,[1] and DAR Memorandum No. 88,[2] for having been issued by the Secretary of Agrarian Reform with grave abuse of discretion amounting to lack or excess of jurisdiction as some provisions of the aforesaid administrative issuances are illegal and unconstitutional.

Petitioner CREBA, a private non-stock, non-profit corporation duly organized and existing under the laws of the Republic of the Philippines, is the umbrella organization of some 3,500 private corporations, partnerships, single proprietorships and individuals directly or indirectly involved in land and housing development, building and infrastructure construction, materials production and supply, and services in the various related fields of engineering, architecture, community planning and development financing. The Secretary of Agrarian Reform is named respondent as he is the duly appointive head of the DAR whose administrative issuances are the subject of this petition.

The Antecedent Facts

The Secretary of Agrarian Reform issued, on 29 October 1997, DAR AO No. 07-97, [3] entitled "*Omnibus Rules and Procedures Governing Conversion of Agricultural Lands to Non-Agricultural Uses*," which consolidated all existing implementing guidelines related to land use conversion. The aforesaid rules embraced all private agricultural lands regardless of tenurial arrangement and commodity produced, and all untitled agricultural lands and agricultural lands reclassified by Local Government Units (LGUs) into non-agricultural uses after 15 June 1988.

Subsequently, on 30 March 1999, the Secretary of Agrarian Reform issued DAR AO No. 01-99,[4] entitled "*Revised Rules and Regulations on the Conversion of Agricultural Lands to Non-agricultural Uses*," amending and updating the previous rules on land use conversion. Its coverage includes the following agricultural lands, to wit: (1) those to be converted to residential, commercial, industrial, institutional and other non-agricultural purposes; (2) those to be devoted to another type of

agricultural activity such as livestock, poultry, and fishpond â”€ the effect of which is to exempt the land from the Comprehensive Agrarian Reform Program (CARP) coverage; (3) those to be converted to non-agricultural use other than that previously authorized; and (4) those reclassified to residential, commercial, industrial, or other non-agricultural uses on or after the effectivity of Republic Act No. 6657[5] on 15 June 1988 pursuant to Section 20[6] of Republic Act No. 7160[7] and other pertinent laws and regulations, and are to be converted to such uses.

On 28 February 2002, the Secretary of Agrarian Reform issued another Administrative Order, *i.e.*, DAR AO No. 01-02, entitled "*2002 Comprehensive Rules on Land Use Conversion*," which further amended DAR AO No. 07-97 and DAR AO No. 01-99, and repealed all issuances inconsistent therewith. The aforesaid DAR AO No. 01-02 covers all applications for conversion from agricultural to non-agricultural uses or to another agricultural use.

Thereafter, on 2 August 2007, the Secretary of Agrarian Reform amended certain provisions[8] of DAR AO No. 01-02 by formulating DAR AO No. 05-07, particularly addressing land conversion in time of exigencies and calamities.

To address the unabated conversion of prime agricultural lands for real estate development, the Secretary of Agrarian Reform further issued Memorandum No. 88 on 15 April 2008, which temporarily suspended the processing and approval of all land use conversion applications.

By reason thereof, petitioner claims that there is an actual slow down of housing projects, which, in turn, aggravated the housing shortage, unemployment and illegal squatting problems to the substantial prejudice not only of the petitioner and its members but more so of the whole nation.

Hence, this petition.

The Issues

In its Memorandum, petitioner posits the following issues:

I.

WHETHER THE DAR SECRETARY HAS JURISDICTION OVER LANDS THAT HAVE BEEN RECLASSIFIED AS RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR FOR OTHER NON-AGRICULTURAL USES.

II.

WHETHER THE DAR SECRETARY ACTED IN EXCESS OF HIS JURISDICTION AND GRAVELY ABUSED HIS DISCRETION BY ISSUING AND ENFORCING [DAR AO NO. 01-02, AS AMENDED] WHICH SEEK TO REGULATE RECLASSIFIED LANDS.

III.

WHETHER [DAR AO NO. 01-02, AS AMENDED] VIOLATE[S] THE LOCAL

AUTONOMY OF LOCAL GOVERNMENT UNITS.

IV.

WHETHER [DAR AO NO. 01-02, AS AMENDED] VIOLATE[S] THE DUE PROCESS AND EQUAL PROTECTION CLAUSE[S] OF THE CONSTITUTION.

V.

WHETHER MEMORANDUM NO. 88 IS A VALID EXERCISE OF POLICE POWER.[9]

The subject of the submission that the DAR Secretary gravely abused his discretion is AO No. 01-02, as amended, which states:

> Section 3. *Applicability of Rules.* - These guidelines shall apply to all applications for conversion, from agricultural to non-agricultural uses or to another agricultural use, such as:
>
> x x x x
>
> 3.4 Conversion of agricultural lands or areas that have been reclassified by the LGU or by way of a Presidential Proclamation, to residential, commercial, industrial, or other non-agricultural uses **on or after the effectivity of RA 6657 on 15 June 1988**, x x x. [Emphasis supplied].

Petitioner holds that under Republic Act No. 6657 and Republic Act No. 8435,[10] the term agricultural lands refers to "lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by a person whether natural or juridical, and not classified by the law as mineral, forest, residential, commercial or industrial land." When the Secretary of Agrarian Reform, however, issued DAR AO No. 01-02, as amended, he included in the definition of agricultural lands "lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988**." In effect, lands reclassified from agricultural to residential, commercial, industrial, or other non-agricultural uses after 15 June 1988 are considered to be agricultural lands for purposes of conversion, redistribution, or otherwise. In so doing, petitioner avows that the Secretary of Agrarian Reform acted without jurisdiction as he has no authority to expand or enlarge the legal signification of the term agricultural lands through DAR AO No. 01-02. Being a mere administrative issuance, it must conform to the statute it seeks to implement, *i.e.*, Republic Act No. 6657, or to the Constitution, otherwise, its validity or constitutionality may be questioned.

In the same breath, petitioner contends that DAR AO No. 01-02, as amended, was made in violation of Section 65[11] of Republic Act No. 6657 because it covers all applications for conversion from agricultural to non-agricultural uses or to other agricultural uses, such as the conversion of agricultural lands or areas that have

been reclassified by the LGUs or by way of Presidential Proclamations, to residential, commercial, industrial or other non-agricultural uses on or after 15 June 1988. According to petitioner, there is nothing in Section 65 of Republic Act No. 6657 or in any other provision of law that confers to the DAR the jurisdiction or authority to require that non-awarded lands or reclassified lands be submitted to its conversion authority. Thus, in issuing and enforcing DAR AO No. 01-02, as amended, the Secretary of Agrarian Reform acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner further asseverates that Section 2.19,[12] Article I of DAR AO No. 01-02, as amended, making reclassification of agricultural lands subject to the requirements and procedure for land use conversion, violates Section 20 of Republic Act No. 7160, because it was not provided therein that reclassification by LGUs shall be subject to conversion procedures or requirements, or that the DAR's approval or clearance must be secured to effect reclassification. The said Section 2.19 of DAR AO No. 01-02, as amended, also contravenes the constitutional mandate on local autonomy under Section 25,[13] Article II and Section 2,[14] Article X of the 1987 Philippine Constitution.

Petitioner similarly avers that the promulgation and enforcement of DAR AO No. 01-02, as amended, constitute deprivation of liberty and property without due process of law. There is deprivation of liberty and property without due process of law because under DAR AO No. 01-02, as amended, lands that are not within DAR's jurisdiction are unjustly, arbitrarily and oppressively prohibited or restricted from legitimate use on pain of administrative and criminal penalties. More so, there is discrimination and violation of the equal protection clause of the Constitution because the aforesaid administrative order is patently biased in favor of the peasantry at the expense of all other sectors of society.

As its final argument, petitioner avows that DAR Memorandum No. 88 is not a valid exercise of police power for it is the prerogative of the legislature and that it is unconstitutional because it suspended the land use conversion without any basis.

The Court's Ruling

This petition must be dismissed.

Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, **such concurrence does not give the petitioner unrestricted freedom of choice of court forum**.[15] In *Heirs of Bertuldo Hinog v. Melicor*,[16] citing *People v. Cuaresma*,[17] this Court made the following pronouncements:

> **This Court's original jurisdiction to issue writs of *certiorari* is not exclusive**. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor

> will be directed. **There is after all a hierarchy of courts**. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition**. This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[18] (Emphasis supplied.)

The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.[19]

This Court thus reaffirms the judicial policy that it will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances, such as cases of national interest and of serious implications, justify the availment of the extraordinary remedy of writ of *certiorari*, calling for the exercise of its primary jurisdiction.[20]

Exceptional and compelling circumstances were held present in the following cases: (a) *Chavez v. Romulo,*[21] on citizens' right to bear arms; (b) *Government of [the] United States of America v. Hon. Purganan,*[22] on bail in extradition proceedings; (c) *Commission on Elections v. Judge Quijano-Padilla,*[23] on government contract involving modernization and computerization of voters' registration list; (d) *Buklod ng Kawaning EIIB v. Hon. Sec. Zamora,*[24] on status and existence of a public office; and (e) *Hon. Fortich v. Hon. Corona,*[25] on the so-called "Win-Win Resolution" of the Office of the President which modified the approval of the conversion to agro-industrial area.[26]

In the case at bench, **petitioner failed to specifically and sufficiently set forth special and important reasons to justify direct recourse to this Court and why this Court should give due course to this petition** in the first instance, hereby failing to fulfill the conditions set forth in *Heirs of Bertuldo Hinog v. Melicor*.[27] The present petition should have been initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts. Failure to do so is sufficient cause for the dismissal of this petition.

Moreover, although the instant petition is styled as a Petition for *Certiorari*, in essence, it seeks the declaration by this Court of the unconstitutionality or illegality