505 Phil. 558

SECOND DIVISION

[G.R. NO. 132477, August 31, 2005]

JOSE LUIS ROS, ANDONI F. ABOITIZ, XAVIER ABOITIZ, ROBERTO E. ABOITIZ, ENRIQUE ABOITIZ, MATTHIAS G. MENDEZONA, CEBU INDUSTRIAL PARK DEVELOPERS, INC. AND FBM ABOITIZ MARINE, INC., PETITIONERS, VS. DEPARTMENT OF AGRARIAN REFORM, HON. ERNESTO GARILAO, IN HIS CAPACITY AS DAR SECRETARY, AND DIR. JOSE LLAMES, IN HIS CAPACITY AS DIRECTOR OF DAR-REGIONAL 7, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Petitioners are the owners/developers of several parcels of land located in Arpili, Balamban, Cebu. By virtue of Municipal Ordinance No. 101 passed by the Municipal Council of Balamban, Cebu, these lands were reclassified as industrial lands.[1] On 03 April 1995, the Provincial Board of Cebu approved Balamban's land use plan and adopted *en toto* Balamban's Municipal Ordinance No. 101 with the passage of Resolution No. 836-95 and Provincial Ordinance No. 95-8, respectively.[2] As part of their preparation for the development of the subject lands as an industrial park, petitioners secured all the necessary permits and appropriate government certifications.[3]

Despite these permits and certifications, petitioner Matthias Mendezona received a letter from Mr. Jose Llames, Director of the Department of Agrarian Reform (DAR) Regional Office for Region 7, informing him that the DAR was disallowing the conversion of the subject lands for industrial use and directed him to cease and desist from further developments on the land to avoid the incurrence of civil and criminal liabilities.[4]

Petitioners were thus constrained to file with the Regional Trial Court (RTC) of Toledo City a Complaint dated 29 July 1996 for Injunction with Application for Temporary Restraining Order and a Writ of Preliminary Injunction, docketed as Civil Case No. T-590.[5] In an order[6] dated 12 August 1996, the RTC, ruling that it is the DAR which has jurisdiction, dismissed the Complaint for lack of jurisdiction.[7] It justified the dismissal in this wise:

> A perusal of Section 20 of the Local Government Code expressly provides that the Municipalities through an Ordinance by the Sanggunian may authorize the reclassification of the agricultural land within their area into non-agricultural. Paragraph (e) of the aforesaid Section, provides further: that nothing in this Section shall be construed as repealing or modifying in any manner the provision of Republic Act 6657. In an opinion of the Secretary of Justice, quoted: With respect of (sic) conversion of

> agricultural land to non-agricultural uses the authority of the DAR to approve the same may be exercise (sic) only from the date of the effectivity of the Agrarian Reform Law on June 15, 1988. It appears that the petitioners had applied for conversion on June 13, 1995 and therefore the petitioner (sic) are estopped from questioning the authority and jurisdiction of the Department of Agrarian Reform. The application having been filed after June 15, 1988, the reclassification by the Municipal Council of Balamban was just a step in the conversion of the aforestated lands according to its purpose. Executive Order No. 129-A, Section 5, "The Department shall be responsible for implementing Comprehensive Agrarian Reform and for such purpose it is authorized to (J) approve or disapprove the conversion, restructuring or readjustment of agricultural land into non-agricultural uses." Said Executive Order amended Section 36 of Republic Act No. 3644 which clearly mandates that the DAR Secretary (sic) approve or disapprove conversion are not impliedly repealed. In fact, under Section 75 of Republic Act 6657 the above laws and other laws not inconsistent of (sic) this act shall have suppletory effect. Further, Section 68 of Republic Act 6657 provides: No injunction, restraining order, prohibition or mandamus shall be issued by the lower court against the Department of Agrarian Reform, DENR and Department of Justice in their implementation of the program. With this provision, it is therefore clear (sic) when there is conflict of laws determining whether the Department of Agrarian Reform has been exclusively empowered by law to approve land conversion after June 15, 1988 and (sic) the final ruling falls only with the Supreme Court or Office of the President.
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> WHEREFORE, in view of the foregoing, the Application for Restraining Order is hereby ordered DENIED and the main case is DISMISSED, this Court having no jurisdiction over the same.[8]

In an order dated 18 September 1996, the trial court denied the motion for reconsideration filed by the petitioners.[9] Petitioners filed before this Court a Petition for Review on *Certiorari* with application for Temporary Restraining Order and Writ of Preliminary Injunction.[10] In a resolution[11] dated 11 November 1996, this Court referred the petition to the Court of Appeals.[12] Petitioners moved for a reconsideration of the said resolution but the same was denied in a resolution dated 27 January 1997.[13]

At the Court of Appeals, the public respondents were ordered[14] to file their Comments on the petition. Two sets of comments from the public respondents, one from the Department of Agrarian Reform Provincial Office[15] and another from the Office of the Solicitor General,[16] were submitted, to which petitioners filed their Consolidated Reply.[17]

On 02 December 1997, the Court of Appeals rendered a decision[18] affirming the Order of Dismissal issued by the RTC.[19] A motion for reconsideration filed by the petitioners was denied in a resolution dated 30 January 1998.[20]

Hence, this petition.

The following issues[21] are raised by the petitioners for resolution:

> (a) Whether or not the reclassification of the subject lands to industrial use by the Municipality of Balamban, Cebu pursuant to its authority under Section 20(a) of Republic Act No. 7160 or the Local Government Code of 1991 (the "LGC") has the effect of taking such lands out of the coverage of the CARL and beyond the jurisdiction of the DAR;
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> (b) Whether or not the Complaint for Injunction may be dismissed under the doctrine of primary jurisdiction;
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> (c) Whether or not the Complaint for Injunction is an appropriate remedy against the order of the DAR enjoining development works on the subject lands;
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> (d) Whether or not the Regional Trial Court of Toledo City had authority to issue a writ of injunction against the DAR.

In sum, petitioners are of the view that local governments have the power to reclassify portions of their agricultural lands, subject to the conditions set forth in Section 20[22][23]of the Local Government Code. According to them, if the agricultural land sought to be reclassified by the local government is one which has already been brought under the coverage of the Comprehensive Agrarian Reform Law (CARL) and/or which has been distributed to agrarian reform beneficiaries, then such reclassification must be confirmed by the DAR pursuant to its authority under Section 6522 of the CARL, in order for the reclassification to become effective. If, however, the land sought to be reclassified is not covered by the CARL and not distributed to agrarian reform beneficiaries, then no confirmation from the DAR is necessary in order for the reclassification to become effective as such case would not fall within the DAR's conversion authority. Stated otherwise, Section 65 of the CARL does not, in all cases, grant the DAR absolute, sweeping and all-encompassing power to approve or disapprove reclassifications or conversions of all agricultural lands. Said section only grants the DAR exclusive authority to approve or disapprove conversions of agricultural lands which have already been brought under the coverage of the CARL and which have already been distributed to farmer beneficiaries.

The petition lacks merit.

After the passage of Republic Act No. 6657, otherwise known as Comprehensive Agrarian Reform Program, agricultural lands, though reclassified, have to go through the process of conversion, jurisdiction over which is vested in the DAR. However, agricultural lands already reclassified before the effectivity of Rep. Act No. 6657 are exempted from conversion.

Department of Justice Opinion No. 44, Series of 1990, provides:

> ". . . True, the DAR's express power over land use conversion is limited to cases in which agricultural lands already awarded have, after five years, ceased to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater

> economic value for residential, commercial or industrial purposes. But to suggest that these are the only instances when the DAR can require conversion clearances would open a loophole in R.A. No. 6657, which every landowner may use to evade compliance with the agrarian reform program. Hence, it should logically follow from the said department's express duty and function to execute and enforce the said statute that any reclassification of a private land as a residential, commercial or industrial property should first be cleared by the DAR."

The requirement that agricultural lands must go through the process of conversion despite having undergone reclassification was underscored in the case of *Alarcon v. Court of Appeals*,[24] where it was held that reclassification of land does not suffice:

> In the case at bar, there is no final order of conversion. The subject landholding was merely reclassified. Conversion is different from reclassification. Conversion is the act of changing the current use of a piece of agricultural land into some other use as approved by the Department of Agrarian Reform. Reclassification, on the other hand, is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion. Accordingly, a mere reclassification of agricultural land does not automatically allow a landowner to change its use and thus cause the ejectment of the tenants. He has to undergo the process of conversion before he is permitted to use the agricultural land for other purposes.

Rep. Act No. 6657 took effect on 15 June 1988. Municipal Ordinance No. 101 of Balamban, Cebu, which reclassified the subject lands, was passed on 25 March 1992, and Provincial Ordinance No. 95-8 of the Provincial Board of Cebu, which adopted Municipal Ordinance No. 101, was passed on 03 April 1995, long after Rep. Act No. 6657 has taken effect. Section 4 of Rep. Act No. 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.
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> . . .
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> (d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

To further clarify any doubt on its authority, the DAR issued Administrative Order No. 12 dated October 1994 which reads:

> Administrative Order No. 12
> Series of 1994
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> SUBJECT: CONSOLIDATED AND REVISED RULES AND PROCEDURES GOVERNING CONVERSION OF ARICULTURAL LANDS TO NON-AGRICULTURAL USES

I. PREFATORY STATEMENT

The guiding principles on land use conversion is to preserve prime agricultural lands. On the other hand, conversion of agricultural lands, when coinciding with the objectives of the Comprehensive Agrarian Reform Law to promote social justice, industrialization, and the optimum use of land as a national resource for public welfare, shall be pursued in a speedy and judicious manner.

To rationalize these principles, and by virtue of Republic Act (R.A.) No. 3844, as amended, Presidential Decree (P.D.) No. 27, P.D. No. 946, Executive Order (E.O.) No. 129-A and R.A. No. 6657, the Department of Agrarian Reform (DAR) has issued several policy guidelines to regulate land use conversion. This Administrative Order consolidates and revises all existing implementing guidelines issued by the DAR, taking into consideration, other Presidential issuances and national policies related to land use conversion.

II. LEGAL MANDATE

A. The Department of Agrarian Reform (DAR) is mandated to "approve or disapprove applications for conversion, restructuring or readjustment of agricultural lands into non-agricultural uses," pursuant to Section 4(i) of Executive Order No. 129-A, Series of 1987.

B. Section 5(i) of E.O. No. 129-A, Series of 1987, vests in the DAR, exclusive authority to approve or disapprove applications for conversion of agricultural lands for residential, commercial, industrial, and other land uses.

C. Section 65 of R.A. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, likewise empowers the DAR to authorize under certain conditions, the reclassification or conversion of agricultural lands.

D. Section 4 of Memorandum Circular No. 54, Series of 1993 of the Office of the President, provides that "action on applications for land use conversion on individual landholdings shall remain as the responsibility of the DAR, which shall utilize as its primary reference, documents on the comprehensive land use plans and accompanying ordinances passed upon and approved by the local government units concerned, together with the National Land Use Policy, pursuant to R.A. No. 6657 and E.O. No. 129-A."

III. DEFINITION OF TERMS

A. Agricultural land refers to land devoted to agricultural activity and not classified as mineral, forest, residential, commercial or