

SECOND DIVISION

[G.R. No. 134741, December 19, 2001]

**SPOUSES BENNY CALVO AND JOVITA S. CALVO, PETITIONERS,
VS. SPOUSES BERNARDITO AND ANGELINA VERGARA AND
SPOUSES ALEXBERTO AND BELIBETH BASALO, RESPONDENTS.**

RESOLUTION

QUISUMBING, J.:

This petition for *certiorari* seeks to annul and set aside the decision^[1] dated February 17, 1998 of the Court of Appeals in CA-G.R. SP No. 42907, which affirmed the decision^[2] dated October 14, 1996 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB CASE NO.1848. DARAB had modified the earlier decision of its regional unit (Region VII), in Cebu City and declared that the 750 square meters portion of Lot No. 5603 was properly covered by Operation Land Transfer (OLT) as homelots pursuant to Letter of Instruction No. 705 and Presidential Decree No. 27; that private respondents Belibeth Basalo and Vergara Spouses were *bona fide* farmer-beneficiaries and recipients of said homelots; and that the orders of reallocation of the farmlots in favor of Belibeth Basalo and Angelina Vergara were valid and legal.

The antecedent facts of this case are as follows:

Milagros Lebumfacil was the owner of Lots 5603, 5602-B, 5774-5 and 5774-7 in Matab-ang, Toledo City. On October 21, 1972, these lots were placed under the Operation Land Transfer (OLT) program of the Department of Agrarian Reform (DAR) under Presidential Decree No. 27,^[3] which deemed the tenant-farmers as owners of the land they till.^[4] Pursuantly, Egmidio Baguio and Josefa Apan, who were identified as farmer beneficiaries, were awarded Lots 5774-5 and 5774-7, and Lot 5602-B respectively. However, due to poor health and senility, Baguio and Apan waived their rights over the said lots. This prompted the DAR on November 25, 1991 to reallocate and award Lots 5774-5 and 5774-7 to the Vergara spouses and Lot 5602-B to the Basalo spouses. A portion of Lot No. 5603, was awarded to Teodulfo Aviles and Adriano Lumangtad, while the remaining 750-square-meters was awarded to herein respondents as their homelots, being the reallocatees of Lots 5602-B, 5774-5 and 5774-7.

Despite the coverage under the OLT program of the abovesited parcels of land, Lebumfacil still sold them on June 2, 1987 to petitioner spouses Benny and Jovita Calvo.

Subsequently, on October 2, 1991, petitioners filed with the Municipal Trial Court of Toledo City a complaint for illegal detainer against private respondents praying for their eviction from their homelots, i.e., the 750 square meter portion of Lot 5603.

As the dispute was agrarian in nature, the Municipal Trial Court forwarded the case to the Provincial Agrarian Reform Adjudication Board, Cebu City,^[5] which, after trial, rendered its decision on July 19, 1993. Its dispositive portion reads:

WHEREFORE, in the light of the foregoing reasons, Decision is hereby rendered as follows, to wit:

- 1) Declaring the coverage of the subject land under Operation Land Transfer (OLT) as valid and legal;
- 2) Declaring the CLT Transfer Action No. CEB-VII-184-91) involving reallocation of Lot No. 5602-B from Josefa Apan to Belibeth Basalo as embodied in the Order of Reallocation dated November 25, 1991 as null and void while affirming the validity of the remaining Order of Reallocation (Exhibit "S-1");
- 3) No pronouncement as to costs and damages.

Notify Atty. Valentino Legaspi, Atty. Florito Pozon, Ms. Elvie Odchigue, MARO of DAR, Toledo City and all the parties of this Decision for their guidance and information.

SO ORDERED.^[6]

Petitioners appealed to the Department of Agrarian Reform Adjudication Board (DARAB) which affirmed the above decision with modification, thus:

WHEREFORE, finding reversible error in the decision appealed from, the same is MODIFIED and judgment is hereby rendered:

- 1) Declaring the landholding in question, Lot No. 5603-part containing an area of seven hundred fifty (750) square meters, more or less, and located at Matab-ang, Toledo City, to be proper coverage of Operation Land Transfer (OLT) as homelots awarded to private Defendants-Appellees Belibeth Basalo and Avelina (Angelina) Vergara pursuant to Letter of Instruction No. 705 and Presidential Decree No. 27;
- 2) Declaring private Defendants-Appellees Basalo and Vergara spouses as bona-fide and valid farmer-beneficiaries and recipients of said homelots;
- 3) Upholding the validity and legality of both Orders, dated November 25, 1991, issued by public Defendant-Appellant Atty. Jesus V. Kabristante, Provincial Agrarian Reform Officer of Cebu Province in CLT Transfer Action Case No. CEB-VII-184-91 (Belibeth A. Basalo's case) and CLT Transfer Action Case No. CEB-VII-185-91 (Avelina S. Vergara's case), accordingly reallocating the farmlots to said private Defendants-Appellees; and
- 4.) Dismissing the complaint/amended complaint in the case at bar.

With costs against Plaintiffs-Appellants.

SO ORDERED.^[7]

Displeased, petitioners elevated the case to the Court of Appeals which considered as the basic issue therein, whether the 750 square meter portion in controversy was residential, as claimed by petitioners, or agricultural within the coverage of PD 27.

The appellate court on February 17, 1998 found the subject area to be agricultural and well within the coverage of PD 27. Thus:

ACCORDINGLY, the petition is hereby DENIED DUE COURSE and is DISMISSED. The decision of respondent DARAB is AFFIRMED. Costs against the petitioners.

SO ORDERED.^[8]

In declaring the area as agricultural, the Court of Appeals sustained the findings of the DARAB-Region VII that petitioners failed to establish that the land was residential. Petitioners did not present the basic requirements for reclassification of agricultural land to residential land such as: (1) the certification of the Housing and Land Use Regulatory Board (HLURB) Deputized Zoning Administrator of the city or municipality concerned, or in its absence, the certification of the Regional HLURB Officer that the land use conforms with the approved Land Use Plan; and (2) certification from the DAR Regional Director that the land ceased to be economically feasible and sound for agricultural use or a certification from the Deputized Zoning Administrator of the HLURB that the land or locality has become urbanized and has greater economic value for commercial, industrial or residential purposes. The appellate court cited *Qua vs. Court of Appeals*, G.R. No. 95318, 198 SCRA 236, 242 (1991), where we did not recognize the residential status of a parcel of land merely on the basis of tax declarations and in the absence of all the requirements for conversion of the use of agricultural land to residential.

In declaring as valid the award of the 750 square meter portion of Lot 5603 to private respondents, the Court of Appeals said that having become OLT beneficiaries of Lot Nos. 5602-B, 5774-5 and 5774-7 through reallocation, private respondents were entitled to the homelots found within Lot 5603, based on Letter of Instruction No. 705 dated June 10, 1978,^[9] which allows acquisition of homelots actually occupied by the beneficiaries of P.D. No. 27, regardless of whether such homelots are located within or outside their farmlots.

The motion for reconsideration filed by petitioners was likewise denied, hence this petition where it is averred that the Court of Appeals erroneously interpreted the provisions of Letter Of Instruction No. 705 in relation to DAR Memo-Circular No. 8-80 in:

I ...NOT DECLARING AS NULL AND VOID THE REALLOCATION OF THE FARMLOTS OF IDENTIFIED TENANT-FARMERS JOSEFA APAN AND IGMEDIO BAGUIO TO THE RESPONDENTS NOTWITHSTANDING THE UNDISPUTED FACT THAT THE SAID RESPONDENTS ARE NEITHER IMMEDIATE MEMBERS OF THE FAMILIES OF JOSEFA APAN AND IGMEDIO BAGUIO NOR TENANT-FARMERS OF LOTS 5602, 5603 OR 5774;

II ...GRANTING TO THE RESPONDENTS THE DISPUTED 750-SQUARE-METER PORTION OF LOT 5603 AS THEIR HOMELOT IN VIOLATION OF LETTER OF INSTRUCTION NO. 705.^[10]