

THIRTEENTH DIVISION

[CA-G.R. SP NO. 113647, November 13, 2014]

SIMEON C. FAJARDO, SUBSTITUTED BY ROSALINA VDA. DE FAJARDO, AND BERNARDO D. TOLENTINO, SUBSTITUTED BY NATIVIDAD BAUTISTA VDA. DE TOLENTINO, PETITIONERS, VS. MOONYEN B. RETIZOS, NELIN B. RETIZOS, AND MAVOURNEEN B. RETIZOS, RESPONDENTS.

DECISION

SADANG, J.:

Before this Court is a petition for review under Rule 43 of the Rules of Court seeking to annul and set aside the June 5, 2009 Decision^[1] of the Office of the President in O.P. Case No. 07-H-325 which reversed and set aside the May 18, 2006 Order and August 8, 2007 Resolution of the Department of Agrarian Reform.

Case Antecedents

When Presidential Decree (P.D.) No. 27,^[2] otherwise known as the "Tenants Emancipation Decree," took effect in 1972, Simeon Fajardo and Bernardo Tolentino^[3] (herein petitioners) and Romeo Tadeo^[4] were the tenants of a 10.5899-hectare land situated in Barangay San Isidro, Cabanatuan City registered in the name of Virginia A. Briones-Retizos (Virginia) under Transfer Certificate of Title (TCT) No. 16393.

After the death of Virginia on September 8, 1982, or on March 4, 1987, the land became the subject of a Final Survey under Module 282. Emancipation patents were issued but they were not registered for the following reasons: "1. There was no claimfolder prepared for the tenants; 2. That prior to the conduct of Final Survey, the subject landholding was subdivided by the landowner into 12 lots and correspondingly approved on February 12, 1976; 3. That TCT No. T-16393 was cancelled; 4. That the Register of Deeds refused to register the emancipation patents."^[5]

On February 28, 1998, petitioners filed a letter-petition^[6] in the Department of Agrarian Reform Regional Office III, (DAR RO III), docketed as Docket No. A-0303-0122-99, A.R. Case No. LSD 0159 '2000, entitled "Re Petition for Issuance of Emancipation Patent to a Landholding Covered by TCT No. T-16393 with an Area of 10.5899 Hectares, More or Less, Situated at Barangay San Isidro, Cabanatuan City."

Herein respondents Moonyeen B. Retizos, Nelin B. Retizos, and Mavourneen B. Retizos (hereafter, respondents), as the children and legal heirs of Virginia, filed an Opposition^[7] to the petition alleging that the land being cultivated by petitioners are partially covered by TCT No. T-90179,^[8] TCT No. T-90183,^[9] and TCT No. T-

90185^[10] in the name of respondent Moonyeen B. Retizos and TCT No. T-90182^[11] in the name of respondent Nelin B. Retizos and said landowners are exercising their right of retention over the parcels of land which should not be covered by Operation Land Transfer (OLT). Respondents' father, Isidro Retizos, did not join them in the opposition. Respondents also filed ejectment suits against petitioners before the DAR Adjudication Board (DARAB).

In an Order,^[12] dated August 30, 2000, Regional Director (RD) Nestor R. Acosta provisionally denied the petition and directed the Provincial Agrarian Reform Officer (PARO) and Municipal Agrarian Reform Officer (MARO) to proceed with the coverage of the land regardless of who may now be the owner thereof and to process the claim folders. The *fallo* of the order reads:

WHEREFORE, premises considered, an ORDER is hereby issued as follows:

1. PROVISIONALLY DENYING the Petition for Issuance of Emancipation Patents over a landholding located at Brgy. San Isidro, Cabanatuan City and formerly registered in the name of Virginia Briones (Retizos) with title number 16393 until there is payment of just compensation and without prejudice to the DARAB cases filed against the petitioners;
2. DIRECTING the PARO and the MARO to proceed with the coverage of the landholdings regardless of who may now be the owner/s thereof and process the corresponding Claim Folders.

SO ORDERED.^[13]

Respondents filed a Notice of Appeal^[14] which was not signed by their counsel, thus, on October 12, 2000, RD Acosta issued an Order^[15] directing the implementation of the August 30, 2000 Order without further delay as no motion for reconsideration was filed and the notice of appeal is considered not properly filed because it was not signed.

On May 18, 2006, the DAR issued an Order^[16] dismissing respondents' Notice of Appeal and affirming the August 30, 2000 Order of RD Acosta.

On August 8, 2007, DAR Secretary Nasser C. Pangandaman issued a Resolution^[17] denying respondents' Motion for Partial Reconsideration which sought to declare the August 30, 2000 Order as null and void for failure to observe administrative due process.

On August 22, 2007, respondents filed an Appeal^[18] with the Office of the President (OP), to which petitioners filed a Comment.^[19]

In a Decision,^[20] dated June 5, 2009, the OP rendered judgment in favor of the respondents, the *fallo* of which reads:

WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The DAR Order and Resolution dated May 18, 2006 and August 8, 2007, respectively, and the August 30, 2000 Order of the DAR RO III, are hereby REVERSED and SET ASIDE. The subject property having an area of 10.5899 hectares located in Barangay San Isidro, Cabanatuan City, covered by TCT No. T-16393, is hereby EXEMPTED from the coverage of the agrarian reform law.

SO ORDERED.^[21]

In the Resolution^[22] dated March 1, 2010, the OP denied the petitioners' Motion for Reconsideration;^[23] hence, this present petition on the ground that:

THE OFFICE OF THE PRESIDENT FAILS TO REALISE (sic) THAT THE SUBJECT LAND WAS ALREADY COVERED BY OPERATION LAND TRANSFER.^[24]

Ruling

Petitioners contend that: a final survey had been conducted and the land is already covered by "Plan Psd-03-018483 Operation Land Transfer and was approved on November 18, 1987;" the petition for issuance of emancipation patent is but the logical consequence of the land's coverage under the OLT; respondents have no right of retention because they are not the owners of the land, the transfer of the title in their names being in violation of Department Memorandum Circular No. 8, series of 1974, and P.D. 27;^[25] it was imperative on respondents to prove that the original landowner, Virginia, had the intention to retain the lot during her lifetime pursuant to Department Order No. 4, series of 1992, but Virginia showed no such intention as she merely subdivided the land into 12 lots.

In their Comment/Opposition^[26] to the instant petition, respondents counter that ownership of the land was transferred to them by operation of law upon the demise of their mother, Virginia, on September 8, 1982 and they have since acquired Virginia's right of retention over the land. They contend that the applicable rule at that time was DAR Memorandum on the Interim Guidelines on Retention of Small Landowners, dated July 10, 1977, which provides that a landowner whose property is subject to P.D. 27 is allowed to retain not more than 7 hectares of his land if his aggregate landholding does not exceed 24 hectares. Respondents maintain that the OP did not err in ruling that the land is exempted from coverage of the agrarian law. They also manifested that after the OP granted their appeal, they filed a Sworn Application for retention under Republic Act No. 6657 on August 31, 2010 in the DAR RO III and their application was approved on the strength of the ruling in *Eudisia Daez v. Court of Appeals* that landowners who failed to exercise their right of retention under P.D. 27 may be allowed to do so under R.A. 6657.

In essence, the issue in this petition is whether respondents have the right to retain the land.

The right of retention, as protected and enshrined in the Constitution, balances the effects of compulsory land acquisition by granting the landowner the right to choose the area to be retained subject to legislative standards.^[27] Necessarily, since the said right is granted to limit the effects of compulsory land acquisition against the landowner it is a prerequisite that the land falls under the coverage of the OLT Program of the government. If the land is beyond the ambit of the OLT Program, the landowner need not - as he should not - apply for retention since the appropriate remedy would be for him to apply for exemption.^[28]

Exemption and retention in agrarian reform are two (2) distinct concepts. P.D. No. 27, under which the OLT Program is being implemented, covers tenanted rice or corn lands. The requisites for coverage under the OLT program are the following: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease-tenancy obtaining therein. If either requisite is absent, a landowner may apply for exemption. If either of these requisites is absent, the land is not covered under OLT. Hence, a landowner need not apply for retention where his ownership over the entire landholding is intact and undisturbed.^[29]

If the land is covered by the OLT Program, which renders the right of retention operable, PD 27 confers in favor of covered landowners who cultivate or intend to cultivate an area of their tenanted rice or corn land the right to retain an area of not more than seven (7) hectares thereof.^[30]

R.A. 6657, enacted on June 10, 1988, modified the retention limits under P.D. 27. This law provides that landowners are allowed to retain a portion of their tenanted land not exceeding five (5) hectares plus three (3) hectares for each child subject to the conditions that the child is: 1) at least 15 years old; and 2) actually tilling the land or directly managing the farm.

Moreover, in *Heirs of Romulo Sandueta v. Robles, et al.*,^[31] it was ruled that LOI 474 amended P.D. 27 by removing the right of retention from persons who own: 1) other agricultural lands of more than seven (7) hectares in aggregate areas; or 2) lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

There is no merit in the contention of petitioners that respondents have no right of retention because they are not the owners of the land inasmuch as the transfer of title in their names is in violation of Department Memorandum Circular No. 8, series of 1974.

The record shows that respondents are the children and legal heirs of the original landowner, Virginia. Upon the death of Virginia in 1982, ownership of the land passed to her heirs, namely, her husband, Isidro, and herein respondents. Such transfer of ownership was by way of hereditary succession. It did not violate P.D. 27 or Department Memorandum Circular No. 8. Clearly, at the time of the final survey in 1987 and the issuance of emancipation patents, respondents and their father were already the owners of the land. And even if the titles over the subdivided lots were issued only in 1997, such does not detract from the fact that respondents and their father acquired the lots by hereditary succession in 1982. It is settled that a Torrens title is merely an evidence of title and not a mode of acquiring ownership.^[32]