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[G.R. No. 149548, December 04, 2009]

ROXAS & COMPANY, INC., PETITIONER, VS. DAMBA-NFSW AND THE DEPARTMENT OF AGRARIAN REFORM,* RESPONDENTS.

[G.R. NO. 167505]

AMAYAN NG MGA MANGGAGAWANG BUKID SA ASYENDA ROXAS-NATIONAL FEDERATION OF SUGAR WORKERS (DAMBA-NFSW), PETITIONER, VS. SECRETARY OF THE DEPT. OF AGRARIAN REFORM, ROXAS & CO., INC. AND/OR ATTY. MARIANO AMPIL, RESPONDENTS.

[G.R. NO. 167540]

KATIPUNAN NG MGA MAGBUBUKID SA HACIENDA ROXAS, INC. (KAMAHARI), REP. BY ITS PRESIDENT CARLITO CAISIP, AND DAMAYAN NG MANGGAGAWANG BUKID SA ASYENDA ROXAS-NATIONAL FEDERATION OF SUGAR WORKERS (DAMBA-NFSW), REPRESNTED BY LAURO MARTIN, PETITIONERS, VS. SECRETARY OF THE DEPT. OF AGRARIAN REFORM, ROXAS & CO., INC., RESPONDENTS.

[G.R. NO. 167543]

DEPARTMENT OF LAND REFORM, FORMERLY DEPARTMENT OF AGRARIAN REFORM (DAR), PETITIONER, VS. ROXAS & CO, INC., RESPONDENT.

[G.R. NO. 167845]

ROXAS & CO., INC., PETITIONER, VS. DAMBA-NFSW, RESPONDENT.

[G.R. NO. 169163]

DAMBA-NFSW REPRESENTED BY LAURO V. MARTIN, PETITIONER, vs.ROXAS & CO., INC., RESPONDENT.

[G.R. NO. 169163]

DAMBA-NFSW, PETITIONER, VS. ROXAS & CO., INC., RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

The main subject of the seven consolidated petitions is the application of petitioner Roxas & Co., Inc. (Roxas & Co.) for conversion from agricultural to non-agricultural use of its three *haciendas* located in Nasugbu, Batangas containing a total area of almost 3,000 hectares. The facts are not new, the Court having earlier resolved intimately-related issues dealing with these *haciendas.* Thus, in the 1999 case of *Roxas & Co., Inc. v. Court of Appeals*,[1] the Court presented the facts as follows:

> . . . Roxas & Co. is a domestic corporation and is the registered owner of three haciendas, namely, **Haciendas Palico, Banilad and Caylaway**, all located in the Municipality of Nasugbu, Batangas. Hacienda Palico is 1,024 hectares in area and is

registered under Transfer Certificate of Title (TCT) No. 985. This land is covered by Tax Declaration Nos. 0465, 0466, 0468, 0470, 0234 and 0354. Hacienda Banilad is 1,050 hectares in area, registered under TCT No. 924 and covered by Tax Declaration Nos. 0236, 0237 and 0390. Hacienda Caylaway is 867.4571 hectares in area and is registered under TCT Nos. T-44662, T-44663, T-44664 and T-44665.

x x x x

On July 27, 1987, the Congress of the Philippines formally convened and took over legislative power from the President. This Congress passed Republic Act No. 6657, the Comprehensive Agrarian Reform Law (CARL) of 1988. The Act was signed by the President on June 10, 1988 and took effect on June 15, 1988.

Before the law's effectivity, on May 6, 1988, [Roxas & Co.] filed with respondent DAR a **voluntary offer to sell [VOS]** Hacienda Caylaway pursuant to the provisions of E.O. No. 229. Haciendas Palico and Banilad were later placed under compulsory acquisition by ... DAR in accordance with the CARL.

x x x x

Nevertheless, on August 6, 1992, [Roxas & Co.], through its President, Eduardo J. Roxas, sent a letter to the Secretary of ...DAR **withdrawing its VOS of Hacienda Caylaway.** The Sangguniang Bayan of Nasugbu, Batangas **allegedly authorized the reclassification of Hacienda Caylaway from agricultural to non-agricultural**. As a result, petitioner informed respondent DAR that it was **applying for conversion of Hacienda Caylaway from agricultural to other uses**.

x x x x[2] (emphasis and underscoring supplied)

The petitions in **G.R. Nos. 167540** and **167543** nub on the interpretation of *Presidential Proclamation (PP) 1520* which was issued on November 28, 1975 by then President Ferdinand Marcos. The PP reads:

DECLARING THE MUNICIPALITIES OF MARAGONDON AND TERNATE IN CAVITE PROVINCE AND THE MUNICIPALITY OF NASUGBU IN BATANGAS AS A TOURIST ZONE, AND FOR OTHER PURPOSES

WHEREAS, **certain areas in the sector comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas have potential tourism value** after being developed into resort complexes for the foreign and domestic market; and

WHEREAS, **it is necessary to conduct the necessary studies and to segregate specific geographic areas** for concentrated efforts of both the government and private sectors in developing their tourism potential;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby declare the area comprising the Municipalities of Maragondon and Ternate in Cavite Province and Nasugbu in Batangas Province as **a tourist zone under the administration and control of the Philippine Tourism Authority (PTA)** pursuant to Section 5 (D) of P.D. 564.

The PTA shall identify well-defined geographic areas within the zone with potential tourism value, wherein optimum use of natural assets and attractions, as well as existing facilities and concentration of efforts and limited resources of both government and private sector may be affected and realized in order to generate foreign exchange as well as other tourist receipts.

Any duly established military reservation existing within the zone shall be excluded from this proclamation.

All proclamation, decrees or executive orders inconsistent herewith are hereby revoked or modified accordingly. (emphasis and underscoring supplied).

The incidents which spawned the filing of the petitions in **G.R. Nos. 149548, 167505, 167845, 169163** and **179650** are stated in the dissenting opinion of Justice Minita Chico-Nazario, the original draft of which was made the basis of the Court's deliberations.

Essentially, Roxas & Co. filed its application for conversion of its three *haciendas* from argricultural to non-agricultural on the assumption that the issuance of PP 1520 which declared Nasugbu, Batangas as a tourism zone, reclassified them to non-agricultural uses. Its pending application notwithstanding, the Department of Agrarian Reform (DAR) issued Certificates of Land Ownership Award (CLOAs) to the farmer-beneficiaries in the three *haciendas* including CLOA No. 6654 which was issued on October 15, 1993 covering 513.983 hectares, the subject of G.R. No. 167505.

The application for conversion of Roxas & Co. was the subject of the above-stated *Roxas & Co., Inc. v. Court of Appeals* which the Court remanded to the DAR for the observance of proper acquisition proceedings. As reflected in the above-quoted statement of facts in said case, during the pendency before the DAR of its application for conversion following its remand to the DAR or on May 16, 2000, Roxas & Co. filed with the DAR an application for exemption from the coverage of the Comprehensive Agrarian Reform Program (CARP) of 1988 on the basis of PP 1520 and of DAR Administrative Order (AO) No. 6, Series of 1994[3] which states that all lands already classified as commercial, industrial, or residential before the effectivity of CARP no longer need conversion clearance from the DAR.

It bears mentioning at this juncture that on April 18, 1982, the *Sangguniang Bayan* of Nasugbu enacted Municipal Zoning Ordinance No. 4 *(Nasugbu MZO No. 4)* which was approved on May 4, 1983 by the Human Settlements Regulation Commission, now the Housing and Land Use Regulatory Board (HLURB).

The records show that *Sangguniang Bayan* and Association of Barangay Captains of Nasugbu filed before this Court petitions for intervention which were, however, denied by Resolution of June 5, 2006 for lack of standing.[4]

After the seven present petitions were consolidated and referred to the Court *en banc*,[5] oral arguments were conducted on July 7, 2009.

The core issues are:

1. Whether PP 1520 reclassified in 1975 all lands in the Maragondon-Ternate-Nasugbu tourism zone to non-agricultural use to exempt Roxas & Co.'s three *haciendas* in Nasugbu from CARP coverage;

2. Whether *Nasugbu MSO No. 4*, Series of 1982 exempted certain lots in *Hacienda Palico* from CARP coverage; and

3. Whether the partial and complete cancellations by the DAR of CLOA No. 6654 subject of G.R. No. 167505 is valid.

The Court shall discuss the issues *in seriatim*.

I. PP 1520 DID *NOT* AUTOMATICALLY CONVERT THE AGRICULTURAL LANDS IN THE THREE MUNICIPALITIES INCLUDING NASUGBU TO NON-AGRICULTURAL LANDS.

Roxas & Co. contends that PP 1520 declared the three municipalities as each constituting a tourism zone, reclassified all lands therein to tourism and, therefore, converted their use to non-agricultural purposes.

To determine the chief intent of PP 1520, reference to the "*whereas clauses*" is in order. By and large, a reference to the congressional deliberation records would provide guidance in dissecting the intent of legislation. But since PP 1520 emanated from the legislative powers of then President Marcos during martial rule, reference to the *whereas clauses* cannot be dispensed with.[6]

The perambulatory clauses of PP 1520 identified only "certain areas in the sector comprising the [three Municipalities that] have potential tourism value" and mandated the conduct of "necessary studies" and the segregation of "specific geographic areas" to achieve its purpose. Which is why the PP directed the Philippine Tourism Authority (PTA) to identify what those potential tourism areas are. If all the lands in those tourism zones were to be wholly converted to non-agricultural use, there would have been no need for the PP to direct the PTA to identify what those "specific geographic areas" are.

The Court had in fact passed upon a similar matter before. Thus in *DAR v. Franco,*[7] it pronounced:

> Thus, the DAR Regional Office VII, **in coordination with the Philippine Tourism Authority, has to determine precisely which areas are for tourism development** and excluded from the Operation Land Transfer and the Comprehensive Agrarian Reform Program. And suffice it to state here that the Court has repeatedly ruled that lands already classified as non-agricultural before the enactment of RA 6657 on 15 June 1988 do not need any conversion clearance.[8] (emphasis and underscoring supplied).

While the above pronouncement in *Franco* is an *obiter*, it should not be ignored in the resolution of the present petitions since it reflects a more rational and just interpretation of PP 1520. There is no prohibition in embracing the rationale of an *obiter dictum* in settling controversies, or in considering related proclamations establishing tourism zones.

In the above-cited case of *Roxas & Co. v. CA*,[9] the Court made it clear that the "power to determine whether *Haciendas Palico*, *Banilad* and *Caylaway* are non-agricultural, hence, exempt from the coverage of the [Comprehensive Agrarian Reform Law] lies with the [Department of Agrarian Reform], not with this Court."[10] The DAR, an administrative body of special competence, denied, by Order of October 22, 2001, the application for CARP exemption of Roxas & Co., it finding that PP 1520 did ***not*** automatically reclassify all the lands in the affected municipalities from their original uses. It appears that the PTA had not yet, at that time, identified the "specific geographic areas" for tourism development and had no pending tourism development projects in the areas. Further, report from the Center for Land Use Policy Planning and Implementation (CLUPPI) indicated that the areas were planted with sugar cane and other crops. [11]

Relatedly, the DAR, by *Memorandum Circular No. 7, Series of 2004*,[12] came up with clarificatory guidelines and therein decreed that

> A. x x x x.
>
> B. Proclamations declaring general areas such as whole provinces, municipalities, barangays, islands or peninsulas as tourist zones that merely:
>
> (1) recognize certain still unidentified areas within the covered provinces, municipalities, barangays, islands, or peninsulas to be with potential tourism value and charge the Philippine Tourism Authority with the task to identify/delineate specific geographic areas within the zone with potential tourism value and to coordinate said

areas' development; or

(2) recognize the potential value of identified spots located within the general area declared as tourist zone (i.e. x x x x) and direct the Philippine Tourism Authority to coordinate said areas' development;

could not be regarded as effecting an automatic reclassification **of the entirety of the land area declared as tourist zone. This is so because "reclassification of lands" denotes their allocation into some specific use and "providing for the manner of their utilization and disposition (Sec. 20, Local Government Code) or the "act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, or commercial, as embodied in the land use plan."** (Joint HLURB, DAR, DA, DILG Memo. Circular Prescribing Guidelines for MC 54, S. 1995, Sec.2)

A proclamation that merely recognizes the potential tourism value of certain areas within the general area declared as tourist zone clearly *does not allocate, reserve, or intend the entirety of the land area of the zone for non-agricultural purposes*. Neither does said proclamation direct that otherwise CARPable lands within the zone shall already be used for purposes other than agricultural.

Moreover, to view these kinds of proclamation as a reclassification for non-agricultural purposes of entire provinces, municipalities, barangays, islands, or peninsulas would be unreasonable as it amounts to an automatic and sweeping exemption from CARP in the name of tourism development. The same would also undermine the land use reclassification powers vested in local government units in conjunction with pertinent agencies of government.

C. There being no reclassification, it is clear that said proclamations/issuances, assuming [these] took effect before June 15, 1988, could not supply a basis for exemption of the entirety of the lands embraced therein from CARP coverage x x x x.

D. x x x x. (underscoring in the original; emphasis and italics supplied)

The DAR's reading into these general proclamations of tourism zones deserves utmost consideration, more especially in the present petitions which involve vast tracts of agricultural land. To reiterate, PP 1520 merely recognized the "potential tourism value" of certain areas within the general area declared as tourism zones. It did not reclassify the areas to non-agricultural use.

Apart from PP 1520, there are similarly worded proclamations declaring the whole of Ilocos Norte and Bataan Provinces, Camiguin, Puerto Prinsesa, Siquijor, Panglao Island, parts of Cebu City and Municipalities of Argao and Dalaguete in Cebu Province as tourism zones.[13]

Indubitably, these proclamations, particularly those pertaining to the Provinces of Ilocos Norte and Bataan, did not intend to reclassify all agricultural lands into non-agricultural lands in one fell swoop. The Court takes notice of how the agrarian reform program was--and still is--implemented in these provinces since there are lands that do not have any tourism potential and are more appropriate for agricultural utilization.

Relatedly, a reference to the *Special Economic Zone Act of 1995*[14] provides a parallel orientation on the issue. Under said *Act*, several towns and cities encompassing the whole Philippines were readily identified as economic zones.[15] To uphold Roxas & Co.'s reading of PP 1520 would see a total reclassification of practically all the agricultural lands in the country to non-agricultural use. Propitiously, the legislature had the foresight to include a bailout provision in Section 31 of said *Act* for land conversion.[16] The same cannot be said of PP 1520, despite the existence of Presidential Decree (PD) No. 27 or the *Tenant Emancipation Decree*,[17] which is the precursor of the CARP.