

SECOND DIVISION

[G.R. NO. 170823, March 27, 2007]

**DEPARTMENT OF AGRARIAN REFORM, REP. BY OIC-SECRETARY
NASSER C. PANGANDAMAN, PETITIONER, VS. OROVILLE
DEVELOPMENT CORP., REP. BY ANTONIO H. TIU AND WALDO G.
REBOLOS, RESPONDENT.**

DECISION

TINGA, J.:

The Department of Agrarian Reform (DAR) assails the Amended Decision^[1] of the Court of Appeals dated July 18, 2005, which declared the 48.8939-hectare property subject of this case as not covered by the Comprehensive Agrarian Reform Program (CARP), and its Resolution^[2] dated November 15, 2005, which denied the DAR's motion for reconsideration.

The undisputed facts are as follows:

On July 7, 1997, petitioner [Oroville Development Corporation] applied with DAR Regional Office No. X for exclusion of the subject property from CARP coverage pursuant to DAR Administrative Order No. 06, s. of 1994, entitled "Guidelines for the Issuance of Exemption Clearance Based on Section 3 [c] of Republic Act (RA) No. 6657 and the Department of Justice (DOJ) Opinion No. 44, Series of 1990." According to petitioner, the property was reclassified into residential use prior to June 15, 1998, the date of effectivity of RA [No.] 6557, per Town Plan and Zoning Ordinance No. 880, s. of 1979 of Cagayan de Oro City, as approved by the Housing and Land Use Regulatory Board (HLURB) on September 24, 1980, and covering tax declarations.

On May 25, 1998, DAR Secretary Ernesto D. Garilao issued an Order denying petitioner's application. The dispositive portion thereof reads:

WHEREFORE, premises considered, Order is hereby issued DENYING the exemption application and DECLARING that the 48.8939 hectare agricultural land embraced by TCT numbers [sic] T-85121, T-85135, and T-104365 located at Maitum, Upper Puerto, Cagayan de Oro City as COVERED by the Comprehensive Agrarian Reform Law (CARP).

Petitioner failed in its move to reconsider the said May 25, 1998 Order, as shown in the Order issued by DAR Secretary Hernani A. Braganza on June 20, 2002, which decreed:

WHEREFORE, premises considered, the Motion for Reconsideration dated 10 June 1998 filed by applicant-movant Oroville Development

Corporation, is hereby DENIED for lack of merit. The Order of the Secretary dated 25 May 1998 is hereby AFFIRMED in toto.

Unfazed, petitioner elevated the DAR Orders to the Office of the President (OP). However, the OP rendered a Decision on June 27, 2003, as follows:

WHEREFORE, premises considered, the questioned Orders dated 25 May 1998 and 20 June 2002 of the DAR Secretary are hereby AFFIRMED and the instant appeal DISMISSED.

Petitioner's motion for reconsideration was denied by the OP in its *Resolution* dated December 9, 2003.^[3]

On petition for review under Rule 43 of the Rules of Court, the Court of Appeals was faced with the issue of whether the subject property is classified as agricultural as found by the DAR Secretary and affirmed by the Office of the President, or residential as alleged by respondent Oroville Development Corporation (Oroville).

The appellate court initially declared in its Decision^[4] dated March 16, 2005 that the subject property is agricultural on the basis of a later certification to this effect dated February 10, 1997 issued by the City Development Coordinator of the City Planning and Development Office which superseded the Certification dated November 22, 1993 issued by the same authority.

Upon Oroville's motion for reconsideration, however, the Court of Appeals set aside its earlier Decision and ruled that the subject property has been reclassified as residential and therefore beyond the coverage of CARP. This time, the appellate court gave credence to three (3) Zoning Certifications dated July 23, 2004 issued by the Assistant City Development Coordinator of the City Planning and Development Office to the effect that the subject property is within the city's potential growth areas for urban expansion. According to the Court of Appeals, these certifications were not considered by the court in the resolution of Oroville's petition because they were not yet in existence when the petition was filed on February 24, 2004.

The Court of Appeals denied reconsideration.

In its Petition for Review^[5] dated January 9, 2006, the DAR seeks the reversal of the appellate court's Amended Decision, arguing that the latter precipitately relied on the Zoning Certifications issued by the City Planning and Development Office and erroneously assumed that a local government unit such as Cagayan de Oro City has unconditional authority to classify and reclassify lands within its territorial jurisdiction. The DAR points out that the Assistant City Development Coordinator herself clarified, in a letter dated December 2, 2005, that the zoning classification of the subject property remains to be agricultural considering that the 1979 Zoning Code of Cagayan de Oro City is still in force. Further, the Zoning Certifications do not qualify as newly discovered evidence because the supposed basis for these certifications, City Ordinance No. 7959, was already in effect in 2001, years before the Court of Appeals rendered its original Decision in 2005.

The DAR maintains that the Certification dated February 10, 1997 to the effect that the subject property is agricultural should be upheld because it was based not only

on a zoning ordinance but, more importantly, was approved prior to the effectivity of the Comprehensive Agrarian Reform Law (CARL) in 1988, by the then Human Settlements Regulatory Commission, now the Housing and Land Use Regulatory Board, the national agency then charged with the classification and reclassification of lands.

Oroville centers its Comment^[6] dated May 11, 2006 on the argument that the subject property had been classified as residential prior to the effectivity of the CARL and the Local Government Code (LGC). The DAR's insistence, invoking Sec. 20 of the LGC, that further approval by the national agency concerned is essential in order to effect the reclassification of the subject property from agricultural to residential because City Ordinance No. 7959 which was made the basis for the Zoning Certifications issued by the City Planning and Development Office was enacted only in 2001, is therefore erroneous. Moreover, Oroville avers that the subject property has been consistently declared as residential land as shown in previous tax declarations.

In its Reply^[7] dated August 8, 2006, the DAR asserts that tax declarations are not conclusive of the nature of the property for zoning purposes.

The question upon which the resolution of this case turns is whether the subject property is agricultural or residential based on Cagayan de Oro City's zoning ordinances. The conflicting certifications issued by the City Planning and Development Office, which has unquestioned primary jurisdiction to rule on matters of classification of lands within its territorial jurisdiction, need to be scrutinized in order to arrive at a definitive ruling.

A review of the case's antecedents shows that in its Orders dated May 25, 1998 and June 20, 2002, the DAR declared the property to be agricultural on the basis primarily of the Certification dated February 10, 1997 prepared by the City Planning and Development Office which states "that Lot No. 184398 (F-V-12713), Lot No. H-4321 and Lot No. H-16-4, located at Upper Puerto, this City, is within AGRICULTURAL DISTRICT per provision of Section 22-A of the 1994 Certified Ordinance of the City of Cagayan de Oro."^[8]

Oroville claims, however, that the earlier Certification dated November 22, 1993, which states "that Lot No. 19801 Cad. 369-0 located at Puerto, this City is within Residential classification per Section 9; Article IV of Zoning Ordinance, Ordinance No. 880 series of 1979,"^[9] should prevail over the February 10, 1997 Certification.

It is at once evident that the 1993 certification pertains generally to a lot located in Puerto, while the 1997 certification makes specific reference to *Upper Puerto*. This distinction gains significance in light of the DAR's finding, in its Order dated June 20, 2002, that Section 9(b), Article IV of Ordinance No. 880, Series of 1979, does classify lands in *Barangay Puerto* as within the residential area, but explicitly provides that lands within *Barangay Upper Puerto*, among others, are within the agricultural zone.^[10]

It is also significant to note that, as mentioned in the assailed Amended Decision, the 1993 certification pertains only to Lot No. 19801 Cad. 369-0 which covers two portions of the subject land, namely: the portion encompassed by Transfer