520 Phil. 854

FIRST DIVISION

[G.R. NO. 153817, March 31, 2006]

NOLITO D. SOLMAYOR, VICENTE LASTIMA, JUANITO B. SUAREZ, GERVACIO BATAUSA (DEC.) REPRESENTED BY ANTONIO BATAUSA, VICTORIANO CANDIA, PRIMITIVO BORRES (DEC.) REPRESENTED BY ROGELIO BORRES, TIBURCIO MANULAT (DEC.) REPRESENTED BY TERESITA MANULAT PALACA, PATRICIO ASTACAAN, JUANITO AMIGABLE, OZITA MENDOZA, LUIS CANDOG (DEC.) REPRESENTED BY JOVENCIA CANDOG AND SABINO CELADES (DEC.) REPRESENTED BY SERGIA ESTANTE, PETITIONERS, VS. ANTONIO L. ARROYO, RESPONDENT

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure assailing the Decision[1] of the Court of Appeals which affirmed the Decision[2] of the Office of the President reversing the Order[3] of the Department of Agrarian Reform (DAR) which dismissed herein respondent's appeal from the order dated 19 May 1989 of the Regional Director of DAR Region XI dismissing the petition filed by Antonio Arroyo for the cancellation of Certificates of Land Transfer (CLTs) issued to herein petitioners.

On 23 November 1978, respondent Arroyo received a letter from the legal officer of the then Ministry of Agrarian Reform (now DAR) informing him that his land with an aggregate area of 9.8038 hectares situated at Matina, Davao City, was the subject of Operation Land Transfer (OLT) under Presidential Decree No. 27, which took effect on 21 October 1972. Likewise, he was advised that he could apply for the conversion of the land to residential or other urban purposes in accordance with applicable laws. In a letter dated 16 January 1979, then Team Leader I of the Ministry of Agrarian Reform notified respondent that based on the parcellary map sketching conducted by the Agrarian Reform and the Bureau of Lands, the subject property was covered by the OLT program since the area thereof, which was tenanted at that time, was more than seven hectares.

Based on an Indorsement issued by the City Zoning and Development Officer on 5 July 1979 certifying that the property is "partly zonified as Residential Class "A" and "B," Commercial and Open Space x x x as per existing Zoning Ordinance of Davao City," respondent applied for the conversion of the land to residential subdivision on 24 July 1979. Attached to the said application were documents issued by different government agencies such as the Human Settlements Regulatory Commission (precursor of the Housing and Land Use Regulatory Board [HLURB]), Bureau of Soils and the City of Davao, showing that said land has been classified as residential.

Acting on said application, DAR local officials conducted a series of conferences

between respondent, through his representative, and herein petitioners as occupants of the property, purposely to reach a settlement for the latter's relocation, award of respective homelots, and the payment of disturbance compensation as a consequence of the conversion. However, no final agreement was reached between the parties. This prompted the Agrarian Reform Technologist of Davao City to propose that the tenants on the land be accorded the benefits of Presidential Decree No. 27 or that the matter be referred to the Bureau of Agrarian Legal Assistance for proper action.

Without first resolving respondent's application for conversion, the then Ministry of Agrarian Reform issued in November 1984 the questioned CLTs in favor of petitioners. Upon knowledge of said issuance, respondent filed a petition for the cancellation of said CLTs on 27 August 1985 on the ground that the subject land was, and still is, residential property and thus, beyond the coverage of Presidential Decree No. 27. Furthermore, respondent denies the existence of a tenancy relationship between him and petitioners.

On 8 August 1988, respondent, through his attorney-in-fact, made a Voluntary Offer to Sell his entire landholding, including the subject property, to the government in accordance with the provisions of Republic Act 6657 or the Comprehensive Agrarian Reform Law of 1988. As a consequence thereof, the Regional Director of DAR Region XI issued an Order dated 19 May 1989 dismissing respondent's petition for cancellation of CLTs. According to said Order, "with the offer made by petitioner, the issue in this petition, whether or not the subject properties are within the land transfer coverage, becomes moot and academic."[4] Respondent appealed said Order to the Office of the Secretary of Agrarian Reform praying that it be set aside and that the CLTs be cancelled. Meanwhile, in 1990, the DAR issued Emancipation Patents to petitioners as the identified farmer-beneficiaries on the land.

In an Order dated 19 July 1994, then DAR Secretary Ernesto Garilao dismissed respondent's appeal and upheld the validity of the Emancipation Patents awarded to petitioners. According to the Secretary:

> Going to the first issue, this Office so holds that the landholding in question are agricultural as of October 21, 1972 despite the fact that the same have been declared for tax purposes as residential. The Memorandum dated May 17, 1993 which contains the investigation report of the DAR personnel who conducted the ocular inspection and investigation explicitly shows that when Presidential Decree No. 27 took effect the actual use of the land is agricultural. This fact is further buttressed when petitioner, in his letter dated August 8, 1988 manifested his desire to voluntarily offer to sell the properties in question to the Department of Agrarian Reform, declaring that the subject landholdings are productive and suitable to agricultural production.
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> The fact that there is a certification from the HLURB that the property has been rezoned to residential use is of no moment. It must be observed that the notion that real property which is already classified as residential or commercial, is no longer agricultural land, is found in Section 3 of R.A. 6657. In other words, the property was still agricultural at the time of the promulgation of P.D. 27, and the rights of the tenant farmers shall have vested by then, and future reclassification could not

derogate such vested rights.

Anent the second issue, records show that sharing was established as per receipts submitted during the investigation by Primitivo J. Borres, overseer of the subject landholding. Records further disclosed that the agricultural produce were received by Melencio A. Gumtang and Bonifacio P. Bernardino, administrators of Antonio Arroyo's properties in Matina, Davao City. The contention of the petitioner that there was no consent extended by him to the respondents is not well-taken. As borne out by the records, overseer Primitivo J. Borres permitted the tilling of the land by the respondents hence, the landowner-petitioner in the present case is chargeable with knowledge through his overseer of such cultivation. Under Section 7 of Republic Act No. 1199, as amended, tenancy relationship may be established either verbally or in writing, expressly or impliedly.

x x x x

WHEREFORE, premises considered, Order is hereby issued dismissing the instant petition for utter lack of merit. The validity of the issuance of the Emancipation Patents (EPs) to the tenants is hereby affirmed.[5]

Respondent's Motion for Reconsideration was subsequently denied in an Order dated 7 August 1996, prompting respondent to file an appeal before the Office of the President. In a Decision dated 17 November 2000, the Office of the President reversed the order of the DAR Secretary and declared the 9.8 hectares outside the coverage of Presidential Decree No. 27, to wit:

The crux of this case is whether or not grounds exist to warrant the cancellation of CLTs and EPs issued to appellees as the identified tenant-beneficiaries on the land. The determination of this issue in turn hinges on the question of whether or not the subject land is exempt under OLT coverage of PD 27.

In the recent case of Eudosia Daez vs. Court of Appeals, G.R. No. 133507, February 17, 2000, the Supreme Court set forth the requirements for coverage under the OLT program in this wise:

> "PD 27, which implemented the Operation Land Transfer (OLT) Program, 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 for [sic] those requisites is absent, the land is not covered under OLT.

x x x x

Thus, on one hand, exemption from coverage of OLT lies if: (1) the land is not devoted to rice or corn crops even if it is tenanted; or (2) the land is untenanted even though it is devoted to rice or corn crops."

Guided by the foregoing, it is essential to determine whether or not tenancy relationship exists between Mr. Arroyo and the appellees. In the absence of the all important element of tenancy, the subject land falls outside OLT coverage of PD 27 even if incidentally it is devoted to rice and/or corn. In the case of Prudential Bank vs. Gapultos, 181 SCRA 160 [1990], the Supreme Court lists the requisites essential for the establishment of tenancy relationship, thus:

> "The essential requisites of tenancy relationship are: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests. All these requisites must concur in order to create a tenancy relationship between the parties. The absence of one does not make an occupant of a parcel of land, or a cultivator thereof, or a planter thereon, a de jure tenant. Unless a person has established his status as a de jure tenant, he is not entitled to security of tenure nor is he covered by Land Reform Program of the government under existing tenancy laws."
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> Applying the above-stated requirements in the case at bar, we find the absence of tenancy relationship between the parties. Firstly, subject land is not an agricultural land, as the term is understood. Uncontroverted evidence shows that the subject land had been classified as residential/commercial even prior to the effectivity of PD 27. Per Official Zoning Map of the City of Davao adopted under Resolution No. 711, Ordinance No. 281, s. of 1972 (p. 243, Records), the land was classified as "Commercial Zone and Residential Zone Class B". This classification confirmed the residential character of the subject land as appearing in Mr. Arroyo's tax declarations filed way back in 1968 (pp. 187-190, Records). x x x
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> The residential character of the subject property is likewise confirmed by the following government agencies or offices:
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> > 1. The Housing and Land Use Regulatory Board (HLURB), Davao City, which issued a Zoning Certification to the effect that the subject land is within the Residential/Commercial Zone under the Zoning Ordinance of Davao City adopted through a Sangguniang Bayan Resolution and ratified by the HLURB, through Board Resolution No. 39-4, s. of 1980 dated July 31, 1980 (p. 208, Records).
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> > 2. The Office of the Zoning Administrator, City of Davao, certifying to the effect that the subject land is within a Residential Zone Class "B" in the Zonification Ordinance of Davao City (p. 126, Records).

3. The Bureau of Soils of then Ministry of Agriculture, Davao City, which submitted a Certification to the effect that the subject land is suitable for urban use/housing projects (p. 127, Records).

4. The Office of the City Planning and Development Coordinator, Office of the Zoning Administrator, certifying to the effect that the subject land was classified as Major Commercial Zone (C-2) and High Density Residential Zone (R-2) in the City Ordinance No. 363, s. of 1982 or better known as Expanded Zoning Ordinance of Davao City (p. 160, Records).To cap it all, even the DAR Provincial Task Force on Illegal Conversion, after conducting on April 10, 2000 an investigation on the reported illegal conversion of the subject land, admitted on its report of June 2, 2000 that it is no longer agricultural, it being classified as commercial and residential zones. Consequently, they ruled out any act of illegal conversion.

Secondly, the records show that the land in dispute was never intended for agricultural production. For one, no agricultural improvements were introduced upon the land since its acquisition by Mr. Arroyo in 1951. In fact, for more than a decade since 1972, the disputed land was subject of numerous business proposals (attached to Appeal/Memorandum) from various land developers for purposes of developing it into a residential and commercial area. For another, the subject property is situated in a commercial and residential area. As the records show, it is adjacent to the Government Service and Insurance System (GSIS) subdivision and other residential or commercial establishments, and surrounded by GSIS Heights, Villa Josefina Subdivision, Flores Village, Central Park Subdivision, Poly Subdivision, San Miguel Village, New Matina Golf Club, Davao Memorial Park, Shrine of the Infant Jesus, Matina Public Market and Venees hotel.

The fact that appellees may perhaps have planted rice or corn on the said land, situated in the middle of what appears to be a fast growing residential and business area in the heart of a metropolitan area, is of little moment. Such agricultural activity cannot, by any strained interpretation of law, amount to converting the land in question into agricultural land and subject it to the agrarian reform program of the government. The Supreme Court in Hilario vs. Intermediate Appellate Court (supra) held that:

"x x x. But even if the claim of the private respondent that some corn was planted on the lots is true, this does not