492 Phil. 432

THIRD DIVISION

[G.R. NO. 146935, February 24, 2005]

SPS. DANILO ESPARAGERA AND DIEGA ESPARAGERA AND ENRIQUE GONZALES, PETITIONERS, VS. J. Y. REALTY & DEVELOPMENT CORPORATION, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

In a complaint filed before the Department of Agrarian Reform (DAR) Regional Office at Cebu City by Enrique V. Gonzales (Gonzales) against Toribio Rodil (Rodil) and Salud Young for Preservation of Tenancy Status,[1] Gonzales claimed to be a tenant on a portion of a five (5)-hectare landholding situated at Upper Bulacao, Pardo, Cebu City which Rodil formerly owned but which he sold to Salud Young.

In a separate complaint/petition filed also before the same DAR Regional Office by Danilo Esparagera, Gonzales' brother-in-law, together with the former's wife, also against Rodil and Young, along with Rodulfo Amancia, and J. Y. Realty Corporation (the realty corporation)[2] to which Young eventually sold the landholding in question, for Injunction with Prayer for Issuance of Restraining Order, the spouses Esparagera claimed to be tenants too of a portion of the same landholding.

The two cases were, upon agreement of the parties, jointly tried. Gonzales and the Esparageras (the complainants) sought to establish that the landholding in question is an agricultural land.

In an 18-page decision[3] dated August 28, 1991, the Provincial Agrarian Reform Adjudicator (PARAD) Atty. Rosalio T. Kintanar defined the following issues in the cases as follows:

> I. - WHETHER OR NOT COMPLAINANTS DANILO ESPARAGERA AND ENRIQUE GONZALES ARE BONA-FIDE TENANT FARMER[S] ON THE LAND IN QUESTION.
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> II. - WHETHER OR NOT THE PROPERTY IN QUESTION IS RESIDENTIAL OR AGRICULTURAL IN NATURE
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> III. - WHETHER OR NOT COMPLAINANTS HEREIN CAN BE DISLODGED, REMOVED OR DISPOSSESSED FROM THE SUBJECT LANDHOLDING BASED ON THE CIRCUMSTANCES OBTAIN[ING] HEREIN.[4]

Resolving the first and second issues in the negative, the PARAD held as follows, quoted *verbatim*:

In resolving all the above-enumerated issues seriatim, the **first issue** can be effectively resolved by traversing on the important elements of tenancy. Well-settled is the rule in this jurisdiction that in order to establish the juridical tie of tenancy relationship, the following essential elements must be present, to wit:

> 1) the parties are the landholder, who may be a landowner, lessor, usufructuary or legal possessor and a "tenant";
> 2) the subject matter is agricultural land;
> 3) the purpose is agricultural production;
> 4) the consent maybe express or implied;
> 5) the consideration maybe the shares given either in money or in kind or payment of lease rental thereon. (Section 4 Rep. Act 1199, as amended; Caballes vs. Department of Agrarian Reform, et al., G.R. No. 78214, December 5, 1988; Gabriel vs. Pangilinan, G.R. No. 27797, August 26, 1974)

As can be gleaned from the records of this case, late before 1948, there were already few coconut trees strategically planted along the boundary line of the land in question identified as Lot 5391 nestled at Pardo, Cebu City. Late thereafter, whole area was fully planted with coconut by former landowner, the late Eugenio Rodil assisted by Gil Rodil, Toribio Rodil, a certain Cleto and few hired laborers. (Exhibits "1" and "2", par. 4 and TSN dated Feb. 26, 1990, p. 16); Complainants Danilo Esparagera and Enrique Gonzales who are related by affinity being brother-in-laws entered the subject landholding **by tolerance** sometime 1960 and 1955, respectively. (Exhibits "H", par. 3 and "A", par. 1) That they were able to plant coconuts, corn and bananas and shared the produced thereof to the landowner through the acknowledged overseers Semiona and Alfonsa Cabaltera. (TSN dated Jan. 23, 1990; p. 5) These averments, however, are sternly denied and controverted no less than by Alfonsa Cabaltera herself who succinctly testified during the hearing in this wise:

> 9) Nga si Enrique Gonzales wala magabantay sa lubi wala siya mananum ug karon na lang naburoka na nga siya miuma sa yuta nga akong gibantayan ug gibantayan ni Juliana Castañares;
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> 10) Nga nakaila usab ako kang Danilo Esparagera nga igo lamang nga nagpuyo sa yuta apan dili siya saop ug karon na lang siya magtanumtanum ug saging ug mais aron ingnon siya nga saop sa diha na nga naburoka ang yuta.

In English translation means:

> 9) That Enrique Gonzales has never watched the coconut trees and never planted them and it was only during the pendency of this case that he cultivated the land I'[m] watching jointly with Juliana Castañares;
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> 10) That I also know Danilo Esparagera who merely stayed on the land but not as tenant and he started planting bananas

> and corn just recently so as to be called tenant in the pendency of this case involving this land." (Exhibit "9" and TSN dated August 20, 1990, pp. 4-15)

Besides, it is highly inconceivable and ludicrous to believe that farming is the main source of livelihood of complainant Gonzales who admittedly testified that he is a taxi driver and a Gospel Minister-Preacher who earned a net and better income of P40.00 to P50.00 a day in driving compared to P3.00 or little bit more in farming for every three (3) months. (TSN dated November 6, 1989, pp. 18-19; TSN dated February 26, 1990, p. 7) While complainant Esparagera derived a minimal income from farming compared to furniture making out of rattan whose lucrative income and viability is even known for export. This is patently shown in the cash advance receipt dated February 25, 1989 signed by Diega Esparagera, wife of the aforenamed complainant. (TSN dated September 14, 1990, pp. 16-17; TSN dated December 10, 1990, pp. 16-18)

Viewed from the foregoing perspective, it is irresistible to conclude that complainants herein are not bona-fide tenant-farmers on the land under controversy especially so that that no scintilla of hard and persuasive evidence has been adduced by complainants except their bare testimonies which fall short of the required "substantial evidence" inevitably necessary to sutain a valid cause of action in agrarian cases or controversies. (Hernandez vs. Intermediate Appellate Court, et. al., G.R. 74323, September 21, 1990)

On the **second issue**, the opposing claims of the parties are obvious that while complainants averred that the parcel in question is agricultural, respondents also contended that it is residential in nature.

A judicious perusal on the records of this case, complainants argued that based on the actual use of the subject land, it is agricultural while respondents alleged that it is residential and in support thereof is the Certification dated March 9, 1989 signed by Mr. Ignacio P. Salgado, Jr. of the Department of Planning and Development, Cebu City (Exhibit "4"), Copy of Resolution No. 2003 approving the Rezonification Plan of Cebu City as approved by the City Planning Board, series of 1966 (Exhibit "5"), Copy of the Zoning and Planning Ordinance of Cebu City adopted by the City Planning Board and approved by the National Urban Planning Commission pursuant to Executive Order No. 98 dated March 11, 1946 (Exhibit "6"), with the subject landholding situated at Pardo, Cebu City, clearly classified as residential (Exhibit "6-a") and, finally, copy of the Zonal Valuation of Real Properties in Cebu City issued by the Department of Finance through the Bureau of Internal Revenue (Exhibit "8") showing the assessment level/valuation of the subject landholding.

While in the ocular inspection conducted by this Board last June 17, 1991 with due notice to all the parties, it can be readily observed that while there are remaining coconut trees and newly planted bananas existing thereon, the land in question is predominantly surrounded with residential houses, the Cabingki subdivision, the Aznar Realty Development Corporation and the adjacent Catholic Cemetery vastly

occupying the adjacent area. (Ocular Inspection Report dated June 27, 1991)

Plainly, therefore, it is not farfetched to believe that the subject landholding is residential in nature. The Honorable Supreme Court categorically ruled that where a piece of land is officially classified as residential by proper authorities, the same cannot be considered agricultural, nor can the fact that a caretaker planted palay thereon convert the land, in the heart of a metropolitan area, to agricultural land. (Tiongson vs. Court of Appeals, 130 SCRA 482) It Is significant to note that this reclassification to residential land under the Zoning Ordinance dating back **1946** as approved by the then National Urban Planning Commission does not need any DAR Clearance as the said "legal requirement in cases of land use from agricultural to non-agricultural uses to conversion made on or after June 15, 1988, the date of the agrarian reform law's effectivity. Prior thereto the power of the HLURB and the Department of Finance to recategorize lands were exclusive." (LRA Circular No. 22 dated February 14, 1990 signed by then Justice Secretary Franklin Drilon).

Further still, the foregoing conclusion appears to be clearly consistent with the judicial norm established by the Honorable Court in parallel case of "Ouano, et al. v. Ercide, et al.," CA-G.R. No SP-08573-CAR, involving a landholding situated at Banilad, Mandaue City, adjacent to Cebu City. In upholding the lower court which declared as residential the land subject matter in said Ouano Case, the Appellate Court ruled:

In the said Peregrino Case, the change came about due to the overt act of the government of the City of Davao; the change in the instant case is due to progress of the times. The passing of time made the change from agricultural to residential/commercial. The change is due to immutable law of nature. Progress must go on; no one cannot arrest it. Take the case of the City of Cebu. Time was when the lands in the heart of the City were agricultural. But as time went on the City shed the agricultural vestures of its lands, not by law of decree, but due to the inevitable change concomitant with the progress of the times. So is the case at bar. The finding of the Planning Board and the Assessor's Office did not convert these parcels of land from agricultural to residential/industrial. The acts of the said Officials are merely reiterations of the fact already in existence . . . a fact that resulted from the progress of the place and the passing of the time.". . .

There can be no further room for doubt as to the subject parcel being residential in nature because the incumbent DAR Secretary, Honorable Benjamin T. Leong, in a very recent Order dated August 6, 1990 declared the landholding involved in Civil Case No. R-226 entitled "Lope Tuttud, et al. vs. Ernesto Oporto," as residential. And said landholding is located in Tamban, Cebu City which is generally a rural community of about 15 kilometers from Cebu City compared to Pardo, Cebu City, the location of the subject property which is barely about 5 kilometers, a stonethrow from "booming" Cebu City. (Emphasis supplied; underscoring partly in the original and partly supplied)[5]

Resolving the **third issue** in the affirmative, the PARAD, crediting the claim of Rodil et al. that the complainants were allowed to occupy or stay on the property "by tolerance" during which the latter were able to introduce improvements on the subject landholding, concluded that complainants are not *de jure* tenants but at most "can be considered **possessor and/or builder in good faith** whose rights and obligations are circumscribed by the provisions of the New Civil Code (Rep. Act 386 as amended)."[6] The PARAD thus disposed as follows:

> WHEREFORE, in the light of all the foregoing considerations, Decision is hereby rendered as follows:
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> 1) Dismissing the instant cases (DARAB Cases Nos. CEB-VII-45-89 and CEB-VII-97-89) for lack of merit;
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> 2) Declaring respondents to be entitled and to receive/accept the deposited amounts tendered by complainant, Danilo Esparagera as evidenced by Official Receipts Nos. 4742045 – P843.75; 4742080 – P240.00 and 4742111 – P300.00 and from complainant Enrique Gonzales as evidenced by Official Receipt No. 4742042 – P2,266.35 dated January 18, 1990;
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> 3) No pronouncement as to costs and damages. (Underscoring supplied)[7]

The complainants appealed the PARAD's decision to the Department of Agrarian Reform Adjudication Board (DARAB), assigning as errors the following:

> (1) THE PARAD OF CEBU ERRED IN FINDING AND CONCLUDING THAT ENRIQUE GONZALES AND DANILO ESPARAGERA ARE NOT AGRICULTURAL TENANTS ON THEIR RESPECTIVE TILLAGES INSIDE THE SUBJECT LAND, AS THE SAME FINDING AND CONCLUSION ARE NOT SUPPORTED BY THE EVIDENCE ON RECORD; AND
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> (2) THE PARAD OF CEBU ERRED IN NOT DIRECTING THE PRESENT OR ACTUAL OWNER OF THE SUBJECT LAND TO EXECUTE A LEASEHOLD CONTRACT WITH ENRIQUE GONZALES; AND IN NOT ISSUING AN INJUNCTION AGAINST RESPONDENTS; (Underscoring supplied)[8]

In resolving the issue of whether the landholding in question is agricultural, the DARAB dwelt at length on the second and fifth essential requisites for the existence of landholder-tenant relationship reflected in the above-quoted portions of the PARAD's decision, to wit: the subject is agricultural landholding, and there is personal cultivation by the tenant.

Citing Administrative Order No. 1, Series of 1990, issued by the DAR Secretary on March 22, 1990 which defines agricultural land as follows:

> Agricultural land refers to those devoted to agricultural activity as defined in RA 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessors agencies, and not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its