

SECOND DIVISION

[G.R. NO. 149837, August 08, 2005]

**DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY
SECRETARY HERNANI A. BRAGANZA, PETITIONER, VS. ESTATE
OF PUREZA HERRERA, REPRESENTED BY CARLOS HERRERA,
RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a petition for review under Rule 45 of the Rules of Court, assailing the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 59460, exempting the Herrera Livestock Farm from the coverage of the Comprehensive Agrarian Reform Program (CARP); ordering herein petitioner Department of Agrarian Reform (DAR) to cease and desist from pursuing to cover the Herrera Estate under the CARP; and further directing the recall and cancellation of Certificate of Land Ownership Award (CLOA) No. 00071771 and other documents relative thereto.

The case stemmed from the following antecedents:

Pureza Herrera, a farmer by profession,^[2] was the owner of a vast tract of land located in Sitio Ilaya, Talavera, Toledo City, covered by Transfer Certificate of Title (TCT) No. T-1384-19, with an area of 113.7941 hectares.^[3]

On June 14, 1988, Republic Act (R.A.) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), took effect. Section 11 of the law provides that private agricultural farms devoted to commercial livestock, poultry and swine raising shall be subject to immediate compulsory acquisition and distribution after ten years from the effectivity of the law.

Sec. 11. *Commercial Farming.* – Commercial farms, which are private agricultural lands devoted to commercial livestock, poultry and swine raising, and aquaculture including salt-beds, fishponds and prawn ponds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations, shall be subject to immediate compulsory acquisition and distribution after ten (10) years from the effectivity of this Act. In the case of new farms, the ten-year period shall begin from the first year of commercial production and operation, as determined by DAR. During the ten-year period, the government shall initiate the steps necessary to acquire these lands, upon payment of just compensation for the land and the improvements thereon, preferably in favor of organized cooperatives or associations, which shall hereafter manage the said lands for the worker-beneficiaries.

If the DAR determines that the purposes for which this deferment is

granted no longer exist, such areas shall automatically be subject to redistribution.

The provisions of Section 32 of this Act, with regard to production and income-sharing, shall apply to commercial farms.

On March 16, 1989, Herrera filed an application^[4] with the DAR for the deferment of the implementation of the CARP over the property. She claimed, *inter alia*, that her property was used for raising livestock and harvesting coffee beans.

Meanwhile, on December 4, 1990, the Court promulgated its decision in *Luz Farms v. Secretary of the Department of Agrarian Reform*,^[5] declaring null and void Sections 3(b), 11, 13 and 32 of R.A. No. 6657, and, consequently, the Implementing Rules and Guidelines promulgated in accordance therewith.

Despite Herrera's application for deferment, Municipal Agrarian Reform Officer (MARO) Quintin Padua of Toledo City, undertook steps to place the property under the CARP. He sent notices of coverage of the property under the CARP on September 4, 1991.^[6] The matter was annotated at the dorsal portion of the certificate of title covering the property.^[7] Herrera also received notices on September 6, 7 and 23, 1991 requiring her, or a representative, to appear in a conference to point out the portion of the property she wanted to retain.

In the meantime, in light of the ruling of the Court in *Luz Farms*, the DAR issued Administrative Order No. 9, Series of 1993 on December 27, 1993, setting forth rules and regulations to govern the exclusion of agricultural lands used for livestock, poultry and swine-raising from CARP coverage. The order provides, *inter alia*, that private agricultural lands or portions thereof, exclusively, directly and actually used for poultry, livestock and swine raising as of June 15, 1988, should be excluded from the coverage of the CARP.

Despite the pendency of Herrera's application for the said deferment, the MARO proceeded with the ocular inspection of the property, along with the representatives of the Land Bank of the Philippines (LBP), the Department of Environment and Natural Resources (DENR), and the *Barangay* Agrarian Reform Council (BARC). The MARO was able to determine that about 101.9185 hectares of the property was covered by the CARP.^[8]

In the meantime, R.A. No. 6657 was amended by R.A. No. 7881, which was approved on February 20, 1995. Private agricultural lands devoted to livestock, poultry and swine-raising were excluded from the coverage of the CARL. On December 18, 1995, the DARAB dismissed the summary administrative proceedings for the determination of the just compensation to the landowner of the property without prejudice to the final result of the pending petition of Herrera.^[9]

Since she received no action on her first application for deferment, Herrera filed an Application for Exclusion/Exemption of her farmland with the DAR Municipal Office in Toledo City on August 7, 1995.^[10] Appended to her application were the following requisite documents:

- 1) Application for Exclusion/Exemption;
- 2) Xerox copy of TCT No. T-1384-19;
- 3) Xerox copy of Tax Declaration No. 19287;
- 4) Individual Income Tax Return covering the years 1987-1993;
- 5) Relocation Plan of the subject property;
- 6) Sketch Plan of the area applied for;
- 7) Affidavit of Pureza A. Herrera dated April 1996 that the property was devoted to the raising of large livestock, such as cows, carabaos, goats, horses and pigs;
- 8) Joint Affidavit of Eustaquio C. Cuizon and Bienvenida C. Canamo dated May 31, 1996 attesting that the subject landholding is devoted to raising of large livestock;
- 9) Site Inspection Report of DA Staff headed by Dr. Felicisimo Lentejas, Jr. dated August 2, 1995;
- 10) Certification from DA Regional Director dated August 14, 1995; and
- 11) Livestock Record/Inventory dated June 1, 1988.^[11]

She was, however, unable to submit a certified copy of a business permit authorizing her to engage in livestock-raising. Hence, she was requested to submit the same, including a sketch plan indicating the facilities and the improvements thereon. Herrera failed to do so, claiming that she had complied with all the requirements. She also claimed that the proceedings before the DAR which ultimately placed the property under CARP coverage was premature, and prayed for an order for the MARO to cease and desist from taking further steps to place the property under the CARP.^[12]

Before the resolution of Herrera's pending applications for exemption, and despite the dismissal of the summary administrative proceedings by the DARAB for the determination of the just compensation for the property, the DAR issued CLOA No. 00071771 on January 18, 1996 in favor of 72 agrarian reform farmer-beneficiaries covering 101.4294 hectares of the subject property. The registration of the said certificate with the Register of Deeds was suspended, however, due to Herrera's pending application.^[13] The LBP pegged the value of the property at P1,666,022.29, and reserved the said amount as compensation to Herrera.

In the meantime, Herrera died intestate. Her estate was substituted as applicant. On October 25, 1996, her son, Carlos Herrera, filed an Opposition,^[14] contending that he discovered that the property had been placed under the CARP only when he saw the annotation on the title thereto;^[15] at that time, he was preparing the estate's evidence for the application for exemption. He asserted that the DAR proceedings placing the property under CARP coverage was premature,^[16] because his mother

had earlier filed the said application for deferment. He also alleged that based on the ruling of the Court in the *Luz Farms* case, the property was exempt from CARP coverage. He claimed that his mother started a livestock project in the property and raised cattle, carabaos, horses and goats as early as 1958, and by the late 1970s, there were about 90 heads of cattle, 30 heads of carabaos, herds of horses and about 60 heads of goats.^[17] He claimed that only 83 hectares of the property was not suited for agriculture, and that the City of Toledo had approved a zoning ordinance reclassifying it as non-agricultural. Herrera prayed that:

WHEREFORE, premises considered, it is most respectfully prayed that after due notice and hearing, Resolution/Order be issued:

1. Declaring that the coverage of the parcel in question under CARP was premature and without legal basis;
2. Ordering the MARO of Toledo City to cease and desist from taking further steps to cover the said parcel under CARP pending resolution of the oppositor's petition for exclusion.
3. Declaring that only about 30 hectares of the parcel is arable and suitable to agriculture, while the remaining area of about 83 hectares is unfit for agriculture and with topography of more than 18 percent in slope;
4. Ordering the exemption of the parcel in question from CARP coverage, it being devoted to the production of commercial livestock.

Other reliefs and remedies which may be grantable under the premises are further prayed for.^[18]

On the other hand, the MARO countered that (a) based on the Land Use Map prepared by the LBP and the DAR, as well as Tax Declaration No. 19287 filed in 1983, the property is classified as agricultural and actually used for such purpose; (b) the applicant failed to present a business permit from the City Treasurer to prove that she had been operating and maintaining a livestock business in the property before June 15, 1988; and (c) it was only on November 26, 1996 that Carlos Herrera acquired 42 heads of Brahman cows.^[19] The MARO further insisted that the ruling placing the property under the CARP was not premature.

In the meantime, MARO Marlieta Arriesgado conducted an ocular inspection of the property with Rolando Beboso, Livestock Inspector & Livestock Specialist of the Toledo City Veterinary's Office. She submitted the following Report dated November 7, 1996:

Actual livestock found/counted:

- 1) cattle – 62 heads (29 heads was recently acquired and of hybrid quality; kind – Brahman and Sta. Gertrudes; 33 heads are unleashed; 30% mixed-graded;
- 2) carabao – 20 heads, 20% mixed-graded; unleashed

3) goats – 27 heads; 25% mixed-graded

4) horse – 2 heads

Actual area (has.) used for grazing - undetermined

Approximate Area used for infrastructure/containment – 2 has. more or less

Topography – plain

The landholding is approximately a kilometer from the national highway and is separated by a private road. On the northwest portion, is hilly with wild grasses and shrubs. However, several coconut trees were growing. On the southeast portion, the topography is plain, also full of wild grasses and shrubs. No sign of cultivation, permanent trees, e.g., acacia, gemelina were found, Napier grass (*Pennisetum purpureum*) and cover crops were also found.

At the back of the house of the Herrera's was an infrastructure utilized as containment area of the hybrid cattles. It was made of strong materials. Per information adduced and as witnessed, the Herrera's are still in the process of re-establishing the sheds/infrastructure because the former infrastructure/sheds were blown away by several typhoons that struck in their place.^[20]

The Regional Director, who was likewise the hearing officer, considered the Opposition filed by Carlos Herrera as part of the late Pureza Herrera's application for exemption.

On October 15, 1997, Legal Officer Elvie Luyao of the Provincial Agrarian Reform Office (PARO), Cebu City, submitted her report recommending that the application for exemption be granted, thus:

Foregoing premises considered, the undersigned respectfully recommends that one hundred (100) hectares of the subject land be excluded from CARP coverage for being actually, directly and exclusively used for livestock raising as of June 15, 1988; and, likewise, recommends that the remaining 1.4294 hectares be placed under CARP pursuant to RA 6657.^[21]

The Report was submitted to the Agrarian Reform Regional Officer (ARRO) who, however, ignored the recommendation and issued, on November 11, 1997, an Order^[22] denying for lack of merit the application for exclusion from the CARP coverage. He ruled that nothing in DAR Administrative Order No. 2, Series of 1989, provides, expressly or impliedly, that CARP coverage proceedings must cease and desist upon the filing of any application for deferment, exclusion or protest on all agricultural lands covered by the said administrative order.^[23] He also stated that the subject landholding had been covered in 1991 and 1994, when first and second notices of coverage were sent to Pureza Herrera on September 4, 1991 and April 15, 1994.^[24] Furthermore, the MARO had not received any application filed by Pureza Herrera for exclusion or deferment from CARP coverage, to put him on guard or