

EN BANC

[G.R. NO. 162070, October 19, 2005]

**DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY
SECRETARY JOSE MARI B. PONCE (OIC), PETITIONER, VS. DELIA
T. SUTTON, ELLA T. SUTTON-SOLIMAN AND HARRY T. SUTTON,
RESPONDENTS.**

D E C I S I O N

PUNO, J.:

This is a petition for review filed by the Department of Agrarian Reform (DAR) of the Decision and Resolution of the Court of Appeals, dated September 19, 2003 and February 4, 2004, respectively, which declared DAR Administrative Order (A.O.) No. 9, series of 1993, null and void for being violative of the Constitution.

The case at bar involves a land in Aroroy, Masbate, inherited by respondents which has been devoted exclusively to cow and calf breeding. On October 26, 1987, pursuant to the then existing agrarian reform program of the government, respondents made a voluntary offer to sell (VOS)^[1] their landholdings to petitioner DAR to avail of certain incentives under the law.

On June 10, 1988, a new agrarian law, Republic Act (R.A.) No. 6657, also known as the Comprehensive Agrarian Reform Law (CARL) of 1988, took effect. It included in its coverage farms used for raising livestock, poultry and swine.

On December 4, 1990, in an en banc decision in the case of **Luz Farms v. Secretary of DAR**,^[2] this Court ruled that lands devoted to livestock and poultry-raising are not included in the definition of agricultural land. Hence, we declared as unconstitutional certain provisions of the CARL insofar as they included livestock farms in the coverage of agrarian reform.

In view of the **Luz Farms ruling**, respondents filed with petitioner DAR a formal request to withdraw their VOS as their landholding was devoted exclusively to cattle-raising and thus exempted from the coverage of the CARL.^[3]

On December 21, 1992, the Municipal Agrarian Reform Officer of Aroroy, Masbate, inspected respondents' land and found that it was devoted solely to cattle-raising and breeding. He recommended to the DAR Secretary that it be exempted from the coverage of the CARL.

On April 27, 1993, respondents reiterated to petitioner DAR the withdrawal of their VOS and requested the return of the supporting papers they submitted in connection therewith.^[4] Petitioner ignored their request.

On December 27, 1993, DAR issued **A.O. No. 9, series of 1993**,^[5] which provided that only portions of private agricultural lands used for the raising of livestock, poultry and swine as of June 15, 1988 shall be excluded from the coverage of the CARL. In determining the area of land to be excluded, the A.O. fixed the following retention limits, viz: 1:1 animal-land ratio (i.e., 1 hectare of land per 1 head of animal shall be retained by the landowner), and a ratio of 1.7815 hectares for livestock infrastructure for every 21 heads of cattle shall likewise be excluded from the operations of the CARL.

On February 4, 1994, respondents wrote the DAR Secretary and advised him to consider as final and irrevocable the withdrawal of their VOS as, under the **Luz Farms doctrine**, their entire landholding is exempted from the CARL.^[6]

On September 14, 1995, then DAR Secretary Ernesto D. Garilao issued an Order^[7] partially granting the application of respondents for exemption from the coverage of CARL. Applying the retention limits outlined in the DAR A.O. No. 9, petitioner exempted 1,209 hectares of respondents' land for grazing purposes, and a maximum of 102.5635 hectares for infrastructure. Petitioner ordered the rest of respondents' landholding to be segregated and placed under Compulsory Acquisition.

Respondents moved for reconsideration. They contend that their entire landholding should be exempted as it is devoted exclusively to cattle-raising. Their motion was denied.^[8] They filed a notice of appeal^[9] with the Office of the President assailing: (1) the reasonableness and validity of DAR A.O. No. 9, s. 1993, which provided for a ratio between land and livestock in determining the land area qualified for exclusion from the CARL, and (2) the constitutionality of DAR A.O. No. 9, s. 1993, in view of the **Luz Farms case** which declared cattle-raising lands excluded from the coverage of agrarian reform.

On October 9, 2001, the Office of the President affirmed the impugned Order of petitioner DAR.^[10] It ruled that DAR A.O. No. 9, s. 1993, does not run counter to the **Luz Farms case** as the A.O. provided the guidelines to determine whether a certain parcel of land is being used for cattle-raising. However, **the issue on the constitutionality of the assailed A.O. was left for the determination of the courts as the sole arbiters of such issue.**

On appeal, the Court of Appeals ruled in favor of the respondents. It declared DAR A.O. No. 9, s. 1993, void for being contrary to the intent of the 1987 Constitutional Commission to exclude livestock farms from the land reform program of the government. The dispositive portion reads:

WHEREFORE, premises considered, DAR Administrative Order No. 09, Series of 1993 is hereby **DECLARED** null and void. The assailed order of the Office of the President dated 09 October 2001 in so far as it affirmed the Department of Agrarian Reform's ruling that petitioners' landholding is covered by the agrarian reform program of the government is **REVERSED** and **SET ASIDE**.

SO ORDERED.^[11]

Hence, this petition.

The main issue in the case at bar is the constitutionality of DAR A.O. No. 9, series of 1993, which prescribes a maximum retention limit for owners of lands devoted to livestock raising.

Invoking its rule-making power under Section 49 of the CARL, petitioner submits that it issued DAR A.O. No. 9 to limit the area of livestock farm that may be retained by a landowner pursuant to its mandate to place all public and private agricultural lands under the coverage of agrarian reform. Petitioner also contends that the A.O. seeks to remedy reports that some unscrupulous landowners have converted their agricultural farms to livestock farms in order to evade their coverage in the agrarian reform program.

Petitioner's arguments fail to impress.

Administrative agencies are endowed with powers legislative in nature, i.e., the power to make rules and regulations. They have been granted by Congress with the authority to issue rules to regulate the implementation of a law entrusted to them. Delegated rule-making has become a practical necessity in modern governance due to the increasing complexity and variety of public functions. However, while administrative rules and regulations have the force and effect of law, they are not immune from judicial review.^[12] They may be properly challenged before the courts to ensure that they do not violate the Constitution and no grave abuse of administrative discretion is committed by the administrative body concerned.

The fundamental rule in administrative law is that, **to be valid, administrative rules and regulations** must be issued by authority of a law and **must not contravene the provisions of the Constitution.**^[13] The rule-making power of an administrative agency may not be used to abridge the authority given to it by Congress or by the Constitution. **Nor can it be used to enlarge the power of the administrative agency beyond the scope intended. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by administrative agencies and the scope of their regulations.**^[14]

In the case at bar, we find that the impugned A.O. is invalid as it contravenes the Constitution. The A.O. sought to regulate livestock farms by including them in the coverage of agrarian reform and prescribing a maximum retention limit for their ownership. However, **the deliberations of the 1987 Constitutional Commission show a clear intent to exclude, inter alia, all lands exclusively devoted to livestock, swine and poultry- raising.** The Court clarified in the **Luz Farms** case that livestock, swine and poultry-raising are industrial activities and do not fall within the definition of "agriculture" or "agricultural activity." The raising of livestock, swine and poultry is different from crop or tree farming. It is an industrial, not an agricultural, activity. A great portion of the investment in this enterprise is in the form of industrial fixed assets, such as: animal housing structures and facilities, drainage, waterers and blowers, feedmill with grinders, mixers, conveyors, exhausts and generators, extensive warehousing facilities for feeds and other supplies, anti-pollution equipment like bio-gas and digester plants augmented by lagoons and concrete ponds, deepwells, elevated water tanks, pumphouses, sprayers, and other