

THIRD DIVISION

[G.R. No. 146540, July 14, 2004]

HEIRS OF GERONIMO RESTRIVERA, GAVINO LEVARDO, CANDIDO MALABANAN, REYNALDO RESTRIVERA AND FLORENTINO SANTIAGO, PETITIONERS, VS. SALVADOR DE GUZMAN, DAMIAN DE GUZMAN, DEOGRACIAS DE GUZMAN AND ZENAIDA DE GUZMAN, AS HEIRS OF THE LATE PEDRO ERMITAÑO AND TRICOM DEVELOPMENT CORPORATION, RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated July 31, 2000 and Resolution^[2] dated December 26, 2000 of the Court of Appeals in CA-G.R. SP No. 54267, entitled "*Heirs of Geronimo Restrivera, Gavino Levardo, Candido Malabanan, Reynaldo Restrivera and Florentino Santiago vs. Department of Agrarian Reform Adjudication Board (DARAB), Salvador De Guzman, Damian de Guzman, Deogracias De Guzman, and Zenaida De Guzman Chavez, as heirs of the late Pedro Ermitaño.*"

The factual antecedents as borne by the records are:

On June 26, 1994, Geronimo Restrivera,^[3] Gavino Levardo, Candido Malabanan, Reynaldo Restrivera and Florentino Santiago, *petitioners*, filed with the Office of the Provincial Agrarian Reform Adjudicator (PARAD) at Trece Martires, Cavite, a complaint^[4] for maintenance of peaceful possession with prayer for the issuance of a writ of preliminary injunction. Impleaded as respondents were Salvador De Guzman, Damian De Guzman, Deogracias De Guzman, and Zenaida De Guzman-Chavez, heirs of Pedro Ermitaño, docketed as Regional Case No. IV-CA-229'94.

Earlier, a similar complaint was filed with the PARAD by Leonarda Mercado, Ricardo Biloy, Remigio Reyes and Andres Ermitaño against respondents, docketed as Regional Case No. IV-CA-147'93.

Forthwith, the two (2) cases were consolidated.

On December 12, 1995, the Provincial Adjudicator rendered a Joint Decision, the dispositive portion of which reads:

"WHEREFORE, based on the findings of the Board, JUDGMENT is hereby rendered:

1. Finding and declaring all the complainants in the above-entitled cases not *bona fide* tenants on the property in question;

2. Denying them the right to security of tenure thereby declaring them not entitled to reinstatement or to be maintained in the peaceful possession and cultivation of their alleged areas of cultivation;
3. In a proper case, directing them to vacate and surrender their possession and cultivation to the defendants-landowners.

SO ORDERED.”

The above-named petitioners and Leonarda Mercado, et al. appealed to the Department of Agrarian Reform Adjudication Board (DARAB). Petitioners’ appeal was docketed as DARAB Case No. 6086, while that of Leonarda Mercado, et al. was docketed as DARAB Case No. 6060.

Meantime, on January 29, 1998, or during the pendency of petitioners’ appeal to the DARAB, Tricom Development Corporation (TRICOM), one of the herein respondents, filed a motion for intervention in DARAB Case No. 6060. TRICOM alleged that it has legal interest in the subject landholding, having purchased the same from respondents, as shown by a Deed of Assignment dated January 29, 1990 and a Deed of Sale on Installments dated August 17, 1992. However, the DARAB, in its Order dated September 29, 1998, denied TRICOM’s motion.

On October 5, 1998, the DARAB rendered a Joint Decision reversing the assailed Provincial Adjudicator’s Joint Decision, declaring all petitioners and Leonarda Mercado, et al. as *bona fide* tenants and directing respondents to maintain the latter in peaceful possession and cultivation of the landholding.

Respondent TRICOM, on October 20, 1998, filed consolidated motions for reconsideration of the DARAB Order dated September 29, 1998 denying its motion for intervention; and for substitution praying that it should be substituted as party defendant in place of respondents on the ground that it has acquired the subject property from them.

Meantime, on November 11, 1998, petitioners filed a motion for execution of the DARAB Decision dated October 5, 1998 which, according to them, has become final and executory.

Eventually, the DARAB promulgated its Resolution dated March 4, 1999 granting respondent TRICOM’s motion for intervention and holding in abeyance the effectivity of its Decision, thus:

“WHEREFORE, finding the grounds for intervention to be meritorious and supported by substantial evidence, this Board hereby reconsiders its Order dated September 29, 1998 and the same is hereby SET ASIDE and Tricom is allowed to intervene. The parties are hereby directed to file an answer or comment to **movant’s Intervention dated January 14, 1998.**

In the meantime, the Decision of this Board dated October 5, 1998 is hereby **held in abeyance** subject to further amendments thereof until all substantive rights of the parties over the subject landholding had been fully ascertained by this Board considering that the Motion for Intervention was filed **before** said decision was rendered.

SO ORDERED.”

On April 8, 1999 and June 1999, petitioners filed two urgent motions to resolve their motion for execution, but were denied by the DARAB. This prompted petitioners to file with the Court of Appeals a petition for mandamus praying that the DARAB be ordered to issue a writ of execution of its final and executory Decision.

On October 4, 1999, respondent TRICOM filed with the DARAB a supplementary motion for intervention alleging that the subject land is not covered by the Comprehensive Agrarian Reform Program (CARP) as it was classified as industrial by the Sangguniang Panlalawigan of Cavite in its Resolutions Nos. 40 and 105 dated March 14, 1980 and March 25, 1988.

On December 27, 1999, the DARAB rendered a modified Joint Decision withdrawing its previous Decision of October 5, 1998 and ordering petitioners and Leonarda Mercado, et al. to vacate the subject property in favor of TRICOM, thus:

“WHEREFORE, premises considered, the appealed decision is hereby MODIFIED in the sense that the complainants-appellants are hereby directed to vacate the premises in favor of the herein intervenor Tricom Development Corporation. The decision of this Board dated October 5, 1998 is now considered superseded by this decision and the same is hereby withdrawn.

SO ORDERED.”

As a consequence, petitioners filed with the Court of Appeals an **amended petition** for certiorari, prohibition and mandamus with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction.

On July 31, 2000, the Appellate Court rendered a Decision affirming the assailed DARAB Decision dated December 27, 1999, thus:

“The petition lacks merit.

In regard to the first ground, it is manifest that the consolidated decision dated October 5, 1998 (Rollo, pp. 57-65) had not become final. Its effectivity was ordered held in abeyance subject to further amendments as pronounced in DARAB Resolution dated March 4, 1999 (Rollo, p. 101, *supra*.) owing to TRICOM’s motion for intervention. The consolidated Decision dated October 5, 1999 refers to both DARAB cases **DCN-6060 and DCN-6086**.

The motion for reconsideration filed seasonably by respondent TRICOM of the Order dated September 29, 1998 denying their motion for intervention was pursuant to Rule VIII, Section 12 of the DARAB New Rules of Procedures. TRICOM’s motion for intervention was allowed to be filed at any time before the rendition of final judgment pursuant to the ruling of the Supreme Court in *Lichauco vs. Court of Appeals* (63 SCRA 123). x x x:

x x x

In this connection, Rule XII, Section 1 of the DARAB Rules provides that execution shall issue only upon final order or decision, to wit:

'Section 1. Execution Upon Final Order or Decision. Execution shall issue upon an order, resolution or decision that **finally disposes** of the action or proceeding.'

Hence, since the consolidated decision dated October 5, 1998 never became final and executory by virtue of DARAB Resolution dated **March 4, 1999**, there can be no issuance of a writ of execution thereon.

On the second ground, We find and so hold that respondent TRICOM's intervention in **DCN-6060** is essentially an intervention also in **DCN-6086** since the two cases had been earlier already consolidated in the PARAD of Cavite (Rollo, p. 70). Respondent TRICOM cannot be faulted for filing a motion for intervention in DCN-6060 only since it had notice of DCN-6086 only after January 18, 2000 when it requested to be furnished with pleadings or processes relative to DCN-6086 (Rollo, p. 106). x x x.

We also take note that the petitioners did not disclose in their original petition for mandamus dated August 10, 1999 (Rollo, p. 29) that the consolidated decision dated October 5, 1998 had been held in abeyance per DARAB Resolution dated March 4, 1999 of which they were furnished copy as shown by the record (Rollo, p. 98). Such failure on their part to disclose this matter which is indubitably material and relevant puts in question their credibility.

On the third ground, x x x. The assailed Decision which is in the nature of an amended judgment is a follow-through of the March 4, 1999 DARAB Resolution.

We find no grave abuse of discretion on the part of public respondent DARAB in issuing the questioned Decision. x x x.

Finally, the failure of the petitioners to file a motion for reconsideration of the DARAB Decision dated December 27, 1999 is fatal to their cause. x x x.

WHEREFORE, for lack of merit, the petition is DISMISSED and the assailed decision is AFFIRMED.

SO ORDERED."

Petitioners filed a motion for reconsideration but was denied by the Appellate Court in a Resolution dated December 26, 2000.

Hence, this petition for review on certiorari. Petitioners ascribe to the Court of Appeals the following errors:

"1. RESPONDENT COURT OF APPEALS ERRED IN FINDING THAT THE