

SECOND DIVISION

[G.R. No. 133806, April 20, 2001]

HEIRS OF PEDRO ATEGA REPRESENTED BY VERONICA ATEGANABLE, PETITIONERS, VS. HON. ERNESTO D. GARILAO IN HIS CAPACITY AS SECRETARY OF AGRARIAN REFORM, HON. ISIDRO DUBLADO AS REGIONAL DIRECTOR, DAR REGION XIII, AND TERESITA DEPENOSO AS OFFICER-IN-CHARGE, DAR AGUSAN DEL NORTE PROVINCIAL OFFICE, RESPONDENTS.

DECISION

BELLOSILLO, J.:

THE HEIRS OF PEDRO ATEGA, petitioners herein, owned a parcel of land containing an area of 129.4615 hectares covered by OCT No. P-5 situated in Taligaman, Butuan City, Agusan del Norte. In December 1992 they received notice from the Provincial Agrarian Reform Office (PARO) that their land was subject of compulsory acquisition and distribution pursuant to RA 6657 otherwise known as the *Comprehensive Agrarian Reform Law*. They protested before the Municipal Agrarian Reform Office (MARO) the inclusion of their property in the *Comprehensive Agrarian Reform Program* (CARP) arguing that their land was classified as non-agricultural. Apparently, the MARO ignored their protest since the PARO sent petitioners on 9 September 1994 a *Notice of Land Acquisition and Valuation*.

In April 1996 petitioners filed with DAR-Region XIII an *Application for Exemption* from the coverage of CARP. But their application for exemption was denied on 27 November 1996 by respondent Regional Director Isidro Dublado on the ground that *SP Ordinance No. 33-79* invoked by them was not submitted for approval to the *Housing and Land Use Regulatory Board* (HLURB) as required by DAR Administrative Order No. 6-94 and Department of Justice Opinion No. 44-90.

Petitioners thereafter filed with the Court of Appeals a *Petition for Certiorari, Prohibition and Mandamus* which assailed the *Resolution* of respondent Regional Director denying their *Application for Exemption*.

But the Court of Appeals dismissed the petition on the ground that petitioners acted prematurely in filing the petition before the appellate court. The appellate court held that petitioners should have first exhausted all the available administrative remedies, *i.e.*, filing a motion for reconsideration of the *Resolution* of respondent Regional Director or appealing the same to the Secretary of Agrarian Reform before filing their petition with the Court of Appeals.^[1] Corollarily, the appellate court ruled that respondent Regional Director did not abuse his discretion amounting to lack or excess of jurisdiction in denying the *Application for Exemption*.

The Court of Appeals opined that pursuant to DAR Adm. Order No. 9-94 Regional Directors are empowered to hear and decide all protests involving coverage under

RA 6657, and that respondent Regional Director's finding that *SP Resolution No. 33-79* of the City of Butuan was not submitted for approval to the HLURB was well within the ambit of his authority.

Petitioners moved for reconsideration but their motion was denied; hence, this petition.

Petitioners contend that the Court of Appeals erred in ruling that they acted prematurely in filing their petition for *certiorari* without first filing a motion for reconsideration of the *Resolution* of respondent Regional Director or appealing to the Secretary of Agrarian Reform.

This contention is meritorious. Pursuant to DAR Administrative Orders Nos. 9-94, 10-94 and 12-94, the remedy of a party aggrieved by the decision of the Regional Director is to file a motion for reconsideration, and in the event the motion is denied, to appeal to the Secretary of Agrarian Reform. Nonetheless, we agree that in the instant case a motion for reconsideration of the *Resolution* of respondent Regional Director would have been useless. It appears that upon the issuance of the *Resolution* of respondent Regional Director denying petitioners' *Application for Exemption* on 27 November 1996 or thereabouts, the Secretary of Agrarian Reform proceeded to cancel their title over the disputed property and transferred it to designated beneficiaries through the issuance of a collective *Certificate of Land Ownership Award No. 00059320* as far back as 26 November 1994, and petitioners learned of it only upon the issuance of the assailed *Resolution*. Hence, considering that the Secretary of Agrarian Reform had already canceled petitioners' title to the property and caused its distribution to designated beneficiaries even before the pending incidents with respondent Regional Director could be resolved, it would indeed be futile to expect the latter to reconsider his earlier posture and contradict or reverse the position taken by his superior, the Secretary of Agrarian Reform.

Certainly, *certiorari* will lie only if there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. The determination of what constitutes a plain, speedy and adequate remedy rests on judicial discretion and depends on the particular circumstances of each case.^[2] In the case before us, we find that an appeal to the Secretary of Agrarian Reform would appear to be a useless exercise because he had already canceled petitioners' title to the property, which simply means, he concurred in the decision of respondent Regional Director denying the application for exemption; hence, an appeal would no longer be deemed an adequate remedy in the instant case.

Petitioners next insist that the *Resolution* of respondent Regional Director was a patent nullity as it was issued with grave abuse of discretion amounting to lack or excess of jurisdiction. They maintain that the Regional Director gravely abused his authority in ruling that *SP Resolution No. 33-79* of the City of Butuan was not submitted to the HLURB for approval. They point out that per certification issued by the HLURB attached to their *Motion for Reconsideration* before the Court of Appeals, *SP Resolution No. 33-79* was actually submitted to and approved by the HLURB.

This is misleading. A meticulous perusal of the records would reveal that the certification issued by the HLURB to the petitioners did not even mention, much less can it be fairly inferred therefrom, that what was submitted and approved was