

SPECIAL FOURTH DIVISION

[CA-G.R. SP NO. 130633, May 23, 2014]

GILDA BADURIA-PETEGHEM, PETITIONER, VS. HON. MARY MAY B. DE LEOZ AS THE REGIONAL PROSECUTOR OF REGION V, HON. SERGIO RAMOS AS THE PROVINCIAL PROSECUTOR OF CAMARINES SUR, AND RAMON B. FUENTE-BELLA AS THE OIC-PROVINCIAL AGRARIAN REFORM OFFICER II, RESPONDENTS.

D E C I S I O N

TOLENTINO, A.G., J.:

This is a *Petition for Certiorari* under Rule 65 of the Revised Rules of Court seeking to annul and set aside the resolutions dated March 8, 2013^[1] and April 19, 2013^[2] of the Regional Prosecutor of Region V.

The antecedents of this case are as follows:

Marcial Kare, Jr. and Angela K. Garchitorena were the registered owners of two (2) parcels of land situated in Barangay San Antonio, Tigaon, Camarines Sur, covered by Transfer Certificate of Title (TCT) No. 19043^[3] consisting of Sixty (60) hectares. The said land was classified as an agricultural land and has been covered by Operation Land Transfer (OLT), ten (10) hectares of which were segregated as retention area.

The petitioner bought the said retention area which is the subject land of this case, from the heirs of Marcial Kare, Jr. and Angela Garchitorena, as evidenced by the Contract to Sell^[4] dated February 23, 2009. Despite the pendency of the registration of the said sale, the petitioner made construction activities such as the construction of a new building and introducing other improvements over the subject land.

The respondent Department of Agrarian Reform (DAR) Provincial Office of Camarines Sur, through its investigating officer, Edgar T. Amoranto, made an investigation report on the premature conversion of the subject land from agricultural use into non-agricultural use. With the construction activities made by the petitioner over the subject land, an urgent application for a cease and desist order was filed by DAR Provincial Office of Camarines Sur against her with the DAR Regional Office V which granted the said application in an order^[5] dated August 22, 2011.

Despite the issuance of the cease and desist order, the petitioner continued the construction activities over the subject land. Two notices of violation dated April 19, 2011^[6] and October 24, 2011^[7], were sent to the petitioner. However, despite receipt of said notices, she ignored the same and still continued the construction activities. It was found out that the petitioner did not secure a building permit on the building constructed over the subject land, and there was no application for land conversion of the same with the DAR.

With the several violations made by the petitioner, the respondent DAR Provincial Office of Camarines Sur, through its officer Ramon B. Fuentebella, filed a criminal complaint against the petitioner with the Provincial Prosecutor for violation of Section 4 of Republic Act 8435 (Agriculture and Fisheries Modernization Act of 1997) on premature conversion. The respondent Provincial Prosecutor issued a resolution^[8] dated October 27, 2012 finding probable cause on the offense charged. Thus, an information was filed. The petitioner's motion for reconsideration was denied in an order^[9] dated December 12, 2012.

A petition for review was filed by the petitioner with the Regional Prosecutor which denied the petition in a resolution^[10] dated March 8, 2013. The dispositive portion of the resolution reads:

"WHEREFORE, premises considered, the Petition for Review is hereby DENIED for lack of merit.

SO ORDERED."^[11]

The motion for reconsideration was denied in a resolution^[12] dated April 19, 2013. The decretal portion of the resolution reads:

"WHEREFORE, premises considered, respondent-appellant's Motions are hereby DENIED for lack of merit.

SO ORDERED."^[13]

Hence, this petition for certiorari.

The issue in this case is whether or not the respondent Regional Prosecutor committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in finding probable cause to prosecute the petitioner for violation of Section 4 of Republic Act 8435 (Agriculture and Fisheries Modernization Act of 1997) on premature conversion despite the enactment of the zoning ordinance classifying the subject land within the residential zone.

THE PETITION IS DISMISSED.

There is no dispute that the subject land is classified as an agricultural land covered by Republic Act No. 6657 (The Comprehensive Agrarian Reform Law of 1988). Upon ocular inspection by the DAR Provincial Office, it was found out that concrete structures were built and other improvements were undertaken by the petitioner on the subject lot. The existing structures were admitted by the petitioner. She contended that despite the existence of the concrete structures and other improvements, only a small portion of the subject land was utilized and the rest can still be used and suitable for agricultural purposes. Thus, she cannot be charged for violation of Section 4 of Republic Act 8435 (Agriculture and Fisheries Modernization Act of 1997) on premature conversion.

Section 4 of Republic Act 8435 (Agriculture and Fisheries Modernization Act of 1997) provides the definition of the following terms:

Section 4. Definition of Terms. -