



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HEIRS OF ROMULO D. SANDUETA, namely: GLORIA SANDUETA ELOPRE, HEIRS OF JOSEPHINE S. NADALA, represented by ROY S. NADALA, HOFBOWER SANDUETA, NERISA SANDUETA MICUBO, OSCAR SANDUETA, MARILYN SANDUETA VELASCO, RONALD SANDUETA, and NAPOLEON SANDUETA,
 Petitioners,

G.R. No. 203204

Present:

CARPIO, J., Chairperson,
 BRION,
 DEL CASTILLO,
 PEREZ, and
 PERLAS-BERNABE, JJ.

-versus -

DOMINGO ROBLES, HEIRS OF TEODORO ABAN, namely: NERIO ABAN, VIRGINIO ABAN, SUSANA ABAN, and DAVID ABAN; HEIRS OF EUFRECENA* GALEZA, namely: CESAR GALEZA, NESTOR GALEZA, ANGELA GALEZA, JUSTO GALEZA, KIA GALEZA PONCE, PORFERIA GALEZA NALZARO, ROSARIO GALEZA VELASCO, HERMINIA GALEZA GUERRERO, and NONA GALEZA NACARIO,
 Respondents.

Promulgated:

NOV 20 2013

Handwritten signature: H. Cabalag Perfecto

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* "Eufrecina" in some parts of the records. See CA rollo, p. 63.

RESOLUTION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ is the Decision² dated April 26, 2012 of the Court of Appeals, Cagayan de Oro City (CA) in CA-G.R. SP No. 03333 which affirmed DARCO Order No. RT-0911-414³ dated November 24, 2009 (November 24, 2009 DARCO Order) issued by former Department of Agrarian Reform (DAR) Secretary Nasser C. Pangandaman (Secretary Pangandaman).

The Facts

Petitioners are the heirs of Romulo and Isabel Sandueta (Sps. Sandueta) who died intestate in 1987 and 1996, respectively, and accordingly inherited several agricultural lands situated in Dipolog City, Zamboanga del Norte, with a total land area of 18.7433 hectares (has.).⁴ One of these parcels of land is Lot No. 3419, with an area of 13.7554 has.⁵ covered by Transfer Certificate of Title (TCT) No. T-5988.⁶ The 4.6523-hectare riceland portion (subject portion) of the foregoing lot was tenanted by Eufrecena Galeza, Teodoro Aban, and Domingo Pableo⁷ (tenants) who were instituted as such by the original owner, Diosdado Jasmin, prior to its sale to Sps. Sandueta.⁸

The subject portion was placed under the government's Operation Land Transfer (OLT) Program pursuant to Presidential Decree No. (PD) 27⁹ and consequently awarded to the above-named tenants who were issued the corresponding Emancipation Patents (EPs).¹⁰

The Proceedings Before the DAR

On July 7, 2005, petitioners filed before the DAR District Office in Dipolog City a petition¹¹ seeking to exercise their right of retention over the

¹ *Rollo*, pp. 10-30.

² *Id.* at 31-38. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Zenaida T. Galapate-Laguilles and Maria Elisa Sempio Diy, concurring.

³ *CA rollo*, pp. 37-43. Signed by Secretary Nasser C. Pangandaman.

⁴ *Id.* at 23.

⁵ *Id.* at 38.

⁶ *Id.* at 62. Including the dorsal portion.

⁷ *Id.* at 23-24.

⁸ *Id.* at 25.

⁹ "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR."

¹⁰ *CA rollo*, pp. 23-24.

¹¹ *Id.* at 52-59. Dated June 30, 2005.

subject portion pursuant to Section 6 of Republic Act No. (RA) 6657,¹² known as the Comprehensive Agrarian Reform Law of 1988, and as enumerated in the case of *Ass'n. of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform*¹³ (*Ass'n. of Small Landowners*). They also sought to annul the EPs of the tenants as well as compel the tenants to pay back rentals.¹⁴

The Provincial Protest Application and Resolution Unit referred the case to the Municipal Agrarian Reform Officer of Dipolog City who, after investigation, recommended the denial of the petition.¹⁵ On the other hand, the Provincial Agrarian Reform Officer (PARO), while similarly recommending the denial of the petition for retention, nevertheless recommended the grant of a 5-hectare retention area for petitioners to be taken from the portion of Lot No. 3419 not covered by the OLT Program.¹⁶

On April 5, 2006, the DAR Regional Office No. IX, through Regional Director Julita R. Ragandang (Director Ragandang) issued an Order¹⁷ (April 5, 2006 Order) adopting the PARO's recommendation. Director Ragandang explained that a landowner who failed to exercise his right of retention under PD 27 can avail of the right to retain an area not exceeding 5 has. pursuant to Section 6 of RA 6657,¹⁸ adding that this award is different from that which may be granted to the children of the landowner, to the extent of 3 has. each, in their own right as beneficiaries.¹⁹ However, to be entitled thereto, each child must meet the age qualification and requirement of actual cultivation of the land or direct management of the farm under Section 6, as well as the other conditions under Section 22²⁰ of RA 6657. As petitioners were

¹² "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES."

¹³ 256 Phil. 777 (1989).

¹⁴ CA *rollo*, pp. 56-57.

¹⁵ Id. at 32-33.

¹⁶ Id. at 39.

¹⁷ Id. at 22-30.

¹⁸ Id. at 27.

¹⁹ Id. at 29.

²⁰ SEC. 22. *Qualified Beneficiaries.* - The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:

- (a) agricultural lessees and share tenants;
- (b) regular farm workers;
- (c) seasonal farm workers;
- (d) other farm workers;
- (e) actual tillers or occupants of public lands;
- (f) collective or cooperatives of the above beneficiaries; and
- (g) others directly working on the land.

Provided, however, That the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents; and: *Provided, further,* that actual tenant-tillers in the landholding shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under their program.

A basic qualification of a beneficiary shall be his willingness, aptitude and ability to cultivate and make land as productive as possible. The DAR shall adopt a system of monitoring the record or

absentee landowners who had left the cultivation of the subject portion entirely to the tenants, Director Ragandang therefore concluded that they are not entitled to exercise retention rights thereon²¹ and, hence, denied their petition for retention. Despite such denial, Director Ragandang granted the decedent Romulo Sandueta the right to retain 5 has. from the portion of Lot No. 3419 not covered by the OLT Program.

Dissatisfied, petitioners filed a motion for reconsideration, essentially arguing that their right to choose the retention area is guaranteed by Section 6 of RA 6657. In an Order²² dated July 14, 2006, Director Ragandang denied the motion and explained that landowners covered by PD 27 who failed to exercise their right of retention which subsequently led to the distribution of the EPs to the tenants, have no right to choose the area to be retained.²³ Moreover, she pointed out that under Letter of Instruction No. 474 (LOI 474), landowners who own less than 24 has. of tenanted rice lands but additionally own more than 7 has. of other agricultural lands may not retain their tenanted rice lands.²⁴ Since petitioners failed to exercise their right or manifest their intention of retention prior to the issuance of their tenants' EPs and considering further that they own about 14.0910 has. of other agricultural lands, Director Ragandang declared them to have no right to choose their retained area of 5 has., which can be accommodated in their other landholdings not covered under the OLT Program.²⁵

On appeal, Secretary Pangandaman issued the November 24, 2009 DARCO Order affirming *in toto* Director Ragandang's April 5, 2006 Order.

The CA Ruling

In a Decision²⁶ dated April 26, 2012, the CA (*a*) held that the subject portion was appropriately covered by the OLT Program pursuant to LOI 474; (*b*) declared that petitioners do not have the absolute right to choose their retention area considering their ownership of 14.0910 has. of other

performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

²¹ CA *rollo*, p. 29.

²² Id. at 32-36.

²³ Id at 35. In consonance with DAR Administrative Order No. 05, series of 2000 (Revised Rules and Procedures for the Exercise of Retention Right by Landowners).

²⁴ Id. at 34.

²⁵ Id. at 34-35.

²⁶ *Rollo*, pp. 31-38.

agricultural lands; and (c) affirmed Secretary Pangandaman's dismissal of the petition for retention under Section 6 of RA 6657.²⁷

On May 31, 2012, petitioners filed a motion for reconsideration²⁸ which was denied by the CA in a Resolution²⁹ dated August 14, 2012. Hence, the instant petition.

The Issue Before the Court

The essential issue in this case is whether or not petitioners are entitled to avail of any retention right under Section 6 of RA 6657.

The Court's Ruling

The right of retention, as protected and enshrined in the Constitution, balances the effects of compulsory land acquisition by granting the landowner the right to choose the area to be retained subject to legislative standards.³⁰ Necessarily, since the said right is granted to limit the effects of compulsory land acquisition against the landowner, it is a prerequisite that the land falls under the coverage of the OLT Program of the government. If the land is beyond the ambit of the OLT Program, the landowner need not – as he should not – apply for retention since the appropriate remedy would be for him to apply for exemption. As explained in the case of *Daez v. CA*³¹ (*Daez*):

Exemption and retention in agrarian reform are two (2) distinct concepts.

P.D. No. 27, which implemented the Operation Land Transfer (OLT) Program, covers tenanted rice or corn lands. The requisites for coverage under the OLT program are the following: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease-tenancy obtaining therein. If either requisite is absent, a landowner may apply for exemption. **If either of these requisites is absent, the land is not covered under OLT. Hence, a landowner need not apply for retention where his ownership over the entire**

²⁷ Id. at 37-38.

²⁸ CA *rollo*, pp. 156-160. Dated May 21, 2012.

²⁹ Id. at 39-40. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Edgardo A. Camello and Maria Elisa Sempio Diy, concurring.

³⁰ *Santiago v. Ortiz-Luis*, G.R. Nos. 186184 & 186988, September 20, 2010, 630 SCRA 670, 678, citing Section 4, Article XIII of the 1987 Philippine Constitution which reads as follows: "The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, **subject to such priorities and reasonable retention limits as the Congress may prescribe**, taking into account ecological, developmental or equity considerations and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing." (Emphasis supplied)

³¹ 382 Phil. 742 (2000).

landholding is intact and undisturbed. (Emphasis and underscoring supplied)

If the land is covered by the OLT Program which hence, renders the right of retention operable, PD 27 – issued on October 21, 1972 – confers in favor of covered landowners who cultivate or intend to cultivate an area of their tenanted rice or corn land the right to retain an area of not more than seven (7) has. thereof.³² Subsequently, on June 10, 1998, Congress passed RA 6657 which modified the retention limits under PD 27. In particular, Section 6 of RA 6657 states that covered landowners are allowed to retain a portion of their tenanted agricultural land not, however, to exceed an area of five (5) has. and, further thereto, provides that an additional three (3) has. may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm.³³ In the case of *Heirs of Aurelio Reyes v. Garilao*³⁴ (*Reyes*), however, the Court held that a landowner's retention rights under RA 6657 are restricted by the conditions set forth in LOI 474 issued on October 21, 1976 which reads:

WHEREAS, last year I ordered that **small landowners of tenanted rice/corn lands with areas of less than twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they own other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families;**

³² PD 27 provides:

x x x x

The tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated;

In all cases, the landowner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it;

x x x x.

³³ SEC. 6. *Retention Limits.* - Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall the retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: Provided, That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; Provided, further, That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain, to the landowner: Provided, however, That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

³⁴ See G.R. No. 136466, November 25, 2009, 605 SCRA 294, 304.

WHEREAS, the Department of Agrarian Reform found that in the course of implementing my directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families;

WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby order the following:

1. **You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.**

2. Landowners who may choose to be paid the cost of their lands by the Land Bank of the Philippines shall be paid in accordance with the mode of payment provided in Letter of Instructions No. 273 dated May 7, 1973.³⁵ (Emphases and underscoring supplied)

Based on the above-cited provisions, it may be readily observed that LOI 474 amended PD 27 by removing **any right of retention** from persons who own:

(a) **other agricultural lands of more than seven (7) has. in aggregate areas; or**

(b) lands used used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

To clarify, in *Santiago v. Ortiz-Luis*,³⁶ the Court, citing the cases of *Ass'n. of Small Landowners*³⁷ and *Reyes*,³⁸ stated that while landowners who have not yet exercised their retention rights under PD 27 are entitled to new retention rights provided for by RA 6657, the limitations under LOI 474 would equally apply to a landowner who filed an application under RA 6657.

³⁵ LOI 474 dated October 21, 1976. See also Ministry Memorandum Circular No. 18-81 entitled, "Clarificatory Guidelines on Coverage of P.D. No. 27 and Retention by Small Landowners."

³⁶ Supra note 30, at 681.

³⁷ Supra note 13, at 826.

³⁸ Supra note 34, at 313.

In this case, records reveal that aside from the 4.6523-hectare tenanted riceland covered by the OLT Program, *i.e.*, the subject portion, petitioners' predecessors-in-interest, Sps. Sandueta, own other agricultural lands with a total area of 14.0910 has. which therefore triggers the application of the first disqualifying condition under LOI 474 as above-highlighted. As such, petitioners, being mere successors-in-interest, cannot be said to have acquired **any retention right** to the subject portion. Accordingly, the subject portion would fall under the complete coverage of the OLT Program hence, the 5 and 3-hectare retention limits as well as the landowner's right to choose the area to be retained under Section 6 of RA 6657 would not apply altogether.

Nevertheless, while the CA properly upheld the denial of the petition for retention, the Court must point out that the November 24, 2009 DARCO Order inaccurately phrased Romulo Sandueta's entitlement to the remaining 14.0910-hectare landholding, outside of the 4.6523-hectare subject portion, as a vestige of his retention right. Since the 14.0910-hectare landholding was not shown to be tenanted and hence, outside the coverage of the OLT Program, there would be no right of retention, in its technical sense, to speak of. Keeping with the Court's elucidation in *Daetz*, retention is an agrarian reform law concept which is only applicable when the land is covered by the OLT Program; this is not, however, the case with respect to the 14.0910-hectare landholding. Thus, if only to correct any confusion in terminology, Romulo Sandueta's right over the 14.0910-hectare landholding should not be deemed to be pursuant to any retention right but rather to his ordinary right of ownership as it appears from the findings of the DAR that the landholding is not covered by the OLT Program.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated April 26, 2012 of the Court of Appeals, Cagayan de Oro City in CA-G.R. SP No. 03333 insofar as it upheld the denial of the petition for retention in this case is hereby **AFFIRMED**.

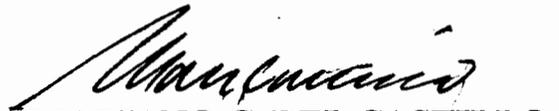
SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice