Land Use Conversion vs. Reclassification
DAR'S MOCKERY OF THE LAW

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Land is indispensable to any and all human activity. And how a nation uses its lands, to a large extent determines its fate ~ whether its people will remain as tillers of the soil or homeless nomads, or prosper along with the better part of the human race.

Cognizant thereof, our Fundamental Charter places a premium on how our country's lands shall be used to further the cause of social justice and economic prosperity for our people. It directs the just distribution of lands to our nation's landless farmers, just as it mandates the provision of land and decent dwelling to our nation's underprivileged landless and homeless non-farmers. It requires the full and efficient use of land and all resources to "provide all sectors of the economy and all regions of the country the optimum opportunity to develop", and thus "raise the quality of life for all".

Our Constitution classifies the nation's lands into 4 categories: mineral, forest, national parks, and agricultural lands.

Of these four categories, only one – agricultural lands – may be alienated. These are the only lands that may be subject to private rights of ownership; and these rights once acquired are protected by our Constitution. And it is the rule that the State may infringe upon these rights only when the common weal so dictates, as the people themselves may so determine, through laws enacted in accordance with the Constitution by their collective representative – Congress at the national level, and sanggunians at the local level.

This, then, is the focus of our controversy: private agricultural lands – whether the Executive Branch or its adjuncts, specifically the Department of Agrarian Reform (DAR), has the power and jurisdiction outside of what is provided in the law or the Constitution, to infringe upon property rights and individual liberties, by prohibiting or otherwise restricting the use of agricultural lands.

Our Constitution is clear that agricultural lands may be further classified by law into the uses to which they may be devoted.

And laws have been passed that prescribe the various uses of agricultural lands – such as RA 8435 for agriculture, RA 6657 for agrarian reform, PD 399 and RA 7279 for urban development and housing, RAs 7357 and 7668 for tourism, RA 7916 for integrated Ecozones, and RA 7160 which provides the mechanism for apportioning agricultural lands at the local level.

These laws are as clear as the Constitutional provisions upon which they are founded – not only on the lands that they cover, but also on the respective jurisdiction of the agencies and instrumentalities tasked to implement them. Properly interpreted as to letter and intent, these laws should afford no occasion for overlapping turf. Properly implemented, these should provide the vehicle for complying with the social justice mandates of our Constitution and the economic development goals envisioned for our people by its Framers – to improve the quality of life for all.

This noble vision of our Framers and our lawmakers, however, has been thwarted – our laws twisted beyond recognition and otherwise cast aside – by one mere administrative agency that is apparently bent on taking complete control of the nation's destiny, by claiming all lands to be subject to its sole ultimate power to regulate.

The DAR, for more than a decade, has promulgated and implemented land conversion rules – allegedly in accordance with law – wherein it has constituted itself as the sole supreme authority over the use of all the nation's lands.

It has usurped the power of local governments, of the HLURB, of the Chief Executive, and even of Congress – in the process disregarding all laws, decisions of the highest court of the land, and the Constitution itself. It has assumed jurisdiction over all lands – whether or not covered by or excluded from the CARP, whether or not reclassified for non-agricultural use, and whether or not embraced by the jurisdiction of other agencies.

Invoking the interest of the peasantry and the nation's need for food security, the DAR has transformed its conversion authority – a simple ministerial function entrusted to it by law – into a mammoth discretionary power to dictate which lands may be used for whichever purpose. It claims to have the power to authorize or dis-authorize all conversions of all these lands; to approve or disapprove all agricultural land reclassifications by local governments; and to allow, disallow or restrict all non-agricultural uses of land, notwithstanding that such uses have already been prescribed by Congress and local sanggunians.

In exercising these arrogated powers, the DAR has:

(a) Expanded the scope of its conversion authority beyond the restrictive limits set by Congress under the law, specifically Section 65 of RA 6657;

(b) Disregarded and dispensed with the criteria and conditions prescribed by Congress for conversion, and promulgated its own prohibitive set of conditions that practically preclude the non-agricultural use of land;

(c) Imposed a total ban on the conversion and reclassification of irrigated and irrigable lands;

(d) Restricted the conversion and reclassification of all other lands that are otherwise not covered by its conversion ban; and

(e) Declared that only those lands reclassified prior to the effectivity of RA 6657 are CARP-exempt, required that exemption clearance still be secured for these exempt lands, and imposed requirements therefor that negate the exemption granted by the law.

And to strike fear on those who may defy its usurped authority, the DAR has instituted and pursued administrative and criminal sanctions against any development activity undertaken without its approval or clearance.

For more than a decade, the DAR's illegal conversion rules have harmed and prejudiced individual landowners by preventing them from exercising their legitimate rights of ownership over their lands. Worse, the DAR's illegal exercise of its conversion authority has harmed and prejudiced the entire nation as well – in terms of the billions of pesos worth of both foreign and local investment prospects, all lost; the hundreds of thousands of unemployed workers for whom these investments could have meant a source of livelihood; the massive loss of government revenues from the non-agricultural development of lands, which could have vastly improved the process of governance; the artificial land scarcity and spiraling of land prices, and its concomitant adverse impact on the prices of all goods and services; the millions of underprivileged homeless families deprived of opportunity to acquire a mere 36-square meter plot each on which to build dwellings; the stagnation of local economies which has contributed largely to urban migration and the uncontrolled growth of urban slums; and a host of other banalities.

Equally alarming is how these Rules can give life to the maxim that "power corrupts, and absolute power corrupts absolutely". The DAR's conversion rules, making the DAR practically all-powerful, wittingly or unwittingly have been so crafted as to provide limitless opportunity for graft and corruption – not only for the entire DAR bureaucracy from the lowest BARO up to the highest levels – via the numerous procedures prescribed and various clearances and documents required for securing DAR's imprimatur.

Apparently unmindful of these dire consequences, the Executive Branch has perpetuated the DAR's illegitimate supremacy – by issuing fiats which, in similar fashion as the DAR's rules, have no basis whether in law or in the Constitution.

All these, despite unrelenting decade-long efforts by CREBA to make the Executive Branch and the DAR see the light; and worse, notwithstanding the Supreme Court's decisions against the DAR on the various instances of its violation of the law.

True, the plight of the nation's peasantry is of grave concern; but the peasantry is not the entire nation. This country has only some 3 million farmers, as against the total population of about 75 million – 48% of which live in urban areas, some 12% of which are unemployed, with more than 4 million families being landless and homeless, and more than 3.5 million households being identified as urban poor squatters. And a 3-hectare piece of land – devoted to satisfy the tenurial aspirations of a single tenant-farmer’s family – could instead provide home lots for some 600 urban poor families if used for urban land reform purposes, or be turned into an industrial estate that could provide jobs to thousands of the unemployed.

Our Constitution is supposed to look upon all with equal favor. Surely, our Framers did not envision a situation where the needs of the peasantry must first be fully satisfied before attending to the needs of the equally downtrodden, nor a situation where ~ in apportioning the nation's scarce land resources ~ agrarian reform would enjoy preferential treatment to the exclusion of all other socio-economic development programs.

To suggest otherwise, and to allow the DAR to prevail, is to say that ours is a government of men and not of laws, and thus our Constitution may be cast aside at will.

For, when, rules are patently biased in favor of the peasantry at the expense of all others, it is discriminatory and violative of the equal protection clause, as well as the social justice and economic mandates of our Constitution. to wit:

(a) A more *equitable* distribution of opportunities, income, and wealth;

(b) An *expanding productivity* as the key to *raising the quality of life for all*

(c) Industrialization and full employment;

(d) *All sectors of the economy and all regions* of the country shall be *given optimum opportunity to develop;*

(e) A *continuing* program of urban land reform and housing; and

(f) An agrarian reform program taking into account *developmental* and *equity considerations.*

When lands that are not covered by the DAR's jurisdiction are so covered and are prohibited or restricted from legitimate use, it is deprivation of property without due process of law. When one is subjected to penalties for exercising a right granted by law, it is deprivation of life or liberty without due process of law. When rules inhibit the exercise by LGUs of their powers under the law, it is violative not only of the law but also of the Constitutional mandate that the State shall *ensure* the autonomy of local governments. When rules promulgated go beyond the limits set forth under the law, it is an arrogation of legislative power in violation of the rule and principle of separation of powers. And when an agency exercises powers beyond those conferred by law, it is a grave abuse of discretion amounting to lack of jurisdiction.

The DAR – in promulgating and implementing its conversion rules – is guilty of all these violations; for;

(a) Under the Constitution and the laws, the power of land reclassification is *distinct* from and *superior* to the conversion authority. Thus the conversion rules – as well as the executive issuances invoked as basis by the DAR – are illegal and unconstitutional insofar as they arrogate unto the DAR the power to pass upon reclassifications of agricultural lands whether by LGUs or by Congress; and

(b) The DAR's *inferior* conversion authority is limited only to CARP-awarded lands, and its exercise beyond the limits and restrictions of Section 65 of RA 6657 and Section 9 of RA 8435 – particularly insofar as it covers reclassified lands and lands intended for Ecozone development – is not only illegal but unconstitutional as well.

RECLASSIFICATION IS A LEGISLATIVE POWER DISTINCT FROM AND SUPERIOR TO THE ADMINISTRATIVE AUTHORITY OF CONVERSION

For purposes of determining whether or not the DAR has overstepped the bounds of its jurisdiction, it is essential at the very outset, to distinguish between the "authority to approve or disapprove

conversion of agricultural lands" and the "power to reclassify agricultural lands". In this regard, we refer to our Constitution and our laws.

The term "reclassification of agricultural lands" derives meaning from Article 12 Section 3 of the Constitution which provides that *"agricultural lands mat be further classified by law according to the uses to which they may be devoted"*. Reclassification therefore is an act of "further classifying" agricultural lands. And "reclassified lands", within the purview of the Constitution, can be none other than erstwhile agricultural lands taken from their original Constitutional category and placed in another, based on the uses for which they may be prescribed.

RECLASSIFICATION AS AN EXERCISE OF POLICE POWER. – The act of reclassification, therefore, necessarily partakes of apportionment or allocation of lands. For, placing a land in one land use category means that to a certain extent, it may no longer be devoted to other land uses.

And such act would necessarily impinge on property rights, in that the owner of the land may no longer utilize it as he may wish, but must submit to the will of the reclassifying authority.

Thus, reclassification partakes of the nature of police power, which has been defined as *the power of promoting the public welfare by restraining and regulating the use of liberty and property."* And its exercise lies in the discretion of the legislative department.

And rightly so; for, "reclassification" or allocation would necessitate the harmonization or balancing of the diverse interests and conflicting aspirations of the people with regard to the use of land, looking with favor at no particular sector but holding paramount the common weal. The far-transcending importance that land holds for the nation, makes of reclassification a policy matter of the highest order – one that may be judiciously pursued only through the distilling process of lawmaking in a truly representative form of government, where the people's will as expressed by their directly elected representatives, prevails.

This, then is the fundamental nature of "reclassification" that makes it separate and distinct from "conversion" ~ reclassification is a legislative power, directly emanating from the Constitution no less. Being a legislative power it can be exercised only by a legislative body.

RECLASSIFICATION BY CONGRESS. ~ The legislature has exercised this power through such laws as: (1) PD 399 which defines Striplands and reserves them for human settlements and other non-agricultural uses; (2) RA 7279 which defines urban and urbanizable lands and reserves them for urban development and social housing purposes; and (3) RA 7916 which identifies areas reserved for Ecozone development and prescribes the manner for identifying such other areas.

RECLASSIFICATION BY LGUS. – As an exercise of police power, reclassification may also be undertaken by local legislative bodies – the sanggunians – under the general welfare clause.

And indeed, the power of local governments to reclassify (or zone, as was the proper term prior to the 1987 Constitution) has been recognized undiluted under laws and jurisprudence.

Under the general welfare clause as affirmed under RA 7160 of 1991, the powers and responsibilities of local governments are almost unlimited, such that they can exercise *"all powers expressly granted*

and necessarily implied", "*powers necessary for efficient and effective governance*", and "*powers essential to the promotion of general welfare*".

As a power that is indispensable to local governance and to the pursuit of their vast responsibilities under the general welfare clause, the primary authority of local governments to determine and prescribe – through zoning ordinances – the allocation and use of lands in their respective localities, is affirmed by Congress under RA 7160.

However, Congress – and Congress alone as the repository of the people's will, and consistent with the Constitution – amay impose limitations on the exercise of local government powers, as indeed it has done with the power to reclassify, under Section 20 of RA 7160.

Under Section 20 of RA 7160, the local sanggunian – upon its own determination that the locality's agricultural lands will have greater economic value for non-agricultural use – may so reclassify such lands, subject however to percentage-of-total-area limitations for each class of municipality, and to the injunction that in the case of 4th to 6th class municipalities such reclassification shall not affect CARP-awarded lands.

And to ensure that local development efforts are harmonized towards effective attainment of national development goals, Congress may also institute a national coordinative and blending mechanism for local land use plans, as indeed it has done under PD 933, EO 648 (s1981), and LOI 1350 (s1983). It is worth noting at this point, that under EO 648 the HLURB's power to approve local land use plans and reclassification or zoning ordinances does not extend to preempting or overruling (as the DAR seeks to effect) the local sanggunians' determination of how lands shall be used, but is limited merely to ensuring compliance with duly promulgated national zoning standards and guidelines.

CONVERSION AS A CONGRESSIONALLY CONFERRED ADMINISTRATIVE AUTHORITY. While the power to reclassify directly emanates from the Constitution in the case of Congress, or inheres with local governments as an incident of police power, the conversion authority, however, emanated merely from the laws which provide for and enable its exercise. These laws are PD 815, PD 946, EO 292 (s1987), and EO 129-A (s1987).

All these laws, as far as the conversion authority is concerned, have been **superseded** by Section 65 of RA 6657 which limited the coverage of the DAR's conversion authority only to CARP-awarded lands which meet certain specified criteria.

From these alone it should be clear that conversion cannot in any way be equated with reclassification. For while the latter is a legislative power that appertains to a lawmaking body, the former is merely an administrative authority conferred by Congress for the sole purpose of implementing a provision of law – to allow or disallow the use of an individual parcel of agricultural land for non-agricultural purposes, when the conditions set forth in the law are met.

Other distinctions, however, may be inferred. For instance, as evident from the Constitution and the Local Government Code, reclassification requires initiative by Congress or LGUs in the process of governance, and its impact is coercive as it is effected through law or ordinance with or without the consent of the parties affected thereby. And for its exercise not to be tainted by discrimination that is not allowed by the Constitution, it must necessarily have as its object not just individually-owned

parcels of land, but rather, vast tracts – regardless of ownership – that may encompass whole towns, cities or even regions.

In direct contrast, as evident from the laws, a purely voluntary private initiative is required before the conversion authority may be exercised. It becomes operative only when it is applied for by a landowner. As such, its object is necessarily only the individual landholdings of the applicants concerned.

And while reclassification – as an exercise of police power – is always predicated on public interest and general welfare, conversion is anchored purely on the self-interest of the applicant therefor.

Further, reclassification as an act of lawmaking is discretionary; and as an exercise of police power it is almost absolute in prescribing which and how much of agricultural lands may be used for whichever purpose. It is circumscribed only by Constitutional injunctions and the principles of lawmaking when exercised by Congress, and by the general welfare clause or express limitations under the Local Government Code when exercised by local governments.

Conversion, on the other hand, as an act merely of law-enforcement is purely ministerial; and any discretion on the part of the implementing agency such as the DAR, would extend simply to determining whether a parcel of agricultural land applied for conversion conforms to the conditions for authorizing the same. Its exercise is circumscribed by the criteria and parameters specified in the law conferring the authority – without which criteria or parameters such conferment would amount to an improper or unconstitutional delegation of power on the part of Congress.

From these distinctions, and from the rule and principle of separation of powers enshrined in our Constitution, it should be clear that reclassification, as a legislative power, cannot in any way be circumscribed by the administrative authority of conversion.

Otherwise put, no act by any administrative agency may in any manner or for whatever purpose serve to reverse, delimit or otherwise modify the impact of acts of reclassification by Congress. To suggest otherwise would be tantamount to saying that the highest policy-making body of the land is being relegated to an inutile recommendatory body that is subservient to its mere creation.

And as far as the reclassification power of LGUs is concerned the Executive Branch may, pursuant to its power of supervision under the Local Government Code, act to regulate its exercise, but only in strict conformity with the will of Congress as spelled out through law.

EXTENT OF DAR's MANDATE AND RULE-MAKING AUTHORITY

In determining whether the DAR has exceeded its authority in promulgating and enforcing the assailed conversion rules, we now examine the extent of its mandate and rule-making powers under the law.

The time-honored principle of separation of powers defines the extent of the rule-making powers of the executive branch. Under our jurisprudence, it is allowable to issue supplementary rules and regulations to assure achievement of statutory objectives. However, such rules and regulations (1)

must be based on law, (2) must be necessary for the effective implementation of such law, and (3) must conform to standards imposed by the legislative branch.

DAR'S MANDATE. – What, then, are the statutory objectives that the DAR is tasked to achieve, for which and within which it may issue and enforce rules?

As should be clear from its very name, the Department of Agrarian Reform is mandated merely to implement the agrarian reform program. It is neither tasked nor was created to implement national land use policy. This is also clear in its charter and in the agrarian reform laws.

For instance, RA 6389 which originally created the DAR, endowed it with authority and responsibility for "*implementing the policies of the State on agrarian reform as provided in this Code";* while EO 129-A (DAR's revised charter) provides that it "*shall be responsible for implementing the Comprehensive Agrarian Reform Program".*

And agrarian reform is defined under RA 6657 concerns itself primarily with the physical redistribution of agricultural lands, and other means alternative to redistribution which will allow the beneficiaries to receive a just share of the fruits of the land they work.

DAR'S RULE-MAKING AUTHORITY. – Thus, the rule-making power of the DAR embraces only those matters relating to the implementation of the law or program that it is tasked to enforce – agrarian reform – as defined under the law. Such power extends only to crafting and enforcing rules that are necessary to carry out the objects and purposes of the agrarian reform law.

DAR OVERSTEPS THE BOUNDS OF ITS MANDATE AND RULE-MAKING AUTHORITY. – Land use policy-making through reclassification, can in no way be considered as a matter embraced by or relating to agrarian reform, such as to place it within the purview of the DAR's mandate and rule-making authority. Otherwise put, the agrarian reform program is not the national land use program, but rather is a mere component thereof. The national land use program is the entire compendium of land use laws, of which the CARL is but one. And the implementation of all these land use laws is not entirely or solely lodged with the DAR, such as would give it any authority or jurisdiction over all other lands not covered by agrarian reform.

Thus, the DAR oversteps the bounds of its mandate and rule-making authority under RA 6657 when, under Section 2 of its Rules, it defines reclassification as *"subject to the requirements and procedures for land use conversion".* For in so doing, it implies that (a) reclassification cannot be effected without complying with the requirements and procedure for conversion set forth in the DAR's conversion rules, foremost of which is that DAR approval must be secured; and (b) the criteria that it has prescribed for allowing or disallowing land conversion (i.e. lands are either non-negotiable for or highly restricted from conversion) also apply to reclassification.

Otherwise put, in including the power to reclassify within the scope of its mandate and rule-making authority, the DAR implies that (a) the formulation of land use policy is embraced by its mandate; and (b) it is superior to Congress or LGUs, in that acts by Congress or LGUs are subject to its administrative authority to overrule or otherwise ratify.

Whether borne of ignorance or arrogance, such stance cannot be countenanced, for it is not allowed by our Constitution and our laws.

CARP COVERAGE AND DAR's JURISDICTION

LANDS COVERED. – As evident from the laws that it is tasked to implement, the DAR's jurisdiction embraces only those lands covered by the agrarian reform program – agricultural lands. This is emphasized in the Supreme Court ruling in the case of *CMU vs. DARAB* (215 SCRA 87), and *Natalia Realty vs. DAR* (225 SCRA 278).

And while under the Constitution all lands not classified as mineral land, timber lands or national parks are agricultural lands, **not all** these agricultural lands, however, are covered by the agrarian reform program.

This is clear under the Constitution, law and jurisprudence, which define agricultural lands and delimit the coverage of the agrarian reform program only to agricultural lands which have not been reclassified for non-agricultural uses, and which are not specifically enumerated in the law as CARP-exempt. This limited definition of agricultural lands is further affirmed under RA 8435, the very Agriculture and Fisheries Modernization Act itself.

LANDS NOT COVERED. – Thus, apart from the specific exemptions and exclusions under Section 10 of RA 6657, reclassified lands – whether or not devoted to or suitable for agricultural activity – are not covered by the agrarian reform program, and are not embraced by the DAR's jurisdiction whether for purposes of redistribution, conversion, or otherwise. These lands are:

(a) Striplands by virtue of PD 399;

(b) Urban lands by virtue of RA 7279;

(c) Ecozones by virtue of RA 7916

(d) By virtue of RA 7357, RA 7668 and other existing laws, all lands in areas set aside for tourism development; and

(e) By virtue of the Local Government Code, all lands in areas zoned or reclassified by LGUs for non-agricultural uses.

For, the logical implication of the Supreme Court's interpretation of the Constitution in *Natalia Realty vs. DAR*, is that these lands ceased to be agricultural upon their reclassification, having been reserved by law or in accordance with law for non-agricultural uses.

The exclusion of reclassified lands from the definition of agricultural lands and, consequently, from coverage of RA 6657 and RA 8435, is absolute – unqualified as it is by any limitation as to the time of reclassification, or any distinction as to whether or not the land is tenanted, awarded, irrigated, irrigable, prime or environmentally critical. To suggest that such limitations or distinctions exist is to imply that the exercise of the legislative power to reclassify is circumscribed by time or is confined merely to a particular type of agricultural land.

Consequently, within the context of the Constitution, the provisions of RA 6657 and RA 8435 – when taken in conjunction with the reclassification laws – yield the interpretation that any agricultural land that Congress and local sanggunians may reclassify at any time prior to or after effectivity of RA 6657 or RA 8435, cease to be agricultural land upon effectivity of the pertinent law or ordinance, and as such may be used for non-agricultural purposes without need of any intervention by the DAR.

Conversely, any land which has not been so reclassified remains as agricultural land, must be redistributed under agrarian reform unless specifically excluded under Section 10 of RA 8435, and may not be used for any purpose other than agricultural – except only when its conversion is authorized under the law.

This interpretation further finds support in the Constitutional injunction under Article 13 Section 4 that the agrarian reform program shall take into account ecological, developmental or equity considerations.

These considerations have already been addressed by Congress in crafting not only the aforementioned reclassification laws and RA 7160, but also in limiting the definition of agricultural lands under RA 6657 and RA 8435, in such manner as would provide all constitutionally mandated programs of government equitable access to land. To imply otherwise, would be to attribute idiocy on the part of Congress.

Thus, when Congress or the LGUs reclassify lands for non-agricultural uses in their exercise of police power, whether or not these lands may in physical character still be "prime lands" or "environmentally critical" or otherwise, the same can no longer be preserved by the DAR or any other executive agency for any other purpose. To do so would be violative of the cardinal rule of separation of powers under our tri-partite system of government.

DAR OVERSTEPS THE BOUNDS OF ITS JURISDICTION BY COVERING RECLASSIFIED LANDS. – The DAR, however, includes in the coverage of its conversion Rules those lands "reclassified on or after effectivity of RA 6657", and identify lands which are non-negotiable for conversion (i.e. irrigated or irrigable lands), and lands which are highly restricted from conversion.

Under these Rules, lands reclassified after effectivity of RA 6657 cannot be developed for non-agricultural purposes without the DAR's approval or clearance, for such would constitute either illegal conversion or premature conversion as defined by the Rules.

In specific terms, the Rules mean that even if a land is reclassified prior to RA 6657:

(a) If it is irrigated or irrigable, it is still subject to the conversion ban under Section 4 and consequently, its development would constitute illegal conversion; and

(b) If it is non-irrigated or non-irrigable, but falls under any of the enumerated category of highly restricted lands, the DAR still has the discretion to allow or disallow its non-agricultural development.

These Rules therefore imply that:

(a) The DAR has the authority to limit or otherwise make distinctions in the absolute CARP-exclusion granted to reclassified lands by Section 3(c) of RA 6657; (

(b) The legislative power to reclassify has lapsed after RA 6657 or has been delimited thereby;

(c) Reclassifications undertaken after effectivity of RA 6657 – by Congress under RA 7279, RA 7357, RA 7668, RA 7916, and by LGUs under RA 7160 – are invalid for purposes of excluding lands from the scope of agrarian reform or for prescribing their non-agricultural use; and

(d) The exercise of DAR's conversion authority is efficacious in overruling edicts of Congress or LGUs.

On this score, the Rules cannot be given effect, for they find no basis whether in law, jurisprudence or Constitution. The Constitution as interpreted by the Supreme Court in *Natalia Realty vs. DAR* is clear that reclassified lands – without distinction – are exempt from the definition of agricultural lands. The same is true with RA 6657 and RA 8435.

CONVERSION COVERAGE AND EXTENT OF DAR's CONVERSION AUTHORITY

Within the context of the limits of DAR's mandate, rule-making authority and jurisdiction, we now examine the coverage and extent of the DAR's conversion authority.

The conversion authority of the DAR emanates solely from Section 65 of RA 6657 which, being a later and "comprehensive" enactment, has superseded all other conversion provisions under previous laws.

Under RA 6657, for purposes of redistribution the DAR's jurisdiction embraces all agricultural lands covered by the agrarian reform program. For purposes of conversion, however, the DAR's authority and jurisdiction is limited only to agricultural lands that have actually been redistributed or awarded under said program.

This is very clear from Section 65 of RA 6657, and from the Supreme Court ruling in *Province of Camarines Sur vs. CA* that the conversion authority only applies to lands previously placed under the agrarian reform program.

Under said Section 65, Congress has prescribed the conditions and criteria that must concur before the conversion authority may be exercised. These conditions and criteria are: (a) that the land must have been awarded; (b) that conversion must be applied for; (c) that 5 years must have lapsed since the award; (d) that the land would have greater value for non-agricultural use; (e) that due notice is served to affected parties; and (f) that the beneficiary has fully paid his obligations.

It should be clear from Section 65 of RA 6657 that the exercise of conversion authority is totally dependent on the *"existence of a state of facts"*, and the DAR's discretion therefore lies solely in determining whether or not such "state of facts" does exist. And this "state of facts" is none other than the simultaneous and concurrent fulfillment of all the 6 conditions set forth under Section 65 of RA 6657.

Absent any one of these conditions, the conversion authority becomes inoperative. This is true, for instance, when a land is awarded but less than 5 years has elapsed after such award; or if 5 years have elapsed but the awardee's obligations have yet to be fully paid; and so on. Conversely, when all of these conditions are met, conversion becomes a right to which the awardee-landowner becomes entitled, and which the DAR may not withhold.

Most importantly, without an application for conversion, no land may become subject to the DAR's conversion authority. For, as earlier discussed, a voluntary private initiative on the part of the landowner (or awardee) is necessary before the conversion authority may become operative. It is this initiative that sets in motion the process of determining the *"existence of a state of facts*" that would lead to conversion approval or disapproval. Only through this voluntary act of filing a conversion application may the DAR acquire jurisdiction to exercise its conversion authority. And such acquired jurisdiction necessarily embraces only the particular piece of land that is subject of the conversion application.

Again, as the Supreme Court has declared further in Province of Camarines Sur vs. CA, the conversoin authority is limited to the application submitted by the tenant beneficiaries.

This, then, is the limited sphere of the DAR's conversion authority: awarded agricultural lands that have been applied for conversion and have fulfilled all of the prerequisites for conversion under Section 65 of RA 6657.

It is further emphasized, that the term "awarded land" is strictly limited to lands actually titled in the name of the awardee in accordance with the applicable laws. For, as the Supreme Court declared in *Vinzons-Magana vs Estrella*, it is only through a duly issued title that a beneficiary acquires the vested right of absolute ownership in the landholding – a right which has become fixed and established and is no longer open to doubt or controversy.

The conditions set forth under said Section 65 were precisely meant by Congress to be restrictive as against the DAR. For, the agricultural lands that Congress has allocated for the CARP are intended for redistribution to landless farmers, under the fundamental principle set forth in the Constitution and echoed in Section 2 of the Act that the program is founded on the right of farmers *"to own directly or collectively the lands they till".*

Further, it would have been an improper delegation of power on the part of Congress to provide for an unrestricted conversion authority, as it would in effect allow the DAR to legislate upon the coverage of the agrarian reform program itself, even as it would mean an abdication by Congress of the Constitutionally conferred legislative power to determine which lands may be used for which purpose.

What, then, is the source and extent of the DAR's rule-making authority as far as conversion is concerned? While on the matter of land redistribution and ancillary functions the DAR's rule-making authority emanates from Section 49 of RA 6657, rule-making for purposes of conversion, however, draws authority from the Revised Administrative Code which empowers administrative agencies to promulgate rules in implementation of specific provisions of law.

Under the RAC and under the principle of *"contingent subordinate legislation*", such rule-making authority cannot extend beyond the confines of Section 65 of RA 6657 – the specific provision of law that is sought to be implemented and from which the conversion authority emanates. It cannot

cover subject matters that are not specifically covered by said provision. It is limited purely to clarifying the legislative details and instituting the mechanics of implementation of said provision, no more and no less.

Thus, in crafting the conversion rules pursuant to Section 65 of RA 6657, the DAR may (a) define or clarify the term "award" consistent with the law; (b) prescribe standard conversion application forms; (c) define the reckoning of the requisite 5-year period; (d) require proof of the land's non-viability for agricultural use; (e) require proof of notice to affected parties; and (f) prescribe the required proof of payment of obligations.

As the Supreme Court declared in *People vs. Macararen*: *"The rule-making power of administrative agencies must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned".*

DAR'S ABUSE OF AUTHORITY

From all the foregoing – it is clear that the DAR grossly overstepped the bounds of its authority, when it promulgated and enforced conversion rules that:

(a) Include in their scope or applicability non-awarded lands, and lands that are excluded from the CARP and DAR's jurisdiction – i.e. lands reclassified by Congress and LGUs;

(b) Render the act of reclassification by Congress and LGUs subject to its conversion authority;

(c) Impose conversion criteria, conditions and requirements outside of what is provided in Section 65 of RA 6657; and

(d) Impose penalties for development activities undertaken without its approval on lands that are outside of its jurisdiction.

Such abuse cannot and should not be countenanced, for it not only amounts to a mockery of the law, but also represents a grave crime against the nation. It is now imperative and incumbent upon the entire Government, to exert utmost political will in demonstrating to all and sundry that no one – not even the seemingly all-powerful DAR – is above the law.