THE CONSTRUCTION AND CONSTRICTION OF AGRARIAN REFORM LAW

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That which has caused so much confusion in the law, which has made it so difficult for the public to understand and know what the law is with respect to a given matter, is in considerable measure the unwarranted interference by judicial tribunals with the English language as found in statutes and contracts, cutting out words here and inserting them there, making them fit personal ideas of what the legislature ought to have done or what parties should have agreed upon, giving them meanings which they do not ordinarily have, cutting, trimming, fitting, changing and coloring until lawyers themselves are unable to advise their clients as to the meaning of a given statute or contract until it has been submitted to some court for its "interpretation and construction."[1]

I. INTRODUCTION

A. An unwanted child

The Comprehensive Agrarian Reform Law[2] (CARL) was enacted pursuant to the constitutional mandate to undertake agrarian reform[3] and was touted as the centerpiece legislation of the government of Corazon C. Aquino.

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[1] Yangco v. The Division of the Court of First Instance of the City of Manila, 29 Phil. 183, 187 (1915).

[2] Rep. Act No. 6657 (1988). An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing for its Implementation, and for Other Purposes.

[3] CONST. art. II, sec. 21; art. XII, sec. 1, par. (2); art. XIII, sec. 4; and art. XVIII, sec. 22.

But many peasant organizations described the law as deceptive and falling short of being a true social justice measure.[4] Even legislators who participated in the crafting of the law called it "extremely faulty"[5] and later succeeded in further crippling it by amendment.[6]

Spurned by peasant groups and lawmakers, and challenged by landowners, the CARL seemed destined to fail, like the agrarian reform laws of the past. To date, the CARL has hardly touched the estates of big landowners, and has only managed to give away government lands. The government has only distributed 98,000 hectares of the nearly 500,000 hectares of private estates which are larger than fifty hectares, making up a poor twenty-two percent of the target under the law. Only around three percent of private lands less than fifty hectares have been distributed so far.[7] Nearly seventy percent of the ten

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[4] Jose Z. Grageda, *Congress for a Peoples' Agrarian Reform*, *in* STUDIES IN COALITION EXPERIENCES IN THE PHILIPPINES 65, 76 (Cesar P. Cala & Jose Z. Grageda eds., 1994). The Congress for a Peoples' Agrarian Reform objected to the provisions allowing landowners to give tenants shares of stocks instead of land, and the land retention limits which, they claimed, would exclude sixty to ninety percent of private agricultural lands from coverage of the law. *See* Pi Villanueva, *The Influence of the Congress for a People's Agrarian Reform (CPAR) on the Legislative Process*, *in* 2 STATE-CIVIL SOCIETY RELATIONS IN POLICY-MAKING 81, 90 (Marlon A. Wui & Ma. Glenda S. Lopez eds., 1997). Peasants decried the law as biased in favor of the landowner and riddled with loopholes, then set out to replace it with their own version. *See* LIGAYA LINDIO-MCGOVERN, FILIPINO PEASANT WOMEN: EXPLOITATION AND RESISTANCE 144-145 (1997), and JAMES PUTZEL, A CAPTIVE LAND: THE POLITICS OF AGRARIAN REFORM IN THE PHILIPPINES 276-278 (1992). In truth, President Aquino avoided the issue of agrarian reform until thirteen peasants were killed by police during a demonstration outside the Presidential Palace in January 1987. *See* JAMES B. GOODNO, THE PHILIPPINES: LAND OF BROKEN PROMISES 271 (1991).

[5] JEFFREY M. RIEDINGER, AGRARIAN REFORM IN THE PHILIPPINES: DEMOCRATIC TRANSITIONS AND REDISTRIBUTIVE JUSTICE 175 (1995). Less than three days after the bill was signed into law, for instance, Senator John Osmeña attempted to increase the land retention rate for landowners from the five-hectare limit under the CARL, to fifty hectares. *See* Cielito C. Goño, *Peasant Movement-State Relations in New Democracies: The Case of the Congress for a Peoples' Agrarian Reform (CPAR) in Post-Marcos Philippines*, PULSO Monograph No. 19 (January 1998) at 41.

[6] *See* Rep. Act No. 7881 (1995). An Act Amending Certain Provisions of Rep. Act No. 6657, An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing for its Implementation, and for Other Purposes.

[7] Of the private lands between twenty-four and fifty hectares, only 10,000 hectares of the 312,000 hectares covered by the CARL were distributed. On the other hand, of the lands between five to twenty-four hectares, only 25,000 hectares of the 736,000 hectares covered by the program were distributed. In contrast, the Department of Agrarian Reform has given away about 686,059 hectares of government-owned lands, a figure slightly above the 657,843 hectares that were targeted for distribution. *See* Richel B. Langit, *Cory, FVR met CARP targets, but....*, MANILA TIMES (2 November 1998) <http://www.manilatimes.net/news/news110298c.html>.

million hectares of farmlands remain in the hands of a few landowners, a credit to "the ability of the great land-owning families to stall these reforms."[8]

The Department of Agrarian Reform (DAR) attributes the pace of distribution of private agricultural lands to strong resistance of landowners and the lack of government funds.[9] The land distribution rate during the first six months of the administration of President Joseph Estrada was likewise hampered by the resistance of landowners, lack of technical documents, and illegal conversion.[10]

Otherwise written off as another legislative failure,[11] the CARL was given a second chance when on 23 February 1998, then President Fidel Ramos signed Republic Act No. 8532 into law, extending the program for ten years and infusing it with another fifty billion pesos.[12]

B. The role of the Supreme Court

The CARL has been criticized with good reason.[13] Too often, however, analyses of the program are limited to the law's congenital defects and

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[8]Paulynn Sicam, *'Full Circle' Land Reform*, THE WORLD PAPER (February 1998) <http://www.worldpaper.com/FEB98/sicam.html>.

[9]*Id.*

[10]Mirasol Ng, *Slow grind for land distribution program*, PHILIPPINE JOURNAL (28 December 1998) <http://www.skyinet.net/journal/top/1228dar_slow.html>.

[11]See generally JOHN BATARA, THE COMPREHENSIVE AGRARIAN REFORM PROGRAM: MORE MISERY FOR THE PHILIPPINE PEASANTRY (1996).

[12]Rep. Act No. 8532 (1998) An Act Strengthening Further the Comprehensive Agrarian Reform Program (CARP), by Providing Augmentation Fund Therefor, Amending for the Purpose section 63 of Rep. Act 6657 otherwise known as "The CARP Law of 1998." Then President Fidel V. Ramos declared that the new law underscored his administration's commitment to uplifting the standard of living of peasants and small farmers. *See* Mia Gonzalez, *Hope for 6-M farmers: CARP funds increased*, TODAY (24 February 1998) <http://www.today.com.ph/>. The President's speech is reproduced in *Agrarian reform: key to growth with equity*, PHILIPPINE JOURNAL, 1 March 1998, at 2. For a contrary view on the motives behind the enactment of this law, see SATURNINO M. BORRAS, JR., THE BIBINGKA STRATEGY IN LAND REFORM IMPLEMENTATION: AUTONOMOUS PEASANT MOVEMENTS AND STATE REFORMISTS IN THE PHILIPPINES 69-71 (1998).

[13]*See supra* note 4. Fifteen days after the Act was signed into law, thirty-nine peasant formations, sectoral and cause-oriented groups, non-government organizations and political alliances gathered in a "Multi-Sectoral Conference for a Genuine Agrarian Reform Program" where they declared the "total rejection" of the Act. *See* Goño, *supra* note 5, at 47.

its fainthearted implementation.[14] Rarely is the role of the Supreme Court in the implementation of the program extensively considered. This article will attempt to point out that the failure of the program may also be traced to a series of decisions promulgated by the Court. There are five significant Supreme Court decisions analyzed here, and each one illustrates the Court's determination to rule in favor of the landowners and to restrict the application of the CARL. This article will also show that these cases are poorly written, and could have been decided in favor of the intended beneficiaries.

The Supreme Court's bent on guaranteeing that landowners prevail in these cases is incomprehensible, considering the manner in which the Court once thwarted the legal challenges to the constitutionality of the CARL. In *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[15] the Court brushed these challenges aside and displayed a clear bias in favor of the law. It concluded by saying that:

> By the decision today, all major legal obstacles to the comprehensive agrarian reform program are removed, to clear the way for the freedom of the farmer. We may now glimpse the day he will be released not only from want but also from the exploitation and disdain of the past and from his own feelings of inadequacy and helplessness. At last his servitude will end forever. At last the farm on which he toils will be *his* farm. It will be his portion of Mother Earth that will give not only the staff of life but also the joy of living. And where once it bred for him only deep despair, now he can see it in the fruition of his hopes for a more fulfilling future. Now at last can he banish from his small plot of earth his insecurities and dark resentments and "rebuild in it the music and the dream."[16]

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[14]*For e.g.* Eduardo Tadem, *Agrarian Reform Implementation in the Philippines: Disabling a Centerpiece Program*, in INTERNATIONAL CONFERENCE ON AGRARIAN REFORM (Proceedings and Documentation) 79 (1993), Lourdes Saulo-Adriano, *A Critique of Agrarian Reform Under the Aquino Administration*, (KAISAHAN Occasional Papers, July 1992), and Joel Rocamora, *Land Reform Under Cory Aquino: Making Much of Very Little*, *in* LUPA AT BUHAY: AGRARIAN REFORM IN THE PHILIPPINES 27 (n.d.). There are consistent attacks against "landlord bias" in PUTZEL, *supra* note 4.

[15]G.R. No. 78742, 14 July 1989, 175 SCRA 343.

[16]Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, G.R. No. 78742, 14 July 1989, 175 SCRA 343, 392-393.

After *Association*, however, Supreme Court decisions took on a more conservative tone that rendered such colorful language meaningless. This article will show that in the last ten years, the Supreme Court has been engaged in the unjustifiable constriction of agrarian reform law.

C. Scope of the study

This article analyzes Supreme Court decisions interpreting the provisions of the CARL. While a steady stream of cases have come from the Supreme Court after the effectivity of the law, some of these involve previous laws such as the Agricultural Tenancy Act of the Philippines,[17] the Agricultural Land Reform Code,[18] and Presidential Decree No. 27.[19] As a rule, they are excluded from this survey. Cases touching on the procedural aspects of the CARL are generally excluded.

II. STATUTORY CONSTRUCTION

A. Social welfare legislation

Laws on agrarian reform are in the nature of social welfare legislation. As a rule, they are liberally construed in favor of the intended beneficiaries. The Supreme Court adopted this rule to ensure the realization of the constitutional mandate on the promotion of social justice in promoting the well-being and economic security of the people.[20] Social justice is the adoption of the Government "of measures calculated to insure economic stability of all component elements of society, through the maintenance of a proper economic and social equilibrium in the inter-relations of the members of the

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[17]Rep. Act No. 1199 (1954).

[18]Rep. Act No. 3844 (1963).

[19]Pres. Decree No. 27 (1972). 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 Mechanisms therefor.

[20]RUBEN AGPALO, STATUTORY CONSTRUCTION 223 (1986).

community."[21] In the consideration of social welfare legislation, the Supreme Court "is guided by more than just an inquiry into the literal meaning of the law . . . [It] will not ignore the truth that the broad considerations bearing upon the proper interpretation of tenancy and labor legislations are the ultimate resolution of doubts in favor of the tenant or worker."[22]

Agrarian reform laws were always treated with this reverence. The Court, for example, interpreted the Agricultural Tenancy Act of the Philippines in *Alfanta v. Noe*,[23] stating that:

> Viewed within the context of the constitutional mandate and obvious legislative intent, the provisions of the law should be construed to further their purpose of redeeming the tenant from his bondage of misery, want and oppression arising from the onerous terms of his tenancy and to uplift his social and financial status.[24]

In *Padasas v. Court of Appeals*,[25] it was held that the Agricultural Land Reform Code "is a social legislation designed and enacted to solve agrarian unrest, one of the country's most pernicious problems that have strangled the economic growth of the nation . . . [T]he liberal interpretation of its provisions is imperative to give full force and effect to its clear intent."[26]

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[21]Victoriano v. Elizalde Rope Workers' Union, G.R. No. L-25246, 12 September 1974, 59 SCRA 54, 81 *citing* Calalang v. Williams, 70 Phil. 726, 734 (1940).

[22]Vda. de Santos v. Garcia, G. R. No. L-16894, 31 May 1963, 8 SCRA 194. *See also* De Ramas v. Court of Agrarian Relations, G.R. No. L-19555, 29 May 1964, 11 SCRA 171.

[23]Alfanta v. Noe, G.R. No. L-32382, 19 September 1973, 53 SCRA 76 (1973). *See also* Hidalgo v. Hidalgo, G.R. No. L-25326, 29 May 1970, 33 SCRA 105, where the Supreme Court held that in the interpretation of tenancy and labor legislation, "it will be guided by more than just an inquiry into the letter of the law as against its spirit and will ultimately resolve grave doubts in favor of the tenant and worker."

[24] Alfanta v. Noe, G.R. No. L-32382, 19 September 1973, 53 SCRA 76, 83.

[25]G.R. No. L-35927, 31 March 1978, 82 SCRA 250. *See also* David v. Court of Appeals, 161 SCRA 114; De Jesus v. Intermediate Appellate Court, 175 SCRA 559; and Catorce v. Court of Appeals, G.R. No. L-59762, 11 May 1984, 129 SCRA 210. There are case when laws on agrarian reform are also construed to favor the landowner. *See* Santiago v. Court of Appeals, G.R. No. 48518, 8 November 1989, 179 SCRA 188; Cabatan v. Court of Appeals, 95 SCRA 323, 356-357; Feliciano v. Court of Agrarian Relations, 5 SCRA 32, 35; and De Tanedo v. De la Cruz, G.R. No. L-27667, 25 March 1970, 32 SCRA 63.

[26] Pasadas v. Court of Appeals, G.R. No. L-35927, 31 March 1978, 82 SCRA 250, 259.

Presidential Decree No. 27 has also been interpreted in a similar fashion. The Supreme Court once declared:

> This case serves to remind those who are involved in the execution of agrarian laws that it is the farmer-beneficiary's interest that must be primarily served. This also holds that agrarian laws are to be liberally construed in favor of the farmer-beneficiary. Anyone who wishes to contest the rights of the farmer to land given to him by the government in accordance with our agrarian laws has the burden of proving that the farmer does not deserve the government grant.[27]

B. Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform

It is in this spirit that the Supreme Court responded to the challenges to the constitutionality of the Comprehensive Agrarian Reform Program (CARP). In *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[28] landowners attacked the constitutionality of the CARL from almost every possible angle. Yet the Court admirably stood by the law and ensured that it withstood the challenges — even if it had to rewrite well-settled rules to do so.

The Court brushed aside attacks against Presidential Decree No. 27, Proclamation No. 131,[29] and Executive Order Nos. 228[30] and 229.[31] The Court explained that President Aquino's Orders were authorized under the Transitory Provisions of the 1987 Constitution,[32] and were affirmed substantially by Congress when it convened. On the claim that these were appropriation measures enacted without conforming to the strictures of the

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[27]Torres v. Ventura, G.R. No. 86044, 2 July 1990, 187 SCRA 96, 99-100. *See also* De Chavez v. Zobel, G.R. No. L-28609-10, 17 January 1974, 55 SCRA 26.

[28]G.R. No. 78742, 79310, 79744, 79777, 14 July 1989, 175 SCRA 343.

[29]Proclamation No. 131, Instituting a Comprehensive Agrarian Reform Program (1987).

[30]Exec. Order No. 228 (1987) Declaring Full Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No 27; Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner.

[31]Exec. Order No. 229 (1987) Providing the Mechanism for the Implementation of the Comprehensive Agrarian Reform Program.

[32]CONST. art. XVIII, sec. 6.

Constitution, the Court responded by pointing out that any appropriation made under these measures were merely incidental to its primary purpose.[33]

Beyond the "preliminary issues" were the more serious challenges to the program. These issuances were challenged for violating the due process and equal protection clauses of the Constitution.[34]

Landowners first attacked the CARL for providing for the immediate acquisition of private lands, instead of available public agricultural lands. The Court, however, pointed out that the manner in which lands were to be distributed was a political question, which the judiciary cannot look into. The Court's intervention is warranted only if the issue is one of legality or validity of acts of the legislature, not its wisdom.

The landowners also challenged section 16 paragraph (d) of the CARL alleging that the determination of just compensation was in violation of judicial prerogatives because it was left to administrative agencies. The Court pointed out that such determination by the DAR, however, was preliminary and subject to review by the Courts.[35]

The most serious objection to the CARL was the mode of payment to the landowner under section 18, which authorized payment in forms other than money. This contention was clearly meritorious because payment in eminent domain proceedings have always been made solely in money. It is here, however, that the Court abandoned tradition in order to justify the program. It said:

> [W]e do not deal here with the *traditional* exercise of the power of eminent domain. This is not an ordinary expropriation where only a

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[33]When questioned on the ground that these issuances did not provide for retention limits, the Court said that the issue had become moot because such limits were already provided for in the CARL. Exec. Order No. 229 was also challenged because it did not satisfy the constitutional requirement that bills should have only one subject to be expressed in its title. But on this point, the Court stated that "the title of the bill does not have to be a catalogue of its contents and will suffice if the matters embodied in the text are relevant to each other and may be inferred from the title." Alalayan v. National Power Corporation, G.R. No. L-24396, 29 July 1968, 24 SCRA 172; Sumulong v. Commission on Elections, 73 Phil. 288 (1941); Tio v. Videogram Regulatory Board, G.R. L-75697, 18 June 1987, 151 SCRA 208.

[34] CONST. art. III, sec. 1.

[35] Association of Small Landowners in the Philippines v. Sec. of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, 79777, 14 July 1989, 175 SCRA 343. *See also* Export Processing Zone Authority v. Dulay, G.R. No. L-59603, 29 April 1987, 149 SCRA 305, 316.

> specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose. What we deal with here is a *revolutionary* kind of expropriation. (emphasis supplied)[36]

The Court assumed that the framers of the Constitution were aware of the difficulty in compensating the landowners when agrarian reform was placed among the priorities of the government. It assumed that the framers were aware of the financial demands of such a program and "that their intention was to allow such manner of payment as is now provided for by the CARP Law."[37] The Court said that nothing in the records of the framers of the Constitution challenges its assumptions and declared the mode of payment not unconstitutional.[38] It added:

> We do not mind admitting that a certain degree of pragmatism has influenced our decision on the issue, but after all this Court is not a cloistered institution removed from the realities and demands of society or oblivious to the need for its enhancement. The Court is as acutely anxious as the rest of our people to see the goal of agrarian reform achieved at last after the frustrations and deprivations of our peasant masses during all these disappointing decades. We are aware that invalidation of the said section will result in the nullification of the entire program, killing the farmer's hopes even as they approach realization and resurrecting the specter of discontent and dissent in the restless countryside. That is not in our view the intention of the Constitution, and that is not what we shall decree today.[39]

The last challenge to the program pointed out that the landowner is deprived of property even before actual payment in full of just compensation. It was alleged that this was in contravention of established principles of eminent domain. But the Court noted that the CARL "conditions the transfer of possession and ownership of the land to the government on receipt by the

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[36] Association of Small Landowners in the Philippines v. Sec. of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, 79777, 14 July 1989, 175 SCRA 343, 385-86.

[37] Association of Small Landowners in the Philippines v. Sec. of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, 79777, 14 July 1989, 175 SCRA 343, 387.

[38] Association of Small Landowners in the Philippines v. Sec. of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, 79777, 14 July 1989, 175 SCRA 343, 387.

[39] Association of Small Landowners in the Philippines v. Sec. of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, 79777, 14 July 1989, 175 SCRA 343, 387-88.

landowner of the corresponding payment or the deposit by the DAR of the compensation in cash or LBP bonds with an accessible bank. Until then title also remains with the landowner."[40]

Not all the Supreme Court decisions promulgated after *Association*, however, are as sublime. Indeed, the trend in jurisprudence has been to curtail the application of the CARL. It is not suggested here that all the decisions of the Supreme Court are poorly written simply because they reduce the coverage of the CARL, or because the landowners prevailed. The rule on the liberal construction of social legislation, after all, is applicable only where there is no doubt or ambiguity in the law, and not when the law itself is clear.[41]

Thus, in *Alita v. Court of Appeals*,[42] the Supreme Court restricted the application of Presidential Decree No. 27 over lands which were obtained through a homestead patent. This was because the Constitution subjects the agrarian reform program to "prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands."[43]

Then, in *Luz Farms v. Secretary of the Department of Agrarian Reform*,[44] the Court declared sections of the CARL covering the raising of livestock, poultry and swine as unconstitutional because the Records of the Constitutional Commission showed that these were never meant to be included in the agrarian reform program.

These decisions were inevitable given the inherent limitations of the Constitution and the agrarian reform laws. The Court could not enlarge the scope of the statute and include situations not intended by the lawmakers.[45] It merely applied the well-established rule in statutory construction that when a

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[40] Association of Small Landowners in the Philippines v. Sec. of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, 79777, 14 July 1989, 175 SCRA 343, 391. Despite the overall tenor of the decision, it has been criticized insofar as it used fair market value as a basis for just compensation in a law, which is essentially social welfare in nature. *See* Perfecto V. Fernandez, *Judicial Overreaching in Selected Supreme Court Decisions Affecting Economic Policy*, 67 PHIL. L.J. 332, 334-336 (1993). *See also* Timothy Hanstad, Comment, *Philippine Land Reform: The Just Compensation Issue*, 63 WASH. L. REV. 417 (1998).

[41] Tamayo v. Manila Hotel Co., 101 Phil. 810 (1957) cited in AGPALO, *supra* note 19, at 225.

[42] G.R. No. 78517, 27 February 1989, 170 SCRA 706.

[43] CONST. art. XIII, sec. 6.

[44] G.R. No. 86889, 4 December 1990, 192 SCRA 51, 57-58.

[45] AGPALO, *supra* note 19, at 52, *citing* Morales v. Subido, G.R. No L-29650, 27 February 1968, 26 SCRA 150 and Vera v. Avelino, 77 Phil. 192 (1946).

statute is free from ambiguity, it must be applied without attempted interpretation.[46]

On the other hand, the Court departed from the well-established doctrines on social welfare legislation when statutory construction *was* justified. As a result, the Supreme Court excluded vast tracts of agricultural lands from the coverage of the CARL, when the Court could easily have decided in favor of their inclusion. The Supreme Court has consistently decided in favor of the landowner, when it could easily have decided in favor of the farmers. In these cases, it is evident that the Supreme Court has maimed the CARL beyond recognition.

III. THE SUPREME COURT DECISIONS

A. Central Mindanao University v. Department of Agrarian Reform Adjudicatory Board

The petitioners in the case of Central Mindanao University v. Department of Agrarian Reform Adjudicatory Board[47] asked the Supreme Court to nullify a decision of the Court of Appeals, affirming a decision of the Department of Agrarian Reform Adjudicatory Board (DARAB), which segregated a portion of the Central Mindanao University (CMU) for distribution to qualified beneficiaries under the CARL. The segregation was done pursuant to section 10 of the CARL, which provides that:

> Section 10. *Exceptions and Exclusions.* — Lands actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves, national defense, school sites and campuses including

[46] Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission, G.R. No. 82511, 3 March 1992, 206 SCRA 701, 711.

[47] G.R. No. 100091, 22 October 1992, 215 SCRA 86.

> experimental farms stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production centers, church sites and convents appurtenant thereto, mosque sites and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent slope and over, except those already developed shall be exempt from coverage of this Act.[48]

While the DARAB found that claimants in this case were not tenants under the law, it nevertheless segregated the land because it was "not directly, actually and exclusively used for school sites, because the same is leased to the Philippine Packaging Corporation (now Del Monte Philippines)."[49] The

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[48]Section 10 has since been amended by Rep. Act No. 7881 (1995) An Act Amending Certain Provisions of Rep. Act No. 6657, otherwise known as "The CARP Law of 1988," to exclude even more lands from the coverage of Act. The provision now reads:

Exemptions and Exclusions. —

a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves shall be exempt from coverage of this Act.

b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: *Provided*, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.

c) In cases where the fishponds or prawns have been subjected to the Comprehensive Agrarian Reform Law, by voluntary offer to sell, or commercial farm deferment or notices of compulsory acquisition, a simple and absolute majority of the actual regular workers or tenants must consent to the exemption within one (1) year from the effectivity of this Act. When the workers or tenants do not agree to this exemption, the fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or tenants who shall form a cooperative or association to manage the same.

d) In cases where the fishponds or prawn farms have not been subjected to the Comprehensive Agrarian Reform Law, the consent of the farm workers shall no longer be necessary, however, the provision of Section 32-A hereof on incentives shall apply.

e) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production center, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed, shall be exempt from the coverage of this Act.

[49] Central Mindanao University v. Department of Agrarian Reform Adjudicatory Board, G.R. No. 100091, 22 October 1992, 215 SCRA 86, 94.

Supreme Court held, however, that the said provision should not be so strictly construed. It said:

> The construction given by the DARAB to section 10 restricts the land area of the CMU to its present needs or to a land area presently, actively exploited and utilized by the university in carrying out its present educational program with its present student population and academic facility — overlooking the very significant factor of growth of the university in the years to come. By the nature of the CMU, which is a school established to promote agriculture and industry, the need for a vast tract of agricultural land for future programs of expansion is obvious .... It was set up in Bukidnon, in the hinterlands of Mindanao, in order that it can have enough resources and wide open spaces to grow as an agricultural educational institution, to develop and train future farmers of Mindanao and help attract settlers to that part of the country.[50]

The Court ignored the fact that the land was not "actually, directly, and exclusively" used, and excluded the properties because it was "found to be necessary" for school purposes. It said:

> As to the determination of when and what lands are *found to be necessary* for use by the CMU, the school is in the best position to resolve and answer the question and pass upon the problem of its needs in relation to its avowed objectives for which the land was given to it by the State. Neither the DARAB nor the Court of Appeals has the right to substitute its judgment or discretion on this matter, unless the evidentiary facts are so manifest as to show that the CMU has no real need for the land.[51]

With respect, it is the Supreme Court here that construed the provision, and not the DARAB. The DARAB merely applied the law because "[w]here the language of the law is clear and the intent of the legislature is equally plain, there is no room for interpretation and construction of the statute."[52] It is clear that the phrase "found to be necessary" should be read together with the preceding phrase, "actually, directly, and exclusively." The word *and* "is not meant to separate words, but is a conjunction used to denote a

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[50] Central Mindanao University v. Department of Agrarian Reform Adjudicatory Board, G.R. No. 100091, 22 October 1992, 215 SCRA 86, 96-97.

[51] Central Mindanao University v. Department of Agrarian Reform Adjudicatory Board, G.R. No. 100091, 22 October 1992, 215 SCRA 86, 98.

[52] United Christian Missionary Society, et al. v. Social Security Commission and Social Security System, G.R. No. L-26712-16, 27 December 1969, 30 SCRA 982, 988.

joinder or union."[53] As such, to be exempted from coverage of the CARL, all four qualifications must concur.[54]

School sites are *not* automatically excluded from the coverage of the CARL. Congress qualified the exemption with the phrase "actually, directly and exclusively used and found to be necessary." The construction of the Court renders the qualification meaningless. If the landowner is allowed to determine whether the land is "found to be necessary" for school purposes, then the landowner can always invoke any fictitious future use of the land and escape the coverage of the law. As a matter of fact, all the landowners of the lands listed under section 10 can abuse this interpretation and concoct future needs of the lands, which they can then back up with impressive paper work.

The Supreme Court also stated that neither the DARAB nor the Court of Appeals has the right to substitute the judgment or discretion of the CMU, "unless the evidentiary facts are so manifest" as to show that there is no real need for the land. Incredibly, the Court has saddled the State with the burden to prove that the land is covered by the CARL. This is a clear departure not only from the Court's prior rulings,[55] but also from established rules of statutory construction. Exceptions should be strictly construed, and all doubts should be resolved in favor of the general provision rather than the exception.[56]

The Court has even set a standard for the amount of evidence that must be shown before the land can be covered under the CARL. It is not sufficient that the State proves that the lands are covered by the CARL. Such proof must be "so manifest" in order to bring the lands into the coverage of the agrarian reform program. The Supreme Court is clearly legislating because there is nothing in CARL which can remotely sanction this interpretation.

Finally, the Court also held that the quasi-judicial powers of the DARAB were never meant to include the power to order private property to be awarded to future beneficiaries. Thus, the taking of the land from the CMU "for distribution to yet uncertain beneficiaries is a gross misrepresentation of

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[53] Mapa v. Arroyo, G.R. No. L-78585, 5 July 1989, 175 SCRA 76, 83.

[54] Mipalar v. Santos, G.R. No. L-22966, 10 August 1967, 20 SCRA 935, 937. *See also* Philippine Constitution Association, Inc. v. Mathay, 18 SCRA 300, 329, Castro, J., concurring.

[55] *See* Torres v. Ventura, G.R. No. 86044, 2 July 1990, 187 SCRA 96, 99-100, and De Chavez v. Zobel, G.R. No. 28609-10, 17 January 1974, 55 SCRA 26.

[56] Salaysay v. Castro, 98 Phil. 364 (1956).

the authority and jurisdiction granted by law to the DARAB."[57] The Court's conclusion is misleading. The DARAB had jurisdiction over the properties of the CMU lands because the CARL covers properties even if these are not covered by a tenancy relationship. The government can distribute lands to other beneficiaries who are not necessarily the lessees and tenants of said property. This can be easily gathered from a reading of the law:

> Section 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 farmworkers;
> (c) seasonal farmworkers;
> (d) other farmworkers;
> (e) actual tillers or occupants of public lands;
> (f) collectives or cooperatives of the above beneficiaries; and
> (g) others directly working on the land . . . .
>
> If, due to the 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.[58]

The non-existence of a tenancy relationship, therefore, does not prevent the government from distributing the properties of the CMU to other qualified beneficiaries. The DARAB clearly had jurisdiction over the case.

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[57] Central Mindanao University v. Department of Agrarian Reform Adjudicatory Board, G.R. No. 100091, 22 October 1992, 215 SCRA 86, 101.

[58] Rep. Act No. 6557 (1988), sec. 22.

B. Krus na Ligas Farmers Multi-Purpose Cooperative v. University of the Philippines

The ruling in *CMU* was reiterated through a minute resolution promulgated by the Supreme Court in 1992. *Krus na Ligas Farmers Multi-Purpose Cooperative v. University of the Philippines*[59] involved thirty-two farmers tilling rice on a parcel of land in the University of the Philippines (U.P.). In November 1991, U.P. began bulldozing the land to begin construction of housing units for its employees. The cooperative filed a complaint for maintenance of peaceful possession with a prayer for temporary restraining order and a preliminary injunction with the DARAB, alleging that they had been tilling the said parcel of land since time immemorial and had been paying rent from 1950-1963. The Provincial Agrarian Reform Adjudicator (PARAD) enjoined U.P., but its order was challenged by U.P. before the DARAB. The DARAB dismissed U.P.'s petition on the ground that there was a landlord-tenant relationship between the tenants and the University.

The University sent a letter-petition to the Office of the Presidential Legal Assistant (OPLA) asking it to assume jurisdiction over the case, and to exclude the university premises from the coverage of the CARL. The OPLA restrained the PARAD from further acting on the case. The farmers challenged this act by filing a petition for certiorari with the Supreme Court questioning OPLA's jurisdiction to entertain the manifestation of the U.P., and claimed that appeals from the decisions of the DARAB should be made with the Court of Appeals.

The Supreme Court dismissed the farmers' petition through a minute resolution. It said:

> A reading of section 10 of Republic Act No. 6657 in connection with section 4 of the same law, reveals that the jurisdiction of DARAB is limited only to matters involving the implementation of the CARP; more specifically, to agrarian cases and controversies involving lands falling within the coverage of the said program. Consequently, it

[59] G.R. No. 107622, 8 December 1992.

> excludes those which are actually, directly and exclusively used and found to be necessary for school sites and campuses.[60]

And further,

> [w]hile the use of the subject areas as a housing cluster may not strictly fit the phrase, "actually, directly and exclusively used," it is myopic and narrow for petitioner association to base its arguments solely on this point. As to when and what lands are necessary for UP's use is beyond DARAB's jurisdiction to decide. DARAB has no right to substitute its judgment with that of UP because as an academic institution, the latter is in the best position to identify and prioritize its needs so that it may fulfill its avowed objectives fully as a state university.[61]

The Supreme Court uses minute resolutions

> when a case is patently without merit, where the issues raised are factual in nature, where the decision appealed from is supported by substantial evidence and is in accord with the facts of the case and the applicable laws, where it is clear from the records that the petition is filed merely to forestall the execution of judgment and for non-compliance with the rules[62]

An analysis of *Krus na Ligas*, however, will show that none of these grounds can justify the use of a minute resolution.

In *CMU*, the mere possibility that school properties may be used for future educational uses was deemed sufficient to exclude them from CARL coverage. In *Krus na Ligas*, the Court further diluted the CARL when it said that the construction of housing sites is sufficient to exempt properties, although it has no direct link with the school's educational purposes.

As in *CMU*, however, the determination of whether the questioned lands are "found to be necessary" for school purposes is the exclusive prerogative of the landowner. But if the DARAB "has no right to substitute its judgment with that of UP because . . . the latter is in the best position to

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[60] Krus na Ligas Farmers Multi-Purpose Cooperative v. University of the Philippines, G.R. No. 107622, 8 December 1992.

[61] Krus na Ligas Farmers Multi-Purpose Cooperative v. University of the Philippines, G.R. No. 107622, 8 December 1992.

[62] Borromeo v. Court of Appeals and Lao, G.R. No. 82273, 1 June 1990, 186 SCRA 1, 5.

identify and prioritize its needs,"[63] then the landowner's position will prevail over any determination made by the government in issues concerning coverage. As in *CMU*, this statement will remove huge tracts of land from the coverage of the CARL.

The most disturbing implication of these two decisions is that they create a presumption of exclusion in favor of the landowner. This departs from the rule laid down in *Torres v. Ventura*,[64] that anyone who wishes to contest the rights of the farmer to land given to him by the government has the burden of proving that the farmer does not deserve the government grant. Now, it is the government that has to prove that the land is covered by the CARL.

Furthermore, *Krus na Ligas* did not even discuss the existence of a tenancy relationship between the farmers and UP. It simply said "it is obvious that its members are merely occupying the questioned premises by mere tolerance of UP."[65] This statement is contrary to the findings of the DARAB. This is yet another departure from the usual methods of the courts. In general, the factual findings of administrative agencies are accorded respect and sometimes finality if the same is supported by substantial evidence. This is in recognition of the expertise acquired by these agencies because their jurisdiction is confined to specific matters.[66] Whether a person is a tenant is a question of fact, which is generally entitled to respect and non-disturbance except for compelling reasons.[67] No reason for its contrary ruling was even intimated by the Supreme Court.

Finally, while the Department of Agriculture attested that the land was suitable for agriculture and that no land conversion was made, the Supreme Court said "it cannot be gainsaid that said land was granted to UP so that it may be able to pursue its objectives as an academic institution."[68]

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[63] Krus na Ligas Farmers Multi-Purpose Cooperative v. University of the Philippines, G.R. No. 107622, 8 December 1992.

[64] G.R. No. 80644, 2 July 1990, 187 SCRA 99.

[65] Krus na Ligas Farmers Multi-Purpose Cooperative v. University of the Philippines, G.R. No. 107622, 8 December 1992.

[66] San Miguel Corporation v. Javate, G.R. No. 54244, 27 January 1992, 205 SCRA 469, 475. *See also* Relucio III v. Macaraig, G.R. No. 82007, 30 May 1989, 173 SCRA 635, 642.

[67] Macaraeg v. Court of Appeals, G.R. No. 48008, 20 January 1989, 169 SCRA 259, 269 and Gelos v. Court of Appeals, G.R. No. 86186, 8 May 1992, 208 SCRA 608, 610.

[68] Krus na Ligas Farmers Multi-Purpose Cooperative v. University of the Philippines, G.R. No. 107622, 8 December 1992.

The effect of this statement is to exclude all school properties, and by implication, all lands listed in section 10 from the coverage of CARL. The Court seems to be saying that if property has been given to a school, it is assumed that its entirety will be used for "its objectives as an academic institution." This negates the legislature's clear intent to cover many of these areas for distribution to qualified tenants. If Congress intended to exclude all such lands from coverage, it would not have qualified the exemptions in the first place.

In both *CMU* and *Krus na Ligas*, the Supreme Court refused to interpret the CARL strictly because it considered the future needs of the schools involved. By doing so, it disregarded another basic tenet of statutory construction. The future needs of the school are irrelevant, because Congress already expressed its intention to cover many of these lands of distribution under the CARL. This may seem impractical, but the Supreme Court has held that courts do not pass upon the wisdom of legislation or keep it within the bounds of common sense because that is exclusively a legislative concern.[69]

C. Province of Camarines Sur v. Court of Appeals

An even more controversial decision is that of *Province of Camarines Sur v. Court of Appeals.*[70] In this case, the Camarines Sur, through a resolution of the Sangguniang Panlalawigan, instituted expropriation proceedings over a certain piece of agricultural land in order to establish a pilot farm for non-food and non-traditional agricultural crops and a housing project for provincial government employees. Eventually, the proceedings reached the Court of Appeals, which ordered the trial court to suspend its proceedings until the DAR Secretary approved the conversion of the property.

When the matter was raised to the Supreme Court, the Province contended that its power to exercise eminent domain should not be restricted by section 65 of the CARL. The provision provides:

> After the lapse of five years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality

[69] *See* Morfe v. Mutuc, G.R. No. L-20387, 31 January 1968, 22 SCRA 424, 450, *citing* Angara v. Electoral Commission, 63 Phil. 139 (1936), and People v. Carlos, 78 Phil. 535, 548 (1947).

[70] G.R. No. 103125, 17 May 1993, 222 SCRA 173.

> has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: *Provided*, That the beneficiary shall have fully paid his obligation.[71]

The Sangguniang Panlalawigan's resolution was promulgated under the old Local Government Code, which provided that, "A local government unit may, through its head and acting pursuant to a resolution of its sanggunian exercise the right of eminent domain and institute condemnation proceedings for public use or purpose."[72] The Court pointed out that this provision makes no requirement that DAR approval for conversion from agricultural to non-agricultural uses be secured by the expropriator. It added that section 65 of the CARL makes no express requirement that expropriation by local government units be subjected to DAR control. It further stated that pertinent provisions of Executive Order No. 129 granting the DAR exclusive authority to approve or disapprove conversions "is limited to the applications for reclassification submitted by the land owners or tenant beneficiaries."[73]

To justify its position in *Camarines*, the Court cited *Heirs of Juancho Ardona v. Reyes*, which ruled that expropriation for tourism purposes satisfies the "public purpose" requirement of eminent domain.[74] The Court in *Camarines* declared that, "a fair and reasonable reading of [*Ardona*] is that this Court viewed the power of expropriation as superior to the power to distribute lands under the land reform program." Nowhere, however, in *Ardona* was there any discussion of the superiority of expropriation over agrarian reform. The Court avoided any discussion of the issue, stating that "We see no need under the facts of this petition to rule on whether one public purpose is superior to another purpose or engage in a balancing of competing interests."[75]

In fact, Justice Makasiar filed a separate opinion to point out that since the petitioners were not tenants, the expropriation was valid. He added:

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[71] Rep. Act No. 6657 (1988), sec. 65.

[72] Batas Pambansa Blg. 337 (1983), sec. 9.

[73] Heirs of Juancho Ardona v. Reyes, G.R. Nos. L-60549, 60553-60555, 26 October 1983, 125 SCRA 220, 238.

[74] Heirs of Juancho Ardona v. Reyes, G.R. Nos. L-60549, 60553-60555, 26 October 1983, 125 SCRA 220.

[75] Heirs of Juancho Ardona v. Reyes, G.R. Nos. L-60549, 60553-60555, 26 October 1983, 125 SCRA 220, 238.

> There is no need to decide whether the power of the Philippine Tourism Authority to expropriate the land in question predicated on the police power of the State shall take precedence over the social justice guarantee in favor of tenants and the landless. The welfare of the landless and small land owners should prevail over the right of the PTA to expropriate the lands just to develop tourism industry, which benefit the wealthy only. Such a position would increase the disenchanted citizens and drive them to dissidence. The government is instituted primarily for the welfare of the governed and there are more poor people in this country than the rich. The tourism industry is not essential to the existence of the government, but the citizens are, and the right to live in dignity should take precedence over the development of the tourism industry.[76]

Before *Camarines*, it has never even been suggested that expropriation by a local government unit can override the exercise of the police power of the national government, particularly one meant to comply with a constitutional mandate. *Camarines* complicates our understanding of the nature of agrarian reform.

It will be recalled that in *Association*, the Supreme Court has explained that:

> To the extent that the measures under challenge merely prescribe retention limits for landowners, there is an exercise of police power for the regulation of private property in accordance with the Constitution. But where, to carry out the regulation, it becomes necessary to deprive such owners of whatever lands they may own in excess of the maximum area allowed, there is definitely a taking under the power of eminent domain for which payment of just compensation is imperative. The taking contemplated is not a mere limitation of the use of the land. What is required is the surrender of the title to and the physical possession of the said excess and all beneficial rights accruing to the owner in favor of the farmer-beneficiary. This is definitely an exercise not of police power but of the power of eminent domain.[77]

It is clear that agrarian reform is an exercise of both police power and the power of eminent domain.

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[76] Heirs of Juancho Ardona v. Reyes, G.R. Nos. L-60549, 60553-60555, 26 October 1983, 125 SCRA 220.

[77] Association of Small Landowners in the Philippines v. Sec. of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, 79777, 14 July 1989, 175 SCRA 343, 373-74.

Camarines created a hierarchy within the exercise of the power of eminent domain, so that expropriation of lands for the purpose of agrarian reform is inferior and must give way to other public uses or purposes. The Court accomplished what it refused to do in *Ardona* — it held "that one public purpose is superior to another purpose."[78] Otherwise put, the Court relegated the distribution of lands under agrarian reform to the lower tiers of "public use or purpose."

The hierarchy, however, does not make any sense. Agrarian reform is a constitutionally mandated program, but the Supreme Court managed to conclude that it is inferior to tourism, government housing, and pilot farm projects — none of which are constitutionally mandated.

Worse, the Supreme Court in *Association* also stated that "to the extent that the measures under challenge merely prescribe retention limits for landowners, there is an exercise of police power."[79] Police power has been described as "the greatest and most powerful attribute of the government."[80] It is "the most essential, insistent, and illimitable of powers,"[81] "the most pervasive . . . and the most demanding of the three inherent powers of the State, far outpacing taxation and eminent domain."[82] It is "infinitely more important than eminent domain."[83]

If police power is more important than eminent domain, it is impossible to conclude that agrarian reform, as a police power measure, is inferior to eminent domain. Indeed, the coercive regulation of agrarian reform legislation has always been justified as a police power measure. Police power has been used to justify the protection of the right of the tenant to the enjoyment and possession of his farmholding,[84] the statutory right of the tenant

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[78] Heirs of Juancho Ardona v. Reyes, G.R. Nos. L-60549, 60553-60555, 26 October 1983, 125 SCRA 220.

[79] Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, G.R. No. 78742, 14 July 1989, 175 SCRA 343.

[80] Sangalang, et al. v. Intermediate Appellate Court, G.R. No. 71169, 22 December 1988, 176 SCRA 719, 731.

[81] Basco v. Philippine Gaming Corporation, G.R. No. 91649, 14 May 1991, 197 SCRA 52, 61 and Ortigas & Co., Limited Partnership v. Feati Bank and Trust Co., G.R. No. 24670, 14 December 1979, 94 SCRA 545 *citing* Smith Bell & Co. v. Natividad, 40 Phil. 136 (1919).

[82] Ynot v. Intermediate Appellate Court, G.R. No. 74457, 20 March 1987, 148 SCRA 659, 670.

[83] ISAGANI I. CRUZ, CONSTITUTIONAL LAW 39 (1985).

[84] Ancheta v. Court of Appeals, G.R. No. 35495, 9 August 1991, 200 SCRA 407, 413.

to change the agricultural tenancy system from sharehold to leasehold,[85] and the abolition of share tenancy.[86]

The Supreme Court continues to confuse the nature of agrarian reform. In 1995, the Court struck down the DAR's Administrative Circular No. 9 as illegal because the DAR "overstepped the limits of its power to enact rules and regulations." The Court pointed out that there is no basis in allowing the opening of a trust account in behalf of the landowner as compensation for his property because section 16 paragraph (e) of the CARL specifically provides that the deposit must be made only in "cash" or in "LBP bonds."[87]

Motions for reconsideration filed by the DAR and the Land Bank of the Philippines were denied. The Court concluded by saying that:

> As an exercise of police power, the expropriation of private property under the CARP puts the landowner, and not the government, in a situation where the odds are already stacked against his favor. He has no recourse but to allow it. His only consolation is that he can negotiate for the amount of compensation to be paid for the expropriated property. As expected, the landowner will exercise this right to the hilt, but subject however to the limitation that he can only be entitled to a "just compensation." Clearly therefore, by rejecting and disputing the valuation of the DAR, the landowner is merely exercising his right to seek just compensation. If we are to affirm the withholding of the release of the offered compensation despite depriving the landowner of the possession and use of his property, we are in effect penalizing the latter for simply exercising a right afforded to him by law.[88]

The Court's concern for the plight of the landowner is not only novel, it is also absurd. The exercise of police power must now be tempered because the landowner can now be entitled to "just compensation" — a requirement for the exercise of eminent domain. This was not the gist of *Association*. There, the Court held that agrarian reform is an exercise of *both* the police power and the power of eminent domain.[89] The Court did not fuse them into one. Thus,

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[85]De Ramas v. Court of Agrarian Relations, G.R. No. 19555, 29 May 1964, 11 SCRA 171.

[86]Vda. de Genuino v. Court of Agrarian Relations, G.R. No. 25035, 26 February 1968, 22 SCRA 792.

[87]Land Bank of the Philippines v. Court of Appeals and Department of Agrarian Reform v. Court of Appeals, G.R. Nos. 118712 and 118745, 6 October 1995, 249 SCRA 149, 157.

[88]Land Bank of the Philippines v. Court of Appeals, and Department of Agrarian Reform v. Court of Appeals, G.R. Nos. 118712 and 118745, 6 October 1995, 258 SCRA 404, 408.

[89]Justice Isagani Cruz, who penned that opinion, would later explain the "gist" of the case:

when lease rentals payable to the landowner under the Agricultural Land Reform Code were challenged as "an unreasonable return" amounting to a confiscation of property without due process of law, the Court quipped that "just compensation is not required in the exercise of police power."[90] Provision for just compensation under the CARL is made, not pursuant to the exercise of police power, but rather for the exercise of eminent domain. In the end, agrarian reform is still a restriction on property rights. As such, the interest of an individual may be infringed in the greater interest of the public good and general welfare.[91] The odds *are* stacked against the landowner because police power is all encompassing:

> The individual, as a member of society, is hemmed in by the police power, which affects him even before he is born and follows him still after he is dead — from the womb to beyond the tomb — in practically everything he does or owns. Its reach is virtually limitless. It is a ubiquitous and often unwelcome intrusion. Even so, as long as the activity or the property has some relevance to the public welfare, its regulation under the police power is not only proper but necessary.[92]

Agrarian reform is a constitutionally mandated exercise of police power. If property rights are sacrificed for the sake of its objectives, the State need not feel sorry for the property owner. These cases suggest, however, that agrarian reform should now be tempered with pity for the property owner.[93]

Finally, this case creates another means to evade the distribution of lands under the agrarian reform program. With this ruling, government can avoid the issues involved in land conversions by simply resorting to eminent domain proceedings. While *Camarines* was decided based on the laws prior to

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> I said, the police power was used to implement the power of eminent domain for the attainment of a policy objective . . . Now for the first time in our jurisprudence, we recognize that even the power of eminent domain, as well as, in fact, no less than the power of taxation can be used for the pursuit of a legitimate policy objective.
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> Isagani A. Cruz, *Human Rights and Wrongs*, 1997 Jorge C. Bocobo Memorial Lecture.

[90]Vda. de Genuino v. Court of Agrarian Relations, G.R. No. 25035, 26 February 1968, 22 SCRA 792, 797. *See also* Sangalang v. Intermediate Appellate Court and Ayala Corporation, G.R. Nos. 71169, 74376, 76394, 78182, 82281, and 60727, 25 August 1989, 176 SCRA 719, 732. Unlike the power of eminent domain, police power is exercised without provision for just compensation.

[91]*See* De La Llana v. Alba, 198 Phil. 1, 80 (1982).

[92]Ynot v. Intermediate Appellate Court, G.R. No. 74457, 20 March 1987, 148 SCRA 659, 670.

[93]At any rate the Supreme Court has held in another case that a tenant who is dispossessed of his/her landholding because of expropriation is still entitled to compensation for such loss. *See* Lacuesta v. Barangay Casabaan, Municipality of Cabangan, Province of Zambales, G.R. No. L-56540, 31 October 1984, 133 SCRA 77, 80.

the effectivity of the CARL and the Local Government Code of 1991, the latter still makes no requirement that the DAR Secretary should approve the exercise of eminent domain by a local government unit.

Camarines thus raises questions on the effect of expropriation on tenancy relations or the rights of farmers affected thereby. At the very least, some earlier cases were careful not to impair existing rights. In *Co v. Intermediate Appellate Court*,[94] the Court ruled that zoning ordinances cannot impair existing rights protected by the non-impairment clause of the Constitution, especially where the right sought to be recognized "belongs to an ordinary tenant-farmer claiming the protection of the social justice policy." It said:

> This is not to suggest that a zoning ordinance cannot affect existing legal relationships for it is settled that it can legally do so, being an exercise of the police power of the State. As such it is superior to the impairment clause. In the case of *Ortigas & Co. v. Feati Bank*, for example, we held that a municipal ordinance establishing a commercial zone could validly revoke an earlier stipulation in a contract of sale of land located in the area that it could be used for residential purposes only. In the case at bar, fortunately for the private respondent, no similar intention is clearly manifested. Accordingly, we affirm the view that the zoning ordinance in question, while valid as a police measure, was not intended to affect existing rights protected by the impairment clause.[95]

Even a valid transfer of ownership does not impair the rights of the tenants. In *Tanpingco v. Intermediate Appellate Court*,[96] a parcel of tenanted land was donated to the Ministry of Education, Culture, and Sports. While acknowledging that the Civil Code allows landowners to dispose of their properties, the Court said that the new owner must respect the rights of the tenant to security of tenure under Republic Act No. 3844. The donation, while valid, did not terminate the tenancy relationship. The Supreme Court further held:

> We rule that the Ministry of Education, Culture, and Sports as the new owner cannot oust the petitioner from the subject riceland and build a public school thereon until after there is payment of the disturbance

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[94] Co. v. Intermediate Appellate Court, G.R. No. L-65928, 21 June 1988, 162 SCRA 390.

[95] Co. v. Intermediate Appellate Court, G.R. No. L-65928, 21 June 1988, 162 SCRA 390, 396.

[96] G.R. No. 76225, 31 March 1992, 207 SCRA 653. *See also* Bernardo v. Court of Appeals, G.R. No. L-30821, 14 December 1988, 168 SCRA 439.

> compensation in accordance with section 36(l) of R.A. No. 3844, as amended.[97]

Unfortunately, *Camarines* did not discuss the effect of expropriation over the rights of the tenants.

D. Natalia Realty, Inc. v. Department of Agrarian Reform

The controversy in the case of *Natalia Realty, Inc. v. Department of Agrarian Reform*[98] involves three parcels of land owned by Natalia Realty (NATALIA) in Banaba, Antipolo, Rizal totaling 125.0078 hectares. These properties were declared as a townsite reservation under Presidential Proclamation No. 1637, issued on 18 April 1979.

Since private landowners were allowed to develop their properties into low-cost housing subdivisions within the reservation, Estate Developers and Investors Corporation (EDIC), as the developer of NATALIA properties, applied for and was granted preliminary approval and clearances by the Human Settlements Regulatory Commission. NATALIA and EDIC were issued development permits after complying with the requirements of the law. After the CARL went into effect, the DAR issued a Notice of Coverage on the undeveloped portions of the Antipolo Hills Subdivision, which consisted of some 90.3307 hectares. NATALIA registered its objection to the Notice of Coverage.

On 17 January 1991, members of the Samahan ng Magsasaka sa Bundok Antipolo, Inc. (SAMBA) filed a complaint against NATALIA and EDIC before the DAR Regional Adjudicator to restrain petitioners from developing areas under cultivation by its members. The Regional Adjudicator temporarily restrained petitioners from proceeding with the development of the subdivision. A motion to dismiss the complaint was denied. Instead, the Regional Adjudicator issued on 5 March 1991 a writ of preliminary injunction. Petitioners elevated their cause to the DARAB, which remanded the case to the Regional Adjudicator for further proceedings.

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[97] Tanpingco v. Intermediate Appellate Court, G.R. No. 76225, 31 March 1992, 207 SCRA 653. *See also* Bernardo v. Court of Appeals, G.R. No. L-30821, 14 December 1988, 168 SCRA 439.

[98] G.R. No. 103302, 12 August 1993, 225 SCRA 278.

NATALIA then wrote to the Secretary of Agrarian Reform reiterating its request to set aside the Notice of Coverage. Due to the absence of a response, the Petitioners filed the case with the Supreme Court, imputing grave abuse of discretion to the DAR for including undeveloped portions of the Antipolo Hills Subdivision within the coverage of the CARL. They argued that NATALIA properties already ceased to be agricultural lands when they were included in the townsite reservation.

The Office of the Solicitor General maintained that the permits granted to the petitioners were not valid because they did not comply with the implementing Standards, Rules and Regulations of Presidential Decree No. 957, which require that an application for conversion of the lands must be filed with the DAR.[99] In essence, the Office of the Solicitor General questioned the validity of the conversion of the land. It also alleged that the petition was prematurely filed because the case instituted by SAMBA against petitioners was still pending before the DAR Regional Adjudicator.

The Supreme Court, however, ruled in favor of the petitioner, saying that contrary to the claim of public respondents, petitioners did comply with all the requirements of law. According to the Court:

> Petitioners first secured favorable recommendations from the Lungsod Silangan Development Corporation, the agency tasked to oversee the implementation of the development of the townsite reservation, before applying for the necessary permits from the Human Settlements Regulatory Commission. And, in all permits granted to petitioners, the Commission stated invariably therein that the applications were in "conformance" or "conformity" or "conforming" with the implementing Standards, Rules and Regulations of P.D. 957. Hence, the argument of public respondents that not all of the requirements were complied with cannot be sustained.[100]

It should be noted that the petitioners were merely granted permits to develop the area into subdivisions, and not to reclassify or convert land. The Solicitor General was arguing that DAR approval was necessary for such a change in the use of the land but the Court held that:

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[99] Natalia Realty, Inc. v. Department of Agrarian Reform, G.R. No. 103302, 12 August 1993, 225 SCRA 278.

[100] Natalia Realty, Inc. v. Department of Agrarian Reform, G.R. No. 103302, 12 August 1993, 225 SCRA 278, 282.

> As a matter of fact, there was even no need for petitioners to secure a clearance or prior approval from DAR. The NATALIA properties were within the areas set aside for the Lungsod Silangan Reservation. Since Presidential Proclamation No. 1637 created the townsite reservation for the purpose of providing additional housing to the burgeoning population of Metro Manila, it in effect converted for residential use what were erstwhile agricultural lands provided all requisites were met. And, in the case at bar, there was compliance with all relevant rules and requirements. Even in their applications for the development of the Antipolo Hills Subdivision, the predecessor agency of HLURB noted that petitioners NATALIA and EDIC complied with all the requirements prescribed by P.D. 957.
>
> The implementing Standards, Rules and Regulations of P.D. 957 applied to all subdivisions and condominiums in general. On the other hand, Presidential Proclamation No. 1637 referred only to the Lungsod Silangan Reservation, which makes it a special law. It is a basic tenet in statutory construction that between a general law and a special law, the latter prevails.[101]

The Supreme Court went on to say that the lands under dispute were not covered by section 4 of the CARL which provides that the CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands."[102] According to the Court, "agricultural lands" are only those which are "arable and suitable agricultural lands" and "do not include commercial, industrial and residential lands."[103] Since the NATALIA lands were converted prior to 15 June 1988, the Supreme Court held that DAR is bound by such conversion, and the undeveloped portions of the Antipolo Hills Subdivision were no longer within the ambit of the CARL.

The Court also cited Opinion No. 44 by the Department of Justice, which concluded that lands covered by Presidential Proclamation No. 1637, having been reserved for townsite purposes "to be developed as human settlements by the proper land and housing agency," are "not deemed 'agricultural lands' within the meaning and intent of section 3 paragraph (c) of

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[101] Natalia Realty, Inc. v. Department of Agrarian Reform, G.R. No. 103302, 12 August 1993, 225 SCRA 278, 282.

[102] Natalia Realty, Inc. v. Department of Agrarian Reform, G.R. No. 103302, 12 August 1993, 225 SCRA 278, 283.

[103] Natalia Realty, Inc. v. Department of Agrarian Reform, G.R. No. 103302, 12 August 1993, 225 SCRA 278, 283.

R.A. No. 6657." Not being deemed "agricultural lands," they are outside the coverage of the CARL.

A close analysis of *Natalia* will show that it is one of the most confusing cases ever promulgated by the Supreme Court.

First, the issue, according to the Court, was: "Are lands already classified for residential, commercial or industrial use, as approved by the Housing and Land Use Regulatory Board and its precursor agencies prior to 15 June 1988, covered by R.A. 6657 . . . ?" There is an obvious problem with the way the issue was phrased. Is the Court saying that the HLURB reclassified the land? This cannot be the case. The discussion on the HLURB was relevant only because its authority is required in any application for the development of subdivisions.[104] But the power of the HLURB to reclassify lands, if it exists at all, was not at issue.

The property was set aside as a townsite reservation by Presidential Proclamation No. 1637. It was that Proclamation, which "in effect converted for residential use what were erstwhile agricultural lands." Was the Court suggesting that the HLURB "approved" the conversion of the land by of the President? This would even be more absurd, because the well-established rule is that the Chief Executive has the power to alter, modify, or set aside what a subordinate officer has done in the performance of his or her duties.[105] It is never the other way around.

While there are distinctions between land reclassification and land conversion, the Supreme Court did not seem to bother with them.[106] This might have led to the confusion in the formulation of the issue in the case. In the end, the Court excluded properties from the coverage of CARL because they were supposedly reclassified into land devoted to non-agricultural uses,

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[104] *See* Pres. Decree No. 957 (1976).

[105] Carpio v. Executive Secretary, G.R. No. 964089, 14 February 1992, 206 SCRA 290, 295. Neither can it be said that this case is justified under the "Doctrine of Qualified Political Agency." Under that doctrine, the acts of Secretaries of the Departments of government "performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the Chief Executive." The doctrine cannot apply in this case, where there is no act by a subordinate subject to review by the President.

[106] The distinctions are very clear under present executive issuances. *See* Admin. Order No. 363 (1997) and Department of Agrarian Reform Admin. Order No. 7 (1997), art. III, secs. (f) and (k).

but without clearly referring to how this reclassification was done, or which agency was empowered to validly reclassify the land in the first place.

Perhaps we can interpret the decision to mean that the conversion of the land is similar to reclassification, so that the President, in effect, reclassified the land. This leads to two problems. The first problem is that this suggests that an implied conversion of land is possible through the issuance of a Presidential Proclamation. In the language of the Court, the land was "in effect converted for residential use." Is the Court suggesting that Presidential action can override the laws on agrarian reform, and particularly on land conversion? It is true that the President is empowered to set aside lands of the public domain as townsite reservations under the Public Land Act,[107] but the power to set aside lands as reservations is not an act of conversion. Where the conversion of lands is involved in the creation of a reservation, it is submitted that compliance with other related laws is also necessary.

The other problem is that we still do not know what the HLURB approved, since it cannot possibly refer to any act of the President.

Second, the Supreme Court's conclusion that the properties were not covered by the CARL because they were not agricultural lands is inaccurate. Section 4 of Republic Act No. 6657 provides for the following:

> *Scope.* — The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands, as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.
>
> More specifically the following lands are covered by the Comprehensive Agrarian Reform Program:
>
> (a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain.

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[107]Statutory authority for the President's action is found in chapter XI of Com. Act No. 141 (1936). *See* application of the law in Director of Forestry v. Villareal, G.R. No. 32266, 27 February 1989, 170 SCRA 598. *See also* ADMIN. CODE OF 1987, Book III, title I, chap. 4, sec. 14.

> (b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;
>
> (c) All other lands owned by the Government devoted to or suitable for agriculture; and
>
> (d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.[108]

Clearly, CARL also covers not only agricultural lands but lands that are suitable for agriculture — regardless of their classification.

Third, the Department of Justice (DOJ) also cites *Natalia* as a confirmation of the controversial Opinion No. 44. In DOJ Opinion No. 136, series of 1993, the DOJ stated:

> Opinion No. 44, series of 1990 of this Department ruled that the authority of the Department of Agrarian Reform (DAR) to approve conversions of agricultural lands to non-agricultural uses may be exercised from the date of the law's effectivity on 15 June 1988. Prior to said date, the exercise of such authority was a "coordinated effort" of all concerned agencies, namely, the Department of Local Governments and Community Development, the Human Settlements Commission and the DAR . . .
>
> > 1. Opinion No. 44, series of 1990 is based on our interpretation of the law, which interpretation was confirmed by the Supreme Court in the case of *Natalia Realty, Inc. vs. Department of Agrarian Reform*, G.R. No. 103302, promulgated on 12 August 1993 . . . [109]

DOJ Opinion No. 44 was issued amidst the controversy involving the NDC-Marubeni case. The National Development Corporation (NDC) owned a 230-hectare estate in Lankaan, Dasmariñas Cavite, which was tilled by some 125 farmers. NDC claimed that the land had already been classified as an industrial zone prior to the effectivity of the CARL, and was no longer covered by the said law. NDC applied for conversion of the land. The DAR opposed the conversion, claiming that it had exclusive authority to approve such

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[108] Rep. Act No. 6657 (1988), sec. 4.
[109] DOJ Opinion 136 s. 1993.

conversions. The DOJ opined, however, that the DAR's exclusive authority to approve conversions may be exercised only from the date of the effectivity of the CARL.[110]

Natalia cannot be construed as an affirmation of Opinion No. 44. The Supreme Court in *Natalia* held that the lands were excluded from the coverage of the CARL because they were reclassified to non-agricultural uses prior to its effectivity. But the validity of the reclassification was not an issue addressed by the Court. There was no attempt made to rule, based on a series of existing laws, on which government agency is empowered to authorize the reclassification or conversion of lands to non-agricultural uses, and on when such powers commenced.

The inconsistency is obvious. The Supreme Court in *Natalia* ruled that the properties were outside the coverage of the CARL because they were converted to "non-agricultural uses prior to the effectivity of CARL by government agencies *other than* the respondent DAR." On the other hand, the DOJ Opinion concluded that while "laws prior to the effectivity of the CARL did grant the DAR authority to convert lands for non-agricultural uses, such authority was always *in coordination with other concerned agencies.*"[111] In short, the Supreme Court sanctions land conversion *without* DAR action if performed prior to the effectivity of the CARL; the DOJ does not.

If the conversion of land was an inter-agency task as contended by the DOJ, then the reclassification of lands by a single government agency without DAR concurrence is incomplete and invalid. There is no question that the DAR in the *Natalia* case did not participate in the conversion of the land whatsoever.[112]

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[110]For a view on the defects of the opinion, *see* RIEDINGER, *supra* note 5, at 181. The opinion has never been examined by the Supreme Court and is still regarded as determinative of the issue. As a result, some 371,000 hectares on agricultural land have been excluded from the coverage of CARL. *See* BATARA, *supra* note 11, at 36.

[111] DOJ Opinion 44 s. 1990, 16 March 1990.

[112]Under prior land reform laws, land use conversion did not impair all the rights of the tenant. In Davao Steel Corporation v. Cabatuando G.R. No. 19866, 29 April 1964, 10 SCRA 704, the Supreme Court held that even in cases of conversion, the consent of the tenant must be obtained, and that the destruction of standing crops by the owner of tenanted land was a ground for the award of exemplary damages to the tenant. It said:

Natalia and the DOJ Opinion are clearly inconsistent with each other, and one cannot be used to justify the other.

E. Fortich v. Corona

1. The first decision

Fortich v. Corona[113] involves a 144-hectare land located at San Vicente, Sumilao, Bukidnon, owned by the Norberto Quisumbing, Sr. Management and Development Corporation (NQSRMDC). In 1984, the land was leased to the Philippine Packing Corporation, now Del Monte Philippines, Inc., a multinational corporation, for ten years. This lease expired in April 1994. During the existence of the lease, the DAR placed the property under compulsory acquisition and assessed the land value at PhP2.38 million. NQSRMDC sought and was granted by the DARAB, a writ of prohibition with preliminary injunction which ordered the provincial and municipal DAR officials, the Land Bank of the Philippines, and their authorized representatives

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While the decision to convert or not to convert the land from agricultural to industrial resides in the owner-corporation, yet, since the land is tenanted and with growing crops thereon, the owner cannot, unilaterally and without the consent of the tenant, exercise the right of conversion. The requisite consent of the tenant or of the court is not based upon the premise that the tenant's will not to convert is superior to that of the owner's decision to convert but that the tenant is entitled to security of tenure, and that the right of possession of the tenant, by express provision of the law, is not extinguished by the sale of the land worked by him (Sec. 9, Act 1199).

See also Baltazar v. Court of Appeals, G.R. No. L-40191, 27 May 1981, 104 SCRA 619.

[113] G.R. No. 131457, 24 April 1998, 289 SCRA 624. Unfortunately, the following discussion is based solely on the decisions of the Supreme Court. Readers should know that the cases do not portray the hardships encountered by the farmers who are claiming the disputed property. Some of the examples of intimidation, harassment, and violence inflicted on the farmers are discussed in Tomasito S. Villarin, *Mapalad in Retrospect and Beyond: Assessing the Agrarian Reform Struggle*, KAISAHAN Occasional Paper No, 98-01 (February 1998), at 4, William A. de Lange, Jr., *Denial of CARP coverage hit by Bukidnon farmers*, BUSINESS WORLD (22 July 1997) <http://codex.bworldonline.com/codex.others.html>, Arnold S. Tenorio, *A question of the law over the land*, BUSINESS WORLD (17 October 1997) <http://codex.bworldonline.com/codex.others.html>.

"to desist from pursuing any activity or activities" concerning the subject land "until further orders."[114]

In the meantime, the Provincial Development Council of Bukidnon, headed by Governor Carlos O. Fortich, passed Resolution No. 6, on 7 January 1993, designating certain parts of the property along Bukidnon-Sayre Highway as part of the Bukidnon Agro-Industrial Zones. Then, pursuant to section 20 of the Local Government Code, the Sangguniang Bayan of Sumilao, on 4 March 1993, enacted Ordinance No. 24 converting or re-classifying 144 hectares of land in Bgy. San Vicente, said Municipality, from agricultural to industrial/institutional. On 12 October 1993, the Bukidnon Provincial Land Use Committee approved the Ordinance.

On 11 December 1993, NQSRMDC and the Bukidnon Agro-Industrial Development Association filed an application for conversion with the DAR. On 14 November 1994, the DAR denied the application on the following grounds:

> 1. The area is considered as a prime agricultural land with irrigation facility;
>
> 2. The land has long been covered by a Notice of Compulsory Acquisition (NCA);
>
> 3. The existing policy on withdrawal or lifting on areas covered by NCA is not applicable;
>
> 4. There is no clear and tangible compensation package arrangements for the beneficiaries;
>
> 5. The procedures on how the area was identified and reclassified for agro-industrial project has no reference to Memo Circular No. 54, Series of 1993, E.O. No. 72, Series of 1993, and E.O. No. 124, Series of 1993.[115]

DAR then placed the land under the compulsory coverage of the CARP. The applicant filed a motion for reconsideration on 9 January 1995,

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[114]Despite the DARAB order of 31 March 1992, the DAR Regional Director issued a memorandum directing the Land Bank to open a trust account for PhP2.38 million in the name of NQSRMDC and to conduct summary proceedings to determine the just compensation of the subject property. NQSRMDC objected and filed an Omnibus Motion to enforce the DARAB order of 31 March 1992. The DARAB granted the Motion. Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 630-631.

[115]Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 634.

but it was denied. The DAR Secretary ordered the DAR Regional Director to proceed with the compulsory acquisition and distribution of the property. Governor Fortich appealed to the Office of the President.[116] The Office of the President, through then Executive Secretary Ruben D. Torres, reversed the DAR in a decision dated 29 March 1996. The decision, in part, provided:

> After a careful evaluation of the petition vis-à-vis the grounds upon which the denial thereof by Secretary Garilao was based, we find that the instant application for conversion by the Municipality of Sumilao, Bukidnon is impressed with merit. To be sure, converting the land in question from agricultural to agro-industrial would open great opportunities for employment and bring about real development in the area towards a sustained economic growth of the municipality. On the other hand, distributing the land to would-be beneficiaries (who are not even tenants, as there are none) does not guarantee such benefits.
>
> Nevertheless, on the issue that the land is considered a prime agricultural land with irrigation facility, it may be appropriate to mention that, as claimed by petitioner, while it is true that there is, indeed, an irrigation facility in the area, the same merely passes thru the property (as a right of way) to provide water to the ricelands located on the lower portion thereof. The land itself, subject of the instant petition, is not irrigated as the same was, for several years, planted with pineapple by the Philippine Packing Corporation.
>
> On the issue that the land has long been covered by a Notice of Compulsory Acquisition (NCA) and that the existing policy on withdrawal or lifting on areas covered by NCA is not applicable, suffice it to state that the said NCA was declared null and void by the Department of Agrarian Reform Adjudication Board (DARAB) as early as March 1, 1992. Deciding in favor of NQSRMDC, the DARAB correctly pointed out that under section 8 of R.A. No. 6657, the subject property could not validly be the subject of compulsory acquisition until after the expiration of the lease contract with Del Monte Philippines, a Multi-National Company, or until April 1994, and ordered the DAR Regional Office and the Land Bank of the Philippines, both in Butuan City, to "desist from pursuing any activity or activities covering petitioner's land."
>
> On this score, we take special notice of the fact that the Quisumbing family has already contributed substantially to the land reform program

[116]To prevent the enforcement of the DAR Secretary's order, NQSRMDC filed with the Court of Appeals a petition for certiorari, prohibition with preliminary injunction, which was granted. Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 635.

> of the government, as follows: 300 hectares of rice land in Nueva Ecija in the 70's and another 400 hectares in the nearby Municipality of Impasugong, Bukidnon, ten years ago, for which they have not received "just compensation" up to this time.
>
> Neither can the assertion that "there is no clear and tangible compensation package arrangements for the beneficiaries" hold water as, in the first place, there are no beneficiaries to speak about, for the land is not tenanted, as already stated.
>
> Nor can procedural lapses in the manner of identifying/reclassifying the subject property for agro-industrial purposes be allowed to defeat the very purpose of the law granting autonomy to local government units in the management of their local affairs. Stated more simply, the language of Section 20 of R.A. No. 7160, *supra*, is clear and affords no room for any other interpretation. By unequivocal legal mandate, it grants local government units autonomy in their local affairs including the power to convert portions of their agricultural lands and provide for the manner of their utilization and disposition to enable them to attain their fullest development as self-reliant communities.[117]

On 20 May 1996, the DAR filed a motion for reconsideration, which was denied for having been filed beyond the reglementary period of fifteen days. The DAR filed on 11 July 1997 a second motion for reconsideration of the 23 June 1997 Order of the President.

Former President Fidel V. Ramos conducted a dialogue with the strikers, and created a Fact-Finding Task Force to look into the controversy and recommend possible solutions to the problem. On 7 November 1997, the Office of the President issued the so-called "Win/Win" Resolution penned by then Deputy Executive Secretary Renato C. Corona.[118]

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[117]Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 636-37.

[118]The dispositive portion of which reads: WHEREFORE, premises considered, the decision of the Office of the President, through Executive Secretary Ruben Torres, dated 29 March 1996, is hereby MODIFIED as follows:

1. NQSRMDC's application for conversion is APPROVED only with respect to the approximately forty-four (44) hectare portion of the land adjacent to the highway, as recommended by the Department of Agriculture.

The petitioners filed a petition with the Supreme Court against then Deputy Executive Secretary Corona and the DAR Secretary. They claimed that the Office of the President was pressured to come up with this purely political decision to appease the "farmers," by modifying the decision of 29 March 1996 which had already been declared final and executory.

The issue, according to the Court, was whether the final and executory decision dated 29 March 1996 could still be substantially modified by the "Win-Win" Resolution.

The Court ruled in favor of the petitioner by citing the rules and regulations governing appeals to the Office of the President of the Philippines in Administrative Order No. 18.[119] The Court concluded that:

> The orderly administration of justice requires that the judgments/resolutions of a court or quasi-judicial body must reach a point of finality set by the law, rules and regulations. The noble purpose is to write finis to disputes once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be

2. The remaining approximately one hundred (100) hectares traversed by an irrigation canal and found to be suitable for agriculture shall be distributed to qualified farmer-beneficiaries in accordance with RA 6657 or the Comprehensive Agrarian Reform Law with a right of way to said portion from the highway provided in the portion fronting the highway. For this purpose, the DAR and other concerned government agencies are directed to immediately conduct the segregation survey of the area, valuation of the property and generation of titles in the name of the identified farmer-beneficiaries.
3. The Department of Agrarian Reform is hereby directed to carefully and meticulously determine who among the claimants are qualified farmer-beneficiaries.
4. The Department of Agrarian Reform is hereby further directed to expedite payment of just compensation to NQSRMDC for the portion of the land to be covered by the CARP, including other lands previously surrendered by NQSRMDC for CARP coverage.
5. The Philippine National Police is hereby directed to render full assistance to the Department of Agrarian Reform in the implementation of this Order.

Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 640.

[119]Sec. 7 of Admin. Order No. 18 provides that "[d]ecisions/resolutions/orders of the Office of the President shall, except as otherwise provided for by special laws, become final after the lapse of fifteen (15) days from receipt of a copy thereof by the parties, unless a motion for reconsideration thereof is filed within such period. Only one motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases."

> maintained by those who wield the power of adjudication. Any act which violates such principle must immediately be struck down.[120]

Surprisingly, the Supreme Court adhered to a strict, rather than a liberal interpretation of the rules, even if administrative agencies exercising quasi-judicial functions are not bound by the rigidities of technical rules of procedure to allow them every opportunity to arrive at the truth of the matter in controversy.[121] This is a rule that goes back at least sixty years:

> In the case of *Goseco v. Court of Industrial Relations et al.*, G. R. No. 46673, promulgated 13 September 1939, we had occasion to point out that the Court of Industrial Relations is not narrowly constrained by technical rules of procedure, and the Act requires it to "act according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rules of legal evidence but may inform its mind in such manner as it may deem just and equitable."[122]

Even decisions of administrative agencies that have become final do not always bar relief. There is nothing so sacred about a "final decision" that would prevent administrative agencies from looking into the merits of the case again. In one case, the Supreme Court held that a decision of the Workmen's Compensation Commission did not become final simply because the petitioner filed a motion for reconsideration instead of filing this petition a review. It pointed out that, "[s]ubstantial justice should not be sacrificed at the altar of sophisticated technicality."[123]

In another case, the Court explained that:

> It is settled that rules of procedure are as a matter of course construed liberally in proceedings before administrative bodies. In the instant case, the original suit for specific performance and damages was filed by the private respondent with the HLURB-OAALA, an administrative body not hamstrung by the strict procedural technicalities of the Rules of Court. Under the circumstances, it was certainly appropriate for the HLURB-OAALA to have acted on the substantive questions relating to the validity of petitioners' unilateral rescission of the contract without

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[120]Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 651.

[121]*See* Garcia v. National Labor Relations Commission, G.R. No. 67825, 4 September 1987, 153 SCRA 639, 654.

[122]Ang Tibay v. The Court of Industrial Relations and National Labor Union, Inc., 69 Phil. 635 (1940).

[123]Reyes v. Workmen's Compensation Commission, G.R. 46579, 28 April 1980, 97 SCRA 311, 316.

> unduly concerning itself with a mere procedural slip, the non-joinder of private petitioner's husband in the original complaint before the HLURB.[124]

The Supreme Court has repeatedly held that administrative agencies are allowed to overlook delays in filing appeals if doing so will serve the interest of justice:

> Even assuming *arguendo* that the appeal was filed beyond the period allowed by law, We have at times overlooked this particular procedural lapse. In the case of *Firestone Tire and Rubber Co. v. Larosa* and reiterated in *Chong Guan Trading v. NLRC* this Court allowed the filing of appeals from the decisions of the labor arbiter to the NLRC, even if filed beyond the reglementary period, in the interest of justice. Thus, technical rules of procedure in labor cases are not to be strictly applied if the result would be detrimental to the working man. Technicality should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties . . . Therefore, We find no grave abuse of discretion on the part of the NLRC in entertaining the appeal of private respondents, even if, as alleged by petitioner, it was filed two days late.[125]

It is true that while administrative agencies are free from the rigidity of procedural requirements, it does not mean that they can ignore the requirements of due process.[126] But the petitioners did not invoke a violation of due process, and they could not have done so, because they were given every opportunity to be heard.[127]

Even courts are allowed to bend the rules of procedure if by doing so, substantial justice is achieved:

> [O]ne does not have any vested right in technicalities. In meritorious cases, a liberal not literal interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent of the rules which is the proper and just determination of litigations. Litigations should, as much as possible be decided on their merits and not on technicality . . . As has been the constant ruling of this Court, every

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[124]Realty Exchange Venture Corporation and/or Magdiwang Realty Corporation v. Sendino and the Office of the Executive Secretary, G.R. No. 109703, 5 July, 1994, 233 SCRA 665, 671.

[125]Judy Philippines, Inc. v. National Labor Relations Commission and Virginia Antiola, G.R. 111934, 29 April 1998, 289 SCRA 755, 764-765 (1998).

[126]Ang Tibay v. The Court of Industrial Relations and National Labor Union, Inc., 69 Phil. 635 (1940).

[127]*See* Villareal v. Court of Appeals, G.R. No. 97505, 1 March 1993, 219 SCRA 293, 301.

> party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause free from the constraints of technicalities (Fonseca v. CA, G.R. No. L-36035, 30 August 1988; Hernandez v. Quirtan, G.R. No. L-48457, 29 November 1988, 168 SCRA 99).[128]

The petitioners in *Fortich* were in essence arguing for a vested right against a mere technicality which, as the Supreme Court has pointed out, cannot be taken seriously. In another case, the Court stated that:

> Procedural laws are technicalities which are adopted not as ends in themselves but as means conducive to the realization of law and justice. The rules of procedure are not to be applied with severity and rigidity when such application would clearly defeat the very rationale for their conception and existence. In *Mauna v. Civil Service Commission*, the Court said:
>
> > [I]t is within the power of this Court to temper rigid rules in favor of substantial justice. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek which is the protection of substantive rights of the parties.
>
> The relaxation of procedural rules, or saving a particular case from the operation of technicalities when substantial justice requires it, should no longer be subject to cavil.[129]

The Rules of Court are technical rules,[130] and delays in filing appeals are mere technicalities. As the Supreme Court recently explained:

> If respondents' right to appeal would be curtailed by the mere expediency of holding that they had belatedly filed their notice of appeal, then this Court as the final arbiter of justice would be deserting its avowed

[128]Lim v. Court of Appeals, G.R. No. 84154 - 55, 28 July 1990, 188 SCRA 23, 33.

[129]Government Service Insurance System v. Court of Appeals, G.R. No. 101632, 13 January 1997, 266 SCRA 187, 198.

[130]BF Corporation v. Court of Appeals, G.R. No. 120105, 27 March, 1998, 288 SCRA 267, 281.

> objective, that is to dispense justice based on the merits of the case and not on a mere technicality.[131]

For a party to seek exception from the requirements for perfecting appeal, "strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage thereof must be shown."[132] *Fortich* easily satisfies these standards. The Supreme Court itself determined that there was a valid reason to bend the rules in *Fortich*. When the Solicitor General asked for the dismissal of the Fortich Petition because it should not have been filed directly with the Supreme Court, the Court responded by saying that:

> [T]he Supreme Court has the full discretionary power to take cognizance of the petition filed directly to it if compelling reasons, or the nature and importance of the issues raised, warrant . . . .
>
> Pursuant to said judicial policy, we resolve to take primary jurisdiction over the present petition in the interest of speedy justice and to avoid future litigations so as to promptly put an end to the present controversy which, as correctly observed by petitioners, has sparked national interest because of the magnitude of the problem created by the issuance of the assailed resolution.[133]

The Court continued:

> Be it remembered that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Time and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require . . . .[134]

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[131]Trans International v. Court of Appeals, G.R. No. 128421, 26 January 1998, 285 SCRA 49, 54-8. *See* cases cited therein. Toledo v. Intermediate Appellate Court, G.R. No. 65211, 31 July 1987, 152 SCRA 579; Castro v. Court of Appeals, G.R. 47410, 29 July 1983, 123 SCRA 782, Velasco v. Gayapa, Jr., G.R. No. 58651, 30 July 1987, 152 SCRA 440; A-One Feeds, Inc. v. Court of Appeals, G.R No. 35560, 30 October 1980, 100 SCRA 590 and Gregorio v. Court of Appeals, G.R. No. 43511, 28 July 1976, 72 SCRA 120. *See also* People's Homesite & Housing Corporation v. Tiongco, G.R. No. L-18891, 28 November 1964, 12 SCRA 471 and Judy Philippines, Inc. v. National Labor Relations Commission and Virginia Antiola, G.R. 111934, 29 April 1998, 289 SCRA 755, 764-765.

[132]Ronquillo v. Marasigan, G.R. No. 11621, 31 May 1962, 5 SCRA 304.

[133]Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 645-646.

[134]Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 645-47, *citing* Piczon v. Court of Appeals, G.R. No. 76378-81, 24 September 1990, 190 SCRA 31, 38.

It makes little sense that the Court should grant the petition on what may be regarded as a flimsy reason — the lapse of the period for appeal — considering the magnitude of the issues that have been raised. In this single case, therefore, the Supreme Court waived procedural rules in favor of the petitioner, but not the respondents.

There is a more compelling reason why the Court should have adhered to a liberal interpretation of the rules of procedure: The decision of the Executive Secretary was legally flawed on each and every point. To sustain the decision was to sanction a miscarriage of justice.

First, Secretary Torres put weight on the fact that

> converting the land in question from agricultural to agro-industrial would open great opportunities for employment and bring about real development in the area towards a sustained economic growth of the municipality. On the other hand, distributing the land to would-be beneficiaries (who are not even tenants, as there are none) does not guarantee such benefits.[135]

Secretary Torres was apparently under the impression that his opinion as to what would benefit Bukidnon is the law that should govern the controversy, regardless of what the CARL and other pertinent laws provide.

Second, Secretary Torres ignored the fact that the land in question was irrigated, preferring to rely on the bare allegation of the petitioner that the irrigation facility "merely passes thru the property (as a right of way) to provide water to the ricelands located on the lower portion thereof."[136] This conclusion was directly contrary to the findings of the DAR. Secretary Torres, without any apparent basis, ignored the factual findings of the Department of Agrarian Reform in favor of a contention of the petitioners. Later, President Ramos' task force' confirmed that 100 hectares of the disputed land are suitable for agriculture with an active irrigation canal.[137] The challenged "Win-Win" Resolution provides that:

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[135] Fortich v. Corona, G.R. No. 131457, 17 November 1998, 287 SCRA 624, 636, *citing* Decision OP Case No. 96-a-6424 (29 March 1998).

[136] Fortich v. Corona, G.R. No. 131457, 17 November 1998, 287 SCRA 624, 636, *citing* Decision OP Case No. 96-a-6424 (29 March 1998).

[137] Mia Gonzalez, *100 hectares for hunger strikers, 44 for owners*, TODAY (6 November 1997) <http://www.today.com.ph/>.

> The remaining approximately 100 hectares traversed by an irrigation canal and found to be suitable for agriculture shall be distributed to qualified farmer-beneficiaries in accordance with RA 6657 or the Comprehensive Agrarian Reform Law with a right of way to said portion from the highway provided in the portion fronting the highway.[138]

The conversion of the land, therefore, is illegal under President Ramos' Administrative Order No. 20, which provides that:

> 1. All agricultural lands classified hereunder shall not be subject to and non-negotiable for conversion:
>
> > (a) All irrigated lands where water is available to support rice and other crop production, and all irrigated lands where water is not available for rice and other crop production but are within areas programmed irrigation facility rehabilitation by the Department of Agriculture (DA) and National Irrigation Administration (NIA), and
> >
> > (b) All irrigable lands already covered by irrigation projects with firm funding commitments at the time of the application for land use conversion.
>
> 2. All agricultural lands other than those referred hereunder as non-negotiable for conversion may be converted only upon strict compliance with existing laws, rules and regulations.[139]

Third, Secretary Torres also ignored the fact that a Notice of Compulsory Acquisition already covered the disputed property. He merely pointed out that the Notice was declared null and void by the DARAB on 1 March 1992. It will be recalled, however, that the DARAB's decision was premised on the existence of a lease contract between NQSRMDC and Del Monte Philippines. That lease expired in April 1994, after which, the DAR placed the land under the compulsory coverage in November of the same year.

Fourth, Secretary Torres brushed aside the DAR's assertion that there should be "clear and tangible compensation package arrangements for the beneficiaries" because "there are no beneficiaries to speak about, for the land is

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[138] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 640 *citing* Resolution of Deputy Executive Secretary Renato C. Corona, 7 November 1997.

[139] Admin. Order No. 20 (1992). *See also* Memo. Cir. No. 54 (1993), sec. 1, par. (d)(3).

not tenanted as already stated." This is outrageous considering that the DAR found to the contrary and did award the beneficiaries with a Certificate of Land Ownership Award No. 00240227 on 25 September 1995.[140] Therefore, the Torres order also violated Memorandum Circular No. 54 of 1993 which provides that:

> (d) In addition, the following types of agricultural lands shall not be covered by the said reclassification:
>
> (1) Agricultural lands distributed to agrarian reform beneficiaries subject to Section 65 of RA 6657;
>
> (2) Agricultural lands already issued a notice of coverage or voluntarily offered for coverage under CARP . . . .[141]

Fifth, Secretary Torres painted the landowners as philanthropists who have "contributed substantially to the land reform program of the government" as if this was relevant to the case before him. Secretary Torres seems to be suggesting that because of their "generosity," the landowners can be excused from further compliance with the mandate of the Constitution and the CARL. Unfortunately, the law is clear, and Congress already set the limits on land ownership. Acts of generosity by the landowner cannot temper the strictures established by the CARL, much less sanction non-compliance therewith.

Sixth, Secretary Torres ignored non-compliance with the President's orders, which set guidelines on land conversion by invoking a supposedly superior law in the form of the Local Government Code. Torres said:

> Nor can procedural lapses in the manner of identifying/reclassifying the subject property for agro-industrial purposes be allowed to defeat the very purpose of the law granting autonomy to local government units in the management of their local affairs. Stated more simply, the language of Section 20 of R.A. No. 7160, *supra*, is clear and affords no room for any other interpretation. By unequivocal legal mandate, it grants local government units autonomy in their local affairs including the power to convert portions of their agricultural lands and provide for the manner of

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[140] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 638. *See also* Dennis Gorecho, *Farmers on strike over Torres' order*, TODAY (10 October 1997) <http://www.today.com.ph> and Butch Enerio, *They Won't Give Up Land*, TODAY (10 November 1997) <http://www.today.com.ph/>.

[141] Memo. Cir. No. 54 (1993), sec. 1, par. (d) cited in Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 634.

> their utilization and disposition to enable them to attain their fullest development as self-reliant communities.[142]

Secretary Torres' disregard for the guidelines issued by the President is incomprehensible. These orders are commonly said to have the force and effect of statutes[143] and are also sources of laws and obligations.[144] They are just as binding as if the regulations had been written in the original law itself.[145]

Furthermore, his conviction notwithstanding, Secretary Torres' interpretation of the Local Government Code is simply wrong. Local government units do not have the power to convert lands. This is clear under section 20 of the Local Government Code, which provides that:

> Section 20. *Reclassification of Lands.* — (a) A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the sanggunian concerned: *Provided,* That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:
>
> (1) For highly urbanized and independent component cities, fifteen percent; (15%);
>
> (2) For component cities and first to the third class municipalities, ten percent (10%); and
>
> (3) For fourth to sixth class municipalities, five percent (5%): *Provided,* further, That agricultural lands distributed to agrarian reform beneficiaries pursuant to Republic Act Numbered Sixty-six hundred fifty-seven (R.A. No. 6657), otherwise known as "The Comprehensive Agrarian Reform Law", shall not be affected by the said reclassification

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[142] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 637.

[143] Evangelista v. Jarencio, G.R. No. L-29274, 27 November 1975, 68 SCRA 99.

[144] *See* Batchelder v. The Central Bank of the Philippines, G.R. No. L-25071, 29 July 1972, 46 SCRA 162, 104.

[145] United States v. Molina, G.R. No. 9878, 29 Phil. 119 (1914), *citing* United States v. Grimaud, 220 U. S. 506, Williamson v. United States, 207 U. S. 425, United States v. United Verde Copper Co., 196 U. S. 207.

> and the conversion of such lands into other purposes shall be governed by section 65 of said Act...
>
> xxxxx
>
> (e) Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657.[146]

Local governments have the power to *reclassify* land, not to convert them. Section 20 paragraph a(3) of the Local Government Code should have alerted the former Secretary to the fact that reclassification and conversion are not one and the same thing. Senator Aquilino Pimentel, who was the primary author of the Local Government Code, clarified that Congress did not invest local government units with the power to convert lands. In discussing section 20, he explained that:

> This is one section of the Code which evoked a lot of discussion among the members of the Conference Committee. This proposal to allow local governments to reclassify land and provide for the manner of their utilization or disposition was made by Congressman Pablo of Cebu, who argued that the central government has no business dictating to the local governments how to classify land within their jurisdiction. Some legislators, however, felt that to allow local governments to reclassify land may open the door to nationwide frustration of the goals of the agrarian reform law.
>
> Congressman Garcia disputed the argument by pointing out that the power he had sought to invest the local governments with was not to convert land for any purpose contrary to the provisions of the Comprehensive Agrarian Reform law, but merely to "reclassify" land.[147]

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[146] Rep. Act No. 7160 (1991), sec. 20.

[147] AQUILINO Q. PIMENTEL, JR., THE LOCAL GOVERNMENT CODE OF 1991: THE KEY TO NATIONAL DEVELOPMENT 111 (1993). Local governments are not alone in this confusion. The Chamber of Real Estate and Builder's Association (CREBA), which is composed of the country's biggest land developers, criticizes Admin. Order No. 363, which prescribes guidelines for the protection of areas non-negotiable for conversion, as illegal and unconstitutional. CREBA claims that the Order preserves virtually all lands for purely agricultural and agrarian reform purposes, expands the jurisdiction of the DAR beyond the confines set by the CARL, precludes reclassification of lands by the local government units and disregards all reclassification. *See Solution to development problems in sight*, BUSINESS WORLD (10 November 1998) <http://www.inquirer.net/issues/nov98/nov10/features/fea_4.htm>.

Sadly, Secretary Torres has been approving applications for land conversions by repeatedly misinterpreting this law.[148] By adhering strictly to procedure, the Supreme Court allowed a seriously defective decision to stand. Worse, there was absolutely no basis for even asserting this conclusion. A perusal of the facts will show that neither the Province of Bukidnon nor the Municipality of Sumilao was a party in the conversion case before the DAR. It was the land developer who filed the application for conversion, and not any local development unit.

It should also be pointed out that the farmers were not heard in this case. The Supreme Court denied their motion to intervene in the proceedings on the ground that they were not the real parties in interest:

> In their motion, movants contend that they are the farmer-beneficiaries of the land in question, hence, are real parties in interest. To prove this, they attached as Annex "I" in their motion a Master List of Farmer-Beneficiaries. Apparently, the alleged master list was made pursuant to the directive in the dispositive portion of the assailed "Win-Win" Resolution which directs the DAR "to carefully and meticulously determine who among the claimants are qualified farmer-beneficiaries." However, a perusal of the said document reveals that movants are those purportedly "Found Qualified and Recommended for Approval." In other words, movants are merely *recommendee* farmer-beneficiaries.[149]

The farmers, however, are not merely recommended beneficiaries; they were granted a Certificate of Land Ownership Award under the CARL back in 1995. As the Supreme Court itself pointed out, title to the disputed property was transferred in the name of the Republic of the Philippines under TCT No. T-50264 of the Registry of Deeds of Bukidnon. On 25 September 1995, the DAR issued CLOA No. 00240227 and had it registered in the name of 137

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[148] The Executive Secretary was already notorious for reversing the DAR's denial of applications for conversions. Among others, Secretary Torres approved the conversion of a 53-hectare lot in the watershed of Angat, Bulacan, for the construction of a golf course; a 189-hectare farmland in barangay Tartiara and Lumil in Silang, Cavite, which displaced 131 farmers; a 213-hectare lot in Hermosa, Bataan, that had 141 farmers; and a 120-hectare lot in Plaridel, Bulacan, with 75 tenants. *See* Dennis Gorecho, *Solon hits Torres on conversion*, TODAY (10 September 1997) <http://www13.asiaonline.net/philippines/today/default.htm>. Torres reversed the DAR six times and approved the conversion of more than 1,000 hectares of agricultural lands to non-agricultural uses. *See* Ric Puod, *'No' to land conversion – Morales*, TODAY (22 July 1998) <http://www.today.com.ph/>.

[149] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 649.

farmer-beneficiaries under TCT No. AT-3536 of the Registry of Deeds of Bukidnon.[150] In fact, the petitioners in *Fortich* filed a complaint for annulment and cancellation of the farmers' title with the Regional Trial Court of Malaybalay, Bukidnon (Civil Case No. 2687-97).[151] The Petitioners were attempting to cancel a valid and subsisting title registered under the name of the farmers. It is difficult to understand how the Supreme Court could not see that they were the real parties in interest. After all, as defined,

> [a] real party in interest is one who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest.[152]

Other parties were converting the farmers' land to some other use. Clearly, the farmers could be "injured by the judgment" of the Supreme Court, and their interest in the case was not merely contingent. Yet, the Supreme Court referred to the regional trial court case as one "for the annulment and cancellation of title issued in the name of the Republic of the Philippines"[153] choosing not to acknowledge that title to the property was already in the name of the farmers.

2. The second decision

The Office of the Solicitor General and the farmers filed motions for reconsideration, which were denied by the Second Division through a resolution dated 17 November 1998. Because there were vacancies in the Supreme Court at the time the motion was considered, the Second Division had only four members. Associate Justices Martinez and Mendoza voted to deny the motions for reconsideration, while Associate Justices Puno and Melo voted to grant them.

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[150] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 638.

[151] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 638.

[152] De Leon v. Court of Appeals, G.R. No. 123290, 15 August 1997, 277 SCRA 478, 486 *citing* Board of Optometry v. Colet, G.R. No. 122241, 30 July 1996, and 1 MANUEL V. MORAN, COMMENTARIES ON THE RULES OF COURT 154 (1979). *See also*, 1997 RULES OF CIVIL PROCEDURE, Rule 3, sec. 2.

[153] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 648.

In its motion for reconsideration, the Office of the Solicitor General argued that the Supreme Court *en banc* should deliberate on the case because it involved the constitutionality or legality or validity of an executive order. The Solicitor General also raised the issue of whether "the power of the local government units to reclassify lands is subject to the approval of the Department of Agrarian Reform."[154] The Solicitor General was obviously confused; the reclassification of the land was not at issue in *Fortich*. The issue in *Fortich* was the conversion of land — the DAR Secretary denied an application for land conversion, and the Office of the President reversed the Secretary's position. No act by any local government unit was put at issue.

The Second Division failed to detect this error and instead held that:

> [T]he issues . . . are matters of no extraordinary import to merit the attention of the Court *en banc*. Specifically, the issue of whether or not the power of the local government units to reclassify lands is subject to the approval of the DAR is no longer novel, this having been decided by this Court in the case of *Province of Camarines Sur, et al. v. Court of Appeals*....[155]

Again, the Court misconstrued the issue. *Fortich* provided an opportunity for the Court to clarify the issue of whether local governments have the power to convert land, and to distinguish between land reclassification and land conversion. Instead, it opted to cite *Camarines*, which, as earlier discussed, is seriously flawed. Furthermore, *Camarines* was not about the reclassification or conversion of land, rather, it was about the sanggunian's exercise of the power of eminent domain, and whether such power could be exercised absent the DAR Secretary's approval.[156] That case was also decided based on the laws *prior to* the enactment of the CARL and the present Republic Act No. 7610 or the Local Government Code.

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[154] Fortich v. Corona, G.R. No. 131457, 17 November 1998, at 3.

[155] Fortich v. Corona, G.R. No. 131457, 17 November 1998, at 4.

[156] The dispositive portion of *Camarines* did set aside the decision of the Court of Appeals insofar as it "requires the Province of Camarines Sur to obtain the approval of the Department of Agrarian Reform to convert or reclassify private respondents' property from agricultural to non-agricultural use." The Court of Appeals, however, required Camarines to secure DAR approval for the conversion before it can "expropriate the lands of the San Joaquins," not as a prerequisite for land reclassification by local governments. There was no conflict between the dispositive portion and the body of the decision; the former was merely vague, and understandably misleading.

The respondents also claimed that the Torres decision was not final and executory because it sought "to correct an erroneous ruling." They added that the Office of the President should have decided the matter "in the interest of substantial justice."

The Court, however, said that fealty to procedural rules is mandated by the Bill of Rights and that there was nothing under the facts of the case that would merit a relaxation of the rules. The first *Fortich* decision, said the Court, was not based on a technicality. It said that the "Win-Win" resolution was issued without or in excess of jurisdiction, and that the delays in the filing of motions for reconsideration were fatal.[157] The Supreme Court could be splitting hairs at this point. A careful analysis of *Fortich* shows that the Office of the President's lack of jurisdiction essentially turned on a technical issue — the lapse of the period for appeal.

The Court now said that the petitioners acquired a "vested right" because of the lapse of the period for appeal — clearly contradicting its prior decisions.[158] The opinion cites *Videogram Regulatory Board v. Court of Appeals*[159] to support its position, but that case did not refer to any "vested right" acquired by the winning party. Furthermore, the Court in *Videogram* was interpreting a very strict provision in the 1988 Revised Internal Rules of the Court of Appeals.[160] There is no reason why the stringent rules of the Court of Appeals should be applied to cases pending before the Office of the President. Besides, while the rule has been explicitly upheld as generally non-extendible, it still admits of exceptions:

> But the extension nonetheless should be limited only to fifteen days, save in exceptionally meritorious cases where the Court of Appeals may grant a longer period, as similarly provided in *Lacsamana*. Generally then, a

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[157] Fortich v. Corona, G.R. No. 131457, 17 November 1998, at 7-9.

[158] *See* Fonseca v. Court of Appeals, G.R. No. L-36035, 30 August 1988; 165 SCRA 40, 45, Hernandez v. Quitain, G.R. No. 48457, 29 November 1988, 168 SCRA 99; Lim v. Court of Appeals, G.R. No. 84154-55, 189 SCRA 23.

[159] G.R. No. 106564, 28 November 1996, 265 SCRA 50.

[160] The provision reads:

> Rule 6, section 3. *Petitions for Review.* — Within the period to appeal, the petitioner shall file a verified petition . . . Upon proper motion presented before the expiration of the original reglementary period, the Court may grant a non-extendible additional period of fifteen (15) days save in exceptionally meritorious cases within which to file the petition for review; *Provided*, however, that should there be no petition filed within the extended period, the case shall be dismissed. A petition filed after the period shall be denied due course outright. . . .

> non-extendible period of fifteen days may be granted unless there are compelling reasons which may warrant the allowance of a longer period....[161]

The respondents were correct in asserting that the "Win-Win" Resolution was attempting "to correct an erroneous ruling." Since the Torres decision was a flagrant violation of the law, it is submitted that the case was "exceptionally meritorious" and there was a "compelling reason" for the Court to adopt a liberal interpretation of the rules of procedure. Furthermore, it is settled that a vested right cannot spring from a wrong interpretation of the law.[162]

The motion for reconsideration filed by the farmers was also denied on the ground that they were not tenants and that they had no interest in the case, once more ignoring the fact that a CLOA was issued in their favor. The Court added that even if their motion was granted, the issues that they raised were already addressed by the challenged Torres decision. The opinion simply quotes the decision, warts and all, without realizing the fact that it is studded with flaws.[163] Instead, the Court stated that:

> It is axiomatic that factual findings of administrative agencies which have acquired expertise in their field are binding and conclusive on the Court, considering that the Office of the President is presumed to be the most competent in matters falling within its domain.[164]

The opinion neglected to point out that this rule is not unqualified,[165] and these findings may and should be reviewed, reversed or nullified "where they are patently arbitrary or capricious or are not supported by substantial evidence."[166] They are not binding on the courts if there is a clear showing that

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[161] Liboro v. Court of Appeals, G.R. Nos. 101132 and 105368, 29 January 1993, 218 SCRA 193, *cited in*, Videogram Regulatory Board v. Court of Appeals, G.R. No. 106564, 28 November 1996, 265 SCRA 50, 57.

[162] Hilado v. Collector of Internal Revenue, 100 Phil. 288 (1956).

[163] Fortich v. Corona, G.R. No. 131457, 17 November 1998, at 11-14.

[164] Fortich v. Corona, G.R. No. 131457, 17 November 1998, at 15.

[165] *See* Benito v. Securities and Exchange Commission, 208 Phil. 638 (1983) and San Miguel Corporation v. Javate, Jr., and the Department of Labor, G.R. No. 5254244, 27 January 1992, 205 SCRA 469.

[166] *See* Presidential Commission on Good Government v. Peña, G.R. No. 77663, 12 April 1988, 159 SCRA 556 and Republic of the Philippines v. Sandiganbayan, G.R. No. 89425, 25 February 1992, 206 SCRA 506.

they are really wrong both on facts and law.[167] As illustrated earlier, the Torres decision has no basis in law and is, therefore, void on its face. Consequently, "it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."[168]

It is surprising that the opinion placed great weight on the assurances of the Bukidnon government that the conversion of the contested lands would redound to the benefit of the people of Bukidnon. The magnitude of the project or its potential for job-generation has nothing to do with the applicable law. Ironically, the opinion then berates its critics for "trying to influence this Court into resolving this case on the basis of considerations other than the applicable law, rules and settled jurisprudence and the evidence on record."[169]

According to the separate opinion,[170] the fifteen-day rule for filing a motion for reconsideration was suspended when President Ramos constituted the Presidential Fact-Finding Task Force to review the controversy in Sumilao. Hence, the decision of the Office of the President could not be construed as final. This suspension is justified as an exercise of the power of control over the DAR Secretary.[171]

The separate opinion touched on something so fundamental and yet so inexplicably ignored throughout this controversy: The President is the Chief Executive of the country and he exercises control over the members of the Cabinet:

> This presidential power of control over the executive branch of government extends over all executive officers from Cabinet Secretary to the lowliest clerk and has been held by us, in the landmark case of *Mondano vs. Silvosa*, to mean "the power of [the President] to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former

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[167]Bonilla v. Secretary of Agriculture and Natural Resources, G.R. No. 20083, 27 April 1967, 19 SCRA 836. *See also*, Ruby Industrial Corporation v. Court of Appeals, G.R. No. 124185 - 187, 20 January 1998, 284 SCRA 445. Once the actuation of the administrative official . . . or agency is tainted by a failure to abide by the command of the law, then it is incumbent on the courts of justice to set matters right . . . .

[168]El Banco Español-Filipino v. Palanca, 37 Phil. 921, 949 (1918).

[169]Fortich v. Corona, G.R. No. 131457, 17 November 1998, at 17.

[170]Fortich v. Corona, G.R. No. 131457, 17 November 1998, J. Puno, Separate Opinion, at 5-7.

[171]Fortich v. Corona, G.R. No. 131457, 17 November 1998, J. Puno, Separate Opinion, at 5-7.

> with that of the latter." It is said to be at the very "heart of the meaning of Chief Executive."[172]

The President has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials.[173] Then President Ramos could have avoided this entire controversy by expressly modifying or reversing the Torres decision, or otherwise suspending its application *while* his Task Force investigated of the controversy. It would make more sense, as the separate opinion pointed out, to say that the President impliedly suspended his department's rules of procedure when the Task Force was created.

The separate opinion likewise stated that the petitioners were estopped from questioning the validity of the decision of the Office of the President because of the fact that they participated in the activities of the Task Force.[174] This old rule was also overlooked in *Fortich.* Twenty years ago the Supreme Court already held that parties who participate in the hearings conducted by the Office of the President are estopped from questioning the said proceedings.[175] The Court frowns upon the "undesirable practice" of a party submitting his case for decision and then accepting the judgment, only if it is favorable, and attacking it for lack of jurisdiction, if adverse to his interest.[176]

Even the separate opinion, however, was unable to point out the more glaring defects of *Fortich.*

As the necessary vote of three members were not obtained, the motions were deemed denied, and in view of the 2-2 vote, the Second Division stated that "the resolution of the motions for reconsideration should be referred to the Court *en banc.*"[177] As of this writing, the case has not been elevated for consideration of the full Court, but on 27 January 1999, the Second Division "noted without action" the farmers' appeal to elevate their case to the Court *en banc.* According to the resolution, the government lawyers also failed to meet the deadline for filing a motion for reconsideration and that the government "did not anymore join [the farmers]" in their appeal to review the

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[172]Carpio v. the Executive Secretary, G.R. No. 96409, 14 February 1992, 206 SCRA 190.
[173]Ople v. Torres, G.R. No. 127685, 23 July 1998.
[174]Fortich v. Corona, G.R. No. 131457, 17 November 1998, J. Puno, Separate Opinion, at 8.
[175]Reyes v. Zamora, G.R. No. 46732, 5 May 1979, 90 SCRA 92, 112.
[176]Tijam v. Sibonghanoy, G.R. No. 21470, 15 April 1968, 23 SCRA 29, 36.
[177]Fortich v. Corona, G.R. No. 131457, 17 November 1998, at 2.

case.[178] The farmers have since asked the Supreme Court for a full-court deliberation on their appeal for participation and resolution of a case.[179]

The mangled *Fortich* cases tell us that the President of the Philippines cannot enforce his resolution because a contrary and error-laden decision of a subordinate was rendered irreversible by the lapse of the period for appeal. In the end, lands that could not have been legally converted to non-agricultural uses were converted. The farmers, who hold title to the disputed property, were not heard because the Court decided that they did not have sufficient interest in the case to justify their intervention. On the other hand, Governor Fortich was not even a party to the case before the DAR, but he managed to "appeal" the case to the Office of the President, file a petition before the Supreme Court, and ultimately prevail.[180]

IV. A NOTE ON LAND USE CONVERSIONS

The Supreme Court decisions analyzed in this article facilitated the circumvention of the agrarian reform mandate of the Constitution. While the first three cases revolved around the undue expansion of the exemption of lands under the CARL, *Camarines* and *Fortich* draw attention to another way by which the implementation of the program is impeded — local governments are changing the use of land within their jurisdictions. Local government resistance to agrarian reform is often cast as an assertion of autonomy. Governor Fortich, for example, depicted the conflict in Sumilao as a battle for local government autonomy against the undue interference of the national government.[181] Secretary Torres, on the other hand, has invoked the Local Government Code to justify the conversion of lands, despite its effect on the implementation of the agrarian reform mandate.[182] Making matters worse are the attempts to decentralize the implementation of CARL on the pretext that "the people are

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[178] Carlito Pablo, *Sumilao farmers suffer new setback*, PHILIPPINE DAILY INQUIRER (20 February 1999) <http://www.inquirer.net/issues/feb99/feb20/news/news_9.htm>.

[179] *Bukidnon farmers group petitions Supreme Court*, MANILA BULLETIN (4 March 1999) <http://www.mb.com.ph/main/9903/04mm01i.asp>.

[180] The Torres decision was in response to a mere letter by Governor Fortich, who was not even a party to the case before the DAR. *See* JOAQUIN G. BERNAS, *The Sumilao Farmers*, in A LIVING CONSTITUTION: THE RAMOS PRESIDENCY 105-107 (1999).

[181] Susan Berfield, *Promised Land*, ASIAWEEK, 23 October 1998 at 44.

[182] Rep. Act. No. 7160. sec. 20.

familiar with their own economic and social conditions, and that they are in a better position to decide what is best for them."[183] The National Economic Development Authority continues to echo the proposal, saying that "local officials are more qualified to determine the use of land in their jurisdictions."[184]

Pitting autonomy against the programs and concerns of the national government is becoming an unfortunate feature of local autonomy. Many have expressed fears that devolution of powers could encourage the circumvention of the national government's role in redistributing resources and in addressing national concerns of high priority.[185] Projects with high social benefits but low recovery rates get little support from local governments because their development priorities differ from those of the national government.[186] Present DAR Secretary Horacio Morales said that local governments have to be recruited to support agrarian reform through an "internal education campaign."[187]

Local governments favor land conversions because they are a potent source of revenue.[188] According to officials of the DAR, local governments prefer to convert lands because they can impose higher real estate taxes on commercial or industrial estates than on agricultural lands.[189] Socioeconomic Planning Secretary Felipe Medalla complained that the process of requiring land developers to get the approval of the DAR and the Department of Agriculture shows a bias against non-agricultural land use. Betraying a bias for

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[183] These attempts have been viewed as an excuse to allow the local economic and political elite to "use local political and administrative structures in antidemocratic and inegalitarian ways, to the detriment of redistributive agrarian reform and the rural poor." See Reidinger, *supra* note 5, at 175 and 211.

[184] William A. de Lange, Jr., *Land conversion should be left to LGUs – NEDA*, BUSINESS WORLD, 21 September 1998, at 12.

[185] Benjamin V. Cariño, *A Review of the Integrated Area Development (IAD) Projects*, 34 PHILIPPINE REVIEW OF ECONOMICS AND BUSINESS 208 (1997).

[186] *Id.* See also Gregory Bankoff, *History at the Service of the Nation-State*, 2 (4) PUBLIC POLICY 28, 50 (1998). Local government aversion to social justice measures is a feature of Philippine history. See Michael Cullinane, *Implementing the "New Order": The Structure and Supervision of Local Government during the Taft Era*, SOLIDARITY, August 1972, at 9.

[187] Horacio Morales, Agrarian Reform Agenda of the Estrada Administration: Completing the Foundation for Sustainable Development and Democratic Governance in the 21st Century, 1(2) PHILIPPINES INTERNATIONAL REVIEW (1998), <http://www.philsol.nl/pir/Morales-98b.htm>.

[188] Dona A. Sermeno, *Circumventing Agrarian Reform: Cases on Land Conversion*, PULSO, Monograph No. 14, July 1994, at 15.

[189] Earl Warren B. Castillo, *DAR against devolved conversion power*, BUSINESS WORLD, 28 September 1999, at 15.

a purely economic assessment of the value of land, he asked, "Why should we limit the land to agricultural use when we can derive a higher value for it, if it were non-agricultural?"[190] Indeed, local governments have clashed with the DAR on land use issues in Cavite,[191] Iloilo City,[192] Zamboanga City[193] and Rizal Province[194] to name a few. Local governments continuously challenge the CARL by invoking their power to reclassify lands through the town-planning process.[195]

Land use conversion also encourages illegal acts by local government officials. At one point, the President suspended land conversions after receiving reports that local officials were offered large sums of money to undertake or sanction land use conversion.[196]

Land conversion, however, is not simply a disagreement in development priorities between the national and local governments. It is not simply a matter of designating the uses of land that will generate greater

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[190]*See supra* note 151.

[191]The case of the industrialization of Cavite is a classic study on the manner in which agrarian reform has been sacrificed at the altar of industrialization. *See* JOHN P. MCANDREW, URBAN USURPATION: FROM FRIAR ESTATES TO INDUSTRIAL ESTATES IN A PHILIPPINE HINTERLAND (1994), Shiela S. Coronel, *The Killing Fields of Commerce, in* BOSS: 5 CASE STUDIES OF LOCAL POLITICS IN THE PHILIPPINES 3-29 (Jose F. Lacaba, ed. 1995), and Terrence R. George, *Local Governance: People Power in the Provinces?, in* ORGANIZING FOR DEMOCRACY: NGOS, CIVIL SOCIETY, AND THE PHILIPPINE STATE 223, 232-236 (G. Sidney Silliman and Lela Garner Noble, eds.,1998). Other local chief executives have been criticized for their strong-arm approaches to industrialization. *See* Rigoberto Tiglao, *Ranking the Growth Centers, in* FOOKIEN TIMES PHILIPPINES YEARBOOK 185, 192 (1996).

[192]Eduardo L. Jalbuna, *Most Iloilo land to be reclassified covered by agrarian reform law*, BUSINESS WORLD (14-15 November 1997) <http://codex.bworldonline.com/codex.others.html>.

[193]*DAR cannot stop land conversions*, MANILA TIMES, 21 August 1987, at 4.

[194]*Rizal gov't, DAR fight over CARP-tagged land*, PHILIPPINE DAILY INQUIRER, 9 July 1998 at 14.

[195]*See* Alecks P. Pabico, *In search of a CARP-friendly government*, BUSINESS WORLD (16 June 1998) <http://codex.bworldonline.com/codex.others.html>.

[196]Estrada pointed out that when agricultural property is put up for industrial conversion, local officials get a share of the amount involved. Local officials in Bulacan, Cavite and Laguna were identified as those involved in these tainted deals. Martin P. Marfil, *Erap stops land conversions*, PHILIPPINE DAILY INQUIRER (4 January 1999) <http://www.inquirer.net/issues/jan99/jan04/news/news%5F13.htm>. Landowners criticized the President claiming that the decision "violates the property rights of landowners under the Constitution." They suggested that the President crack down on erring local officials instead of suspending land conversions. *See* Earl Warren B. Castillo, *Landowners slam conversion suspension*, BUSINESS WORLD (5 January 1999) <http://www.bworld.com.ph/current/TopStories/TOPSTOR6.HTM>. While this paper was being prepared for publication, the suspension was lifted and the Department of Agrarian Reform issued new rules and regulations on land use conversion. *See* DAR Admin. Order No. 1 (1999), *published in* MALAYA, 31 March 1999, at 8-10 and THE MANILA STANDARD, 31 March 1999, at 8-10.

income. Indiscriminate large-scale land conversion poses serious problems for the country as a whole.

Land conversion has been identified as a cause of the decrease in food production and the increase in the pollution of the environment. The Bureau of Soils and Water Management released a report stating that conversion of irrigated rice land for settlements and industrial use was averaging 2,267 hectares a year. To make up for the 11,337 hectares of irrigated lands that have been converted into non-agricultural uses, some 33,000-55,000 hectares of upland areas must be cultivated in order to replace the losses.[197]

Land conversion also erodes the gains made under the CARL. Peasant organizations claim that the Department of Agrarian Reform has been "canceling certificates of land titles . . . from farmers displaced by massive land conversions."[198] They further stated that more than 20,000 CLTs, 2,500 Emancipation Patents and 320 CLOAs covering more than 70,000 hectares have been canceled or confiscated by the DAR.[199]

The government seems to have turned a blind eye to the threats imposed by massive land conversion, and little effort has been made to stem the land conversion tide. Indeed, even the Department of Agrarian Reform has been a willing party to the conversion of lands. Since 1987, the annual average approval rate for land conversion has been at 202.5 percent. In the first quarter of 1998, 1,575 hectares of lands were converted to non-agricultural uses. This figure already amounted to fifty-nine percent of the total area converted in 1997. In that same period, ninety-one percent of the total applications covering 22,871 hectares were approved. Only 176 applications covering 3,536 hectares were denied.[200] By the end of 1998, a total of 29,233 hectares of agricultural

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[197] *See* Priscila R. Arias, *Farm losses cited in 15 provinces*, MANILA BULLETIN (1 January 1999) <http://www.mb.com.ph/main/9901/12jm01c.asp> and Henrylito D. Tacio, *Shrinking agricultural lands cause food shortage*, TODAY (28 October 1997) <http://www.today.com.ph/>.

[198] *See* Ric Puod, *CARL failed after 10 yrs*, TODAY (11 June 1998) <http://www.today.com.ph/>, and Annie Ruth Sabangan, *Land reform lost under Estrada*, MANILA TIMES, 12 October 1998 at 5.

[199] *Id.*

[200] Presidential Agrarian Reform Council data showed that conversion was rampant in major agricultural regions such as Southern Tagalog, Central Luzon, Southern Mindanao, Western Visayas and Northern Mindanao. Fewer conversions were noted in Caraga, the Cordillera Administrative Region, Eastern Visayas and the Ilocos region. Most of the conversion during the review period took place in Southern Tagalog where the DAR approved a total of 561 applications covering 10,660 hectares of agricultural land. *Conversion of agricultural lands still growing*, BUSINESS WORLD (15 October 1998) <http://bworld.com.ph/current/TheEconomy/istory1.html>.

lands were approved for conversion, which represents a 38.56% increase from the 1997 total of 21,105 hectares.[201]

The Department of Agrarian Reform gripes about the difficulty of proving cases of illegal land conversion.[202] But the problem is not only the illegal conversion of lands, but also the *legal* conversion of lands for the development of golf courses, shopping malls and subdivisions.[203] Thus, the "Agriculture and Fisheries Modernization Act of 1997" which penalizes the "premature conversion" of agricultural lands will not stem the tide of land conversion tide since the government approves virtually every application for conversion.[204] It should also be pointed out that this provision is limited to [a]ny person or juridical entity who knowingly or deliberately causes any

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[201]A total of 2,026 out of 2,219 applications were approved. The number of approved applications rose nationwide with the exception of northern Mindanao. The land conversion applications came mostly from agricultural regions such as Southern Tagalog, Central Luzon and Southern Mindanao. *See Land conversions up in 1998, says DAR*, BUSINESS WORLD (17 February 1999) <http://bworld.net/current/TheEconomy/istory1.html>.

[202]Eduardo L. Jalbuna, *Illegal land reclassification hard to prove, DAR official* admits, BUSINESS WORLD, 18 September 1998, at 11.

[203]Carlos Marque, *Graft charges filed against DAR execs*, TODAY (6 November 1997) <http://www13.asiaon-line.net/philippines/today/default.htm>. *See also*, Howie G. Severino, *Land for a Giant*, *in* SAVING THE EARTH: THE PHILIPPINE EXPERIENCE 133-140 (4th ed. 1997).

[204]*See* Rep. Act No. 8435 (1997). Section 4 of the Act defines "Premature Conversion of Agricultural Land" as "the undertaking of any development activity, the results of which modify or alter the physical characteristics of the agricultural lands to render them suitable for non-agricultural purposes, without an approved order of conversion from the DAR." Section 11 provides that:

> Section 11. *Penalty for Agricultural Inactivity and Premature Conversion.* — Any person or juridical entity who knowingly or deliberately causes any irrigated agricultural lands seven hectares or larger, whether contiguous or not, within the protected areas for agricultural development, as specified under Section 6 in relation to Section 9 of this Act, to lie idle and unproductive for a period exceeding one year, unless due to force majeure, shall be subject to an idle land tax of Three Thousand Pesos (P3,000.00) per hectare per year. In addition, the violator shall be required to put back such lands to productive agricultural use. Should the continued agricultural inactivity, unless due to force majeure, exceed a period of two years, the land shall be subject to escheat proceedings.
>
> Any person found guilty of premature or illegal conversion shall be penalized with imprisonment of two to six years, or a fine equivalent to one hundred percent (100%) of the government's investment cost, or both, at the discretion of the court, and an accessory penalty of forfeiture of the land and any improvement thereon.
>
> In addition, the DAR may impose the following penalties, after determining, in an administrative proceedings, that violation of this law has been committed:
>
> a) Cancellation or withdrawal of the authorization for land use conversion; and
> b) Blacklisting, or automatic disapproval of pending and subsequent conversion applications that they may file with the DAR.

irrigated agricultural lands seven (7) hectares or larger, whether contiguous or not, within the protected areas for agricultural development."[205]

The Department of Finance is presently lobbying Congress to legislate a twenty percent land conversion tax, which could generate an estimated 2.3 billion pesos for the national government. The tax will allegedly discourage the conversion of agricultural lands for "speculative" purposes, and prevent the "undue economic displacement of tenants and farmworkers" and the premature conversion of land. The tax is also being presented as a means to preserve agricultural lands to ensure food security.[206] In truth, however, the Estrada Administration is lobbying for the land conversion tax precisely to generate additional revenue for the government.[207] It cannot be seriously claimed, therefore, that the proposed measure is designed to curtail land conversions.[208]

Existing laws and guidelines already impose safeguards against rampant land conversions. The problem is that the executive branch ignores its own policies and guidelines and continues to approve applications for the conversion of lands to non-agricultural uses.[209]

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[205]Rep. Act No. 8435, (1997), sec. 11.

[206] Two bills now pending in Congress propose a tax rate of ten percent to fifteen percent unlike the twenty percent tax proposed by the Department of Finance. *See Land conversion tax to generate PhP2.3B*, BUSINESS WORLD (8 February 1999), <http://bworld.net/current/TopStories/TOPBRIEF.HTM>.

[207]The land conversion tax is one of six revenue-generating measures submitted to Congress by the Estrada Administration. *See* Doris C. Dumlao, *Budget deficit seen to hit P100B*, PHILIPPINE DAILY INQUIRER (25 February 1999) <http://www.inquirer.net/issues/feb99/feb25/business/bus_main.htm>, and Doris C. Dumlao, *Gov't vows to contain budget deficit to P68B*, PHILIPPINE DAILY INQUIRER (10 March 1999) <http://www.inquirer.net/issues/mar99/mar10/business/bus_4.htm>. As of the present, these measures are not among the priorities of Congress. *See* Butch Fernandez, *Solons nix new taxes for pork barrel, budget deficit*, TODAY (1 September 1998) <http://www.today.com.ph/> and J. Cadacio, *House to set aside Erap's tax measures*, TODAY (17 September 1998) <http://www.today.com.ph/>.

[208]There are other bills in Congress seeking to regulate the conversion of agricultural lands to non-agricultural uses. The House of Representatives Committee on Agrarian Reform approved the consolidation of House Bill Nos. 1487, 136, 1097, 1383, and 602 authored by Representatives Pacifico Fajardo, Narciso Monfort, Oscar Rodriguez, and Heherson Alvarez, respectively. *See Bills on regulating land conversion consolidated*, House of Representatives, Committee News, Volume VII, Issue 25, 4 February 1999, <http://members.xoom.com/philhouse/com0204.htm>.

[209] This is not to suggest that the existing guidelines can totally prevent illegal land use conversions. The Department of Agrarian Reform has noted several schemes through which landowners are able to circumvent the laws on land use conversion. *See* Jemileen U. Nuqui, *DAR wants stop to conversion of agri lands*, BUSINESS WORLD (18 September 1996) <http://codex.bworldonline.com/codex.others.html>.

V. CONCLUSION

> *The Supreme Court of the Philippines is, under the Constitution, the last bulwark to which the Filipino people may repair to obtain relief for their grievances or protection of their rights when these are trampled upon, and if the people lose their confidence in the honesty and integrity of the members of this Court and believe that they cannot expect justice therefrom, they might be driven to take the law into their own hands, and disorder and perhaps chaos might be the result.*[210]

> *[T]he real essence of justice does not emanate from quibblings over patchwork legal technicality. It proceeds from the spirit's gut consciousness of the dynamic role of law as a brick in the ultimate development of the social edifice.*[211]

In the last few years, the Supreme Court has been criticized for allegedly meddling in the government's economic programs. Some of its decisions[212] have been criticized as setbacks to big business that could impede the inflow of foreign investments.[213] Indeed, it has been said that the Supreme Court's public relations crisis[214] was managed by politicians and public officials to intimidate the Court into restraining the use of its powers, particularly in cases involving economic development.[215]

In its own defense, the Supreme Court points out that it is mandated "to be the guardian not only of the people's political rights, but their economic rights as well."[216] As Professor Pacifico Agabin noted, "the Court is now

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[210] *In re* Vicente Sotto, 82 Phil. 595, 602 (1949).

[211] Obosa v. Court of Appeals, G.R. No. 114350, 16 January 16, 1997, 266 SCRA 281, 304 citing Frivaldo v. COMELEC, G.R. Nol 120295, 257 SCRA 727, 772.

[212] Notably, Garcia v. Board of Investments, G.R. No. 92024, 9 November 1990, 191 SCRA 288 (1990), PLDT v. Eastern Telecommunications Phils., Inc., G.R. No. 94374, 27 August 1992, 213 SCRA 16 (1992), Manila Prince Hotel v. Government Service Insurance System, G.R. No. 122156, 3 February 1997, 267 SCRA and Tatad v. Secretary of the Department of Energy and Secretary of Department of Finance, G.R. No. 124360, 5 November 1997, 281 SCRA 330.

[213] Sheila Oviedo, *Judicial review: Court's bounden duty*, TODAY, 5 December 1997.

[214] *See* Shiela S. Coronel, *The Dean's December*, I, THE INVESTIGATIVE REPORTING MAGAZINE, vol. III, no. 2, April -June 1997 at 6-12.

[215] JAN WILLEM BAKKER, THE PHILIPPINE JUSTICE SYSTEM: THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY AND HUMAN RIGHTS FROM 1986 TILL 1987 at 143 (1997). *See also*, Sheila S. Coronel, *Questions for the Chief*, BUSINESS WORLD (23 May 1997) <http://codex.bworldonline.com/codex.others.html>.

[216] Tatad v. Secretary, G.R. No. 124360, 5 November 1997, 281 SCRA 330, 370.

cognizant of its role to intervene in economic policy to enforce constitutional provisions."[217] It has a duty to enforce the economic, social, and educational policies listed in the Constitution and to review economic measures implementing policy.[218]

Yet the decisions examined in this article reveal a Court which is impeding the agrarian reform program. In every case examined here, the Supreme Court could have ruled in favor of the farmer, but instead, it acted as an agent of commerce and industry. To say that the Supreme Court contributed significantly to the failure of the Comprehensive Agrarian Reform Law would be a generous understatement.

Crippled at birth and by amendment, constricted by the Supreme Court, and facing challenges from local and national fronts, CARL is unlikely to succeed even with its new lease on life. A new chief justice has taken over the helm of the Supreme Court and vows to lead "an activist court."[219] In the last few years, however, the political climate has become even more hostile towards agrarian reform. The entire program has been vilified as an affront to the perceived imperatives of industry and globalization.[220] The Estrada administration, which received its mandate by running largely on promises of improving the lot of the poor, has already sanctioned schemes to circumvent the actual distribution of lands under the CARL.[221] Estrada's executive secretary has also developed a taste for land conversions.[222]

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[217]Pacifico A. Agabin, *Judicial Review of Economic Policy Under the 1987 Constitution*, 72 PHIL. L.J. 167, 187 (1997).

[218]*Id.* at 193-194.

[219]Donna S. Cueto, *Davide's aim: An 'activist' Court*, PHILIPPINE DAILY INQUIRER (12 December 1998) <http://www.inquirer.net/issues/dec98/dec12/news/news11.htm>.

[220]*See* Ricardo Basilio Reyes, *Whither Agrarian Reform*, *in* THE STATE AND THE MARKET: ESSAYS ON A SOCIALLY ORIENTED PHILIPPINE ECONOMY 190 (Filomeno S. Sta. Ana III, ed. 1998).

[221]The DAR has adapted the use of joint-venture agreements with farm workers as its model in the distribution of commercial farms, a system devised by former Marcos cronies. In lieu of the distribution of lands, the DAR will combine a corporation and a farmers' cooperative into a "joint economic enterprise for productivity" or JEEP. *See* Carlito Pablo, *Jeep, courtesy of Danding, is new model for land reform*, PHILIPPINE DAILY INQUIRER, 7 January 1998 at 5. The scheme is becoming an attractive option for owners of commercial farms. *See* Carla P. Gomez, *Marcos crony to adopt Cojuangco land reform scheme*, PHILIPPINE DAILY INQUIRER (15 February 1999) <http://www.inquirer.net/issues/feb99/feb15/news/news_10.htm> and Gilbert Bayoran & Jaime Espina, *Benedicto's land into joint venture*, TODAY (13 February 1999) <http://www.today.com.ph/>. The DAR is now also considering the use of the World Bank's "market-assisted land reform". *See* Jowel Canuday, *DAR to try World Bank land reform formula*, PHILIPPINE DAILY INQUIRER (19 March 1999) <http://www.inquirer.net/issues/mar99/mar19/news/news_9.htm> and Jennifer C. Franco, *Is*

The CARL has suffered one setback after another in the hands of the same Court, which was once so determined to see it succeed. A decade later, the Supreme Court impressed the CARL with its imprimatur and unleashed it with a roar. Ten years later, the program has been muzzled by poorly reasoned decisions, leaving it scarcely able to breathe. The next ten years should provide an opportunity for the Supreme Court to interpret the CARL properly. If the Supreme Court is still anxious to see the goal of agrarian reform achieved,[223] the next ten years should make it obvious that the key to the realization of the goals of the program, in significant measure, lies in its hands.

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agrarian reform on the way out?, PHILIPPINE DAILY INQUIRER (7 March 1999) <http://www.inquirer.net/issues/mar99/mar07/features/fea_main.htm>.

[222]Annie Ruth C. Sabangan, *Palace OKs conversion of riceland*, PHILIPPINE DAILY INQUIRER (10 September 1998) <http://www.portalinc.com/manilatimes/news/news091098c.html>. Present Executive Secretary Ranaldo Zamora's rulings on land cases have already earned him the epithet of "another Ruben Torres". *See* Carlito Pablo and Juliet L. Javellana, *2 Cabinet execs gird for battle vs Zamora*, PHILIPPINE DAILY INQUIRER, 3 September 1998 at 1.

[223]Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, G.R. Nos. 78742, 79310, 79744 and 79777, 14 July 1989, 75 SCRA 343, 387-88.