



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

**SECRETARY OF THE
 DEPARTMENT OF
 AGRARIAN REFORM,**
Petitioner,

G.R. No. 204905

Present:

- versus -

GESMUNDO, C.J.,
 PERLAS-BERNABE,*
 CAGUIOA,
 CARANDANG, and
 GAERLAN, JJ.

DIANA H. MENDOZA,
Respondent.

Promulgated:

JUL 14 2021 *mff/ab*

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DECISION

GAERLAN, J.:

Before this Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated August 15, 2012 and Resolution³ dated December 3, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 122463. The dispositive portion of the challenged CA Decision reads:

ACCORDINGLY, the case is remanded back to the Regional Director of the Department of Agrarian Reform for determination once and for all, of the identity of the person who executed the voluntary offer to sell, his authority, if any, its effects on the rights of the heirs of Clifford Hawkins, the date when the latter died, and his relationship with petitioner who claims to be his heir. After due proceedings, the Regional Director is directed to render a new decision on petitioner's application for retention.

SO ORDERED.⁴

* Designated additional Member per Raffle dated July 5, 2021.

¹ *Rollo*, pp. 10-19.

² *Id.* at 22-30; penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court) and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Rodil V. Zalameda (now a Member of this Court).

³ *Id.* at 31.

⁴ *Id.* at 29.

Facts

Clifford Hawkins (Clifford) is the registered owner of two parcels of agricultural land located in Piat, Cagayan and covered by Original Certificate of Title (OCT) Nos. O-106 and O-107.⁵ Sometime in 2001, said lands were placed within the coverage of the government's Comprehensive Agrarian Reform Program (CARP) through the Voluntary Offer to Sell (VOS) scheme⁶ under Republic Act (R.A.) No. 6657.⁷

On September 25, 2006, Diana H. Mendoza (respondent), filed before the Department of Agrarian Reform (DAR) Municipal Office an application for retention of several lots covered by OCT Nos. O-106 and O-107 that were already awarded to several farmer-beneficiaries.⁸ The Municipal Agrarian Reform Officer (MARO) conducted an ocular inspection and reported that the landholdings involved were tenanted. The MARO recommended the approval of respondent's application on the ground that she was not able to exercise her right of retention under Presidential Decree (P.D.) No. 27,⁹ subject to the condition that the tenants be allowed to remain on the land.¹⁰

On June 13, 2007, the DAR Provincial Office of Cagayan, through its Provincial Agrarian Reform Officer (PARO), issued a Resolution¹¹ recommending the dismissal of respondent's application with prejudice.¹² Cited as reasons were respondent's failure to submit the statutorily mandated documentary requirements and the implied waiver of the registered owner, Clifford, of his right of retention as stated under Section 6, Article II of DAR Administrative Order (A.O.) No. 2 series of 2003. The PARO noted that the subject lands were subject of a VOS sometime in 2001 without the landowner's manifestation to exercise his right of retention simultaneous to the filing of such VOS, thereby perpetually foreclosing respondent's right to retain the subject landholdings.¹³

In an Order¹⁴ dated May 28, 2008, DAR Regional Office No. 02, adopted in *toto* the recommendation of the PARO and denied respondent's application for retention. Agreeing with the PARO, the DAR Regional Director held that Clifford's act in making the offer of placing the subject farmlands under the

⁵ Id., at 51-54.

⁶ Id. at 39.

⁷ *Comprehensive Agrarian Reform Law of 1988*.

⁸ Id. at 23.

⁹ Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor, (1972).

¹⁰ Id. at 39.

¹¹ Id. at 55-58; penned by OIC-Provincial Agrarian Reform Officer Alfredo B. Lorenzo, Jr.

¹² Id. at 58.

¹³ Id. at 57-58.

¹⁴ Id. at 59-61; penned by OIC Regional Director Casiano G. Eclar, Jr., CESO IV.

coverage of the agrarian program without manifesting his intention to exercise the right of retention upon filing of the application for VOS constitutes an implied waiver of his right of retention.¹⁵

Respondent filed an appeal before the DAR. On January 25, 2011, then DAR Secretary Virgilio R. Delos Reyes (DAR Secretary Delos Reyes) issued an Order¹⁶ denying respondent's appeal. Apart from sustaining the finding of the PARO and the Regional Director on the lack of intention from Clifford to exercise his right of retention, DAR Secretary Delos Reyes also noted that respondent failed to show her purported right over the subject lands. Respondent did not present any evidence to prove her relationship to Clifford. Neither was there any proof of Clifford's death or respondent's right to inherit Clifford's estate. In sum, DAR Secretary Delos Reyes held that respondent failed to show that she is entitled to her application for retention.¹⁷ Respondent's motion for reconsideration was also denied by the DAR Secretary.¹⁸

Unrelenting, respondent elevated the case before the CA. On August 15, 2012, the CA rendered the challenged Decision, the dispositive portion of which was herein earlier quoted.

Ruling in favor of the respondent, the CA held that respondent is not precluded from presenting evidence of her birth certificate and her parents' death certificates to prove her relationship with Clifford whom respondent claims to be her father.¹⁹ The CA also delved on the supposed "mystery" about the VOS of the subject lands, which according to respondent was executed 17 years after the death of her purported father, Clifford. According to the CA, the issue of who actually executed the VOS is crucial to a final and just resolution of respondent's application for retention.²⁰ The CA ultimately ordered that the case be remanded to the DAR Regional Director for the determination of the validity of the VOS and its effects to the rights of Clifford's heirs, including respondent who claims to be Clifford's daughter.²¹

The DAR Secretary (petitioner), through the Office of the Solicitor General (OSG), moved for reconsideration²² but to no avail.²³

¹⁵ Id. at 61.

¹⁶ Id. at 39-43.

¹⁷ Id. at 41-42.

¹⁸ Id. at 62-66.

¹⁹ Id. at 26-27.

²⁰ Id. at 27.

²¹ Id.

²² Id. at 32-38.

²³ Id. at 31.

Hence, this petition under Rule 45 of the Rules of Court raising the lone issue of:

WHETHER OR NOT THE DENIAL OF RESPONDENT'S APPLICATION FOR RETENTION WAS PURSUANT TO SECTION 6, [R.A.] NO. 6657 AND ESTABLISHED JURISPRUDENCE.²⁴

In gist, the OSG argues that determination of compliance with the requirements of retention under R.A. No. 6657 falls within the technical expertise of herein petitioner. Here, the denial of respondent's application was based on her failure to submit the mandatorily required documents. Thus, petitioner could not be faulted in rendering decision against the respondent. Moreover, DAR Secretary Delos Reyes correctly ruled that respondent cannot exercise the right of retention over the subject parcels of land because she failed to prove that Clifford, the registered owner, manifested during his lifetime his intention to exercise his right of retention prior to August 23, 1990, in accordance with Section 3.3 of DAR A.O. No. 2, series of 2003.²⁵ The OSG asserts that the exercise of right of retention is personal to the landowner; thus, respondent, may not exercise such right in her own right. The only way respondent may exercise the right of retention over the subject lands was if, during the lifetime of her purported father, Clifford, he manifested his intention to exercise such right. As found by the PARO, the DAR Regional Director, and petitioner DAR Secretary, no such intention was communicated or manifested by Clifford to the DAR at the time of the completion of the VOS. Neither was respondent able to show that her father intended to exercise his right of retention. The OSG further argues that respondent, in invoking her alleged right of retention, has impliedly recognized the regularity and validity of the government's acquisition of the subject lands through the VOS scheme. If indeed the VOS was not instituted by Clifford's heirs, respondent should have, at the earliest possible stance, caused for its nullification and cancellation.²⁶

In her comment,²⁷ respondent invokes the constitutionally enshrined rights to property, due process, and equal protection of the laws. She asserts that denial by the DAR of her application for retention on grounds of technicality was violative of the aforesaid rights. To be exact, respondent argues that she was not able to submit documentary proof of her relationship to Clifford and his death because she was not notified by the DAR to submit the same. Respondent also assails the validity of the VOS allegedly executed by her father sometime in 2001. She insists that her father could not have done such act because he already

²⁴ Id. at 14.

²⁵ 2003 Rules and Procedures Governing Landowner Retention Rights.

²⁶ *Rollo*, pp. 14-17.

²⁷ Id. at 86-97.

died on May 24, 1984. Thus, he could not have waived his right of retention. Neither could her father exercised his right of retention because there was no notice of coverage sent to him or to respondent by the DAR. In sum, respondent asserts that a landowner cannot be denied the right of retention even through estoppel or waiver.²⁸

The Court's Ruling

The petition is meritorious.

At the onset, a reading of the PARO Resolution²⁹ and the Orders³⁰ of the DAR Regional Director and Secretary reveals that the validity of the VOS over the subject lands was never an issue in the proceedings before the DAR. Respondent raised such issue only in the CA when she filed her petition for review.³¹ Settled is the rule that points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule.³² Verily, the CA's conclusion that the DAR "invariably evaded to pass upon the issue of who actually executed the VOS" was indubitably without any basis.³³

Delving now on the crux of the present petition, We sustain the ruling of the DAR in denying respondent's application for retention.

The right of retention is a constitutionally guaranteed right, which is subject to qualification by the legislature. It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner.³⁴

Section 4, Article XIII of the 1987 Constitution states:

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. **To this end, the State shall encourage and undertake the just distribution of all agricultural**

²⁸ Id. at 87-95.

²⁹ Id. at 55-58.

³⁰ Id. at 59-61, 39-43, 62-66.

³¹ Id. at 25.

³² *Saguinsin v. Liban, et al.*, 789 Phil. 374, 385 (2016).

³³ *Rollo*, p. 28.

³⁴ *Department of Agrarian Reform, et al. v. Carriedo*, 778 Phil. 656, 671-672 (2016).

lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied)

Corollary thereto is Section 6 of R.A. No. 6657, which reads:

Section 6. *Retention Limits.* — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. x x x

To implement R.A. No. 6657, petitioner issued, among others, DAR A.O. No. 2 series of 2003. Section 3, Article II of DAR A.O. No. 2 series of 2003 enumerates who may apply for retention, to *wit*:

SECTION 3. *Who May Apply for Retention*

3.1. Any person, natural or juridical, who **owns** agricultural lands with an aggregate area of more than five (5) hectares may apply for retention area. However, a landowner who exercised his right of retention under PD 27 may no longer exercise the same right under RA 6657. Should he opt to retain five (5) hectares in his other agricultural lands, the seven (7) hectares previously retained by him shall be immediately placed under CARP coverage.

3.2. A **landowner** who owns five (5) hectares or less, of land which are not yet subject of coverage based on the schedule of implementation provided in Section 7 of RA 6657, may also file an application for retention and a Certification of Retention shall be issued in his favor.

3.3. The right of retention of a **deceased landowner** may be exercised by his heirs **provided that the heirs must first show proof that the decedent landowner had manifested during his lifetime his intention to exercise his right of retention prior to 23 August 1990** (finality of the Supreme Court ruling in the case of *Association of Small Landowners in the Philippines Incorporated versus the Honorable Secretary of Agrarian Reform*). (Emphasis and underscoring supplied)

In the present case, a perusal of respondent's application for retention shows that the basis for such application is unclear. Notably, respondent filed the application in her name, stating that she is the **owner** of the subject lands.³⁵

³⁵ *Rollo*, p. 44.

Nonetheless, the material documents³⁶ attached to her application all indicate that the lands are registered in the name of Clifford, *viz.*:

1. Certification from the Municipal Assessor's Office Relative to the Real Properties Declared **in the Name of Clifford Hawkins**;³⁷
2. Declaration of Real Property of **Clifford Hawkins**;³⁸ and
3. Certified Xerox Copy of OCT No. 0-106 and OCT No. 0-107 **in the name of Clifford Hawkins**.³⁹

Records are likewise bereft of proof that respondent succeeded to Clifford's rights as landowner of the subject lands. Thus, **the above documents are insufficient to support respondent's application for retention as landowner.** Neither do said documents constitute sufficient basis to sustain respondent's application as one filed by an heir of a deceased landowner.

On this score, the CA was correct when it held that respondent was not precluded to present evidence to prove her relationship with Clifford. In fact, Section 3.3, Article II of DAR A.O. No. 2 series of 2003 herein earlier quoted explicitly provides that before the heirs of a deceased landowner may exercise the latter's right of retention, such heirs must first show proof that **the decedent landowner had manifested during his lifetime his intention to exercise his right of retention prior to August 23, 1990. Clearly, respondent must not only establish her right as Clifford's heir, but she must also prove: (1) Clifford's death; (2) his manifestation during his lifetime of the intention to exercise his right of intention; and (3) the fact that such manifestation was done before August 23, 1990.** This burden on the part of respondent is conformably with the basic rule in this jurisdiction that a party claiming a right granted or created by law must prove his or her claim by competent evidence.⁴⁰ Unfortunately, respondent failed to rectify the deficiency in her application even when she already had the opportunity to do so before the DAR Regional Director and the DAR Secretary. It was only when she filed her appeal with the CA that she submitted her birth certificate and Clifford's death certificate. Such belated submission not only violates due process and fair play but also – and more importantly – undermines the jurisdiction of the DAR to determine, in the exercise of its primary jurisdiction, the entitlement of an applicant for retention.

³⁶ Id. at 56.

³⁷ Id. at 46.

³⁸ Id. at 47-50.

³⁹ Id. at 51-54.

⁴⁰ See *Heirs of Arcadio Castro, Sr. v. Lozada, et al.*, 693 Phil. 431, 443 (2012).

Further, as found by the DAR, the lands in the present case were already made subject of a VOS in 2001, without any manifestation from the landowner of an intention to exercise the right of retention. Under the VOS scheme, the right of retention shall be exercised at the time the land is offered for sale. The offer should specify and segregate the portion covered by VOS and the portion applied for retention; otherwise, the landowner shall be deemed to have waived his right of retention over the subject property.⁴¹ In any event, assuming *arguendo* that respondent's purported father, Clifford, indeed died in 1984, such fact is not sufficient to cancel or nullify the VOS. For one, We have already held that it is not necessary that the voluntary offeror of the lot be the registered owner thereof.⁴² Also, respondent has not shown proof that she acquired the subject lands upon Clifford's death in 1984 and before the VOS in 2001. Neither had she questioned or objected to the said VOS at the earliest opportunity before the DAR. The DAR therefore cannot be faulted for resolving respondent's application for retention solely on the basis of her submitted documents. Conversely, the CA erred in sustaining respondent's belated arguments and remanding the case to the DAR. Besides, even if the case is remanded to the DAR, still, the issue on the alleged nullity of the VOS over the subject lands is immaterial in the proceedings for respondent's application for retention.

To reiterate, even without the disputed VOS, respondent, as purported heir of Clifford, is mandated to prove that Clifford was qualified to exercise his right of retention under P.D. No. 27 or R.A. No. 6657 but had failed to do so,⁴³ and that he had manifested, during his lifetime and before August 23, 1990, his intention to exercise such right of retention.⁴⁴ Respondent having failed to discharge this burden, the DAR correctly denied her application for retention.

In sum, **We sustain the DAR's denial of respondent's application for retention because of her failure to clearly and sufficiently show the basis of her alleged retention right.** Be that as it may, respondent is not precluded to assail the transfer (if already effected) of the subject lands in favor of the farmer-beneficiaries on the ground of the alleged nullity of the VOS in an appropriate proceeding initiated for that purpose, more so if she could establish that she acquired ownership of the lands before the execution of the VOS. In that case, respondent's right to apply for retention is no longer predicated on the right of an heir of a deceased landowner but on her own right as the landowner herself in accordance with existing DAR guidelines.

⁴¹ See Secs. 4 and 7 (d), Article II of DAR A.O. No. 5 series of 2000 and Sec. 6.5, Article II of DAR A.O. No. 2 series of 2003.

⁴² *GSIS v. Court of Appeals*, 427 Phil. 281, 290 (2002).

⁴³ See III, Par. A of DAR A.O. No. 11 series of 1990; Sec. 3, Article II of DAR A.O. No. 5 series of 2000; and Sec. 3.1, Art. II of DAR A.O. No. 2 series of 2003.

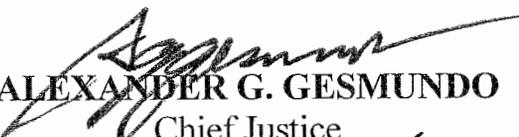
⁴⁴ See B, Par. 3, DAR A.O. No. 4 series of 1991; Sec. 3 (b) DAR A.O. No. 5 series of 2000; Sec. 3.3, Art. II DAR A.O. No. 2 series of 2003.

WHEREFORE, the petition is **GRANTED**. The assailed Decision dated August 15, 2012 and Resolution dated December 3, 2012 of the Court of Appeals in CA-G.R. SP No. 122463 are **REVERSED and SET ASIDE**. The Orders dated January 25, 2011 and November 11, 2011 of the Secretary of the Department of Agrarian Reform are **REINSTATED**.

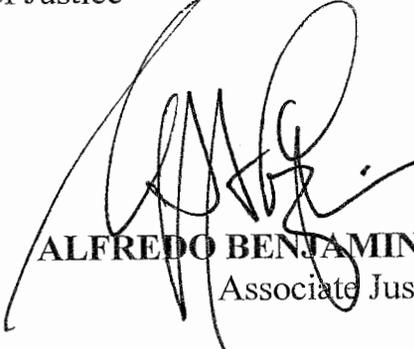
SO ORDERED.

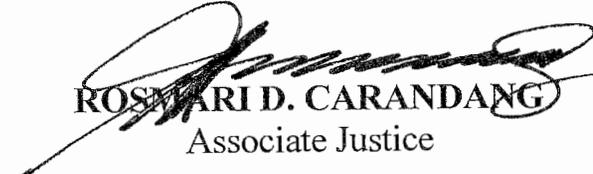

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

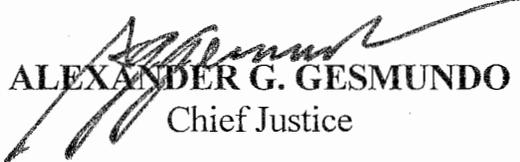

ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice