G.R. No. 204232 — THE LOCAL GOVERNMENT UNIT OF STA. CRUZ, DAVAO DEL SUR, as represented by its Municipal Mayor ATTY. JOEL RAY L. LOPEZ, *petitioner, versus* **PROVINCIAL OFFICE OF THE DEPARTMENT OF AGRARIAN REFORM, DIGOS CITY, DAVAO DEL SUR,** *respondent.*

Promulgated:

16 OCT 2019

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SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

Before the Court is a Petition for Injunction with Application for Permanent Restraining Order filed by petitioner Local Government Unit (LGU) of Sta. Cruz, Davao del Sur (petitioner LGU of Sta. Cruz) against respondent Provincial Office of the Department of Agrarian Reform (DAR), Digos City, Davao del Sur (respondent DAR). The instant Petition seeks to prevent respondent DAR from subjecting the Tan Kim Kee Estate (subject property) under Republic Act No. (R.A.) 6657 or the Comprehensive Agrarian Reform Law (CARL).

The subject property was designated by petitioner LGU of Sta. Cruz as an industrial park through the latter's land use plan and zoning ordinance in 1991. In 1994, an application for conversion of the subject property for commercial/industrial uses was filed by Braulio A. Lim (Lim), *et al.*, the landowners of the subject property. On November 8, 1994, respondent DAR, through then Secretary Ernesto Garilao, issued an Order approving the application for conversion, but with the condition that the conversion plan would be implemented within five years from the conversion in 1994. Upon application of Lim, *et al.*, respondent DAR, in its Order dated October 15, 1999, extended the five-year period for a non-extendible period of two years. Before the lapse of the said period, or on March 14, 2001, Lim, *et al.* filed an application for the exclusion of the subject property from the coverage of CARL on the ground that the land was actually, exclusively, and directly used for cattle raising.

Holding that the condition on the conversion of the subject property from agricultural land to industrial land within the prescribed period was not complied with, respondent DAR, in 2012, placed the subject property under the coverage of the Comprehensive Agrarian Reform Program (CARP) by issuing and publishing several Notices of Coverage.[1]

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[1] *Rollo*, pp. 119-122.

Subsequently, an Order (DARCO Order No. Exc-1301-027, s. 2013)[2] dated January 3, 2013 was issued by respondent DAR, through then DAR Secretary Virgilio R. delos Reyes, denying the application for exclusion filed by Lim, *et al.* in 2011.

On purely procedural grounds, the instant Petition merits outright dismissal.

By filing the instant Petition, petitioner LGU of Sta. Cruz directly seeks recourse from the Court to reverse respondent DAR's decision to place the subject property under the coverage of the CARP. In this regard, Section 54 of CARL provides which court has jurisdiction to hear, try, and decide this cause of action, to wit:

> SEC. 54. *Certiorari.* – **Any decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the *Court of Appeals by certiorari*** except as otherwise provided in this Act within fifteen (15) days from the receipt of a copy thereof.
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> The findings of fact of the DAR shall be final and conclusive if based on substantial evidence.[3]

As pronounced by the Court in *Department of Agrarian Reform v. Trinidad Valley Realty & Development Corp., et al.*,[4] "Section 54 of RA 6657 leaves no room for doubt that decisions, orders, awards or rulings of the DAR may be brought to the CA by *certiorari*."[5]

Hence, considering that the proper remedy as regards rulings of the DAR pertaining to the application, implementation, enforcement, or interpretation of the CARL is to file a *certiorari* petition before the Court of Appeals (CA), I agree with the *ponencia*'s holding that petitioner LGU of Sta. Cruz resorted to an improper remedy in filing the instant Petition directly before the Court. To be sure, the Court has no jurisdiction to hear the instant Petition.

Even assuming *arguendo* that the Court has concurrent jurisdiction with the CA in hearing the instant Petition, the doctrine of hierarchy of courts, as correctly held by the *ponencia*, precludes the Court from taking cognizance of the instant Petition. As unanimously held by the Court in *Gios-Samar, Inc. v. Department of Transportation and Communication*,[6] strict observance of the doctrine of hierarchy of courts should not be a matter of mere policy. In this regard, I agree with the *ponencia* that there is no special and important reason to convince this Court to assume jurisdiction over this Petition.[7]

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2 Id. at 123-136.
3 Emphasis and underscoring supplied.
4 726 Phil. 419 (2014).
5 Id. at 434.
6 G.R. No. 217158, March 12, 2019.
7 *Ponencia*, p. 5.

Moreover, I believe that the instant Petition fails to state any cause of action as the instant Petition was not filed by the real party-in-interest. Under Rule 3, Section 2 of the Rules of Court, every action must be prosecuted or defended in the name of the real party-in-interest.

It is not denied that the petitioner LGU of Sta. Cruz is not the registered owner of the subject property. **The lots comprising the subject property are owned by private landowners, *i.e.*, Lim, *et al.*, and *not* by petitioner LGU of Sta. Cruz**.

The Court has held that "a *real party in interest* is a party who would be benefited or injured by the judgment or is the party entitled to the avails of the suit. ***Real interest* means a *present substantial* interest, as distinguished from *a mere expectancy or a future, contingent, subordinate or consequential interest*.**"[8]

In filing the instant Petition, petitioner LGU of Sta. Cruz argues that it would be for the future benefit of the LGU if the area would be converted for industrial and other related usages.[9] This is a mere expectancy or a future, contingent, subordinate or consequential interest. Hence, the lack of any real party-in-interest warrants the dismissal of the instant Petition.

Nevertheless, even if the Court decides to go beyond the aforementioned procedural hurdles, a ruling on the substantive merits of the instant Petition leads to the same result — the denial of the instant Petition.

It has already been settled with definitiveness that after the passage of R.A. 6657, agricultural lands, though reclassified by LGUs, have to undergo the process of DAR conversion before such lands may be excluded from the coverage of CARP. As correctly pointed out by the *ponencia*, the Court already definitively held in *Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform* (*Chamber of Real Estate and Builders Associations, Inc.)*,[10] that:

> x x x In *Ros v. Department of Agrarian Reform*, this Court has enunciated that **after the passage of Republic Act No. 6657, agricultural lands, though reclassified, have to go through the process of conversion, jurisdiction over which is vested in the DAR**. However, agricultural lands, which are already reclassified before the effectivity of Republic Act No. 6657 which is 15 June 1988, are exempted from conversion. It bears stressing that the said date of effectivity of Republic Act No. 6657 served as the cut-off period for automatic reclassifications or rezoning of agricultural lands that no longer require any DAR conversion clearance or authority. **It necessarily follows that any reclassification made thereafter can be the subject of DAR's conversion authority**. Having recognized the DAR's conversion authority over lands reclassified after 15 June 1988, it can no longer be argued that the Secretary of Agrarian Reform

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8 *Hon. Fortich v. Hon. Corona*, 352 Phil. 461, 484 (1998); emphasis supplied, citation omitted.
9 *Rollo*, p. 5.
10 635 Phil. 283 (2010).

was wrongfully given the authority and power to include "lands not reclassified as residential, commercial, industrial or other non-agricultural uses before 15 June 1988" in the definition of agricultural lands. Such inclusion does not unduly expand or enlarge the definition of agricultural lands; instead, it made clear what are the lands that can be the subject of DAR's conversion authority, thus, serving the very purpose of the land use conversion provisions of Republic Act No. 6657.

x x x x

Nevertheless, emphasis must be given to the fact that DAR's conversion authority can only be exercised after the effectivity of Republic Act No. 6657 on 15 June 1988. The said date served as the cut-off period for automatic reclassification or rezoning of agricultural lands that no longer require any DAR conversion clearance or authority. **Thereafter, reclassification of agricultural lands is already subject to DAR's conversion authority. Reclassification alone will not suffice to use the agricultural lands for other purposes. Conversion is needed to change the current use of reclassified agricultural lands**.

x x x x

x x x **Reclassification alone will not suffice and does not automatically allow the landowner to change its use. It must still undergo conversion process before the landowner can use such agricultural lands for such purpose. Reclassification of agricultural lands is one thing, conversion is another. Agricultural lands that are reclassified to non-agricultural uses do not *ipso facto* allow the landowner thereof to use the same for such purpose**. Stated differently, despite having reclassified into school sites, the landowner of such reclassified agricultural lands must apply for conversion before the DAR in order to use the same for the said purpose.[11]

As explained in *Chamber of Real Estate and Builders Associations, Inc.*, Executive Order No. (E.O.) 129-A, otherwise known as The Reorganization Act of the Department of Agrarian Reform, was issued in 1987 authorizing the DAR to approve or disapprove the conversion, restructuring or readjustment of agricultural lands into non-agricultural uses.[12]

Upon the passage of R.A. 7160, otherwise known as the Local Government Code of 1991, LGUs were granted the power to reclassify agricultural lands subject to certain conditions.[13] However, this power of

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[11] Id. at 307-311; emphasis and underscoring supplied, citations omitted.

[12] E.O. 129-A, Sec. 4(j).

[13] R.A. 7160, SEC. 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

LGUs to reclassify agricultural land for non-agricultural purposes does not mean that DAR conversion can be dispensed with in order to exclude land beyond the coverage of CARP. That was expressly addressed and explained by the Court in *Chamber of Real Estate and Builders Associations, Inc.*, thus: "[t]he aforequoted provisions of law show that the power of the LGUs to reclassify agricultural lands is not absolute. The authority of the DAR to approve conversion of agricultural lands covered by Republic Act No. 6657 to non-agricultural uses has been validly recognized by said Section 20 of Republic Act No. 7160 by explicitly providing therein that, 'nothing in this section shall be construed as repealing or modifying in any manner the provisions of Republic Act No. 6657.'"[14]

Hence, the rule mandating that "the reclassification of agricultural lands by LGUs shall be subject to the requirements of land use conversion procedure or that DAR's approval or clearance must be secured to effect reclassification, [does] not violate the autonomy of the LGUs"[15] is settled.

It has been espoused that in *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*,[16] the power of the LGU to convert or reclassify lands is not subject to the approval of the DAR. However, this case is not controlling as the subject property in the said case was reclassified to non-agricultural land by the LGU, *i.e.*, Municipal Council of Carmona, *prior to the passage of R.A. 6657*.

Prior to the effectivity of R.A. 6657 on June 15, 1988, a conversion clearance from DAR was not necessary with respect to agricultural lands reclassified by the LGU. Under DAR Administrative Order No. (A.O.) 1, series of 1990,[17] the DAR clarified that agricultural lands classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board and its preceding authorities *prior to June 15, 1988* were expressly excluded from the coverage of CARP.[18]

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hundred fifty-seven (R.A. No. 6657), otherwise known as "The Comprehensive Agrarian Reform Law," shall not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.

(b) The President may, when public interest so requires and upon recommendation of the National Economic and Development Authority, authorize a city or municipality to reclassify lands in excess of the limits set in the next preceding paragraph.

(c) The local government units shall, in conformity with existing laws, continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary and dominant bases for the future use of land resources: *Provided*, That the requirements for food production, human settlements, and industrial expansion shall be taken into consideration in the preparation of such plans.

(d) Where approval by a national agency is required for reclassification, such approval shall not be unreasonably withheld. Failure to act on a proper and complete application for reclassification within three (3) months from receipt of the same shall be deemed as approval thereof.

(e) Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657.

14 *Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform*, supra note 10 at 313.

15 Id. at 312.

16 473 Phil. 64 (2004).

17 Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non-Agricultural Uses.

18 DAR Administrative Order No. 1, series of 1990.

In sharp contrast, the subject property in the instant case was designated by petitioner LGU of Sta. Cruz as an industrial park through the latter's land use plan and zoning ordinance in 1991 *after the passage of CARL*. To reiterate once more, reclassification of agricultural lands after the effectivity of CARL is subject to DAR's conversion authority.

It has also been posited that since R.A. 6657 applies only for conversion of lands previously placed under the agrarian reform law, petitioner LGU validly reclassified Tan Kim Kee Estate into an industrial land, pointing to Section 65 of R.A. 6657, as amended by R.A. 9700,[19] as basis of its argument that the DAR's power to approve applications for reclassification or conversion of agricultural land and the rule that failure to implement the conversion plan within five years from the approval of the conversion plan causing the land to automatically be covered by CARP applies only to applications by the landowner or the beneficiary for the conversion of lands previously placed under the agrarian reform law after the lapse of five years from its award.

This position is untenable as *Chambers of Real Estate and Builders Associations, Inc.* already directly addressed this. The Court held therein that while "the DAR's express power over land use conversion provided for under Section 65 of Republic Act No. 6657 is limited to cases in which agricultural lands already awarded have, after five years, ceased to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes[,] x x x [t]o suggest, however, that these are the only instances that the DAR can require conversion clearances would open a loophole in Republic Act No. 6657 which every landowner may use to evade compliance with the agrarian reform program. It should logically follow, therefore, from the said department's express duty and function to execute and enforce the said statute that any reclassification of a private land[, including those that were not previously awarded to farmer-beneficiaries,] as

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[19] An Act Strengthening The Comprehensive Agrarian Reform Program (CARP), Extending The Acquisition And Distribution Of All Agricultural Lands, Instituting Necessary Reforms, Amending For The Purpose Certain Provisions Of Republic Act No. 6657, Otherwise, Known As The Comprehensive Agrarian Reform Law Of 1988, As Amended, And Appropriating Funds Therefor; Section 65 provides:

SEC. 65. *Conversion of Lands.* – After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality 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 respect only to his/her retained area which is tenanted, 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 if the applicant is a beneficiary under agrarian laws and the land sought to be converted is the land awarded to him/her or any portion thereof, the applicant, after the conversion is granted, shall invest at least ten percent (10%) of the proceeds coming from the conversion in government securities: *Provided, further,* That the applicant upon conversion shall fully pay the price of the land: *Provided, furthermore,* That irrigated and irrigable lands, shall not be subject to conversion: *Provided, finally,* That the National Irrigation Administration shall submit a consolidated data on the location nationwide of all irrigable lands within one (1) year from the effectivity of this Act.

Failure to implement the conversion plan within five (5) years from the approval of such conversion plan or any violation of the conditions of the conversion order due to the fault of the applicant shall cause the land to automatically be covered by CARP.

a residential, commercial or industrial property, on or after the effectivity of Republic Act No. 6657 on 15 June 1988 should first be cleared by the DAR."[20]

It bears emphasis that the power of DAR to require the application for conversion is not only sourced from R.A. 6657. To reiterate, E.O. 129-A expressly grants DAR the power to approve and disapprove the conversion of agricultural lands for non-agricultural uses. And in exercise of its statutory power to promulgate rules and regulations implementing the said law, DAR required the completion of development within five years from the issuance of the Order of Conversion under DAR A.O. 12-94[21] and subsequent issuances.[22] Hence, as recognized by the Court in *Chambers of Real Estate and Builders Associations, Inc.*, despite the *Conversion of Lands* provision under R.A. 6657 referring only to agricultural lands already awarded, it cannot be said that respondent DAR has no power to require an application for conversion and impose the condition that the conversion plan be implemented within five years from the approval of the conversion.

Therefore, applying the foregoing in the instant case, when respondent DAR issued the Order approving the application for conversion, but with the condition that the conversion plan to utilize the subject property for industrial and commercial purposes be actualized within five years from the conversion in 1994, the imposition of such condition was with legal basis.

It is not disputed by petitioner LGU of Sta. Cruz that this condition was not met. In fact, petitioner LGU of Sta. Cruz even admitted in the instant Petition that the subject property was not actually used for commercial and industrial purposes. It was admitted in the instant Petition that the subject property "has been utilized as [a] cattle ranch[.]"[23] In fact, in 2001, Lim, *et al.* even filed an Application for exclusion from CARP coverage on the ground that the subject property was actually, exclusively, and directly used for cattle raising.[24] It goes without saying that cattle raising is not a commercial or industrial activity. It is in fact an agricultural enterprise or agricultural activity — which includes the raising of livestock.[25]

For the foregoing reasons, I vote to **DISMISS** the instant Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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20 *Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform*, supra note 10 at 308-309; citation omitted.

21 Section VI(G) of DAR Administrative Order No. 12-94 re Consolidated and Revised Rules and Procedures Governing Conversion of Agricultural Lands to Non-Agricultural Uses.

22 Section 33.6 of DAR Administrative Order No. 01-02 re 2002 Comprehensive Rules on Land Use Conversion.

23 *Rollo*, p. 8.

24 *Ponencia*, p. 2.

25 R.A. 6657, Sec. 3(b).