Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

BITANAGAN FARMERS AGRARIAN REFORM BENEFICIARIES ASSOCIATION, ETC., Petitioner,	**G.R. No. 243310**
	Present:
	LEONEN, *J., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.*
-versus-	
HACIENDA BITANAGAN, ETC., Respondent.	**Promulgated:** AUG 15 2022

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DECISION

LEONEN, *J.*:

The operative fact doctrine cannot be invoked to give unwarranted advantage to a landowner engaged in cattle farming who is not in good faith in applying for exclusion of a landholding from the coverage of agrarian reform. Before the application for exclusion can be granted, there must be a showing that the landholding is actually, directly, and exclusively used for livestock raising.

This resolves a Petition for Review[1] of the Court of Appeals Decision[2] partially granting Hacienda Bitanagan's petition for review, and Amended

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1 *Rollo*, pp. 3–13. Filed under Rule 45.

2 Id. at 32 – 61. The December 15, 2017 Decision in CA-G.R. SP No. 07293-MIN was penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Romulo V. Borja and Ruben Reynaldo G. Roxas of the Special Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

Decision[3] granting Hacienda Bitanagan's application for exclusion of its landholdings allegedly devoted to its cattle-raising business.

On March 20, 1989, Hacienda Bitanagan filed with the Department of Agrarian Reform (DAR) an Application for Deferment from the coverage of the Comprehensive Agrarian Reform Program (CARP) of three parcels of land: Lot Nos. 3-A-5, 3-A-4, and F-11-05-008043, covered by Transfer Certificate of Title (TCT) Nos. T-206 (T-3047), T-207 (T-3048), and P-13524, respectively. These lands are located in Barangay Dahican, Mati, Davao Oriental, with an aggregate area of 285.5785 hectares.[4]

On February 26, 1990, the DAR Regional Director issued an Order of Deferment. Subsequently, on October 28, 1991, OIC Regional Director Ronaldo Orig advised Hacienda Bitanagan that the lands are not covered by Administrative Order No. 16, Series of 1988 on commercial farming. Instead, they were advised to apply for exemption/exclusion from CARP coverage.[5]

On February 28, 1996, Hacienda Bitanagan, as represented by Pablo Rabat (Rabat), filed an Application for Exclusion.[6] After the ocular inspection, a March 25, 1996 Joint Report[7] was submitted to Provincial Agrarian Reform Officer Benjamin T. Etulle (PARO Etulle) recommending the exclusion/exemption from CARP coverage of the entire landholdings. Thereafter, PARO Etulle favorably endorsed the case folder of Hacienda Bitanagan to the DAR Regional Office. However, on October 15, 1996, the vehicle containing the records fell off a cliff in Puntalinao, Banaybanay, Davao Oriental due to a vehicular accident caused by heavy rains.[8]

In a June 16, 2003 letter, Municipal Agrarian Reform Officer (MARO) Felipe Gaviola of Mati, Davao Oriental informed Rabat of the incident, along with a request for the reconstruction of the pertinent documents. On February 18, 2005, Rabat submitted a letter enclosing the reconstructed documents and stating that they are the same as those submitted on June 22, 2004 but subsequently withdrawn on October 2004 for safekeeping purposes.[9]

On January 10, 2006, the Notice of CARP Coverage of Hacienda Bitanagan's landholdings was published by the DAR Regional Office in the Philippine Star.[10]

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3 Id. at 20–30. The October 25, 2018 Amended Decision was penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Edgardo A. Camello and Ruben Reynaldo G. Roxas of the Former Special Twenty-Third Division, Court of Appeals, Cagayan De Oro City.

4 Id. at 33.

5 Id.

6 Id.

7 The Inspection Team was composed of Agrarian Reform Program Technologist (ARPT) Eduardo Ignacio, ARPT Felipe Gaviola and MARO Venchito Mandap.

8 *Rollo*, p. 96.

9 Id.

10 Id. at 34.

On March 4, 2006, Hacienda Bitanagan filed a petition for the lifting of the Notice of CARP Coverage.[11]

On January 8, 2007, then Regional Director Rodolfo Inson (Regional Director Inson) ordered the reconstitution of Hacienda Bitanagan's previous application for exclusion. Pending the outcome of its application for exemption, the resolution of its petition for lifting the Notice of CARP Coverage was also suspended.[12]

On December 6, 2007, Hacienda Bitanagan filed its reconstituted Application for Exclusion.[13]

On November 15, 2010, Regional Director Datu Yusoph B. Mama (Regional Director Mama) issued an Order[14] approving the application for exclusion. He held that Hacienda Bitanagan was able to show that the land was mainly devoted to its livestock business, specifically, "cattle, goat, and poultry raising as of June 15, 1988 up to the present time."[15] A certificate of finality was also issued on May 5, 2011.[16]

On June 23, 2011, Bitanagan Farmers Agrarian Reform Beneficiaries Association (Bitanagan Farmers Association), represented by Organi G. Biong (Biong), filed a Notice of Appeal with the Office of the DAR Secretary of the November 15, 2010 Order and May 5, 2011 Order of Finality. The appeal was based on the Regional Director's supposed lack of jurisdiction. Consequently, Hacienda Bitanagan submitted its Appeal Memorandum on December 6, 2011.[17]

On November 25, 2012, the DAR Secretary issued an Order[18] reversing Regional Director Mama's Order and denying Hacienda Bitanagan's application for exclusion. It reads:

> **WHEREFORE**, premises considered, the Order issued by RD Yusoph Mama is hereby **REVOKED** for being null and void. The Application for Exclusion filed on 06 December 2007 by Hacienda Bitanagan, represented by Pablo Rabat, is hereby denied for lack of merit. The concerned Provincial Agrarian Reform Officer (PARO) is hereby directed to proceed with the coverage of the subject property under CARP and identify potential farmer beneficiaries pursuant to the NOC published on 10 January 2006 and in accordance with existing rules.

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11 Id.
12 Id. at 97.
13 Docketed as DAR Case No. A-1100-0082-08.
14 *Rollo*, pp. 85–91.
15 Id. at 99.
16 Id. at 93.
17 Id. at 99.
18 Id. at 93–116. By DAR Secretary Virgilio R. Delos Reyes.

SO ORDERED.[19] (Emphasis in the original)

The DAR Secretary ruled that in filing the reconstituted application for exemption based on the order of Regional Director Inson, Hacienda Bitanagan had agreed that the applicable law was Administrative Order No. 1, Series 2004. Considering that the subject landholdings have an aggregate area of 285.5785 hectares, the jurisdiction over its application belongs to the DAR Secretary and not the Regional Director. Thus, the order of the Regional Director and the Certificate of Finality are void for lack of jurisdiction.[20]

Moreover, it was found that Hacienda Bitanagan's landholdings were "not exclusively devoted to cattle raising activity, as copra selling is also part and parcel of its business operations." The DAR Secretary used Hacienda Bitanagan's Articles of Incorporation and Financial Statements from 1988 to 1996 to conclude that it derived income from both farming and livestock raising.[21] Moreover, the affidavits executed by several residents and laborers in the Hacienda, attested that the land was also being used for farming of "bananas, coconuts, copra, and cashew nuts."[22] Thus, the DAR Secretary denied Hacienda Bitanagan's application for exclusion due to the presence of agricultural activity in the subject landholdings.[23]

On December 24, 2012, Hacienda Bitanagan filed a Motion for Reconsideration, which the DAR Secretary denied on March 26, 2013.[24]

Aggrieved, Hacienda Bitanagan filed a Joint Notice on Appeal assailing the DAR Secretary's Order before the Office of the President. On February 16, 2015, the Office of the President dismissed Hacienda Bitanagan's appeal.[25]

The Office of the President ruled that Hacienda Bitanagan failed to timely submit its appeal memorandum given that the material dates were not clearly stated.[26] It also held that the applicable law is Administrative Order No. 01-2004 stating that the jurisdiction for areas larger than 5 hectares belong to the DAR Secretary.[27] The Office of the President likewise affirmed the DAR Secretary's findings that the landholdings were not exclusively used for cattle raising, hence, not exempt from CARP coverage.[28]

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19 Id. at 115–116.
20 Id. at 105-106.
21 Id. at 113.
22 Id. at 103.
23 Id. at 114–115.
24 Id. at 35.
25 Id. at 117–121. The Decision was signed by Executive Secretary Paquito N. Ochoa, Jr. "[b]y authority of the President."
26 Id. at 119.
27 Id. at 120.
28 Id. at 120–121.

Hacienda Bitanagan filed a Motion for Reconsideration, but it was similarly denied on January 29, 2016.[29]

Unfazed, Hacienda Bitanagan filed a Petition for Review under Rule 43 of the Rules of Court before the Court of Appeals assailing the Office of the President's affirmation of the dismissal of its application for exclusion before the DAR Secretary.

The Court of Appeals partially granted the Petition on December 15, 2017. The *fallo* reads:

> WHEREFORE, the instant petition is PARTIALLY GRANTED. The Decision dated February 16, 2015 and Resolution dated January 29, 2016 of the Office of the President, affirming the Order dated November 25, 2012 of the Secretary of the Department of Agrarian Reform, is MODIFIED in so far as it declared the Order dated November 15, 2010 of the Regional Director in DAR Case No. A-110-0082-08 to be completely null and void. The Order dated November 15, 2010 of the Regional Director in DAR Case No. A-110-0082-08 is declared VALID in so far as it granted petitioner's application for exemption over Lot No. 3-A-4 covered by TCT No. T-207 (T-3048).[30]

The Court of Appeals relaxed the procedural rules and found Hacienda Bitanagan to have substantially complied, having stated the date of receipt of the DAR Secretary's Order denying its motion for reconsideration.[31] It also affirmed the DAR Regional Director's jurisdiction over Hacienda Bitanagan's application for exclusion from CARP coverage. It explained that DAR Administrative Order No. 09-1993 should govern Hacienda Bitanagan's reconstituted application, since the application was first filed in 1996 and the documents were lost without Hacienda Bitanagan's fault.[32] It applied the transitory provision of DAR Administrative Order No. 01-2004 stating that pending applications are governed by existing rules and regulations at the time of their filing.[33] The Court of Appeals applied the doctrine of prospectivity, finding that the subsequent declaration of nullity of DAR Administrative Order No. 09-1993 in *Department of Agrarian Reform v. Sutton*[34] did not prejudice Hacienda Bitanagan who relied on previous regulations and acted in good faith.[35]

The Court of Appeals applied the requirements of DAR Administrative Order No. 09-1993 in ruling that Hacienda Bitanagan complied with the required ratio of land to livestock and thus exempted from CARP. It gave credence to the findings of the MARO that Lot No. 3-A-4 consisting of

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29 Id. at 35.
30 Id. at 60.
31 Id. at 41–43.
32 Id. at 45–46.
33 Id. at 46–47.
34 510 Phil. 177 (2005) [Per J. Puno, *En Banc*].
35 *Rollo*, p. 48.

148.6140 hectares,[36] is actually and directly being used for cattle-raising business given the presence of 241 heads of cattle, 3 horses, and 9 carabao therein.[37] It also affirmed the MARO's findings that the coconut-harvesting activity in the landholding was merely incidental to Hacienda Bitanagan's livestock business.[38]

However, the Court of Appeals denied the exclusion of Lot No. 3-A-5 consisting of 131.9645 hectares. It affirmed the findings of CLUPPI[39] which noted the absence of livestock and other infrastructures therein. Instead, it found coconut, cashew, and some trees of various species planted in the area.[40]

On October 25, 2018, the Court of Appeals amended its Decision and held that Lot No. 3-A-5 is also exempted from CARP. It accepted Hacienda Bitanagan's explanation that the livestock were being rotated for grazing purposes and that livestock facilities were only built on strategic locations outside Lot No. 3-A-5.[41] The Court of Appeals also considered the lots as a whole in applying the ratio required under Administrative Order No. 09-1993. Finally, it also ruled that Lot No. F-11-05-008043 is exempted from CARP coverage after CLUPPI found it to be a shoreline.[42]

The Court of Appeals granted Hacienda Bitanagan's partial motion for reconsideration, and denied the motion for reconsideration filed by the Bitanagan Farmers Association. The Court of Appeals found Hacienda Bitanagan's explanation to be credible and consistent with the MARO's and CLUPPI's findings that the Hacienda's landholdings are being continuously used for livestock activity.

Hence, Bitanagan Farmers Agrarian Reform Beneficiaries Association filed a Petition for Review before this Court.

On February 27, 2019, this Court ordered respondent Hacienda Bitanagan to file its Comment[43] which it complied with on June 28, 2019.

Petitioner contends that the DAR Regional Director has no jurisdiction over the application for exclusion because Administrative Order. No. 09-1993 has been declared unconstitutional. Thus, it has no legal effect and the parameters outlined therein cannot be used to decide this case.[44]

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36 Covered by TCT No. T-207 (T-3048).
37 Id. at 52.
38 Id. at 57–58.
39 Center for Land Use Policy, Planning, and Implementation.
40 *Rollo*, p. 58–60.
41 Id. at 23.
42 Id. at 26.
43 Id. at 123–136.
44 Id. at 9.

Petitioner insists that the landholdings are not "actually, directly, and exclusively used for cattle-raising activities," and thus not exempt from the coverage of CARP. Petitioner points to respondent's Article of Incorporation and Statements of Income and Retained Earnings for 1988 to 1996 showing that the latter is not exclusively engaged in cattle-raising activities, and that a substantial portion of respondent's revenue came from copra sales.[45]

Finally, petitioner contends that the decision of the DAR Secretary became final and executory upon respondent's failure to file a motion for reconsideration. It argues that since December 24 is a holiday, no one could have received the motion for reconsideration allegedly filed by respondent.[46]

Respondent refutes that it timely filed its motion for reconsideration via registered mail on December 24, 2012.[47] It argues that the Petition should be dismissed since it contains factual issues which are not allowed in a Rule 45 Petition.[48] It argues that since the findings of the Court of Appeals are in consonance with the Regional Director where the case originated, and since the arguments of petitioner are mere rehash of those already disposed by the Court of Appeals, there is no compelling reason for this Court to take cognizance of the Petition.[49] Moreover, there is also no evidence of the filing of the required fees, or that petitioner is exempt from its payment.[50]

On the substantive issues, respondent contends that the operative fact doctrine applies to extend the effects of DAR Administrative Order No. 09-1993 to the application for exclusion it filed on February 28, 1996.[51] The declaration of unconstitutionality of the administrative issuance in *Department of Agrarian Reform v. Sutton* did not prevent the Court of Appeals from granting respondent's application for exclusion on the basis of the doctrine of prospectivity.[52]

The issues for resolution are as follows:

Whether the Court of Appeals erred in extending the effects of DAR Administrative Order No. 09, Series of 1993 to Hacienda Bitanagan's reconstituted application in 2007 even after the issuance had been declared as unconstitutional in *Department of Agrarian Reform v. Sutton* in 2005.

Whether the Court of Appeals erred in ruling that the landholdings are exempted from the coverage of agrarian reform.

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45 Id. at 10–11.
46 Id. at 11.
47 Id. at 131.
48 Id. at 128–129.
49 Id. at 128.
50 Id. at 124–126.
51 Id. at 126–127.
52 Id. at 127.

We grant the Petition.

I

The 1987 Constitution mandates the State to undertake agrarian reform founded on the rights of farmers and regular farmworkers to own the land they till and receive a just share of the fruits of their labor.[53] With the welfare of the landless farmers and farmworkers as the highest consideration, Congress enacted Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 to promote social justice and to achieve sound rural development and industrialization.[54] The policy of the law is to cover as much public and private land suitable for agriculture.[55]

Livestock farming was included in the original wording of Republic Act No. 6657 where the "raising of livestock, poultry, or fish" was included in the definition of agricultural enterprise or activity.[56] In 1990, this inclusion was declared unconstitutional in *Luz Farms v. Secretary of Department of Agrarian Reform*.[57] There, it was held that livestock and poultry industry were not intended by the framers of the Constitution to be included in the State's agrarian reform program:

> The transcripts of the deliberations of the Constitutional Commission of 1986 on the meaning of the word "agricultural," clearly show that it was never the intention of the framers of the Constitution to include livestock and poultry industry in the coverage of the constitutionally-mandated agrarian reform program of the Government.
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> The Committee adopted the definition of "agricultural land" as defined under Section 166 of R.A. 3844, as laud devoted to any growth, including but not limited to crop lands, saltbeds, fishponds, idle and abandoned land (Record, CONCOM, August 7, 1986, Vol. III, p. 11).

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53 CONST. art. 13, sec. 4 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 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.

54 Republic Act No. 6657 (1988), sec. 2(1) states:
SECTION 2. *Declaration of Principles and Policies.* - It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture."

55 *Department of Agrarian Reform v. Department of Education, Culture and Sports*, 469 Phil. 1083 (2004) [Per J. Ynares-Santiago, First Division].

56 Republic Act No. 6657 (1988), sec. 3(b).

57 270 Phil. 151 (1990) [Per J. Paras, *En Banc*].

The intention of the Committee is to limit the application of the word "agriculture." Commissioner Jamir proposed to insert the word "ARABLE" to distinguish this kind of agricultural land from such lands as commercial and industrial lands and residential properties because all of them fall under the general classification of the word "agricultural". This proposal, however, was not considered because the Committee contemplated that agricultural lands are limited to arable and suitable agricultural lands and therefore, do not include commercial, industrial and residential lands (Record, CONCOM, August 7, 1986, Vol. III, p. 30).

In the interpellation, then Commissioner Regalado (now a Supreme Court Justice), posed several questions, among others, quoted as follows:

. . . .

> "Line 19 refers to genuine reform program founded on the primary right of farmers and farmworkers. I wonder if it means that leasehold tenancy is thereby proscribed under this provision because it speaks of the primary right of farmers and farmworkers to own directly or collectively the lands they till. As also mentioned by Commissioner Tadeo, farmworkers include those who work in piggeries and poultry projects.
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> I was wondering whether I am wrong in my appreciation that if somebody puts up a piggery or a poultry project and for that purpose hires farmworkers therein, these farmworkers will automatically have the right to own eventually, directly or ultimately or collectively, the land on which the piggeries and poultry projects were constructed. (Record, CONCOM, August 2, 1986, p. 618).

. . . .

The questions were answered and explained in the statement of then Commissioner Tadeo, quoted as follows:

. . . .

> "Sa pangalawang katanungan ng Ginoo ay medyo hindi kami nagkaunawaan. Ipinaaalam ko kay Commissioner Regalado na hindi namin inilagay ang agricultural worker sa kadahilanang kasama rito ang piggery, poultry at livestock workers. Ang inilagay namin dito ay farm worker kaya hindi kasama ang piggery, poultry at livestock workers (Record, CONCOM, August 2, 1986, Vol. II, p. 621).

It is evident from the foregoing discussion that Section 11 of R.A. 6657 which includes "private agricultural lands devoted to commercial livestock, poultry and swine raising" in the definition of "commercial farms" is invalid, to the extent that the aforecited agro-industrial activities are made to be covered by the agrarian reform program of the State. There is simply no reason to include livestock and poultry lands in the coverage of agrarian reform. (Rollo, p. 21).[58]

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[58] Id. at 158–160.

Congress confirmed the Constitutional construction adopted in *Luz Farms* and enacted Republic Act No. 7881 where the phrase "livestock, poultry, and swine raising" was removed from the definition of agricultural activity and commercial farming.[59]

To protect the rights of farmers against fraudulent conversion of agricultural lands to livestock raising, the Department of Agrarian Reform issued Administrative Order No. 9, Series of 1993:

> In the case entitled "Luz Farms versus The Honorable Secretary of the Department of Agrarian Reform (DAR)" (G.R. No. 86889, 04 December 1990), the Supreme Court held that lands devoted to the raising of livestock, poultry and swine are excluded from the coverage of R.A. No. 6657. Following the said decision, numerous reports have been received that some landowners had taken steps to convert their agricultural lands to livestock, poultry and swine raising.
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> In order to prevent the circumvention of the Comprehensive Agrarian Reform Program and to protect the rights of the agrarian reform beneficiaries, specifically against their possible unlawful ejectment due to the unauthorized change or conversion or fraudulent declaration of areas actually, directly, and exclusively used for livestock, poultry and swine raising purposes, the following rules and regulations are hereby prescribed for the guidance of all concerned.[60]

However, in the 2005 of *Department of Agrarian Reform v. Sutton*,[61] this Court declared the entirety of Administrative Order No. 9-1993 unconstitutional:

> In the case at bar, we find that the impugned A.O. is invalid as it contravenes the Constitution. The A.O. sought to regulate livestock farms by including them in the coverage of agrarian reform and prescribing a maximum retention limit for their ownership. However, the deliberations of the 1987 Constitutional Commission show a clear intent to exclude, inter alia, all lands exclusively devoted to livestock, swine and poultry-raising. The Court clarified in the Luz Farms case that livestock, swine and poultry-raising are industrial activities and do not fall within the definition of "agriculture" or "agricultural activity." The raising of livestock, swine and poultry is different from crop or tree farming. It is an industrial, not an agricultural, activity. A great portion of the investment in this enterprise is in the form of industrial fixed assets, such as: animal housing structures and facilities, drainage, waterers and blowers, feedmill with grinders, mixers, conveyors, exhausts and generators, extensive warehousing facilities for feeds and other supplies, antipollution equipment like bio-gas and digester plants augmented by lagoons and concrete ponds, deepwells, elevated water

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59 *Department of Agrarian Reform v. Sutton*, 510 Phil. 177 (2005) [Per J. Puno, *En Banc*].
60 DAR Administrative Order No. 9 (1993), Prefatory Statement.
61 510 Phil. 177 (2005) [Per J. Puno, En Banc].

tanks, pumphouses, sprayers, and other technological appurtenances.

Clearly, petitioner DAR has no power to regulate livestock farms which have been exempted by the Constitution from the coverage of agrarian reform. It has exceeded its power in issuing the assailed A.O.[62]

Prior to *Sutton*, the Department of Agrarian Reform issued Administrative Issuance No. 1, Series of 2004 amending several provisions of Administrative Order No. 9, Series of 1993. Its transitory provision provides that applications filed prior to its issuance shall be governed by the administrative order in force at the time of filing of the application.[63]

Here, the DAR Secretary and the Court of Appeals disagreed on the applicable law under which respondent's application for exclusion should be resolved. The Court of Appeals held that while respondent reconstituted its application during the effectivity of Administrative Order No. 1, Series of 2004, it was constrained to do so because its application was lost without its fault. Thus, it considered the original filing date of February 28, 1996 and applied Administrative Order No. 9, Series of 1993, the governing issuance at that time. It also applied the principle of prospectivity of judicial decisions in ruling that "new doctrines and principles must be applied only to acts and events transpiring after the precedent-setting judicial decision, and not to those that occurred and were caused by persons who relied on the 'old' doctrine and acted on good faith thereof."[64]

We do not agree.

The Court of Appeals wrongly applied the principle of prospectivity of judicial decisions. This principle applies when there is a new case reversing an old doctrine which construed the contemporaneous intention of a law or administrative issuance.[65] Without a previous doctrine interpreting a law or administrative issuance, the principle of prospectivity of judicial decisions does not apply. In *Philippine International Trading Corporation v. Commission on Audit*,[66] the Court *En Banc* refused to apply the principle of prospectivity in relation to its prior decision in G.R. No. 183517 considering that such decision did not reverse an existing doctrine on retirement benefits. It merely interpreted the law and held that its judicial construction retroacts to the law's enactment:

As the COA correctly argued, the Decision in G.R. No. 183517 neither reversed an old doctrine nor adopted a new one. The Court merely

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62 Id. at 183–184 *citing Luz Farms v. Secretary of Department of Agrarian Reform*, 270 Phil. 151 (1990) [Per J. Paras, *En Banc*].

63 DAR Administrative Order No. 1 (2004), sec. 16.

64 *Rollo*, p. 17.

65 *Co v. Court of Appeals*, 298 Phil. 221 (1993) [Per J. Narvasa, Second Division] *citing People v. Jabinal*, 154 Phil. 565 (1974) [Per J. Antonio, Second Division].

66 821 Phil. 144 (2017) [Per J. Leonardo De Castro, *En Banc*].

> construed therein the meaning and application of Section 6 of Executive Order No. 756 by taking into consideration the rationale behind the provision, its interplay with pre-existing retirement laws, and the subsequent enactments and statutes that eventually repealed the same. Prior to the Decision in G.R. No. 183517, there was no other ruling from this Court that explained the nature of the retirement benefits under Section 6 of Executive Order No. 756. Thus, the Court's interpretation of the aforesaid provision embodied in the Decision in G.R. No. 183517 retroacts to the date when Executive Order No. 756 was enacted.[67]

Here, *Department of Agrarian Reform v. Sutton*[68] did not establish a new doctrine. It merely affirmed the pronouncement in *Luz Farms v. Secretary of Department of Agrarian Reform*[69] that livestock and poultry industry are outside the coverage of the constitutionally-mandated agrarian reform program of the government. The entirety of Administrative Order No. 9, Series of 1993 was invalidated for violating the Constitution. Thus, the Court of Appeals should have determined whether there is an operative fact that would have extended the effects of Administrative Order No. 9, Series of 1993 to respondent's application.

I (A)

An unconstitutional law or administrative act is a nullity.[70] Generally, "[i]t confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."[71] However, the absolute retroactive application of nullity have unsettling effects as explained in *Tañada v. Tuvera*:[72]

> The Court therefore declares that presidential issuances of general application, which have not been published, shall have no force and effect. Some members of the Court, quite apprehensive about the possible unsettling effect this decision might have on acts done in reliance of the validity of those presidential decrees which were published only during the pendency of this petition, have put the question as to whether the Court's declaration of invalidity apply to P.D.s which had been enforced or implemented prior to their publication. The answer is all too familiar. In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter Bank* to wit:

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67 *Philippine International Trading Corporation v. Commission on Audit*, 821 Phil. 144, 157 (2017) [Per J. Leonardo De Castro, *En Banc*].

68 510 Phil. 177 (2005) [Per J. Puno, *En Banc*].

69 270 Phil. 151 (1990) [Per J. Paras, *En Banc*].

70 CIVIL CODE, art. 7 states:
ARTICLE 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.
When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.
Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.

71 *Municipality of Malabang v. Benito*, 137 Phil. 358, 364 (1969) [Per J. Castro, En Banc] *citing Norton v. Shelby Count*, 118 U.S. 425, 442 (1886).

72 220 Phil. 422 (1985) [Per J. Escolin, *En Banc*].

> "The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. Norton v. Shelby County, 118 U.S. 425, 442; Chicago, I. & L. Ry. Co. v. Hackett, 228 U.S. 559, 566. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. *The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination.* These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified."[73] (Emphasis supplied)

Thus, this Court has recognized as an exception the operative fact doctrine wherein the effects of a law or administrative issuance prior to the judicial declaration of its nullity may be left undisturbed. For it to be applied, there must be a showing that the retroactive application of the law's nullity will impose an undue burden on those who relied in good faith to the effects of the void law or issuance.[74]

Its rationale is extensively explained in *Serrano De Agbayani v. Philippine National Bank*:[75]

> Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure

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73 Id. at 434–435 *citing Chicot County Drainage District vs. Baxter Bank*, 308 U.S. 371, 374 (1940).

74 *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, G.R. Nos. 203754 & 204418, October 15, 2019 [Per J. Perlas-Bernabe, *En Banc*].

75 148 Phil. 443 (1971) [Per J. Fernando, *En Banc*].

> is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.
>
> In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always he erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, - with respect to particular relations, individual and corporate, and particular conduct, private and official[.]"[76] (Citation omitted)

The operative fact doctrine does not give a new life to a void law. It only modifies the effects of the unconstitutional law.[77] The operative fact doctrine will only be granted when extraordinary circumstances exist and when the conditions for its application are present.[78]

In applying the doctrine, courts must closely examine the effects of the acts already done based on the unconstitutional law or administrative issuance and determine, on the basis of equity and fairness, if these effects should be allowed to stand.[79] The operative fact doctrine is a rule of equity founded on a practical and realistic approach on the role of the judiciary in relation to the other branches of government and the public.[80]

We should not allow the operative fact doctrine "to give any unwarranted advantage to parties, but merely seeks to protect those who, in good faith, relied on the invalid law."[81] Good faith requires honesty of intention such that the one invoking it must be "free from any knowledge of circumstances that ought to have prompted him to undertake an inquiry."[82]

The question now is whether the original filing of respondent's application for exclusion during the effectivity of the unconstitutional Administrative Order No. 9, Series of 1993 is an operative fact which allows the effect of the invalid issuance to be extended to its application.

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76 Id. at 447–448.

77 *League of Cities of the Philippines v. COMELEC*, 592 Phil. 1 (2010) [Per J. Carpio, *En Banc*].

78 *Mandanas v. Ochoa*, 835 Phil. 97 (2018) [Per J. Bersamin, En Banc] *citing Araullo v. Aquino III*, 737 Phil. 457, 547–549 (2014) [Per J. Bersamin, *En Banc*].

79 *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, G.R. Nos. 203754 & 204418, October 15, 2019 [Per J. Perlas-Bernabe, *En Banc*].

80 *Tañada v. Tuvera*, 220 Phil. 422 (1985) [Per J. Escolin, *En Banc*] citing *Chicot County Drainage District v. Baxter Bank*, 308 U.S. 371, 374 (1940).

81 *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, G.R. Nos. 203754 & 204418, October 15, 2019 [Per J. Perlas-Bernabe, *En Banc*] at 8. This pinpoint citation refers to a copy of the Resolution uploaded to the Supreme Court website.

82 *Wooden v. Civil Service Commission*, 508 Phil. 500, 516 (2005) [Per J. Austria-Martinez, *En Banc*] *citing Disapproved Appointment of Noraina D. Limgas as Stenographer III, RTC, Br. 8, Marawi City*, 491 Phil. 160 (2005) [Per Curiam, *En Banc*].

The operative fact doctrine does not apply in this case.

An examination of the records shows that respondent was at fault in the delay of the resolution of its application for exclusion. Its withdrawal of its reconstituted documents after having been advised of the loss of its application, and its subsequent actions before the Department of Agrarian Reform, do not justify the application of the operative fact doctrine.

The DAR Secretary narrated the facts surrounding the loss of the application folder as follows:

> However, the application for exclusion folder of Hacienda Bitanagan got lost before it even reached the DARRO due to a vehicular accident. Per Affidavit dated 23 April 2003 executed by then PARO Etulle, the circumstances surrounding said loss were detailed, as follows:
>
> 1. xxxxxxxxx
> 2. xxxxxxxxx
> 3. On October 15, 1996, the Land Exemption Folder was ready for transmittal to the DAR Regional Office, and was loaded in the Toyota Jeep, on a Friday night.
> 4. However, said documents were thrown off the service jeep boarded by the herein affiant, when the jeep fell in the embankment along the cliff of Puntalinao, Banaybanay, Davao Oriental;
> 5. Due to heavy downpour of rain and the impact of the accident, affiant failed to retrieve said documents, and cannot anymore be recovered, hence, a redocumentation is proper under the circumstance;
> 6. The accident was not anymore reported to the police authorities as the jeep only suffered minor engine failure, and affiant only suffered minor injuries."
>
> On account of this incident, MARO Felipe Gaviola of Mati, Davao Oriental, in a letter dated 16 June 2003, regretfully informed Ragat about the loss of the application folder. He then earnestly requested Rabat to reconstruct the pertinent documents. In a letter-reply dated 23 June 2003, Rabat requested for a year to reconstruct the aforementioned documents considering the great number of papers from 1987 to 1995. This request was granted by MARO Gaviola in his letter dated 24 June 2003.
>
> On 18 February 2005, Rabat wrote a letter to the MARO of Mati enclosing therewith the reconstructed documents and stating that the documents he submitted are the same documents filed on 22 June 2004 ***but subsequently withdrawn on October 2004 for safekeeping purposes.***[83] (Emphasis supplied)

Respondent cannot feign ignorance that its pending application cannot be resolved since DAR did not have any supporting documents. Respondent was given the opportunity to reconstruct its application in 2003. It submitted

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[83] *Rollo*, pp. 95–96.

the documents on June 22, 2004. However, it later withdrew its documents on October 2004, allegedly for safekeeping purposes. The timing of its withdrawal of documents is suspect, given that it was only a few months from the issuance of Administrative Order No. 1, Series of 2004 on August 16, 2004. It waited for a few more months before informing the MARO of Mati on February 18, 2005 of its withdrawal of documents. Without the issuance of a Notice of Coverage on January 10, 2006, it does not appear that respondent would have done anything to resolve its pending application before the DAR, since DAR did not have the documents supporting its application. Instead of pursuing its pending application for exclusion, respondent strategically filed a Petition to Lift Notice of CARP Coverage. It awaited another order from DAR Regional Director Inson to reconstruct its application on January 8, 2007:

> "Considering however that the application folder was lost through no fault of petitioner, reconstruction of the records should be undertaken. Petitioner is hereby given a period of sixty (60) days from receipt hereof, to submit copies of the application and its supporting documents to the Provincial Agrarian Reform Officer of Mati, Davao Oriental for appropriate action.
>
> In the same vein, *since the petition could not be acted upon inasmuch as the ground raised by the petitioner calls for a separate proceeding, as embodied in DAR Administrative Order No. 1, series of 2004*, the instant petition shall have to be suspended in the meanwhile, pending the outcome of the application for exclusion."[84] (Emphasis supplied)

Its subsequent actions after having been informed of the loss of its application show that it took advantage of such loss. The records show that respondent strategically maneuvered the rules to exempt itself from the effects of Administrative Order No. 1, Series of 2004. Thus, it cannot be said that respondent was in good faith and that it merely relied on the application of the invalid Administrative Order No. 9, Series of 1993. It is also not true that respondent was without fault.

Applying the operative fact doctrine will give respondent undue advantage even after it prevented the Department of Agrarian Reform from resolving its application for exclusion. Equity and fair play cannot be invoked by those who take advantage of the system. They are bound by the consequences of their actions. Since the reconstituted application was filed in 2007 during the effectivity of Administrative Order No. 1, Series of 2004, respondent's application for exclusion should be resolved based on the parameters of that issuance.

Administrative Order No. 1, Series of 2004 provides the jurisdiction where applications for exclusions should be filed:

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[84] Id. at 97.

> SECTION. 5. *Filing of Applications* (See LVSTK EXC Annex "D" for the Process Flow)
>
> 5.1. The LO/applicant shall secure an application form (LVSTCK EXC Form No. 1 from the Regional Center for Land Use Policy Planning and Implementation (RCLUPPI) or the Center for Land Use Policy Planning and Implementation (CLUPPI) and may file the duly accomplished and notarized application forms, and the complete documentary requirements enumerated in Art. II, Sec. 4, Item 4.2 of this A.O. with the following offices:
>
> 5.1.1. The RCLUPPI, located at the DAR Regional Office, for applications involving lands with an area less than or equal to five (5) hectares. The Regional Director shall be the approving authority for such applications; and
>
> 5.1.2. *The CLUPPI, located at the DAR Central Office, for applications involving lands with an area larger than five (5) hectares.* The Secretary shall be the approving authority for such applications and may delegate the same authority to any Undersecretary.[85]

We agree with the DAR Secretary that respondent's application should have been filed with the DAR Central Office since the landholdings subject of its application have an aggregate area of 285.5785 hectares, which is beyond the jurisdiction of DAR Regional Director.[86] Thus, the Regional Director's grant of respondent's application for exclusion did not attain finality because it is void for lack of jurisdiction.

Even assuming that its application can be taken cognizance, there was no showing that there is basis to grant respondent's application for exclusion from CARP coverage under Administrative Order No. 1, Series of 2004.

II

The Department of Agrarian Reform is given the power to issue rules and regulations to carry out the purpose and objective of Republic Act No. 6657.[87] It also has the primary jurisdiction "to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all

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85 DAR Administrative Order No. 01 (2004), sec. 5.

86 *Rollo*, p. 105–106.

87 Republic Act No. 6657 (1988), sec. 49 states that "(t)he PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation."

matters involving the implementation of agrarian reform," subject to a few exceptions.[88] This includes the determination of whether a land falls within the coverage of agrarian reform.[89]

Pursuant to its mandate, DAR issued Administrative Order No. 1, Series of 2004 governing the applications for exclusion form CARP coverage of private agricultural lands actually, exclusively, and directly used for cattle raising as of June 15, 1988.[90] In addition, DAR prescribed a ratio of land to cattle and other livestock infrastructure:

> SECTION 4. *Requirements*. In determining the areas qualified for exclusion under this Administrative Order, the following ratios of land to cattle raising shall apply:
>
> 4.1 Physical/Land Requirements
>
> 4.1.1. Grazing/Pasture Areas
>
> 4.1.1.1. The required Stocking Rate (SR) for cattle expressed as animal unit per hectare (AU/ha), in determining areas qualified for exclusion under this Administrative Order shall be case-specific (i.e. per individual farm), based on the topography of the grazing and pasture areas, using the following criteria or parameters of evaluation:

TOPOGRAPHY	STOCKING RATE (AU/HA)
Nearly flat or level to gently sloping lands (>50% of the entire area should be nearly flat or level to gently sloping with slopes ranging from 3% to 8%).	1.0
Gently sloping to undulating/rolling slopes (>50% of the area should be of gently sloping to undulating/rolling topography with slopes ranging from 8% to 18%)	0.5

> 4.1.2. Land requirement for infrastructure or production facilities for cattle raising shall be computed based on the minimum space requirements for cattle raising per type, age and weight classification of the animals specified in LVSTK EXC Annex "C".

Aside from the land requirements, DAR adopted the following policies

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88 Republic Act No. 6657 (1988), sec. 50.

89 *Milestone Farms, Inc. v. Office of the Presldent*, 659 Phil. 283 (2011) [Per J. Nachura, Second Division].

90 DAR Administrative Order No. 1 (2004), sec. 1.

for the exclusion of a landholding exclusively devoted to cattle-raising from the coverage of agrarian reform:

> SECTION 3. *Statement of Policies* – The exclusion of private agricultural lands devoted to cattle raising shall be governed by the following policies:
>
> 3.1. Private agricultural lands or portions thereof *actually, exclusively and directly used for cattle raising* as of 15 June 1988 shall be excluded from the coverage of CARP.
>
> 3.2. To prevent the circumvention of coverage under CARP, *exclusion shall be granted only upon proof that the subject agricultural land or portions thereof are actually, exclusively, and directly used for cattle production (ranching or feedlot) prior to 15 June 1988 and continuously utilized or devoted for such purpose up to the time of application for exclusion.*
>
> 3.3. Any act of the landowner (LO) to change or convert his agricultural land to cattle raising after 15 June 1988, with the intent to avoid the application of R.A. No. 6657 to his landholdings, shall be considered invalid and illegal and shall not affect the coverage of his landholding under CARP. Any diversification or change in the agricultural use of the landholding, or shift from crop production to cattle raising after the effectivity of this A.O. shall be subject to existing DAR guidelines on land use conversion.
>
> 3.4. In all cases of applications for exclusion, farmers, farmworkers, agricultural lessees or actual tillers who are qualified and who will be displaced as a result of the said application shall be entitled to disturbance compensation in accordance with existing laws.
>
> 3.5. For purposes of informing all stakeholders and party/ies of interest on the subject landholding applied for exclusion from CARP coverage, a public notice, contained in a billboard shall be posted by the applicant in conspicuous places within the subject property.
>
> 3.6. *Only the grazing area within the farm and the portions of the property required for infrastructure necessary for cattle raising shall be considered for exclusion from CARP coverag*e, based on the provisions of Art. II, Sec. 4, Item 4.1 of this A.O. All other areas within the farm which are not used and necessary for grazing, pasture or other activities related to cattle raising but are suitable for agricultural crop production shall automatically revert to the category of agricultural land and shall be covered under CARP through Compulsory Acquisition.
>
> 3.7. Any person who will be displaced or directly affected by the exclusion application, such as farmworkers, tenants, occupants and tillers, may file a written protest against the application for exclusion of lands utilized for

> cattle raising from CARP coverage.
>
> 3.8. At the instance of the Municipal Agrarian Reform Officer (MARO)/Provincial Agrarian Reform Officer (PARO)/ Regional Director (RD) or any party in interest the DAR shall cancel, or revoke the Order of Exclusion from CARP coverage pursuant to Art. V, Sec. 13 of this A.O.
>
> 3.9. To encourage the growth of the cattle industry and to ensure the maximum utilization and the optimum productivity of the lands devoted to cattle raising and issued CARP exclusion orders, such lands will remain excluded from CARP coverage subject to the conditions provided in Art. V, Sec. 14 of this A.O.
>
> 3.10. If the filing of an exclusion is in response to a Notice of CARP Coverage, the DAR shall deny due course to the application if the exclusion application is filed sixty (60) days after the date of receipt by the landowner of the Notice of Coverage pursuant to DAR A.O. No. 01, Series of 2003.
>
> 3.11. Only exclusion applications which are fully supported by required documents shall be accepted.[91] (Emphasis supplied)

From the foregoing, the following requirements must be met for an application for exclusion to be granted under Administrative Order No. 1, Series of 2004: (1) proof of actual, exclusive, and direct use for cattle production prior to June 15, 1988; (2) proof of continuous use or devotion of the landholding for such purpose up to the time of application; (3) compliance with the required livestock and infrastructure to land ratio; (4) submission of the required documentary requirements; and (5) payment of inspection cost.[92] It is not enough that only the physical land ratio and documentary requirements are satisfied. There must be proof that the landholding is "actually, directly, and exclusively used" for cattle-raising.[93] Moreover, only areas actually used for grazing or those with infrastructure necessary for cattle raising are excluded from the coverage of agrarian reform.[94]

Here, the Court of Appeals relied on the *obiter dictum* in *Republic v. Sandoval N. Lopez Agri-Business Corp*[95] as basis in ruling that "in order to detract from the purpose of livestock farming it must be shown that the applicant is primarily engaged in agricultural business, specifically, coconut-harvesting."[96] Despite respondent's admission that it is engaged in copra harvesting and it derived income from copra sales, the Court of Appeals

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91 DAR Administrative Order No. 1 (2004), sec. 3.
92 DAR Administrative Order No. 1 (2004), sec. 4.
93 DAR Administrative Order No. 1 (2004), sec. 1.
94 DAR Administrative Order No. 1 (2004), sec. 3.6.
95 654 Phil. 44 (2011) [Per J. Sereno, Third Division].
96 *Rollo*, p. 57.

characterized it only as incidental.

We do not agree.

In *Department of Agrarian Reform v. Department of Education, Culture and Sports (DECS)*,[97] DECS appealed the Notice of Coverage issued to its property leased to a private corporation. This Court held that the property is a land of the public domain devoted to or suitable for agriculture. DECS claimed that all the income derived from the leasing of the property was actually, directly, and exclusively used for educational purposes, thus, the land is exempt under Section 10 of Republic Act. No. 6657. This Court emphasized the importance of the phrase "actually, directly, and exclusively used and found to be necessary" for the purpose of exemption from the coverage of agrarian reform is being sought. Since the words of the law are clear and unambiguous, this Court applied the plain and literal meaning of the words and held that the use of land *per se*, not its income, is the basis of the exemption from the coverage of agrarian reform.

Moreover in *Hospicio de San Jose de Barili, Cebu City v. Department of Agrarian Reform*,[98] this Court recognized the radical and revolutionary scale and effects of agrarian reform laws on property relations, such that strict application of the exceptions to its coverage is needed to ensure that its purposes are achieved.

Pursuant to its mandate to issue rules and regulations to carry out the purpose and objective of Republic Act No. 6657,[99] the Department of Agrarian Reform have consistently adopted "actually, directly, and exclusively used" found in Section 10 of Republic Act No. 6657 in its issuances governing applications for exclusions of land devoted to livestock raising. Thus, the requirement of actual, direct, and exclusive use for cattle raising under Administrative Order No. 1, Series of 2004 should be understood in its plain and literal meaning.

It does not escape this Court that the Department of Agrarian Reform first issued Administrative Order No. 9, Series of 1993 after the issuance of *Luz Farms* in 1990. This was done in order to protect CARP Beneficiaries after "numerous reports have been received that some landowners had taken steps to convert their agricultural lands to livestock, poultry and swine raising."[100]

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97 *Department of Agrarian Reform v. Department of Education, Culture and Sports*, 469 Phil. 1083 (2004) [Per J. Ynares-Santiago, First Division].

98 507 Phil. 585 (2005) [Per J. Tinga, Second Division].

99 Republic Act No. 6657 (1988), sec. 49 states that "(t)he PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation."

100 DAR Administrative Order No. 9 (1993), Prefatory Statement.

In 2004, the Department amended Administrative Order No. 9, Series of 1993 through Administrative Order No. 1, Series of 2004, with the same intent to protect beneficiaries of the Comprehensive Agrarian Reform Program:

> In order to prevent the circumvention of the Comprehensive Agrarian Reform Program and to protect the rights of the agrarian reform beneficiaries, specifically against their possible unlawful ejectment due to the unauthorized change or conversion or fraudulent declaration of areas actually, directly, and exclusively used for cattle raising purposes, the following rules and regulations are hereby prescribed for the guidance of all concerned.[101]

Subsequently, this Court struck down Administrative Order No. 9, Series of 1993 in *Department of Agrarian Reform v. Sutton* in 2005. In response to the second case, the Department revoked Administrative Order No. 1, Series of 2004 and issued Administrative Order No. 7, Series of 2008:

> The Supreme Court of the Philippines declared in the case entitled, *"Department of Agrarian Reform (DAR) versus Delia T. Sutton, et al. (G.R. No. 162070, 19 October 2005)"* that the DAR has no authority to regulate livestock farms which have been exempted by the Constitution from the coverage of agrarian reform.
>
> The Supreme Court's decision in the above-cited case was based on its appreciation of the intent of the framers of the Constitution relative to livestock raising lands, etc., as shown in the following statement/quote from the text of the decision: "the deliberations of the 1987 Constitutional Commission show a clear intent to exclude, inter-alia, all lands exclusively devoted to livestock, "exclusivity" of use as a requisite for land devoted to livestock, poultry and swine raising to be deemed excluded from the coverage of CARP.
>
> To guide the Department in the coverage of agricultural lands under CARP based on the above-cited Supreme Court decision, the following policy guidelines are hereby issued:
>
> 1. Private agricultural lands or portions thereof actually, directly and exclusively used for livestock purposes other than agricultural like cattle raising as of 15 June 1988 and continuously and exclusively utilized or devoted for such purpose up until the time of inventory as provided under Item 3 of this Order, shall be excluded from CARP coverage.
> 2. Conversely, landholdings or any portions thereof not actually, directly and exclusively used for livestock raising are subject to CARP coverage if one or more of the following conditions apply:
>
> 2.1 There is agricultural activity in the area, *i.e.*, cultivation of the soil, planting of crops, growing of

[101] DAR Administrative Order No. 1 (2004), Prefatory Statement.

fruit trees, including the harvesting of such products, and other farm activities and practices, whether done by a natural or juridical person and regardless of the final use or destination of such agricultural products; and/or

2.2 The land is suitable for agriculture and it is presently occupied and tilled by farmer/s.

3. The Municipal Agrarian Reform Officer (MARO), together with a representative of the DAR Provincial Office (DARPO), shall conduct an inventory and ocular inspection of all agricultural lands with livestock raising activities.

4. A report on the inventoried and inspected lands with the following information shall be submitted by the MARO and the DARPO representative to the Provincial Agrarian Reform Officer (PARO):
• Name of landowner;
• Location of property, title number and area;
• Actual land use;
• Existence of agricultural activity;
• Type of animals raised and/or agricultural commodities produced; and
• Other information vital to the determination of coverage of the land or portions thereof under CARP.

5. In case any of the conditions under Items 2.1 and 2.2 of these guidelines are evident, the PARO shall immediately proceed with the issuance of Notice of Coverage (NOC) on the subject landholding or portions thereof.

6. Pursuant to DAR Administrative Order (A.O.) No. 04, Series of 2005, the landowner has thirty (30) days from receipt of the Notice of Coverage within which to file protest on the coverage. He shall be given another thirty (30) days from date of the filing thereof within which to present evidence or documents with probative value to support his protest.

7. The processing and settlement of all protests on the coverage of the subject landholding under these guidelines shall be governed by DAR A.O. No. 03, Series of 2003 entitled, "2003 Rules for Agrarian Law Implementation Cases".

8. Any act of a landowner to change or convert his/her agricultural land for livestock raising shall not affect the coverage of his/her landholding under CARP. Any diversification or change in the agricultural use of the landholding, or shift from crop production to livestock raising shall be subject to the existing guidelines on land use conversion.

9. In line with the principle on regularity in the performance of mandated and official functions, all processes undertaken by DAR pursuant to A.O. No. 09, Series of 1993 and A.O. No. 1, Series of 2004 are valid. Accordingly, the EPs or CLOAs issued to agrarian reform beneficiaries (ARBs) for such lands likewise remain valid.

10. Any petition to nullify the coverage of said lands under CARP and the EPs/CLOAs issued therefor shall not be given due course. Further, in consonance with the doctrine on indefeasibility of EPs/CLOAs being titles of ownership under the Torrens System of registration, and pursuant to DAR Memorandum Circular No. 19, Series of 2004 entitled,

> "Reaffirming the Indefeasibility EPs and CLOAs as Titles under the Torrens System", no order or decision for CARP exclusion which carries with it the cancellation or recall of EPs/CLOAs shall be issued.
>
> All issuances of the DAR which are inconsistent herewith are hereby revoked, amended, or modified accordingly. This Administrative Order shall take effect ten (10) days after its publication in two (2) newspapers of general circulation.

While Administrative Order No. 7, Series of 2008 is not the governing law of the case, it bears emphasis that the requirement of exclusivity of use of the landholding for livestock raising has consistently guided the Department of Agrarian Reform in its determination of whether to exclude a land from the coverage of CARP.

We must recognize not only the Department of Agrarian Reform's jurisdiction to implement rules but also its resolve to protect the beneficiaries of the program. Similar to the Department's firm stance in requiring the actual, direct, and exclusive use of the landholding for livestock raising, so must this Court strictly apply the requirements in relation to respondent's application for exclusion.

Contrary to the erroneous reading of the Court of Appeals of *Republic v. Salvador N. Lopez Agri-business Corporation*,[102] DAR need not establish that the applicant is engaged in agricultural business to detract from livestock farming.[103] Under Administrative Order No. 1, Series of 2004, the applicant must present proof not only of prior use but also of continuous use of the landholding for livestock raising.[104] Thus, the burden is on the applicant to establish actual, exclusive, direct, and continuous use of the landholding for the purpose for which the exclusion is being sought.

Republic v. Salvador N. Lopez Agri-business Corporation[105] instructs that the presence of intermittent trees planted on the property do not automatically place a landholding within the coverage of agrarian reform. It "must be placed within the context of how they figure in the actual, direct and exclusive use of the subject lands."[106] Reiterating the ruling in *Department of Agrarian Reform v. Uy*,[107] this Court held that there must be a showing that the trees were planted and used for agricultural business.

Here, the Court of Appeals ignored the findings of the DAR Secretary of the presence of agricultural business in Hacienda Bitanagan. It gravely

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[102] 654 Phil. 44 (2011) [Per J. Sereno, Third Division].
[103] *Rollo*, p. 57.
[104] DAR Administrative Order No. 1 (2004), sec. 3.2.
[105] 654 Phil. 44 (2011) [Per J. Sereno, Third Division].
[106] *Republic v. Salvador N. Lopez Agri-Business Corporation*, 654 Phil. 44, 62 (2011) [Per J. Sereno, Third Division].
[107] 544 Phil. 308 (2007) [Per J. Callejo, Third Division].

erred in disregarding the findings of the DAR Secretary showing that respondent was not exclusively engaged in cattle-raising but also engaged in copra farming from which it consistently received income from 1988 to 1996:

> On the other hand, a careful examination of the documents which have a direct bearing on the nature of the business of the corporation clearly paint a different picture altogether.
>
> First, a reading of the Articles of Incorporation of BADI shows that the primary purpose for which it was incorporated is, as follows:
>
> 1)"Primary:
>
> > To engage in agricultural ventures, such as, but not limited to, planting and production of coconuts and copra, coffee, cacao, mangoes, bananas, orchards, ramie and other fibers; raising of large cattle, goats, sheep, hogs and poultry; and development of ponds and areas for the propagation of agricultural aqua-marine crops, such as, but not limited to fry, milk fish, shrimps and prawns;"
>
> Verily, from the above provision, it appears that right at the outset of its corporate life, cattle raising was just among the several ventures that the corporation intended to engage in. Based on the evidence hereafter discussed, the corporation indeed utilized the hacienda for all of the above purposes.
>
> Moreover, in the Statement of Income and Retained Earnings for the seven (7) months ending on 31 December 1988, BADI's operating revenues was, as follows:
>
> | "OPERATING REVENUES | 1988 |
> |---|---|
> | Copra Sales | 189,602.34 |
> | Cattle Sales | 302,871.26 |
> | Total Operating Revenues | 492,473.60" |
>
> Clearly, in the seven (7) month period prior to 31 December 1988, Hacienda Bitanagan was deriving income both from copra and cattle raising. Again, in 1990, the Statement of Income and Retained Earnings for the year ended December 31, 1990 with Comparative Figures for 1989, likewise submitted by the hacienda, show the following figures:
>
> | "OPERATING REVENUES | 1990 | 1989 |
> |---|---|---|
> | Copra Sales | 460,346.15 | 1,205,799.20 |
> | Cattle Sales | 1,183,745.00 | 0.00 |
> | Total Operating Revenues | 1,644,091.15 | 1,205,799.20" |
>
> The above data are revealing. *In 1989, the hacienda generated income only from the sales of Copra, but not from Cattle, indicating a change in business operations at least for that year,* although in 1990, it

appears to have returned to its original business of copra and cattle raising. This pattern continues, as shown by its subsequent Statements of Income and Retained Earnings from 1991, 1992, 1993, and 1995, 1995 and 1996, where it is consistently shown that the corporation was deriving income from both farming and livestock raising.

No financial statements were submitted after the above periods. *But the above documents already suffice to establish that before and after the effectivity of the CARP, Hacienda Bitanagan was used not just for the business of cattle raising, but also of farming.*

The foregoing is further underscored by the Sinumpaang Panayam executed by the people living both inside and outside the hacienda. The Sinumpaang Panayam was individually answered by the 18 people who were interviewed but dealt mainly with how the subject property was utilized. As the 18 interviewees have personal knowledge of the physical attributes of the hacienda, being either residents of or employees/laborers in the hacienda, they were able to answer the Sinumpaang Panayam. While most of the interviewees noted that there were indeed cattle present in the subject property, some averred that the number of those present were only around 60-70.

Even with the presence of cattle in the hacienda, other activities are agricultural in nature were being undertaken. In fact, while Mr. Gelvar Ayag, the farm manager (encargado) of Hacienda Bitanagan, alleges on the one hand that hacienda had been engaged in cattle raising in cattle raising even before the implementation of the CARP, he stated also that the same is also used for Copra production. The use of the subject property other than for cattle raising is further emphasized when, while most of the interviewees admitted that there were cattle heads within the hacienda, they also stated that the area is also being used for agricultural purposes as a "niyogan", "sagingan", "casoyan", and even a "koprahan". Though the answers of the interviewees varies in terms of the crops planted, or the number of cattle present, they were uniform in their testimony that there is still agricultural activity in the hacienda.

The contents of the Sinumpaang Panayam of those interviewed are also consistent with the On-Site Investigation Report of the CLUPPI. Upon ocular inspection of the subject property, the CLUPPI noted that coconut, cashew, and other different types of trees were planted in the hacienda. Furthermore, there were machinery present, including a copra dryer, which signifies that agricultural activity is being conducted in the subject property. The existence of agricultural activity within the hacienda will show that it was not used exclusively for cattle raising, especially since there is showing that Hacienda Bitanagan derives significant income from copra, a product of coconut.

Hacienda Bitanagan, in trying to prove through the various documents it presented that the cattle heads are present in the hacienda, failed to show an important aspect that would enable the subject property to be considered exempt: the exclusivity of the cattle raising activity.[108] (Emphasis supplied)

Worse, respondent admitted that it is engaged in copra harvesting.

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[108] *Rollo*, pp. 111–114.

However, the Court of Appeals conveniently ignored this admission and the significant income that respondent earned from its agricultural business from 1988 to 1996. The language of Administrative No. 1, Series of 2004 is clear that the landholding must be exclusively used for landholding. Thus, any use of the land for another purpose, whether incidental or otherwise, will be sufficient for the denial of the application for exclusion from the coverage of agrarian reform.

The requirement of actual, direct, and exclusive use of the land protects the interests of farmers and other farm workers who may be tilling the soil. It protects against the "unauthorized change or conversion or fraudulent declaration"[109] of lands seeking to be excluded from the coverage of agrarian reform when there are agricultural activities in the landholding. The fear that these unscrupulous practices were happening in Hacienda Bitanagan is also apparent in the records. The CLUPPI Investigation Team interviewed tenants of Hacienda Bitanagan and some stated that only 60 to 70 cattle heads were present in the property and that additional cattle heads were brought from a different Hacienda into the landholding whenever the DAR conducted its investigations or visited.[110] Moreover, it found that Lot No. 3-A-4 was predominantly planted with coconut trees and there is a copra dryer in the area which is indicative of agricultural activity therein.[111]

While there is no question that respondent satisfied the physical/land ratio requirement of livestock and infrastructure for Lot No. 3-A-4, it was not able to prove that it exclusively used the property for such purpose. The MARO and CLUPPI teams inspecting the subject landholdings in 1996 and in 2012 found evidence of copra harvesting in Hacienda Bitanagan.[112] Courts give great respect to the factual findings of administrative agencies in the exercise of their primary jurisdiction for their special knowledge and expertise.[113] Thus, the application for exclusion of Lot No. 3-A-4 should be denied.

As regards the other landholdings subject of the Petition, we uphold the findings of the DAR Secretary that there was no evidence of any livestock or infrastructure in Lot No. 3-A-5 and Lot No. P-13535. Thus these landholdings should not be excluded from CARP coverage under Administrative Order No. 1, Series of 2004:

> With respect to Lot 3-A-5 with an area of more than One Hundred Thirty One (specifically 131.9645) hectares, the Team described its topography as flat to rolling. It noted the absence of cattle and livestock facilities because the cattle heads were allegedly rounded up and brought to Lot 3-A-4 for the ocular inspection. The area was planted with coconut,

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[109] DAR Administrative Order No. 1 (2004), Prefatory Statement.
[110] *Rollo*, pp. 111–114.
[111] Id. at 103.
[112] Id. at 90 & 103.
[113] *Republic v. Salvador N. Lopez Agri-Business Corp.*, 654 Phil. 44 (2011) [Per J. Sereno, Third Division].

> cashew, and some trees of various species, and about eight (8) goats were seen roaming about it. A portion of the property was inaccessible, being a swampy area. The Team also noted that Lot P-13525 covering about five (5) hectares was a shoreline area containing no livestock facilities and cattle.[114]

As a final note, the Comprehensive Agrarian Reform Program has been and is still the most radical and revolutionary exercise of police power of the State. In reviewing exclusion from the coverage of agrarian reform, this Court should not forget that "it is no less than the Constitution itself that has ordained this revolution in the farms, calling for 'a just distribution' among the farmers of lands that have heretofore been the prison of their dreams but can now become the key at least to their deliverance."[115]

ACCORDINGLY, the Petition is **GRANTED**. The December 15, 2017 Decision and October 25, 2018 Amended Decision of the Court of Appeals in CA-G.R. SP No. 07293-MIN granting the application for exclusion of Hacienda Bitanagan for its three parcels of land identified as Lot No. 3-A-4 covered by TCT No. T-207 (T-3048); Lot No. 3-A-5 covered by TCT No. T-206 (T-3047); and Lot No. F-11-05-008043 covered by TCT No. P-13524 are **REVERSED.** The November 25, 2012 Order of the Secretary of the Department of Agrarian Reform in DARCO Order No. EXC-1211-333 is **REINSTATED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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[114] Id. at 104.

[115] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 819 [Per J. Cruz, *En Banc*].

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest 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.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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