EN BANC

DEPARTMENT OF AGRARIAN REFORM, represented by SECRETARY JOSE MARI B. PONCE (OIC),	**G.R. No. 162070**
Petitioner,	**Present:**
	Davide, *C.J.*, Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario and Garcia, *JJ.*
- versus -	
DELIA T. SUTTON, ELLA T. SUTTON-SOLIMAN and HARRY T. SUTTON,	**Promulgated:**
Respondents.	**October 19, 2005**

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DECISION

PUNO, *J.*:

This is a petition for review filed by the Department of Agrarian Reform (DAR) of the Decision and Resolution of the Court of Appeals, dated September 19, 2003 and February 4, 2004, respectively, which declared DAR Administrative Order (A.O.) No. 9, series of 1993, null and void for being violative of the Constitution.

The case at bar involves a land in Aroroy, Masbate, inherited by respondents which has been devoted exclusively to cow and calf breeding. On October 26, 1987, pursuant to the then existing agrarian reform program of the government, respondents made a

voluntary offer to sell (VOS) [1] their landholdings to petitioner DAR to avail of certain incentives under the law.

On June 10, 1988, a new agrarian law, Republic Act (R.A.) No. 6657, also known as the Comprehensive Agrarian Reform Law (CARL) of 1988, took effect. It included in its coverage farms used for raising livestock, poultry and swine.

On December 4, 1990, in an *en banc* decision in the case of **Luz Farms v. Secretary of DAR,** [2] this Court ruled that lands devoted to livestock and poultry-raising are not included in the definition of agricultural land. Hence, we declared as unconstitutional certain provisions of the CARL insofar as they included livestock farms in the coverage of agrarian reform.

In view of the **Luz Farms ruling,** respondents filed with petitioner DAR a formal request to withdraw their VOS as their landholding was devoted exclusively to cattle-raising and thus exempted from the coverage of the CARL. [3]

On December 21, 1992, the Municipal Agrarian Reform Officer of Aroroy, Masbate, inspected respondents' land and found that it was devoted solely to cattle-raising and breeding. He recommended to the DAR Secretary that it be exempted from the coverage of the CARL.

On April 27, 1993, respondents reiterated to petitioner DAR the withdrawal of their VOS and requested the return of the supporting papers they submitted in connection therewith. [4] Petitioner ignored their request.

On December 27, 1993, DAR issued **A.O. No. 9, series of 1993,** [5] which provided that only portions of private agricultural lands used for the raising of livestock, poultry and swine as of June 15, 1988 shall be excluded from the coverage of the CARL. In determining the area of land to be excluded, the A.O. fixed the following retention limits, *viz*: 1:1 animal-land ratio (*i.e.,* 1 hectare of land per 1 head of animal shall be retained by the landowner), and a ratio of 1.7815 hectares for livestock infrastructure for every 21 heads of cattle shall likewise be excluded from the operations

of the CARL.

On February 4, 1994, respondents wrote the DAR Secretary and advised him to consider as final and irrevocable the withdrawal of their VOS as, under the **Luz Farms doctrine,** their entire landholding is exempted from the CARL. [6]

On September 14, 1995, then DAR Secretary Ernesto D. Garilao issued an Order [7] partially granting the application of respondents for exemption from the coverage of CARL. Applying the retention limits outlined in the DAR A.O. No. 9, petitioner exempted 1,209 hectares of respondents' land for grazing purposes, and a maximum of 102.5635 hectares for infrastructure. Petitioner ordered the rest of respondents' landholding to be segregated and placed under Compulsory Acquisition.

Respondents moved for reconsideration. They contend that their entire landholding should be exempted as it is devoted exclusively to cattle-raising. Their motion was denied. [8] They filed a notice of appeal [9] with the Office of the President assailing: (1) the reasonableness and validity of DAR A.O. No. 9, s. 1993, which provided for a ratio between land and livestock in determining the land area qualified for exclusion from the CARL, and (2) the constitutionality of DAR A.O. No. 9, s. 1993, in view of the **Luz Farms case** which declared cattle-raising lands excluded from the coverage of agrarian reform.

On October 9, 2001, the Office of the President affirmed the impugned Order of petitioner DAR. [10] It ruled that DAR A.O. No. 9, s. 1993, does not run counter to the **Luz Farms case** as the A.O. provided the guidelines to determine whether a certain parcel of land is being used for cattle-raising. However, **the issue on the constitutionality of the assailed A.O. was left for the determination of the courts as the sole arbiters of such issue.**

On appeal, the Court of Appeals ruled in favor of the respondents. It declared DAR A.O. No. 9, s. 1993, void for being contrary to the intent of the 1987 Constitutional Commission to exclude livestock farms from the land reform program of the

government. The dispositive portion reads:

> **WHEREFORE,** premises considered, DAR Administrative Order No. 09, Series of 1993 is hereby **DECLARED** null and void. The assailed order of the Office of the President dated 09 October 2001 in so far as it affirmed the Department of Agrarian Reform's ruling that petitioners' landholding is covered by the agrarian reform program of the government is **REVERSED** and **SET ASIDE.**
>
> SO ORDERED. [11]

Hence, this petition.

The main issue in the case at bar is the constitutionality of DAR A.O. No. 9, series of 1993, which prescribes a maximum retention limit for owners of lands devoted to livestock raising.

Invoking its rule-making power under Section 49 of the CARL, petitioner submits that it issued DAR A.O. No. 9 to limit the area of livestock farm that may be retained by a landowner pursuant to its mandate to place all public and private agricultural lands under the coverage of agrarian reform. Petitioner also contends that the A.O. seeks to remedy reports that some unscrupulous landowners have converted their agricultural farms to livestock farms in order to evade their coverage in the agrarian reform program.

Petitioner's arguments fail to impress.

Administrative agencies are endowed with powers legislative in nature, *i.e.,* the power to make rules and regulations. They have been granted by Congress with the authority to issue rules to regulate the implementation of a law entrusted to them. Delegated rule-making has become a practical necessity in modern governance due to the increasing complexity and variety of public functions. However, while administrative rules and regulations have the force and effect of law, they are not immune from judicial review. [12] They may be properly challenged before the courts to ensure that they do not violate the Constitution and no grave abuse of administrative discretion is committed by the administrative body concerned.

The fundamental rule in administrative law is that, **to be valid, administrative**

rules and regulations must be issued by authority of a law and **must not contravene the provisions of the Constitution.**[13] The rule-making power of an administrative agency may not be used to abridge the authority given to it by Congress or by the Constitution. **Nor can it be used to enlarge the power of the administrative agency beyond the scope intended**. **Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by administrative agencies and the scope of their regulations.**[14]

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, anti-pollution equipment like bio-gas and digester plants augmented by lagoons and concrete ponds, deepwells, elevated water tanks, pumphouses, sprayers, and other technological appurtenances.[15]

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.

The subsequent case of **Natalia Realty, Inc. v. DAR**[16] reiterated our ruling in the **Luz Farms** case. In **Natalia Realty,** the Court held that industrial, commercial and residential lands are not covered bv the CARL.[17] We stressed anew that **while Section**

4 of R.A. No. 6657 provides that the CARL shall cover all public and private agricultural lands, the term "agricultural land" does not include lands classified as mineral, forest, residential, commercial or industrial. Thus, in **Natalia Realty,** even portions of the Antipolo Hills Subdivision, which are **arable yet still undeveloped,** could not be considered as agricultural lands subject to agrarian reform as these lots were already classified as residential lands.

A similar logical deduction should be followed in the case at bar. Lands devoted to raising of livestock, poultry and swine have been classified as industrial, not agricultural, lands and thus exempt from agrarian reform. Petitioner DAR argues that, in issuing the impugned A.O., it was seeking to address the reports it has received that some unscrupulous landowners have been converting their agricultural lands to livestock farms to avoid their coverage by the agrarian reform. Again, we find neither merit nor logic in this contention. **The undesirable scenario which petitioner seeks to prevent with the issuance of the A.O. clearly does not apply in this case.** Respondents' family acquired their landholdings as early as 1948. They have long been in the business of breeding cattle in Masbate which is popularly known as the cattle-breeding capital of the Philippines.[18] Petitioner DAR does not dispute this fact. Indeed, there is no evidence on record that respondents have just recently engaged in or converted to the business of breeding cattle after the enactment of the CARL that may lead one to suspect that respondents intended to evade its coverage. It must be stressed that what the CARL prohibits is the **conversion of agricultural lands for non-agricultural purposes** after the effectivity of the CARL. **There has been no change of business interest in the case of respondents.**

Moreover, it is a fundamental rule of statutory construction that the reenactment of a statute by Congress without substantial change is an implied legislative approval and adoption of the previous law. On the other hand, by making a new law, Congress seeks to supersede an earlier one.[19] In the case at bar, after the passage of the 1988 CARL, Congress enacted R.A. No. 7881[20] which amended certain provisions of the CARL.

Specifically, **the new law changed the definition of the terms "agricultural activity" and "commercial farming" by dropping from its coverage lands that are devoted to commercial livestock, poultry and swine-raising.** [21] **With this significant modification, Congress clearly sought to align the provisions of our agrarian laws with the intent of the 1987 Constitutional Commission to exclude livestock farms from the coverage of agrarian reform.**

In sum, it is doctrinal that rules of administrative bodies must be in harmony with the provisions of the Constitution. They cannot amend or extend the Constitution. To be valid, they must conform to and be consistent with the Constitution. In case of conflict between an administrative order and the provisions of the Constitution, the latter prevails. [22]

The assailed A.O. of petitioner DAR was properly stricken down as unconstitutional as it enlarges the coverage of agrarian reform beyond the scope intended by the 1987 Constitution.

IN VIEW WHEREOF, the petition is DISMISSED. The assailed Decision and Resolution of the Court of Appeals, dated September 19, 2003 and February 4, 2004, respectively, are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

REYNATO S. PUNO
Associate Justice

WE CONCUR:

HILARIO G. DAVIDE, JR.
Chief Justice

ARTEMIO V. PANGANIBAN
Associate Justice

LEONARDO A. QUISUMBING
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

ANTONIO T. CARPIO
Associate Justice

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

DANTE O. TINGA
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

CANCIO C. GARCIA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

HILARIO G. DAVIDE, JR.
Chief Justice

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[1] This is a transaction entered into by the landowner and the government, thru the DAR, the purchase price of the land being the one agreed upon between them, and paid by the Land Bank of the Philippines. Under E.O. No. 229, such transactions shall be exempt from the payment of the capital gains tax and other taxes and fees. As an additional incentive, Section 19 of the CARP gives to landowners who voluntarily offer to sell their land an additional five percent (5%) cash payment.

[2] 192 SCRA 51 (1990).

[3] CA Rollo, pp. 65-66.

[4] *Id.,* pp. 67-68.

[5] *Id.,* pp. 57-62.

[6] *Id.,* pp. 69-71.

[7] *Id.,* pp. 72-76.

[8] Order, dated October 5, 1995; CA Rollo, pp. 87-89.

[9] O.P. Case No. 96-A-6361.

[10] CA Rollo, pp. 50-54.

[11] CA Decision dated September 19, 2003, penned by Associate Justice Buenaventura J. Guerrero and concurred in by Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong; Rollo, pp. 32-43.

[12] Administrative Law and Process in a Nutshell, Gellhorn and Levin, 1990 ed., p. 315.

[13] Pagpalain Haulers, Inc. v. Trajano, 310 SCRA 354 (1999).

[14] Conte v. Commission on Audit, 264 SCRA 19 (1996).

[15] Luz Farms case, *supra,* p. 61.

[16] 225 SCRA 278 (1993).

[17] This same ruling was adapted on February 21, 1995 by then Executive Secretary Teofisto Guingona, Jr., by authority of the President, in his Decision exempting from the coverage of agrarian reform the landholdings of Golden Country Farms, Inc., used in its cattle, swine and poultry operations. *See* O.P. Case No. 5454, CA Rollo, pp. 103-111.

[18] Opposition to Respondent's Motion for Reconsideration, pp. 310-311.

[19] Administrative Law, A Text, Reginald Parker, p. 157.

[20] Enacted on July 25, 1994.

[21] Sections 1 and 3 of R.A. No. 7881.

[22] Conte v. Commission on Audit, *supra*.

Republic of the Philippines
Supreme Court
Manila

Sirs/Mesdames:

Quoted hereunder, for your information, is a resolution of the Court En Banc dated
17 January 2006

"G.R. No. 162070 (Department of Agrarian Reform, represented by Sec. Jose Mari B. Ponce [OIC] vs. Delia T. Sutton, et al.).- Acting on the Motion for Reconsideration of the decision of October 19, 2005, dated November 25, 2005 filed by counsel for petitioner Department of Agrarian Reform, the Court Resolved to **DENY WITH FINALITY** the said motion for reconsideration, as the basic issues raised therein have been passed upon by this Court and no substantial arguments were presented to warrant the reversal of the questioned decision." (42)

Very truly yours,

mdvillarama
MA. LUISA D. VILLARAMA
Clerk of Court

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Republic of the Philippines
Supreme Court
Manila

Sirs/Mesdames:

Quoted hereunder, for your information, is a resolution of the Court En Banc dated April 4, 2006

"G.R. No. 162070 (Department of Agrarian Reform, represented by Sec. Jose Mari B. Ponce [OIC] vs. Delia T. Sutton, et al.).- The Court Resolved to

(a) **TREAT** as a **SECOND MOTION FOR RECONSIDERATION** the Motion for Clarification of the decision of October 19, 2005, dated February 15, 2006 filed by Atty. Delfin B. Samson, counsel for the Department of Agrarian Reform; and

(b) **DENY** the subject motion, considering that a second motion for reconsideration is a prohibited pleading under Rule 52, Section 2 in relation to Rule 56, Section 2, 1997 Rules of Civil Procedure, as amended." Puno, J., on leave. (81)

Very truly yours,

MA. LUISA D. VILLARAMA
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