Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

DEPARTMENT OF AGRARIAN REFORM, QUEZON CITY & PABLO MENDOZA,	**G.R. NO. 176549**
Petitioners,	Present:
	VELASCO, JR., *J.*, *Chairperson*
	PERALTA,
- versus -	PEREZ,*
	REYES, and
	JARDELEZA, *JJ.*
ROMEO C. CARRIEDO,	
Respondent.	Promulgated:
	January 20, 2016

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DECISION

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Court of Appeals Decision dated October 5, 2006[2] and Resolution dated January 10, 2007[3] in CA-G.R. SP No. 88935. The Decision and Resolution reversed the Order dated February 22, 2005[4] issued by the Department of Agrarian Reform-Central Office (DAR-CO) in Administrative Case No. A-9999-03-CV-008-03 which directed that a 5.0001 hectare piece of agricultural land (land) be placed under the Comprehensive Agrarian Reform Program pursuant to Republic Act (RA) No. 6657 or the Comprehensive Agrarian Reform Law.

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* Designated as Regular Member of the Third Division per Special Order No. 2311 dated January 14, 2016.

1 *Rollo*, pp. 14-22.

2 Penned by Associate Justice Jose L. Sabio Jr. with Associate Justices Regalado E. Maambong and Ramon M. Bato, Jr. concurring, *id.* at 164-179.

3 Penned by Associate Justice Jose L. Sabio Jr. with Associate Justices Regalado E. Maambong and Ramon M. Bato, Jr. concurring, *id.* at 28-29.

4 CA *rollo*, pp. 56-61.

The Facts

The land originally formed part of the agricultural land covered by Transfer Certificate of Title (TCT) No. 17680,[5] which in turn, formed part of the total of 73.3157 hectares of agricultural land owned by Roman De Jesus (Roman).[6]

On May 23, 1972, petitioner Pablo Mendoza (Mendoza) became the tenant of the land by virtue of a *Contrato King Pamamuisan*[7] executed between him and Roman. Pursuant to the *Contrato*, Mendoza has been paying twenty-five (25) piculs of sugar every crop year as lease rental to Roman. It was later changed to Two Thousand Pesos (P2, 000.00) per crop year, the land being no longer devoted to sugarcane.[8]

On November 7, 1979, Roman died leaving the entire 73.3157 hectares to his surviving wife Alberta Constales (Alberta), and their two sons Mario De Jesus (Mario) and Antonio De Jesus (Antonio).[9] On August 23, 1984, Antonio executed a Deed of Extrajudicial Succession with Waiver of Right[10] which made Alberta and Mario co-owners in equal proportion of the agricultural land left by Roman.[11]

On June 26, 1986, Mario sold[12] approximately 70.4788 hectares to respondent Romeo C. Carriedo (Carriedo), covered by the following titles and tax declarations, to wit:

1. TCT No. 35055
2. (Tax Declaration) TD No. 48354
3. TCT No. 17681
4. TCT No. 56897
5. TCT No. 17680

The area sold to Carriedo included the land tenanted by Mendoza (forming part of the area covered by TCT No. 17680). Mendoza alleged that the sale took place without his knowledge and consent.

In June of 1990, Carriedo sold all of these landholdings to the Peoples' Livelihood Foundation, Inc. (PLFI) represented by its president, Bernabe Buscayno.[13] All the lands, except that covered by TCT No. 17680, were subjected to Voluntary Land Transfer/Direct Payment Scheme and were awarded to agrarian reform beneficiaries in 1997.[14]

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5 Comprising a total of 12.1065 hectares. DAR-CO Records, pp. 537-539.
6 CA *rollo*, p. 57.
7 *Id.* at 73-74.
8 *Rollo,* p. 165.
9 *Id.* at 166.
10 *Id.*; DAR-CO Records (A-9999-03-CV-008-03), pp. 500-503.
11 *Rollo*, p. 166.
12 CA *rollo,* pp. 75-78.
13 DAR-CO Records (A-9999-03-CV-008-03), pp. 493-495.
14 *Id.* at 571-572; *rollo*, p. 166.

The parties to this case were involved in three cases concerning the land, to wit:

The Ejectment Case (DARAB Case No. 163-T-90 | CA-G.R. SP No. 44521 | G.R. No. 143416)

On October 1, 1990, Carriedo filed a Complaint for Ejectment and Collection of Unpaid Rentals against Mendoza before the Provincial Agrarian Reform Adjudication Board (PARAD) of Tarlac docketed as DARAB Case No. 163-T-90. He subsequently filed an Amended Complaint on October 30, 1990.[15]

In a Decision dated June 4, 1992,[16] the PARAD ruled that Mendoza had knowledge of the sale, hence, he could not deny the fact nor assail the validity of the conveyance. Mendoza violated Section 2 of Presidential Decree (PD) No. 816,[17] Section 50 of RA No. 1199[18] and Section 36 of RA

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15 CA *rollo,* pp. 69-72.

16 *Id.* at 62-75.

17 Providing That Tenant-farmers/Agricultural Lessees Shall Pay the Leasehold Rentals When They Fall Due and Providing Penalties Therefor (1975). Section 2 of PD No. 816 reads:

> Section 2. That any agricultural lessee of a rice or corn land under Presidential Decree No. 27 who deliberately refuses and/or continues to refuse to pay the rentals or amortization payments when they fall due for a period of two (2) years shall, upon hearing and final judgment, forfeit the Certificate of Land Transfer issued in his favor, if his farmholding is already covered by such Certificate of Land Transfer, and his farmholding.

18 Agricultural Tenancy Act of the Philippines. Section 50 of RA No. 1199 reads:

> Section 50. *Causes for the Dispossession of a Tenant.* — Any of the following shall be a sufficient cause for the dispossession of a tenant from his holdings:
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> (a) The *bona fide* intention of the landholder to cultivate the land himself personally or through the employment of farm machinery and implements: *Provided, however*, That should the landholder not cultivate the land himself or should fail to employ mechanical farm implements for a period of one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the land and damages for any loss incurred by him because of said dispossession: *Provided, further*, That the land-holder shall, at least one year but not more than two years prior to the date of his petition to dispossess the tenant under this subsection, file notice with the court and shall inform the tenant in wiring in a language or dialect known to the latter of his intention to cultivate the land himself, either personally or through the employment of mechanical implements, together with a certification of the Secretary of Agriculture and Natural Resources that the land is suited for mechanization: *Provided, further*, That the dispossessed tenant and the members of his immediate household shall be preferred in the employment of necessary laborers under the new set-up.
>
> (b) When the current tenant violates or fails to comply with any of the terms and conditions of the contract or any of the provisions of this Act: *Provided, however*, That this subsection shall not apply when the tenant has substantially complied with the contract or with the provisions of this Act.
>
> (c) The tenant's failure to pay the agreed rental or to deliver the landholder's share: *Provided, however*, That this shall not apply when the tenant's failure is caused by a fortuitous event or *force majeure*.
>
> (d) When the tenant uses the land for a purpose other than that specified by agreement of the parties.

No. 3844,[19] and thus, the PARAD declared the leasehold contract terminated, and ordered Mendoza to vacate the premises.[20]

Mendoza filed an appeal with the Department of Agrarian Reform Adjudication Board (DARAB). In a Decision dated February 8, 1996,[21] the DARAB affirmed the PARAD Decision *in toto*. The DARAB ruled that ownership of the land belongs to Carriedo. That the deed of sale was unregistered did not affect Carriedo's title to the land. By virtue of his ownership, Carriedo was subrogated to the rights and obligation of the

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> (e) When a share-tenant fails to follow those proven farm practices which will contribute towards the proper care of the land and increased agricultural production.
> (f) When the tenant through negligence permits serious injury to the land which will impair its productive capacity.
> (g) Conviction by a competent court of a tenant or any member of his immediate family or farm household of a crime against the landholder or a member of his immediate family.

[19] Agricultural Land Reform Code. Section 36 of RA No. 3844 reads:

> Section 36. *Possession of Landholding; Exceptions.* — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:
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> (1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: *Provided*; That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor, is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: *Provided, further*, That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossessions.
> (2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or *force majeure*;
> (3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;
> (4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;
> (5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;
> (6) The agricultural lessee does not pay the lease rental when it falls due: *Provided*, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or
> (7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.

[20] *Rollo,* p. 75.

[21] *Id.* at 76-83.

former landowner, Roman.[22]

Mendoza then filed a Petition for Review with the Court of Appeals (CA). The case was docketed as CA-G.R. SP No. 44521. In a Decision dated September 7, 1998,[23] the CA affirmed the DARAB decision *in toto.* The CA ruled that Mendoza's reliance on Section 6 of RA No. 6657 as ground to nullify the sale between De Jesus and Carriedo was misplaced, the section being limited to retention limits. It reiterated that registration was not a condition for the validity of the contract of sale between the parties.[24] Mendoza's Motions for Reconsideration and New Trial were subsequently denied.[25]

Mendoza thus filed a Petition for Review on *Certiorari* with this Court, docketed as G.R. No. 143416. In a Resolution dated August 9, 2000,[26] this Court denied the petition for failure to comply with the requirements under Rule 45 of the Rules of Court. An Entry of Judgment was issued on October 25, 2000.[27] In effect, the Decision of the CA was affirmed, and the following issues were settled with finality:

1) Carriedo is the absolute owner of the five (5) hectare land;
2) Mendoza had knowledge of the sale between Carriedo and Mario De Jesus, hence he is bound by the sale; and
3) Due to his failure and refusal to pay the lease rentals, the tenancy relationship between Carriedo and Mendoza had been terminated.

Meanwhile, on October 5, 1999, the landholding covered by TCT No. 17680 with an area of 12.1065 hectares was divided into sub-lots. 7.1065 hectares was transferred to Bernabe Buscayno *et al*. through a Deed of Transfer[28] under PD No. 27.[29] Eventually, TCT No. 17680 was partially cancelled, and in lieu thereof, emancipation patents (EPs) were issued to Bernabe, Rod and Juanito, all surnamed Buscayno. These lots were identified as Lots C, D and E covered by TCT Nos. 44384 to 44386 issued on September 10, 1999.[30] Lots A and B, consisting of approximately 5.0001 hectares and which is the land being occupied by Mendoza, were registered in the name of Carriedo and covered by TCT No. 344281[31] and TCT No. 344282.[32]

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22 *Id.* at 79-80.
23 *Id.* at 89-95.
24 *Id.* at 92-93.
25 CA *rollo,* p. 113.
26 *Rollo,* pp. 96-97.
27 *Id.* at 98.
28 DAR-CO Records (A-9999-03-CV-008-03), pp. 451-452.
29 Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor (1972).
30 DAR-CO Records (A-9999-03-CV-008-03), pp. 553-555.
31 *Id.* at 511.
32 *Id.* at 510.

The Redemption Case
(DARAB III-T-1476-97 | CA-G.R. SP No. 88936)

On July 21, 1997, Mendoza filed a Petition for Redemption[33] with the PARAD. In an Order dated January 15, 2001,[34] the PARAD dismissed his petition on the grounds of *litis pendentia* and lack of the required certification against forum-shopping. It dismissed the petition so that the pending appeal of DARAB Case No. 163-T-90 (the ejectment case discussed above) with the CA can run its full course, since its outcome partakes of a prejudicial question determinative of the tenability of Mendoza's right to redeem the land under tenancy.[35]

Mendoza appealed to the DARAB which reversed the PARAD Order in a Decision dated November 12, 2003.[36] The DARAB granted Mendoza redemption rights over the land. It ruled that at the time Carriedo filed his complaint for ejectment on October 1, 1990, he was no longer the owner of the land, having sold the land to PLFI in June of 1990. Hence, the cause of action pertains to PLFI and not to him.[37] It also ruled that Mendoza was not notified of the sale of the land to Carriedo and of the latter's subsequent sale of it to PLFI. The absence of the mandatory requirement of notice did not stop the running of the 180 day-period within which Mendoza could exercise his right of redemption.[38] Carriedo's Motion for Reconsideration was subsequently denied.[39]

Carriedo filed a Petition for Review with the CA. In a Decision dated December 29, 2006,[40] the CA reversed the DARAB Decision. It ruled that Carriedo's ownership of the land had been conclusively established and even affirmed by this Court. Mendoza was not able to substantiate his claim that Carriedo was no longer the owner of the land at the time the latter filed his complaint for ejectment. It held that the DARAB erred when it ruled that Mendoza was not guilty of forum-shopping.[41] Mendoza did not appeal the decision of the CA.

The Coverage Case
(ADM Case No. A-9999-03-CV-008-03 | CA-G.R. SP No. 88935)

On February 26, 2002, Mendoza, his daughter Corazon Mendoza

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33 *Rollo*, pp. 84-87.
34 *Id.* at 99-104.
35 *Id.* at 101.
36 *Id.* at 105-116.
37 *Id.* at 112-113.
38 *Id.* at 113-114.
39 *Id.* at 121.
40 Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Juan Q. Enriquez, Jr. and Normandie B. Pizarro concurring, *id.*. at 118-127.
41 *Id.* at 123-126.

(Corazon) and Orlando Gomez (Orlando) filed a Petition for Coverage[42] of the land under RA No. 6657. They claimed that they had been in physical and material possession of the land as tenants since 1956, and made the land productive.[43] They prayed (1) that an order be issued placing the land under Comprehensive Agrarian Reform Program (CARP); and (2) that the DAR, the Provincial Agrarian Reform Officer (PARO) and the Municipal Agrarian Reform Officer (MARO) of Tarlac City be ordered to proceed with the acquisition and distribution of the land in their favor.[44] The petition was granted by the Regional Director (RD) in an Order dated October 2, 2002,[45] the dispositive portion of which reads:

> WHEREFORE, foregoing premises considered, the petition for coverage under CARP filed by Pablo Mendoza, et al[.], is given due course. Accordingly, the MARO and PARO are hereby directed to place within the ambit of RA 6657 the landholding registered in the name of Romeo Carriedo covered and embraced by TCT Nos. 334281 and 334282, with an aggregate area of 45,000 and 5,001 square meters, respectively, and to distribute the same to qualified farmer-beneficiaries.
>
> SO ORDERED.[46]

On October 23, 2002, Carriedo filed a Protest with Motion to Reconsider the Order dated October 2, 2002 and to Lift Coverage[47] on the ground that he was denied his constitutional right to due process. He alleged that he was not notified of the filing of the Petition for Coverage, and became aware of the same only upon receipt of the challenged Order.

On October 24, 2002, Carriedo received a copy of a Notice of Coverage dated October 21, 2002[48] from MARO Maximo E. Santiago informing him that the land had been placed under the coverage of the CARP.[49] On December 16, 2002, the RD denied Carriedo's protest in an Order dated December 5, 2002.[50] Carriedo filed an appeal to the DAR-CO.

In an Order dated February 22, 2005,[51] the DAR-CO, through Secretary Rene C. Villa, affirmed the Order of the RD granting coverage. The DAR-CO ruled that Carriedo was no longer allowed to retain the land due to his violation of the provisions of RA No. 6657. His act of disposing his agricultural landholdings was tantamount to the exercise of his retention right, or an act amounting to a valid waiver of such right in accordance with

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42 CA *rollo*, pp. 127-130.
43 *Id.* at 128.
44 *Id.* at 130.
45 *Id.* at 48-51.
46 *Id.* at 50.
47 *Id.* at 150-170.
48 *Id.* at 171.
49 *Id.* at 26.
50 *Id.* at 27, 52-54.
51 *Id.* at 56-61.

applicable laws and jurisprudence.[52] However, it did not rule whether Mendoza was qualified to be a farmer-beneficiary of the land. The dispositive portion of the Order reads:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DISMISSED** for lack of merit. Consequently, the Order dated 2 October 2002 of the Regional Director of DAR III, is hereby **AFFIRMED**.
>
> **SO ORDERED**.[53]

Carriedo filed a Petition for Review[54] with the CA assailing the DAR-CO Order. The appeal was docketed as CA-G.R. SP No. 88935. In a Decision dated October 5, 2006, the CA reversed the DAR-CO, and declared the land as Carriedo's retained area. The CA ruled that the right of retention is a constitutionally-guaranteed right, subject to certain qualifications specified by the legislature.[55] It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner.[56] It held that Carriedo did not commit any of the acts which would constitute waiver of his retention rights found under Section 6 of DAR Administrative Order No. 02, S.2003.[57] The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered and pursuant to applicable law and jurisprudence on the matter, the present Petition is hereby **GRANTED**. Accordingly, the assailed Order of the Department of Agrarian Reform-Central Office, Elliptical Road, Diliman, Quezon City (dated February 22, 2005) is hereby **REVERSED** and **SET ASIDE** and a new one entered—**DECLARING** the subject landholding as the Petitioner's retained area. No pronouncements as to costs.
>
> **SO ORDERED**.[58]

Hence, this petition.

Petitioners maintain that the CA committed a reversible error in declaring the land as Carriedo's retained area.[59]

They claim that Paragraph 4, Section 6 of RA No. 6657 prohibits any sale, disposition, lease, management contract or transfer of possession of private lands upon effectivity of the law.[60] Thus, Regional Director Renato

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52 *Id.* at 59-60.
53 *Id.* at 61.
54 *Id.* at 11-47.
55 *Rollo*, p. 170-171.
56 *Id.* at 171.
57 *Id.* at 173-175; 2003 Rules and Procedure Governing Landowner Retention Rights.
58 *Rollo*, pp. 177-176.
59 *Id.* at 17.
60 *Id.* at 18.

Herrera correctly observed that Carriedo's act of disposing his agricultural property would be tantamount to his exercise of retention under the law. By violating the law, Carriedo could no longer retain what was left of his property. "To rule otherwise would be a roundabout way of rewarding a landowner who has violated the explicit provisions of the Comprehensive Agrarian Reform Law."[61]

They also assert that Carriedo waived his right to retain for failure or neglect for an unreasonable length of time to do that which he may have done earlier by exercising due diligence, warranting a presumption that he abandoned his right or declined to assert it.[62] Petitioners claim that Carriedo has not filed an Application for Retention over the subject land over a considerable passage of time since the same was acquired for distribution to qualified farmer beneficiaries.[63]

Lastly, they argue that Certificates of Land Ownership Awards (CLOAs) already generated in favor of his co-petitioners Corazon Mendoza and Rolando Gomez cannot be set aside. CLOAs under RA No. 6657 are enrolled in the Torrens system of registration which makes them indefeasible as certificates of title issued in registration proceedings.[64]

The Issue

The sole issue for our consideration is whether Carriedo has the right to retain the land.

Our Ruling

We rule in the affirmative. Carriedo did not waive his right of retention over the land.

The 1987 Constitution expressly recognizes landowner retention rights under Article XIII, Section 4, to wit:

> 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.

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61 *Id.*
62 *Rollo,* pp. 19-20.
63 *Id.* at 20.
64 *Id.* at 21.

> The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied.)

RA No. 6657 implements this directive, thus:

> Section 6. *Retention Limits*. — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, **but in no case shall retention by the landowner exceed five (5) hectares.**
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> xxx
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> The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner: Provided, however, That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention. In all cases, the security of tenure of the farmers or farmworkers on the land prior to the approval of this Act shall be respected. xxx (Emphasis supplied.)

In *Danan v. Court of Appeals,*[65] we explained the rationale for the grant of the right of retention under agrarian reform laws such as RA No. 6657 and its predecessor PD No. 27, to wit:

> The right of retention is a constitutionally guaranteed right, which is subject to qualification by the legislature. It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner. A retained area, as its name denotes, is land which is not supposed to anymore leave the landowner's dominion, thus sparing the government from the inconvenience of taking land only to return it to the landowner afterwards, which would be a pointless process. For as long as the area to be retained is compact or contiguous and does not exceed the retention ceiling of five (5) hectares, a landowner's choice of the area to be retained

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65 G.R. No. 132759, October 25, 2005, 474 SCRA 113.

must prevail. xxx[66]

To interpret Section 6 of RA No. 6657, DAR issued Administrative Order No. 02, Series of 2003 (DAR AO 02-03). Section 6 of DAR AO 02-03 provides for the instances when a landowner is deemed to have waived his right of retention, to wit:

> Section 6. *Waiver of the Right of Retention.* – The landowner waives his right to retain by committing any of the following act or omission:
>
> 6.1 Failure to manifest an intention to exercise his right to retain within sixty (60) calendar days from receipt of notice of CARP coverage.
>
> 6.2 Failure to state such intention upon offer to sell or application under the [Voluntary Land Transfer (VLT)]/[Direct Payment Scheme (DPS)] scheme.
>
> 6.3 Execution of any document stating that he expressly waives his right to retain. The MARO and/or PARO and/or Regional Director shall attest to the due execution of such document.
>
> 6.4 Execution of a *Landowner Tenant Production Agreement and Farmer's Undertaking* (LTPA-FU) or *Application to Purchase and Farmer's Undertaking* (APFU) covering subject property.
>
> 6.5 Entering into a VLT/DPS or [Voluntary Offer to Sell (VOS)] but failing to manifest an intention to exercise his right to retain upon filing of the application for VLT/DPS or VOS.
>
> 6.6 Execution and submission of any document indicating that he is consenting to the CARP coverage of his entire landholding.
>
> 6.7 Performing any act constituting estoppel by laches which is the failure or neglect for an unreasonable length of time to do that which he may have done earlier by exercising due diligence, warranting a presumption that he abandoned his right or declined to assert it.

Petitioners cannot rely on the RD's Order dated October 2, 2002 which granted Mendoza's petition for coverage on the ground that Carriedo violated paragraph 4 Section 6[67] of RA No. 6657 for disposing of his

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66 *Id*. at 128 citing *Daez v. Court of Appeals,* G.R. No. 133507, February 17, 2000, 325 SCRA 856.

67 Paragraph 4, Section 6 of RA No. 6657 provides:

> Upon the effectivity of this Act, any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of the Act shall be null and void: Provided, however, That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter,

agricultural land, consequently losing his right of retention. At the time when the Order was rendered, up to the time when it was affirmed by the DAR-CO in its Order dated February 22, 2005, the applicable law is Section 6 of DAR 02-03. Section 6 clearly shows that the disposition of agricultural land is not an act constituting waiver of the right of retention.

Thus, as correctly held by the CA, Carriedo "[n]ever committed any of the acts or omissions above-stated (DAR AO 02-03). Not even the sale made by the herein petitioner in favor of PLFI can be considered as a waiver of his right of retention. Likewise, the Records of the present case is bereft of any showing that the herein petitioner expressly waived (in writing) his right of retention as required under sub-section 6.3, section 6, DAR Administrative Order No. 02-S.2003."[68]

Petitioners claim that Carriedo's alleged failure to exercise his right of retention after a long period of time constituted a waiver of his retention rights, as envisioned in Item 6.7 of DAR AO 02-03.

We disagree.

Laches is defined as the failure or neglect for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[69] Where a party sleeps on his rights and allows laches to set in, the same is fatal to his case.[70]

Section 4 of DAR AO 02-03 provides:

> Section 4. *Period to Exercise Right of Retention under RA 6657*
>
> 4.1 The landowner may exercise his right of retention at any time before receipt of notice of coverage.
>
> 4.2 Under the Compulsory Acquisition (CA) scheme, the landowner shall exercise his right of retention within sixty (60) days from receipt of notice of coverage.
>
> 4.3 Under the Voluntary Offer to Sell (VOS) and the Voluntary Land Transfer (VLT)/Direct Payment Scheme (DPS), the landowner shall exercise his right of retention simultaneously at the time of offer for sale or transfer.

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all Registers of Deeds shall inform the Department of Agrarian Reform (DAR) within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

68 *Rollo,* p. 140.

69 *Olizon v. Court of Appeals,* G.R. No. 107075, September 1, 1994, 236 SCRA 148, 157-158.

70 *Periquet, Jr. v. Intermediate Appellate Court,* G.R. No. 69996, December 5, 1994, 238 SCRA 697.

The foregoing rules give Carriedo any time before receipt of the notice of coverage to exercise his right of retention, or if under compulsory acquisition (as in this case), within sixty (60) days from receipt of the notice of coverage. The validity of the notice of coverage is the very subject of the controversy before this court. Thus, the period within which Carriedo should exercise his right of retention cannot commence until final resolution of this case.

Even assuming that the period within which Carriedo could exercise his right of retention has commenced, Carriedo cannot be said to have neglected to assert his right of retention over the land. The records show that per Legal Report dated December 13, 1999[71] prepared by Legal Officer Ariel Reyes, Carriedo filed an application for retention which was even contested by Pablo Mendoza's son, Fernando.[72] Though Carriedo subsequently withdrew his application, his act of filing an application for retention belies the allegation that he abandoned his right of retention or declined to assert it.

In their Memorandum[73] however, petitioners, *for the first time*, invoke *estoppel*, citing DAR Administrative Order No. 05 Series of 2006[74] (DAR AO 05-06) to support their argument that Carriedo waived his right of retention.[75] DAR AO 05-06 provides for the rules and regulations governing the acquisition and distribution of agricultural lands subject of conveyances under Sections 6, 70[76] and 73 (a)[77] of RA No. 6657. Petitioners particularly cite Item no. 4 of the Statement of Policies of DAR AO 05-06, to wit:

> II. Statement of Policies
>
> 4. Where the transfer/sale involves more than the five (5)

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71 DARAB Records (A-9999-03-CV-008-03), pp. 445-448.

72 *Id.* at 448.

73 *Rollo,* pp. 237-251.

74 Guidelines on the Acquisition and Distribution of Agricultural lands Subject of Conveyance Under Sections 6, 70 and 73 (a) of RA No. 6657.

75 *Rollo*, pp. 241-245.

76 Section 70 of RA No. 6657 reads:

> Section 70. *Disposition of Private Agricultural Lands*. — The sale or disposition of agricultural lands retained by a landowner as a consequence of Section 6 hereof shall be valid as long as the total landholdings that shall be owned by the transferee thereof inclusive of the land to be acquired shall not exceed the landholding ceilings provided for in this Act. Any sale or disposition of agricultural lands after the effectivity of this Act found to be contrary to the provisions hereof shall be null and void. Transferees of agricultural lands shall furnish the appropriate Register of Deeds and the [Barangay Agrarian Reform Committee (BARC)] an affidavit attesting that his total landholdings as a result of the said acquisition do not exceed the landholding ceiling. The Register of Deeds shall not register the transfer of any agricultural land without the submission of this sworn statement together with proof of service of a copy thereof to the BARC.

77 Section 73 (a) of RA No. 6657 reads:

> Section 73. *Prohibited Acts and Omissions*. –The following are prohibited:
>
> (a) The ownership or possession, for the purpose of circumventing the provisions of this Act, of agricultural lands in excess of the total retention limits or award ceilings by any person, natural or juridical, except those under collective ownership by farmer-beneficiaries;
>
> xxx

> hectares retention area, the transfer is considered violative of Sec. 6 of R.A. No. 6657.
>
> In case of multiple or series of transfers/sales, the first five (5) hectares sold/conveyed without DAR clearance and the corresponding titles issued by the Register of Deeds (ROD) in the name of the transferee shall, **under the principle of estoppel**, **be considered valid and shall be treated as the transferor/s' retained area** but in no case shall the transferee exceed the five-hectare landholding ceiling pursuant to Sections 6, 70 and 73(a) of R.A. No. 6657. Insofar as the excess area is concerned, the same shall likewise be covered considering that the transferor has no right of disposition since CARP coverage has been vested as of 15 June 1988. Any landholding still registered in the name of the landowner after earlier dispositions totaling an aggregate of five (5) hectares can no longer be part of his retention area and therefore shall be covered under CARP. (Emphasis supplied.)

Citing this provision, petitioners argue that Carriedo lost his right of retention over the land because he had already sold or disposed, after the effectivity of RA No. 6657, more than fifty (50) hectares of land in favor of another.[78]

In his Memorandum,[79] Carriedo maintains that petitioners cannot invoke any administrative regulation to defeat his right of retention. He argues that "administrative regulation must be in harmony with the provisions of law otherwise the latter prevails."[80]

We cannot sustain petitioners' argument. Their reliance on DAR AO 05-06 is misplaced. As will be seen below, nowhere in the relevant provisions of RA No. 6657 does it indicate that a multiple or series of transfers/sales of land would result in the loss of retention rights. Neither do they provide that the multiple or series of transfers or sales amounts to the waiver of such right.

The relevant portion of Section 6 of RA No. 6657 referred to in Item no. 4 of DAR AO 05-06 provides:

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

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78 *Rollo*, p. 245.

79 *Id.* at 214-236.

80 *Id.* at 227, citing *Philippine Petroleum Corp., v. Municipality of Pililla, Rizal,* G.R. No. 90776, June 3, 1991, 198 SCRA 82.

> exceed five (5) hectares. xxx
>
> Upon the effectivity of this Act, **any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of the Act shall be null and void**: Provided, however, That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the Department of Agrarian Reform (DAR) within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares. (Emphasis supplied.)

Section 70 of RA No. 6657, also referred to in Item no. 4 of DAR AO 05-06 partly provides:

> The sale or disposition of agricultural lands retained by a landowner as a consequence of Section 6 hereof shall be valid as long as the total landholdings that shall be owned by the transferee thereof inclusive of the land to be acquired shall not exceed the landholding ceilings provided for in this Act. **Any sale or disposition of agricultural lands after the effectivity of this Act found to be contrary to the provisions hereof shall be null and void.** xxx (Emphasis supplied.)

Finally, Section 73 (a) of RA No. 6657 as referred to in Item No. 4 of DAR AO 05-06 provides,

> Section 73. *Prohibited Acts and Omissions*. – The following are prohibited:
>
> (a) The ownership or possession, for the purpose of circumventing the provisions of this Act, of agricultural lands in excess of the total retention limits or award ceilings by any person, natural or juridical, except those under collective ownership by farmer-beneficiaries; xxx

Sections 6 and 70 are clear in stating that any sale and disposition of agricultural lands in violation of the RA No. 6657 shall be null and void. Under the facts of this case, the reasonable reading of these three provisions in relation to the constitutional right of retention should be that the consequence of nullity pertains to the area/s which were sold, or owned by the transferee, in excess of the 5-hectare land ceiling. Thus, the CA was correct in declaring that the land is Carriedo's retained area.[81]

Item no. 4 of DAR AO 05-06 attempts to defeat the above reading by providing that, under the principle of *estoppel*, the sale of the first five hectares is valid. But, it hastens to add that the first five hectares sold

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[81] *Rollo*, pp. 142-143.

corresponds to the transferor/s' retained area. Thus, since the sale of the first five hectares is valid, therefore, the landowner loses the five hectares because it happens to be, at the same time, the retained area limit. In reality, Item No. 4 of DAR AO 05-06 operates as a forfeiture provision in the guise of *estoppel*. It punishes the landowner who sells in excess of five hectares. Forfeitures, however, partake of a criminal penalty.[82]

In *Perez v. LPG Refillers Association of the Philippines, Inc.,*[83] this Court said that for an administrative regulation to have the force of a penal law, (1) the violation of the administrative regulation must be made a crime by the delegating statute itself; and (2) the penalty for such violation must be provided by the statute itself.[84]

Sections 6, 70 and 73 (a) of RA No. 6657 clearly do not provide that a sale or disposition of land in excess of 5 hectares results in a forfeiture of the five hectare retention area. Item no. 4 of DAR AO 05-06 imposes a penalty where none was provided by law.

As this Court also held in *People v. Maceren,*[85] to wit:

> The reason is that the Fisheries law does not expressly prohibit electro fishing. As electro fishing is not banned under the law, the Secretary of Agriculture and Natural Resources and the Natural Resources and the Commissioner of Fisheries are powerless to penalize it. In other words, Administrative Order Nos. 84 and 84-1, in penalizing electro fishing, are devoid of any legal basis.
>
> Had the lawmaking body intended to punish electro fishing, a penal provision to that effect could have been easily embodied in the old Fisheries Law.[86]

The repugnancy between the law and Item no. 4 of DAR AO 05-06 is apparent by a simple comparison of their texts. The conflict undermines the

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82 See *Cabal v. Kapunan, Jr.,* G.R. No. L-19052, December 29, 1962, 6 SCRA 1059, 1064:

> Such forfeiture has been held, however, to partake the nature of a penalty.
>
> "In a strict signification, a forfeiture is a divestiture of property without compensation, in consequence of a default or an offense, and the term is used in such a sense in this article. A forfeiture, as thus defined, is imposed by way of *punishment*, not by the mere convention of the parties, but by the lawmaking power, to insure a prescribed course of conduct. It is a method deemed necessary by the legislature to restrain the *commission of an offense* and to *aid in the prevention of such an offense*. The effect of such a forfeiture is to transfer the title to the specific thing from the owner to the sovereign power. (23 Am. Jur. 599)
>
> In Black's Law Dictionary, a 'forfeiture' is defined to the 'the incurring of a liability to pay a definite sum of money as the consequence of violating the provisions of some statute or refusal to comply with some requirement of law.' It may be said to be a *penalty* imposed for misconduct or breach of duty." (Com. Vs. French, 114 S.W. 255)

83 G.R. No. 159149, June 26, 2006, 492 SCRA 638.

84 *Id.* at 649.

85 G.R. No. L-32166, October 18, 1977, 79 SCRA 450.

86 *Id*. at 456.

statutorily-guaranteed right of the landowner to choose the land he shall retain, and DAR AO 05-06, in effect, amends RA No. 6657.

In *Romulo, Mabanta, Buenaventura, Sayoc & De Los Angeles* (RMBSA) *v. Home Development Mutual Fund* (HDMF),[87] this Court was confronted with the issue of the validity of the amendments to the rules and regulations implementing PD No. 1752.[88] In that case, PD No. 1752 (as amended by RA No. 7742) exempted RMBSA from the Pag-Ibig Fund coverage for the period January 1 to December 31, 1995. In September 1995, however, the HDMF Board of Trustees issued a board resolution amending and modifying the rules and regulations implementing RA No. 7742. As amended, the rules now required that for a company to be entitled to a waiver or suspension of fund coverage, it must have a plan providing for both provident/retirement *and* housing benefits superior to those provided in the Pag-Ibig Fund. In ruling against the amendment and modification of the rules, this Court held that—

> In the present case, when the Board of Trustees of the HDMF required in Section 1, Rule VII of the 1995 Amendments to the Rules and Regulations Implementing R.A. No. 7742 that employers should have both provident/retirement and housing benefits for all its employees in order to qualify for exemption from the Fund, it effectively amended Section 19 of P.D. No. 1752. And when the Board subsequently abolished that exemption through the 1996 Amendments, it repealed Section 19 of P.D. No. 1752. Such amendment and subsequent repeal of Section 19 are both invalid, as they are not within the delegated power of the Board. The HDMF cannot, in the exercise of its rule-making power, issue a regulation not consistent with the law it seeks to apply. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law.[89] (Citations omitted; underscoring supplied.)

Laws, as well as the issuances promulgated to implement them, enjoy the presumption of validity.[90] However, administrative regulations that alter or amend the statute or enlarge or impair its scope are void, and courts not only may, but it is their obligation to strike down such regulations.[91] Thus, in this case, because Item no. 4 of DAR AO 05-06 is patently null and void, the presumption of validity cannot be accorded to it. The invalidity of this

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87 G.R. No. 131082, June 19, 2000, 333 SCRA 777.

88 Amending the Act Creating the Home Development Mutual Fund (1980).

89 *Supra* note 88 at 786.

90 *Dasmariñas Water District v. Monterey Foods Corporation,* G.R. No. 175550, September 17, 2008, 565 SCRA 624 citing *Tan v. Bausch & Lomb Inc.,* G.R. No. 148420, December 15, 2005, 478 SCRA 115, 123-124, citing *Walter E. Olsen & Co. v. Aldanese and Trinidad,* 43 Phil. 259 (1922) and *San Miguel Brewer, Inc. v. Magno,* G.R. No. L-21879, September 29, 1967, 21 SCRA 292.

91 *California Assn. of Psychology Providers v. Rank*, 51 Cal 3d 1, 270 Cal Rptr 796, 793 P2 2 (1980) citing *Dyna-med, Inc. v. Fair Employment & Housing Com.*, 43 Cal.3d 1379, 1388-1389 (1987) and *Hittle v. Santa Barbara County Employees Retirement Assn.*, 39 Cal.3d 374, 387 (1985).

provision constrains us to strike it down for being *ultra vires.*

In *Conte v. Commission on Audit*,[92] the sole issue of whether the Commission on Audit (COA) acted in grave abuse of discretion when it disallowed in audit therein petitioners' claim of financial assistance under Social Security System (SSS) Resolution No. 56 was presented before this Court. The COA disallowed the claims because the financial assistance under the challenged resolution is similar to a separate retirement plan which results in the increase of benefits beyond what is allowed under existing laws. This Court, sitting *en banc*, upheld the findings of the COA, and invalidated SSS Resolution No. 56 for being *ultra vires,* to wit:

> xxx Said Sec. 28 (b) as amended by RA 4968 in no uncertain terms bars the creation of any insurance or retirement plan — other than the GSIS — for government officers and employees, in order to prevent the undue and [iniquitous] proliferation of such plans. It is beyond cavil that Res. 56 contravenes the said provision of law and is therefore invalid, void and of no effect. xxx
>
> We are not unmindful of the laudable purposes for promulgating Res. 56, and the positive results it must have had xxx. But it is simply beyond dispute that the SSS had no authority to maintain and implement such retirement plan, particularly in the face of the statutory prohibition. The SSS cannot, in the guise of rule-making, legislate or amend laws or worse, render them nugatory.
>
> It is doctrinal that in case of conflict between a statute and an administrative order, the former must prevail. A rule or regulation must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by the Congress or the Constitution or to enlarge its power beyond the scope intended. xxx Though well-settled is the rule that retirement laws are liberally interpreted in favor of the retiree, nevertheless, there is really *nothing to interpret* in either RA 4968 or Res. 56, and correspondingly, **the absence of any doubt as to the *ultra-vires* nature and illegality of the disputed resolution constrains us to rule against petitioners**.[93] (Citations omitted; emphasis and underscoring supplied.)

Administrative regulations must be in harmony with the provisions of the law for administrative regulations cannot extend the law or amend a legislative enactment.[94] Administrative issuances must not override, but must remain consistent with the law they seek to apply and implement. They are

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92 G.R. No. 116422, November 4, 1996, 264 SCRA 19.

93 *Id.* at 30-31.

94 *Landbank of the Philippines v. Court of Appeals,* G.R. Nos. 118712 & 118745, October 6, 1995, 249 SCRA 149.

intended to carry out, not to supplant or modify the law.[95] Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.[96] Administrative regulations issued by a Department Head in conformity with law have the force of law.[97] As he exercises the rule-making power by delegation of the lawmaking body, it is a requisite that he should not transcend the bounds demarcated by the statute for the exercise of that power; otherwise, he would be improperly exercising legislative power in his own right and not as a surrogate of the lawmaking body.[98]

If the implementing rules and regulations are issued in excess of the rule-making authority of the administrative agency, they are without binding effect upon the courts. At best, the same may be treated as administrative interpretations of the law and as such, they may be set aside by the Supreme Court in the final determination of what the law means.[99]

While this Court is mindful of the DAR's commitment to the implementation of agrarian reform, it must be conceded that departmental zeal may not be permitted to outrun the authority conferred by statute.[100] Neither the high dignity of the office nor the righteousness of the motive then is an acceptable substitute; otherwise the rule of law becomes a myth.[101]

As a necessary consequence of the invalidity of Item no. 4 of DAR AO 05-06 for being *ultra vires*, we hold that Carriedo did not waive his right to retain the land, nor can he be considered to be in *estoppel.*

Finally, petitioners cannot argue that the CLOAs allegedly granted in favor of his co-petitioners Corazon and Orlando cannot be set aside. They claim that CLOAs under RA No. 6657 are enrolled in the Torrens system of registration which makes them indefeasible as certificates of title issued in registration proceedings.[102] Even as these allegedly issued CLOAs are not in the records, we hold that CLOAs are not equivalent to a Torrens certificate of title, and thus are not indefeasible.

CLOAs and EPs are similar in nature to a Certificate of Land Transfer (CLT) in ordinary land registration proceedings. CLTs, and in turn the CLOAs and EPs, are issued merely as preparatory steps for the eventual issuance of a certificate of title. They do not possess the indefeasibility of

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95 *Commissioner of Internal Revenue v. Court of Appeals,* G.R. No. 108358, January 20, 1995, 240 SCRA 368.

96 CIVIL CODE OF THE PHILIPPINES, Article 7.

97 *Valerio v. Secretary of Agriculture and Natural Resources,* G.R. No. L-18587, April 23, 1963, 7 SCRA 719.

98 *People v. Maceren, supra* note 86 at 459.

99 *Cebu Institute of Technology v. Ople*, G.R. No. L-58870, December 18, 1987, 156 SCRA 629, 658.

100 *Radio Communications of the Philippines, Inc. v. Santiago,* G.R. Nos. L-29236 & L-29247, August 21, 1974, 58 SCRA 493, 498.

101 *Villegas v. Subido,* G.R. No. L-26534, November 28, 1969, 30 SCRA 498, 511.

102 *Rollo,* p. 21.

certificates of title. Justice Oswald D. Agcaoili, in *Property Registration Decree and Related Laws (Land Titles and Deeds)*,[103] notes, to wit:

> Under PD No. 27, beneficiaries are issued certificates of land transfers (CLTs) to entitle them to possess lands. Thereafter, they are issued emancipation patents (EPs) after compliance with all necessary conditions. Such EPs, upon their presentation to the Register of Deeds, shall be the basis for the issuance of the corresponding transfer certificates of title (TCTs) in favor of the corresponding beneficiaries.
>
> Under RA No. 6657, the procedure has been simplified. Only certificates of land ownership award (CLOAs) are issued, in lieu of EPs, after compliance with all prerequisites. Upon presentation of the CLOAs to the Register of Deeds, TCTs are issued to the designated beneficiaries. CLTs are no longer issued.
>
> The issuance of EPs or CLOAs to beneficiaries does not absolutely bar the landowner from retaining the area covered thereby. Under AO No. 2, series of 1994, an EP or CLOA may be cancelled if the land covered is later found to be part of the landowner's retained area. (Citations omitted; underscoring supplied.)

The issue, however, involving the issuance, recall or cancellation of EPs or CLOAs, is lodged with the DAR,[104] which has the primary jurisdiction over the matter.[105]

WHEREFORE, premises considered, the Petition is hereby **DENIED** for lack of merit. The assailed Decision of the Court of Appeals dated October 5, 2006 is **AFFIRMED**. Item no. 4 of DAR Administrative Order No. 05, Series of 2006 is hereby declared **INVALID, VOID and OF NO EFFECT** for being *ultra vires*.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

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103 2011 ED., P. 758.

104 *Aninao v. Asturias Chemical Industries, Inc.*, G.R. No. 160420, July 28, 2005, 464 SCRA 526.

105 *Bagongahasa v. Romualdez*, G.R. No. 179844, March 23, 2011, 646 SCRA 338.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified 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.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

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