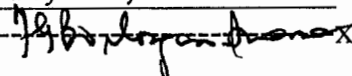


EN BANC

G.R. No. 181953: LAND BANK OF THE PHILIPPINES, *petitioner v.*
RURAL BANK OF HERMOSA (BATAAN), INC., *respondent.*

Promulgated:

July 25, 2017

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SEPARATE CONCURRING OPINION

CARPIO, J.:

In this case, the Court of Appeals upheld the Regional Trial Court's valuation of just compensation as being in accord with the guidelines set forth under Section 17 of Republic Act No. 6657 (RA 6657), as amended. It rejected the Land Bank of the Philippines' contention that DAR AO 17, Series of 1989, as amended, should control the computation of just compensation, holding that the said administrative orders are mere guidelines to be used by the LBP, and are not binding on the courts.


The *ponencia* reversed the Court of Appeals and remanded Civil Case No. 6428 to the Regional Trial Court for reception of evidence to determine just compensation in accordance with the guidelines set in the *ponencia*, which pertinently state that “[c]ourts should consider the factors in Section 17 of RA 6657, as amended, prior to its amendment by RA 9700, as translated into the applicable DAR formula. x x x.”

I submit this Separate Concurring Opinion to point out the gravely erroneous statement in *Alfonso v. LBP*¹ that “the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself x x x.” While the *ponencia* does not cite this particular statement in its discussion, it nevertheless stated that the Court supposedly “settle[d] the perennial objections to the use of Section 17 and the resulting DAR formulas in the valuation of acquired properties under the CARP” in *Alfonso*. With a fallacious statement that “the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself x x x,” *Alfonso* incorrectly settled the various objections to the use of the DAR formulas.

The statement in *Alfonso* that the DAR formulas partake of the nature of statutes is wrong for two reasons.

First, the DAR formulas are embodied in administrative issuances merely for the guidance of the courts in the determination of just compensation, and therefore they clearly do not partake of the nature of laws. Statutes are written laws passed by the legislature that courts construe

¹ G.R. Nos. 181912 & 183347, 29 November 2016.



and apply to specific situations. Congress did not craft the DAR formulas. As such, the DAR formulas are not statutes and therefore, the courts, which construe and apply laws,² are not bound by such formulas.

In the same case of *Alfonso*, the majority stressed that “courts should x x x consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. **In other words, courts of law possess the power to make a final determination of just compensation.**” If the DAR formulas “partake of the nature of statutes,” then courts will have to mandatorily implement the DAR formulas without deviation. The fact that the Court in *Alfonso* declared that courts can deviate from the DAR formulas proves that these formulas do not partake of the nature of statutes.

Clearly, the majority in *Alfonso* admit that the DAR formulas are not binding on the courts. There is no dispute that the courts must consider the DAR formulas in determining just compensation. However, the courts may depart or deviate from the DAR formulas. In other words, while the courts are bound to **consider** the DAR formulas in determining just compensation, the courts are **not bound to implement** the DAR formulas in computing just compensation. Otherwise, the courts serve merely as rubber stamps of the DAR, obligated to give their *imprimatur* to the DAR formulas. To hold that courts are bound by DAR’s valuation makes resort to the courts an empty exercise.

Second, under the 2009 amendment of Section 17 of RA 6657, the DAR formulas never “became law,” contrary to the statement in *Alfonso* that the DAR formulas “became law” under the 2009 amendment. Nowhere in the amended Section 17 of RA 6657 did the DAR formulas become law to be mandatorily implemented by the courts.

Section 17 of RA 6657, as amended by RA 9700, reads:

SEC. 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into **a basic formula by the DAR shall be considered, subject to the final decision of the proper court.** The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as

² See *United States v. Ang Tang Ho*, 43 Phil. 1 (1922).



well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Emphasis supplied)

This provision merely states that the DAR formulas translating the factors in determining just compensation **shall be considered, but remain subject to the final decision of the courts.** The DAR formulas did not become law in the amended Section 17 of RA 6657 to be followed mandatorily without deviation by the courts. **The courts are merely statutorily required to consider the DAR formulas; however, the courts are not bound by law to implement the DAR formulas.** If the DAR formulas “became law” under the 2009 RA 9700 amendment, then the DAR formulas could no longer be changed by the courts, and the phrase “subject to the final decision of the courts” in the amendment would be a superfluity. To insist that the DAR formulas “became law” not only goes beyond the express language and intent of the law, such insistence also defies reason.

As I stated in my Separate Concurring Opinion in *Alfonso*, the clause “a basic formula by the DAR shall be considered, subject to the final decision of the proper court” means that the law requires the courts to consider the DAR formula in determining just compensation, but the courts are not bound by the DAR formula since the determination of just compensation is essentially a judicial function. This amendment recognizes that the DAR has adopted a formula for determining just compensation. **However, the same amendment recognizes that any DAR formula is always, in the appropriate case, “subject to the final decision of the proper court.”** This is an express recognition by the legislature that the DAR formulas are neither mandatory nor binding on the courts, and that the determination of just compensation is essentially a judicial function.

In *Land Bank of the Philippines v. Yatco Agricultural Enterprises*³ and *Land Bank of the Philippines v. Eusebio, Jr.*,⁴ the Court held that the SACs must consider the DAR formulas in determining just compensation; however, the SACs are not strictly bound to apply the DAR formulas, thus:

When acting within the parameters set by the law itself, the RTC-SACs, however, are not strictly bound to apply the DAR formula to its minute detail, particularly when faced with situations that do not warrant the formula’s strict application; they may, in the exercise of their discretion, relax the formula’s application to fit the factual situations before them. They must, however, clearly explain the reason for any deviation from the factors and formula that the law and the rules have provided.

I reiterate my Separate Concurring Opinion in *Alfonso*. The application of the DAR formulas is not mandatory on Special Agrarian

³ 724 Phil. 276, 287-288 (2014).

⁴ 738 Phil. 7, 22 (2014).



Courts (SACs) in the determination of just compensation. The first paragraph of Section 18 of RA 6657 or the *Comprehensive Agrarian Reform Law of 1988* reads:

Section 18. *Valuation and Mode of Compensation.* — The LBP shall compensate the landowner in such amounts **as may be agreed upon by the landowner and the DAR and the LBP**, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, **or as may be finally determined by the court, as the just compensation for the land.** (Emphasis supplied)

This provision on valuation of just compensation consists of two parts. The first part refers to the amount of just compensation “as may be agreed upon by the landowner and the DAR and the LBP” while the second part pertains to the amount of just compensation “as may be finally determined by the court.” **In other words, the amount of just compensation may either be (1) by an agreement among the parties concerned; or (2) by a judicial determination thereof.**

In the first case, there must be an **agreement** on the amount of just compensation between the landowner and the DAR. Such **agreement** must be in accordance with the criteria under Sections 16 and 17 of RA 6657.⁵

⁵ Section 16 of RA 6657 provides:

SECTION 16. *Procedure for Acquisition of Private Lands.* — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other monuments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.



Section 16 outlines the procedure for acquiring private lands while Section 17 provides for the factors to be considered in determining just compensation. To translate such factors, the DAR devised a formula, which is embodied in DAO No. 5.⁶ The DAR, using the formula in DAO No. 5, will make an initial determination of the value of the land and thereafter offer such amount to the landowner. If the landowner accepts the DAR's offer, he shall be paid the amount of just compensation as computed by the DAR. If the landowner rejects the DAR's offer, he may opt to file an action before the courts to finally determine the proper amount of just compensation.⁷ **Clearly, the DAR cannot mandate the value of the land because Section 18 expressly states that the landowner shall be paid the amount of just compensation "as may be agreed upon" by the parties.** In other words, the DAR's valuation of the land is not final and conclusive upon the landowner. **Simply put, the DAR's computation of just compensation is not binding on the landowner.**

Since the landowner is not bound to accept the DAR's computation of just compensation, with more reason are courts not bound by DAR's valuation of the land. To mandate the courts to adhere to the DAR's valuation, and thus require the courts to impose such valuation on the landowner, is contrary to the first paragraph of Section 18 which states that the DAR's valuation is not binding on the landowner. If the law intended courts to be bound by the DAR's valuation, and to impose such

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

Section 17 of RA 6657 provides:

- SECTION 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Republic Act No. 9700, which took effect on 1 July 2009, amended Section 17 of RA 6657 to read as follows:

SEC. 17. *Determination of Just Compensation.* - In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

⁶ DAO No. 5, entitled *Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657*, amended DAO No. 11, series of 1994, which in turn amended DAO No. 6, series of 1992, entitled the *Rules and Regulations Covering the Valuation of Lands Voluntarily Offered or Compulsorily Acquired*.

⁷ *Republic v. Court of Appeals*, 331 Phil. 1070, 1077 (1996).

valuation on the landowner, then Section 18 should have simply directly stated that the landowner is bound by DAR's valuation. To avoid violating Section 18, courts must be given the discretion to accept, modify, or reject the DAR's valuation.

In my Separate Concurring Opinion, I also emphasized that the law itself vests in the Regional Trial Courts, sitting as SACs, the original and exclusive jurisdiction over actions for the determination of just compensation. Section 57 of RA 6657 reads:

Section 57. *Special Jurisdiction.* — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision. (Emphasis supplied)

Since the SACs exercise exclusive jurisdiction over petitions for determination of just compensation, the valuation by the DAR, presented before the agrarian courts, should only be regarded as initial or preliminary. As such, the DAR's computation of just compensation is not binding on the courts. In *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*,⁸ the Court held:

In fact, RA 6657 does not make DAR's valuation absolutely binding as the amount payable by LBP. A reading of Section 18 of RA 6657 shows that the courts, and not the DAR, make the final determination of just compensation. It is well-settled that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. The courts will still have the right to review with finality the determination in the exercise of what is admittedly a judicial function. (Emphasis supplied)

I likewise cited in my Separate Concurring Opinion the case of *Apo Fruits Corporation v. Court of Appeals*,⁹ which enunciated that the DAR formula is not controlling on the courts, thus:

x x x [T]he basic formula and its alternatives – administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998) – although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts. To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation goes beyond the intent and spirit of the law. The suggested interpretation is strained and would render the law inutile. Statutory

⁸ 634 Phil. 9, 31 (2010).

⁹ 565 Phil. 418, 433-434 (2007).

construction should not kill but give life to the law. As we have established in earlier jurisprudence, the valuation of property in eminent domain is essentially a judicial function which is vested in the regional trial court acting as a SAC, and not in administrative agencies. The SAC, therefore, must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be arbitrarily restricted by a formula dictated by the DAR, an administrative agency. **Surely, DAR AO No. 5 did not intend to straightjacket the hands of the court in the computation of the land valuation. While it provides a formula, it could not have been its intention to shackle the courts into applying the formula in every instance.** The court shall apply the formula after an evaluation of the three factors, or it may proceed to make its own computation based on the extended list in Section 17 of Republic Act No. 6657, which includes other factors[.] x x x. (Emphasis supplied)

To adhere to the DAR formula, in every instance, constitutes an undue restriction of the power of the courts to determine just compensation. This is clear from the case of *Land Bank of the Philippines v. Heirs of Puyat*¹⁰ which stated:

As the CA correctly held, the determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. While the courts should be mindful of the different formulae created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it.

To repeat, the DAR valuation of just compensation is not binding or mandatory on the courts. No administrative order can deprive the courts of the power to review with finality the DAR's determination of just compensation in the exercise of what is admittedly a judicial function.¹¹ What the DAR is empowered to do is only to determine in a preliminary manner the amount of just compensation, leaving to the courts the ultimate power to decide the final just compensation.

ACCORDINGLY, I vote to remand Civil Case No. 6428 to the Regional Trial Court of Bataan, Branch 1 for reception of evidence on the issue of just compensation.

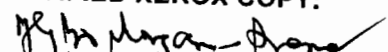


ANTONIO T. CARPIO
Associate Justice

¹⁰ 689 Phil. 505, 522 (2012).

¹¹ See *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 815 (1989).

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FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT